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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2022

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 001-39801

XOMA CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**52-2154066**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
2200 Powell Street, Suite 310, Emeryville, California	**94608**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (510) 204-7200

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.0075 par value	XOMA	The Nasdaq Global Market
8.625% Series A Cumulative, Perpetual Preferred Stock, par value $0.05	XOMAP	The Nasdaq Global Market
Depositary Shares (each representing 1/1000th interest in a share of 8.375% Series B Cumulative Perpetual Preferred Stock, par value $0.05)	XOMAO	The Nasdaq Global 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, 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. ☐

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

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

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant, based on the closing price of the shares of common stock on the Nasdaq Global Market on June 30, 2022, was $154,564,269.

Number of shares of Registrant's Common Stock outstanding as of March 6, 2023 was 11,460,968.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's Definitive Proxy Statement relating to the Company's 2023 Annual Meeting of Stockholders are incorporated by reference into Part III of this Report.

XOMA Corporation
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GLOSSARY OF TERMS AND ABBREVIATIONS

Abbreviations	Definition
2010 Plan	the Company's 2010 Long Term Incentive and Stock Award Plan, as amended
2018 Common Stock ATM Agreement	At The Market Issuance Sales Agreement with HCW dated December 18, 2018
2021 Series B Preferred Stock ATM Agreement	At The Market Issuance Sales Agreement with B. Riley dated August 5, 2021
'40 Act	Investment Company Act of 1940
ACA	The Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010
Affimed	Affimed N.V.
Affitech	Affitech Research AS
Affitech CPPA	the Company's Commercial Payment Purchase Agreement with Affitech dated October 6, 2021
Agenus	Agenus, Inc. and certain affiliates
Agenus RPA	the Company's Royalty Purchase Agreement with Agenus dated September 20, 2018
Anti-TGFβ Antibody License Agreement	the Company's License Agreement with Novartis dated September 30, 2015
April 2022 Letter Agreement	the Letter Agreement to Officer Employment Agreement dated August 7, 2017, between XOMA Corporation and Thomas Burns dated April 1, 2022
Aronora	Aronora, Inc.
Aronora RPA	the Company's Royalty Purchase Agreement with Aronora dated April 7, 2019
AstraZeneca	AstraZeneca plc
ASC	Accounting Standards Codification
ASC 310	ASC Topic 310, Receivables
ASC 450	ASC Topic 450, Contingencies
ASC 606	ASC Topic 606, Revenue from Contracts with Customers
ASC 730	ASC Topic 730, Research and Development
ASC 805	ASC Topic 805, Business Combinations
ASC 815	ASC Topic 815, Derivatives and Hedging
ASU	Accounting Standards Update
Bayer	Bayer Pharma AG
Bioasis	Bioasis Technologies, Inc. and certain affiliates
Bioasis RPA	the Company's Royalty Purchase Agreement with Bioasis dated February 25, 2019
BLA	Biologic License Application
Black-Scholes Model	Black-Scholes Option Pricing Model
B. Riley	B. Riley Securities, Inc.
BVF	Biotechnology Value Fund, L.P.
CCPA	California Consumer Privacy Act of 2018, collectively the Act and its regulations
CARES	Coronavirus Aid, Relief, and Economic Security
cGMP	current Good Manufacturing Processes
Chiesi	Chiesi Farmaceutici S.p.A.
Chiron	Chiron Corporation
Chiron Collaboration Agreement	the Company's Collaboration Agreement with Chiron dated February 27, 2004, as amended in May 2005, July 2008 and September 2015
Company	XOMA Corporation, including subsidiaries
CPPA	Commercial Payment Purchase Agreement
CPRA	California Privacy Rights Act
EC	European Commission

EMA	European Medicines Agency
ESPP	2015 Employee Stock Purchase Plan, as amended
EU	European Union
FCPA	U.S. Foreign Corrupt Practices Act of 1977, as amended
FDA	U.S. Food and Drug Administration
GAAP	Generally accepted accounting principles
G&A	General and administrative
GDPR	General Data Protection Regulation
Gevokizumab License Agreement	the Company's License Agreement with Novartis dated August 24, 2017
HCRP	Healthcare Royalty Partners II, L.P.
HCW	H.C. Wainwright & Co., LLC
HIPAA	Federal Health Insurance Portability and Accountability Act of 1996
ICE®	Innate cell engager
IP	Intellectual Property
Janssen	Janssen Biotech, Inc.
Kuros	Kuros Biosciences AG, Kuros US LLC and Kuros Royalty Fund (US) LLC, collectively
Kuros RPA	the Company's Royalty Purchase Agreement with Kuros dated July 14, 2021
Merck	Merck Sharp & Dohme Corp
Merck KGaA	Ares Trading SA
Merck KGaA License Agreement	In-license agreement from Merck KGaA to ObsEva related to ebopiprant dated June 10, 2015 and subsequently amended on July 8, 2016 (assumed by the Company as part of the ObsEva Agreement)
NDA	New Drug Application
NIH	National Institutes of Health
NOL	net operating loss
Novartis	Novartis Pharma AG, Novartis International Pharmaceutical Ltd., Novartis Institutes for Biomedical Research, Inc. and/or Novartis Vaccines and Diagnostics, Inc.
November 2022 Letter Agreement	November 1, 2022 amendment to the April 2022 Letter Agreement
ObsEva	ObsEva SA
ObsEva IP Acquisition Agreement	the Company's IP Acquisition Agreement with ObsEva dated November 21, 2022
Ology Bioservices	Ology Bioservices Inc. (formerly Nanotherapeutics Inc., now a wholly owned subsidiary of National Resilience, Inc.)
Organon	Organon International GmbH
Organon License Agreement	Out-license agreement to Organon from ObsEva dated July 26, 2021, related to the development and commercialization of ebopiprant (assumed by the Company as part of the ObsEva IP Acquisition Agreement)
Palo	Palobiofarma, S.L.
Palo RPA	the Company's Royalty Purchase Agreement with Palo dated September 26, 2019
Pfizer	Pfizer, Inc.
Regeneron	Regeneron Pharmaceuticals, Inc.
Amended Retention Plan	October 25, 2022 amendment to the Retention Plan
Retention Plan	Retention and Severance Plan dated March 31, 2022
Rezolute	Rezolute, Inc., formerly Antria Bio, Inc.
Rezolute License Agreement	the Company's License Agreement with Rezolute dated December 6, 2017, as amended in March 2018, January 2019 and March 2020
RPA	Royalty Purchase Agreement
Roche	F. Hoffmann-La Roche AG
SEC	Securities and Exchange Commission
Second Bioasis RPA	the Company's Royalty Purchase Agreement with Bioasis dated November 2, 2020

Series A Preferred Stock	the 8.625% Series A cumulative, perpetual preferred stock issued in December 2020
Series B Preferred Stock	the 8.375% Series B cumulative, perpetual preferred stock issued in April 2021
Series A and Series B Preferred Stock	Series A Preferred Stock and Series B Preferred Stock, collectively
Series B Depositary Shares	the depositary shares, each representing 1/1000th interest in a share of Series B Preferred Stock
Sonnet	Sonnet BioTherapeutics, Inc., formerly Oncobiologics, Inc.
Sonnet Collaboration Agreement	the Company's Collaboration Agreement with Sonnet dated July 23, 2012, as amended in May 2019
SOX	Sarbanes-Oxley Act of 2002
SVB	Silicon Valley Bank
SVB Loan Agreement	the loan and security agreement with SVB dated May 7, 2018, as amended (terminated upon repayment in June 2021)
SVB Loan	the loan with SVB pursuant to the SVB Loan Agreement (extinguished upon repayment in June 2021)
Takeda	Takeda Pharmaceutical Company Limited
Takeda Collaboration Agreement	the Company's Collaboration Agreement with Takeda dated November 1, 2006, as amended in February 2007 and February 2009
TGFβ	transforming growth factor beta
VABYSMO	faricimab-svoa
Viracta	Viracta Therapeutics, Inc.
Viracta RPA	the Company's Royalty Purchase Agreement with Viracta dated March 22, 2021
XOMA	XOMA Corporation, a Delaware corporation, including subsidiaries

PART I

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and the Private Securities Litigation Reform Act of 1995, which are subject to the "safe harbor" created by those sections. Forward-looking statements are based on our management's beliefs and assumptions and on information currently available to them. In some cases you can identify forward-looking statements by words such as "may," "will," "should," "could," "would," "expects," "plans," "anticipates," "believes," "estimates," "projects," "predicts," "potential," "intend" and similar expressions intended to identify forward-looking statements. Examples of these statements include, but are not limited to, statements regarding: our future operating expenses, our future losses, the success of our strategy as a royalty aggregator, the assumptions underlying our business model; the extent to which issued and pending patents may protect the products and processes in which we have an ownership or royalty interest and prevent the use of the covered subject matter by third parties, the potential of our existing product candidates to lead to the development of commercial products, our ability to receive potential milestone or royalty payments under license and collaboration agreements and the amount and timing of receipt of those payments, and the impact of the evolving COVID-19 pandemic. These statements are based on assumptions that may not prove accurate. Actual results could differ materially from those anticipated due to certain risks inherent in the biotechnology industry and for our licensees engaged in the development of new products in a regulated market. Among other things: there can be no assurance that our revenues or expenses will meet any expectations or follow any trend(s); we may be unable to retain our key employees; litigation, arbitration or other disputes with third parties may have a material adverse effect on us; our product candidates subject to our out-license agreements are still being developed, and our licensees' may require substantial funds to continue development which may not be available; we may not be successful in entering into out-license agreements for our product candidates; if our therapeutic product candidates do not receive regulatory approval, our third-party licensees will not be able to manufacture and market them; products or technologies of other companies may render some or all of our product candidates noncompetitive or obsolete; we do not know whether there will be, or will continue to be, a viable market for the products in which we have an ownership or royalty interest; even once approved, a product may be subject to additional testing or significant marketing restrictions, its approval may be withdrawn or it may be voluntarily taken off the market; and we and our licensees are subject to various state and federal healthcare related laws and regulations that may impact the commercialization of our product candidates and could subject us to significant fines and penalties. These and other risks, including those related to current economic and financial market conditions, are contained principally in Item 1, Business; Item 1A, Risk Factors; Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations; and other sections of this Annual Report on Form 10-K. Factors that could cause or contribute to these differences include those discussed in Item 1A, Risk Factors, as well as those discussed elsewhere in this Annual Report on Form 10-K.

Forward-looking statements are inherently uncertain and you should not place undue reliance on these statements, which speak only as of the date that they were made. These cautionary statements should be considered in connection with any written or oral forward-looking statements that we may issue in the future. We do not undertake any obligation to release publicly any revisions to these forward-looking statements after completion of the filing of this Annual Report on Form 10-K to reflect later events or circumstances or to reflect the occurrence of unanticipated events.

In addition, statements that "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this Annual Report on Form 10-K. While we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

All references to "portfolio" in this Annual Report on Form 10-K are to milestone and/or royalty rights associated with a basket of drug products in development.

We use our trademarks, trade names and services marks in this report as well as trademarks, trade names and service marks that are the property of other organizations. Solely for convenience, trademarks and trade names referred to in this report appear without the ® and ™ symbols, but those references are not intended to indicate, in any way, that

we will not assert, to the fullest extent under applicable law, our rights or that the applicable owner will not assert its rights, to these trademarks and trade names.

Risk Factors Summary

Below is a summary of material factors that make an investment in our securities speculative or risky. Importantly, this summary does not address all of the risks and uncertainties that we face. Additional discussion of the risks and uncertainties summarized in this risk factor summary, as well as other risks and uncertainties that we face, can be found under "Risk Factors" in Part I, Item 1A of this Annual Report on Form 10-K. The below summary is qualified in its entirety by that more complete discussion of such risks and uncertainties. You should consider carefully the risks and uncertainties described under "Risk Factors" in Part I, Item 1A of this Annual Report on Form 10-K as part of your evaluation of the risks associated with an investment in our securities.

- Our acquisitions of potential future royalty and/or milestone payments may not produce anticipated revenues and/or may be negatively affected by a default or bankruptcy of the licensor(s) or licensee(s), and if such transactions are secured by collateral, we may be, or may become, under-secured by the collateral or such collateral may lose value and we will not be able to recuperate our capital expenditures associated with the acquisition.

- Many of our potential royalty acquisitions may be associated with drug products that are in clinical development and have not yet been commercialized. To the extent that such products are not successfully developed and commercialized, our financial condition and results of operations may be negatively impacted. Acquisitions of potential royalties associated with development stage biopharmaceutical product candidates are subject to a number of uncertainties.

- We depend on our licensees and royalty-agreement counterparties for the determination of royalty and milestone payments. While we typically have primary or back-up rights to audit our licensees and royalty-agreement counterparties, the independent auditors may have difficulty determining the correct royalty calculation, errors, may be undetectable and payment calculations may call for retroactive adjustments. We may have to exercise legal remedies to resolve any disputes resulting from any such audit.

- The lack of liquidity of our acquisitions of future potential milestones and royalties may adversely affect our business and, if we need to sell any of our acquired assets, we may not be able to do so at a favorable price, if at all. As a result, we may suffer losses. We have sustained losses in the past, and we expect to sustain losses in the foreseeable future.

- The ongoing COVID-19 pandemic, macroeconomic conditions, such as rising inflation rates, uncertain credit and global financial markets and supply chain disruptions, and geopolitical events, have adversely impacted and could materially and adversely impact the future our licensees or royalty-agreement counterparties or their licensees, which could cause delays or elimination of our receipts of potential milestones and royalties under our licensing or royalty and milestone acquisition arrangements.

- Our royalty aggregator strategy may require that we register with the SEC as an "investment company" in accordance with the Investment Company Act of 1940. If we were to become an "investment company" and be subject to the restrictions of the 1940 Act, those restrictions would likely require significant changes in the way we do business and add significant administrative burdens to our operations.

- Our royalty aggregator strategy may require us to raise additional funds to acquire milestone and royalty interests; we cannot be certain that funds will be available or available at an acceptable cost of capital, and if they are not available, we may be unsuccessful in acquiring milestone and royalty interests to sustain the business in the future.

- Information available to us about the biopharmaceutical products underlying the potential royalties we buy may be limited and therefore our ability to analyze each product and its potential future cash flow may be similarly limited.

- Our future income is dependent upon numerous potential milestone and royalty-specific assumptions and, if these assumptions prove not to be accurate, we may not achieve our anticipated rates of returns. Reductions in potential milestone or royalty payments compared to expectations, or impairments in the value of potential milestones and royalties acquired could have a material adverse effect on our financial condition and results of operations.

- A large percentage of the calculated net present value of our portfolio is represented by a limited number of products. The failure of any one of these products to move forward in clinical development or commercialization may have a material adverse effect on our financial condition and results of operation.

- We rely heavily on license and collaboration relationships, and any litigation, arbitration or other disputes with our licensees, collaborators and their partners or termination or breach of any of the related agreements could reduce the financial resources available to us. In the event of any disagreement that cannot be resolved satisfactorily to us, we may end up being paid less than anticipated on such product or involved in costly and time-consuming arbitration or litigation, which could materially adversely affect our financial condition, results of operation and future prospects.

- Our potential milestone and royalty providers may rely on third parties to provide services in connection with their product candidate development and manufacturing programs. The inadequate performance by or loss of any of these service providers could adversely affect our potential milestone and royalty providers' product candidate development.

- We may not be able to successfully identify and acquire potential milestone and royalty streams on other products, product candidates, or programs, or other companies to grow and diversify our business, and, even if we are able to do so, we may not be able to successfully manage the risks associated with integrating any such products, product candidates, programs or companies into our business or we may otherwise fail to realize the anticipated benefits of these acquisitions.

- Our potential milestone and royalty providers face uncertain results of clinical trials of product candidates. If our potential royalty providers' therapeutic product candidates do not receive regulatory approval, our potential royalty providers will be unable to market them.

- We do not know whether there will be, or will continue to be, a viable market for the product candidates in which we have an ownership, milestone or royalty interest.

- If we and our potential royalty providers are unable to protect our intellectual property, in particular patent protection for principal products, product candidates and processes in which we have an ownership or royalty interest, and prevent the use of the covered subject matter by third parties, our potential royalty providers' ability to compete in the market will be harmed, and we may not realize our profit potential.

- We have a continuing obligation to pay quarterly dividends to holders of our Series A and Series B Preferred Stock, which will be an on-going expenditure for us and may limit our ability to borrow additional funds.

Item 1. Business

Overview and Strategy

XOMA is a biotech royalty aggregator. We have a sizable portfolio of economic rights to future potential milestone and royalty payments associated with partnered commercial and pre-commercial therapeutic candidates. Our

portfolio was built through acquisitions of rights to future milestones and royalties that we have made since our royalty aggregator business model was implemented in 2017 combined with outlicensing our proprietary products and platforms from our legacy discovery and development business. We expect that most of our future revenue will be based on payments we may receive for milestones and royalties related to these programs.

Our strategy is to expand our portfolio by acquiring additional potential milestone and royalty revenue streams on drug product candidates from third parties. Expanding our portfolio through these acquisitions can allow for further diversification across therapeutic areas and development stages. Our ideal target acquisitions are in pre-commercial stages of development, have an expected long duration of market exclusivity, have high revenue potential, and are partnered with a large pharmaceutical or biopharmaceutical enterprise.

Portfolio Highlights

The following table highlights key assets included in our portfolio of potential future milestone and royalty streams. This table does not include all assets because certain assets are subject to confidentiality agreements.

COMPANY	ASSET NAME	TARGET	ROYALTY RATE
Affimed	AFM13	CD30/CD16A	Confidential
Affimed	AFM24	EGRF/CD16A	Confidential
Aronora	AB002 (proCase/E-WE thrombin)	Protein kinase C	Low single-digit
Aronora	AB023 (xisomab, 3G3)	Factor XI	Low single-digit
Aronora	AB054	Factor XII	Low single-digit
AstraZeneca	AZD2936	TIGIT/PD-1	Low single-digit
AVEO Oncology	AV-299 (ficlatuzumab)	HGF	Low single-digit
Bayer (Aronora RPA)	BAY1213790 (osocimab)	Factor XIa	Low single-digit
Regeneron	CMP-001 (vidutolimod)	TLR9	High single-digit to double-digit
Chiesi (Bioasis RPA)	Lysosomal Storage Disorders Enzymes	Enzyme replacement therapy	Low single-digit
Compugen	COM902	TIGIT	Low single-digit
Day One	DAY101 (tovorafenib)	Pan-RAF	Mid-single-digit
Denovo Biopharma	vosaroxin	Topoisomerase II	High single-digit
Incyte (Agenus RPA)	INCAGN1876	GITR	Mid-single-digit
Incyte (Agenus RPA)	INCAGN1949	OX-40	Mid-single-digit
Incyte (Agenus RPA)	INCAGN02390	TIM-3	Low to mid-single-digit
Incyte (Agenus RPA)	INCAGN2385	LAG-3	Low to mid-single-digit
Janssen Biotech	JNJ-63723283 (cetrelimab)	PD-1	0.75%
Merck (Agenus RPA)	MK-4830	ILT-4	Low single-digit
Molecular Templates	MT-0169	CD-38	4%
Novartis	CFZ533 (iscalimab)	CD-40	Mid-single-digit to low-teens
Novartis	VPM087 (gevokizumab)	IL-1ß	High single-digit to mid-teens
Novartis	NIS793	TGFß	Mid-single-digit to low teens
Novartis (Palobiofarma RPA)	NIR178	Adenosine A2a receptor	Low single-digit

Ology Bioservices	G03-52-01	Botulinum neurotoxins	15%
Organon (ObsEva IP Acquisition Agreement)	ebopiprant	Prostaglandin F2α (PGF2α) receptor	Low- to mid-teens
Palo	PBF-680	Adenosine A1 receptor	Low single-digit
Palo	PBF-677	Adenosine A3 receptor	Low single-digit
Palo	PBF-999	Adenosine A2a receptor/ Phosphodiesterase 10 (PDE-10)	Low single-digit
Palo	PBF-1129	Adenosine A2b receptor	Low single-digit
Palo	PBF-1650	Adenosine A3 receptor	Low single-digit
Rezolute	RZ358	INSR	High single-digit to mid-teens
Rezolute	RZ402	Plasma kallikrein	Low single-digit
Roche	faricimab (faricimab-svoa)	Angiopoietin-2 and VEGF-A	0.5%
Takeda	TAK-079 (mezagitamab)	CD-38	4%

Acquisitions

ObsEva Intellectual Property Acquisition Agreement

In November 2022, we entered into the ObsEva IP Acquisition Agreement pursuant to which we acquired all of ObsEva's intellectual property (patents and know-how) and license agreement rights related to ebopiprant, an investigational compound previously licensed by ObsEva from Merck KGaA. We also assumed ObsEva's ongoing obligations under the Organon License Agreement and the Merck KGaA License Agreement. Pursuant to the Organon License Agreement, XOMA is eligible to receive up to $475.0 million in payments for ebopiprant development, commercialization and sales-based milestones. If ebopiprant is successfully commercialized, we will be entitled to receive royalties that range from low to mid-teens from Organon and will be required to make mid-single-digit royalty payments to Merck KGaA. We paid ObsEva a $15.0 million upfront payment at closing and will pay potential earn-out payments of up to $97.5 million for development, regulatory and sales-based milestones, representing a portion of what we will receive pursuant to the Organon License Agreement.

Affitech Commercial Payment Purchase Agreement

In October 2021, we entered into the Affitech CPPA, pursuant to which we purchased a future stream of commercial payment rights to Roche's faricimab from Affitech for an upfront payment of $6.0 million. We are eligible to receive commercial payments from Roche consisting of 0.50% of future net sales of faricimab for a ten-year period following the first commercial sales in each applicable jurisdiction.

In January 2022, Genentech, a member of the Roche group, received approval from the FDA to commercialize VABYSMO (faricimab-svoa) for the treatment of wet, or neovascular, age-related macular degeneration and diabetic macular edema. Pursuant to the Affitech CPPA, we paid Affitech a $5.0 million milestone tied to these U.S. marketing approvals.

In September 2022, in connection with Roche receiving approval from the European Commission to commercialize VABYSMO for the treatment of neovascular or 'wet' age-related macular degeneration and visual impairment due to diabetic macular edema, we made a $3.0 million milestone payment to Affitech pursuant to the terms of the Affitech CPPA. As a result of the EC Approval, we are eligible to receive a 0.5% commercial payment stream for ten years from the first commercial sale of VABYSMO in Europe.

In August 2022, we received $0.5 million from Roche representing the first commercial payment for sales of VABYSMO during the first six months of 2022, and in February 2023 we received $2.4 million for sales of VABYSMO during the second half of 2022.

Kuros Royalty Purchase Agreement

In July 2021, we entered into the Kuros RPA, pursuant to which we acquired the rights to 100% of the potential future royalties from commercial sales, which are tiered from high single-digit to low double-digits, and up to $25.5 million in pre-commercial milestone payments associated with an existing license agreement related to Checkmate Pharmaceuticals' vidutolimod (CMP-001), a Toll-like receptor 9 agonist, packaged in a virus-like particle, for an upfront payment of $7.0 million. We may pay additional sales-based milestones to Kuros of up to $142.5 million representing a portion of the future royalties on commercial sales.

In May 2022, Regeneron completed its acquisition of Checkmate Pharmaceuticals resulting in a $5.0 million milestone payment to Kuros. Pursuant to the Kuros RPA, we were entitled to 50% of the milestone payment, which we received in July 2022.

Viracta Royalty Purchase Agreement

In March 2021, we entered into the Viracta RPA, pursuant to which we acquired the right to receive future royalties, milestones, and other payments related to two clinical-stage drug candidates for $13.5 million. The first candidate, DAY101 (pan-RAF kinase inhibitor), is being developed by Day One Biopharmaceuticals, and the second candidate, vosaroxin (topoisomerase II inhibitor), is being developed by Denovo Biopharma. We acquired the right to receive (i) up to $54.0 million in potential milestones, potential royalties on sales, if approved, and other payments related to DAY101, excluding up to $20.0 million consideration retained by Viracta, and (ii) up to $57.0 million in potential regulatory and commercial milestones and high single-digit royalties on sales related to vosaroxin, if approved.

Agenus Royalty Purchase Agreement

In September 2018, we entered into the Agenus RPA, pursuant to which we acquired the right to receive 33% of the future royalties due to Agenus from Incyte (net of certain royalties payable by Agenus to a third party) and 10% of all future developmental, regulatory and sales milestones on sales of six Incyte immuno-oncology assets. In addition, we acquired the right to receive 33% of the future royalties due to Agenus from Merck and 10% of all future developmental, regulatory and sales milestones on sales of MK-4830, an immuno-oncology product currently in clinical development. Pursuant to the Agenus Royalty Purchase Agreement, our share in future potential development, regulatory and commercial milestones is up to $59.5 million, and the royalties have no limit. Under the terms of the Agenus Royalty Purchase Agreement, we paid Agenus $15.0 million.

In November 2020, MK-4830 advanced to Phase 2 development stage. As a result of the advancement, Agenus earned a $10.0 million clinical development milestone pursuant to its license agreement with Merck, of which we received $1.0 million.

Bioasis Royalty Purchase Agreement

In February 2019, we entered into the Bioasis RPA, pursuant to which we acquired future milestone, royalty and option fee payment rights from Bioasis for product candidates that are being developed pursuant to a License Agreement between Bioasis and Prothena Biosciences Limited. Under the terms of the Bioasis RPA, we paid Bioasis an upfront cash payment of $0.3 million and will be required to make contingent future cash payments of up to $0.2 million to Bioasis if and when the licensed product candidates reach certain development milestones. As of December 31, 2021, none of the development milestones had been achieved. In addition, we were granted an option to purchase a 1% royalty right on the next two license agreements entered into between Bioasis and third-party licensees subject to certain payments and conditions as well as a right of first negotiation on the purchase of royalty rights on subsequent Bioasis license agreements with third parties.

In November 2020, we entered into the Second Bioasis RPA, pursuant to which we acquired potential future milestone and other payments, and royalty rights from Bioasis for product candidates that are being developed pursuant to a research collaboration and license agreement between Bioasis and Chiesi. We paid Bioasis $1.2 million upon closing of the Second Bioasis RPA for the purchased rights.

Aronora Royalty Purchase Agreement

In April 2019, we entered into the Aronora RPA, pursuant to which we acquired the rights to potential royalties and a portion of upfront, milestone, and option payments associated with five anti-thrombotic hematology drug products in development: three candidates subject to Aronora's collaboration Bayer (the "Bayer Products") and two additional early-stage candidates (the "non-Bayer Products").

Under the terms of the Aronora RPA, we made a $6.0 million upfront payment to Aronora when the transaction closed on June 26, 2019, and in September 2019 we made an additional $3.0 million payment for the three Bayer Products that were active as of September 1, 2019. Pursuant to the Aronora RPA, if we receive $250.0 million in cumulative royalties on net sales per product, we will be required to pay associated tiered milestones payments to Aronora in an aggregate amount of up to $85.0 million per product. The tiered milestones will be paid based on various royalty tiers prior to reaching $250.0 million in cumulative royalties on net sales per product. We will retain royalties per product in excess of $250.0 million. We will receive, on average, low single-digit royalties on future sales of the Bayer Products and 10% of all future developmental, regulatory and sales milestones related to the Bayer Products. In addition, we purchased from Aronora the right to receive low single-digit percentage of net sales of the non-Bayer Products and 10% of all future payments, including upfront payments, option payments and developmental, regulatory and sales milestone payments on potential future sales of the non-Bayer Products. In July 2020, Bayer elected to not exercise its option on the third Bayer Product and that product is now subject to the same economics as the non-Bayer Products.

Palobiofarma Royalty Purchase Agreement

In September 2019, we entered into the Palo RPA, pursuant to which we acquired the rights to potential royalty payments in low single-digit percentages of aggregate net sales associated with six drug candidates in various clinical development stages, targeting the adenosine pathway with potential applications in solid tumors, non-Hodgkin's lymphoma, asthma/chronic obstructive pulmonary disease, ulcerative colitis, idiopathic pulmonary fibrosis, lung cancer, psoriasis, nonalcoholic steatohepatitis and other indications (the "Palo Licensed Products") that are being developed by Palo. Novartis is a development partner on NIR178, one of the Palo Licensed Products, and NIR178 is being developed pursuant to a license agreement between Palo and Novartis. Under the terms of the Palo RPA, we paid Palo $10.0 million for the rights to potential royalty payments on future sales of the Palo Licensed Products.

Selected Programs Underlying Our Portfolio

Historically, we have licensed product candidates or provided research and development collaboration services to world-class organizations, such as Novartis and Takeda, in pursuit of new antibody products under which we are eligible to receive potential future milestone payments and royalties. The following is a summary of material license and collaboration agreements that represent a significant component of our portfolio.

Novartis – Anti-TGFβ Antibody (NIS793)

In September 2015, we and Novartis entered into the Anti-TGFβ Antibody License Agreement under which we granted Novartis an exclusive, worldwide, royalty-bearing license to our anti-TGFβ antibody program ("NIS793"). Novartis is solely responsible for the development and commercialization of the antibodies and products containing the antibodies arising from this program.

Under the Anti-TGFβ Antibody License Agreement, we received a $37.0 million upfront fee, and were eligible to receive up to a total of $480.0 million in development, regulatory and commercial milestones. We also are eligible to receive royalties on sales of licensed products, which are tiered based on sales levels and have percentage rates ranging from mid-single-digits to low double-digits. Novartis' obligation to pay royalties with respect to a particular product and

country will continue for the longer of the date of expiration of the last valid patent claim covering the product in that country, or ten years from the date of the first commercial sale of the product in that country. This program is currently in clinical testing.

In October 2020, we earned a $25.0 million milestone upon the dosing of the first patient in Novartis' first NIS793 Phase 2 clinical trial. As specified under the terms the Anti-TGFβ Antibody License Agreement, we received $17.7 million in cash and the remaining balance of $7.3 million was recognized as a reduction to our debt obligation to Novartis.

In July 2021, Novartis announced the FDA had granted Orphan Drug Designation to NIS793 in combination with standard of care chemotherapy for the treatment of pancreatic cancer.

In October 2021, we earned a $35.0 million milestone payment upon dosing of the first patient in Novartis' first NIS793 Phase 3 clinical trial. We are eligible to receive remaining milestones up to a total of $410.0 million under the Anti-TGFβ Antibody License Agreement. Upon receipt of regulatory approval to commercialize NIS793, we will receive tiered royalties on net product sales that range from the mid-single-digit to the low double-digits percentage rate.

Novartis – Anti-IL-1β Antibody (VPM087)

In August 2017, we and Novartis entered into the Gevokizumab License Agreement, under which we granted Novartis an exclusive, worldwide, royalty-bearing license to gevokizumab ("VPM087") (a clinical-stage anti-IL-1b product candidate) and related know-how and patents. Under the terms of the Gevokizumab License Agreement, Novartis is solely responsible for the development and commercialization of VPM087 and products containing such antibody.

Under the Gevokizumab License Agreement, we received total consideration of $30.0 million in 2017 for the license and rights granted to Novartis. Of the total consideration, $15.7 million was paid in cash and $14.3 million (equal to €12.0 million) was paid by Novartis, on our behalf, to settle our loan with Les Laboratories Servier. In addition, Novartis extended the maturity date on our debt to Novartis to September 30, 2022. In June 2021, we repaid its entire outstanding debt balance to Novartis. We also received $5.0 million related to the sale of 539,131 shares of our common stock, at a price per share of $9.2742. Based on the achievement of pre-specified criteria, we are eligible to receive up to $438.0 million in development, regulatory and commercial milestones. We also are eligible to receive royalties on sales of licensed products, which are tiered based on sales levels and have percentage rates ranging from mid-single digit to mid-teens. This program is in Phase 1 clinical testing.

Unless terminated earlier, the Gevokizumab License Agreement will remain in effect, on a country-by-country and product-by-product basis, until Novartis' royalty obligations end. The Gevokizumab License Agreement contains customary termination rights relating to material breach by either party. Novartis also has a unilateral right to terminate the Gevokizumab License Agreement on a product-by-product and country-by-country basis or in its entirety with six months' prior written notice.

In March 2023, Novartis notified us that based upon a strategic review of the development program, Novartis will not initiate further studies of gevokizumab in gastrointestinal cancers. Novartis' study to evaluate treatment with gevokizumab with standard of care anti-cancer therapies in patients with metastatic colorectal, gastroesophageal, and renal cancers will continue to primary analysis, which is anticipated later this year.

Novartis – Anti-CD40 Antibody

In February 2004, we entered into an exclusive, worldwide, multi-product collaboration agreement with Chiron to research, develop and commercialize multiple antibody products for the treatment of cancer, and such agreement was replaced with the Chiron Collaboration Agreement entered in May of 2005. The Chiron Collaboration Agreement was a risk-sharing arrangement whereby Chiron and XOMA shared expenses and revenues on a 70-30 basis, with XOMA's share being 30%. Financial terms included a loan facility from Chiron to XOMA, secured by XOMA's 30% ownership interest in the collaboration, of up to $50.0 million to fund up to 75% of our share of expenses beginning in 2005.

In October 2005, Chiron announced it had entered into a definitive merger agreement with Novartis under which Novartis acquired all of the shares of Chiron that it did not already own. This transaction closed in 2006 at which time Novartis acquired Chiron's interest in the Chiron Collaboration Agreement. In July of 2008, Novartis and XOMA restructured the Chiron Collaboration Agreement, which involved six development programs including iscalimab, a fully human anti-CD40 antagonist antibody intended as a treatment for B-cell mediated diseases, including malignancies and autoimmune diseases. As part of the restructuring, Novartis, the successor to Chiron, was granted, among other things, control over the ongoing product development collaborations remaining thereunder, including iscalimab. In September 2015, the parties agreed to reduce the royalty-style payments that XOMA is eligible to receive on sales of Novartis' clinical-stage anti-CD40 antibodies (such as iscalimab). These royalty-style payments are tiered based on sales levels and now have percentage rates ranging from mid-single-digit to low teens.

In September 2021, Novartis announced its decision to discontinue its study of CFZ533 (iscalimab) in kidney transplant. In September 2022, after an interim analysis of data, Novartis also decided to discontinue its study of CFZ533 in liver transplant. Novartis is continuing iscalimab studies in other indications such as Sjögren's Syndrome, Lupus Nephritis and Hidradenitis Suppurativa.

Our right to royalty-style payments expires on the later of the expiration of any licensed patent covering each product or 10 years from the first commercial sale of each product in each country.

Takeda

In November 2006, we entered into the Takeda Collaboration Agreement with Takeda under which we agreed to discover and optimize therapeutic antibodies against multiple targets selected by Takeda.

Under the Takeda Collaboration Agreement, we may receive additional milestone payments aggregating up to $19.0 million relating to TAK-079 (mezagitamab) and a 4% royalty on future sales of all products subject to this license, including TAK-169, which entered a phase 1 study in February 2020. Our right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation by Takeda of all research and development activities with respect to all program antibodies, collaboration targets or collaboration products. Our right to royalties expires on the later of 13.5 years from the first commercial sale of each royalty-bearing discovery product or the expiration of the last-to-expire licensed patent (or 12 years from first commercial sale if there is significant generic competition post patent-expiration).

In February 2009, we expanded our existing collaboration to provide Takeda with access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. We may receive milestones of up to $3.3 million per discovery product candidate and low single-digit royalties on future sales of all antibody products subject to this license. Our right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation by Takeda of all research and development activities with respect to all program antibodies, collaboration targets or collaboration products. Our right to royalties expires on the later of 10 years from the first commercial sale of such royalty-bearing discovery product or the expiration of the last-to-expire licensed patent.

In November 2020, the first patient was dosed in Takeda's Phase 2 study of mezagitamab and we earned a $2.0 million milestone payment from Takeda. We are eligible to receive remaining milestones up to a total of $16.0 million under the Takeda Collaboration Agreement.

In August 2021, Molecular Templates, Inc., assumed full rights to TAK-169 from Takeda, including full control of TAK-169 clinical development, per the terms of its terminated collaboration agreement with Takeda.

In January 2022, we earned a development milestone of $0.8 million pursuant to the Takeda Collaboration Agreement.

Rezolute

In December 2017, we entered into a license agreement with Rezolute pursuant to which we granted an exclusive global license to Rezolute to develop and commercialize X358 (now "RZ358") products for all indications. We and Rezolute also entered into a common stock purchase agreement pursuant to which Rezolute agreed to issue to us, as consideration for receiving the license for RZ358, a certain number of its common stock related to its future financing activities.

Under the terms of the license agreement, Rezolute is responsible for all development, regulatory, manufacturing and commercialization activities associated with RZ358 and is required to make certain development, regulatory and commercial milestone payments to us of up to $232.0 million in the aggregate based on the achievement of pre-specified criteria. Under the license agreement, we are also eligible to receive royalties ranging from the high single-digits to the mid-teens based upon annual net sales of any commercial product incorporating RZ358. Rezolute's obligation to pay royalties with respect to a particular RZ358 product and country will continue for the longer of the date of expiration of the last valid patent claim covering the product in that country, or twelve years from the date of the first commercial sale of the product in that country. Rezolute's future royalty obligations in the United States will be reduced by 20% if the manufacture, use or sale of a licensed product is not covered by a valid XOMA patent claim, until such a claim is issued.

Pursuant to the license agreement, we are eligible to receive a low single-digit royalty on sales of Rezolute's other non-RZ358 products from its current programs, including RZ402 which is in Phase 1 clinical testing. Rezolute's obligation to pay royalties with respect to a particular Rezolute product and country will continue for the longer of twelve years from the date of the first commercial sale of the product in that country or for so long as Rezolute or its licensee is selling such product in such country, provided that any such licensee royalty will terminate upon the termination of the licensee's obligation to make payments to Rezolute based on sales of such product in such country.

The license agreement contains customary termination rights relating to material breach by either party. Rezolute also has a unilateral right to terminate the license agreement in its entirety on ninety days' notice at any time. To the extent permitted by applicable laws, we have the right to terminate the license agreement if Rezolute challenges the licensed patents.

No consideration was exchanged upon execution of the arrangement. In consideration for receiving the license for RZ358, Rezolute agreed to issue shares of its common stock and pay cash to us upon the occurrence of Rezolute's financing activities.

The license agreement was subsequently amended in 2018, 2019 and 2020. Pursuant to the terms of the license agreement as amended, we received a total of $6.0 million upon Rezolute's achievement of financing activities and $8.5 million in installment payments through October 2020. We also received 161,861 shares of common stock of Rezolute (on an as-adjusted post reverse-split basis).

In January 2022, Rezolute dosed the last patient in its Phase 2b clinical trial for RZ358, which triggered a $2.0 million milestone payment due to XOMA pursuant to our Rezolute License Agreement.

Janssen

We and Janssen were parties to a license agreement which was terminated in 2017. In August 2019, we and Janssen entered into a new agreement pursuant to which we granted a non-exclusive license to Janssen to develop and commercialize certain drug candidates under our patents and know-how. Under the new agreement, Janssen made a one-time payment of $2.5 million to us. Additionally, for each drug candidate, we are entitled to receive milestone payments of up to $3.0 million upon Janssen's achievement of certain clinical development and regulatory approval events. Additional milestones may be due for drug candidates, which are the subject of multiple clinical trials. Upon commercialization, we are eligible to receive a 0.75% royalty on net sales of each product. Janssen's obligation to pay royalties with respect to a particular product and country will continue until the eighth-year-and-sixth-month anniversary of the first commercial sale of the product in such country. The new agreement will remain in effect unless terminated by mutual written agreement of the parties.

In May 2021, we announced we earned a $0.5 million milestone from Janssen, upon dosing of the first patient in a Phase 3 clinical trial evaluating one of Janssen's biologic assets. In December 2021, we earned a $0.2 million milestone pursuant to our agreement with Janssen.

Affimed

In April 2021, we entered into a new agreement with Affimed, under which we are eligible to receive payments from Affimed on potential future commercial sales related to three ICE molecules and pre-loaded natural killer cells containing the ICE molecules. Additionally, we are eligible to receive a milestone upon the first product candidate in each program achieving marketing approval.

Compugen

In September 2021, we earned a $0.5 million milestone payment under our license agreement with Compugen triggered by the dosing of the first patient in a Phase 1/2 study of AZD2936, a TIGIT/PD-1 bispecific antibody, in patients with advanced or metastatic non-small cell lung cancer. AZD2936 is derived from COM902 and is being developed by AstraZeneca.

In November 2022, we earned a $0.8 million milestone payment under our license agreement with Compugen.

Sonnet Biotherapeutics

In July 2012, we entered into the Sonnet Collaboration Agreement which was amended in May 2019 to develop various products using Sonnet's ABD platform. Under the terms of the Sonnet Collaboration Agreement, we may receive milestone payments aggregating up to $3.75 million and low single-digit royalties from Sonnet on future commercial sales of such products.

In April 2022, Sonnet initiated a Phase 1 clinical trial of SON-1010 in adult patients with advanced solid tumors, and we earned a $0.5 million development milestone from Sonnet.

Competition

The biotechnology and pharmaceutical industries are subject to continuous and substantial technological change. Some of the drugs our licensees or milestone and royalty partners are developing may compete with existing therapies or other drugs in development by other companies. Furthermore, academic institutions, government agencies and other public and private organizations conducting research may seek patent protection with respect to potentially competing products or technologies and may establish collaborative arrangements with our licensees' or royalty partners' competitors. There can be no assurance that developments by others, including, without limitation, the development of generics or biosimilars, will not render our licensees' or royalty partners' products or technologies obsolete or uncompetitive.

Additionally, our royalty aggregator model faces competition on at least two fronts. First, there are other companies, funds and other investment vehicles seeking to aggregate royalties or provide alternative financing to development-stage biotechnology and pharmaceutical companies. These competitive companies, funds and other investment vehicles may have a lower target rate of return, a lower cost of capital or access to greater amounts of capital and thereby may be able to acquire assets that we are also targeting for acquisitions. Second, existing or potential competitors to our partners and licensees' products, particularly large pharmaceutical companies, may have greater financial, technical and human resources than our licensees. Accordingly, these competitors may be better equipped to develop, manufacture and market products. Many of these companies also have extensive experience in preclinical testing and human clinical trials, obtaining FDA and other regulatory approvals and manufacturing and marketing pharmaceutical products.

For a discussion of the risks associated with competition, see below under "Item 1A. Risk Factors."

Government Regulation and Environmental Matters

The research and development, manufacturing and marketing of pharmaceutical products are subject to regulation by numerous governmental authorities in the United States and other countries. We and our partners and licensees, depending on specific activities performed, are subject to these regulations. In the United States, pharmaceuticals are subject to regulation by both federal and various state authorities, including the FDA. The Federal Food, Drug and Cosmetic Act and the Public Health Service Act govern the testing, manufacture, safety, efficacy, labeling, storage, record keeping, approval, advertising and promotion of pharmaceutical products and there are often comparable regulations that apply at the state level. Further, various state and federal healthcare laws, including the federal Anti-Kickback Statute, the federal False Claims Act and state and federal data privacy and security law, may also apply. There are similar regulations in other countries as well. For both currently marketed and products in development, failure to comply with applicable regulatory requirements can, among other things, result in delays, the suspension of regulatory approvals, as well as possible civil and criminal sanctions. Development stage products in our portfolio require approval by the FDA before we will recognize any royalties from sales. In addition, changes in existing regulations could have a material adverse effect on us or our partners.

In the United States, the EU and other significant or potentially significant markets for our portfolio and product candidates, government authorities and third-party payors are increasingly attempting to limit or regulate the price of medical products and services. In the United States, the volume of drug pricing-related legislation has dramatically increased in recent years. For example, Congress has enacted laws requiring manufacturers to refund the Centers for Medicare & Medicaid Services, or CMS, for certain discarded amounts of drugs from single-use vials beginning in 2023 and eliminating the existing cap on Medicaid rebate amounts beginning in 2024. Also, in August 2022 Congress enacted the Inflation Reduction Act of 2022, which, among other things, requires the Department of Health and Human Services to negotiate Medicare prices for certain drugs, imposes an inflation-based rebate on Medicare Part B and D utilization, restructures the Medicare Part D benefit and increases manufacturer contributions in some or all of the Medicare Part D benefit phases. In addition, many state legislatures are considering, or have already passed into law, legislation that seeks to indirectly or directly regulate pharmaceutical drug pricing, such as requiring manufacturers to publicly report proprietary pricing information, creating review boards for prices to state agencies, and encouraging the use of generic drugs. In both the United States and elsewhere, sales of medical products and treatments are dependent, in part, on the availability of coverage and adequate reimbursement from third-party payors, such as government and private insurance plans. Further, many countries outside the United States, including the EU member states, have established complex and lengthy procedures to obtain price approvals and coverage reimbursement and periodically review their pricing and reimbursement decisions. If any pricing-related regulation impacts products in our portfolio, it would result in lower royalties received by us.

We believe there are no compliance issues with laws and regulations that have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, that have adversely affected, or are reasonably expected to adversely affect, our business, financial condition and results of operations, and we currently do not anticipate material capital expenditures arising from environmental regulation. We believe climate change could present risks to our business. Some of the potential impacts of climate change to our business include increased operating costs due to additional regulatory requirements and the risk of disruptions to our business. We do not believe these risks are material to our business at this time.

For a discussion of the risks associated with government regulations, see below under “Item 1A. Risk Factors.”

Intellectual Property

Intellectual property is important to our business and our future income streams will depend in part on our partners and licensees’, ability to obtain issued patents and to operate without infringing on the proprietary rights of others. We hold and have filed applications for a number of patents in the United States and internationally to protect our products and technology. We also have obtained or have the right to obtain licenses to, or income streams based on, certain patents and applications filed by others. However, the patent position of biotechnology companies generally is highly uncertain and consistent policy regarding the breadth of allowed claims has not emerged from the actions of the U.S. Patent and Trademark Office with respect to biotechnology patents. Accordingly, no assurance can be given that our, or our partners

or licensees' patents will afford protection against competitors with similar products or that others will not obtain patents claiming aspects similar to those covered by our, or our partners' or licensees' patent applications. Some of our agreements, or those of our partners or licensees, contain "step-down" provisions where the royalty rate is reduced following patent expiration or revocation. Below is a list of representative patents and patent applications related to our licensed programs:

Licensee	Program	Representative Patents/Applications	Subject matter	Expected last expiration in family
Novartis	Anti-IL-1b	US 7,531,166 US 7,582,742 EP 1 899 378	Gevokizumab (VPM087) and other antibodies and antibody fragments with similar binding properties for IL-1β	2027
		US 7,695,718 US 8,101,166 US 8,586,036 US 9,163,082	Methods of treating Type 2 diabetes or Type 2 diabetes-induced diseases or conditions with high affinity antibodies and antibody fragments that bind to IL-1β	2027
		US 8,637,029	Methods of treating gout with certain doses of IL-1β binding antibodies or binding fragments	2028
		JP 5763625 US 10,611,832	Pharmaceutical compositions comprising anti-IL-1β binding antibodies or fragments for reducing acute coronary syndrome in a subject with a history of myocardial infarction.	2030
Novartis	Anti-TGFb	US 8,569,462 US 9,145,458 US 9,714,285 US 10,358,486 EP 2714735 EP 21186327 JP 6363948	TGFβ antibodies and methods of use thereof	2032
		US 10,167,334 EP 3 277 716 JP 6901400	Combination therapy using an inhibitor of TGFb and an inhibitor of PD-1 for treating or preventing recurrence of cancer	2036
Rezolute	Anti-INSR	US 9,944,698 EP 2 480 254 JP 5849050	Insulin receptor-modulating antibodies having the functional properties of RZ358	2030
		US 10,711,067 EP 3 265 491A1	Methods of treating or preventing post-prandial hypoglycemia after gastric bypass surgery using a negative modulator antibody to the insulin receptor	2036
Ology Bioservices	Anti-BoNT	US 8,821,879 EP 2 473 191	Coformulations of anti- botulinum neurotoxin antibodies	2030
Various	Phage display libraries	US 8,546,307 EP 2 344 686	XOMA phage display library components	2032

Licensee	Program	Representative Patents/Applications	Subject matter	Expected last expiration in family
Seeking out license	Anti-IL2	US 10,858,428* EP 3 518 969A2*	Interleukin-2 Antibodies and Uses Thereof	2037
Seeking out license	Anti-PTH1R	US 10,519,250 EP 3 490 600A1	Parathyroid Hormone Receptor 1 Antibodies and Uses Thereof	2037
Organon	Ebopiprant	US 8,451,480*** EP1 487 442***	Generically covers ebopiprant	2024
		9,447,055*** 9,834,528*** 10,259,795*** EP 3 400 217***	Ebopiprant; prodrug valine ester; method of synthesizing ebopiprant, method of treating or preventing preterm labor by administering ebopiprant	2036
		10,555,934**** 11,524,003 **** EP 3 397 622****	Treating pre-term labor or delaying onset of labor with Ebopiprant or prodrug valine ester plus an additional agent such as nifedipine or atosiban	2037
		11,534,428****	Delaying onset of delivery by administering ebopiprant and about 20mg of nifedipine	2039

* Jointly owned with Medical University of South Carolina Foundation for Research Development
** Jointly owned with Novartis Vaccines and Diagnostics, Inc.
***Owned by Merck Serono S.A.
****Owned by XOMA (US) LLC

If certain patents issued to others are upheld or if certain patent applications filed by others are issued and upheld, our partners and licensees may require certain licenses from others to develop and commercialize certain potential products incorporating our technology. There can be no assurance that such licenses, if required, will be available on acceptable terms. If such licenses are obtained, our partners and licensees may be able to deduct some or all of the costs from the royalties they owe to us.

We protect our proprietary information, in part, by confidentiality agreements with our employees, consultants and partners. These parties may breach these agreements, and we may not have adequate remedies for any breach. To the extent that we or our consultants or partners use intellectual property owned by others, we may have disputes with our consultants or partners or other third parties, as to the rights in related or resulting know-how and inventions.

Concentration of Risk

Our business model is dependent on third parties achieving specified development milestones and product sales. Our portfolio currently includes over 70 fully funded programs from which we could potentially receive royalties or other payments if the programs achieve marketability. Novartis is developing several of the programs in our portfolio. While we do not expect the discontinuation of any one program would have a material impact on our business, the discontinuation of all programs by Novartis could have a material effect on our business and financial condition.

Organization

We were incorporated in Delaware in 1981 and became a Bermuda-exempted company in December 1998. Effective December 31, 2011, we changed our jurisdiction of incorporation from Bermuda to Delaware and changed our name from XOMA Ltd. to XOMA Corporation. When referring to a time or period before December 31, 1998, or after December 31, 2011, the terms "Company" and "XOMA" refer to XOMA Corporation, a Delaware corporation; when referring to a time or period between December 31, 1998, and December 31, 2011, such terms refer to XOMA Ltd., a Bermuda company.

Our principal executive offices are located at 2200 Powell Street, Suite 310, Emeryville, California 94608. Our telephone number at our principal executive offices is (510) 204-7200. Our website address is www.xoma.com. The information found on our website is not part of this or any other report filed with or furnished to the SEC.

Impact of COVID-19 Pandemic

The COVID-19 pandemic continues to pose risks to our business as clinical trials industry-wide have slowed. Our business is dependent on the continued development and commercialization efforts of our licensees and our royalty agreement counterparties and their licensees. We have been monitoring and continue to monitor our portfolio programs for potential delays in underlying research programs and elections of our partners to continue or cease development. Delays in clinical trials and underlying research programs may lead to delayed revenue from milestones from our licensees and royalty agreement counterparties or, if certain research programs are discontinued, we may recognize impairment charges for our royalty receivables. COVID-19 and the related variants may impact our underlying programs in a variety of ways which are unknown in length and scope at this time.

Employees

We rely on a small number of skilled, experienced, and innovative employees to conduct the operations of our company. As of March 6, 2023, we employed 12 full-time employees and one part-time employee primarily engaged in executive, business development, legal, finance and administrative positions. We also utilize independent contractors and consultants to supplement our workforce.

Item 1A. Risk Factors

The following risk factors and other information included in this Annual Report should be carefully considered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us also may impair our business operations. If any of the following risks occur, our business, financial condition, operating results and cash flows could be materially adversely affected.

Risks Related to our Royalty Aggregator Strategy

Our acquisitions of potential future royalty and/or milestone payments may not produce anticipated revenues and/or may be negatively affected by a default or bankruptcy of the licensor(s) or licensee(s) under the applicable license agreement(s) covering such potential royalties and/or milestones, and if such transactions are secured by collateral, we may be, or may become, under-secured by the collateral or such collateral may lose value and we will not be able to recuperate our capital expenditures associated with the acquisition.

We are engaged in a continual review of opportunities to acquire future royalties, milestones and other payments related to drug development and sales as part of our royalty aggregator strategy or to acquire companies that hold royalty assets. Generally, at any time, we seek to have acquisition opportunities in various stages of active review, including, for example, our engagement of consultants and advisors to analyze particular opportunities, technical, financial and other confidential information, submission of indications of interest and involvement as a bidder in competitive auctions. Many potential acquisition targets do not meet our criteria, and for those that do, we may face significant competition for these acquisitions from other royalty buyers and enterprises. Competition for future asset acquisition opportunities in our markets could increase the price we pay for such assets and could reduce the number of potential acquisition targets. The

success of our acquisitions is based on our ability to make accurate assumptions regarding the valuation, probability, timing and amount of potential future royalty and milestone payments as well as the viability of the underlying technology and intellectual property. The failure of any of these acquisitions to produce anticipated revenues may materially and adversely affect our financial condition and results of operations.

Some of these acquisitions may expose us to credit risk in the event of a default by or bankruptcy of the licensor(s) or licensee(s) that are parties to the applicable license agreement(s) covering the potential milestone and royalty streams being acquired. In addition, recent volatility in the capital markets may limit our licensees or royalty-agreement counterparties' ability to access additional funding. While we generally try to structure our receipt of potential milestone and royalty payments to minimize the risk associated with such a default or bankruptcy, there can be no assurance that any such default or bankruptcy will not adversely affect our ability to receive future potential royalty and/or milestone payments. To mitigate this risk, on occasion, we may obtain a security interest as collateral in such royalty, milestone and other payments. Our credit risk in respect of such counterparty may be exacerbated when the collateral held by us cannot be realized upon or is liquidated at prices not sufficient to recover the full amount we are due pursuant to the terms of the agreements covering the particular assets. This could occur in circumstances where the original collateral was not sufficient to cover a complete loss (e.g., our interests were only partially secured) or may result from the deterioration in value of the collateral, so that, in either such case, we are unable to recuperate our full capital outlay. Any such losses resulting therefrom could materially and adversely affect our financial condition and results of operations.

Many of our potential royalty acquisitions may be associated with drug products that are in clinical development and have not yet been commercialized. To the extent that such products are not successfully developed and commercialized, our financial condition and results of operations may be negatively impacted. Acquisitions of potential royalties associated with development stage biopharmaceutical product candidates are subject to a number of uncertainties.

As part of our royalty aggregator strategy, we may continue to purchase future potential milestone and royalty streams associated with drug products which are in clinical development and have not yet received marketing approval by any regulatory authority or been commercialized. There can be no assurance that the FDA, the EMA or other regulatory authorities will approve such products or that such products will be brought to market timely or at all, or that the market will be receptive to such products. To the extent that any such drug products are not successfully developed and subsequently commercialized, the value of our acquired potential milestone and royalty streams will be negatively affected. The ultimate success of our royalty aggregator strategy will depend on our ability to properly identify and acquire high quality products and the ability of the applicable counterparty to innovate, develop and commercialize their products, in increasingly competitive and highly regulated markets. Their inability to do so would negatively affect our ability to receive royalty and/or milestone payments. In addition, we are dependent, to a large extent, on third parties to enforce certain rights for our benefit, such as protection of a patent estate, adequate reporting and other protections, and their failure to do so would presumably negatively impact our financial condition and results of operations.

If the FDA, the EMA or other regulatory authority approves a development-stage product candidate that generates our royalty, the labeling, packaging, adverse event reporting, storage, advertising, promotion and recordkeeping for the product will be subject to extensive and ongoing regulatory requirements. The subsequent discovery of previously unknown problems with the product, including adverse events of unanticipated severity or frequency, may result in restrictions on the marketing of the product, and could include withdrawal of the product from the market.

In addition, the developers of these development-stage product candidates may not be able to raise additional capital to continue their discovery, development and commercialization activities, which may cause them to delay, reduce the scope of, or eliminate one or more of their clinical trials or research and development programs. If other product developers introduce and market products that are more effective, safer, less invasive or less expensive than the relevant products that generate our royalties, or if such developers introduce their products prior to the competing products underlying our royalties, such products may not achieve commercial success and thereby result in a loss for us.

Further, the developers of such products may not have sales, marketing or distribution capabilities. If no sales, marketing or distribution arrangements can be made on acceptable terms or at all, the affected product may not be able to be successfully commercialized, which will result in a loss for us. Losses from such assets could have a material adverse effect on our business, financial condition and results of operations.

We intend to continue, and may increase, this strategy of acquiring development-stage product candidates. While we believe that we can readily evaluate and gain conviction about the likelihood of a development-stage product candidate's approval and achieving significant sales, there can be no assurance that our assumptions will prove correct, that regulatory authorities will approve such development-stage product candidates, that such development-stage product candidates will be brought to market timely or at all, or that such products will achieve commercial success.

The ongoing COVID-19 pandemic may continue to, and other actual or threatened epidemics, pandemics, outbreaks, or public health crises may in the future, adversely affect our and our licensees or royalty-agreement counterparties or their licensees, which could cause delays or elimination of our receipts of potential milestones and royalties under our licensing or royalty and milestone acquisition arrangements.

The global spread of COVID-19 and other actual or threatened epidemics, pandemics, outbreaks, or public health crises has adversely impacted and could materially and adversely impact in the future our licensees or royalty-agreement counterparties or their licensees, which has and could further cause delays, suspensions or cancellations of their drug development efforts including, without limitation, their clinical trials, which would correspondingly delay, suspend or negate the timing of our potential receipts of milestones and royalties under our out-licensing or royalty acquisition agreements. The disruptions to our licensees or RPA counterparties or their licensees could include, without limitation:

- delays or difficulties in recruiting and enrolling new patients in their clinical trials;
- delays or difficulties in clinical site initiation;
- diversion of healthcare resources away from the conduct of clinical trials, including the diversion of hospitals serving as their clinical trial sites and hospital staff supporting the conduct of their clinical trials;
- interruption of key clinical trial activities, such as clinical trial site monitoring;
- limitations in employee resources that would otherwise be focused on the conduct of their clinical trials, including because of sickness of employees or their families or the desire of employees to avoid contact with large groups of people;
- interruption in global shipping that may affect the transport of clinical trial supplies and materials;
- potential refusal by the FDA to accept data, including from clinical trials in affected geographies or failure to comply with updated FDA guidance and expectations related to the conduct of clinical trials during the COVID-19 pandemic; and
- delays in receiving approval from the FDA, the EMA and other U.S. and foreign federal, state and local regulatory authorities to initiate their planned clinical trials or to market their products.

The extent to which the COVID-19 pandemic continues to impact our business and prospects and the overall economies of the United States and other countries will depend on numerous evolving factors, which are highly uncertain and cannot be predicted with confidence, such as the duration and scope of the pandemic and mutations in the COVID-19 virus.

The evolving effects of the COVID-19 pandemic and restrictive government measures taken in response have had a significant impact, both direct and indirect, on businesses and commerce, as significant reductions in business related activities have occurred, supply chains have been disrupted, and manufacturing and clinical development activities have been curtailed or suspended.

In addition, quarantines, stay-at-home, executive and similar government orders, shutdowns or other restrictions on the conduct of business operations continue to impact personnel at third-party clinical testing sites, manufacturing

facilities, and the availability or cost of materials, which could disrupt our licensees' and RPA counterparties and their licensees' supply chains.

The spread of COVID-19, which has already resulted in a significant disruption of global financial markets, may materially affect us economically. While the evolving economic impacts brought by, and the duration of, COVID-19 may be difficult to assess or predict, it has already significantly disrupted global financial markets, and may limit our ability to access capital, which could in the future negatively affect our liquidity. A recession or market correction resulting from the spread of COVID-19 could materially affect our business and the value of our common stock.

While several of our partners have experienced delays due to the COVID-19 pandemic, we do not yet know the full extent of potential delays or impacts on our business, clinical trials, healthcare systems or the global economy as a whole. However, the effects could continue to have an impact on our operations and could have a material adverse effect on our business, financial condition, results of operations and prospects in future periods.

Risks Related to our Industry

Biopharmaceutical products are subject to sales risks.

Biopharmaceutical product sales may be lower than expected due to a number of reasons, including pricing pressures, insufficient demand, product competition, failure of clinical trials, lack of market acceptance, obsolescence, loss of patent protection, government regulations, the impact of COVID-19 or other factors, and development-stage product candidates may fail to reach the market. Unexpected side effects, safety or efficacy concerns can arise with respect to a product, leading to product recalls, withdrawals, declining sales or litigation. As a result, payments of our future potential milestones and/or royalties may be reduced or cease. In addition, these potential payments may be delayed, causing our near-term financial performance to be weaker than expected.

Biopharmaceutical products are subject to substantial competition.

The biopharmaceutical industry is a highly competitive and rapidly evolving industry. The length of any product's commercial life cannot be predicted with certainty. There can be no assurance that one or more products on which we are entitled to a potential milestone or royalty will not be rendered obsolete or non-competitive by new products or improvements on which we are not entitled to a potential milestone or royalty, either by the current marketer of such products or by another marketer. Current marketers of products may undertake these development efforts in order to improve their products or to avoid paying our royalty. Adverse competition, obsolescence or governmental and regulatory action or healthcare policy changes could significantly affect the revenues, including royalty-related revenues, of the products which generate our potential milestones and royalties.

Competitive factors affecting the market position and success of each product include:

- effectiveness;
- safety and side effect profile;
- price, including third-party insurance reimbursement policies;
- timing and introduction of the product;
- effectiveness of marketing strategy and execution;
- governmental regulation;

- availability of lower-cost generics and/or biosimilars;
- treatment innovations that eliminate or minimize the need for a product; and
- product liability claims.

Biopharmaceutical products that have the potential to generate future milestones and royalties for us may be rendered obsolete or non-competitive by new products, including generics and/or biosimilars, improvements on existing products or governmental or regulatory action. In addition, as biopharmaceutical companies increasingly devote significant resources to innovate next-generation products and therapies using gene editing and new curative modalities, such as cell and gene therapy, products on which we have a milestone or royalty rights may become obsolete. These developments could have a material adverse effect on the sales of the biopharmaceutical products that have potential to generate our milestones and royalties, and consequently could materially adversely affect our business, financial condition and results of operations.

We depend on our licensees and royalty-agreement counterparties for the determination of royalty and milestone payments. While we typically have primary or back-up rights to audit our licensees and royalty-agreement counterparties, the independent auditors may have difficulty determining the correct royalty calculation, we may not be able to detect errors and payment calculations may call for retroactive adjustments. We may have to exercise legal remedies, if available, to resolve any disputes resulting from any such audit.

The royalty, milestone and other payments we may receive are dependent on our licensees and royalty agreement counterparties and their licensees' achievement of regulatory and developmental milestones and product sales. Each licensee's calculation of the royalty payments is subject to and dependent upon the adequacy and accuracy of its sales and accounting functions, and errors may occur from time to time in the calculations made by a licensee and/or a licensee may fail to report the achievement of royalties or milestones in whole or in part. Our license and royalty agreements typically provide us the primary or back-up right to audit the calculations and sales data for the associated royalty payments; however, such audits may occur many months following our recognition of the royalty revenue, may require us to adjust our royalty revenues in later periods and may require expense on our part. Further, our licensees and royalty-agreement counterparties may be uncooperative or have insufficient records, which may complicate and delay the audit process.

Although we intend to regularly exercise our royalty audit rights as necessary and to the extent available, we rely in the first instance on our licensees and royalty-agreement counterparties to accurately report the achievement of milestones and royalty sales and calculate and pay applicable milestones and royalties and, upon exercise of such royalty and other audit rights, we rely on licensees' and royalty-agreement counterparties' cooperation in performing such audits. In the absence of such cooperation, we may be forced to incur expenses to exercise legal remedies, if available, to enforce our agreements.

The lack of liquidity of our acquisitions of future potential milestones and royalties may adversely affect our business and, if we need to sell any of our acquired assets, we may not be able to do so at a favorable price, if at all. As a result, we may suffer losses.

We generally acquire milestone and royalty rights that have limited secondary resale markets and may be subject to transfer restrictions. The illiquidity of most of our milestone and royalty receivable assets may make it difficult for us to dispose of them at a favorable price if at all and, as a result, we may suffer losses if we are required to dispose of any or all such assets in a forced liquidation or otherwise. In addition, if we liquidate all or a portion of our potential future milestone and/or purchased royalty stream interests quickly or relating to a forced liquidation, we may realize significantly less than the value at which we had previously recorded these interests.

Our royalty aggregator strategy may require that we register with the SEC as an "investment company" in accordance with the Investment Company Act of 1940.

The rules and interpretations of the SEC and the courts, relating to the definition of "investment company" are very complex. While we currently intend to conduct our operations so that we will not be an investment company under

applicable SEC interpretations, we can provide no assurance that the SEC would not take the position that the Company would be required to register under the '40 Act and comply with the '40 Act's registration and reporting requirements, capital structure requirements, affiliate transaction restrictions, conflict of interest rules, requirements for disinterested directors, and other substantive provisions. We monitor our assets and income for compliance under the '40 Act and seek to conduct our business activities to ensure that we do not fall within its definitions of "investment company" or that we qualify under one of the exemptions or exclusions provided by the '40 Act and corresponding SEC regulations. If we were to become an "investment company" and be subject to the restrictions of the '40 Act, those restrictions likely would require significant changes in the way we do business and add significant administrative costs and burdens to our operations. To ensure we do not fall within the '40 Act, we may need to take various actions which we might otherwise not pursue. These actions may include restructuring the Company and/or modifying our mixture of assets and income or a liquidation of certain of our assets.

Our licensees or royalty-agreement counterparties or their licensees could be subject to natural disasters, public health crises, political crises and other catastrophic events that could hinder or disrupt development efforts.

We depend on our licensees and royalty-agreement counterparties and their licensees to successfully develop and commercialize product candidates for which we may receive milestone, royalty and other payments in the future. Our licensees and royalty-agreement counterparties and their licensees operate research and development efforts in various locations in the United States and internationally. If any of their facilities is affected by natural disasters, such as earthquakes, tsunamis, power shortages or outages, floods or monsoons, public health crises, such as pandemics and epidemics, political crises, such as terrorism, war, political instability, labor disputes or strikes, other conflict, or other events outside of their control, their research and development efforts could be disrupted, which could result in the delay or discontinuation of development of one or more of the product candidates in which we have rights to future milestone and/or royalty payments which could have a material adverse effect on our business, results of operations and prospects.

Because many of the companies with which we do business also are in the biotechnology sector, the volatility of that sector can affect us indirectly as well as directly.

The same factors that affect us directly also can adversely affect us indirectly by affecting the ability of our partners and others with whom we do business to meet their obligations to us and reduce our ability to realize the value of the consideration provided to us by these other companies in connection with their licensing of our products.

Risks Related to our Financial Results and Capital Requirements

We have sustained losses in the past, and we expect to sustain losses in the foreseeable future.

We have incurred significant operating losses and negative cash flows from operations since our inception. Although we generated net income of $15.8 million and positive cash flows from operations of $22.7 million for the year ended December 31, 2021, we generated net loss of $17.1 million and negative cash flows from operations of $12.9 million for the year ended December 31, 2022 and we had an accumulated deficit of $1.2 billion as of December 31, 2022. We do not know whether we will ever achieve sustained profitability or whether cash flow from future operations will be sufficient to meet our needs.

To date, we have financed our operations primarily through the sale of equity securities and debt and royalty interests, and payments received under our collaboration and licensing arrangements. The size of our future net losses will depend, in part, on the rate of our future expenditures and our and our partners' ability to generate revenues. If our partners' product candidates are not successfully developed or commercialized, or if revenues are insufficient following regulatory approval, we will not achieve profitability and our business may fail. Our ability to achieve profitability is dependent in large part on the success of our and our partners' ability to license product candidates, and the success of our partners' development programs, both of which are uncertain. Our success is also dependent on our partners obtaining regulatory approval to market product candidates which may not materialize or prove to be successful.

Unstable market and global economic conditions may have adverse consequences on our business, financial condition and stock price.

The global credit and financial markets have experienced volatility, including as a result of the COVID-19 pandemic, changes in interest rates, and economic inflation, which has included diminished liquidity and credit availability, declines in consumer confidence, declines in economic growth, high inflation, uncertainty about economic stability and changes in unemployment rates. The financial markets and the global economy may also be adversely affected by the current or anticipated impact of military conflict, acts of terrorism or other geopolitical events. Sanctions imposed by the United States and other countries in response to such conflicts, including the one in Ukraine, may also continue to adversely impact the financial markets and the global economy, and any economic countermeasures by the affected countries or others could heighten market and economic instability. There can be no assurance that further deterioration in credit and financial markets and confidence in economic conditions will not occur. Our royalty aggregator strategy may be adversely affected by any such economic downturn, volatile business environment or continued unpredictable and unstable market conditions. Failure to secure any necessary financing in a timely manner could have a material adverse effect on our growth strategy, financial performance and stock price.

Our royalty aggregator strategy may require us to raise additional funds to acquire milestone and royalty interests; we cannot be certain that funds will be available or available at an acceptable cost of capital, and if they are not available, we may be unsuccessful in acquiring milestone and royalty interests to sustain the business in the future.

We may need to commit substantial funds to continue our business, and we may not be able to obtain sufficient funds on acceptable terms, if at all. If the current equity and credit markets deteriorate, it may make any additional debt or equity financing more difficult and more costly. Any additional debt financing or additional equity that we raise may contain terms that are not favorable to us and/or result in dilution to our stockholders, including pursuant to our 2018 Common Stock ATM Agreement, as amended and to our 2021 Series B Preferred Stock ATM Agreement. If we raise additional funds through licensing arrangements with third parties, we may be required to relinquish some rights to our technologies or our product candidates, grant licenses on terms that are not favorable to us or enter into a license arrangement for a product candidate at an earlier stage of development or for a lesser amount than we might otherwise choose.

If adequate funds are not available on a timely basis, we may:

- reduce or eliminate royalty aggregation efforts;
- further reduce our capital or operating expenditures;
- curtail our spending on protecting our intellectual property; or
- take other actions which may adversely affect our financial condition or results of operations.

Changes in the potential royalty acquisition market, including its structure and participants, or a reduction in the growth of the biopharmaceutical industry, could lead to diminished opportunities for us to acquire potential milestones and royalties, fewer potential milestones and royalties (or potential milestones or royalties of significant scale) being available, or increased competition for potential royalties. Even if we continue to acquire potential royalties and they become actual royalties, they may not generate a meaningful return for a period of several years, if at all, due to the price we pay for such royalties or other factors relating to the underlying products. As a result, we may not be able to continue to acquire potential milestones and royalties as we have in the past, or at all.

We have a continuing obligation to pay quarterly dividends to holders of our Series A Preferred Stock and Series B Preferred Stock, which will be an on-going expenditure for us and may limit our ability to borrow additional funds.

Holders of our Series A Preferred Stock are entitled to receive, when and as declared by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.625% of the $25.00 liquidation preference per year (equivalent to $2.15625 per year). Dividends on the Series A Preferred Stock will

accumulate and be cumulative from, and including, the date of original issue by us of the Series A Preferred Stock. Dividends will be payable in arrears on or about the 15th day of January, April, July and October. In the event of any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of shares of Series A Preferred Stock are entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference of $25.00 per share, plus an amount equal to any accumulated and unpaid dividends up to the date of payment (whether or not declared), before any distribution or payment may be made to holders of shares of common stock or any other class or series of our equity stock ranking, as to liquidation rights, junior to the Series A Preferred Stock. The shares of Series A Preferred Stock are redeemable at our option, in whole or in part, at redemption prices ranging from $26.00 per share to $25.00 per share, plus any accrued and unpaid dividends, depending on the date of redemption.

Holders of depositary shares representing interests in our Series B Preferred Stock are entitled to receive, when and as declared by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.375% of the $25,000 liquidation preference per share of Series B Preferred Stock ($25.00 per depositary share) per year (equivalent to $2,093.75 per year per share or $2.09375 per year per depositary share). Dividends on the Series B Preferred Stock will accumulate and be cumulative from, and including, the date of original issue by us of the Series B Preferred Stock. Dividends are payable in arrears on or about the 15th day of January, April, July and October. The shares of Series B Preferred Stock are redeemable at our option, in whole or in part, at redemption prices ranging from $26,000.00 per share ($26.00 per depositary share) to $25,000.00 per share ($25.00 per depositary share), plus any accrued and unpaid dividends, depending on the date of redemption.

The payment of cash dividends and share repurchases is subject to limitations under applicable laws and the discretion of our Board of Directors and is determined after considering current conditions, including earnings, other operating results and capital requirements. Decreases in asset values or increases in liabilities can reduce net earnings and stockholders' equity. A deficit in stockholders' equity could limit our ability to pay dividends and make share repurchases under Delaware law. On the other hand, our continued obligation to pay dividends to the holders of our Series A Preferred Stock and depositary shares representing interests in Series B Preferred Stock could restrict us from additional borrowings or make them more costly.

The holders of preferred stock have rights that are senior to those of our common stockholders.

As of December 31, 2022, we had issued and outstanding 984,000 shares of Series A Preferred Stock with a liquidation preference of $25.00 per share, plus an amount equal to any accumulated and unpaid dividends up to the date of payment (whether or not declared). Additionally, as of December 31, 2022, we had issued and outstanding 1,600,000 depositary shares, each representing a 1/1000th fractional interest in a share of our Series B Preferred Stock with a liquidation preference of $25,000 per share of Series B Preferred Stock ($25.00 per depositary share), plus an amount equal to any accumulated and unpaid dividends up to the date of payment (whether or not declared). Our preferred stock is senior to our shares of common stock in right of payment of dividends and other distributions. In the event of our bankruptcy, dissolution or liquidation, the holders of our preferred stock must be satisfied before any distributions can be made to our common stockholders.

Information available to us about the biopharmaceutical products underlying the potential royalties we buy may be limited and therefore our ability to analyze each product and its potential future cash flow may be similarly limited.

We may have limited information concerning the products generating the future potential milestones and royalties we are evaluating for acquisition. Often following our acquisition, the information we have regarding products underlying a potential milestone or royalty may be limited to the information that is available in the public domain. Therefore, there may be material information that relates to such products that we would like to know but do not have and may not be able to obtain. For example, we do not always know the results of studies conducted by sponsors of the products of others or the nature or number of any complaints from doctors or users of such products. In addition, the market data that we obtain independently may also prove to be incomplete or incorrect. Due to these and other factors, the actual potential cash flow from a potential royalty may be significantly lower than our estimates.

Our future income is dependent upon numerous potential milestone and royalty-specific assumptions and, if these assumptions prove not to be accurate, we may not achieve our expected rates of returns.

Our business model is based on multiple-year internal and external forecasts regarding potential product sales and numerous product-specific assumptions in connection with each potential milestone and royalty acquisition, including where we have limited information regarding the product. There can be no assurance that the assumptions underlying our financial models, including those regarding potential product sales or competition, patent expirations or license terminations for the products underlying our portfolio, are accurate. These assumptions involve a significant element of subjective judgment and may be and in the past have been adversely affected by post-acquisition changes in market conditions and other factors affecting the underlying product. Our assumptions regarding the financial stability or operational or marketing capabilities of the partner obligated to pay us potential royalties may also prove to be incorrect. Due to these and other factors, the assets in our current portfolio or future assets may not generate our projected returns or in the time periods we expect. This could negatively impact our results of operation for a given period.

Reductions or declines in income from potential milestones and royalties, or significant reductions in potential milestone or royalty payments compared to expectations, or impairments in the value of potential milestones and royalties acquired could have a material adverse effect on our financial condition and results of operation.

The amount and duration of a royalty usually varies on a country-by-country basis and can be based on a number of factors, such as payments to third party licensors, whether the product is sold singly or in combination, patent expiration dates, regulatory exclusivity, years from first commercial sale of the applicable drug product, the entry of competing generic or biosimilar products, or other terms set out in the contracts governing the royalty. It is common for royalty durations to expire earlier or later than anticipated due to unforeseen positive or negative developments over time, including with respect to the granting of patents and patent term extensions, the invalidation of patents, claims of patent misuse, litigation between the party controlling the patents and third party challengers of the patents, the ability of third parties to design around or circumvent valid patents, the granting of regulatory exclusivity periods or extensions, timing of the arrival of generic or biosimilar competitor products, changes to legal or regulatory regimes affecting intellectual property rights or the regulation of pharmaceutical products, product life cycles, and industry consolidations. If an unexpected reduction in a royalty amount or shortening of a potential royalty term were to occur, it could result in a reduction in potential income from milestones and royalties, a significant reduction in potential milestones and royalty payments compared to expectations, or a permanent impairment of such potential milestones and royalty payments.

A large percentage of the calculated net present value of our portfolio is represented by a limited number of products. The failure of any one of these products to move forward in clinical development or commercialization may have a material adverse effect on our financial condition and results of operation.

Our asset portfolio may not be fully diversified by product, therapeutic area, geographic region or other criteria. Any significant deterioration in the amount or likelihood of receipt of potential cash flows from the top products in our asset portfolio could have a material adverse effect on our business, financial condition and results of operation. For example, in September 2021, Novartis announced its decision to discontinue its study of CFZ533 (iscalimab) in kidney transplant. In September 2022, after an interim analysis of data, Novartis also decided to discontinue its study of CFZ533 in liver transplant. In addition, should the payor of any future potential milestones or royalties decline to pay such potential milestones and royalties for any reason, such failure may result in a material adverse effect on our financial condition and results of operation.

Risks Related to Our Milestone and Royalty Streams

We may not be able to successfully identify and acquire potential milestone and royalty streams on other products, product candidates, or programs, or other companies to grow and diversify our business, and, even if we are able to do so, we may not be able to successfully manage the risks associated with integrating any such products, product candidates, programs or companies into our business or we may otherwise fail to realize the anticipated benefits of these acquisitions.

To grow and diversify our business, we plan to continue our business development efforts to identify and seek to acquire and/or in-license potential milestone and royalty streams or companies. Future growth through acquisition or in-licensing will depend upon the availability of suitable products, product candidates, programs or companies for acquisition or in-licensing on acceptable prices, terms and conditions. Even if appropriate opportunities are available, we may not be able to acquire rights to them on acceptable terms, or at all. The competition to acquire or in-license rights to promising products, product candidates, programs and companies is fierce, and many of our competitors are large, multinational pharmaceutical and biotechnology companies with considerably more financial, development and commercialization resources, personnel, and experience than we have. In order to compete successfully in the current business climate, we may have to pay higher prices for assets than may have been paid historically, which may make it more difficult for us to realize an adequate return on any acquisition.

Even if we are able to successfully identify and acquire or in-license new products, product candidates, programs or companies, we may not be able to successfully manage the risks associated with integrating any products, product candidates, programs or companies into our business or the risks arising from anticipated and unanticipated problems in connection with an acquisition or in-licensing. Further, while we seek to mitigate risks and liabilities of potential acquisitions through, among other things, due diligence, indemnification and risk allocation, there may be risks and liabilities that such due diligence efforts fail to discover, that are not disclosed to us, or that we inadequately assess. Any failure in identifying and managing these risks and uncertainties effectively would have a material adverse effect on our business. In any event, we may not be able to realize the anticipated benefits of any acquisition or in-licensing for a variety of reasons, including the possibility that a product candidate fails to advance to clinical development, proves not to be safe or effective in clinical trials, or that a product fails to reach its forecasted commercial potential or that the integration of a product, product candidate, program or company gives rise to unforeseen difficulties and expenditures. Any failure in identifying and managing these risks and uncertainties would have a material adverse effect on our business.

If our potential royalty providers' therapeutic product candidates do not receive regulatory approval, our potential royalty providers will be unable to market them.

Our potential royalty providers' product candidates cannot be manufactured and marketed in the United States or any other countries without required regulatory approvals. The U.S. government and governments of other countries extensively regulate many aspects of our partners' product candidates, including:

- clinical development and testing;
- manufacturing;
- labeling;
- storage;
- record keeping;
- promotion and marketing; and
- importing and exporting.

In the United States, the FDA regulates pharmaceutical products under the Federal Food, Drug, and Cosmetic Act and other laws, including, in the case of biologics, the Public Health Service Act.

Initiation of clinical trials requires approval by health authorities. Clinical trials involve the administration of the investigational new drug to healthy volunteers or to patients under the supervision of a qualified principal investigator. Clinical trials must be conducted in accordance with FDA and International Conference on Harmonization Good Clinical Practices and the European Clinical Trials Directive, as applicable, under protocols that detail the objectives of the study, the parameters to be used to monitor safety and the efficacy criteria to be evaluated. Other national, foreign and local regulations also may apply. The developer of the drug must provide information relating to the characterization and controls of the product before administration to the patients participating in the clinical trials. This requires developing approved assays of the product to test before administration to the patient and during the conduct of the trial. In addition, developers of pharmaceutical products must provide periodic data regarding clinical trials to the FDA and other health authorities, and these health authorities may issue a clinical hold upon a trial if they do not believe, or cannot confirm, that the trial can be conducted without unreasonable risk to the trial participants.

The results of the preclinical studies and clinical testing, together with chemistry, manufacturing and controls information, are submitted to the FDA and other health authorities in the form of a NDA for a drug, and in the form of a BLA for a biological product, requesting approval to commence commercial sales. In responding to an NDA or BLA, the FDA or foreign health authorities may grant marketing approvals, request additional information or further research, or deny the application if they determine the application does not satisfy regulatory approval criteria. Regulatory approval of an NDA, BLA, or supplement is never guaranteed. The approval process can take several years, is extremely expensive and can vary substantially based upon the type, complexity, and novelty of the products involved, as well as the target indications. Our potential royalty providers ultimately may not be able to obtain approval in a timely fashion or at all.

The FDA and foreign health authorities have substantial discretion in the drug and biologics approval processes. Despite the time and expense incurred, failure can occur at any stage, and our potential development partners could encounter problems that cause abandonment of clinical trials or cause them to repeat or perform additional preclinical, clinical or manufacturing-related studies.

Changes in the regulatory approval policy during the development period, changes in, or the enactment of additional regulations or statutes, or changes in regulatory review for a submitted product application may cause delays in the approval or rejection of an application.

The FDA and other regulatory agencies have substantial discretion in both the product approval process and manufacturing facility approval process, and as a result of this discretion and uncertainties about outcomes of testing, we cannot predict at what point, or whether, the FDA or other regulatory agencies will be satisfied with our licensees' submissions or whether the FDA or other regulatory agencies will raise questions that may be material and delay or preclude product approval or manufacturing facility approval. In light of this discretion and the complexities of the scientific, medical and regulatory environment, our or our potential royalty providers' interpretation or understanding of the FDA's or other regulatory agencies' requirements, guidelines or expectations may prove incorrect, which also could delay further or increase the cost of the approval process.

Our potential milestone and royalty providers face uncertain results of clinical trials of product candidates.

Drug development has inherent risk, and our potential milestone and royalty providers are required to demonstrate through adequate and well-controlled clinical trials that product candidates are effective, with a favorable benefit-risk profile for use in their target profiles before they can seek regulatory approvals for commercial use. It is possible our potential royalty providers may never receive regulatory approval for any licensed product candidates. Even if a product candidate receives regulatory approval, the resulting product may not gain market acceptance among physicians, patients, healthcare payors and the medical community.

Our potential milestone and royalty providers' product candidates require significant additional research and development, extensive preclinical studies and clinical trials and regulatory approval prior to any commercial sales. This process is lengthy and expensive, often taking a number of years. As clinical results frequently are susceptible to varying

interpretations that may delay, limit or prevent regulatory approvals, the length of time necessary to complete clinical trials and to submit an application for marketing approval for a final decision by a regulatory authority varies significantly. As a result, it is uncertain whether:

- our potential milestone and royalty providers' future filings will be delayed;
- our potential milestone and royalty providers' preclinical studies will be successful;
- our potential milestone and royalty providers will be successful in generating viable product candidates;
- we will be successful in finding collaboration and licensing partners to advance our product candidates on our behalf;
- our potential milestone and royalty providers will be able to provide necessary data;
- results of future clinical trials by our potential milestone and royalty providers will justify further development; or
- our potential milestone and royalty providers ultimately will achieve regulatory approval for product candidates in which we have an interest.

The timing of the commencement, continuation and completion of clinical trials by our potential milestone and royalty providers may be subject to significant delays relating to various causes, including failure to complete preclinical testing and earlier-stage clinical trials in a timely manner, inability to engage contract research organizations and other service providers, scheduling conflicts with participating clinicians and clinical institutions, changes in key personnel at clinical institutions, difficulties in identifying and enrolling patients who meet trial eligibility criteria and shortages of available drug supply. In addition, since we and our royalty agreement counterparties license our product candidates to others to fund and conduct clinical trials, we, and they, have limited control over how quickly and efficiently such licensees advance those trials. Patient enrollment is a function of many factors, including the size of the patient population, the proximity of patients to clinical sites, the concentration of patients in specialist centers, the eligibility criteria for the trial, the existence of competing clinical trials and the availability of alternative or new treatments. Regardless of the initial size or relative complexity of a clinical trial, the costs of such trial may be higher than expected due to increases in duration or size of the trial, changes in the protocol under which the trial is being conducted, additional or special requirements of one or more of the healthcare centers where the trial is being conducted, or changes in the regulatory requirements applicable to the trial or in the standards or guidelines for approval of the product candidate being tested or for other unforeseen reasons.

In addition, our potential milestone and royalty providers may conduct clinical trials in foreign countries, which may subject them to further delays and expenses as a result of increased drug shipment costs, additional regulatory requirements and the engagement of foreign clinical research organizations, and may expose our potential milestone and royalty providers to risks associated with foreign currency transactions to make contract payments denominated in the foreign currency where the trial is being conducted.

New products and technologies of other companies may render some or all of our potential milestone and royalty providers' product candidates noncompetitive or obsolete.

New developments by others may render our potential milestone and royalty providers' product candidates or technologies obsolete or uncompetitive. Technologies developed and utilized by the biotechnology and pharmaceutical industries are changing continuously and substantially. Competition in antibody-based technologies is intense and is expected to increase in the future as a number of established biotechnology firms and large chemical and pharmaceutical companies advance in these fields. In addition, as biopharmaceutical companies increasingly devote significant resources to innovate next-generation products and therapies using gene editing and new curative modalities, such as cell and gene therapy, products on which we have a milestone or royalty rights may become obsolete. Many of these competitors may

be able to develop products and processes competitive with or superior to our potential milestone and royalty providers for many reasons, including that they may have:

- significantly greater financial resources;
- larger research and development staffs;
- entered into arrangements with, or acquired, biotechnology companies to enhance their capabilities; or
- extensive experience in preclinical testing and human clinical trials.

These factors may enable others to develop products and processes competitive with or superior to our own or those of our potential milestone and royalty providers. In addition, a significant amount of research in biotechnology is being carried out in universities and other non-profit research organizations. These entities are becoming increasingly interested in the commercial value of their work and may become more aggressive in seeking patent protection and licensing arrangements. Furthermore, many companies and universities tend not to announce or disclose important discoveries or development programs until their patent position is secure or, for other reasons, later. As a result, we and our potential milestone and royalty providers may not be able to track development of competitive products, particularly at the early stages.

Positive developments in connection with a potentially competing product may have an adverse impact on our future potential for receiving revenue derived from development milestones and royalties. For example, if another product is perceived to have a competitive advantage, or another product's failure is perceived to increase the likelihood that our licensed product will fail, our potential milestone and royalty providers may halt development of product candidates in which we have an interest.

Our potential royalty providers may be unable to price our products effectively or obtain coverage and adequate reimbursement for sales of our products, which would prevent our potential royalty providers' products from becoming profitable and negatively affect the royalties we may receive.

If our potential royalty providers succeed in bringing our product candidates to the market, they may not be considered cost effective, and reimbursement to the patient may not be available or may not be sufficient to allow our potential royalty providers to sell the products on a competitive basis. In both the United States and elsewhere, sales of medical products and treatments are dependent, in part, on the availability of coverage and adequate reimbursement from third-party payors, such as government and private insurance plans. Significant uncertainty exists as to the coverage and reimbursement status of any products for which our potential royalty providers may obtain regulatory approval. Even if coverage is available, the associated reimbursement rate may not be adequate for our potential royalty providers to cover related marketing costs. Additionally, coverage and reimbursement policies for drug products can differ significantly from payor to payor as there is no uniform policy of coverage and reimbursement for drug products among third-party payors in the United States. Therefore, the process of obtaining coverage and reimbursement is often time-consuming and costly. Thus, even if our partners' product candidates are approved by the FDA, our royalty partners may not be able to price the products effectively or obtain coverage and adequate reimbursement for their products, which could adversely affect the royalties we receive.

Third-party payors are increasingly challenging the prices charged for pharmaceutical products and services. Our business is affected by the efforts of government and third-party payors to contain or reduce the cost of healthcare through various means. In the United States, there have been and will continue to be a number of federal and state proposals to implement government controls on pricing.

In addition, the emphasis on managed care in the United States has increased and will continue to increase the pressure on the pricing of pharmaceutical products. We cannot predict whether any legislative or regulatory proposals will be adopted or the effect these proposals or managed care efforts may have on our or our potential milestone and royalty providers' businesses.

We do not know whether there will be, or will continue to be, a viable market for the product candidates in which we have an ownership or royalty interest.

Even if product candidates in which we have an interest receive approval in the future, they may not be accepted in the marketplace. In addition, our potential royalty providers may experience difficulties in launching new products, many of which are novel and based on technologies that are unfamiliar to the healthcare community. We have no assurance healthcare providers and patients will accept such products, if developed. Similarly, physicians may not accept a product if they believe other products to be more effective or more cost effective or are more comfortable prescribing other products.

Furthermore, government agencies, as well as private organizations involved in healthcare, from time to time publish guidelines or recommendations to healthcare providers and patients. Such guidelines or recommendations can be very influential and may adversely affect product usage directly (for example, by recommending a decreased dosage of a product in conjunction with a concomitant therapy) or indirectly (for example, by recommending a competitive product over a product in which we have an ownership or royalty interest). Consequently, we do not know if physicians or patients will adopt or use products in which we have an ownership or royalty interest for their approved indications.

Even approved and marketed products are subject to risks relating to changes in the market for such products. Introduction or increased availability of generic or biosimilar versions of products can alter the market acceptance of branded products. In addition, unforeseen safety issues may arise at any time, regardless of the length of time a product has been on the market which may lead to litigation, increased costs and delays or removal of the product from the market.

We are exposed to an increased risk of product liability claims.

The testing, marketing and sales of medical products entails an inherent risk of allegations of product liability. In the event of one or more large, unforeseen awards of damages against us, our product liability insurance may not provide adequate coverage. A significant product liability claim for which we were not adequately covered by insurance or indemnified by a third party would have to be paid from cash or other assets, which could have an adverse effect on our business, financial condition and the value of our common stock. To the extent we have sufficient insurance coverage, such a claim would presumably result in higher subsequent insurance rates. In addition, product liability claims can have various other ramifications, regardless of merit or eventual outcome, including loss of future sales opportunities, discontinuation of clinical trials, increased costs associated with replacing products, a negative impact on our goodwill and reputation, costs to defend litigation, and divert our management's attention from our business, each of which could also adversely affect our business and operating results.

If we and our potential royalty providers are unable to protect our intellectual property, in particular patent protection for principal products, product candidates and processes in which we have an ownership or royalty interest, and prevent the use of the covered subject matter by third parties, our potential royalty providers' ability to compete in the market will be harmed, and we may not realize our profit potential.

We and our potential royalty providers rely on patent protection, as well as a combination of copyright, trade secret, and trademark laws to protect our proprietary technology and prevent others from duplicating our products or product candidates. However, these means may afford only limited protection and may not:

- prevent our competitors from duplicating our products and those of our potential royalty providers;
- prevent our competitors from gaining access to our proprietary information and technology and that of our potential royalty providers; or
- permit us or our potential royalty providers to gain or maintain a competitive advantage.

Because of the length of time and the expense associated with bringing new products to the marketplace, we and our potential royalty providers hold and are in the process of applying for a number of patents in the United States and abroad to protect product candidates and important processes and also have obtained or have the right to obtain exclusive

licenses to certain patents and applications filed by others. However, the mere issuance of a patent is not conclusive as to its validity or its enforceability.

The U.S. Federal Courts, the U.S. Patent & Trademark Office or equivalent national courts or patent offices elsewhere may invalidate our patents or find them unenforceable. The America Invents Act introduced post-grant review procedures subjecting U.S. patents to post-grant review procedures similar to European oppositions. U.S. patents owned or licensed by us or our licensees may therefore be subject to post-grant review procedures, as well as other forms of review and re-examination. A decision in such proceedings adverse to our interests could result in the loss of valuable patent rights, which would have a material adverse effect on our business. In addition, the laws of foreign countries may not protect our intellectual property rights effectively or to the same extent as the laws of the United States.

If our, and our potential royalty providers intellectual property rights are not protected adequately, our potential royalty providers may not be able to commercialize technologies or products in which we have an ownership or royalty interest, and their competitors could commercialize such technologies or products, which could result in a decrease in our potential royalty providers' sales and market share that would harm our business and operating results. Specifically, the patent position of biotechnology companies generally is highly uncertain and involves complex legal and factual questions. The legal standards governing the validity of biotechnology patents are in transition, and current defenses as to issued biotechnology patents may not be adequate or available in the future. Accordingly, there is uncertainty as to:

- whether any pending or future patent applications held by us or our potential royalty providers will result in an issued patent, or whether issued patents will provide meaningful protection against competitors or competitive technologies;

- whether competitors will be able to design around our or our potential royalty providers' patents or develop and obtain patent protection for technologies, designs or methods that are more effective than those covered by our or our potential royalty providers' patents and patent applications; or

- the extent to which our or our potential royalty providers' product candidates could infringe on the intellectual property rights of others, which may lead to costly litigation, result in the payment of substantial damages or royalties, reduce the royalty rate due to us, and prevent our potential royalty providers from using our technology or product candidates.

If certain patents issued to others are upheld or if certain patent applications filed by others are issued and upheld, our potential royalty providers may require licenses from others to develop and commercialize certain potential products in which we have an ownership or royalty interest. These licenses, if required, may not be available on acceptable terms, or may trigger contractual royalty offset clauses in our license agreements, or those of our royalty-agreement counterparties. We may become involved in litigation to determine the proprietary rights of others, and any such litigation will presumably be costly, time consuming, may not be adequately covered by insurance and may have other adverse effects on our business, such as inhibiting our potential royalty providers' ability to compete in the marketplace and absorbing significant management time.

Due to the uncertainties regarding biotechnology patents, we also have relied and will continue to rely upon trade secrets, know-how and continuing technological advancement to develop and maintain our competitive position. Our employees and contractors are typically required to sign confidentiality agreements under which they agree not to use or disclose any of our proprietary information. Research and development contracts and relationships between us and our scientific consultants and potential licensees provide access to aspects of our know-how that are protected generally under confidentiality agreements. These confidentiality agreements may be breached or may not be enforced by a court. To the extent proprietary information is divulged to competitors or to the public generally, such disclosure may adversely affect our licensees' ability to develop or commercialize our products by giving others a competitive advantage or by undermining our patent position.

In addition, periodic maintenance fees, renewal fees, annuity fees and various other governmental fees on patents and or applications will be due to the U.S. and various foreign patent offices at various points over the lifetime of our and our licensees' patents and/or applications. We have systems in place to remind us to pay these fees, and we rely on our

outside patent annuity service to pay these fees when due. Additionally, the U.S. and various foreign patent offices require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. We employ reputable law firms and other professionals to help us comply, and in many cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with rules applicable to the particular jurisdiction. However, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. If such an event were to occur, it could have a material adverse effect on our business.

No assurance can be given that our, or our partners or licensees' patents will be extended upon expiration, which may have an effect on our financial condition and results of operation.

We hold and have filed applications for a number of patents in the United States and internationally to protect our products and technology and have the right to obtain licenses to, or income streams based on, certain patents and applications filed by others. However, the life of a patent, and thus the protection it affords, is limited. Significant patents in our portfolio will expire in the coming years and while various extensions may be available, on a jurisdiction-by-jurisdiction basis, continuous patent protection is not guaranteed. While we expect to seek, and expect our partners to seek, extensions of patent terms for issued patents where available and when necessary, failure to secure patent extensions may have an effect on our financial condition and results of operations.

Litigation regarding intellectual property and/or the enforcement of our contractual rights against licensees and third parties can be costly and expose us to risks of counterclaims against us.

From time to time, we are required to engage in litigation, arbitration or other proceedings to protect our intellectual property and/or enforce our contractual rights against former or current licensees or third parties, including third-party collaborators of such licensees. The cost to us of complex proceedings of this type, even if resolved in our favor, can be substantial, and the parties opposing us in such proceedings may be able to sustain the cost of such proceedings more effectively than we can if they have substantially greater resources than we have. Any such proceedings and any negotiations leading up to them also may be time-consuming and can divert management's attention and resources. If a proceeding of this type is resolved against us, we may lose the value associated with contract rights contained in our arrangements with licensees and third parties, the patents that are the subject of such proceeding may be declared invalid, we could be exposed to counterclaims against us, and we could be held liable for significant damages, fees and/or costs. While it is our current plan to continue to review and pursue, on a selective basis, potential material contractual breaches against licensees and third parties (including third-party collaborators of licensees) and/or infringement of our intellectual property rights or technology, there can be no assurance that any such enforcement actions will be successful, or if successful, the timing of such success or that we will have sufficient capital to prosecute any such actions to a successful conclusion.

In June 2021, we initiated an arbitration proceeding against one of our licensees (the "Licensee") with the American Arbitration Association/International Centre for Dispute Resolution. We believe that the Licensee violated the terms of our License Agreement (the "License Agreement") and that we are entitled to milestone and royalty payments under the License Agreement, and that the Licensee impermissibly attempted to sublicense our licensed patent rights. We also seek damages and fees and costs of the arbitration (which fees and costs are currently estimated to be in the mid-single-digit millions of U.S. dollars range). In response, the Licensee seeks declarations that the License Agreement, under our interpretation, is unlawful, void and unenforceable, and that the License Agreement has expired. To date, the Licensee has not filed any counterclaims against us. However, to the extent the Licensee is deemed to be the prevailing party, the arbitrators, in their discretion, may require us to pay the Licensee's fees and costs of the arbitration (currently estimated to be in the mid-single-digit millions of U.S. dollars range). A hearing before a panel of arbitrators was held on this matter in November 2022, and the parties have submitted post-hearing briefs. A decision is expected in the first quarter of 2023.

In addition, we may be subject to claims that we, or our licensees, are infringing other parties' patents. If such claims are resolved against us, we or our licensees may be enjoined from developing, manufacturing, selling or importing products, processes or services unless we obtain a license from the other party. Such a license may not be available on reasonable terms or at all, thus preventing us, or our licensees, from using these products, processes or services and adversely affecting our potential future revenue.

Uncertainties resulting from our participation in litigation, arbitration or other proceedings involving intellectual property and/or contractual rights could have a material adverse effect on our or our partners' ability to compete in the marketplace. There could also be public announcements of the results of hearings, motions or interim proceedings or developments. If securities analysts or investors perceive these results to be negative, the perceived value of the drug product candidates as to which we hold potential milestone or royalty interests, or intellectual property or contractual rights could be diminished. Accordingly, the market price of our common stock may decline. Uncertainties resulting from the initiation and continuation of litigation, arbitration or other proceedings involving intellectual property and/or contractual rights could have a material adverse effect on our business, financial condition and results of operation.

Risks Related to Our Reliance on Third Parties

We and our partners rely heavily on license and collaboration relationships, and any disputes or litigation with our partners or termination or breach of any of the related agreements could reduce the financial resources available to us, including our ability to receive milestone payments and future potential royalty and other revenues. License or collaboration agreements relating to products may, in some instances, be unilaterally terminated or disputes may arise which may affect our potential milestones, royalties and other payments.

License or collaboration agreements relating to the products generating our future potential milestones and royalties and other payment rights may be terminated, which may adversely affect sales of such products and therefore the potential payments we may receive. For example, under certain license or collaboration agreements, marketers may retain the right to unilaterally terminate the agreements. When the last patent covering a product expires or is otherwise invalidated in a country, a marketer may be economically motivated to terminate the applicable license or collaboration agreement, either in whole or with respect to such country, in order to terminate its payment and other obligations. In the event of such a termination, a licensor (which may be us in the case of our out-licensed products) or collaborator may no longer receive all of the payments it expected to receive from the applicable licensee or collaborator and may also be unable to find another company to continue developing and commercializing the product on the same or similar terms as those under the license or collaboration agreement that has been terminated.

In addition, license or collaboration agreements may fail to provide significant protection for the applicable licensor (which may be us in the case of our out-licensed products) or collaborator in case of the applicable licensee's or collaborator's failure to perform or in the event of disputes. License and collaboration agreements which relate to the products underlying our potential future milestones, royalties and other payment rights, are complex and certain provisions in such agreements may be susceptible to multiple interpretations. Disputes may arise regarding intellectual property, royalty terms, payment rights or other contractual terms subject to a license or collaboration agreement, including:

- the scope or duration of rights granted under the license or collaboration agreement and other interpretative issues;
- the amounts or timing of royalties, milestones or other payments due under the license or collaboration agreement;
- the sublicensing of patent or other rights under our license or collaboration relationships;
- the diligence obligations under the license or collaboration agreement and what activities satisfy such diligence obligations:
- the inventorship and ownership of inventions and know-how resulting from the joint creation or use of intellectual property by us or our partners; and
- the priority of invention of patented technology.

The resolution of any contract interpretation disagreement that may arise could narrow what the licensor (which may be us in the case of our out-licensed products) or collaborator believes to be the scope of its rights to the relevant

intellectual property or technology, or decrease the licensee's or collaborator's financial or other obligations under the relevant agreement, any of which could in turn impact the value of our potential royalties, milestones and other payments and have a material adverse effect on our business, financial condition, results of operations and prospects. If a marketer were to default on its obligations under a license or collaboration agreement, the licensor's or collaborator's remedy may be limited either to terminating certain licenses or collaborations related to certain countries or to generally terminate the license or collaboration agreement with respect to such country. In such cases, we may not have the right to seek to enforce the rights of the licensor or collaborator (if not us) and we may be required to rely on the resources and willingness of the licensor or collaborator (if not us) to enforce its rights against the applicable licensee or collaborator. In any of these situations, if the expected upfront, milestone, royalty or other payments under the license or collaboration agreements do not materialize, this could result in a significant loss to us and materially adversely affect our business, financial condition and results of operation. At any given time, the Company may be engaged in discussions with its licensees or collaborators regarding the interpretation of the payment and other provisions relating to products as to which we have milestones and potential royalty or other payment rights. Should any such discussions result in a disagreement regarding a particular product that cannot be resolved satisfactorily to us, we may end up being paid less than anticipated on such product should it successfully progress through clinical development and be approved for commercialization. Should our milestone and future potential royalty or other payment interests be reduced or eliminated as a result of any such disagreement, it could have an adverse effect on our business, financial condition, results of operation and prospects.

Our existing collaborations may not continue or be successful, and we may be unable to enter into future arrangements to develop and commercialize our unpartnered assets. Generally, our current collaborative partners have the right to terminate their collaborations at will or under specified circumstances. If any of our collaborative partners breach or terminate their agreements with us or otherwise fail to conduct their collaborative activities successfully (for example, by not making required payments when due, or at all or failing to engage in commercially reasonable efforts to develop products if required), our product development under these agreements will be delayed or terminated.

Our potential milestone and royalty providers may rely on third parties to provide services in connection with their product candidate development and manufacturing programs. The inadequate performance by or loss of any of these service providers could affect our potential milestone and royalty providers' product candidate development.

Third parties provide services in connection with preclinical and clinical development programs, including *in vitro* and *in vivo* studies, assay and reagent development, immunohistochemistry, toxicology, pharmacokinetics, clinical trial support, manufacturing and other outsourced activities. If these service providers do not adequately perform the services for which our potential milestone and royalty providers have contracted, or cease to continue operations, and our potential milestone and royalty partners are not able to find a replacement provider quickly or lose information or items associated with their drug product candidates, our potential milestone and royalty providers' development programs and receipt of any potential resulting income may be delayed.

Agreements with other third parties, many of which are material to our business, expose us to numerous risks and have caused us to incur additional liabilities.

Because our licensees, suppliers and contractors are independent third parties, they may be subject to different risks than we are and have significant discretion in, and different criteria for, determining the efforts and resources they will apply related to their agreements with us. If these licensees, suppliers and contractors do not successfully perform the functions for which they are responsible, we may not have the capabilities, resources or rights to do so on our own.

We do not know whether we or our licensees will successfully develop and market any of the products that are or may become the subject of any of our licensing arrangements. In addition, third-party arrangements such as ours also increase uncertainties in the related decision-making processes and resulting progress under the arrangements, as we and our licensees may reach different conclusions, or support different paths forward, based on the same information, particularly when large amounts of technical data are involved.

In addition, under the contracts with HCRP, the amortization for the reporting period is calculated based on the payments expected to be made by the licensees to HCRP over the term of the arrangement. Any changes to the estimated payments by the licensees to HCRP can result in a material adjustment to revenue previously reported.

Failure of our potential milestone and royalty providers' product candidates to meet current Good Manufacturing Practices standards may cause delays in regulatory approval and penalties for noncompliance.

Our potential milestone and royalty providers may rely on third party manufacturers and such contract manufacturers are required to produce clinical product candidates under cGMP to meet acceptable standards for use in clinical trials and for commercial sale, as applicable. If such standards change, the ability of contract manufacturers to produce our potential milestone and royalty providers' drug product candidates on the schedule required for clinical trials or to meet commercial requirements may be affected. In addition, contract manufacturers may not perform their obligations under their agreements with our potential milestone and royalty providers or may discontinue their business before the time required by us to successfully produce clinical and commercial supplies of our potential milestone and royalty providers' product candidates.

Contract manufacturers are subject to pre-approval inspections and periodic unannounced inspections by the FDA and corresponding state and foreign authorities to ensure strict compliance with cGMP and other applicable government regulations and corresponding foreign standards. We do not have control over a third-party manufacturer's compliance with these regulations and standards. Any difficulties or delays in contractors' manufacturing and supply of our potential milestone and royalty providers' product candidates or any failure of our potential milestone and royalty providers' contractors to maintain compliance with the applicable regulations and standards could increase costs, reduce revenue, make our licensees postpone or cancel clinical trials, prevent or delay regulatory approval by the FDA and corresponding state and foreign authorities, prevent the import and/or export of our potential milestone and royalty providers' product candidates, or cause any of our potential milestone and royalty providers' products that may be approved for commercial sale to be recalled or withdrawn.

Certain of our technologies are in-licensed from third parties, so our and our licensees' use of them may be restricted and subject to additional risks.

We have licensed technologies from third parties. These technologies include phage display technologies licensed to us in connection with our bacterial cell expression technology licensing program and antibody products. However, our and our licensees and collaborators' use of these technologies is limited by certain contractual provisions in the licenses relating to them, and although we have obtained numerous licenses, intellectual property rights in the area of phage display are particularly complex. If we are unable to maintain our licenses, patents or other intellectual property, we could lose important protections that are material to continuing our operations and for future prospects. Our licensors also may seek to terminate our license, which could cause us and our licensees to lose the right to use the licensed intellectual property and adversely affect our and our licensees' ability to commercialize our technologies, products or services.

Risks Related to Employees, Location, Data Integrity, and Litigation

The loss of, COVID-19 related absence of, or changes in any of our key personnel, could delay or prevent achieving our objectives.

Our business efforts could be adversely affected by the loss or COVID-19 related absence of one or more key members of our staff. We currently do not have key person insurance on any of our employees. In addition, given our minimal employee base, a COVID-19 outbreak in our employee population could significantly hinder our ability to meet our operating objectives. Changes in management may cause disruption in our business, strategic and employee relationships, which may delay or prevent the achievement of our business objectives. During the transition periods, there may be uncertainty among investors, employees and others concerning our future direction and performance.

Because we are a small biopharmaceutical focused company with limited resources, we may not be able to attract and retain qualified personnel.

We had 12 full-time employees and one part-time employee as of March 6, 2023. We may require additional experienced executive, accounting, legal, administrative and other personnel from time to time in the future. We are highly dependent on principal members of our executive team, the loss of whose services may adversely impact the achievement of our objectives. There is intense competition for the services of these personnel, especially in California.

Moreover, we expect the high cost of living in the San Francisco Bay Area, where our headquarters is located, may impair our ability to attract and retain employees in the future. If we do not succeed in attracting new personnel and retaining and motivating existing personnel, our business may suffer, and we may be unable to implement our current initiatives or grow effectively.

We rely and will continue to rely on outsourcing arrangements for many of our activities, including financial reporting and accounting and human resources.

Due to our small number of employees, we rely, and expect to continue to rely, on outsourcing arrangements for a significant portion of our activities, including financial reporting and accounting and human resources, as well as for certain of our functions as a public company. We may have limited control over these third parties, and we cannot guarantee that they will perform their obligations in an effective and timely manner.

Our employees may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements and insider trading.

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include intentional failures to comply with applicable regulations, provide accurate information to regulatory authorities, comply with federal and state fraud and abuse laws and regulations, report financial information or data accurately or disclose unauthorized activities to us. In particular, the health care industry is subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. It is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with these laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant fines or other sanctions.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems and those of our current and any future licensees, suppliers, contractors and consultants are vulnerable to damage from cyberattacks, computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. We could experience failures in our information systems and computer servers, which could be the result of a cyberattacks and could result in an interruption of our normal business operations and require substantial expenditure of financial and administrative resources to remedy. System failures, accidents or security breaches can cause interruptions in our operations and can result in a material disruption of our development programs and other business operations. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability.

If our information technology systems or data or those of our partners or contractors are or were compromised by security incidents, our sensitive information could be exposed or stolen and we could experience adverse consequences, including regulatory investigations or actions; litigation; fines and penalties; a disruption of our business operations; reputational harm; loss of revenue or profits; and other adverse business consequences.

Our business is increasingly dependent on critical, complex and interdependent information technology systems, including cloud-based systems, to support business processes as well as internal and external communications. Our computer systems, and those of our partners and contractors, are potentially vulnerable to breakdown, malicious intrusion and computer viruses that may result in the impairment of key business processes. Such disruptions and breaches of security could have a material adverse effect on our business, financial condition and results of operations.

In the ordinary course of our business, we maintain sensitive data on our networks, including our intellectual property and proprietary or confidential business information relating to our business and that of our business partners. The secure maintenance and protection of this information is critical to our business and reputation. Threats to our systems and sensitive data can come from a variety of sources, ranging in sophistication from a person with authorized access to

our network, to an individual hacker, to an organized threat actor organization, to a state-sponsored attack. Cyber threats also may be intentional or accidental. It is often difficult to anticipate or immediately detect cyber incidents and the damage caused by such incidents. Data breaches and any unauthorized access to our systems could compromise our intellectual property and expose sensitive business information. A data security breach could also lead to exposure of personal information of our employees, legacy clinical trial patients, vendors and others, which could expose us to liability under foreign, federal, or state privacy laws. Theft of proprietary information could be used to compete against us and could cause us to incur significant remediation costs, result in product development delays, disrupt key business operations and divert attention of management and key information technology resources. These incidents could also subject us to liability, expose us to significant expense and cause significant harm to our reputation and business.

Authorities worldwide have been warning businesses of increased cybersecurity threats from actors seeking to exploit the COVID-19 pandemic. Moreover, failure to maintain effective internal accounting controls related to data security breaches and cybersecurity in general could impact our ability to produce timely and accurate financial statements and could subject us to regulatory scrutiny. In addition, these breaches and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased harm of the type described above. Moreover, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could lead to the loss of confidential information, trade secrets or other intellectual property.

While we have implemented security measures that are intended to protect our data security and information technology systems, such measures may not prevent all such cyber incidents. Further, we cannot be sure that our insurance coverage will be adequate or sufficient to protect us from or to mitigate liabilities arising out of our privacy and security practices, that such coverage will continue to be available on commercially reasonable terms or at all, or that such coverage will pay future claims.

Compliance with stringent and changing obligations related to data privacy and security protection is a rigorous and time-intensive process. Our actual or perceived failure to comply with any privacy or data security obligations could lead to regulatory investigations or actions; litigation; fines and penalties; a disruption of our business operations; reputational harm; loss of revenue or profits; loss of customers or sales; and other adverse business consequences.

Many states, countries and jurisdictions strictly regulate data privacy and protection and may impose significant penalties for failure to comply with these requirements. For example, in the U.S., the CCPA became effective on January 1, 2020. The CCPA establishes a privacy framework for covered businesses, including an expansive definition of personal information and data privacy rights for California residents and the CPRA which became effective on January 1, 2023, which expands upon the CCPA. The CCPA and CPRA give California residents expanded privacy rights, including the right to request correction, access and deletion of their personal information, the right to opt out of certain personal information sharing, and the right to receive detailed information about how their information is processed. The CCPA and CPRA include a framework with potentially severe statutory damages and private rights of action and will likely impact our business activities, along with increasing our compliance costs and potential liability. If we fail to comply with the CCPA and CPRA, we may face significant fines and penalties that could adversely affect our business, financial condition and results of operations. Other states are beginning to pass similar laws.

Compliance with laws and regulations concerning privacy, cybersecurity, data governance and data protection is a rigorous and time-intensive process, and we may be required to put in place additional mechanisms ensuring compliance with the laws and regulations and incur substantial expenditures. If we fail to comply with any such laws or regulations, we may face significant fines and penalties that could adversely affect our business, financial condition and results of operations. Further, data incidents experienced by us, our partners or collaborators could lead to significant fines, required corrective action, the loss of trade secrets or other intellectual property, public disclosure of sensitive clinical or commercial data, and the exposure of personally identifiable information (including sensitive personal information) of our employees, partners, and others. A data security breach or privacy violation that leads to disclosure or modification of, or prevents access to, patient information, including personally identifiable information or protected health information, could result in fines, increased costs or loss of revenue as a result of:

- harm to our reputation;

- fines imposed on us by regulatory authorities;
- additional compliance obligations under federal, state or foreign laws;
- requirements for mandatory corrective action to be taken by us; and
- requirements to verify the correctness of database contents and otherwise subject us to liability under laws and regulations that protect personal data.

In addition, cyber incidents can be difficult to detect, and any delay in identifying them may lead to increased harm of the type described above. Moreover, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches. While we have implemented security measures to protect our data security and information technology systems, such measures may not prevent such events. Lastly, we cannot guarantee that we are in compliance with all applicable data protection laws and regulations as they are enforced now or as they evolve.

Risks Related to Government Regulation

Even after FDA approval, a product may be subject to additional testing or significant marketing restrictions, its approval may be withdrawn, or it may be removed voluntarily from the market.

Even if our potential royalty providers receive regulatory approval for our product candidates, they will be subject to ongoing regulatory oversight and review by the FDA and other regulatory entities. The FDA, the EMA, or another regulatory agency may impose, as a condition of the approval, ongoing requirements for post-approval studies or post-approval obligations, including additional research and development and clinical trials, and the FDA, EMA or other regulatory agency subsequently may withdraw approval based on these additional trials or obligations.

Even for approved products, the FDA, EMA or other regulatory agency may impose significant restrictions on the indicated uses, conditions for use, labeling, advertising, promotion, marketing and production of such product. In addition, the labeling, packaging, adverse event reporting, storage, advertising, promotion and record-keeping for such products are subject to extensive regulatory requirements.

Furthermore, marketing approval of a product may be withdrawn by the FDA, the EMA or another regulatory agency or such product may be withdrawn voluntarily by our potential royalty providers based, for example, on subsequently arising safety concerns. The FDA, EMA and other agencies also may impose various civil or criminal sanctions for failure to comply with regulatory requirements, including withdrawal of product approval.

Healthcare reform measures and other statutory or regulatory changes could adversely affect our business.

The United States and some foreign jurisdictions have enacted or are considering a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our potential royalty providers' ability to sell products in which we have ownership or and royalty interests, if approved, profitably. Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and expanding access. In the United States, the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives. For example, in March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, or collectively the ACA, was enacted, which, among other things, substantially changed the way healthcare is financed by both governmental and private payors.

There have been judicial, Congressional and executive branch challenges to the ACA. As a result, there have been delays in the implementation of, and action taken to repeal or replace, certain aspects of the ACA. For example, on June 17, 2021, the U.S. Supreme Court dismissed a challenge on procedural grounds that argued the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress. In addition, there have been a number of health reform initiatives by the Biden administration that have impacted the ACA. On August 16, 2022,

President Biden signed the Inflation Reduction Act of 2022, or the IRA, into law, which among other things, extends enhanced subsidies for individuals purchasing health insurance coverage in ACA marketplaces through plan year 2025. The IRA also eliminates the "donut hole" under the Medicare Part D program beginning in 2025 by significantly lowering the beneficiary maximum out-of-pocket cost and through a newly established manufacturer discount program. It is possible that the ACA will be subject to judicial or Congressional challenges in the future. It is unclear how other such challenges, and the healthcare reform measures of the Biden administration will impact the ACA and our business.

Other legislative changes have also been proposed and adopted since the ACA was enacted. For example, the Budget Control Act of 2011 resulted in aggregate reductions in Medicare payments to providers of up to two percent per fiscal year, starting in 2013 and, due to subsequent legislative amendments to the statute, will remain in effect until 2031 unless additional Congressional action is taken. Under current legislation the actual reduction in Medicare payments will vary from 1% in 2022 to up to 4% in the final fiscal year of this sequester. In addition, the American Taxpayer Relief Act of 2012, among other things, reduced Medicare payments to several types of providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. Such laws, and others that may affect our business that have been recently enacted or may in the future be enacted, may result in additional reductions in Medicare and other healthcare funding.

Also, there has been heightened governmental scrutiny recently in the U.S. over pharmaceutical pricing practices in light of the rising cost of prescription drugs and biologics. Such scrutiny has resulted in several recent Congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products. For example, in July 2021, the Biden administration released an executive order, "Promoting Competition in the American Economy," with multiple provisions aimed at prescription drugs. In response to Biden's executive order, on September 9, 2021, the Department of Health and Human Services, or HHS, released a Comprehensive Plan for Addressing High Drug Prices that outlines principles for drug pricing reform and sets out a variety of potential legislative policies that Congress could pursue to advance these principles. In addition, the IRA, among other things, (i) directs the Secretary of HHS to negotiate the price of certain high-expenditure, single-source drugs and biologics covered under Medicare Part B and Medicare Part D, and subjects drug manufacturers to civil monetary penalties and a potential excise tax by offering a price that is not equal to or less than the negotiated "maximum fair price" under the law, and (ii) imposes rebates under Medicare Part B and Medicare Part D to penalize price increases that outpace inflation. The IRA permits HHS to implement many of these provisions through guidance, as opposed to regulation, for the initial years. These provisions will take effect progressively starting in fiscal year 2023, although they may be subject to legal challenges. It is currently unclear how the IRA will be implemented but it is likely to have a significant impact on the pharmaceutical industry. Further, the Biden administration released an additional executive order on October 14, 2022, directing HHS to report on how the Center for Medicare and Medicaid Innovation can be further leveraged to test new models for lowering drug costs for Medicare and Medicaid beneficiaries. In addition, beginning in 2023, Centers for Medicare & Medicaid Services, or CMS, will require manufacturers to refund CMS for certain discarded amounts of single-dose container and single-use package drugs. At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, and restrictions on certain product access. In some cases, such legislation and regulations have been designed to encourage importation from other countries and bulk purchasing.

An expansion in the government's role in the U.S. healthcare industry may cause general downward pressure on the prices of prescription drug products, lower reimbursements for providers, and reduced product utilization, any of which could adversely affect our business and results of operations. We expect that additional healthcare reform measures will be adopted in the future. We cannot know what form any such new legislation may take or the market's perception of how such legislation would affect us. Any reduction in reimbursement from government programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent our potential royalty providers from being able to generate revenue, attain profitability, develop, or commercialize our current product candidates in which we have an ownership or royalty interest.

We and our potential milestone and royalty providers are subject to various state and federal healthcare-related laws and regulations that if violated may impact the commercialization of our product candidates for which we possess milestone or royalty rights or could subject us to significant fines and penalties.

Our operations may be directly or indirectly subject to various state and federal healthcare laws, including the federal Anti-Kickback Statute, the federal False Claims Act and state and federal data privacy and security laws. These laws may impact, among other things, the commercial operations for any of our product candidates that may be approved for commercial sale.

The federal Anti-Kickback Statute prohibits, among other things, persons and entities from knowingly and willfully soliciting, offering, receiving or providing any remuneration, directly or indirectly, in cash or in kind, in exchange for or to induce either the referral of an individual for, or the furnishing or arranging for the purchase, lease, or order of a good or service for which payment may be made under a federal healthcare program, such as the Medicare and Medicaid programs. The ACA modified the federal Anti-Kickback Statute's intent requirement so that a person or entity no longer needs to have actual knowledge of the statute or the specific intent to violate it to have committed a violation. In addition, several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute has been violated. The Anti-Kickback Statute is broad and prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry.

The federal false claims laws, including the False Claims Act, and civil monetary penalties laws prohibit, among other things, persons and entities from knowingly filing, or causing to be filed, a false claim to, or the knowing use of false statements to obtain payment from the federal government. Certain suits filed under the False Claims Act, known as "qui tam" actions, can be brought by any individual on behalf of the government and such individual, commonly known as a "whistleblower", or "relator" may share in any amounts paid by the entity to the government in fines or settlement. The filing of qui tam actions has caused a number of pharmaceutical, medical device and other healthcare companies to have to defend and/or settle a False Claims Act action.

The Health Insurance Portability and Accountability Act of 1996, or HIPAA created new federal criminal statutes that prohibit, among other things, executing a scheme to defraud any healthcare benefit program, including a private payor, or falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of, or payment for, health care benefits, items or services.

HIPAA, as amended by the Health Information Technology and Clinical Health Act, and its implementing regulations, also imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information by entities subject to the law, such as certain healthcare providers, health plans, and healthcare clearinghouses as well as their respective business associates and their subcontractors that perform certain functions or activities that involve the use or disclosure of protected health information on their behalf.

Many states also have adopted laws similar to each of the federal laws described above, some of which apply to healthcare items or services reimbursed by any source, not only federal healthcare programs, such as the Medicare and Medicaid programs. In addition, some states have laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government. Additionally, certain state and local laws require the registration of pharmaceutical sales representatives, restrict payments that may be made to healthcare providers and other potential referral sources, and require manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers. Further, some states have laws governing the privacy and security of health information in certain circumstances, many of which are not preempted by HIPAA and differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

Because of the breadth of these laws, and the narrowness of the statutory exceptions and regulatory safe harbors available, it is possible that some of our or our potential milestone and royalty providers' business activities could be subject to challenge under one or more of such laws.

If we or our potential milestone and royalty providers are found to be in violation of any of the laws and regulations described above or other applicable state and federal healthcare laws, we or our potential milestone and royalty providers may be subject to penalties, including significant civil, criminal, and administrative penalties, damages, fines, disgorgement, imprisonment, integrity oversight and reporting obligations, reputational harm, exclusion from government healthcare reimbursement programs and the curtailment or restructuring of our or our potential milestone and royalty providers' operations, any of which could have a material adverse effect on our business and results of operations. In addition, we and our licensees may be subject to certain analogous foreign laws and violations of such laws could result in significant penalties.

We are subject to the U.S. Foreign Corrupt Practices Act and other anti-corruption laws, as well as export control laws, import and customs laws, trade and economic sanctions laws and other laws governing our operations.

We are subject to the U.S. Foreign Corrupt Practices Act and other anti-corruption laws, as well as export control laws, import and customs laws, trade and economic sanctions laws and other laws governing our operations. Our operations are subject to anti-corruption laws including the FCPA, the U.S. domestic bribery statute contained in 18 U.S.C. §201, the U.S. Travel Act, and other anti-corruption laws that apply in countries where we do business. The FCPA and these other laws generally prohibit us and our employees and intermediaries from authorizing, promising, offering, or providing, directly or indirectly, improper or prohibited payments, or anything else of value, to government officials or other persons to obtain or retain business or gain some other business advantage. We and the royalty agreement counterparties and licensees who generate our royalties operate in a number of jurisdictions that pose a high risk of potential FCPA violations, and we participate in collaborations and relationships with third parties whose corrupt or illegal activities could potentially subject us to liability under the FCPA or local anti-corruption laws, even if we do not explicitly authorize or have actual knowledge of such activities. In addition, we cannot predict the nature, scope or effect of future regulatory requirements to which our international operations might be subject or the manner in which existing laws might be administered or interpreted. We are also subject to other laws and regulations governing our international operations, including regulations administered by the governments of the United States and authorities in the European Union, including applicable export control regulations, economic sanctions and embargoes on certain countries and persons, anti-money laundering laws, import and customs requirements and currency exchange regulations, collectively referred to as the Trade Control laws. There is no assurance that we will be completely effective in ensuring our compliance with all applicable anti-corruption laws, including the FCPA or other legal requirements, including Trade Control laws. If we are not in compliance with the FCPA and other anticorruption laws or Trade Control laws, we may be subject to criminal and civil penalties, disgorgement and other sanctions and remedial measures, and legal expenses, which could have an adverse impact on our business, financial condition, results of operations and liquidity. Likewise, any investigation of any potential violations of the FCPA, other anti-corruption laws or Trade Control laws by the United States or other authorities could also have an adverse impact on our reputation, our business, financial condition and results of operations. Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations will involve substantial costs. Because of the breadth of these laws and the narrowness of the statutory exceptions and safe harbors available, it is possible that some of our business activities or our business arrangements with third parties could be subject to challenge under one or more of such laws. It is possible that governmental authorities will conclude that our business practices or the business practices of the royalty agreement counterparties and licensees who generate our royalties may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations or the operations of the royalty agreement counterparties and licensees who generate our royalties are found to be in violation of any of these laws or any other governmental regulations, we or the royalty agreement counterparties and licensees who generate our may be subject to significant criminal, civil and administrative sanctions, including monetary penalties, damages, fines, disgorgement, individual imprisonment and exclusion from participation in government-funded healthcare programs, such as Medicare and Medicaid, additional reporting requirements and oversight if we or the royalty agreement counterparties and licensees who generate our royalties become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws, reputational harm, and we or marketers of products that generate our royalties may be required to curtail or restructure operations, any of which could adversely affect our ability to operate our business and our results of operations. The risk of our being found in violation of these laws is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. The shifting compliance environment and the need

to build and maintain robust and expandable systems to comply with multiple jurisdictions with different compliance and/or reporting requirements increases the possibility that a healthcare company may run afoul of one or more of the requirements.

As we or our potential milestone and royalty providers do more business internationally, we will be subject to additional political, economic and regulatory uncertainties.

We or our potential milestone and royalty providers may not be able to operate successfully in any foreign market. We believe that because the pharmaceutical industry is global in nature, international activities will be a significant part of future business activities and when and if we or our potential milestone and royalty providers are able to generate income, a substantial portion of that income will be derived from product sales and other activities outside the United States. Foreign regulatory agencies often establish standards different from those in the United States, and an inability to obtain foreign regulatory approvals on a timely basis could put us at a competitive disadvantage or make it uneconomical to proceed with a product or product candidate's development. International sales may be limited or disrupted by many factors, including without limitation:

- imposition of government controls;
- export license requirements;
- political or economic instability;
- trade restrictions;
- changes in tariffs;
- restrictions on repatriating profits;
- exchange rate fluctuations; and
- withholding and other taxation.

General Risk Factors

Our share price may be volatile, and there may not be an active trading market for our common stock, Series A Preferred Stock or our Series B Preferred Stock.

There can be no assurance that the market price of our common stock will not decline below its present market price. Additionally, there may not be an active trading market for our common stock, Series A Preferred Stock or depositary shares representing interests in our Series B Preferred Stock. The market prices of biotechnology companies have been and are likely to continue to be highly volatile. Fluctuations in our operating results and general market conditions for biotechnology stocks could have a significant impact on the volatility of our stock price or the existence of an active trading market for our common stock, Series A Preferred Stock or depositary shares representing interests in our Series B Preferred Stock. We have experienced significant volatility in the price of our common stock. From January 1, 2022, through March 6, 2023, the share price of our common stock has ranged from a high of $32.09 to a low of $15.68. From January 1, 2022, through March 6, 2023, the share price of our Series A Preferred Stock has ranged from a high of $27.09 to a low of $22.14. From January 1, 2022, through March 6, 2023, the share price of our Series B Preferred Stock has ranged from a high of $26.81 to a low of $21.75. Additionally, we have two significant holders of our common stock that could affect the liquidity of our stock and have a significant negative impact on our stock price if the holders were to quickly sell their ownership positions.

Our results of operations and liquidity needs could be materially negatively affected by market fluctuations or an economic downturn.

Our results of operations could be materially negatively affected by economic conditions generally, both in the United States and elsewhere around the world. Concerns over inflation, energy costs, geopolitical issues, the availability and cost of credit, and the U.S. financial markets have in the past contributed to, and may continue in the future contribute to, increased volatility and diminished expectations for the economy and the markets. Domestic and international equity markets periodically experience heightened volatility and turmoil. These events may have an adverse effect on us. In the event of a market downturn, our results of operations could be adversely affected by those factors in many ways, including making it more difficult for us to raise funds if necessary, and our stock price may decline.

We have issued equity securities and may issue additional equity securities from time to time, that materially and adversely affect the price of our common stock, including our Series X preferred stock, Series A Preferred Stock and depositary shares representing interests in our Series B Preferred Stock.

We expect significant additional capital will be needed in the future to continue our planned operations. To the extent we raise additional capital by issuing equity securities, our stockholders may experience substantial dilution. We may sell common stock, convertible securities or other equity securities in one or more transactions at prices and in such a manner as we determine from time to time, including pursuant to our 2018 Common Stock ATM Agreement, as amended, and 2021 Series B Preferred Stock ATM Agreement. If we sell common stock, convertible securities or other equity securities in more than one transaction, investors may be materially diluted by subsequent sales. These sales may also result in material dilution to our existing stockholders, and new investors could gain rights superior to our existing stockholders. If we issue additional equity securities, the price of our existing securities may be materially and adversely affected.

As of December 31, 2022, there were 5,003 shares of Series X preferred stock issued and outstanding. Each share of Series X preferred stock is convertible into 1,000 shares of registered common stock. The total number of shares of common stock issuable upon conversion of all issued Series X preferred stock would be 5,003,000 shares. Each share is convertible at the option of the holder at any time, provided that the holder will be prohibited from converting into common stock if, as a result of such conversion, the holder, together with its affiliates, would beneficially own a number of shares above a conversion blocker, which was initially set at 19.99% of our total common stock then issued and outstanding immediately following the conversion of such shares. A holder of Series X preferred shares may elect to increase or decrease the conversion blocker above or below 19.99% on 61 days' notice, provided the conversion blocker does not exceed the limits under Nasdaq Marketplace Rule 5635(b), to the extent then applicable. If holders of our Series X convertible preferred stock elect to convert their preferred shares into common stock such conversion would dilute our currently outstanding common stock both in number and in earnings per share. BVF (and its affiliates), as current holders of all shares of our Series X preferred stock, would, if they converted all such shares to common stock, obtain majority voting control of the Company. As of December 31, 2022, BVF owned approximately 31.5% of our total outstanding shares of common stock, and if all of the Series X convertible preferred shares were converted, BVF would own 52.3% of our total outstanding shares of common stock. Additionally, as of December 31, 2022, we had issued and outstanding 984,000 shares of Series A Preferred Stock and 1,600,000 depositary shares, each representing a 1/1000th fractional interest in a share of our Series B Preferred Stock.

In addition, funding from collaboration partners and others has in the past and may in the future involve issuance by us of our common stock. We cannot be certain how the purchase price of such shares, the relevant market price or premium, if any, will be determined or when such determinations will be made.

Any issuance by us of equity securities, whether through an underwritten public offering, an at the market offering, a private placement, in connection with a collaboration or otherwise could result in dilution in the value of our issued and outstanding shares, and a decrease in the trading price of our securities.

We may sell additional equity or debt securities to fund our operations, which may result in dilution to our stockholders and impose restrictions on our business.

In order to raise additional funds to support our operations, we may sell additional equity or convertible debt securities, which would result in dilution to our stockholders and/or debt securities which may impose restrictive covenants that would adversely impact our business. The sale of additional equity or convertible debt securities could result in additional dilution or result in other rights or obligations that adversely affect our stockholders. For example, holders of shares of our Series A Preferred Stock are entitled to receive, when and as declared by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.625% of the $25.00 liquidation preference per year (equivalent to $2.15625 per year). Additionally, holders of depositary shares representing interests in our Series B Preferred Stock are entitled to receive, when and as declared by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.375% of the $25,000 liquidation preference per share of Series B Preferred Stock ($25.00 per depositary share) per year (equivalent to $2,093.75 per year per share or $2.09375 per year per depositary share). The incurrence of indebtedness would result in increased fixed payment obligations and could also result in certain restrictive covenants, such as limitations on our ability to incur additional debt, limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business.

Our organizational documents contain provisions that may prevent transactions that could be beneficial to our stockholders and may insulate our management from removal.

Our charter and by-laws:

- require certain procedures to be followed and time periods to be met for any stockholder to propose matters to be considered at annual meetings of stockholders, including nominating directors for election at those meetings; and

- authorize our Board of Directors to issue up to 1,000,000 shares of preferred stock without stockholder approval and to set the rights, preferences and other designations, including voting rights, of those shares as the Board of Directors may determine.

In addition, we are subject to the provisions of Section 203 of the Delaware General Corporation Law (the "DGCL"), that may prohibit large stockholders, in particular those owning 15% or more of our outstanding common stock, from merging or combining with us.

These provisions of our organizational documents and the DGCL, alone or in combination with each other, may discourage transactions involving actual or potential changes of control, including transactions that otherwise could involve payment of a premium over prevailing market prices to holders of common stock, could limit the ability of stockholders to approve transactions that they may deem to be in their best interests, and could make it considerably more difficult for a potential acquirer to replace management.

As a public company in the United States, we are subject to the Sarbanes-Oxley Act. We have determined our disclosure controls and procedures and our internal control over financial reporting are effective. We can provide no assurance that we will, at all times, in the future be able to report that our disclosure controls and internal controls over financial reporting are effective.

Companies that file reports with the SEC, including us, are subject to the requirements of Section 404 of the SOX. Section 404 requires management to establish and maintain a system of internal control over financial reporting, and annual reports on Form 10-K filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), must contain a report from management assessing the effectiveness of our internal control over financial reporting. Ensuring we have adequate internal financial and accounting controls and procedures in place to produce accurate financial statements on a timely basis is a time-consuming effort that needs to be re-evaluated frequently. Failure on our part to have effective internal financial and accounting controls would cause our financial reporting to be unreliable, could have a material

adverse effect on our business, operating results, and financial condition, and could cause the trading price of our common stock to fall.

Our ability to use our NOL carry-forwards and certain other tax attributes to offset taxable income or taxes may be limited.

Our net operating loss, or NOL, carryforwards could expire unused and/or be unavailable to offset future income tax liabilities. As of December 31, 2022, we had U.S. federal NOL carryforwards of $108.8 million, of which $13.6 million will begin to expire in 2036. Under the federal income tax law, federal NOLs incurred in taxable years beginning after December 31, 2017 may be carried forward indefinitely, but the deductibility of such federal NOLs is limited to 80% of current year taxable income. It is uncertain if and to what extent various states will conform to the federal tax law. In addition, Section 382 of the U.S. Internal Revenue Code of 1986, as amended (or, the Code), and corresponding provisions of state law, generally limit the ability of a corporation that undergoes an "ownership change" to utilize its NOL carry-forwards and certain other tax attributes against any taxable income in taxable periods after the ownership change. An "ownership change" is generally defined as a greater than 50% change, by value, in a corporation's equity ownership over a three-year period.

Based on an analysis under Section 382 of Code, we experienced an ownership change in February 2017, that significantly limits the availability of our tax attributes to offset future income. To the extent that we do not utilize our carry forwards within the applicable statutory carry-forward periods, either because of Section 382 limitations or the lack of sufficient taxable income, the carry-forwards will also expire unused.

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

New tax laws, statutes, rules, regulations, or ordinances could be enacted at any time. For instance, the recently enacted Inflation Reduction Act imposes, among other rules, a 15% minimum tax on the book income of certain large corporations and a 1% excise tax on certain corporate stock repurchases. Further, existing tax laws, statutes, rules, regulations, or ordinances could be interpreted differently, changed, repealed, or modified at any time. Any such enactment, interpretation, change, repeal, or modification could adversely affect us, possibly with retroactive effect. In particular, changes in corporate tax rates, the realization of our net deferred tax assets, the taxation of foreign earnings, and the deductibility of expenses under the Tax Act, as amended by the CARES Act or any future tax reform legislation, could have a material impact on the value of our deferred tax assets, result in significant one-time charges, and increase our future tax expenses.

Stockholder and private lawsuits, and potential similar or related lawsuits, could result in substantial damages, divert management's time and attention from our business, and have a material adverse effect on our business, financial condition and results of operations.

Securities-related class action and stockholder derivative litigation has often been brought against companies, including many biotechnology companies, which experience volatility in the market price of their securities. This risk is especially relevant for us because biotechnology and biopharmaceutical companies often experience significant stock price volatility in connection with their product development programs.

It is possible that suits will be filed, or allegations received from stockholders, naming us and/or our officers and directors as defendants. These potential lawsuits are subject to inherent uncertainties, and the actual defense and disposition costs will depend upon many unknown factors. The outcome of these lawsuits is uncertain. We could be forced to expend significant time and resources in the defense of these suits, and we may not prevail. In addition, we may incur substantial legal fees and costs in connection with these lawsuits. Although we carry insurance to protect us from such claims, our insurance may not provide adequate coverage. It is possible that we could, in the future, incur judgments or enter into settlements of claims for monetary damages. A decision adverse to our interests on these actions could result in the payment of substantial damages, or possibly fines, and could have a material adverse effect on our cash flow, results of operations and financial position.

Monitoring, initiating and defending against legal actions, including any currently pending litigation, are time-consuming for our management, are likely to be expensive and may detract from our ability to fully focus our internal resources on our business activities. The outcome of litigation is always uncertain, and in some cases could include judgments against us that require us to pay damages, enjoin us from certain activities, or otherwise affect our legal or contractual rights, which could have a significant adverse effect on our business. In addition, the inherent uncertainty of any future litigation could lead to increased volatility in our stock price and a decrease in the value of an investment in our common stock.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

We currently lease space in one building that houses our corporate headquarters in Emeryville, California. The lease was originally scheduled to expire in February 2023 and in January 2023, we extended the lease through July 2023. We believe our facilities are adequate to meet our requirements for the near term and we are currently evaluating our future office space needs.

Item 3. Legal Proceedings

From time to time, we are involved in litigation, arbitration or other proceedings relating to claims arising out of our operations.

We are not currently involved in any legal proceedings that we believe to be material. We may, however, be involved in material legal proceedings in the future, and the potential impact on us of any on-going proceeding could change. Such matters are subject to significant uncertainties, and there can be no assurance that any legal proceedings in which we are or may become involved will not have a material adverse effect on our business, results of operations, financial position or cash flows.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

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

Market for Registrant's Common Equity

Our common stock trades on The Nasdaq Global Market tier of the Nasdaq Stock Market LLC ("Nasdaq") under the symbol "XOMA." On March 6, 2023, there were 192 stockholders of record of our common stock, one of which was Cede & Co., a nominee for Depository Trust Company ("DTC"). All of the shares of our common stock held by brokerage firms, banks and other financial institutions as nominees for beneficial owners are deposited into participant accounts at DTC and are therefore considered to be held of record by Cede & Co. as one stockholder.

Dividend Policy

We have not paid dividends on our common stock. Holders of shares of our Series A Preferred Stock are entitled to receive, when and as declared by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.625% of the $25.00 liquidation preference per year (equivalent to $2.15625 per year per share) per year. Holders of our Series B Preferred Stock are entitled to receive, when and as declared by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.375% of the $25,000 liquidation preference per year of Series B Preferred Stock ($25.00 per depositary share) per year (equivalent to $2,093.75 per year per share or $2.09375 per year per depositary share). We do not anticipate paying cash dividends on our common stock in the foreseeable future.

Recent Sales of Unregistered Securities

None.

Item 6. Reserved

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

Overview

XOMA is a biotech royalty aggregator. We have a sizable portfolio of economic rights to future potential milestone and royalty payments associated with partnered pre-commercial therapeutic candidates. Our portfolio was built through licensing our proprietary products and platforms from our legacy discovery and development business, combined with the acquisition of rights to future milestones and royalties that we have made since our royalty aggregator business model was implemented in 2017. Our drug royalty aggregator business is focused on early to mid-stage clinical assets, primarily in Phase 1 and 2, with significant commercial sales potential that are licensed to large-cap partners. We expect that most of our future revenue will be based on payments we may receive for milestones and royalties related to these programs.

The generation of future revenues related to licenses, milestones, and royalties is dependent on the achievement of milestones or product sales by our existing licensees. Although we generated net income of $15.8 million and positive cash flows from operations of $22.7 million for the year ended December 31, 2021, we generated net loss of $17.1 million and negative cash flows from operations of $12.9 million for the year ended December 31, 2022 and we had an accumulated deficit of $1.2 billion as of December 31, 2022. The payment we received from Novartis pursuant to our Anti-TGFβ Antibody License Agreement in 2021 was a one-time milestone payment that does not represent recurring revenue.

Significant Developments

Purchase of IP

ObsEva Intellectual Property Acquisition Agreement

In November 2022, we entered into the ObsEva IP Acquisition Agreement pursuant to which we acquired all of ObsEva's intellectual property (patents and know-how) and license agreement rights related to ebopiprant, an investigational compound previously licensed by ObsEva from Merck KGaA. We also assumed ObsEva's ongoing obligations under the Organon License Agreement and the Merck KGaA License Agreement. Pursuant to the Organon License Agreement, XOMA is eligible to receive up to $475.0 million in payments for ebopiprant development, commercialization and sales-based milestones. If ebopiprant is successfully commercialized, we will be entitled to receive royalties that range from low to mid-teens from Organon and will be required to make mid-single-digit royalty payments to Merck KGaA. We paid ObsEva a $15.0 million upfront payment at closing and will pay potential earn-out payments of up to $97.5 million for development, regulatory and sales-based milestones, representing a portion of what we will receive pursuant to the Organon License Agreement.

Royalty and Commercial Payment Purchase Agreements

Commercial Payment Purchase Agreement with Affitech

In January 2022, Genentech, a member of the Roche group, received approval from the FDA to commercialize VABYSMO (faricimab-svoa) for the treatment of wet, or neovascular, age-related macular degeneration and diabetic macular edema. Pursuant to the Affitech CPPA, we paid Affitech a $5.0 million regulatory approval milestone tied to these U.S. marketing approvals. Under the terms of the Affitech CPPA, we are eligible to receive a 0.5% commercial payment stream on net sales of VABYSMO in each of certain regions where it is approved, for a ten-year period following its first commercial sale in such region.

In September 2022, in connection with Roche receiving approval from the EC to commercialize VABYSMO for the treatment of neovascular or 'wet' age-related macular degeneration and visual impairment due to diabetic macular edema, we made a $3.0 million milestone payment to Affitech pursuant to the terms of the Affitech CPPA. As a result of

the EC approvals, we will be eligible to receive a 0.5% commercial payment stream for ten years from the first commercial sale of VABYSMO in Europe.

VABYSMO was previously approved by the FDA in January 2022 and by Japan's Ministry of Health, Labour, and Welfare in March 2022. In August 2022, we received $0.5 million from Roche representing the first commercial payment for sales of VABYSMO during the first six months of 2022, and in February 2023 we received $2.4 million for sales of VABYSMO during the second half of 2022.

Kuros Royalty Purchase Agreement

In July 2022, we received $2.5 million pursuant to our Kuros RPA. This payment represents 50% of a milestone earned by Kuros upon the closing of Regeneron's acquisition of Checkmate Pharmaceuticals on May 31, 2022.

License and Collaboration Agreements

Compugen

In November 2022, we earned a $0.8 million milestone payment under our license agreement with Compugen.

Novartis – VPM087

In March 2023, Novartis notified us that based upon a strategic review of the development program, Novartis will not initiate further studies of gevokizumab in gastrointestinal cancers. Novartis' study to evaluate treatment with gevokizumab with standard of care anti-cancer therapies in patients with metastatic colorectal, gastroesophageal, and renal cancers will continue to primary analysis, which is anticipated later this year.

Novartis – Anti-CD40 Antibody

In September 2021, Novartis announced its decision to discontinue its study of CFZ533 (iscalimab) in kidney transplant. In September 2022, after an interim analysis of data, Novartis also decided to discontinue its study of CFZ533 in liver transplant. Novartis is continuing iscalimab studies in other indications such as Sjögren's Syndrome, Lupus Nephritis and Hidradenitis Suppurativa.

Sonnet Collaboration Agreement

In April 2022, Sonnet dosed the first patient in its Phase 1 clinical trial for SON-1010, and we earned a development-related milestone payment of $0.5 million from Sonnet pursuant to our Sonnet Collaboration Agreement.

Rezolute – RZ358 Antibody

In January 2022, Rezolute dosed the last patient in its Phase 2b clinical trial for RZ358, we earned a $2.0 million milestone payment pursuant to our Rezolute License Agreement.

Modification of Equity Awards

In November 2022, we entered into the November 2022 Letter Agreement with Thomas Burns. Pursuant to the November 2022 Letter Agreement, in the event Mr. Burns remains employed by us for a twelve-month period beginning on November 1, 2022, he will be deemed "retirement eligible" for purposes of his equity awards under the terms of his equity award agreements. All other terms of his amended and restated employment agreement remain the same. Conditioned on his execution of a release in favor of us, Mr. Burns will also receive this benefit upon any involuntary termination for reasons other than cause. This modification resulted in an acceleration of the expense recognized related to Mr. Burns' stock options. During the year ended December 31, 2022, we recognized stock-based compensation expense of $0.6 million related to the Mr. Burns' option awards. As of December 31, 2022, there was $0.5 million total

unrecognized compensation expense related to Mr. Burns' stock options expected to be recognized through the earlier of the vesting date of the option or October 31, 2023.

Employee Retention Bonus

In October 2022, we approved the Amended Retention Plan that amended the Retention Plan to provide that each of our current employees, excluding the Chief Executive Officer ("CEO"), will be eligible to receive a cash retention bonus if employed through each of two periods: (1) the three-month anniversary of November 1, 2022 (the "Initial Period") and (2) the nine-month period immediately following the Initial Period. All other terms of the Amended Retention Plan remain consistent with the Retention Plan. As of December 31, 2022, we expect to pay $0.8 million in 2023 related to employee retention bonuses under the Amended Retention Plan, of which $0.1 million was accrued in operating expenses in the consolidated statement of operations and comprehensive loss during the year ended December 31, 2022.

James R. Neal's Departure and Continuity Incentive

Effective December 31, 2022, James R. Neal retired as our Chief Executive Officer and, effective as of January 1, 2023, resigned as a member of our Board and Chairman of the Board. Pursuant to Mr. Neal's Amended and Restated Employment Agreement, dated as of December 15, 2021, following his departure date, Mr. Neal is entitled to a cash payment of $1.2 million, which will be made in equal monthly installments starting in January 2023 through December 2023, less deductions and withholdings. As of December 31, 2022, we accrued the full amount of Mr. Neal's continuity incentive of $1.2 million in operating expenses in the consolidated statement of operations and comprehensive loss during the year ended December 31, 2022.

On December 30, 2022, the Board appointed Owen Hughes as our Executive Chairman of the Board and Interim Chief Executive Officer (principal executive officer), effective as of January 1, 2023. Mr. Hughes will receive an annual base salary of $125,000 and will be eligible to receive an annual discretionary cash bonus with a target amount equal to 55% of his annual base salary upon the achievement of annual performance milestones to be established by the Board.

On December 30, 2022, the Board also appointed Bradley Sitko as our Chief Investment Officer, effective as of January 3, 2023. Mr. Sitko will receive an annual base salary of $500,000, a signing bonus of $110,000 and will be eligible to receive an annual discretionary cash bonus with a target amount equal to 50% of his annual base salary upon the achievement of annual performance milestones to be established by the Board.

Mr. Hughes and Mr. Sitko were also granted non-qualified stock options subject to the terms and conditions of the Company's Amended and Restated 2010 Long Term Incentive and Stock Award Plan. The options were granted outside the Plan as an inducement material to Mr. Hughes and Mr. Sitko entering into employment with us in accordance with Nasdaq Listing Rule 5635(c)(4). Further details of the stock option grants can be found in our Form 8-K filed January 4, 2023.

Arbitration Proceeding

In June 2021, we initiated an arbitration proceeding against one of our licensees (the "Licensee") with the American Arbitration Association/International Centre for Dispute Resolution. We seek damages, plus interest, and fees and costs of the arbitration (which fees and costs are currently estimated to be in the mid-single-digit millions of U.S. dollars range). In response, the Licensee seeks declarations that the License Agreement, under our interpretation, is unlawful, void and unenforceable, and that the License Agreement has expired. To date, the Licensee has not filed any counterclaims against us. However, to the extent the Licensee is deemed to be the prevailing party, the arbitrators, in their discretion, may require us to pay the Licensee's fees and costs of the arbitration (currently estimated to be in the mid-single-digit millions of U.S. dollars range). A hearing before a panel of arbitrators was held on this matter in November 2022, and the parties have submitted post-hearing briefs.

Critical Accounting Estimates

The preparation of financial statements in accordance with generally accepted accounting principles, or GAAP, requires us to make estimates, assumptions and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. We evaluate our estimates on an ongoing basis. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form our basis for making judgments about the carrying values of assets and liabilities and the reported amounts of revenues and expenses that are not readily apparent from other sources. Actual results may differ from those estimates under different assumptions and conditions.

Critical accounting estimates are those estimates that involve a significant level of judgment and/or estimation uncertainty and could have or are reasonably likely to have a material impact on our financial condition or results of operations. We believe the following critical accounting policies and estimates describe the more significant judgments and estimates used in the preparation of our consolidated financial statements.

Purchase of Rights to Future Milestones, Royalties and Commercial Payments

We have purchased rights to receive a portion of certain future developmental, regulatory and commercial sales milestones, and royalties on sales of products currently in clinical development. We acquired such rights from various entities and recorded the amount paid for these rights as long-term royalty receivables. We have accounted for the purchased rights as a financial asset in accordance with ASC 310.

Receivables

We account for milestone and royalty rights related to developmental pipeline products on a non-accrual basis using the cost recovery method. Except for VABYSMO, these developmental pipeline products are non-commercialized, non-approved products that require FDA or other regulatory approval, and thus have uncertain cash flows. The related receivable balances are classified as noncurrent since no payments are probable to be received in the near term. VABYSMO received FDA approval in January 2022, was approved by Japan's Ministry of Health, Labour, and Welfare in March 2022, and was approved by the EU's EC in September 2022 and we do not yet have a foundation upon which to estimate receipts expected to be collected in the near term; therefore, they remain classified as noncurrent until such time an estimate can be made. Under the cost recovery method, any milestone, royalty, or other payment received is recorded as a direct reduction of the recorded receivable balance. When the recorded receivable balance has been fully collected, any additional amounts collected will be recognized as revenue.

Contingent Payments

We may be obligated to make contingent payments related to certain product development and regulatory approval milestones and sales-based milestones. If the contingent payments fall within the scope of ASC 815, the contingent payments are measured at fair value at the inception of the arrangement, subject to remeasurement to fair value at the end of each reporting period. Any changes in the estimated fair value are recorded in the consolidated statement of operations and comprehensive (loss) income.

Impairment Assessment

We review these balances for impairment on a quarterly basis using updates from our partners, press releases and public information on clinical trials. If we determine an impairment is necessary, the impairment recorded will be based on an estimate of discounted future cash flows, which will rely on assumptions including probability of technical success and discount rate. Changes to these assumptions could have a material impact on our financial statements. No impairment has been recorded as of December 31, 2022.

Stock-Based Compensation

Stock-based compensation expense for stock options and other stock awards is estimated at the grant date based on the award's fair value-based measurement. The valuation of stock-based compensation awards is determined at the date of grant using the Black-Scholes Model. This model requires highly complex and subjective inputs, such as the expected term of the option and expected volatility. These inputs are subjective and generally require significant analysis and judgment to develop. Our current estimate of volatility is based on the historical volatility of our stock price. To the extent volatility in our stock price increases in the future, our estimates of the fair value of options granted in the future could increase, thereby increasing stock-based compensation cost recognized in future periods. To establish an estimate of expected term, we consider the vesting period and contractual period of the award and our historical experience of stock option exercises, post-vesting cancellations and volatility. The risk-free rate is based on the yield available on United States Treasury zero-coupon issues. Forfeitures are recognized as they occur.

We review our valuation assumptions quarterly and, as a result, we likely will update our valuation assumptions used to value stock-based awards granted in future periods utilizing current data. In the future, as additional empirical evidence regarding these input estimates becomes available, we may change or refine our approach of deriving these input estimates. These changes could impact our fair value-based measurement of stock options granted in the future. Changes in the fair value-based measurement of stock awards could materially impact our operating results.

Results of Operations

Revenues

Total revenues for the years ended December 31, 2022 and 2021, were as follows (in thousands):

	Year Ended December 31,		
	2022	2021	Change
Revenue from contracts with customers	$ 4,150	$ 36,518	$ (32,368)
Revenue recognized under units-of-revenue method	1,877	1,642	235
Total revenues	$ 6,027	$ 38,160	$ (32,133)

Revenue from Contracts with Customers

Revenue from contracts with customers includes upfront fees, annual license fees and milestone payments related to the out-licensing of our legacy product candidates and technologies. The primary components of revenue from contracts with customers in 2022 were due to milestones earned of $2.0 million pursuant to our Rezolute License Agreement, $0.8 million pursuant to the Takeda Collaboration Agreement, $0.8 million pursuant to our license agreement with Compugen and $0.5 million pursuant to our Sonnet Collaboration Agreement. The primary components of revenue from contracts with customers in 2021 were due to milestones earned of $35.0 million under our Anti-TGFβ Antibody License Agreement with Novartis, $0.5 million under our license agreement with Compugen and $0.7 million under our license agreement with Janssen.

Revenue recognized under units-of-revenue method

Revenues recognized under the units-of-revenue method include the amortization of unearned revenue from the sale of royalty interests to HCRP in 2016. The increase in 2022 compared with 2021 was due to increased sales of products underlying the agreements with HCRP.

G&A Expenses

G&A expenses include salaries and related personnel costs, professional fees, and facilities costs. In 2022, G&A expenses were $23.2 million compared with $20.5 million in 2021.

The net increase of $2.7 million in 2022 as compared with 2021 was primarily due a $2.6 million increase in salaries and related expenses including the $1.2 million Continuity Incentive accrued in connection with the departure of Mr. Neal, a $0.7 million increase in salaries and wages due to increased headcount and general salary increases, $0.4 million related to bonus payments to Mr. Neal pursuant to his amended employment agreement, and $0.1 million accrued in connection with the employee retention bonus. A $2.3 million increase in consulting and legal costs also contributed to the overall increase. The increases in salaries and related expenses, consulting and legal costs were partially offset by a $2.6 million reduction in stock-based compensation expense for stock options.

Other Income (Expense)

Interest Expense

The $0.5 million interest expense reported for the year ended December 31, 2021 was related to our SVB Loan that was repaid in June 2021. There was no interest expense for the year ended December 31, 2022. We expect no interest expense in 2023 as we have no outstanding loan balances; however if we elect to obtain new debt financing, our interest expense may increase.

Other Income (Expense), Net

The following table shows the activity in other income (expense), net for the years ended December 31, 2022 and 2021 (in thousands):

	Year Ended December 31,		
	2022	2021	Change
Other income (expense), net			
Investment income	$ 694	$ 35	$ 659
Change in fair value of equity securities	(439)	(919)	480
Other	40	5	35
Total other income (expense), net	$ 295	$ (879)	$ 1,174

The change in fair value of equity securities is due to the change in market price of equity securities we own in shares of Rezolute's common stock. Investment income increased $0.7 million compared with the same period in 2021 due to higher market interest rates.

Provision for Income Taxes

We recorded a $15,000 income tax benefit and a $0.1 million income tax expense for the years ended December 31, 2022 and 2021, respectively. We continue to maintain a full valuation allowance against our remaining net deferred tax assets. We had a total of $5.9 million of gross unrecognized tax benefits, none of which would impact our effective tax rate to the extent that we continue to maintain a full valuation allowance against our deferred tax assets. We do not expect our unrecognized tax benefits to change significantly over the next twelve months.

Liquidity and Capital Resources

The following table summarizes our unrestricted cash, our working capital and our cash flow activities as of and for each of the periods presented (in thousands):

	December 31, 2022	December 31, 2021	Change
Cash and cash equivalents	$ 57,826	$ 93,328	$ (35,502)
Working capital	$ 54,435	$ 84,006	$ (29,571)

	Year Ended December 31, 2022	2021	Change
Net cash (used in) provided by operating activities	$ (12,879)	$ 22,678	$ (35,557)
Net cash used in investing activities	(20,221)	(26,500)	6,279
Net cash (used in) provided by financing activities	(4,451)	12,835	(17,286)
Net (decrease) increase in cash, cash equivalents and restricted cash	$ (37,551)	$ 9,013	$ (46,564)

Net cash used in operating activities for 2022 was primarily due to our operating expenses of $23.4 million, excluding non-cash expenses of $4.4 million including stock-based compensation of $3.6 million, partially offset by a $2.0 million milestone payment received from Rezolute, a $0.8 million milestone payment received from Takeda and a $0.8 million milestone payment received from Compugen. Our primary source of cash provided by operating activities in 2021 was the $35.0 million milestone payment received from Novartis, partially offset by our operating expenses of $20.6 million excluding non-cash expenses including stock-based compensation of $6.2 million.

Net cash used in investing activities for the year ended December 31, 2022 of $20.2 million was primarily due to the $15.2 million paid for the IP acquired pursuant to the ObsEva IP Acquisition Agreement in November 2022 and the $5.0 million and $3.0 million payments for regulatory milestones pursuant to the Affitech CPPA, partially offset by the $2.5 million milestone payment received from Kuros in July 2022 and the $0.5 million commercial payment received from Roche in August 2022. Net cash used in investing activities for the year ended December 31, 2021, of $26.5 million was due to our acquisitions under RPAs and a CPPA, including a $13.5 million payment pursuant to the Viracta RPA, a $7.0 million payment pursuant to the Kuros RPA and a $6.0 million payment pursuant to the Affitech CPPA.

Net cash used in financing activities for the year ended December 31, 2022, of $4.5 million was primarily due to the payment of dividends on our Series A and Series B Preferred Stock of $5.5 million, partially offset by the receipt of net cash provided from the exercise of stock options after related tax payments of $1.0 million. Net cash provided by financing activities for the year ended December 31, 2021 of $12.8 million was primarily due to the receipt of net cash proceeds of $37.1 million from our public offering of Series B Preferred Stock, $1.1 million net cash provided from the exercise of stock options after related tax payments, partially offset by $4.3 million cash used in the principal payments of debt, $17.1 million cash used to extinguish outstanding loans and $3.5 million payment of dividends on our Series A Preferred Stock and Series B Preferred Stock.

Capital Resources

We have incurred significant operating losses since our inception and as of December 31, 2022, we had an accumulated deficit of $1.2 billion. As of December 31, 2022, we had $57.8 million in cash and cash equivalents. Based on our current cash balance and our ability to control discretionary spending, such as royalty acquisitions, we have evaluated and concluded our financial condition is sufficient to fund our planned operations, commitments, and contractual obligations for a period of at least one year following the filing date of this report.

We have primarily financed our operations and acquisitions through the issuance of our common stock, Series A and Series B Preferred Stock, and amounts received as milestone payments under our license agreements. The generation of future revenues related to licenses, milestones, and royalties is dependent on the achievement of milestones or product sales by our existing licensees. Milestone payments earned in 2021 and 2022 are not indicative of anticipated milestones in future periods. We may seek additional capital through use of our 2018 Common Stock ATM Agreement or 2021 Series B Preferred Stock ATM Agreement (see Note 11 of the Consolidated Financial Statements), or through other public or private debt or equity transactions. Our ability to raise additional capital in the equity and debt markets, should we choose to do so, is dependent on a number of factors, including, but not limited to, the market demand for our common and preferred stock, which are subject to a number of development and business risks and uncertainties, our creditworthiness and the uncertainty that we would be able to raise such additional capital at a price or on terms that are favorable to us. If we are unable to raise additional funds when we need them, our business and operations may be adversely affected.

Material Cash Requirements

Our material cash requirements in the short and long term consist of the following expenditures:

Operating expenditures: Our primary uses of cash and operating expenses relate to employee and related costs, consultants to support our administrative and business development efforts, legal and accounting services, insurance, investor relations and IT services. Our planned spending includes costs to satisfy the Continuity Incentive related to the departure of Mr. Neal as CEO in December 2022 and increased personnel-related costs starting in 2023 due to the appointment of our new Executive Chairman and Chief Investment Officer.

In response to our prior CEO's intention to retire as announced in December 2021, we implemented a Retention Plan to encourage our employees to remain with the Company through and beyond the new CEO transition period. Our Retention Plan includes a cash "stay" bonus, effective November 1, 2022, as well as a policy defining benefits upon any involuntary termination for reasons other than cause, which includes minimum severance, COBRA benefits, outplacement services and certain modifications to option awards. We expect our operating expenses to increase as a result of this Retention Plan.

To support our royalty aggregator business model, we engage third parties to assist in our evaluation of potential acquisitions of milestone and royalty streams. Additional operating expenses, including consulting and legal costs, may increase in 2023 in response to an anticipated increase in the volume of acquisition targets evaluated or completed.

Our amended headquarters lease expires in July 2023, and we are currently evaluating our office space needs, however, due to our small staff and minimal operating space requirements, we do not expect to incur material incremental costs associated with our current or future building leases.

RPAs, CPPAs and IP Acquisitions: A significant component of our business model is to acquire rights to potential future milestone and royalty streams. We expect to continue deploying capital toward these acquisitions in the near and long term.

We also have potential contingent consideration of $0.1 million recorded on our consolidated balance sheets as of December 31, 2022, for development milestones due under our agreement with Bioasis. We paid Affitech a total of $8.0 million in 2022 for milestones tied to the achievement of regulatory approvals. We have evaluated and concluded our existing capital resources are adequate to meet those needs.

We also have potential sales-based milestones that may become due under our agreements with Aronora, Kuros and Affitech as well as non-sales-based milestones, sales-based milestones and sales-based royalty payments that may become due under our agreement with ObsEva. All of these milestones and royalty payments represent a portion of the funds we may receive in the future pursuant to these agreements, and therefore will be fully funded by the related royalty or commercial payment receipts.

Collaborative Agreements, Royalties and Milestone Payments: We have committed to make potential future milestone payments and legal fees to third parties as part of licensing and development programs. Payments under these agreements become due and payable only upon the achievement of certain developmental, regulatory and commercial milestones by our licensees. Because it is uncertain if and when these milestones will be achieved, such contingencies, aggregating up to $6.3 million (assuming one product per contract meets all milestone events) have not been recorded on our consolidated balance sheet as of December 31, 2022. We are unable to determine precisely when and if our payment obligations under the agreements will become due as these obligations are based on milestone events, the achievement of which is subject to a significant number of risks and uncertainties. All payments due will be funded by a portion of the related milestone or royalty revenue we receive or will be reimbursed by our licensees.

Dividends: Holders of our Series A Preferred Stock are entitled to receive, when and as declared by our Board of Directors, cumulative cash dividends at the rate of 8.625% of the $25.00 liquidation preference per year (equivalent to $2.15625 per share of Series A Preferred Stock per year). Holders of Series B Depositary Shares are entitled to receive, when and as declared by our Board of Directors, cumulative cash dividends at the rate of 8.375% of the $25,000 liquidation

preference per share of Series B Preferred Stock ($25.00 per depositary share) per year, which is equivalent to $2,093.75 per year per share of Series B Preferred Stock ($2.09375 per year per depositary share). Dividends on the Series A and Series B Preferred Stock are payable in arrears on or about the 15th day of January, April, July and October of each year. Since original issuance, all dividends have been paid as scheduled. We expect to continue making these dividend payments as scheduled using our existing capital resources.

Recent Accounting Pronouncements

See Note 2 to the Consolidated Financial Statements for information regarding new accounting pronouncements.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

We are a smaller reporting company as defined by Rule 12b-2 of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and are not required to provide the information required under this item.

Item 8. Financial Statements and Supplementary Data

The following consolidated financial statements of the registrant, related notes and report of independent registered public accounting firm are set forth beginning on page F-1 of this report.

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

Not applicable.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Executive Chairman and our Senior Vice President, Finance and Chief Financial Officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15 promulgated under the Securities Exchange Act of 1934, as amended, as of the end of the period covered by this report. Our disclosure controls and procedures are intended to ensure that the information we are required to disclose in the reports that we file or submit under the Securities Exchange Act of 1934 is (i) recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and (ii) accumulated and communicated to our management, including the Executive Chairman and Senior Vice President, Finance and Chief Financial Officer, as the principal executive and financial officers, respectively, to allow timely decisions regarding required disclosures. Based on this evaluation, our Executive Chairman and our Senior Vice President, Finance and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

Management's Report on Internal Control over Financial Reporting

Management, including our Executive Chairman and Interim Chief Executive Officer (principal executive officer) and our Senior Vice President, Finance and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting (as such term is defined in Exchange Act Rules 13a-15(f)). The Company's internal control system was designed to provide reasonable assurance to the Company's management and

board of directors regarding the preparation and fair presentation of published financial statements in accordance with accounting principles generally accepted in the United States.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2022. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control—*Integrated Framework (2013 Framework)*. Based on our assessment we believe that, as of December 31, 2022, our internal control over financial reporting is effective based on those criteria.

This Annual Report does not include an attestation report by our registered public accounting firm regarding internal control over financial reporting. Management's report is not subject to attestation by our registered public accounting firm under Section 404(b) of the Sarbanes-Oxley Act pursuant to the rules established by the Securities and Exchange Commission, which permit us to provide only our management report in this Annual Report.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal controls over financial reporting as defined in Rule 13a-15(f) under the Exchange Act during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

Item 9B. Other Information

Not applicable.

Item 9C. Disclosure Regarding Foreign Jurisdiction that Prevents Inspections

Not applicable.

PART III

Item 10. Directors, Executive Officers, Corporate Governance

Information required by this Item will be included in the Company's proxy statement for the 2023 Annual Meeting of Stockholders ("2023 Proxy Statement"), under the sections labeled "*Proposal 1—Election of Directors," "Information about our Executive Officers"* and *"Delinquent Section 16(a) Reports"* and is incorporated by reference. The 2023 Proxy Statement will be filed with the SEC within 120 days after the end of the fiscal year to which this report relates.

Code of Ethics

The Company's Code of Ethics applies to all employees, officers and directors including the Executive Chairman and Interim Chief Executive Officer (principal executive officer) and the Senior Vice President, Finance and Chief Financial Officer (principal financial and principal accounting officer) and is posted on the Company's website at https://investors.xoma.com/corporate-governance. We intend to satisfy the applicable disclosure requirements regarding amendments to, or waivers from, provisions of our Code of Ethics by posting such information on our website.

Item 11. Executive Compensation

Information required by this Item will be included in the sections labeled *"Compensation of Executive Officers," "Summary Compensation Table," "Outstanding Equity Awards as of December 31, 2022,"* and *"Compensation of Directors"* appearing in our 2023 Proxy Statement and is incorporated by reference.

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

Information required by this Item will be included in the sections labeled "*Common Stock of Certain Beneficial Owners and Management*" and "Equity Compensation Plan Information" appearing in our 2023 Proxy Statement and is incorporated by reference.

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

Information required by this Item will be included in the section labeled "*Transactions with Related Persons*" appearing in our 2023 Proxy Statement and is incorporated by reference.

Item 14. Principal Accountant Fees and Services

Information required by this Item will be included in the section labeled *"Proposal 3 – Ratification of Appointment of Independent Registered Public Accounting Firm"* appearing in our 2023 Proxy Statement and is incorporated by reference.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) The following documents are included as part of this Annual Report on Form 10-K:

(1) Financial Statements:

All financial statements of the registrant referred to in Item 8 of this Report on Form 10-K.

(2) Financial Statement Schedules:

All financial statements schedules have been omitted because the required information is included in the consolidated financial statements or the notes thereto or is not applicable or required.

(3) Exhibits:

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
3.1	Certificate of Incorporation of XOMA Corporation	8-K12G3	000-14710	3.1	01/03/2012
3.2	Certificate of Amendment of Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	05/31/2012
3.3	Certificate of Amendment of Amended Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	05/28/2014
3.4	Certificate of Amendment to the Amended Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	10/18/2016
3.5	Certificate of Designation of Preferences, Rights and Limitations of Series X Convertible Preferred Stock	8-K	000-14710	3.1	02/16/2017
3.6	Certificate of Designation of 8.625% Series A Cumulative Perpetual Preferred Stock	8-K	000-14710	3.1	12/11/2020
3.7	Certificate of Designation of 8.375% Series B Cumulative Perpetual Preferred Stock	8-K	001-39801	3.1	04/08/2021
3.8	Certificate of Correction of the Certificate of Designation of 8.375% Series B Cumulative Perpetual Preferred Stock	10-Q	001-39801	3.8	08/05/2021
3.9	Certificate of Amendment to the Certificate of Designation of 8.375% Series B Cumulative Perpetual Preferred Stock of XOMA Corporation	8-K	001-39801	3.1	08/05/2021
3.10	By-laws of XOMA Corporation	8-K12G3	000-14710	3.2	01/03/2012

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9 and 3.10				
4.2	Specimen of Common Stock Certificate	8-K	000-14710	4.1	01/03/2012
4.3	Deposit Agreement, dated effective April 9, 2021, by and among XOMA Corporation, American Stock Transfer & Trust Company, LLC, as depositary, and the holders of the depositary receipts issued thereunder	8-K	001-39801	4.1	04/08/2021
4.4	Form of Warrants (May 2018 Warrants)	10-Q	000-14710	4.6	08/07/2018
4.5	Form of Warrants (March 2019 Warrants)	10-Q	000-14710	4.7	05/06/2019
4.6+	Description of Registrant's Securities				
10.1*	Amended and Restated 2010 Long Term Incentive and Stock Award Plan	DEF 14A	001-39801	Appendix A	04/07/2022
10.2*	Form of Stock Option Agreement for Amended and Restated 2010 Long Term Incentive and Stock Award Plan	10-K	000-14710	10.6A	03/14/2012
10.3*	2016 Non-Equity Incentive Compensation Plan	10-Q	000-14710	10.1	05/04/2016
10.4*	Amended 2015 Employee Share Purchase Plan	8-K	000-14710	10.2	05/24/2017
10.5*	Form of Subscription Agreement and Authorization of Deduction under the 2015 Employee Stock Purchase Plan	S-8	333-204367	99.2	05/21/2015
10.6*	Amended and Restated Employment Agreement, dated December 15, 2021, between XOMA Corporation and James R. Neal	10-K	001-39801	10.26	3/8/2022
10.7*	Amended and Restated Change of Control Severance Agreement, dated August 7, 2017, to the Change of Control Severance Agreement, dated January 3, 2011, between XOMA Corporation and James R. Neal	10-Q	000-14710	10.9	11/06/2017
10.8*	Officer Employment Agreement, dated August 7, 2017, between XOMA Corporation and Thomas Burns	10-Q	000-14710	10.8	11/06/2017

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.9#*	Letter Amendment to Officer Employment Agreement dated August 7, 2017, between XOMA Corporation and Thomas Burns	10-Q	001-39801	10.2	05/05/2022
10.10+#*	Letter Amendment to Officer Employment Agreement dated November 1, 2022, between XOMA Corporation and Thomas Burns				
10.11*	Amended and Restated Change of Control Severance Agreement, dated August 7, 2017, to the Change of Control Severance Agreement, dated October 28, 2015, between XOMA Corporation and Thomas Burns	10-Q	000-14710	10.10	11/06/2017
10.12*	Form of Amended and Restated Indemnification Agreement for Directors and Officers	10-K	001-39801	10.56	03/10/2021
10.13#*	The Retention and Severance Plan dated, March 31, 2022	10-Q	001-39801	10.1	05/05/2022
10.14+#*	The Amended Retention and Severance Plan dated, October 25, 2022				
10.15+*	Officer Employment Agreement, dated January 3, 2023, between XOMA Corporation and Owen Hughes				
10.16+*	Officer Employment Agreement, dated January 3, 2023, between XOMA Corporation and Bradley Sitko				
10.17*	Inducement Stock Option Agreement, by and between XOMA Corporation and Owen Hughes	S-8	333-269459	99.2	01/30/2023
10.18*	Inducement Stock Option Agreement, by and between XOMA Corporation and Owen Hughes	S-8	333-269459	99.3	01/30/2023
10.19*	Inducement Stock Option Agreement, by and between XOMA Corporation and Bradley Sitko	S-8	333-269459	99.4	01/30/2023
10.20*	Inducement Stock Option Agreement, by and between XOMA Corporation and Bradley Sitko	S-8	333-269459	99.5	01/30/2023
10.21#	Non-Exclusive License Agreement, dated November 30, 2001, between XOMA Ireland Limited ("XOMA") Sesen Bio, Inc. and (formerly Viventia Biotech Inc.)	10-K	001-39801	10.57	03/10/2021

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.22	Amendment No. 1, dated July 24, 2020, to the Non-Exclusive License Agreement, dated November 30, 2001, between XOMA Ireland Limited ("XOMA") and Sesen Bio, Inc.	10-K	001-39801	10.58	03/10/2021
10.23†	License Agreement by and between XOMA Ireland Limited and MorphoSys AG, dated as of February 1, 2002	10-Q/A	000-14710	10.43	12/04/2002
10.24†	Collaboration Agreement, dated as of November 1, 2006, between Takeda Pharmaceutical Company Limited and XOMA (US) LLC	10-K	000-14710	10.46	03/08/2007
10.25†	First Amendment to Collaboration Agreement, effective as of February 28, 2007, between Takeda Pharmaceutical Company Limited and XOMA (US) LLC	10-Q	000-14710	10.48	05/10/2007
10.26†	Second Amendment to Collaboration Agreement, effective as of February 9, 2009, among Takeda Pharmaceutical Company Limited and XOMA (US) LLC	10-K	000-14710	10.31B	03/11/2009
10.27†	Discovery Collaboration Agreement dated September 9, 2009, by and between XOMA Development Corporation and Arana Therapeutics Limited	10-Q/A	000-14710	10.35	03/05/2010
10.28†	Amended and Restated Research, Development and Commercialization Agreement, executed November 7, 2008, by and between Novartis Vaccines and Diagnostics, Inc. (formerly Chiron Corporation) and XOMA (US) LLC	10-K	000-14710	10.24C	03/11/2009
10.29†	Amendment No. 1 to Amended and Restated Research, Development and Commercialization Agreement, effective as of April 30, 2010, by and between Novartis Vaccines and Diagnostics, Inc. (formerly Chiron Corporation) and XOMA (US) LLC	10-K	000-14710	10.25B	03/14/2012
10.30#	Amendment to Amended and Restated Research, Development and Commercialization Agreement, between the Company and Novartis Vaccine and Diagnostics, Inc., dated September 30, 2015	10-Q	000-14710	10.2	11/05/2020

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.31	Letter Agreement, dated June 19, 2015, by and between XOMA (US) LLC and Novartis Vaccines and Diagnostics, Inc.	10-Q	000-14710	10.1	08/10/2015
10.32#	License Agreement between the Company and Novartis International Pharmaceutical Ltd., dated September 30, 2015	10-Q	000-14710	10.1	11/05/2020
10.33#	IL-1b Target License Agreement, dated August 24, 2017, by and between XOMA Corporation and Novartis Pharma AG	10-Q	001-39801	10.1	11/03/2022
10.34#	License Agreement, dated August 24, 2017, by and between XOMA Corporation and Novartis Pharma AG	10-Q	001-39801	10.2	11/03/2022
10.35†	License Agreement, dated December 6, 2017, between XOMA (US) LLC and Rezolute, Inc. (formerly AntriaBio)	10-K	000-14710	10.66	03/07/2018
10.36†	Amendment No. 1, dated March 30, 2018, to the License Agreement, dated December 6, 2017, between XOMA (US) LLC and Rezolute, Inc. (formerly AntriaBio, Inc.)	10-Q	000-14710	10.1	05/09/2018
10.37†	Amendment No. 2, dated January 7, 2019, to the License Agreement, dated December 6, 2017, between XOMA (US) LLC and Rezolute, Inc. (formerly AntriaBio)	10-K	000-14710	10.71	03/07/2019
10.38	Asset Purchase Agreement, dated November 4, 2015, between XOMA Corporation and Ology Bioservices Inc. (formerly Nanotherapeutics Inc., now a wholly owned subsidiary of National Resilience, Inc.)	10-Q	000-14710	10.4	11/06/2017
10.39#	License Agreement, dated March 23, 2016, between XOMA Corporation and Ology Bioservices Inc. (formerly Nanotherapeutics Inc., now a wholly owned subsidiary of National Resilience, Inc.)	10-Q	001-39801	10.3	11/03/2022
10.40#	Amendment and Restatement, dated February 2, 2017, to the Asset Purchase Agreement, dated November 4, 2015, and License Agreement, dated March 23, 2016, between XOMA Corporation and Ology Bioservices Inc. (formerly Nanotherapeutics	10-Q	001-39801	10.4	11/03/2022

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
	Inc., now a wholly owned subsidiary of National Resilience, Inc.)				
10.41	Protective Rights Agreement dated December 21, 2016 by and between XOMA (US) LLC and HealthCare Royalty Partners II, L.P. relating to the Royalty Interest Acquisition Agreement dated December 20, 2016, by and between XOMA Corporation and HealthCare Royalty Partners II, L.P. and the Amended and Restated License Agreement, dated effective as of October 27, 2006, between XOMA (US) LLC and DYAX, Corp.	10-K	000-14710	10.60	03/16/2017
10.42	Protective Rights Agreements dated December 21, 2016 by and between XOMA (US) LLC and HealthCare Royalty Partners II, L.P. relating to the Royalty Interest Acquisition Agreement dated December 20, 2016, by and between XOMA Corporation and HealthCare Royalty Partners II, L.P. and the License Agreement, dated effective as of August 18, 2005, between XOMA (US) LLC and Wyeth Pharmaceuticals	10-K	000-14710	10.61	03/16/2017
10.43	Royalty Interest Acquisition Agreement dated December 20, 2016, by and between XOMA Corporation and HealthCare Royalty Partners II, L.P., relating to the Amended and Restated License Agreement, dated effective as of October 27, 2006, between XOMA (US) LLC and DYAX, Corp.	10-K	000-14710	10.62	03/16/2017
10.44	Royalty Interest Acquisition Agreement dated December 20, 2016, by and between XOMA Corporation and HealthCare Royalty Partners II, L.P., relating to the License Agreement, dated effective as of August 18, 2005, between XOMA (US) LLC and Wyeth Pharmaceuticals	10-K	000-14710	10.63	03/16/2017
10.45	Amendment of Section 6.10(a) and (b), dated March 8, 2017, to Royalty Interest Acquisition Agreements dated December 20, 2016, by and between XOMA Corporation and HealthCare Royalty Partners II, L.P.	10-K	000-14710	10.64	03/16/2017
10.46	Common Stock Sales Agreement, dated December 18, 2018, by and between XOMA Corporation and H.C. Wainwright & Co., LLC	8-K	000-14710	10.1	12/18/2018

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.47	Amendment No. 1, dated March 10, 2021, to the Common Stock Sales Agreement, dated December 18, 2018, by and between XOMA Corporation and H.C. Wainwright & Co., LLC	10-K	001-39801	10.59	03/10/2021
10.48#	At Market Issuance Sales Agreement, dated August 5, 2021, by and between XOMA Corporation and B. Riley Securities, Inc.	8-K	001-39801	10.1	08/05/2021
10.49†	Royalty Purchase Agreement dated September 20, 2018, between XOMA Corporation and Agenus Inc.	10-Q	000-14710	10.9	11/07/2018
10.50#	Royalty Purchase Agreement dated April 7, 2019, between XOMA (US) LLC and Aronora, Inc.	10-Q	000-14710	10.1	08/06/2019
10.51#	Royalty Purchase Agreement dated September 26, 2019, between XOMA (US) LLC and Palobiofarma, S.L	10-Q	000-14710	10.1	11/05/2019
10.52#	Royalty Purchase Agreement dated March 22, 2021 between XOMA (US) LLC and Viracta Therapeutics, Inc.	10-Q	001-39801	10.1	05/06/2021
10.53#	Royalty Purchase Agreement, dated July 14, 2021, by and among XOMA (US) LLC and Kuros Royalty Fund (US) LLC	10-Q	001-39801	10.2	11/04/2021
10.54#	Settlement and Release Agreement, dated April 15, 2021, by and among XOMA (US) LLC and Affimed N.V., Affimed GmbH Affimed	10-Q	001-39801	10.1	08/05/2021
10.55#	Commercial Payment Purchase Agreement, dated October 6, 2021, by and among XOMA (US) LLC and Affitech Research AS	10-K	001-39801	10.48	03/08/2021
10.56+#	Intellectual Property Acquisition Agreement, dated November 21, 2022 between XOMA Corporation and ObsEva, SA				
10.57+#	License Agreement, dated July 26, 2021, between ObsEva, SA and Organon International GmbH				
10.58+#	License Agreement, dated June 10, 2015, between ObsEva, SA and Ares Trading S.A.				
21.1+	Subsidiaries of the Company				

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
23.1+	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm				
24.1+	Power of Attorney (included on the signature pages hereto)				
31.1+	Certification of Executive Chairman, as required by Rule 13a-14(a) or Rule 15d-14(a)				
31.2+	Certification of Chief Financial Officer, as required by Rule 13a 14(a) or Rule 15d 14(a)				
32.1+(1)	Certification of Executive Chairman and Chief Financial Officer, as required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350)				
101.INS+	Inline XBRL Instance Document				
101.SCH+	Inline XBRL Taxonomy Extension Schema Document				
101.CAL+	Inline XBRL Taxonomy Extension Calculation Linkbase Document				
101.DEF+	Inline XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB+	Inline XBRL Taxonomy Extension Labels Linkbase Document				
101.PRE+	Inline XBRL Taxonomy Extension Presentation Linkbase Document				
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)				

† Confidential treatment has been granted with respect to certain portions of this exhibit. This exhibit omits the information subject to this confidentiality request. Omitted portions have been filed separately with the SEC.

* Indicates a management contract or compensation plan or arrangement.

+ Filed herewith.

Portions of this exhibit have been omitted as the Registrant has determined that (i) the omitted information is not material and (ii) the omitted material is of the type that the Registrant treats as private or confidential.

(1) This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Registrant under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.

The exhibits listed in the accompanying index to exhibits are filed or incorporated by reference as part of this Annual Report on Form 10-K.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on this 9th day of March 2023.

XOMA Corporation

By: /s/ OWEN HUGHES
Owen Hughes
Executive Chairman of the Board of Directors and Interim Chief Executive Officer

POWER OF ATTORNEY

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

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

Signature	Title	Date
/s/ Owen Hughes **(Owen Hughes)**	Executive Chairman of the Board of Directors and Interim Chief Executive Officer (Principal Executive Officer)	March 9, 2023
/s/ Thomas Burns **(Thomas Burns)**	Senior Vice President, Finance and Chief Financial Officer (Principal Financial and Principal Accounting Officer)	March 9, 2023
/s/ Heather L. Franklin **(Heather L. Franklin)**	Director	March 9, 2023
/s/ Natasha Hernday **(Natasha Hernday)**	Director	March 9, 2023
/s/ Barbara Kosacz **(Barbara Kosacz)**	Director	March 9, 2023
/s/ Joseph M. Limber **(Joseph M. Limber)**	Director	March 9, 2023
/s/ Matthew Perry **(Matthew Perry)**	Director	March 9, 2023
/s/ W. Denman Van Ness **(W. Denman Van Ness)**	Director	March 9, 2023
/s/ Jack L. Wyszomierski **(Jack L. Wyszomierski)**	Director	March 9, 2023

Index to Consolidated Financial Statements

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of XOMA Corporation

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of XOMA Corporation and subsidiaries (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of operations and comprehensive (loss) income, stockholders' equity, and cash flows, for the each of the two years in the period ended December 31, 2022, 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, 2022 and 2021, and the results of its operations and its cash flows for the each of the two years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

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 Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of 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 matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Purchase of Rights to Future Milestones, Royalties and Commercial Payments — Refer to Notes 2 and 5 to the financial statements

Critical Audit Matter Description

The Company has purchased rights to receive a portion of certain future developmental, regulatory and commercial sales milestones, royalties and option fees on sales of products currently in clinical development. The carrying value of the long-term royalty and commercial payment receivables (“milestone and royalty rights”) is $63.7 million as of December 31, 2022. The Company accounts for milestone and royalty rights on a non-accrual basis using the cost recovery method. The developmental pipeline products are non-commercialized, non-approved products that require FDA or other regulatory approval, and thus have uncertain cash flows. The commercial payment product has limited available historical sales information, and as such the Company is unable to reasonably estimate the amount and timing of the commercial

payments to be received. Management assesses any impairment indicators and changes in expected recoverability of the long-term royalty and commercial payment receivable assets regularly.

The determination of impairment indicators requires obtaining and assessing all available information regarding the developmental pipeline products and the commercial payment product as of the Company's financial reporting dates. The Company obtains information through available sources including: 1) updates from the selling party of the milestone and royalty rights, 2) publicly available clinical trial data and news, and 3) public disclosures provided by the research companies developing the products.

We identified the accounting evaluation of impairment indicators as a critical audit matter, primarily due to the Company's reliance on third parties to disclose updates to the Company timely for the Company's required financial reporting deadlines. The timing of disclosure to the Company of a change in the use, or intent for future use, of the licenses related to the milestone and royalty rights could have a significant impact on the fair value of milestone and royalty rights and a significant change in fair value could cause a significant impairment. Performing audit procedures to evaluate whether management had appropriately identified impairment indicators involved challenging and complex auditor judgment, including the need to involve more experienced auditors in assessing the completeness of available information and if any available public information represents an impairment indicator as of the Company's financial reporting date.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the evaluation of assumptions used in the impairment assessment of the long-term royalty receivables included, but were not limited to, the following:

- Considering the impact of changes in the regulatory environment on management's impairment indicator conclusions.
- We evaluated the Company's assessment of impairment indicators by developing an independent expectation of impairment indicators through research of third-party disclosures and clinical trial news for programs associated with the milestone and royalty rights and comparing such expectation to those included in the impairment analysis.
- We inspected the Company's documentation of inquiries and written correspondence to obtain program updates from the selling parties of the milestone and royalty rights throughout the year and through the Company's reporting date.
- Confirmed with the selling parties of the milestone and royalty rights that complete information known to the selling party regarding the associated research programs was provided timely, completely, and accurately to the Company.

/s/ DELOITTE & TOUCHE LLP

San Francisco, California
March 9, 2023

We have served as the Company's auditor since 2018.

XOMA Corporation
CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	December 31, 2022	December 31, 2021
ASSETS		
Current assets:		
Cash and cash equivalents	$ 57,826	$ 93,328
Restricted cash	—	2,049
Short-term equity securities	335	774
Trade and other receivables, net	1	209
Short-term royalty and commercial payment receivables	2,366	—
Prepaid expenses and other current assets	725	613
Total current assets	61,253	96,973
Property and equipment, net	7	13
Operating lease right-of-use assets	29	200
Long-term royalty and commercial payment receivables	63,683	69,075
Intangible assets, net	15,150	—
Other assets - long term	260	301
Total assets	$ 140,382	$ 166,562
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 524	$ 1,072
Accrued and other liabilities	2,918	525
Income taxes payable	—	91
Contingent consideration under RPAs and CPPAs	75	8,075
Operating lease liabilities	34	195
Unearned revenue recognized under units-of-revenue method	1,899	1,641
Preferred stock dividend accrual	1,368	1,368
Total current liabilities	6,818	12,967
Unearned revenue recognized under units-of-revenue method – long-term	9,550	11,685
Long-term operating lease liabilities	—	34
Total liabilities	16,368	24,686
Commitments and Contingencies (Note 12)		
Stockholders' equity:		
Preferred Stock, $0.05 par value, 1,000,000 shares authorized:		
8.625% Series A cumulative, perpetual preferred stock, 984,000 shares issued and outstanding at December 31, 2022 and December 31, 2021	49	49
8.375% Series B cumulative, perpetual preferred stock, 1,600 shares issued and outstanding at December 31, 2022 and December 31, 2021	—	—
Convertible preferred stock, 5,003 shares issued and outstanding at December 31, 2022 and December 31, 2021	—	—
Common stock, $0.0075 par value, 277,333,332 shares authorized, 11,454,025 and 11,315,263 shares issued and outstanding at December 31, 2022 and December 31, 2021, respectively	86	85
Additional paid-in capital	1,306,271	1,307,030
Accumulated deficit	(1,182,392)	(1,165,288)
Total stockholders' equity	124,014	141,876
Total liabilities and stockholders' equity	$ 140,382	$ 166,562

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

XOMA Corporation
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE (LOSS) INCOME
(in thousands, except per share amounts)

	Year Ended December 31,	
	2022	**2021**
Revenues:		
Revenue from contracts with customers	$ 4,150	$ 36,518
Revenue recognized under units-of-revenue method	1,877	1,642
Total revenues	6,027	38,160
Operating expenses:		
Research and development	153	171
General and administrative	23,191	20,460
Amortization of intangible assets	97	—
Total operating expenses	23,441	20,631
(Loss) income from operations	(17,414)	17,529
Other income (expense), net:		
Interest expense	—	(461)
Loss on extinguishment of debt	—	(300)
Other income (expense), net	295	(879)
(Loss) income before income tax	(17,119)	15,889
Income tax benefit (expense)	15	(91)
Net (loss) income and comprehensive (loss) income	$ (17,104)	$ 15,798
Net (loss) income and comprehensive (loss) income (attributable to) available to common stockholders (Note 10), basic	$ (22,576)	$ 7,787
Net (loss) income and comprehensive (loss) income (attributable to) available to common stockholders (Note 10), diluted	$ (22,576)	$ 7,968
Basic net (loss) income per share (attributable to) available to common stockholders	$ (1.98)	$ 0.69
Diluted net (loss) income per share (attributable to) available to common stockholders	$ (1.98)	$ 0.65
Weighted average shares used in computing basic net (loss) income per share (attributable to) available to common stockholders	11,413	11,288
Weighted average shares used in computing diluted net (loss) income per share (attributable to) available to common stockholders	11,413	12,192

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

XOMA Corporation
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands)

	Series A Preferred Stock		Series B Preferred Stock		Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, December 31, 2021	984	$ 49	2	$ —	5	$ —	11,315	$ 85	$ 1,307,030	$ (1,165,288)	$ 141,876
Exercise of stock options	—	—	—	—	—	—	129	1	929	—	930
Stock-based compensation expense	—	—	—	—	—	—	—	—	3,608	—	3,608
Issuance of common stock related to 401(k) contribution and ESPP	—	—	—	—	—	—	10	—	176	—	176
Preferred stock dividends		—		—		—	—	—	(5,472)	—	(5,472)
Net loss and comprehensive loss	—	—	—	—	—	—	—	—	—	(17,104)	(17,104)
Balance, December 31, 2022	984	$ 49	2	$ —	5	$ —	11,454	$ 86	$ 1,306,271	$ (1,182,392)	$ 124,014

	Series A Preferred Stock		Series B Preferred Stock		Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, December 31, 2020	984	$ 49	—	$ —	5	$ —	11,229	$ 84	$ 1,267,377	$ (1,181,086)	$ 86,424
Issuance of preferred stock	—	—	2	—	—	—	—	—	37,140	—	37,140
Exercise of stock options	—	—	—	—	—	—	77	1	1,052	—	1,053
Stock-based compensation expense	—	—	—	—	—	—	—	—	6,195	—	6,195
Exercise of common stock warrants	—	—	—	—	—	—	5	—	—	—	—
Issuance of common stock related to 401(k) contribution and ESPP	—	—	—	—	—	—	4	—	133	—	133
Preferred stock dividends	—	—	—	—	—	—	—	—	(4,867)	—	(4,867)
Net income and comprehensive income	—	—	—	—	—	—	—	—	—	15,798	15,798
Balance, December 31, 2021	984	$ 49	2	$ —	5	$ —	11,315	$ 85	$ 1,307,030	$ (1,165,288)	$ 141,876

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

XOMA Corporation
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,	
	2022	2021
Cash flows from operating activities:		
Net (loss) income	$ (17,104)	$ 15,798
Adjustments to reconcile net (loss) income to net cash (used in) provided by operating activities:		
Stock-based compensation expense	3,608	6,195
Common stock contribution to 401(k)	85	90
Depreciation	7	7
Amortization of debt issuance costs, debt discount and final payment on debt	—	200
Loss on extinguishment of debt	—	300
Reduction of contingent NIH refund liability	—	(105)
Non-cash lease expense	170	160
Change in fair value of equity securities	439	919
Amortization of intangible assets	97	—
Changes in assets and liabilities:		
Trade and other receivables, net	208	54
Income tax receivable	—	1,526
Prepaid expenses and other assets	(71)	(169)
Accounts payable and accrued liabilities	1,845	765
Income taxes payable	(91)	91
Operating lease liabilities	(195)	(179)
Unearned revenue recognized under units-of-revenue method	(1,877)	(1,642)
Contingent NIH refund liability	—	(1,305)
Other liabilities	—	(27)
Net cash (used in) provided by operating activities	(12,879)	22,678
Cash flows from investing activities:		
Payments of consideration under RPAs and CPPAs	(8,000)	(26,500)
Receipts under RPAs and CPPAs	3,026	—
Payment for IP acquired under the ObsEva IP Acquisition Agreement	(15,247)	—
Net cash used in investing activities	(20,221)	(26,500)
Cash flows from financing activities:		
Proceeds from issuance of preferred stock	—	40,000
Payment of preferred stock dividends	(5,472)	(3,499)
Payment of preferred and common stock issuance costs	—	(3,385)
Proceeds from exercise of options and other share-based compensation	2,419	1,584
Taxes paid related to net share settlement of equity awards	(1,398)	(488)
Principal payments – debt	—	(4,250)
Payment for extinguishment of debt	—	(17,103)
Payment for debt modification fee	—	(24)
Net cash (used in) provided by financing activities	(4,451)	12,835
Net (decrease) increase in cash, cash equivalents and restricted cash	(37,551)	9,013
Cash and restricted cash at the beginning of the period	95,377	86,364
Cash, cash equivalents and restricted cash at the end of the period	$ 57,826	$ 95,377
Supplemental Cash Flow Information:		
Cash paid for taxes	$ 76	$ —
Cash paid for interest	$ —	$ 311
Non-cash investing and financing activities:		
Estimated fair value of contingent consideration under the Affitech CPPA	$ —	$ 8,000
Preferred stock dividend accrual	$ 1,368	$ 1,368
Accrued transaction costs in connection with ObsEva IP Acquisition	$ 122	$ —

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

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Description of Business

XOMA, a Delaware corporation, is a biotech royalty aggregator with a sizable portfolio of economic rights to future potential milestone and royalty payments associated with partnered commercial and pre-commercial therapeutic candidates. The Company's portfolio was built through the acquisition of rights to future milestones and royalties that the Company has made since the royalty aggregator business model was implemented in 2017 combined with outlicensing its proprietary products and platforms from its legacy discovery and development business. The Company's drug royalty aggregator business is focused on early to mid-stage clinical assets primarily in Phase 1 and 2 with significant commercial sales potential that are licensed to large-cap partners. The Company expects that most of its future revenue will be based on payments the Company may receive for milestones and royalties related to these programs.

Liquidity and Financial Condition

The Company has incurred significant operating losses and negative cash flows from operations since its inception. As of December 31, 2022, the Company had cash and cash equivalents of $57.8 million.

Based on the Company's current cash balance and its ability to control discretionary spending, such as milestone and royalty acquisitions, the Company has evaluated and concluded its financial condition is sufficient to fund its planned operations and commitments and contractual obligations for a period of at least one year following the date that these consolidated financial statements are issued.

2. Basis of Presentation and Significant Accounting Policies

Basis of Presentation

The accompanying consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany accounts and transactions among consolidated entities were eliminated upon consolidation. The accompanying consolidated financial statements were prepared in accordance with GAAP in the United States for financial information and with the instructions to Form 10-K and Article 10 of Regulation S-X.

Use of Estimates

The preparation of financial statements in conformity with GAAP in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosures. On an ongoing basis, management evaluates its estimates including, but not limited to, those related to revenue recognition, revenue recognized under the units-of-revenue method, royalty and commercial payment receivables, intangible assets, legal contingencies, contingent consideration and stock-based compensation. The Company bases its estimates on historical experience and on various other market-specific and other relevant assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources.

Actual results may differ significantly from these estimates, such as the Company's amortization of the payments received from HCRP. Under the contracts with HCRP, the amortization for the reporting period is calculated based on the payments expected to be made by the licensees to HCRP over the term of the arrangement. Any changes to the estimated payments by the licensees to HCRP can result in a material adjustment to revenue previously reported.

Cash, Cash Equivalents and Restricted Cash

Cash consists of bank deposits held in business checking and interest-bearing deposit accounts. As of December 31, 2022, the Company had cash equivalent balances of $30.3 million, defined as highly liquid financial instruments that are both readily convertible to known amounts of cash and so near their maturity that they present insignificant risk of

changes in value because of changes in interest rates. The Company considers all highly liquid debt instruments with maturities of three months or less at the time the Company acquires them and that can be liquidated without prior notice or penalty to be cash equivalents. As of December 31, 2021, the Company did not have any cash equivalent balances.

Restricted cash as of December 31, 2021 consisted of bank deposits held to pay dividends on the Company's Series A and Series B Preferred Stock. As of December 31, 2022, the Company has paid the first year of dividends for the Series A and Series B Preferred stock and is no longer required to hold a restricted cash balance.

The Company maintains cash balances at commercial banks. Balances commonly exceed the amount insured by the Federal Deposit Insurance Corporation. The Company has not experienced any losses in such accounts, and management believes that the Company is not exposed to any significant credit risk with respect to such cash.

The following table provides a reconciliation of cash and cash equivalents and restricted cash reported within the consolidated balance sheets that sum to the total of the same amounts shown in the consolidated statements of cash flows (in thousands):

	December 31, 2022	December 31, 2021
Cash and cash equivalents	$ 57,826	$ 93,328
Restricted cash	—	2,049
Total cash, cash equivalents and restricted cash	$ 57,826	$ 95,377

Revenue Recognition

The Company recognizes revenue from all contracts with customers according to ASC 606, except for contracts that are within the scope of other standards, such as leases, insurance, collaboration arrangements and financial instruments. The Company recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration which the Company expects to receive in exchange for those goods or services.

To determine revenue recognition for arrangements that the Company determines are within the scope of ASC 606, the Company performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the Company satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable that the Company will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. At contract inception, once the contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within each contract and determines those that are performance obligations and assesses whether each promised good or service is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation based on relative fair values, when (or as) the performance obligation is satisfied.

The Company recognizes revenue from its license and collaboration arrangements and royalties. The terms of the arrangements generally include payment to the Company of one or more of the following: non-refundable, upfront license fees, development, regulatory and commercial milestone payments, and royalties on net sales of licensed products.

License of intellectual property

If the license to the Company's intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, the Company recognizes revenue from non-refundable, upfront fees allocated to the license when the license is transferred to the customer and the customer is able to use and benefit from the license. For licenses that are bundled with other promises, such as transfer of related materials, process and know-how, the Company utilizes judgement to assess the nature of the combined performance obligation to determine whether the combined performance obligation is satisfied over time or at a point in time. Under the Company's license agreements, the nature of

the combined performance obligation is the granting of licenses to the customers as the other promises are not separately identifiable in the context of the arrangement. Since the Company grants the license to a customer as it exists at the point of transfer and is not involved in any future development or commercialization of the products related to the license, the nature of the license is a right to use the Company's intellectual property as transferred. As such, the Company recognizes revenue related to the combined performance obligation upon completion of the delivery of the related materials, process and know-how (i.e., at a point in time).

Milestone payments

At the inception of each arrangement that includes development and regulatory milestone payments, the Company evaluates whether the milestones are considered probable of being reached and estimates the amount to be included in the transaction price. ASC 606 suggests two alternatives to use when estimating the amount of variable consideration: the expected value method and the most likely amount method. Under the expected value method, an entity considers the sum of probability-weighted amounts in a range of possible consideration amounts. Under the most likely amount method, an entity considers the single most likely amount in a range of possible consideration amounts. The Company uses the most likely amount method for development and regulatory milestone payments.

If it is probable that a significant cumulative revenue reversal would not occur, the associated milestone value is included in the transaction price. Milestone payments that are not within the control of the Company or the licensee, such as regulatory approvals, are not considered probable of being achieved until those approvals are received. The transaction price is then allocated to each performance obligation on a relative stand-alone selling price basis. The Company recognizes revenue as or when the performance obligations under the contract are satisfied. At the end of each subsequent reporting period, the Company re-evaluates the probability or achievement of each such milestone and any related constraint, and if necessary, adjusts its estimates of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect revenue and earnings in the period of adjustment.

Royalties

For arrangements that include sales-based royalties, including milestone payments based on the level of sales, and the license is deemed to be the predominant item to which the royalties relate, the Company recognizes revenue at the later of (i) when the related sales occur, or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied (or partially satisfied).

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

Sale of Future Revenue Streams

The Company has sold its rights to receive certain milestones and royalties on product sales. In the circumstance where the Company has sold its rights to future milestones and royalties under a license agreement and also maintains limited continuing involvement in the arrangement (but not significant continuing involvement in the generation of the cash flows that are due to the purchaser), the Company defers recognition of the proceeds it receives for the sale of milestone or royalty streams and recognizes such unearned revenue as revenue under units-of-revenue method over the life of the underlying license agreement. Under the units-of-revenue method, amortization for a reporting period is calculated by computing a ratio of the proceeds received from the purchaser to the total payments expected to be made to the purchaser over the term of the agreement, and then applying that ratio to the period's cash payment.

Estimating the total payments expected to be received by the purchaser over the term of such arrangements requires management to use subjective estimates and assumptions. Changes to the Company's estimate of the payments

expected to be made to the purchaser over the term of such arrangements could have a material effect on the amount of revenues recognized in any particular period.

Stock-Based Compensation

The Company recognizes compensation expense for all stock-based payment awards made to the Company's employees, consultants and directors that are expected to vest based on estimated fair values. The valuation of stock option awards is determined at the date of grant using the Black-Scholes Model. The Black-Scholes Model requires inputs such as the expected term of the option, expected volatility and risk-free interest rate. To establish an estimate of expected term, the Company considers the vesting period and contractual period of the award and its historical experience of stock option exercises, post-vesting cancellations and volatility. The estimate of expected volatility is based on the Company's historical volatility. The risk-free rate is based on the yield available on United States Treasury zero-coupon issues corresponding to the expected term of the award. The Company records forfeitures when they occur. The Company records compensation expense for service-based awards on a straight-line basis over the requisite service period, which is generally the vesting period of the award, or to the date on which retirement eligibility is achieved, if shorter.

Equity Securities

The Company entered into a license agreement with Rezolute in December 2017, in which it received shares of common stock from Rezolute (Note 4). Equity investments in Rezolute are classified in the consolidated balance sheets as equity securities. The equity securities are measured at fair value, with changes in fair value recorded in the other income (expense), net line item of the consolidated statement of operations and comprehensive (loss) income at each reporting period. The Company remeasures its equity investments at each reporting period until such time that the investment is sold or disposed of. If the Company sells an investment, any realized gains and losses on the sale of the securities will be recognized in the consolidated statement of operations and comprehensive (loss) income in the period of sale.

Purchase of Rights to Future Milestones, Royalties and Commercial Payments

The Company has purchased rights to receive a portion of certain future developmental, regulatory and commercial sales milestones, royalties and option fees on sales of products currently in clinical development. The Company acquired such rights from various entities and recorded the amount paid for these rights as long-term royalty receivables (Note 5). In addition, the Company may be obligated to make contingent payments related to certain product development milestones, fees upon exercise of options related to future license products and sales-based milestones. The contingent payments are evaluated whether they are freestanding instruments or embedded derivatives. If the contingent payments fall within the scope of ASC 815, the contingent payments are measured at fair value at the inception of the arrangement, and subject to remeasurement to fair value each reporting period. Any changes in the estimated fair value are recorded in the consolidated statement of operations and comprehensive (loss) income.

The Company accounts for milestone and royalty rights related to developmental pipeline products on a non-accrual basis using the cost recovery method. These developmental pipeline products are non-commercialized, non-approved products that require FDA or other regulatory approval, and thus have uncertain cash flows. The Company is not yet able to reliably forecast future cash flows given their pre-commercial stages of development. The related receivable balance is classified as noncurrent or current based on whether payments are probable to be received in the near term. Under the cost recovery method, any milestone or royalty payment received is recorded as a direct reduction of the recorded receivable balance. When the recorded receivable balance has been fully collected, any additional amounts collected are recognized as revenue.

The Company reviews public information on clinical trials, press releases and updates from its partners regularly to identify any impairment indicators or changes in expected recoverability of the long-term royalty receivable asset. If an impairment indicator is identified, and the Company determines expected future cash flows discounted to the current period are less than the carrying value of the asset, the Company will record impairment. The impairment will be recognized by reducing the financial asset to an amount that represents the present value of the most recent estimate of future cash flows. No impairment indicators were identified, and no impairment was recorded as of December 31, 2022 and 2021.

Asset Acquisitions

As a first step, for each acquisition, the Company determines if it is an acquisition of a business or an asset acquisition under ASC 805. Acquisitions of assets or a group of assets that do not meet the definition of a business are accounted for as asset acquisitions under ASC 805-50, using the cost accumulation method, whereby the cost of the acquisition, including certain transaction costs, is allocated to the assets acquired on the basis of relative fair values (Note 4).

Contingent payments are evaluated whether they are freestanding instruments or embedded derivatives. If the contingent payments fall within the scope of ASC 815, the contingent payments are measured at fair value at the acquisition date, and subject to remeasurement to fair value each reporting period. The estimated fair value at the acquisition date is included in the cost of the acquired assets. Any subsequent changes in the estimated fair value are recorded in the consolidated statement of operations and comprehensive (loss) income. Other contingent consideration payments are recognized when the amount is probable and estimable according to ASC 450.

Cash payments related to acquired assets are reflected as an investing cash flow in the Company's consolidated statement of cash flows.

Intangible Assets

The identifiable intangible asset consists of IP acquired in the ObsEva IP Acquisition Agreement in 2022. This intangible asset is amortized on a straight-line basis over its estimated useful life of 17 years. The straight-line method of amortization represents the Company's best estimate of the distribution of the economic value of the identifiable intangible asset. The intangible asset is carried at cost less accumulated amortization. Amortization will be included in amortization of intangible assets in the consolidated statement of operations and comprehensive (loss) income.

Intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability is measured by comparison of the carrying amount of an asset group to the future net undiscounted cash flows that the assets are expected to generate. If the carrying amount of an asset group exceeds its estimated future cash flows, an impairment charge is recognized in the amount by which the carrying amount of the asset group exceeds the fair value of the asset group.

Leases

The Company leases its headquarters office space in Emeryville, California. The Company determines the initial classification and measurement of its right-of-use assets and lease liabilities at the lease commencement date and thereafter if modified. The lease term includes any renewal options and termination options that the Company is reasonably certain to exercise. The present value of lease payments is determined by using the interest rate implicit in the lease, if that rate is readily determinable; otherwise, the Company uses its incremental borrowing rate. The incremental borrowing rate is determined by using the rate of interest that the Company would pay to borrow on a collateralized basis an amount equal to the lease payments for a similar term and in a similar economic environment. The Company built its incremental borrowing rate starting with the interest rate on its fully collateralized debt and then adjusted it for lease term length.

Rent expense for the operating lease is recognized on a straight-line basis, over the reasonably assured lease term based on the total lease payments and is included in operating expenses in the consolidated statements of operations and comprehensive (loss) income.

The Company has elected the practical expedient to not separate lease and non-lease components. The Company's non-lease components are primarily related to property maintenance, which varies based on future outcomes, and thus is recognized in rent expense when incurred.

Income Taxes

The Company accounts for income taxes using the liability method under which deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. Valuation allowances are established when necessary to reduce deferred tax assets to the amount which is more likely than not to be realizable.

The recognition, derecognition and measurement of a tax position is based on management's best judgment given the facts, circumstances and information available at each reporting date. The Company's policy is to recognize interest and penalties related to the underpayment of income taxes as a component of income tax expense. To date, there have been no interest or penalties charged in relation to the unrecognized tax benefits.

Net (Loss) Income per Share (Attributable to) Available to Common Stockholders

The Company calculates basic and diluted (loss) income per share (attributable to) available to common stockholders using the two-class method. The Company's convertible Series X preferred stocks participate in any dividends declared by the Company on its common stock and are therefore considered to be participating securities. The Company's Series A and Series B Preferred Stock do not participate in any dividends or distribution by the Company on its common stock and are therefore not considered to be participating securities.

Under the two-class method, net income, as adjusted for any accumulated dividends on Series A and Series B Preferred Stock for the period, is allocated to each class of common stock and participating security as if all of the net income for the period had been distributed. Undistributed earnings allocated to participating securities are subtracted from net income in determining net income attributable to common stockholders. During periods of loss, the Company allocates no loss to participating securities because they have no contractual obligation to share in the losses of the Company. Basic net (loss) income per share attributable to common stockholders is then calculated by dividing the net (loss) income attributable to common stockholders by the weighted average number of shares of common stock outstanding during the period. All participating securities are excluded from the basic weighted average common shares outstanding.

Diluted net (loss) income per share attributable to common stockholders is based on the weighted average number of shares outstanding during the period, adjusted to include the assumed exercise of certain stock options and warrants for common stock using the treasury method, if dilutive. The calculation assumes that any proceeds that could be obtained upon exercise of options and warrants would be used to purchase common stock at the average market price during the period. Adjustments to the denominator are required to reflect the related dilutive shares. The Company's Series A and Series B Preferred Stock become convertible upon the occurrence of specific events other than a change in the Company's share price and, therefore, are not included in the diluted shares until the contingency is resolved.

Comprehensive (Loss) Income

Comprehensive (loss) income is comprised of two components: net (loss) income and other comprehensive (loss) income. Other comprehensive (loss) income refers to gains and losses that under U.S. GAAP are recorded as an element of stockholders' equity but are excluded from net (loss) income. The Company did not record any transactions within other comprehensive (loss) income in the periods presented and, therefore, the net (loss) income and comprehensive (loss) income were the same for all periods presented.

Accounting Pronouncements Recently Adopted

In May 2021, the FASB issued ASU 2021-04, Earnings Per Share (Topic 260), Debt—Modifications and Extinguishments (Subtopic 470-50), Compensation—Stock Compensation (Topic 718), and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options. The amendments in ASU No. 2021-04 provide guidance to clarify and reduce diversity in an issuer's accounting for modifications or exchanges of freestanding equity-classified written call options (for example, warrants) that remain equity classified after modification or exchange. The amendments in this ASU

No. 2021-04 are effective for all entities for fiscal years beginning after December 15, 2021, and interim periods within those fiscal years, with early adoption permitted, including interim periods within those fiscal years. The Company adopted ASU 2021-04 and related updates on January 1, 2022. The adoption of ASU 2021-04 had no impact on the consolidated financial statements.

Recent Accounting Pronouncements Not Yet Adopted

In June 2016, the FASB issued ASU 2016-13, Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. ASU 2016-13 replaced the incurred loss impairment methodology under current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. ASU 2016-13 requires use of a forward-looking expected credit loss model for accounts receivables, loans, and other financial instruments. Adoption of the standard requires using a modified retrospective approach through a cumulative-effect adjustment to retained earnings as of the effective date to align existing credit loss methodology with the new standard. ASU 2016-13 will be effective for smaller reporting companies for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years, using a modified retrospective approach. The Company plans to adopt ASU 2016-13 and related updates on January 1, 2023. The Company does not expect it to have a material impact on its consolidated financial statements.

In October 2021, the FASB issued ASU 2021-08, Business Combinations – Accounting for Contract Assets and Contact Liabilities from Contracts with Customers. The guidance is intended to improve the accounting for acquired revenue contracts with customers in a business combination by addressing diversity in practice. The guidance requires an acquirer to recognize and measure contract assets and liabilities acquired in a business combination in accordance with Topic 606 as if they had originated the contracts, as opposed to at fair value on the acquisition date. The standard will be effective for business combinations that occur after January 1, 2023. The Company plans to adopt ASU 2021-08 and related updates on January 1, 2023. The Company does not expect it to have a material impact on its consolidated financial statements.

3. Consolidated Financial Statement Detail

Equity Securities

As of December 31, 2022 and 2021, equity securities consisted of an investment in Rezolute's common stock of $0.3 million and $0.8 million, respectively (Note 4). For the years ended December 31, 2022 and 2021, the Company recognized a loss of $0.4 million and $0.9 million, respectively, due to the change in fair value of its investment in Rezolute's common stock in the other income (expense), net line item of the consolidated statements of operations and comprehensive (loss) income.

Intangible assets, net

The following table summarizes cost, accumulated amortization, and net carrying value of the intangible assets as of December 31, 2022 (in thousands):

	Cost	Accumulated Amortization	Net Carrying Value
As of December 31, 2022			
Ebopiprant IP (Note 4)	$ 15,247	$ 97	$ 15,150
Total intangible assets	$ 15,247	$ 97	$ 15,150

The remaining life of the intangible assets is 16.9 years. The following table presents the projected amortization expense for the next five years (in thousands):

	Intangible Asset Amortization
2023	$ 897
2024	897
2025	897
2026	897
2027	897
Total	$ 4,485

Accrued and Other Liabilities

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

	December 31, 2022	December 31, 2021
Accrued payroll and benefits	1,449	135
Accrued legal and accounting fees	867	295
Accrued incentive compensation	562	55
Other accrued liabilities	40	40
Total	$ 2,918	$ 525

4. Licensing and Other Arrangements

ObsEva

On November 21, 2022, the Company entered into the ObsEva IP Acquisition Agreement pursuant to which the Company acquired all of ObsEva's intellectual property (patents and know-how) and license agreement rights related to ebopiprant, an investigational compound previously licensed by ObsEva from Merck KGaA. The Company also assumed ObsEva's ongoing rights and obligations under the Organon License Agreement and the Merck KGaA License Agreement. Pursuant to the Organon License Agreement, XOMA is eligible to receive up to $475.0 million in payments for ebopiprant development, commercialization and sales-based milestones. If ebopiprant is successfully commercialized, the Company will be entitled to receive royalties that range from low to mid-teens from Organon and will be required to make mid-single-digit royalty payments to Merck KGaA. The Company paid ObsEva a $15.0 million upfront payment at closing and will pay potential earn-out payments of up to $97.5 million for development, regulatory and sales-based milestones, representing a portion of what the Company will receive pursuant to the Organon License Agreement.

The transaction was treated as an acquisition of a finite-lived intangible asset (Note 2). As such, the Company's cost to acquire said intangible asset of $15.2 million, consisting of $15.0 million cash paid upon closing of the ObsEva IP Acquisition Agreement and direct incremental transaction costs of $0.2 million, was recognized as a long-term asset in the consolidated balance sheet for the year ended December 31, 2022. The estimated useful life of the intangible asset at acquisition represented 17 years. The Company recognized $0.1 million of amortization expense in the consolidated statement of operations and comprehensive (loss) income for the year ended December 31, 2022. No impairment indicators were identified, and no impairment was recorded as of December 31, 2022.

The Company concluded that the development and regulatory milestone payments of $46.5 million, sales-based milestones payments of $51.0 million and royalty payments to Merck KGaA do not meet the definition of a derivative under ASC 815 and a liability will be recognized at the time that the underlying revenue is recognized under the Organon License Agreement for the corresponding development and regulatory milestone payments, sales-based milestone

payments, and royalty payments. ASC 450 may require recognition of the contingent consideration if it is probable that a liability has been incurred and the amount of that liability can be reasonably estimated. Due to the nature of the non-sales and sales-based milestones the Company expects the contingent payments to be probable of payment at the same time that revenue from the Organon License Agreement would be recorded.

As of December 31, 2022, there were no contract assets or contract liabilities related to this arrangement. No revenue was recognized related to this arrangement for the year ended December 31, 2022.

Novartis – Anti-TGFβ Antibody (NIS793)

On September 30, 2015, the Company and Novartis entered into the Anti-TGFβ Antibody License Agreement under which the Company granted Novartis an exclusive, world-wide, royalty-bearing license to the Company's anti-transforming growth factor beta ("TGFβ") antibody program (now "NIS793"). Under the terms of the Anti-TGFβ Antibody License Agreement, Novartis has worldwide rights to NIS793 and is responsible for the development and commercialization of antibodies and products containing antibodies arising from NIS793. Unless terminated earlier, the Anti-TGFβ Antibody License Agreement will remain in effect, on a country-by-country and product-by-product basis, until Novartis' royalty obligations end. The Anti-TGFβ Antibody License Agreement contains customary termination rights relating to material breach by either party. Novartis also has a unilateral right to terminate the Anti-TGFβ Antibody License Agreement on an antibody-by-antibody and country-by-country basis or in its entirety on one hundred eighty days' notice.

The Company concluded that there were multiple promised goods and services under the Anti-TGFβ Antibody License Agreement, including the transfer of license, regulatory services and transfer of materials, process and know-how, which were determined to represent one combined performance obligation. The Company recognized the entire upfront payment of $37.0 million as revenue in the consolidated statement of comprehensive loss in 2015 as it had completed its performance obligations as of December 31, 2015.

The Company was eligible to receive up to a total of $480.0 million in development, regulatory and commercial milestones under the Anti-TGFβ Antibody License Agreement. During the year ended December 31, 2017, Novartis achieved a clinical development milestone pursuant to the Anti-TGFβ Antibody License Agreement, and as a result, the Company earned a $10.0 million milestone payment.

The Company concluded that the development and regulatory milestone payments are solely dependent on Novartis' performance and achievement of the specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the remaining development and regulatory milestones are fully constrained and excluded from the transaction price. Any consideration related to commercial milestones (including royalties) will be recognized when the related sales occur as they were determined to relate predominantly to the licenses granted to Novartis and therefore, have also been excluded from the transaction price. At the end of each reporting period, the Company will update its assessment of whether an estimate of variable consideration is constrained and update the estimated transaction price accordingly.

The Company is also eligible to receive royalties on sales of licensed products, which are tiered based on sales levels and range from a mid-single-digit percentage rate to up to a low double-digit percentage rate. Novartis' obligation to pay royalties with respect to a particular product and country will continue for the longer of the date of expiration of the last valid patent claim covering the product in that country, or ten years from the date of the first commercial sale of the product in that country.

In October 2020, the Company earned a $25.0 million milestone upon the dosing of the first patient in Novartis' first NIS793 Phase 2 clinical trial. As specified under the terms of the Anti-TGFβ Antibody License Agreement, the Company received $17.7 million in cash, and the remaining balance of $7.3 million was recognized as a reduction to the Company's debt obligation to Novartis.

In October 2021, the Company earned a $35.0 million milestone payment upon dosing of the first patient in Novartis' first NIS793 Phase 3 clinical trial. The Company recognized $35.0 million as revenue from contracts with

customers in the consolidated statement of operations and comprehensive (loss) income for the year ended December 31, 2021.

The Company is eligible to receive remaining milestones up to a total of $410.0 million under the Anti-TGFβ Antibody License Agreement.

As of December 31, 2022 and 2021, there were no contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized. No revenue was recognized related to this arrangement for the year ended December 31, 2022.

Novartis – Anti-IL-1β Antibody (VPM087)

On August 24, 2017, the Company and Novartis entered into the Gevokizumab License Agreement under which the Company granted to Novartis an exclusive, worldwide, royalty-bearing license to gevokizumab ("VPM087"), a novel anti-Interleukin-1 ("IL-1") beta allosteric monoclonal antibody and related know-how and patents. Under the terms of the Gevokizumab License Agreement, Novartis is solely responsible for the development and commercialization of VPM087 and products containing VPM087.

On August 24, 2017, pursuant to a separate agreement (the "IL-1 Target License Agreement"), the Company granted to Novartis non-exclusive licenses to its intellectual property covering the use of IL-1 beta targeting antibodies in the treatment and prevention of cardiovascular disease and other diseases and conditions, and an option to obtain an exclusive license (the "Exclusivity Option") to such intellectual property for the treatment and prevention of cardiovascular disease.

Under the Gevokizumab License Agreement, the Company received total consideration of $30.0 million for the license and rights granted to Novartis. Of the total consideration, $15.7 million was paid in cash and $14.3 million (equal to €12.0 million) was paid by Novartis, on behalf of the Company, to settle the Company's outstanding debt with Les Laboratories Servier ("Servier") (the "Servier Loan"). In addition, Novartis extended the maturity date on the Company's debt to Novartis. The Company also received $5.0 million cash related to the sale of 539,131 shares of the Company's common stock, at a purchase price of $9.2742 per share. The fair market value of the common stock issued to Novartis was $4.8 million, based on the closing stock price of $8.93 per share on August 24, 2017, resulting in a $0.2 million premium paid to the Company.

Based on the achievement of pre-specified criteria, the Company is eligible to receive up to $438.0 million in development, regulatory and commercial milestones under the Gevokizumab License Agreement. The Company is also eligible to receive royalties on sales of licensed products, which are tiered based on sales levels and range from the high single-digits to mid teens. Under the IL-1 Target License Agreement, the Company received an upfront cash payment of $10.0 million and is eligible to receive low single-digit royalties on canakinumab sales in cardiovascular indications covered by the Company's patents. Should Novartis exercise the Exclusivity Option, the royalties on canakinumab sales will increase to the mid-single-digits.

Unless terminated earlier, the Gevokizumab License Agreement and IL-1 Target License Agreement will remain in effect, on a country-by-country and product-by-product basis, until Novartis' royalty obligations end. The two agreements contain customary termination rights relating to material breach by either party. Novartis also has a unilateral right to terminate the Gevokizumab License Agreement on a product-by-product and country-by-country basis or in its entirety on six months' prior written notice to the Company. Under the IL-1 Target License Agreement, Novartis has a unilateral right to terminate the agreement on a product-by-product and country-by-country basis or in its entirety upon a prior written notice.

The Gevokizumab License Agreement and IL-1 Target License Agreement were accounted for as one arrangement because they were entered into at the same time in contemplation of each other. The Company concluded that there are multiple promised goods and services under the combined arrangement, including the transfer of license to IL-1 beta targeting antibodies, and the transfer of license, know-how, process, materials and inventory related to the VPM087 antibody, which were determined to represent two distinct performance obligations. The Company determined that the

Exclusivity Option is not an option with material right because the upfront payments to the Company were not negotiated to provide an incremental discount for the future additional royalties upon exercise of the Exclusivity Option. Therefore, the Company concluded that the Exclusivity Option is not a performance obligation. The additional royalties will be recognized as revenue when, and if, Novartis exercises its option because the Company has no further performance obligations at that point.

At the inception of the arrangement, the Company determined that the transaction price under the arrangement was $40.2 million, which consisted of the $25.7 million upfront cash payments, the $14.3 million Servier Loan payoff and the $0.2 million premium on the sale of the common stock. The transaction price was allocated to the two performance obligations based on their standalone selling prices. The Company determined that the nature of the two performance obligations is the right to use the licenses as they exist at the point of transfer, which occurred when the transfer of materials, process and know-how, and filings to regulatory authority were completed. During the year ended December 31, 2017, the Company recognized the entire transaction price of $40.2 million as revenue upon completion of the delivery of the licenses and related materials, process and know-how and filings to regulatory authority.

The Company concluded that the development and regulatory milestone payments are solely dependent on Novartis' performance and achievement of specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the development and regulatory milestones are fully constrained and excluded from the transaction price until the respective milestone is achieved. Any consideration related to commercial milestones (including royalties) will be recognized when the related sales occur as they were determined to relate predominantly to the licenses granted to Novartis and therefore, have also been excluded from the transaction price. At the end of each reporting period, the Company will update its assessment of whether an estimate of variable consideration is constrained and update the estimated transaction price accordingly.

As of December 31, 2022 and 2021, there were no contract assets or contract liabilities related to this arrangement and none of the costs to obtain or fulfill the contract were capitalized. The Company did not recognize any revenue related to this arrangement during the years ended December 31, 2022 and 2021.

Takeda

On November 1, 2006, the Company entered into the Takeda Collaboration Agreement with Takeda under which the Company agreed to discover and optimize therapeutic antibodies against multiple targets selected by Takeda.

Under the terms of the Takeda Collaboration Agreement, the Company may receive additional milestone payments aggregating up to $19.0 million relating to TAK-079 (mezagitamab) and TAK-169, and low single-digit royalties on future sales of all products subject to this license. The Company's right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation by Takeda of all research and development activities with respect to all program antibodies, collaboration targets or collaboration products. The Company's right to royalties expires on the later of 13.5 years from the first commercial sale of each royalty-bearing discovery product or the expiration of the last-to-expire licensed patent (or 12 years from first commercial sale if there is significant generic competition post patent-expiration).

In February 2009, the Company expanded the existing collaboration to provide Takeda with access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. The Company may receive milestones of up to $3.3 million per discovery product candidate and low single-digit royalties on future sales of all antibody products subject to this license. The Company's right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation by Takeda of all research and development activities with respect to all program antibodies, collaboration targets or collaboration products. The Company's right to royalties expires on the later of 10 years from the first commercial sale of such royalty-bearing discovery product or the expiration of the last-to-expire licensed patent.

In November 2020, the first patient was dosed in Takeda's Phase 2 study of mezagitamab and the Company earned a $2.0 million milestone payment from Takeda.

During the year ended December 31, 2022, the Company earned a development milestone pursuant to the Takeda Collaboration Agreement and recognized $0.8 million as revenue from contracts with customers in the consolidated statement of operations and comprehensive (loss) income. The Company recognized annual license fee revenue of $0.1 million from Takeda in the consolidated statement of operations and comprehensive (loss) income for the each of the years ended December 31, 2022 and 2021.

As of December 31, 2022 and 2021, there were no contract assets or contract liabilities related to this arrangement and none of the costs to obtain or fulfill the contract were capitalized. The Company is eligible to receive remaining milestones up to a total of $16.0 million under the Takeda Collaboration Agreement.

Rezolute

On December 6, 2017, the Company entered into a license agreement with Rezolute pursuant to which the Company granted an exclusive global license to Rezolute to develop and commercialize X358 (now "RZ358") products for all indications. The Company and Rezolute also entered into a common stock purchase agreement pursuant to which Rezolute agreed to issue to the Company, as consideration for receiving the license for RZ358, a certain number of its common stock related to its future financing activities.

Under the terms of the license agreement, Rezolute is responsible for all development, regulatory, manufacturing and commercialization activities associated with RZ358 and is required to make certain development, regulatory and commercial milestone payments to the Company of up to $232.0 million in the aggregate based on the achievement of pre-specified criteria. Under the license agreement, the Company is also eligible to receive royalties ranging from the high single-digits to the mid-teens based upon annual net sales of any commercial product incorporating RZ358.

The Company concluded that the development and regulatory milestone payments are solely dependent on Rezolute's performance and achievement of the specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the remaining development and regulatory milestones are fully constrained and excluded from the transaction price until the respective milestone is achieved. Any consideration related to commercial milestones (including royalties) will be recognized when the related sales occur as they were determined to relate predominantly to the licenses granted to Rezolute and therefore, have also been excluded from the transaction price. At the end of each reporting period, the Company will update its assessment of whether an estimate of variable consideration is constrained and update the estimated transaction price accordingly.

Rezolute is obligated to take customary steps to advance RZ358, including using diligent efforts to commence the next clinical study for RZ358 by a certain deadline and to meet certain spending requirements on an annual basis for the program until a marketing approval application for RZ358 is accepted by the FDA. Rezolute's obligation to pay royalties with respect to a particular RZ358 product and country will continue for the longer of the date of expiration of the last valid patent claim covering the product in that country, or twelve years from the date of the first commercial sale of the product in that country. Rezolute's future royalty obligations in the United States will be reduced by 20% if the manufacture, use or sale of a licensed product is not covered by a valid XOMA patent claim, until such a claim is issued.

Pursuant to the license agreement, XOMA is eligible to receive a low single-digit royalty on sales of Rezolute's other non-RZ358 products from its current programs, including RZ402 which is in Phase 1 clinical testing. Rezolute's obligation to pay royalties with respect to a particular Rezolute product and country will continue for the longer of twelve years from the date of the first commercial sale of the product in that country or for so long as Rezolute or its licensee is selling such product in such country, provided that any such licensee royalty will terminate upon the termination of the licensee's obligation to make payments to Rezolute based on sales of such product in such country

The license agreement contains customary termination rights relating to material breach by either party. Rezolute also has a unilateral right to terminate the license agreement in its entirety on ninety days' notice at any time. To the extent permitted by applicable laws, the Company has the right to terminate the license agreement if Rezolute challenges the licensed patents.

No consideration was exchanged upon execution of the arrangement. In consideration for receiving the license for RZ358, Rezolute agreed to issue shares of its common stock and pay cash to the Company upon the occurrence of Rezolute's financing activities.

The license agreement was subsequently amended in 2018, 2019 and 2020. Pursuant to the terms of the license agreement as amended, the Company received a total of $6.0 million upon Rezolute's financing and $8.5 million in installment payments through October 2020. The Company also received 161,861 shares of Rezolute's common stock (as adjusted for the 1:50 reverse stock split in October 2020).

In January 2022, Rezolute dosed the last patient in its Phase 2b clinical trial for RZ358, which triggered a $2.0 million milestone payment due to the Company pursuant to the Rezolute License Agreement.

The Company recognized $2.0 million and no revenue as revenue from contracts with customers in the consolidated statement of operations and comprehensive (loss) income for the year ended December 31, 2022 and December 31, 2021, respectively.

As of December 31, 2022 and 2021, there were no contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized.

Janssen Biotech

The Company and Janssen were parties to a license agreement which was terminated in 2017. In August 2019, the Company and Janssen entered into a new agreement pursuant to which the Company granted a non-exclusive license to Janssen to develop and commercialize certain drug candidates under the XOMA patents and know-how. Under the new agreement, Janssen made a one-time payment of $2.5 million to XOMA. Additionally, for each drug candidate, the Company is entitled to receive milestone payments of up to $3.0 million upon Janssen's achievement of certain clinical development and regulatory approval events. Additional milestones may be due for drug candidates which are the subject of multiple clinical trials. Upon commercialization, the Company is eligible to receive 0.75% royalty on net sales of each product. Janssen's obligation to pay royalties with respect to a particular product and country will continue until the eighth-year-and-sixth-month anniversary of the first commercial sale of the product in such country. The new agreement will remain in effect unless terminated by mutual written agreement of the parties.

The Company concluded that the new agreement should be accounted for separately from any prior arrangements with Janssen and that the license grant is the only performance obligation under the new agreement. The Company recognized the entire one-time payment of $2.5 million as revenue for the year ended December 31, 2019 as it had completed its performance obligation.

The Company concluded that the development and regulatory milestone payments are solely dependent on Janssen's performance and achievement of specified events and thus it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the development and regulatory milestones are fully constrained and excluded from the transaction price until the respective milestone is achieved. Any consideration related to royalties will be recognized when the related sales occur as they were determined to relate predominantly to the license granted to Janssen and therefore, have also been excluded from the transaction price. At the end of each reporting period, the Company will update its assessment of whether an estimate of variable consideration is constrained and update the estimated transaction price accordingly.

In May 2021, the Company earned a $0.5 million milestone from Janssen, upon dosing of the first patient in a Phase 3 clinical trial evaluating one of Janssen's biologic assets. In December 2021, the Company earned a $0.2 million milestone pursuant to its agreement with Janssen.

As of December 31, 2022 and 2021, there were no contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized. The Company recognized no revenue and $0.7 million as revenue from contracts with customers in the consolidated statement of operations and comprehensive (loss) income for the year ended December 31, 2022 and 2021, respectively.

Affimed

In April 2021, the Company and Affimed entered into a contractual agreement, under which the Company is eligible to receive payments from Affimed on potential future commercial sales related to three ICE molecules and preloaded natural killer cells containing the ICE molecules. Additionally, the Company is eligible to receive a milestone upon the first product candidate in each program achieving marketing approval.

The Company concluded that the commercial milestone payments are solely dependent on Affimed's performance and achievement of specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the commercial milestones are fully constrained and excluded from the transaction price until the respective milestone is achieved. Any consideration related to commercial milestones (including royalties) will be recognized when the related approvals occur and therefore, have also been excluded from the transaction price. At the end of each reporting period, the Company will update its assessment of whether an estimate of variable consideration is constrained and update the estimated transaction price accordingly.

As of December 31, 2022 and 2021, there were no contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized. No revenue was recognized related to this arrangement for the years ended December 31, 2022 or 2021.

Sale of Future Revenue Streams

On December 21, 2016, the Company entered into two royalty interest sale agreements (together, the "Royalty Sale Agreements") with HCRP. Under the first Royalty Sale Agreement, the Company sold its right to receive milestone payments and royalties on future sales of products subject to a License Agreement, dated August 18, 2005, between XOMA and Wyeth Pharmaceuticals (subsequently acquired by Pfizer) for an upfront cash payment of $6.5 million, plus potential additional payments totaling $4.0 million in the event three specified net sales milestones were met in 2017, 2018 and 2019. Based on actual sales, 2017, 2018, and 2019 sales milestones were not achieved. Under the second Royalty Sale Agreement entered into in December 2016, the Company sold its right to receive certain royalties under an Amended and Restated License Agreement dated October 27, 2006 between XOMA and Dyax Corp. for a cash payment of $11.5 million.

The Company classified the proceeds received from HCRP as unearned revenue, to be recognized as revenue under the units-of-revenue method over the life of the license agreements because of the Company's limited continuing involvement in the Acquisition Agreements. Such limited continuing involvement is related to the Company's undertaking to cooperate with HCRP in the event of litigation or a dispute related to the license agreements. Because the transaction was structured as a non-cancellable sale, the Company does not have significant continuing involvement in the generation of the cash flows due to HCRP and there are no guaranteed rates of return to HCRP, the Company recorded the total proceeds of $18.0 million as unearned revenue recognized the under units-of-revenue method. The Company allocated the total proceeds between the two Royalty Sale Agreements based on the relative fair value of expected payments to be made to HCRP under the license agreements. The unearned revenue is being recognized as revenue over the life of the underlying license agreements under the "units-of-revenue" method. Under this method, amortization for a reporting period is calculated by computing a ratio of the allocated proceeds received from HCRP to the payments expected to be made by the licensees to HCRP over the term of the Acquisition Agreements, and then applying that ratio to the period's cash payment. During the third quarter of 2018, the Shire product underlying the Dyax Corp. license agreement was approved, and the Company began recognizing revenue under the units-of-revenue method due to sales of the approved product.

The Company recognized $1.9 million and $1.6 million as revenue under the units-of-revenue method under these arrangements during the years ended December 31, 2022 and 2021, respectively. As of December 31, 2021, the Company classified $1.6 million and $11.7 million as current and non-current unearned revenue recognized under the units-of-revenue method, respectively. As of December 31, 2022, the current and non-current portion of the remaining unearned revenue recognized under the units-of-revenue method was $1.9 million and $9.6 million, respectively.

5. Royalty and Commercial Payment Purchase Agreements

The balance of short-term royalty and commercial payment receivables was $2.4 million as of December 31, 2022. There was no balance of short-term royalty and commercial payment receivables as of December 31, 2021. The balance of long-term royalty and commercial payment receivables was $63.7 million and $69.1 million as of December 31, 2022 and 2021, respectively.

Agenus Royalty Purchase Agreement

On September 20, 2018, the Company entered into the Agenus RPA, pursuant to which the Company acquired the right to receive 33% of the future royalties on six Incyte Europe S.a.r.l. ("Incyte") immuno-oncology assets, currently in development, due to Agenus from Incyte (net of certain royalties payable by Agenus to a third party) and 10% of all future developmental, regulatory and commercial milestones related to these assets. However, the Company did not have a right to the expected near-term milestone associated with the entry of INCAGN2390 (anti-TIM-3) into its Phase 1 clinical trial. The future royalties due to Agenus from Incyte are based on low single to mid teen digit percentage of applicable net sales.

In addition, the Company acquired the right to receive 33% of the future royalties on MK-4830, an immuno-oncology product currently in clinical development, due to Agenus from Merck and 10% of all future developmental, regulatory and commercial milestones related to this asset. The future royalties due to Agenus from Merck are based on low single-digit percentage of applicable net sales. Pursuant to the Agenus RPA, the Company's share in future potential development, regulatory and commercial milestones is up to $59.5 million. There is no limit on the amount of future royalties on sales that the Company may receive under the agreements.

Under the terms of the Agenus RPA, the Company paid Agenus $15.0 million. At the inception of the agreement, the Company recorded $15.0 million as long-term royalty receivables in the consolidated balance sheets.

In November 2020, MK-4830 advanced into Phase 2 development, and Agenus earned a $10.0 million clinical development milestone under its license agreement with Merck, of which the Company earned $1.0 million. In accordance with the cost recovery method, the $1.0 million milestone received was recorded as a direct reduction of the recorded long-term royalty receivable balance.

The Company continues to assess that no further payments are probable to be received under this agreement in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to milestones and royalties received until the purchase price has been fully collected. The Company performed its impairment assessments and no impairment indicators have been identified. Accordingly, no impairment was recorded as of December 31, 2022.

Bioasis Royalty Purchase Agreement

On February 25, 2019, the Company entered into the Bioasis RPA, pursuant to which the Company acquired potential future milestone and royalty rights from Bioasis for product candidates that are being developed pursuant to a license agreement between Bioasis and Prothena Biosciences Limited. In addition, the Company was granted options to purchase a 1% royalty right on the next two license agreements entered into between Bioasis and third-party licensees subject to certain payments and conditions as well as a right of first negotiation on the purchase of royalty rights on subsequent Bioasis license agreements with third parties. Upon exercise of the option related to the second license agreement executed by Bioasis, the Company may be obligated to pay up to $0.3 million per licensed product. Upon exercise of the option related to the third license agreement executed by Bioasis, the Company may be obligated to pay up to $0.4 million per licensed product.

Under the terms of the Bioasis RPA, the Company paid $0.3 million and will make contingent future cash payments of up to $0.2 million to Bioasis as the licensed product candidates reach certain development milestones (the "Bioasis Contingent Consideration").

At the inception of the agreement, the Company recorded $0.4 million as long-term royalty receivables in its consolidated balance sheet, including the estimated fair value of the Bioasis Contingent Consideration of $0.1 million. Future changes in the estimated fair value of the contingent consideration will be recognized in the other income (expense), net line item of the consolidated statement of operations and comprehensive (loss) income. As of December 31, 2022, there was no change in the fair value of the contingent consideration from its initial value and no amounts were paid during the year ended December 31, 2022. The Company continues to assess that no payments are probable to be received under this agreement in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to milestones and royalties received until the purchase price has been fully collected. The Company performed its quarterly impairment assessment and no impairment indicators were identified. Accordingly, no impairment was recorded as of December 31, 2022.

On November 2, 2020, the Company entered into the Second Bioasis RPA, pursuant to which the Company acquired potential future milestone and other payments, and royalty rights from Bioasis for product candidates that are being developed pursuant to a research collaboration and license agreement between Bioasis and Chiesi. The Company paid Bioasis $1.2 million upon closing of the Second Bioasis RPA for the purchased rights.

At the inception of the Second Bioasis RPA, the Company recorded $1.2 million as long-term royalty receivables in its consolidated balance sheet. The Company continues to assess that no payments are probable to be received under the Second Bioasis RPA in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to milestones and other payments until the purchase price has been fully collected. The Company performed its quarterly impairment assessment and no impairment indicators were identified. Accordingly, no impairment was recorded as of December 31, 2022.

Aronora Royalty Purchase Agreement

On April 7, 2019, the Company entered into the Aronora RPA which closed on June 26, 2019. Under the Aronora RPA, the Company acquired the right to receive future royalties and a portion of upfront, milestone, and option payments (the "Non-Royalties") related to five anti-thrombotic hematology drug candidates. Three candidates were subject to Aronora's collaboration with Bayer (the "Bayer Products"), including one which was subject to an exclusive license option by Bayer. The Company will receive 100% of future royalties and 10% of future Non-Royalties economics from these Bayer Products. The other two candidates are unpartnered (the "non-Bayer Products") for which the Company will receive low single-digit percentage of net sales and 10% of Non-Royalties. The future payment percentage for Non-Royalties will be reduced from 10% to 5% upon the Company's receipt of two times the total cumulative amount of consideration paid by the Company to Aronora. In July 2020, Bayer elected to not exercise its option on the third Bayer Product and that product is now subject to the same economics as the non-Bayer Products.

Under the terms of the Aronora RPA, the Company paid Aronora a $6.0 million upfront payment at the close of the transaction. The Company financed $3.0 million of the upfront payment with a term loan under its Loan and Security Agreement with SVB. The Company was required to make a contingent future cash payment of $1.0 million for each of the three Bayer Products that were active on September 1, 2019 (up to a total of $3.0 million, the "Aronora Contingent Consideration"). Pursuant to the Aronora RPA, if the Company receives $250.0 million in cumulative royalties on net sales per product, the Company will be required to pay associated tiered milestone payments to Aronora in an aggregate amount of up to $85.0 million per product (the "Royalty Milestones"). The Royalty Milestones are paid based upon various royalty tiers prior to reaching $250.0 million in cumulative royalties on net sales per product. Royalties per product in excess of $250.0 million are retained by the Company.

At the inception of the agreement, the Company recorded $9.0 million as long-term royalty receivables in its consolidated balance sheet, including the estimated fair value of the Aronora Contingent Consideration of $3.0 million. In September 2019, the Company paid the $3.0 million contingent consideration to Aronora. As the Company receives royalties from Aronora for a product, the Company will recognize the liability for future Royalty Milestones for such product when probable and estimable. The Company continues to assess that no payments are probable to be received under this agreement in the near term.

Under the cost recovery method, the Company does not expect to recognize any income related to milestones and royalties received until the purchase price has been fully collected. The Company performed its quarterly impairment assessment and no impairment indicators were identified. Accordingly, no impairment was recorded as of December 31, 2022.

Palobiofarma Royalty Purchase Agreement

On September 26, 2019, the Company entered into the Palo RPA, pursuant to which the Company acquired the rights to potential royalty payments in low single-digit percentages of aggregate net sales associated with six drug candidates in various clinical development stages, targeting the adenosine pathway with potential applications in solid tumors, non-Hodgkin's lymphoma, asthma/chronic obstructive pulmonary disease, ulcerative colitis, idiopathic pulmonary fibrosis, lung cancer, psoriasis and nonalcoholic steatohepatitis and other indications (the "Palo Licensed Products") that are being developed by Palo. Novartis is a development partner on NIR178, one of the Palo Licensed Products, and NIR178 is being developed pursuant to a license agreement between Palo and Novartis.

Under the terms of the Palo RPA, the Company paid Palo a $10.0 million payment at the close of the transaction, which occurred simultaneously upon parties' entry into the Palo RPA on September 26, 2019.

At the inception of the agreement, the Company recorded $10.0 million as long-term royalty receivables in its consolidated balance sheet. The Company continues to assess that no payments are probable to be received under this agreement in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to royalties received until the purchase price has been fully collected. The Company performed its quarterly impairment assessment and no impairment indicators were identified. Accordingly, no impairment was recorded as of December 31, 2022.

Viracta Royalty Purchase Agreement

On March 22, 2021, the Company entered into the Viracta RPA, pursuant to which the Company acquired the right to receive future royalties, milestones, and other payments related to two clinical-stage drug candidates for $13.5 million. The first candidate, DAY101 (pan-RAF kinase inhibitor), is being developed by Day One Biopharmaceuticals, and the second candidate, vosaroxin (topoisomerase II inhibitor), is being developed by Denovo Biopharma. The Company acquired the right to receive (i) up to $54.0 million in potential milestones, potential royalties on sales, if approved, and other payments related to DAY101, excluding up to $20.0 million consideration retained by Viracta, and (ii) up to $57.0 million in potential regulatory and commercial milestones and high single-digit royalties on sales related to vosaroxin, if approved.

At the inception of the Viracta RPA, the Company recorded $13.5 million as long-term royalty receivables in its consolidated balance sheet. No payments are probable to be received under the Viracta RPA in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to royalties, milestones and other payments until the purchase price has been fully collected. The Company performed its quarterly impairment assessment and no impairment indicators were identified. Accordingly, no impairment was recorded as of December 31, 2022.

Kuros Royalty Purchase Agreement

On July 14, 2021, the Company entered into the Kuros RPA, pursuant to which the Company acquired the rights to 100% of the potential future royalties from commercial sales, which are tiered from high single-digit to low double-digits, and up to $25.5 million in pre-commercial milestone payments associated with an existing license agreement related to Checkmate Pharmaceuticals' vidutolimod (CMP-001), a Toll-like receptor 9 agonist, packaged in a virus-like particle, for an upfront payment of $7.0 million. The Company may pay up to an additional $142.5 million to Kuros in sales-based milestones.

At the inception of the Kuros RPA, the Company recorded $7.0 million as long-term royalty receivables in its consolidated balance sheet. Under the cost recovery method, the Company does not expect to recognize any income related to royalties, milestones and other payments until the purchase price has been fully collected.

In May 2022, Regeneron completed its acquisition of Checkmate Pharmaceuticals resulting in a $5.0 million milestone payment to Kuros. Pursuant to the Kuros RPA, the Company is entitled to 50% of the milestone payment, which was received by XOMA in July 2022. In accordance with the cost recovery method, the $2.5 million milestone received was recorded as a direct reduction of the recorded long-term royalty receivable balance. As of December 31, 2022, no payments are probable to be received under the Kuros RPA in the near term.

The Company performed its quarterly impairment assessment and no impairment indicators were identified. Accordingly, no impairment was recorded as of December 31, 2022.

Affitech Commercial Payment Purchase Agreement

On October 6, 2021, the Company entered into the Affitech CPPA, pursuant to which, the Company purchased a future stream of commercial payment rights to Roche's faricimab from Affitech for an upfront payment of $6.0 million. The Company is eligible to receive 0.50% of future net sales of faricimab for a ten-year period following the first commercial sales in each applicable jurisdiction. The Company may pay up to an additional $20.0 million based on the achievement of certain regulatory and sales milestones. At the inception of the Affitech CPPA, the Company recorded $14.0 million as long-term royalty receivables which includes the $6.0 million upfront payment and $8.0 million in regulatory milestones in its consolidated balance sheet. The Company concluded the regulatory milestone payments of $8.0 million met the definition of a derivative under ASC 815 and should be accounted at fair value and recorded as a current liability at the inception of the transaction. Therefore, the regulatory milestone payments were recorded as contingent liabilities in its consolidated balance sheet. The Company concluded the sales-based milestone payments of $12.0 million do not meet the definition of a derivative under ASC 815 and a liability will be recognized when probable and estimable.

In January 2022, Genentech, a member of the Roche group, received approval from the FDA to commercialize VABYSMO (faricimab-svoa) for the treatment of wet, or neovascular, age-related macular degeneration and diabetic macular edema. Pursuant to the Affitech CPPA, the Company paid Affitech a $5.0 million milestone tied to these U.S. marketing approvals.

In September 2022, in connection with Roche receiving approval from the European Commission to commercialize VABYSMO for the treatment of neovascular or 'wet' age-related macular degeneration and visual impairment due to diabetic macular edema, the Company made a $3.0 million milestone payment to Affitech pursuant to the terms of the Affitech CPPA. As a result of the EC Approval, XOMA is eligible to receive a 0.5% commercial payment stream for ten years from the first commercial sale of VABYSMO in Europe.

In August 2022, the Company received $0.5 million from Roche representing the first commercial payment for sales of VABYSMO during the first six months of 2022. In accordance with the cost recovery method, the $0.5 million received was recorded as a direct reduction of the long-term royalty receivable balance. In February 2023, the Company received $2.4 million, representing its commercial payment stream from sales of VABYSMO during the last six months of 2022. The payment amount was reclassified from long-term to short-term royalty and commercial payment receivables in the Company's consolidated balance sheet as of December 31, 2022. Based upon limited available information, the Company is unable to reasonably estimate future net sales and the commercial payments to be received during the year ended December 31, 2023 and, as such, no additional amounts are reflected as short-term royalty and commercial payment receivables.

Under the cost recovery method, the Company does not expect to recognize any income related to future commercial payment receipts until the purchase price has been fully collected. The Company performed its quarterly impairment assessment and no impairment indicators were identified. Accordingly, no impairment was recorded as of December 31, 2022.

The following table summarizes the royalty receivable activities during the years ended December 31, 2022 and 2021 (in thousands):

	Short-Term	Long-Term
Balance at January 1, 2021	$ —	$ 34,575
Acquisition of royalty and commercial payment rights:		
Viracta	—	13,500
Kuros	—	7,000
Affitech	—	14,000
Balance at December 31, 2021	$ —	$ 69,075
Receipt of royalty and commercial payments		
Kuros	—	(2,500)
Affitech	—	(526)
Reclassification to short-term royalty and commercial payment receivable		
Affitech	2,366	(2,366)
Balance at December 31, 2022	$ 2,366	$ 63,683

6. Fair Value Measurements

The Company records its financial assets and liabilities at fair value. The carrying amounts of certain of the Company's financial instruments, including cash, trade receivables, net and accounts payable, approximate their fair value due to their short maturities. Fair value is defined as the exchange price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The accounting guidance for fair value establishes a framework for measuring fair value and a fair value hierarchy that prioritizes the inputs used in valuation techniques. The accounting standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

Level 1 – Observable inputs, such as unadjusted quoted prices in active markets for identical assets or liabilities.

Level 2 – Observable inputs, either directly or indirectly, other than quoted prices in active markets for identical assets or liabilities, such as quoted prices in active markets for similar assets or liabilities, quoted prices in markets that are not active or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 – Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities; therefore, requiring an entity to develop its own valuation techniques and assumptions.

The following tables set forth the Company's fair value hierarchy for its financial assets and liabilities measured at fair value on a recurring basis as follows (in thousands):

	Fair Value Measurements at December 31, 2022 Using:			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Cash equivalents:				
Money market funds	$ 30,334	$ —	$ —	$ 30,334
Total cash equivalents	30,334	—	—	30,334
Equity securities	335	—	—	335
Total financial assets	$ 30,669	$ —	$ —	$ 30,669
Liabilities:				
Contingent consideration under RPAs and CPPAs	$ —	$ —	$ 75	$ 75

	Fair Value Measurements at December 31, 2021 Using:			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Equity securities	$ 774	$ —	$ —	$ 774
Liabilities:				
Contingent consideration under RPAs and CPPAs	$ —	$ —	$ 8,075	$ 8,075

Equity Securities

The equity securities consisted of an investment in Rezolute's common stock and are classified on the consolidated balance sheets as current assets as of December 31, 2022 and 2021. The equity securities are revalued each reporting period with changes in fair value recorded in the other income (expense), net line item of the consolidated statements of operations and comprehensive (loss) income. As of December 31, 2022 and 2021, the Company valued the equity securities using the closing price for Rezolute's common stock traded on the Nasdaq Stock Market of $2.07 and $4.78, respectively. The inputs that were used to calculate the fair value of the equity securities were observable prices in active markets and therefore were classified as a Level 1 fair value measurement.

Contingent Consideration

The estimated fair value of the contingent consideration liability at the inception of the Bioasis RPA represents the future consideration that is contingent upon the achievement of specified development milestones for a product candidate. The fair value measurement is based on significant Level 3 inputs such as anticipated timelines and probability of achieving development milestones of each licensed product candidate.

The estimated fair value of the contingent consideration liability at the inception of the Affitech CPPA represented the future consideration that was contingent upon the achievement of specified regulatory milestones. The fair value measurement was based on significant Level 3 inputs such as anticipated timelines and probability of achieving regulatory milestones. During the year ended December 31, 2022, the estimated fair value of the contingent consideration recorded pursuant to the Affitech CPPA decreased from $8.0 million to zero after the Company paid Affitech a total of $5.0 million for milestones tied to the achievement of U.S. marketing approvals in January 2022 and $3.0 million for milestones tied to the achievement of EC Approvals in September 2022 (Note 5).

Changes in the fair value of the liability for contingent consideration will be recorded in the other income (expense), net line item of the consolidated statements of operations and comprehensive (loss) income until settlement. As

of December 31, 2022, there were no changes in the estimated fair value of the contingent consideration recorded pursuant to the Bioasis RPA from the initial value of $0.1 million.

7. Lease Agreement

The Company leases one facility in Emeryville, California under an operating lease that expires in February 2023. As of December 31, 2022, the total net lease liability from January 2023 until expiration of the lease was $34,000. In January 2023, the Company amended the lease to extend the lease period through July 2023 (Note 14).

The following table summarizes the cost components of the Company's operating lease for the years ended December 31, 2022 and 2021, respectively (in thousands):

	Year Ended December 31,	
	2022	2021
Lease costs:		
Operating lease cost	$ 177	$ 177
Variable lease cost [1]	12	8
Total lease costs	$ 189	$ 185

(1) Under the terms of the lease agreement, the Company is also responsible for certain variable lease payments that are not included in the measurement of the lease liability. Variable lease payments include non-lease components such as common area maintenance fees.

The following information represents supplemental disclosure for the statement of cash flows related to operating leases (in thousands):

	Year Ended December 31,	
	2022	2021
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows under operating leases	$ 202	$ 196

The present value assumptions used in calculating the present value of the lease payments for the Company's operating lease as of December 31, 2022 and 2021 were as follows:

	December 31, 2022	December 31, 2021
Weighted-average remaining lease term	0.17 years	1.17 years
Weighted-average discount rate	5.51 %	5.51 %

8. Income Taxes

The Company has pre-tax book loss of $17.1 million and pre-tax book income of $15.9 million for the years ended December 31, 2022 and 2021, respectively. The Company had a $15,000 income tax benefit and $0.1 million income tax expense for the years ended December 31, 2022 and 2021, respectively.

The (benefit) provision for income taxes, all classified as current, consists of the following (in thousands):

	Year Ended December 31,	
	2022	2021
Federal	$ (15)	$ 91
State	—	—
Total	$ (15)	$ 91

Reconciliation between the tax provision computed at the federal statutory income tax rate and the Company's actual effective income tax rate is as follows:

	Year Ended December 31,	
	2022	2021
Federal tax at statutory rate	21 %	21 %
Stock compensation and other permanent differences	(1)%	9 %
Federal orphan drug credit	— %	(2)%
Tax benefit related to net operating loss carryforward utilization	— %	(11)%
Valuation allowance	(20)%	(16)%
Total	— %	1 %

The significant components of net deferred tax assets at December 31, 2022 and 2021 were as follows (in thousands):

	December 31,	
	2022	2021
Capitalized research and development expenses	$ 4,732	$ 7,822
Net operating loss carryforwards	23,974	17,657
Research and development and other tax credit carryforwards	13,176	13,125
Stock compensation	4,715	4,778
Unearned revenue	2,408	2,817
Other	1,324	807
Total deferred tax assets	50,329	47,006
Valuation allowance	(50,329)	(47,006)
Net deferred tax assets	$ —	$ —

The net increase (decrease) in the valuation allowance was $3.3 million and $(4.6) million, for the years ended December 31, 2022 and 2021, respectively.

Accounting standards provide for the recognition of deferred tax assets if realization of such assets is more likely than not. Based upon the weight of available evidence, which includes the Company's four sources of taxable income including historical operating performance and the repeal of NOL carryback, the Company has determined that total deferred tax assets should be fully offset by a valuation allowance.

Based on an analysis under Section 382 of the Internal Revenue Code (which subjects the amount of pre-change NOLs and certain other pre-change tax attributes that can be utilized to annual limitations), the Company experienced an ownership change in February 2017 which substantially limits the future use of its pre-change NOLs and certain other pre-change tax attributes per year. The Company has excluded the related tax attributes that will expire as a result of the annual limitations in the deferred tax assets as of December 31, 2022 and 2021. To the extent that the Company does not utilize its carryforwards within the applicable statutory carryforward periods, either because of Section 382 limitations or the lack of sufficient taxable income, the carryforwards will expire unused.

As of December 31, 2022, the Company had federal NOL carry-forwards of approximately $108.8 million and state NOL carry-forwards of approximately $20.9 million to offset future taxable income. $13.6 million of federal NOL carryforwards will begin to expire in 2036 and the remainder may be carried forward indefinitely. The state NOL carryforwards will begin to expire in 2033. The Company had federal orphan credit of $2.0 million which if not utilized will expire in 2037. The Company also had $19.8 million of California research and development tax credits which have no expiration date.

Under the 2017 Tax Cuts and Jobs Act, as modified by the federal tax law changes enacted in March 2020, federal NOLs incurred in tax years beginning after December 31, 2017 may be carried forward indefinitely, but, for taxable years

beginning after December 31, 2020, the deductibility of such federal NOLs may only be utilized to offset 80% of taxable income annually.

One of the provisions under the 2017 Tax Cuts and Jobs Act that became effective in tax years beginning after December 31, 2021 required the capitalization and amortization of research and experimental expenditures. The change in this US tax law did not have an impact on the Company's consolidated financial statements. The Company will continue to evaluate the impact of this tax law change on future periods.

On August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 (the "Inflation Act") into law. The Inflation Act contains certain tax measures, including a corporate alternative minimum tax of 15% on some large corporations and an excise tax of 1% on corporate stock buy-backs. The various provisions of the Inflation Act did not have an impact on the Company's consolidated financial statements and related notes.

The Company files income tax returns in the U.S. federal jurisdiction and various states. The Company's federal income tax returns for tax years 2019 and beyond remain subject to examination by the Internal Revenue Service. The Company's state income tax returns for tax years 2018 and beyond remain subject to examination by state tax authorities. In addition, all of the NOLs and research and development credit carryforwards that may be used in future years are still subject to adjustment.

The following table summarizes the Company's activity related to its unrecognized tax benefits (in thousands):

	Year Ended December 31,	
	2022	2021
Balance at January 1	$ 5,938	$ 5,938
Increase related to current year tax position	—	—
Increase related to prior year tax position	—	—
Balance at December 31	$ 5,938	$ 5,938

As of December 31, 2022, the Company had a total of $5.9 million of gross unrecognized tax benefits, none of which would affect the effective tax rate upon realization as the Company currently has a full valuation allowance against its deferred tax assets. The reversal of related deferred tax assets will be offset by a valuation allowance, should any of these uncertain tax positions be favorably settled in the future.

The Company does not expect its unrecognized tax benefits to change significantly over the next twelve months. The Company will recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. Through December 31, 2022, the Company has not accrued interest or penalties related to uncertain tax positions.

9. Stock Based Compensation and Other Benefit Plans

The Company may grant qualified and non-qualified stock options, common stock and other stock-based awards under various plans to directors, officers, employees and other individuals. Stock options are granted at exercise prices of not less than the fair market value of the Company's common stock on the date of grant. Additionally, the Company has an ESPP that allows employees to purchase Company shares at a purchase price equal to 85% of the lower of the fair market value of the Company's common stock on the first trading day of the offering period or on the last day of the offering period.

Employee Stock Purchase Plan

In May 2015, the Company's stockholders approved the 2015 Employee Stock Purchase Plan (the "2015 ESPP"), which replaced the Company's legacy 1998 ESPP. Under the 2015 ESPP, the Company reserved 15,000 shares of common stock for issuance as of its effective date of July 1, 2015, subject to adjustment in the event of a stock split, stock dividend, combination or reclassification or similar event. The 2015 ESPP allows eligible employees to purchase shares of the Company's common stock at a discount through payroll deductions of up to 10% of their eligible compensation, subject

to any plan limitations. The 2015 ESPP provides for six-month offering periods ending on May 31 and November 30 of each year. At the end of each offering period, employees are able to purchase shares at 85% of the lower of the fair market value of the Company's common stock on the first trading day of the offering period or on the last day of the offering period.

In February 2017, the Compensation Committee and the Board of Directors adopted, and in May 2017, the Company's stockholders approved, an amendment to the Company's 2015 ESPP. The amendment (a) increased by 250,000 the shares of common stock (from 15,000 shares to a total of 265,000 shares) available for issuance under the 2015 ESPP; and (b) increased the maximum number of shares of common stock an employee may purchase in any offering period to 2,500. As of December 31, 2022, the Company had 230,937 remaining authorized shares available for purchase under the ESPP.

During the years ended December 31, 2022 and 2021, employees purchased 6,090 and 2,225 shares of common stock, respectively, under the 2015 ESPP.

Deferred Savings Plan

Under section 401(k) of the Internal Revenue Code of 1986, the Board of Directors adopted, effective June 1, 1987, a tax-qualified deferred compensation plan for employees of the Company. Participants may make contributions which defer up to 50% of their eligible compensation per payroll period, up to a maximum for 2022 and 2021 of $20,500 and $19,500, respectively (or $27,000 and $26,000, respectively, for employees over 50 years of age). The Company may, at its sole discretion, make contributions each plan year, in cash or in shares of the Company's common stock, in amounts which match up to 50% of the salary deferred by the participants. The expense related to these contributions was $0.1 million for the years ended December 31, 2022 and 2021, and 100% was paid in common stock for each year. The Company applies shares from plan forfeitures of terminated employees toward the Company's matching contribution.

Stock Option Plans

In May 2010, the Compensation Committee and Board of Directors adopted, and in July 2010 the Company's stockholders approved the 2010 Plan. The 2010 Plan was amended in 2016, 2017 and 2019 to (a) increase the number of shares of common stock issuable under the 2010 Plan; (b) increase the number of shares of common stock issuable under the 2010 Plan as incentive stock options; and (c) extend the term of the 2010 Plan to April 1, 2029.

From the 2010 Plan, the Company grants stock options to eligible employees, consultants and directors. Stock-based awards granted under the 2010 Plan may be exercised when vested and generally expire ten years from the date of the grant or three months from the date of termination of employment (longer in case of death, certain retirements or subject to certain terminations pursuant to the Retention Plan).

As of December 31, 2022, the Company had 192,964 shares available for grant under the 2010 Plan. As of December 31, 2022, options to purchase 2,025,542 shares of common stock were outstanding under the 2010 Plan.

Stock Options

Stock options generally vest monthly over three years for employees and one year for directors. Stock options held by employees who qualify for retirement age (defined as employees that are a minimum of 55 years of age and the sum of their age plus years of full-time employment with the Company exceeds 70 years) vest on the earlier of scheduled vest date or the date of retirement.

Stock Option Plans Summary

The following table summarizes the Company's stock option activity for the year ended December 31, 2022.

	Number of shares	Weighted Average Exercise Price Per Share	Weighted Average Contractual Remaining Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at January 1, 2022	1,911,177	$ 20.64	6.33	$ 15,103
Granted	292,972	19.40		
Exercised	(128,811)	7.22		
Forfeited, expired or cancelled	(49,796)	64.30		
Outstanding at December 31, 2022	2,025,542	$ 20.24	6.10	$ 10,804
Exercisable at December 31, 2022	1,718,864	$ 19.67	5.56	$ 10,764

The aggregate intrinsic value of stock options exercised in 2022 and 2021 was $2.8 million and $1.6 million, respectively.

The weighted-average grant-date fair value per share of the options granted in 2022 and 2021 was $12.01 and $22.23, respectively.

As of December 31, 2022, $4.0 million of total unrecognized compensation expense related to stock options is expected to be recognized over a weighted average period of 1.8 years.

Stock-based Compensation Expense

The fair value of stock options granted during the years ended December 31, 2022 and 2021, was estimated based on the following weighted average assumptions for:

	Year Ended December 31,	
	2022	2021
Dividend yield	0 %	0 %
Expected volatility	69 %	83 %
Risk-free interest rate	2.68 %	0.95 %
Expected term	5.64 years	5.66 years

All stock-based compensation expense is recorded in G&A expense. The following table shows total stock-based compensation expense for stock options and ESPP in the consolidated statements of operations and comprehensive (loss) income (in thousands):

	Year Ended December 31,	
	2022	2021
Total stock-based compensation expense included in G&A	$ 3,608	$ 6,195

Thomas Burns Equity Awards Modification

In April 2022 and November 2022, the Company entered into letter agreements with Thomas Burns that amended and supplemented his amended and restated employment agreement. Pursuant to the November 2022 Letter Agreement, in the event Mr. Burns remains employed by the Company for a twelve-month period beginning on November 1, 2022, he will be deemed "retirement eligible" for purposes of his equity awards under the terms of his equity award agreements. All other terms of his amended and restated employment agreement remain the same. Conditioned on his execution of a release in favor of the Company, Mr. Burns will also receive this benefit upon any involuntary termination for reasons other than cause. The unrecognized stock compensation cost for the unvested stock options as of November 1, 2022 will be recognized over the shorter of (1) twelve months and (2) the remaining original vesting period (the "Revised Vesting

Term"). During the year ended December 31, 2022, the Company recognized stock-based compensation expense of $0.6 million related to the Mr. Burns' option awards. As of December 31, 2022, there was $0.5 million total unrecognized compensation expense related to Mr. Burns' stock options expected to be recognized through the earlier of the vesting date of the option or October 31, 2023.

Employee Retention Bonus

On October 25, 2022, the Company approved the Amended Retention Plan which provides that each of its current employees, excluding the CEO, will be eligible to receive a cash retention bonus if employed through each of two periods: (1) the three-month anniversary of November 1, 2022 (the "Initial Period") and (2) the nine-month period immediately following the Initial Period. All other terms of the Amended Retention Plan remain consistent with the Retention Plan. The Company will accrue and recognize the cost of the cash retention bonus as expense on a straight-line basis from November 1, 2022 through October 31, 2023. Pursuant to Amended Retention Plan, as of December 31, 2022, the Company expects to pay $0.8 million in 2023 related to the cash retention bonuses. The Company accrued $0.1 million for cash retention bonuses in operating expenses in the consolidated statement of operations and comprehensive loss (income) during the year ended December 31, 2022.

James R. Neal Departure and Continuity Incentive

On December 30, 2022, the Company's board of directors ("the Board") appointed Owen Hughes as Executive Chairman of the Board and Interim Chief Executive Officer ("CEO") effective January 1, 2023 and, in connection with Mr. Hughes' appointment, James R. Neal retired as the Company's CEO effective as of December 31, 2022 (the "Departure Date") and resigned as a member of the Board and Chairman of the Board, effective as of January 1, 2023. Pursuant to Mr. Neal's Amended and Restated Employment Agreement, dated December 15, 2021, by and between the Company and Mr. Neal, following the Departure Date, Mr. Neal is entitled to a cash payment of $1.2 million (the "Continuity Incentive") which will be made in equal monthly installments starting in January 2023 through December 2023, less deductions and withholdings. The Company accrued the full $1.2 million Continuity Incentive in operating expenses in the consolidated statement of operations and comprehensive loss (income) during the year ended December 31, 2022.

10. Net (Loss) Income Per Share (Attributable to) Available to Common Stockholders

Potentially dilutive securities are excluded from the calculation of diluted net (loss) income per share (attributable to) available to common stockholders if their inclusion is anti-dilutive.

The following table shows the weighted-average outstanding securities considered anti-dilutive and therefore excluded from the computation of diluted net (loss) income per share attributable to common stockholders (in thousands):

	Year Ended December 31,	
	2022	2021
Convertible preferred stock	5,003	—
Common stock options	885	479
Warrants for common stock	6	—
Total	5,894	479

The following is a reconciliation of the numerator (net (loss) income) and denominator (number of shares) used in the calculation of basic and diluted net (loss) income per share attributable to common stockholders (in thousands):

	Year Ended December 31,	
	2022	2021
Numerator		
Net (loss) income	$ (17,104)	$ 15,798
Less: Series A accumulated dividends	(2,122)	(2,122)
Less: Series B accumulated dividends	(3,350)	(2,438)
Less: Allocation of undistributed earnings to participating securities	—	(3,451)
Net (loss) income (attributable to) available to common stockholders, basic	$ (22,576)	$ 7,787
Add: Adjustments to undistributed earnings allocated to participating securities	—	181
Net (loss) income (attributable to) available to common stockholders, diluted	$ (22,576)	$ 7,968
Denominator		
Weighted average shares used in computing basic and diluted net (loss) income per share (attributable to) available to common stockholders	11,413	11,288
Effect of dilutive stock options	—	900
Effect of dilutive warrants	—	4
Weighted average shares used in computing diluted net (loss) income per share (attributable to) available to common stockholders	11,413	12,192
Basic net (loss) income per share (attributable to) available to common stockholders	$ (1.98)	$ 0.69
Diluted net (loss) income per share (attributable to) available to common stockholders	$ (1.98)	$ 0.65

11. Capital Stock

Series X and Series Y Convertible Preferred Stock

The Company sold directly to BVF 5,003 shares of Series X convertible preferred stock in 2017 and 1,252.772 shares of Series Y convertible preferred stock in 2018. There were no shares of Series Y convertible preferred stock outstanding as of December 31, 2021, after BVF converted all Series Y preferred stock into common stock on April 15, 2020.

As of December 31, 2022 and 2021, there were 5,003 shares authorized and issued of Series X convertible preferred stock.

The Series X and Series Y convertible preferred stock have the following characteristics, which are set forth in Certificates of Designation of Preferences, Rights and Limitations filed with the Delaware Secretary of State.

Dividends— Holders of convertible preferred stock are entitled to receive dividends on shares of convertible preferred stock equal (on an as if converted to common stock basis) to and in the same form as dividends actually paid on the Company's common stock.

Liquidation Rights— In the event of the Company's liquidation, dissolution or winding up, holders of convertible preferred stock will participate, on a pro-rata basis, with any distribution of proceeds to holders of common stock.

Conversion— Each share of Series X and Series Y is convertible into 1,000 shares of registered common stock based on a conversion price of $4.03 per share and $13.00 per share of common stock respectively.

Voting Rights— Convertible preferred stock will generally have no voting rights, except as required by law and except that the consent of the holders of the outstanding convertible preferred stock will be required to amend the terms and to issue additional shares of the preferred stock.

Classification— The Company evaluated the convertible preferred stock for liability or equity classification under the applicable accounting guidance and determined that equity treatment was appropriate because the convertible preferred stock did not meet the definition of the liability instruments defined thereunder for convertible instruments. Specifically, the convertible preferred shares are not mandatorily redeemable and do not embody an obligation to buy back the shares outside of the Company's control in a manner that could require the transfer of assets. Additionally, the Company determined that the convertible preferred stock would be recorded as permanent equity, not temporary equity, given that they are not redeemable for cash or other assets (i) on a fixed or determinable date, (ii) at the option of the holder, and (iii) upon the occurrence of an event that is not solely within control of the Company. The Company has also evaluated the embedded conversion and contingent redemption features within the convertible preferred stock in accordance with the accounting guidance for derivatives and determined that bifurcation is not required for any embedded feature.

Series A Preferred Stock

On December 15, 2020, the Company sold 984,000 shares of its 8.625% Series A cumulative, perpetual preferred stock at the price of $25.00 per share, through a public offering for aggregate gross proceeds of $24.6 million. Total offering costs of $2.0 million were offset against the proceeds from the sale of Series A Preferred Stock, for total net proceeds of $22.6 million.

As of December 31, 2022 and 2021, there were 984,000 shares authorized and issued of Series A Preferred Stock.

The Series A preferred stock have the following characteristics, which are set forth in the Certificates of Designation of Preferences, Rights and Limitations filed with the Delaware Secretary of State.

Dividends— Holders of the Series A Preferred Stock shall be entitled to receive, when, and if authorized by the Board of Directors and declared by the Corporation, cumulative cash dividends at the rate of 8.625% per annum of the $25.00 liquidation preference per share of the Series A Preferred Stock. Such dividends will accumulate and be cumulative from, and including, the date of original issue of the Series A Preferred Stock. Dividends will be payable in arrears on or about the 15th day of January, April, July and October of each year beginning on or about April 15, 2021. The amount of any dividend payable on the Series A Preferred Stock for any period greater or less than a full Dividend Period shall be prorated and computed on the basis of a 360-day year consisting of twelve 30-day months.

Liquidation Rights— In the event of the Company's liquidation, dissolution or winding up, holders of Series A Preferred Stock will rank senior to all classes or series of common stock as to dividend rights and rights upon liquidation, dissolution or winding-up and on parity with respect to the distribution of assets with the Company's Series X Preferred Stock. The Series A Preferred Stock have a par value of $0.05 per share and a liquidation preference of $25.00 per share plus any accrued and unpaid dividends.

Redemption and Special Optional Redemption— The Company, at its option, may redeem the Series A Preferred Stock, in whole or in part, at any time for a cash redemption price, plus any accrued and unpaid dividends, as follows: (i) $26.00 per share between December 15, 2021 and December 15, 2022, (ii) $25.75 per share between December 15, 2022 and December 15, 2023, (iii) $25.50 per share between December 15, 2023 and December 15, 2024 (iv) $25.25 per share between December 15, 2024 and December 15, 2025 and $25.00 per share on or after December 15, 2025. The Company also has a special optional redemption option whereby, upon the occurrence of a delisting event or change of control event, the Company may redeem outstanding Series A Preferred Stock at an amount of $25.00 per share.

Conversion— The shares of Series A Preferred Stock are not convertible into or exchangeable for any other property or securities of the Company except upon the occurrence of a delisting event or change in control event and the Company has not, on or before the date of such an event, provided the required notice of its election to redeem the Series A Preferred Stock pursuant to its redemption right or special optional redemption right. In this case, the holder of shares of Series A Preferred Stock can convert some or all of their Series A Preferred Stock into a number of shares of common

stock per share equal to the lesser of (A) (i) the sum of the $25.00 liquidation preference per share of Series A Preferred Stock to be converted plus (y) the amount of any accrued and unpaid dividends to, but not including, the event date, as applicable by (ii) the common stock price and (B) 1.46071 (the "Share Cap"). The common stock price to be used in the latter noted calculation for a delisting event will be the average of the closing price per share of the Company's common stock on the 10 consecutive trading days immediately preceding, but not including, the effective date of the delisting event. The common stock price used in the event of a change in control event will, alternatively, be based on market price according to the definition in the Certificate of Designation.

Voting Rights— Holders of the Series A Preferred Stock generally will have no voting rights, but will have limited voting rights if the issuer fails to pay dividends for six or more quarters (whether or not declared or consecutive) and in certain other events.

Classification—The Company evaluated the convertible preferred stock for liability or equity classification under the applicable accounting guidance and determined that treatment as equity was appropriate.

Depositary Shares Representing Interest in Series B Preferred Stock

On April 9, 2021, the Company sold 1,600,000 Series B Depositary Shares, at the price of $25.00 per Series B Depositary Share, through a public offering for aggregate gross proceeds of $40.0 million. Each Series B Depositary Share represents 1/1000 interest in a share of Series B Preferred Stock. Total offering costs of $2.9 million were offset against the proceeds from the sale of Series B Depositary Shares, for net proceeds of $37.1 million.

The spouse of James Neal, then CEO and Chairman of the Board of Directors, purchased 8,000 shares of the Series B Depositary Shares in the public offering at the public offering price of $25.00 per share for an aggregate amount of $0.2 million.

As of December 31, 2022 and 2021, there were 3,600 shares authorized and 1,600 issued of Series B Preferred Stock.

The Series B Preferred Stock has the following characteristics, which are set forth in the Certificate of Designation of 8.375% Series B Cumulative Perpetual Preferred Stock, as corrected, filed with the Delaware Secretary of State.

Dividends— Holders of Series B Preferred Stock shall be entitled to receive cash dividends, when and if declared by the Board of Directors at the rate of 8.375% per annum of the $25,000.00 liquidation preference per share, which equals $2,093.75 per share each year. Such dividends shall be payable quarterly in arrears on or about the 15th calendar day of each January, April, July and October commencing on or about July 15, 2021. The dividends will accumulate and be cumulative from, and including, the date of original issue of the Series B Preferred Stock, on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in the stockholder records of the Company (or the depositary in the case of Series B Depositary Shares representing underlying Series B Preferred Stock) at the close of business on the applicable dividend record date.

Liquidation Preference - Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, before any distribution or payment shall be made to holders of shares of Common Stock or any other class or series of capital stock of the Company ranking junior to the Series B Preferred Stock, the holders of shares of Series B Preferred Stock shall be paid out of the assets of the Company, after payment of or provision for the debts and other liabilities and any class or series of capital stock, as to rights upon any voluntary or involuntary liquidation, dissolution or winding up, senior to the Series B Preferred Stock. The Series B Preferred Stock have a par value of $0.05 per share and a liquidation preference of $25,000.00 per share plus any accrued and unpaid dividends.

Redemption and Special Optional Redemption - On and after April 15, 2022, the Company, at its option, may redeem the Series B Preferred Stock, for cash, in whole or in part, at any time or from time to time, as follows: (i) between April 15, 2022 to April 15, 2023, at a redemption price of $26,000.00 per share ($26.00 per depositary share), (ii) between April 15, 2023 to April 15, 2024, at a redemption price of $25,750.00 per share ($25.75 per depositary share), (iii) between April 15, 2024 to April 15, 2025, at a redemption price of $25,500.00 per share ($25.50 per depositary share), (iv) between

April 15, 2025 to April 15, 2026, at a redemption price of $25,250.00 per share ($25.25 per depositary share), and (v) after April 15, 2026, at a redemption price of $25,000.00 per share ($25.00 per depositary share), and in each case, plus any accrued and unpaid dividends thereon up to but not including the date fixed for redemption, without interest. If fewer than all of the outstanding shares of Series B Preferred Stock are to be redeemed, the shares to be redeemed will be determined pro rata or by lot. Upon the occurrence of a delisting event or change of control the Company will have the option to redeem the Series B Preferred Stock, in whole or in part, for cash at $25,000.00 per share plus accrued and unpaid dividends.

Conversion - The shares of Series B Preferred Stock are not convertible into or exchangeable for any other property or securities of the Company, except upon the occurrence of a delisting event or a change of control, each holder Series B Preferred Stock will have the right (unless the Company has elected to redeem the Series B Preferred Stock) to convert some or all of the shares of Series B Preferred Stock held by such holder on the delisting event conversion date or change of control conversion date into a number of shares of the common stock (or equivalent value of alternative consideration) per share of Series B Preferred Stock, equal to the lesser of (A) the quotient obtained by dividing (1) the sum of the $25,000.00 per share liquidation preference plus the amount of any accumulated and unpaid dividends up to, but not including, the delisting event conversion date or change of control conversion date, as applicable (unless the delisting event conversion date or change of control conversion date, is after a record date for a Series B Preferred Stock dividend payment and prior to the corresponding Series B Preferred Stock dividend payment date, in which case no additional amount for such accumulated and then remaining unpaid dividend will be included in this sum) by (2) the common stock price (such quotient, the "Conversion Rate"); and (B) 1,253.13 (1.25313 per depositary share) (i.e., the "Share Cap"), subject to certain adjustments described in the Series B Preferred Stock Certificate of Designation.

Voting Rights— Holders of the Series B Preferred Stock generally will have no voting rights, but will have limited voting rights if the issuer fails to pay dividends for six or more quarters (whether or not declared or consecutive) and in certain other events.

Classification—The Company evaluated the convertible preferred stock for liability or equity classification under the applicable accounting guidance and determined that treatment as equity was appropriate.

Dividends

During the year ended December 31, 2022, the Company's Board of Directors declared and paid cash dividends on the Company's Series A Preferred Stock and Series B Depositary shares as follows.

Dividend Declaration Date	Series A Preferred Stock Cash Dividend Declared ($ per share)	Series B Depositary Share Cash Dividend Declared ($ per share)	Dividend Payment Date
October 20, 2021	$ 0.53906	$ 0.52344	January 18, 2022
March 17, 2022	$ 0.53906	$ 0.52344	April 15, 2022
May 18, 2022	$ 0.53906	$ 0.52344	July 15, 2022
July 20, 2022	$ 0.53906	$ 0.52344	October 17, 2022
October 26, 2022	$ 0.53906	$ 0.52344	January 17, 2023

BVF Ownership

As of December 31, 2022, BVF owned approximately 31.5% of the Company's total outstanding shares of common stock, and if all the Series X convertible preferred shares were converted, BVF would own 52.3% of the Company's total outstanding shares of common stock. The Company's Series A Preferred Stock becomes convertible upon the occurrence of specific events and as of December 31, 2022, the contingency was not met, therefore the Series A Preferred Stock owned by BVF is not included in the as-converted ownership calculation. Due to its significant equity ownership, BVF is considered a related party of the Company.

2018 Common Stock ATM Agreement

On December 18, 2018, the Company entered into the 2018 Common Stock ATM Agreement with HCW, under which the Company may offer and sell from time to time at its sole discretion shares of its common stock through HCW as its sales agent, in an aggregate amount not to exceed $30.0 million. HCW may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act and will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the shares up to the amount specified. The Company will pay HCW a commission of up to 3% of the gross proceeds of any shares of common stock sold under the 2018 Common Stock ATM Agreement. On March 10, 2021, the Company amended the 2018 Common Stock ATM Agreement with HCW to increase the aggregate amount of shares of its common stock that it could sell through HCW as its sales agent to $50.0 million. No shares have been sold under the 2018 Common Stock ATM Agreement since the agreement was executed.

2021 Series B Preferred Stock ATM Agreement

On August 5, 2021, the Company entered into the 2021 Series B Preferred Stock ATM Agreement with B. Riley, under which the Company may offer and sell from time to time, at its sole discretion, through or to B. Riley, as agent or principal an aggregate amount not to exceed $50.0 million of its Series B Depositary Shares. B. Riley may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, and will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the shares up to the amount specified. The Company will pay B. Riley a commission of up to 3% of the gross proceeds of any Series B Depositary Shares sold under the 2021 Series B Preferred Stock ATM Agreement. No shares have been sold under the 2021 Series B Preferred Stock ATM Agreement since the agreement was executed.

Common Stock Warrants

As of December 31, 2022 and 2021, the following common stock warrants were outstanding:

Issuance Date	Expiration Date	Balance Sheet Classification	Exercise Price per Share	December 31, 2022	December 31, 2021
May 2018	May 2028	Stockholders' equity	$ 23.69	6,332	6,332
March 2019	March 2029	Stockholders' equity	$ 14.71	4,845	4,845
				11,177	11,177

In May 2018, the Company issued SVB a warrant in connection with the legacy SVB Loan Agreement which is exercisable in whole or in part for up to an aggregate of 6,332 shares of common stock with an exercise price of $23.69 per share. The warrant may be exercised on a cashless basis and is exercisable within 10 years from the date of issuance or upon the consummation of certain acquisitions of the Company. The fair value of the warrant issued to SVB was determined using the Black-Scholes Model and was estimated to be $0.1 million. The warrant is classified in stockholders' equity on the consolidated balance sheets.

In March 2019, the legacy SVB Loan Agreement was amended to extend the draw period from March 31, 2019 to March 31, 2020. In connection with the amendment, the Company issued a second warrant to SVB which is exercisable in whole or in part for up to an aggregate of 4,845 shares of common stock with an exercise price of $14.71 per share. The second warrant may be exercised on a cashless basis and is exercisable within 10 years from the date of issuance or upon the consummation of certain acquisitions of the Company. The fair value of the second warrant issued to SVB was determined using the Black-Scholes Model and was estimated to be $0.1 million. As of December 31, 2022, both warrants are outstanding and no shares have been issued upon exercise of the warrants.

12. Commitments and Contingencies

Collaborative Agreements, Royalties and Milestone Payments

The Company has committed to make potential future milestone payments and legal fees to third parties as part of licensing and development programs. Payments under these agreements become due and payable only upon the achievement of certain developmental, regulatory and commercial milestones by the Company's licensees. Because it is uncertain if and when these milestones will be achieved, such contingencies, aggregating up to $6.3 million (assuming one product per contract meets all milestones events) have not been recorded on the accompanying consolidated balance sheets. The Company is unable to determine precisely when and if payment obligations under the agreements will become due as these obligations are based on milestone events, the achievement of which is subject to a significant number of risks and uncertainties. None of these milestones were assessed to be probable as of December 31, 2022.

Contingent Consideration

Pursuant to the Company's agreements with Bioasis, Aronora, Kuros, Affitech, and ObsEva the Company has committed to pay the Bioasis Contingent Consideration, the Aronora Royalty Milestones, the Kuros Sales Milestones, the Affitech Sales Milestones, the ObsEva Sales Milestones, the ObsEva Non-Sales Milestones, and the Merck KGaA royalties. The Company recorded $0.1 million for the Bioasis Contingent Consideration which, represents the estimated fair value of the potential future payments at the inception of the Bioasis RPA. The contingent consideration is remeasured at fair value at each reporting period, with changes in fair value recorded in other income (expense), net. As of December 31, 2022, there has been no change in the estimated fair value of the Bioasis Contingent Consideration from the initial value.

The liability for future Aronora Royalty Milestones, Kuros Sales Milestones, and Affitech Sales Milestones will be recorded when the amounts, by product, are estimable and probable. The liability for future ObsEva Non-Sales Milestones, ObsEva Sales Milestones and Merck KGaA royalties will be recorded at the time that the corresponding underlying revenue under the Organon License Agreement is recognized. As of December 31, 2022, none of these Aronora Royalty Milestones, Kuros Sales Milestones, Affitech Sales Milestones, ObsEva Non-Sales Milestones, ObsEva Sales Milestones, or Merck KGaA royalties were assessed to be probable and as such, no liability was recorded on the consolidated balance sheet.

Arbitration Proceeding

In June 2021, the Company initiated an arbitration proceeding against one of its licensees (the "Licensee") with the American Arbitration Association/International Centre for Dispute Resolution. XOMA seeks damages, plus interest, and fees and costs of the arbitration (which fees and costs are currently estimated to be in the mid-single-digit millions of U.S. dollars range). In response, the Licensee seeks declarations that the License Agreement, under XOMA's interpretation, is unlawful, void and unenforceable, and that the License Agreement has expired. To date, the Licensee has not filed any counterclaims against XOMA. However, to the extent the Licensee is deemed to be the prevailing party, the arbitrators, in their discretion, may require XOMA to pay the Licensee's fees and costs of the arbitration (currently estimated to be in the mid-single-digit millions of U.S. dollars range). A hearing before a panel of arbitrators was held on this matter in November 2022, and the parties have submitted post-hearing briefs.

13. Concentration of Risk, Segment and Geographic Information

Concentration of Risk

Cash and receivables are financial instruments which potentially subject the Company to concentrations of credit risk, as well as liquidity risk.

The Company has not experienced any significant credit losses and does not generally require collateral on receivables. For the year ended December 31, 2022, four partners represented 33%, 31%, 13% and 12% of total revenues.

For the year ended December 31, 2021, one partner represented 92% of total revenues. As of December 31, 2022, there is no trade receivables balance. As of December 31, 2021, one partner represented 100% of the trade receivables balance.

Segment Information

The Company has determined that it operates in one business segment as it only reports operating results on an aggregate basis to the chief operating decision maker of the Company.

Geographic Information

Revenue attributed to the following geographic regions was as follows (in thousands) based on the location of the licensees:

	Year Ended December 31,	
	2022	2021
United States	$ 4,477	$ 2,610
Asia Pacific	1,550	550
Europe	—	35,000
Total	$ 6,027	$ 38,160

The Company's property and equipment is held in the United States.

14. Subsequent Events

Emeryville Lease Extension

On January 13, 2023, the Company entered into an amendment to extend the lease term of its corporate headquarters in Emeryville, California from its original expiration of February 2023 through July 2023. The total remaining undiscounted lease payments due in 2023 under the extended lease term is $0.1 million.

Appointment of Owen Hughes as Executive Chairman of the Board of Directors and Interim CEO

On December 30, 2022, the Board appointed Owen Hughes as Executive Chairman of the Board and Interim CEO (principal executive officer), effective as of January 1, 2023. Pursuant to Mr. Hughes' employment agreement, Mr. Hughes will receive an annual base salary of $125,000 and be eligible to receive an annual discretionary cash bonus, with a target amount equal to 55% of his then-current annual base salary, upon the achievement of annual performance milestones to be established by the Board.

Pursuant to the terms of his employment agreement, on January 3, 2023, the Company granted Mr. Hughes two separate non-qualified stock options to purchase: (i) 100,000 shares of the Company's common stock at an exercise price of $18.66 per share (the "First Hughes Inducement Award") and (ii) 75,000 shares of the Company's common stock at an exercise price of $30.00 per share (the "Second Hughes Inducement Award" and together with the First Hughes Inducement Award, the "Hughes Inducement Awards"). The First Hughes Inducement Award will vest in a series of four equal installments on March 31, 2023, June 30, 2023, September 30, 2023 and December 31, 2023. The Second Hughes Inducement Award will vest in a series of 36 successive equal monthly installments measured from January 1, 2023. The Hughes Inducement Awards are subject to the terms and conditions of the 2010 Plan but were granted outside the 2010 Plan as an inducement material to Mr. Hughes entering into employment with us in accordance with Nasdaq Listing Rule 5635(c)(4).

Appointment of Bradley Sitko as Chief Investment Officer

On December 30, 2022, the Board appointed Bradley Sitko as the Company's Chief Investment Officer, effective as of January 3, 2023. Pursuant to Mr. Sitko's employment agreement with the Company, he will receive an annual base

salary of $500,000 and a signing bonus of $110,000. Mr. Sitko's signing bonus will be paid within 30 days after the effective date of his employment agreement and will be subject to standard deductions and withholdings. If Mr. Sitko resigns without good reason or is terminated for cause (each as defined in his employment agreement), in either case, within one year after the effective date of his employment agreement, then Mr. Sitko will be required to repay the signing bonus, based on the gross amount, but prorated on a daily basis for the time employed, to be paid within 60 days after his termination date. Mr. Sitko will also be eligible to receive an annual discretionary cash bonus, with a target amount equal to 50% of his then-current annual base salary, upon the achievement of annual performance milestones to be established by the Board.

Pursuant to the terms of his employment agreement, on January 3, 2023 the Company granted Mr. Sitko two separate non-qualified stock options to purchase: (i) 300,000 shares of the Company's common stock at an exercise price of $18.66 per share (the "First Sitko Inducement Award") and (ii) 250,000 shares of the Company's common stock at an exercise price of $30.00 per share (together with the First Sitko Inducement Award, the "Sitko Inducement Awards"). Twenty-five percent of the shares subject to each of the Sitko Inducement Awards will vest and become exercisable on January 3, 2024 (the "Initial Vesting Date"), and the balance of the shares subject to each of the Sitko Inducement Awards will vest and become exercisable in a series of 36 successive equal monthly installments thereafter on the same day of the month as the Initial Vesting Date. The Sitko Inducement Awards are subject to the terms and conditions of the 2010 Plan, but were granted outside the 2010 Plan as an inducement material to Mr. Sitko entering into employment with us in accordance with Nasdaq Listing Rule 5635(c)(4).

Exhibit 4.6

DESCRIPTION OF XOMA CORPORATION CAPITAL STOCK

The following is a description of the Common Stock, $0.0075 par value (the "***Common Stock***"), Preferred Stock, $0.05 par value (the "***Preferred Stock***") and depositary shares of XOMA Corporation (the "***Company***"). The Common Stock, 8.625% Series A Cumulative Perpetual Preferred Stock (the "***Series A Preferred Stock***") and the depositary shares (the "***Series B Depositary Shares***") representing the 8.375% Series B Cumulative Perpetual Preferred Stock (the "***Series B Preferred Stock***") are the only securities of the Company registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***").

Common Stock

General. The Company is authorized to issue up to 277,333,332 shares of Common Stock. The following description is based on (i) the Company's Certificate of Incorporation, as currently in effect (the "***Certificate of Incorporation***"), (ii) the Company's By-laws, as currently in effect (the "***By-laws***"), and (iii) the Delaware General Corporation Law (the "***DGCL***"). The following summary description of the Common Stock of the Company is qualified in its entirety by reference to the provisions of the Certificate of Incorporation and By-laws, copies of which have been filed as exhibits to the Company's Annual Report on Form 10-K filed herewith, and the applicable provisions of the DGCL.

Dividend Rights. The holders of our Common Stock have the right to receive dividends and distributions, whether payable in cash or otherwise, as may be declared from time to time by our board of directors, from legally available funds.

Voting Rights. Each holder of our Common Stock is generally entitled to one vote for each share of Common Stock owned of record on all matters submitted to a vote of our stockholders. Except as otherwise required by law, holders of Common Stock (as well as holders of any Preferred Stock entitled to vote with the common stockholders) will generally vote together as a single class on all matters presented to the stockholders for their vote or approval, including the election of directors. Any matter brought before the stockholders for a vote, other than the election of directors, will generally be decided by a majority of the votes cast on the matter, unless the matter is one in which an express provision of the DGCL, the Certificate of Incorporation, the By-laws, the rules or regulations of any stock exchange applicable to us, applicable law or pursuant to any regulation applicable to us or our securities requires a different vote, in which case the express provision will govern and control the decision of the matter. Directors will be elected by a plurality of the votes cast and entitled to vote generally on the election of directors. There are no cumulative voting rights with respect to the election of directors or any other matters.

No Preemptive or Similar Rights. Holders of our Common Stock have no redemption rights, conversion rights or preemptive rights to purchase or subscribe for our securities.

Right to Receive Liquidation Distributions. In the event of our liquidation, dissolution or winding-up, holders of our Common Stock will be entitled to share equally in the assets available for distribution after payment of all creditors and the liquidation preferences of our Preferred Stock (if any).

The rights of the holders of our Common Stock are subject to, and may be adversely affected by, the rights of holders of shares of any Preferred Stock that we may designate and issue in the future.

Preferred Stock

General. Under our Certificate of Incorporation, our board of directors is authorized to issue up to 1,000,000 shares of Preferred Stock, and, by resolution, to divide the Preferred Stock into series and, with respect to each series,

to determine the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, including the dividend rights, conversion or exchange rights, voting rights, redemption rights and terms, liquidation preferences, sinking fund provisions and the number of shares constituting the series. Our board of directors can, without stockholder approval but subject to the terms of the Certificate of Incorporation and to any resolution of the stockholders approved by at least 75% of all issued shares entitled to vote in respect thereof, issue Preferred Stock with voting and other rights that could adversely affect the voting power of the holders of our Common Stock and which could have certain anti-takeover effects. Before we may issue any series of Preferred Stock, our board of directors will be required to adopt resolutions creating and designating such series of Preferred Stock.

The following summary description of the Preferred Stock of the Company, including the Series B Depositary Shares, is qualified in its entirety by reference to the provisions of the Certificate of Incorporation, By-laws and the certificates of designation of preferences, rights and limitations of each series of the Preferred Stock, copies of which have been filed as exhibits to the Company's Annual Report on Form 10-K, and the applicable provisions of the DGCL. As of December 31, 2022, 5,003 shares of Series X Preferred Stock, 984,000 shares of Series A Preferred Stock and 1,600 shares of Series B Depositary Shares were issued and outstanding.

The 8.625% Series A Cumulative Perpetual Preferred Stock. We have designated 984,000 shares of our Preferred Stock as Series A Preferred Stock.

The Series A Preferred Stock will rank, as to dividend rights and rights upon our liquidation, dissolution or winding up:

- senior to all classes or series of our Common Stock and to all other equity securities issued by us expressly designated as ranking junior to the Series A Preferred Stock;

- senior with respect to the payment of dividends and on parity with respect to the distribution of assets upon our liquidation, dissolution or winding up with our Series X Preferred Stock and on parity with any future class or series of our equity securities expressly designated as ranking on parity with the Series A Preferred Stock;

- junior to all equity securities issued by us with terms specifically providing that those equity securities rank senior to the Series A Preferred Stock with respect to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up, none of which exists on the date hereof; and;

- effectively junior to all our existing and future indebtedness (including indebtedness convertible into our Common Stock or Preferred Stock) and to the indebtedness and other liabilities of (as well as any preferred equity interests held by others in) our existing or future subsidiaries.

Dividends. We will pay cumulative cash dividends on the Series A Preferred Stock, when and as declared by our board of directors, at the rate of 8.625% of the $25.00 liquidation preference per share per year (equivalent to $2.15625 per year). Dividends will be payable quarterly in arrears, on or about the 15th day of January, April, July and October; provided that if any dividend payment date is not a business day, then the dividend which would otherwise have been payable on that dividend payment date may be paid on the next succeeding business day, and no interest, additional dividends or other sums will accumulate. Dividends will accumulate and be cumulative from, and including, the date of original issuance. The first dividend, which was paid on April 15, 2021 in the amount of $0.71875 per share of Series A Preferred Stock, was for more than a full quarter and covered the period from, and including, the first date we issued and sold the Series A Preferred Stock through, but not including, April 15, 2021. Dividends on the Series A Preferred Stock will continue to accumulate whether or not (i) any of our agreements prohibit the current payment of dividends, (ii) we have earnings or funds legally available to pay the dividends, or (iii) our board of directors does not declare the payment of the dividends.

Liquidation Preference. The liquidation preference of each share of Series A Preferred Stock is $25.00. Upon liquidation, holders of our Series A Preferred Stock will be entitled to receive the liquidation preference with respect to their shares of Series A Preferred Stock plus an amount equal to accumulated but unpaid dividends with respect to such shares.

***Optional Redemption*.** On and after December 15, 2021, the first anniversary of December 15, 2020, to but excluding the second anniversary, the shares of Series A Preferred Stock will be redeemable at our option, in whole or in part, at a redemption price equal to $26.00 per share, plus any accrued and unpaid dividends. On and after December 15, 2022, the second anniversary of December 15, 2020, to but excluding the third anniversary, the shares of Series A Preferred Stock will be redeemable at our option, in whole or in part, at a redemption price equal to $25.75 per share, plus any accrued and unpaid dividends. On and after December 15, 2023, the third anniversary of December 15, 2020, to but excluding the fourth anniversary, the shares of Series A Preferred Stock will be redeemable at our option, in whole or in part, at a redemption price equal to $25.50 per share, plus any accrued and unpaid dividends. On and after December 15, 2024, the fourth anniversary of December 15, 2020, to but excluding the fifth anniversary, the shares of Series A Preferred Stock will be redeemable at our option, in whole or in part, at a redemption price equal to $25.25 per share, plus any accrued and unpaid dividends. On and after December 15, 2025, the fifth anniversary of December 15, 2020, the shares of Series A Preferred Stock will be redeemable at our option, in whole or in part, at a redemption price equal to $25.00 per share, plus any accrued and unpaid dividends.

***Special Optional Redemption Upon a Change of Control or Delisting Event*.** Upon the occurrence of a Delisting Event (as defined below), we may, at our option, redeem the Series A Preferred Stock, in whole or in part, within 90 days after the first date on which such Delisting Event occurred, for cash, at a redemption price of $25.00 per share, plus any accrued and unpaid dividends up to, but not including, the date of redemption.

With respect to the Series A Preferred Stock, a "***Delisting Event***" occurs when, after the original issuance of Series A Preferred Stock, both (i) the shares of Series A Preferred Stock are no longer listed on Nasdaq, the New York Stock Exchange (the "***NYSE***") or the NYSE American LLC ("***NYSE AMER***"), or listed or quoted on an exchange or quotation system that is a successor to Nasdaq, the NYSE or the NYSE AMER, and (ii) we are not subject to the reporting requirements of the Exchange Act, but any Series A Preferred Stock is still outstanding.

Upon the occurrence of a Change of Control (as defined below), we may, at our option, redeem the Series A Preferred Stock, in whole or in part within 120 days after the first date on which such Change of Control occurred, for cash, at a redemption price of $25.00 per share, plus any accrued and unpaid dividends up to, but not including, the date of redemption.

With respect to the Series A Preferred Stock, a "***Change of Control***" occurs when, after the original issuance of the Series A Preferred Stock, the following have occurred and are continuing:

- the acquisition by any person, including any syndicate or group deemed to be a "person" under Section 13(d)(3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of shares of our company entitling that person to exercise more than 50% of the total voting power of all shares of our company entitled to vote generally in elections of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and

- following the closing of any transaction referred to in the bullet point above, neither we nor any acquiring or surviving entity (or if, in connection with such transaction shares of our Common Stock are converted into or exchanged for (in whole or in part) common equity securities of another entity), has a class of common securities (or ADRs representing such securities) listed on Nasdaq, the NYSE or the NYSE AMER, or listed or quoted on an exchange or quotation system that is a successor to Nasdaq, the NYSE or the NYSE AMER.

We refer to redemption following a Delisting Event or Change of Control as a "***special optional redemption***." If, prior to the Delisting Event Conversion Date (as defined below) or the Change of Control Conversion Date (as defined below), as applicable, we have provided or provide notice of exercise of any of our redemption rights relating to the Series A Preferred Stock (whether our optional redemption right or our special optional redemption right), the holders of the Series A Preferred Stock will not have the conversion right described below.

Conversion. Upon the occurrence of a Delisting Event or a Change of Control, as applicable, each holder of Series A Preferred Stock will have the right (unless, prior to the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable, we have provided or provide notice of our election to redeem the Series A Preferred Stock) to convert some or all of the Series A Preferred Stock held by such holder on the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable, into a number of shares of our Common Stock (or equivalent value of alternative consideration) per share of Series A Preferred Stock equal to the lesser of:

- the quotient obtained by dividing (1) the sum of the $25.00 per share liquidation preference plus the amount of any accumulated and unpaid dividends up to, but not including, the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable (unless the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable is after a record date for a Series A Preferred Stock dividend payment and prior to the corresponding Series A Preferred Stock dividend payment date, in which case no additional amount for such accumulated and unpaid dividend will be included in this sum) by (2) the Common Stock Price (as defined below); and

- 1.46071 (i.e., the Share Cap), subject to certain adjustments; and subject, in each case, to certain conditions, including, under specified circumstances, an aggregate cap on the total number of shares of our Common Stock issuable upon conversion and to provisions for the receipt of alternative consideration.

If, prior to the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable, we have provided or provide a redemption notice, whether pursuant to our special optional redemption right or our optional redemption right, holders of Series A Preferred Stock will not have any right to convert the Series A Preferred Stock, and any Series A Preferred Stock subsequently selected for redemption that has been tendered for conversion will be redeemed on the related date of redemption instead of converted on the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable.

In the event that the conversion would result in the issuance of fractional shares of Common Stock, we will pay the holder of Series A Preferred Stock cash in lieu of such fractional shares.

Except as provided above in connection with a Delisting Event or Change of Control, shares of the Series A Preferred Stock are not convertible into or exchangeable for any other securities or property.

For purposes of this description of the Series A Preferred Stock, "***Change of Control Conversion Date***" means a business day fixed by our board of directors that is not fewer than 20 days nor more than 35 days after the date on which we provide notice to the holders of the Series A Preferred Stock of a Change of Control.

For purposes of this description of the Series A Preferred Stock, "***Common Stock Price***" for any Change of Control will be: (1) if the consideration to be received in the Change of Control by the holders of our Common Stock is solely cash, the amount of cash consideration per share of Common Stock; and (2) if the consideration to be received in the Change of Control by holders of our Common Stock is other than solely cash (x) the average of the closing prices for our Common Stock on the principal U.S. securities exchange on which our Common Stock is then traded (or, if no closing sale price is reported, the average of the closing bid and ask prices per share or, if more than one in either case, the average of the average closing bid and the average closing ask prices per share) for the ten consecutive trading days immediately preceding, but not including, the date on which such Change of Control occurred as reported on the principal U.S. securities exchange on which our Common Stock is then traded, or (y) the average of the last quoted bid prices for our Common Stock in the over-the-counter market as reported by OTC Markets Group Inc. or similar organization for the ten consecutive trading days immediately preceding, but not including, the date on which such Change of Control occurred, if our Common Stock is not then listed for trading on a U.S. securities exchange. The "***Common Stock Price***" for any Delisting Event will be the average of the closing price per share of our Common Stock on the 10 consecutive trading days immediately preceding, but not including, the effective date of the Delisting Event.

For purposes of this description of the Series A Preferred Stock, "***Delisting Event Conversion Date***" means a business day fixed by our board of directors that is not fewer than 20 days nor more than 35 days after the date on which we provide notice to the holders of the Series A Preferred Stock of a Delisting Event.

Voting Rights. Holders of Series A Preferred Stock generally will have no voting rights. However, if we do not pay dividends on any outstanding shares of Series A Preferred Stock for six or more quarterly dividend periods (whether or not declared or consecutive), holders of Series A Preferred Stock (voting separately as a class with all other outstanding series of preferred stock upon which like voting rights have been conferred and are exercisable) will be entitled to elect two additional directors to our board of directors to serve until all unpaid dividends have been fully paid or declared and set apart for payment. In addition, certain material and adverse changes to the terms of the Series A Preferred Stock cannot be made without the affirmative vote of holders of at least 66 2/3% of the outstanding shares of Series A Preferred Stock, voting as a separate class. In any matter in which the Series A Preferred Stock may vote, each share of Series A Preferred Stock shall be entitled to one vote.

The 8.375% Series B Cumulative Perpetual Preferred Stock and the Series B Depositary Shares. We have designated 3,600 shares of our Preferred Stock as Series B Preferred Stock.

The Series B Preferred Stock underlying the Series B Depositary Shares will rank, as to dividend rights and rights upon our liquidation, dissolution or winding up:

- senior to all classes or series of our Common Stock and to all other equity securities issued by us expressly designated as ranking junior to the Series B Preferred Stock;
- senior with respect to the payment of dividends and on parity with respect to the distribution of assets upon our liquidation, dissolution or winding up with our Series X Preferred Stock;
- on parity with our Series A Preferred Stock, and with any future class or series of our equity securities expressly designated as ranking on parity with the Series B Preferred Stock;
- junior to all equity securities issued by us with terms specifically providing that those equity securities rank senior to the Series B Preferred Stock with respect to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up, none of which exists on the date hereof; and
- effectively junior to all our existing and future indebtedness (including indebtedness convertible into our Common Stock or Preferred Stock) and to the indebtedness and other liabilities of (as well as any preferred equity interests held by others in) our existing or future subsidiaries.

Dividends. We will pay cumulative cash dividends on the Series B Preferred Stock, when and as declared by our board of directors, at the rate of 8.375% of the $25,000.00 liquidation preference ($25.00 per depositary share) per year (equivalent to $2,093.75 per share or $2.09375 per depositary share per year). Dividends will be payable quarterly in arrears, on or about the 15th day of January, April, July and October; provided that if any dividend payment date is not a business day, then the dividend which would otherwise have been payable on that dividend payment date may be paid on the next succeeding business day, and no interest, additional dividends or other sums will accumulate. Dividends will accumulate and be cumulative from, and including, the date of original issuance. Dividends on the Series B Preferred Stock underlying the Series B Depositary Shares will continue to accumulate whether or not (i) any of our agreements prohibit the current payment of dividends, (ii) we have earnings or funds legally available to pay the dividends, or (iii) our board of directors does not declare the payment of the dividends.

Liquidation Preference. The liquidation preference of each share of Series B Preferred Stock is $25,000.00 ($25.00 per depositary share). Upon liquidation, holders of our Series B Preferred Stock will be entitled to receive the liquidation preference with respect to their shares of Series B Preferred Stock plus an amount equal to accumulated but unpaid dividends with respect to such shares.

Optional Redemption. On and after April 15, 2022, the shares of Series B Preferred Stock will be redeemable at our option, in whole or in part, at a redemption price equal to $26,000.00 per share ($26.00 per depositary share), plus any accrued and unpaid dividends. On and after April 15, 2023, the shares of Series B Preferred Stock will be redeemable at our option, in whole or in part, at a redemption price equal to $25,750.00 per share ($25.75 per depositary share), plus any accrued and unpaid dividends. On and after April 15, 2024, the shares of Series B Preferred

Stock will be redeemable at our option, in whole or in part, at a redemption price equal to $25,500.00 per share ($25.50 per depositary share), plus any accrued and unpaid dividends. On and after April 15, 2025, the shares of Series B Preferred Stock will be redeemable at our option, in whole or in part, at a redemption price equal to $25,250.00 per share ($25.25 per depositary share), plus any accrued and unpaid dividends. On and after April 15, 2026, the shares of Series B Preferred Stock will be redeemable at our option, in whole or in part, at a redemption price equal to $25,000.00 per share ($25.00 per depositary share), plus any accrued and unpaid dividends. On or after the date fixed for redemption of shares of Series B Preferred Stock, each holder of Series B Depositary Shares to be redeemed must present and surrender the depositary receipts evidencing the Series B Depositary Shares to the depositary at the place designated in the notice of redemption. The redemption price of such Series B Depositary Shares will then be paid to or on the order of the person whose name appears on such depositary receipts as the owner thereof.

Special Optional Redemption Upon a Change of Control or Delisting Event. Upon the occurrence of a Delisting Event (as defined below), we may, at our option, redeem the Series B Preferred Stock, in whole or in part, within 90 days after the first date on which such Delisting Event occurred, for cash, at a redemption price of $25,000.00 per share (equivalent to $25.00 per depositary share), plus any accrued and unpaid dividends up to, but not including, the date of redemption, and the depositary will redeem a proportional number of Series B Depositary Shares representing the shares redeemed.

With respect to the Series B Preferred Stock, a "***Delisting Event***" occurs when, after the original issuance of Series B Preferred Stock, both (i) the shares of Series B Preferred Stock (or the Series B Depositary Shares) are no longer listed on Nasdaq, the NYSE or the NYSE AMER, or listed or quoted on an exchange or quotation system that is a successor to Nasdaq, the NYSE or the NYSE AMER, and (ii) we are not subject to the Exchange Act, but any Series B Preferred Stock is still outstanding.

Upon the occurrence of a Change of Control (as defined below), we may, at our option, redeem the Series B Preferred Stock underlying the Series B Depositary Shares, in whole or in part within 120 days after the first date on which such Change of Control occurred, for cash, at a redemption price of $25,000.00 per share (equivalent to $25.00 per depositary share), plus any accrued and unpaid dividends up to, but not including, the date of redemption, and the depositary will redeem a proportional number of Series B Depositary Shares representing the shares redeemed.

With respect to the Series B Preferred Stock, a "***Change of Control***" occurs when, after the original issuance of the Series B Preferred Stock, the following have occurred and are continuing:

- the acquisition by any person, including any syndicate or group deemed to be a "person" under Section 13(d)(3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of shares of our company entitling that person to exercise more than 50% of the total voting power of all shares of our company entitled to vote generally in elections of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and

- following the closing of any transaction referred to in the bullet point above, neither we nor any acquiring or surviving entity (or if, in connection with such transaction shares of our Common Stock are converted into or exchanged for (in whole or in part) common equity securities of another entity), has a class of common securities (or ADRs representing such securities) listed on Nasdaq, the NYSE or the NYSE AMER, or listed or quoted on an exchange or quotation system that is a successor to Nasdaq, the NYSE or the NYSE AMER.

We refer to redemption following a Delisting Event or Change of Control as a "***special optional redemption***." If, prior to the Delisting Event Conversion Date or the Change of Control Conversion Date (each as defined below), as applicable, we have provided or provide notice of exercise of any of our redemption rights relating to the Series B Preferred Stock (whether our optional redemption right or our special optional redemption right), the holders of Series B Depositary Shares representing interests in the Series B Preferred Stock will not have the conversion right described below.

***Conversion*.** Upon the occurrence of a Delisting Event or a Change of Control, as applicable, each holder of Series B Depositary Shares representing interests in the Series B Preferred Stock will have the right (unless, prior to the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable, we have provided or provide notice of our election to redeem the Series B Preferred Stock) to direct the depositary, on such holder's behalf, to convert some or all of the Series B Preferred Stock underlying the Series B Depositary Shares held by such holder on the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable into a number of shares of our Common Stock (or equivalent value of alternative consideration) per depositary share equal to the lesser of:

- the quotient obtained by dividing (1) the sum of the $25.00 per depositary share liquidation preference plus the amount of any accumulated and unpaid dividends up to, but not including, the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable (unless the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable is after a record date for a Series B Preferred Stock dividend payment and prior to the corresponding Series B Preferred Stock dividend payment date, in which case no additional amount for such accumulated and unpaid dividend will be included in this sum) by (2) the Common Stock Price (as defined herein); and

- 1.25313 (i.e., the Share Cap), subject to certain adjustments; and subject, in each case, to certain conditions, including, under specified circumstances, an aggregate cap on the total number of shares of our Common Stock issuable upon conversion and to provisions for the receipt of alternative consideration.

If, prior to the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable, we have provided or provide a redemption notice, whether pursuant to our special optional redemption right or our optional redemption right, holders of Series B Depositary Shares representing interests in the Series B Preferred Stock will not have any right to direct the depositary to convert the Series B Preferred Stock, and any Series B Preferred Stock subsequently selected for redemption that has been tendered for conversion will be redeemed on the related date of redemption instead of converted on the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable.

Because each depositary share represents a 1/1000th interest in a share of the Series B Preferred Stock, the number of shares of Common Stock ultimately received for each depositary share will be equal to the number of shares of Common Stock received upon conversion of each share of Series B Preferred Stock divided by 1000. In the event that the conversion would result in the issuance of fractional shares of Common Stock, we will pay the holder of Series B Depositary Shares cash in lieu of such fractional shares.

Except as provided above in connection with a Delisting Event or Change of Control, shares of the Series B Preferred Stock are not convertible into or exchangeable for any other securities or property.

For purposes of this description of the Series B Preferred Stock and the underlying Series B Depositary Shares, "***Change of Control Conversion Date***" means a business day fixed by our board of directors that is not fewer than 20 days nor more than 35 days after the date on which we provide the notice described above to the holders of the Series B Depositary Shares representing interests in the Series B Preferred Stock.

For purposes of this description of the Series B Preferred Stock and the underlying Series B Depositary Shares, "***Common Stock Price***" for any Change of Control will be: (1) if the consideration to be received in the Change of Control by the holders of our Common Stock is solely cash, the amount of cash consideration per share of Common Stock; and (2) if the consideration to be received in the Change of Control by holders of our Common Stock is other than solely cash (x) the average of the closing prices for our Common Stock on the principal U.S. securities exchange on which our Common Stock is then traded (or, if no closing sale price is reported, the average of the closing bid and ask prices per share or, if more than one in either case, the average of the average closing bid and the average closing ask prices per share) for the ten consecutive trading days immediately preceding, but not including, the date on which such Change of Control occurred as reported on the principal U.S. securities exchange on which our Common Stock is then traded, or (y) the average of the last quoted bid prices for our Common Stock in the over-the-counter market as reported by OTC Markets Group Inc. or similar organization for the ten consecutive trading days immediately preceding, but not including, the date on which such Change of Control occurred, if our Common Stock is not then

listed for trading on a U.S. securities exchange. The "***Common Stock Price***" for any Delisting Event will be the average of the closing price per share of our Common Stock on the 10 consecutive trading days immediately preceding, but not including, the effective date of the Delisting Event.

For purposes of this description of the Series B Preferred Stock and the underlying Series B Depositary Shares, "***Delisting Event Conversion Date***" means a business day fixed by our board of directors that is not fewer than 20 days nor more than 35 days after the date on which we provide the notice described above to the holders of the Series B Depositary Shares representing interests in the Series B Preferred Stock.

Voting Rights. Holders of the Series B Depositary Shares representing interests in the Series B Preferred Stock generally will have no voting rights. However, if we do not pay dividends on any outstanding shares of Series B Preferred Stock for six or more quarterly dividend periods (whether or not declared or consecutive), holders of Series B Preferred Stock (voting separately as a class with all other outstanding series of preferred stock upon which like voting rights have been conferred and are exercisable) will be entitled to elect two additional directors to our Board of Directors to serve until all unpaid dividends have been fully paid or declared and set apart for payment. In addition, certain material and adverse changes to the terms of the Series B Preferred Stock cannot be made without the affirmative vote of holders of at least 66 2/3% of the outstanding shares of Series B Preferred Stock, voting as a separate class. In any matter in which the Series B Preferred Stock may vote, each share of Series B Preferred Stock shall be entitled to one vote. As a result, each depositary share will be entitled to 1/1000th of a vote.

The Series X Preferred Stock. We have designated 5,003 shares of our Preferred Stock as Series X Preferred Stock. The Series X Preferred Stock ranks:

- senior to any class or series of our capital stock created specifically ranking by its terms junior to the Series X Preferred Stock;
- on parity to our Common Stock;
- on parity to any class or series of our capital stock created specifically ranking by its terms on parity with the Series X Preferred Stock; and
- junior to any class or series of our capital stock created specifically ranking by its terms senior to the Series X Preferred Stock;

in each case, as to distributions of assets upon our liquidation, dissolution or winding up whether voluntarily or involuntarily.

Dividends. Holders of Series X Preferred Stock are entitled to receive dividends on shares of Series X Preferred Stock equal (on an as-converted basis) to and in the same form as dividends actually paid on our Common Stock or other junior securities.

Liquidation Preference. In the event of our liquidation, dissolution, or winding up, holders of our Series X Preferred Stock will participate pari passu (on an as-converted basis, without regard to any blocker provisions) with any distribution of proceeds to holders of our Common Stock.

Redemption. We are not obligated to redeem or repurchase any shares of Series X Preferred Stock. Shares of Series X Preferred Stock are not otherwise entitled to any redemption rights or mandatory sinking fund or analogous fund provisions.

Conversion. The Series X Preferred Stock is convertible at the option of the holders thereof at any time after issuance into the number of registered shares of Common Stock determined by dividing the aggregate stated value of the Series X Preferred Stock being converted by the conversion price then in effect. The initial conversion price is $4.03 and is subject to adjustment as described below. No holder may request a conversion of its Series X Preferred Stock to the extent such conversion would result in the holder and its affiliates beneficially owning more than a pre-

set conversion blocker threshold, which will initially be set at 19.99% of our Common Stock then outstanding (the "***Beneficial Ownership Limitation***"). The amount of beneficial ownership of a holder and its affiliates will be determined in accordance with Section 13(d) of the Exchange Act, and the rules and regulations of that section.

Conversion Price Adjustment-Stock Dividends and Stock Splits. If we pay a stock dividend or otherwise make a distribution payable in Common Stock on our Common Stock or any Common Stock equivalents, subdivide or combine our outstanding Common Stock, or reclassify our Common Stock in such a way that we issue additional shares of our capital stock, the conversion price will be adjusted by multiplying the then-existing conversion price by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately before the distribution, dividend, adjustment or recapitalization and the denominator of which is the number of shares of Common Stock outstanding immediately after such action.

Fundamental Transaction. If we effect a "fundamental transaction" (as defined below), then upon any future conversion of the Series X Preferred Stock, the holders will have the right to receive, for each share of Common Stock they would have received upon such conversion, the same kind and amount of securities, cash or property as such holder would have been entitled to receive in the fundamental transaction had it been the holder of Common Stock immediately prior to the fundamental transaction. The term "***fundamental transaction***" means any of the following:

- a merger or consolidation of the Company with or into another entity or any stock sale to, or other business combination in which the Company is not the surviving entity;
- the sale of all or substantially all of our assets in one transaction or a series of related transactions;
- any completed tender offer or exchange offer involving holders of Common Stock in which more than 50% of the Common Stock is converted or exchanged into other securities, cash or property, regardless of who makes such offer; or
- any reclassification of Common Stock or any compulsory share exchange by which our Common Stock is effectively converted into or exchanged for other securities, cash or property (but not a reverse stock split).

If the holders of Common Stock are given a choice as to the securities, cash or property to be received in a fundamental transaction, the holders of Series X Preferred Stock will be given the same choice on conversion of such holders' shares.

Voting Rights. The Series X Preferred Stock has no voting rights, except to the extent expressly provided in our Certificate of Incorporation or as otherwise required by law. However, so long as 2,502 shares of Series X Preferred Stock are outstanding, we may not take any of the following actions without the affirmative consent of holders of a majority of the outstanding Series X Preferred Stock:

- amend our Certificate of Incorporation, By-laws or other charter documents so as to materially, specifically and adversely affect the preferences, rights, or privileges of the Series X Preferred Stock;
- issue additional shares of Series X Preferred Stock or increase or decrease the number of authorized shares of Series X Preferred Stock;
- sell, assign, monetize, pledge or otherwise divest or encumber our rights under any material license agreement, joint venture or other partnership agreement to which we are a party as of the date of this offering and involving any drug or drug candidate;
- issue or commit to issue any other equity securities, with certain exceptions;
- issue any equity-based award or compensation to certain of our officers, unless the award has been unanimously approved by our compensation committee at a time when a designee appointed by the Series X Preferred holders is then serving on that committee; or

- enter into any agreement or understanding to take any of the actions listed above.

Anti-takeover Effects of Provisions of our Certificate of Incorporation and By-laws and Delaware Law

Certificate of Incorporation and By-laws Provisions. Our Certificate of Incorporation authorizes our board of directors to issue up to 1,000,000 shares of Preferred Stock without stockholder approval and to set the rights, preferences and other designations, including voting rights, of those shares as the board of directors may determine. In addition, our By-laws require certain procedures to be followed and time periods to be met for any stockholder to propose matters to be considered at annual meetings of stockholders, including nominating directors for election at those meetings. Our By-laws also provide that our board of directors is able to elect a director to fill a vacancy created by the expansion of the board of directors or due to the resignation or departure of an existing board member. Provisions of Delaware law and our Certificate of Incorporation and By-laws could make the acquisition of our company through a tender offer, a proxy contest or other means more difficult and could make the removal of incumbent officers and directors more difficult. We expect these provisions to discourage coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of our company to first negotiate with our board of directors. We believe that the benefits provided by our ability to negotiate with the proponent of an unfriendly or unsolicited proposal outweigh the disadvantages of discouraging these proposals. We believe the negotiation of an unfriendly or unsolicited proposal could result in an improvement of its terms.

Delaware Law. We are subject to Section 203 of the DGCL, an anti-takeover law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years following the date the person became an interested stockholder, unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (a) shares owned by persons who are directors and also officers, and (b) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to the date of the transaction, the business combination is approved by the board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66% of the outstanding voting stock which is not owned by the interested stockholder.

Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. An "interested stockholder" is a person who, together with affiliates and associates, beneficially owns, or is an affiliate of the corporation and within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation's outstanding voting securities. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our board of directors does not approve in advance.

Exhibit 10.10

November 1, 2022

Thomas Burns
VIA EMAIL/DOCUSIGN

Dear Thomas:

As you know, you are employed by XOMA Corporation (the "Company") pursuant to the terms of an Officer Employment Agreement dated August 7, 2017, as amended on April 1, 2022 (the "Agreement"). You and the Company are hereby agreeing to amend the Agreement to modify the retention benefit contained therein, as set forth below (the "Amendment").

Under the existing terms of the Agreement, in order to be eligible for the retention benefit, you must remain employed by the Company for a twelve (12)-month period (the "Period") following the first day of employment of the Company's new Chief Executive Officer. By the terms of this Amendment, the Period shall be accelerated to start on November 1, 2022.

Other than set forth herein, the terms of the Agreement shall remain in full force and effect.

This Amendment forms the complete and exclusive agreement between you and the Company with respect to this subject matter. It supersedes any other agreements or promises made to you by anyone, whether oral or written, with respect to such subject matter. Changes to the terms of this Amendment require a written modification signed by an officer of the Company. This Amendment may be delivered and executed via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and shall be deemed to have been duly and validly delivered and executed and be valid and effective for all purposes.

Please sign and date this letter and return it to me.

Sincerely,

Jim Neal
On behalf of the Board of Directors

Understood and Accepted:

/s/ Thomas Burns	November 1, 2022
Thomas Burns	Date

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.

Exhibit 10.14

XOMA CORPORATION
AMENDED AND RESTATED
RETENTION AND SEVERANCE PLAN

Section 1. INTRODUCTION.

This XOMA Corporation Retention and Severance Plan (the "***Plan***") is hereby established by the Board of Directors of XOMA Corporation (the "***Company***") effective as of January 1, 2022. The purpose of the Plan is to provide for retention bonuses and severance benefits to eligible employees of the Company under certain specified conditions. This Plan document also is the Summary Plan Description for the Plan. Capitalized terms used but not defined herein shall have the meanings given to them in the Equity Plan (as defined below).

For purposes of the Plan, the following terms are defined as follows:

(a) "***Affiliate***" means any corporation or limited liability company (other than the Company) in an "unbroken chain of corporations and/or limited liability companies" beginning with the Company, if each of the corporations and/or limited liability company other than the last corporation or limited liability company in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock or limited liability company membership interests in one of the other corporations and/or limited liability companies in such chain.

(b) "***Base Salary***" means base pay (excluding incentive pay, premium pay, commissions, overtime, bonuses and other forms of variable compensation) as in effect prior to any reduction that would give rise to an employee's right to a resignation for Good Reason (if applicable).

(c) "***Cause***" means (1) willful material fraud or material dishonesty in connection with the employee's performance of his or her duties to the Company; (2) failure by the employee to materially perform his or her duties; (3) material breach by the employee of his or her employment agreement with the Company or the Company's Code of Ethics; (4) misappropriation of a material business opportunity of the Company; (5) misappropriation of any Company funds or property; or (6) conviction of, or the entering of a plea of guilty or no contest with respect to, a felony.

(d) "***Code***" means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(e) "***Committee***" means the Compensation Committee of the Company's Board of Directors.

(f) "***Company***" means XOMA Corporation or any successor company.

(g) "***Confidentiality Agreement***" means the employee's Proprietary Information and Inventions Agreement or any similar or successor document.

(h) "***Covered Termination***" means, with respect to an employee, a Termination of Service that is due to (1) a termination by the Company without Cause (and other than as a result of the employee's death or Disability) or (2) the employee's resignation for Good Reason, and in either case of (1) or (2), results in such employee's Separation from Service.

(i) "***Disability***" means any physical or mental condition which renders an Eligible Employee incapable of performing the work for which he or she was employed by the Company or similar work offered by the Company and that results in a Termination of Service. The Disability of an Eligible Employee shall be established if such Eligible Employee is, by reason of any medically determinable physical or mental impairment expected to result in death or to be of continuous duration of not less than twelve (12) consecutive months or more, unable to perform his or her usual duties for the Company or its Affiliates.

(j) "***Eligible Employee***" means an employee of the Company that meets the requirements to be eligible to receive Plan benefits as set forth in Section 2.

(k) "***Equity Plan***" means the XOMA Corporation Amended and Restated 2010 Long Term Incentive and Stock Award Plan.

(l) "***Good Reason***" for an employee's resignation means the occurrence of any of the following actions are undertaken by the Company without the employee's prior written consent:

(1) a material reduction in such employee's Base Salary (unless pursuant to a salary reduction program applicable generally to XOMA's employees);

(2) a material reduction in such employee's duties (including responsibilities and/or authorities), provided, however, that a change in job position (including a change in title) shall not be deemed a "material reduction" in and of itself unless the employee's new duties are materially reduced from the prior duties;

(3) a material breach by the Company of any provision of this Plan or any other material agreement between such employee and the Company concerning the terms and conditions of such employee's employment with the Company; or

(4) a relocation of such employee's principal place of employment with the Company (or successor to the Company, if applicable) to a place that increases such employee's one-way commute by more than 30 miles as compared to such employee's then- current principal place of employment immediately prior to such relocation (excluding regular travel in the ordinary course of business); provided that this Section 1(l)(4) shall not apply so long as the employee remains eligible following such relocation to live and work full-time outside of such 30 mile radius as long as such employee performs his or her duties in a timely fashion.

Notwithstanding the foregoing, in order for the employee's resignation to be deemed to have been for Good Reason, the employee must (a) provide written notice to the Company of such employee's intent to resign for Good Reason within 90 days after the first occurrence of the event giving rise to Good Reason, which notice shall describe the event(s) the employee believes give rise to Good Reason; (b) allow the Company at least 60 days from receipt of the written notice to cure the event (such period, the "***Cure Period***"), and (c) if the event is not reasonably cured within the Cure Period, then the employee must resign from all positions the employee then holds with the Company not later than one hundred eighty (180) days following the first occurrence of the event giving rise to Good Reason.

(m) "***Participation Agreement***" means an agreement between an employee and the Company in substantially the form of **APPENDIX A** attached hereto, and which may include such other terms as the Committee deems necessary or advisable in the administration of the Plan.

(n) "***Plan Administrator***" means the Committee.

(o) ***"Section 409A"*** means Section 409A of the Code and the treasury regulations and other guidelines thereunder and any state law of similar effect.

(p) "***Separation from Service***" means a "separation from service" within the meaning of Treasury Regulations Section 1.409A-1(h), without regard to any alternative definition thereunder.

Section 2. ELIGIBILITY FOR BENEFITS.

(a) Eligible Employee. An employee of the Company is eligible to participate in the Plan if (i) the Plan Administrator has designated such employee as eligible to participate in the Plan by providing such employee a Participation Agreement; (ii) such employee has signed and returned such Participation Agreement to the Company within the time period required therein; and (iii) such employee meets the other Plan eligibility requirements set forth in this Section 2. The determination of whether an employee is an Eligible Employee shall be made by the Plan Administrator, in its sole discretion, and such determination shall be binding and conclusive on all persons.

(b) Release Requirement. Except as otherwise provided in an individual Participation Agreement, in order to be eligible to receive benefits under the Plan, the employee also must execute a general waiver and release, in such a form as provided by the Company (the "***Release***"), within the applicable time period set forth therein, and such Release must become effective in accordance with its terms, which must occur in no event more than 60 days following the date of the applicable Covered Termination.

(c) Plan Benefits Provided In Lieu of Any Previous Benefits. Except as otherwise provided in an individual Participation Agreement, this Plan shall supersede any severance benefit plan, policy or practice previously maintained by the Company with respect to an Eligible Employee and any severance benefits in any individually negotiated employment contract or other agreement between the Company and an Eligible Employee, excluding the terms of any equity award grant notices and agreements governing the Eligible Employee's outstanding equity awards that may apply upon termination of such employee's service. For avoidance of doubt, the Eligible Employee's equity awards shall remain subject to the terms and conditions of the applicable equity plan or equity option or award agreement under which such awards were granted and no provision of this Plan shall be construed as to limit the actions that may be taken, or to violate the terms of such equity plan or equity option or award agreement. Further notwithstanding the foregoing or any other provision of this Plan or the applicable Participation Agreement, no vesting and extension of time for exercise of options or other equity awards upon the retirement of an Eligible Employee will be superseded or otherwise adversely affected by this Plan or the applicable Participation Agreement in any way and the definition of Cause in this Plan shall supersede the definition of Cause in any applicable equity option or award agreement.

(d) Exceptions to Severance Benefit Entitlement. An employee who otherwise is an Eligible Employee will not receive benefits under the Plan in the following circumstances, as determined by the Plan Administrator in its sole discretion:

(1) The employee is terminated by the Company for any reason (including due to the employee's death or Disability) or voluntarily terminates employment with the Company in any manner, and in either case, such termination does not constitute a Covered Termination. Voluntary terminations include, but are not limited to, resignation or retirement.

(2) The employee voluntarily terminates employment with the Company in order to accept employment with another entity that is wholly or partly owned (directly or indirectly) by the Company or an Affiliate.

(3) The employee is offered an identical or substantially equivalent or comparable position with the Company or an Affiliate. For purposes of this Section 2(d), a "substantially equivalent or comparable position" is one that provides the employee substantially the same level of responsibility and compensation and would not give rise to the employee's right to a resignation for Good Reason.

(4) The employee is offered immediate reemployment in a substantially equivalent or comparable position by a successor to the Company or an Affiliate or by a purchaser of the Company's assets, as the case may be, following a Change in Control and the terms of such reemployment would not give rise to the employee's right to a resignation for Good Reason. For purposes of the foregoing, "immediate reemployment" means that the employee's employment with the successor to the Company or an Affiliate or the purchaser of its assets, as the case may be, results in uninterrupted employment such that the employee does not incur a lapse in pay or benefits as a result of the change in ownership of the Company or the sale of its assets. For the avoidance of doubt, an employee who becomes immediately reemployed as described in this Section 2(d)(4) by a successor to the Company or an Affiliate or by a purchaser of the Company's assets, as the case may be, following a Change in Control shall continue to be an Eligible Employee following the date of such reemployment.

(5) The employee is rehired by the Company or an Affiliate in a substantially equivalent or comparable position and recommences employment prior to the date severance benefits under the Plan are scheduled to commence.

(e) **Termination of Severance Benefits**. An Eligible Employee's right to receive severance benefits under this Plan shall terminate immediately if, at any time prior to or during the period for which the Eligible Employee is receiving severance benefits under the Plan, the Eligible Employee willfully breaches any material statutory, common law, or contractual obligation to the Company or an Affiliate (including, without limitation, the contractual obligations set forth in the Confidentiality Agreement and any other confidentiality, non-disclosure and developments agreement, non-competition, non-solicitation, or similar type agreement between the Eligible Employee and the Company, as applicable).

Section 3. **RETENTION BONUSES.**

Eligible Employees will receive a cash retention bonus in the event the Eligible Employee remains employed by the Company through the three (3)-month anniversary of November 1, 2022 (the "***Initial Period***"). The cash bonus will be equal to 25% of the Base Salary paid to the Eligible Employee by the Company during the Initial Period, less any standard and customary payroll deductions and withholdings. This bonus will be paid on the first payroll date following the last day of the Initial Period. In order to earn the bonus, the Eligible Employee must remain employed through the last day of the Initial Period; ***provided, however,*** that if the Eligible Employee is terminated by the Company without Cause or resigns for Good Reason, in either case during the Initial Period, then the Eligible Employee will remain eligible for the bonus payment as set forth in the Eligible Employee's Participation Agreement.

Eligible Employees will receive a second cash retention bonus in the event the Eligible Employee remains employed by the Company through the nine (9)-month period immediately following the Initial Period (the "***Extended Period***"). The cash bonus will be equal to 25% of the Base Salary paid to the Eligible Employee by the Company during the Extended Period, less payroll deductions and withholdings. This bonus will be paid on the first payroll date following the last day of the Extended Period. In order to earn the bonus, the Eligible Employee must remain actively employed through the last day of the Extended Period; ***provided, however,*** that if the Eligible Employee is terminated by the Company without Cause or resigns for Good Reason, in either case during the Extended Period, then the Eligible Employee will remain eligible for the bonus payment as set forth in the Eligible Employee's Participation Agreement.

Section 4. SEVERANCE BENEFITS.

(a) Benefits in Participation Agreement. Benefits under the Plan shall be provided to an Eligible Employee as set forth in the Participation Agreement.

(b) Additional Benefits. Notwithstanding the foregoing, the Committee may, in its sole discretion, provide benefits to Company employees who are not Eligible Employees ("***Non-Eligible Employees***") chosen by the Plan Administrator, in its sole discretion, and the provision of any such benefits to a Non-Eligible Employee shall in no way obligate the Company to provide such benefits to any other employee, even if similarly situated. If benefits under the Plan are provided to a Non-Eligible Employee, references in the Plan to "Eligible Employee" (and similar references) shall be deemed to refer to such Non-Eligible Employee.

(c) Certain Reductions. In addition to Section 2(e) above, the Company, in its sole discretion, shall have the authority to reduce an Eligible Employee's severance benefits, in whole or in part, by any other severance benefits, pay and benefits provided during a period following written notice of a business closing or mass layoff, pay and benefits in lieu of such notice, or other similar benefits payable to the Eligible Employee by the Company or an Affiliate that become payable in connection with the Eligible Employee's termination of employment pursuant to (i) any applicable legal requirement, including, without limitation, the Worker Adjustment and Retraining Notification Act or any other similar state law or (ii) any Company policy or practice providing for the Eligible Employee to remain on the payroll for a limited period of time after being given notice of the termination of the Eligible Employee's employment, and the Plan Administrator shall so construe and implement the terms of the Plan. Any such reductions that the Company determines to make pursuant to this Section 4(c) shall be made such that any severance benefit under the Plan shall be reduced solely by any similar type of benefit under such legal requirement, agreement, policy or practice (*i.e.*, any cash severance benefits under the Plan shall be reduced solely by any cash payments or severance benefits under such legal requirement, agreement, policy or practice). The Company's decision to apply such reductions to the severance benefits of one Eligible Employee and the amount of such reductions shall in no way obligate the Company to apply the same reductions in the same amounts to the severance benefits of any other Eligible Employee. In the Company's sole discretion, such reductions may be applied on a retroactive basis, with severance benefits previously paid being re-characterized as payments pursuant to the Company's statutory obligation.

(d) Parachute Payments. Except as otherwise provided in an individual Participation Agreement, if any payment or benefit an Eligible Employee will or may receive from the Company or otherwise (a "***Payment***") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "***Excise Tax***"), then any such Payment shall be equal to the Reduced Amount. The "***Reduced Amount***" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment (after reduction) being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount (i.e., the amount determined by clause (x) or by clause (y)), after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in the Eligible Employee's receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in a Payment is required pursuant to the preceding sentence and the Reduced Amount is determined pursuant to clause (x) of the preceding sentence, the reduction shall occur in the manner (the "***Reduction Method***") that results in the greatest economic benefit for the Eligible Employee. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata (the "***Pro Rata Reduction Method***").

Notwithstanding any provisions in this Section above to the contrary, if the Reduction Method or the Pro Rata Reduction Method would result in any portion of the Payment being subject to taxes pursuant to Section 409A that would not otherwise be subject to taxes pursuant to Section 409A, then the Reduction Method and/or the Pro Rata Reduction Method, as the case may be, shall be modified so as to avoid the imposition of taxes pursuant to Section 409A as follows: (A) as a first priority, the modification shall preserve to the greatest extent possible, the greatest economic benefit for the Eligible Employee as determined on an after-tax basis; (B) as a second priority, Payments that are contingent on future events (*e.g.*, being terminated without Cause), shall be reduced (or eliminated) before Payments that are not contingent on future events; and (C) as a third priority, Payments that are "deferred compensation" within the meaning of Section 409A shall be reduced (or eliminated) before Payments that are not deferred compensation within the meaning of Section 409A.

The Company shall appoint a nationally recognized accounting or law firm to make the determinations required by this Section. The Company shall bear all expenses with respect to the determinations by such accounting or law firm required to be made hereunder. If the Eligible Employee receives a Payment for which the Reduced Amount was determined pursuant to clause (x) above and the Internal Revenue Service determines thereafter that some portion of the Payment is subject to the Excise Tax, Eligible Employee agrees to promptly return to the Company a sufficient amount of the Payment (after reduction pursuant to clause (x) above) so that no portion of the remaining Payment is subject to the Excise Tax. For the avoidance of doubt, if the Reduced Amount was determined pursuant to clause (y) above, the Eligible Employee shall have no obligation to return any portion of the Payment pursuant to the preceding sentence.

Section 5. RETURN OF COMPANY PROPERTY.

An Eligible Employee will not be entitled to any severance benefit under the Plan unless and until the Eligible Employee returns all material Company Property. For this purpose, "***Company Property***" means all paper and electronic Company documents (and all copies thereof) and other Company property which the Eligible Employee had in his or her possession or control at any time, including, but not limited to, Company files, notes, drawings, records, plans, forecasts, reports, studies, analyses, proposals, agreements, financial information, research and development information, sales and marketing information, operational and personnel information, specifications, code, software, databases, computer-recorded information, tangible property and equipment (including, but not limited to, computers, mobile telephones), credit cards, entry cards, identification badges and keys; and any materials of any kind which contain or embody any proprietary or confidential information of the Company (and all reproductions thereof in whole or in part). As a condition to receiving benefits under the Plan, an Eligible Employee must not make or retain copies, reproductions or summaries of any such Company documents, materials or property. However, an Eligible Employee is not required to return his or her personal copies of documents evidencing the Eligible Employee's hire, termination, compensation, benefits and stock options and any other documentation received as a stockholder of the Company.

Section 6. TIME OF PAYMENT AND FORM OF BENEFITS.

The Company reserves the right in the Participation Agreement to specify whether payments under the Plan will be paid in a single sum, in installments, or in any other form and to determine the timing of such payments. All such payments under the Plan will be subject to applicable withholding for federal, state, foreign, provincial and local taxes. All benefits provided under the Plan are intended to satisfy the requirements for an exemption from application of Section 409A to the maximum extent that an exemption is available and any ambiguities herein shall be interpreted accordingly; *provided, however*, that to the extent such an exemption is not available, the benefits provided under the Plan are intended to comply with the requirements of Section 409A to the extent necessary to avoid adverse personal tax consequences and any ambiguities herein shall be interpreted accordingly.

It is intended that (i) each installment of any benefits payable under the Plan to an Eligible Employee be regarded as a separate "payment" for purposes of Treasury Regulations Section 1.409A-2(b)(2)(i), (ii) all payments of any such benefits under the Plan satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulations Sections 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9)(iii), and (iii) any such benefits consisting of COBRA premiums also satisfy, to the greatest extent possible, the exemption from the application of Section 409A provided under Treasury Regulations Section 1.409A- 1(b)(9)(v). However, if the Company determines that any severance benefits payable under the Plan constitute "deferred compensation" under Section 409A and the Eligible Employee is a "specified employee" of the Company, as such term is defined in Section 409A(a)(2)(B)(i), then, solely to the extent necessary to avoid the imposition of the adverse personal tax consequences under Section 409A, (A) the timing of such severance benefit payments shall be delayed until the earlier of (1) the date that is six months and one day after the Eligible Employee's Separation from Service and (2) the date of the Eligible Employee's death (such applicable date, the "***Delayed Initial Payment Date***"), and (B) the Company shall (1) pay the Eligible Employee a lump sum amount equal to the sum of the severance benefit payments that the Eligible Employee would otherwise have received through the Delayed

Initial Payment Date if the commencement of the payment of the severance benefits had not been delayed pursuant to this paragraph and (2) commence paying the balance, if any, of the severance benefits in accordance with the applicable payment schedule.

In no event shall payment of any severance benefits under the Plan be made prior to an Eligible Employee's Separation from Service or prior to the effective date of the Release. If the Company determines that any severance payments or benefits provided under the Plan constitute "deferred compensation" under Section 409A, and the Eligible Employee's Separation from Service occurs at a time during the calendar year when the Release could become effective in the calendar year following the calendar year in which the Eligible Employee's Separation from Service occurs, then regardless of when the Release is returned to the Company and becomes effective, the Release will not be deemed effective, solely for purposes of the timing of payment of severance benefits under this Plan, any earlier than the latest permitted effective date (the "***Release Deadline***"). If the Company determines that any severance payments or benefits provided under the Plan constitute "deferred compensation" under Section 409A, then except to the extent that severance payments may be delayed until the Delayed Initial Payment Date pursuant to the preceding paragraph, on the first regular payroll date following the effective date of an Eligible Employee's Release, the Company shall (1) pay the Eligible Employee a lump sum amount equal to the sum of the severance benefit payments that the Eligible Employee would otherwise have received through such payroll date but for the delay in payment related to the effectiveness of the Release and (2) commence paying the balance, if any, of the severance benefits in accordance with the applicable payment schedule.

Section 7. TRANSFER AND ASSIGNMENT.

The rights and obligations of an Eligible Employee under this Plan may not be transferred or assigned without the prior written consent of the Company. This Plan shall be binding upon any entity or person who is a successor by merger, acquisition, consolidation or otherwise to the business carried on by the Company without regard to whether or not such entity or person actively assumes the obligations hereunder as required under the Equity Plan and without regard to whether or not a Change in Control occurs.

Section 8. MITIGATION.

Except as otherwise specifically provided in the Plan, an Eligible Employee will not be required to mitigate damages or the amount of any payment provided under the Plan by seeking other employment or otherwise, nor will the amount of any payment provided for under the Plan be reduced by any compensation earned by an Eligible Employee as a result of employment by another employer or any retirement benefits received by such Eligible Employee after the date of the Eligible Employee's termination of employment with the Company.

Section 9. CLAWBACK; RECOVERY.

All payments and severance benefits provided under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. No recovery of compensation under such a clawback policy will be an event giving rise to a right to resign for Good Reason, constructive termination, or any similar term under any plan of or agreement with the Company.

Section 10. RIGHT TO INTERPRET AND ADMINISTER PLAN; AMENDMENT AND TERMINATION.

(a) Interpretation and Administration. The Committee shall be the Plan Administrator and shall have the exclusive discretion and authority to establish rules, forms, and procedures for the administration of the Plan and to construe and interpret the Plan and to decide any and all questions of fact, interpretation, definition, computation or administration arising in connection with the operation of the Plan, including, but not limited to, the eligibility to participate in the Plan and amount of benefits paid under the Plan. The rules, interpretations, computations and other actions of the Committee shall be binding and conclusive on all persons.

(b) Amendment. The Plan Administrator reserves the right to amend this Plan at any time; *provided, however,* that any amendment of the Plan will not be effective as to a particular employee who is or may be adversely impacted by such amendment and has an effective Participation Agreement without the written consent of such employee.

(c) Termination. Unless otherwise extended by the Committee, the Plan will automatically terminate following satisfaction of all the Company's obligations under the Plan.

Section 11. NO IMPLIED EMPLOYMENT CONTRACT.

The Plan shall not be deemed (i) to give any employee or other person any right to be retained in the employ of the Company or (ii) to interfere with the right of the Company to discharge any employee or other person at any time, with or without cause, which right is hereby reserved. This Plan does not modify the at-will employment status of any Eligible Employee.

Section 12. LEGAL CONSTRUCTION.

This Plan is intended to be governed by and shall be construed in accordance with the Employee Retirement Income Security Act of 1974 ("***ERISA***") and, to the extent not preempted by ERISA, the laws of the State of California.

Section 13. CLAIMS, INQUIRIES AND APPEALS.

(a) Applications for Benefits and Inquiries. Any application for benefits, inquiries about the Plan or inquiries about present or future rights under the Plan must be submitted to the Plan Administrator in writing by an applicant (or his or her authorized representative). The Plan Administrator is:

XOMA Corporation
Compensation Committee of the Board of Directors
Attention to: Corporate Secretary
2200 Powell Street, Suite 310
Emeryville, CA 94608

(b) Denial of Claims. In the event that any application for benefits is denied in whole or in part, the Plan Administrator must provide the applicant with written or electronic notice of the denial of the application, and of the applicant's right to review the denial. Any electronic notice will comply with the regulations of the U.S. Department of Labor. The notice of denial will be set forth in a manner designed to be understood by the applicant and will include the following:

(1) the specific reason or reasons for the denial;

(2) references to the specific Plan provisions upon which the denial is based;

(3) a description of any additional information or material that the Plan Administrator needs to complete the review and an explanation of why such information or material is necessary; and

(4) an explanation of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the applicant's right to bring a civil action under Section 502(a) of ERISA following a denial on review of the claim, as described in Section 13(d) below.

This notice of denial will be given to the applicant within 90 days after the Plan Administrator receives the application, unless special circumstances require an extension of time, in which case, the Plan Administrator has up to an additional 90 days for processing the application. If an extension of time for processing is required, written notice of the extension will be furnished to the applicant before the end of the initial 90 day period.

This notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render its decision on the application.

(c) Request for a Review. Any person (or that person's authorized representative) for whom an application for benefits is denied, in whole or in part, may appeal the denial by submitting a request for a review to the Plan Administrator within 60 days after the application is denied. A request for a review shall be in writing and shall be addressed to:

XOMA Corporation
Compensation Committee of the Board of Directors
Attention to: Corporate Secretary
2200 Powell Street, Suite 310
Emeryville, CA 94608

A request for review must set forth all of the grounds on which it is based, all facts in support of the request and any other matters that the applicant feels are pertinent. The applicant (or his or her representative) shall have the opportunity to submit (or the Plan Administrator may require the applicant to submit) written comments, documents, records, and other information relating to his or her claim. The applicant (or his or her representative) shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his or her claim. The review shall take into account all comments, documents, records and other information submitted by the applicant (or his or her representative) relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(d) Decision on Review. The Plan Administrator will act on each request for review within 60 days after receipt of the request, unless special circumstances require an extension of time (not to exceed an additional 60 days), for processing the request for a review. If an extension for review is required, written notice of the extension will be furnished to the applicant within the initial 60 day period. This notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render its decision on the review. The Plan Administrator will give prompt, written or electronic notice of its decision to the applicant. Any electronic notice will comply with the regulations of the U.S. Department of Labor. In the event that the Plan Administrator confirms the denial of the application for benefits in whole or in part, the notice will set forth, in a manner calculated to be understood by the applicant, the following:

(1) the specific reason or reasons for the denial;

(2) references to the specific Plan provisions upon which the denial is based;

(3) a statement that the applicant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his or her claim; and

(4) a statement of the applicant's right to bring a civil action under Section 502(a) of ERISA.

(e) Rules and Procedures. The Plan Administrator will establish rules and procedures, consistent with the Plan and with ERISA, as necessary and appropriate in carrying out its responsibilities in reviewing benefit claims. The Plan Administrator may require an applicant who wishes to submit additional information in connection with an appeal from the denial of benefits to do so at the applicant's own expense.

(f) Exhaustion of Remedies. No legal action for benefits under the Plan may be brought until the applicant (i) has submitted a written application for benefits in accordance with the procedures described by Section 13(a) above, (ii) has been notified by the Plan Administrator that the application is denied, (iii) has filed a written request for a review of the application in accordance with the appeal procedure described in Section 13(c) above, and (iv) has been notified that the Plan Administrator has denied the appeal. Notwithstanding the foregoing, if the Plan Administrator does not respond to an Eligible Employee's claim or appeal within the relevant time limits specified in this Section 13, the Eligible Employee may bring legal action for benefits under the Plan pursuant to Section 502(a) of ERISA.

Section 14. BASIS OF PAYMENTS TO AND FROM PLAN.

The Plan shall be unfunded, and all cash payments under the Plan shall be paid only from the general assets of the Company.

Section 15. OTHER PLAN INFORMATION.

(a) Employer and Plan Identification Numbers. The Employer Identification Number assigned to the Company (which is the "Plan Sponsor" as that term is used in ERISA) by the Internal Revenue Service is 52-2154066. The Plan Number assigned to the Plan by the Plan Sponsor pursuant to the instructions of the Internal Revenue Service is 510.

(b) Ending Date for Plan's Fiscal Year. The date of the end of the fiscal year for the purpose of maintaining the Plan's records is December 31.

(c) Agent for the Service of Legal Process. The agent for the service of legal process with respect to the Plan is:

XOMA Corporation
Compensation Committee of the Board of Directors
Attention to: Corporate Secretary
2200 Powell Street, Suite 310
Emeryville, CA 94608

In addition, service of legal process may be made upon the Plan Administrator.

(d) Plan Sponsor. The "Plan Sponsor" is:

XOMA Corporation
Compensation Committee of the Board of Directors
Attention to: Corporate Secretary
2200 Powell Street, Suite 310
Emeryville, CA 94608

(e) Plan Administrator. The Plan Administrator is the Committee. The Plan Administrator's contact information is:

XOMA Corporation
Compensation Committee of the Board of Directors
Attention to: Corporate Secretary
2200 Powell Street, Suite 310
Emeryville, CA 94608

The Plan Administrator is the named fiduciary charged with the responsibility for administering the Plan.

Section 16. STATEMENT OF ERISA RIGHTS.

Participants in this Plan are entitled to certain rights and protections under ERISA. If you are an Eligible Employee, you are considered a participant in the Plan and, under ERISA, you are entitled to:

(a) Receive Information About Your Plan and Benefits

(1) Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites, all documents governing the Plan and a copy of the latest annual report (Form 5500 Series), if applicable, filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration;

(2) Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan and copies of the latest annual report (Form 5500 Series), if applicable, and an updated (as necessary) Summary Plan Description. The Administrator may make a reasonable charge for the copies; and

(3) Receive a summary of the Plan's annual financial report, if applicable. The Plan Administrator is required by law to furnish each Eligible Employee with a copy of this summary annual report.

(b) Prudent Actions by Plan Fiduciaries. In addition to creating rights for Plan Eligible Employees, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Eligible Employees and beneficiaries. No one, including your employer, your union or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a Plan benefit or exercising your rights under ERISA.

(c) Enforce Your Rights. If your claim for a Plan benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan, if applicable, and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to $110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator.

If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court.

If you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

(d) Assistance with Your Questions. If you have any questions about the Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

APPENDIX A PARTICIPATION

AGREEMENT

Name:_____

Section 1. ELIGIBILITY.

You have been designated as eligible to participate in the XOMA Corporation Retention and Severance Plan (the "***Plan***"), a copy of which is attached to this Participation Agreement (the "***Participation Agreement***"). Capitalized terms not explicitly defined in this Participation Agreement but defined in the Plan shall have the same definitions as in the Plan. You will receive the benefits set forth below if you meet all the eligibility requirements set forth in the Plan, including, without limitation, executing the required Release within the applicable time period set forth therein and allowing such Release to become effective in accordance with its terms. Notwithstanding the schedule for provision of benefits as set forth below, the schedule and timing of payment of any benefits under this Participant Agreement is subject to any delay in payment that may be required under the Plan.

Section 2. SEVERANCE BENEFITS.[1]

If you are terminated in a Covered Termination, you will receive the severance benefits set forth in this Section 2. All severance benefits described herein are subject to standard deductions and withholdings.

(a) Base Salary. You shall receive a cash payment in an amount equal to [*] months (the "***Severance Period***") of payment of your then-applicable Base Salary. The Base Salary payment will be paid to you in a lump sum cash payment no later than the second regular payroll date following the effective date of the Release, but in any event not later than March 15 of the year following the year in which your Separation from Service occurs.

(b) Bonus Payment. You will be entitled to payment of [*] of your annual target cash bonus for the year in which your Covered Termination occurs (the "***Annual Target Bonus Severance Payment***"). The Annual Target Bonus Severance Payment shall be paid in a lump sum cash payment no later than the second regular payroll date following the effective date of the Release, but in any event not later than March 15 of the year following the year in which your Separation from Service occurs.

[1] Severance benefits to be omitted from participation agreement for CFO, other than paragraph (c) (Retention Bonus Payment).

(c) Retention Bonus Payment. If your Covered Termination occurs during the Initial Period (as such term is defined in the Plan), then you will receive payment of the retention bonus that you would have received had you remained employed through the last day of the Initial Period. And if your Covered Termination occurs during the Extended Period (as such term is defined in the Plan), then you will receive payment of the retention bonus that you would have received had you remained employed through the last day of the Extended Period. Any bonus paid to you under this Section will be paid to you at the same time as the severance payment set forth in Section 2(a) above.

(d) Payment of Continued Group Health Plan Benefits. If you timely elect continued group health plan continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("***COBRA***") following your Covered Termination date, the Company shall pay directly to the carrier the full amount of your COBRA premiums on behalf of you for your continued coverage under the Company's group health plans, including coverage for your eligible dependents, until the earliest of (i) the end of the Severance Period following the date of your Covered Termination, (ii) the expiration of your eligibility for the continuation coverage under COBRA, or (iii) the date when you become eligible for substantially equivalent health insurance coverage in connection with new employment (such period from your termination date through the earliest of (i) through (iii), the "***COBRA Payment Period***"). Upon the conclusion of such period of insurance premium payments made by the Company, you will be responsible for the entire payment of premiums (or payment for the cost of coverage) required under COBRA for the duration of your eligible COBRA coverage period, if any. You agree to promptly notify the Company as soon as you become eligible for health insurance coverage in connection with new employment or self-employment.

Notwithstanding the foregoing, if at any time the Company determines, in its sole discretion, that it cannot provide the COBRA premium benefits without potentially incurring financial costs or penalties under applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then in lieu of paying COBRA premiums directly to the carrier on your behalf, the Company will instead pay you on the last day of each remaining month of the COBRA Payment Period a fully taxable cash payment equal to the value of your monthly COBRA premium for the first month of COBRA coverage, subject to applicable tax withholding (such amount, the "***Special Severance Payment***"), such Special Severance Payment to be made without regard to your election of COBRA coverage or payment of COBRA premiums and without regard to your continued eligibility for COBRA coverage during the COBRA Payment Period. Such Special Severance Payment shall end upon expiration of the COBRA Payment Period.

(e) Equity Acceleration. The vesting and exercisability of each outstanding unvested stock option and other stock award, as applicable, that you hold covering Company common stock as of the date of your Covered Termination (each, an "***Equity Award***") that is subject to time-vesting shall be accelerated in full and any reacquisition or repurchase rights held by the Company in respect of Company common stock issued pursuant to any time-vesting Equity Award granted to you shall lapse in full. In addition, the Company will extend the period of time in which you may exercise any vested outstanding and unexercised stock options or other equity awards (including those vested pursuant to the previous sentence) through the applicable expiration date(s) of your options.

(f) Outplacement. The Company will pay (directly to the outplacement provider of your choice) up to [*] in outplacement assistance for you.

To accept the terms of this Participation Agreement and participate in the Plan, please sign and date this Participation Agreement in the space provided below and return it to _____ no later than _____, ____.

Eligible Employee

_____
[Insert Name]

Date: _____

Exhibit 10.15

OFFICER EMPLOYMENT AGREEMENT

This Officer Employment Agreement ("Agreement") between Owen Hughes ("Employee") and XOMA Corporation ("XOMA" or "the Company") (collectively, the "Parties") is effective as of January 1, 2023 (the "Agreement Effective Date").

1. Employment. Employee's employment with XOMA in the position of Executive Chairman and Interim Chief Executive Officer shall commence on the Agreement Effective Date. Employee's employment with XOMA will be governed by the terms set forth in this Agreement.

2. Position and Responsibilities. Employee shall be employed on a part-time basis, averaging approximately 30-40 hours per month, reporting to the Board of Directors (the "Board"). While employed by XOMA, Employee may not accept consulting or other business or non-profit opportunities without first obtaining written approval from the Board. In addition, while employed by XOMA, except on behalf of XOMA, Employee will not directly or indirectly serve as an officer, director, stockholder, employee, partner, proprietor, investor, joint venturer, associate, representative or consultant of any other person, corporation, firm, partnership or other entity whatsoever known by Employee to compete with XOMA (or that is planning or preparing to compete with XOMA), anywhere in the world, in any line of business engaged in (or planned to be engaged in) by XOMA; *provided, however,* that Employee may purchase or otherwise acquire up to (but not more than) five percent (5%) of any class of securities of any enterprise (but without participating in the activities of such enterprise) if such securities are listed on any national or regional securities exchange.

3. Term of Employment. The term of Employee's employment with XOMA shall be the period from the Agreement Effective Date until Employee's employment is terminated pursuant to Section 7. It is anticipated that Employee will serve as Interim Chief Executive Officer for a period of one (1) year while the Company recruits a new Chief Executive Officer. Upon the new Chief Executive Officer commencing employment with the Company, Employee's employment will automatically terminate and Employee will cease serving as Executive Chair, however Employee will remain a member of the Board of Directors.

4. Compensation and Reimbursement of Expenses.

(a) Compensation. Employee will receive for services to be rendered hereunder a base salary paid at the rate of $125,000 per year, less applicable payroll deductions and withholdings (the "Base Salary"), paid on XOMA's ordinary payroll cycle. In addition, Employee shall be eligible to participate in XOMA's Corporate Achievement Goals plan ("CAGs"), as it may be amended from time to time in accordance with its terms, with an initial target rate of 55% of Base Salary, which can be adjusted from time to time by the Board.

(b) Equity Awards. Subject to approval by the Board, the Company will grant Employee a non-qualified option to purchase 100,000 shares of the Company's common stock with an exercise price equal to the fair market value of the common stock (the "FMV Option"). The FMV Option shall vest in four equal installments on March 31, 2023, June 30, 2023, September 30, 2023 and December 31, 2023 (subject to Employee's continuous service). In addition, subject to approval by the Board, the Company will grant Employee a non-qualified

option to purchase 75,000 shares of the Company's common stock with an exercise price equal to $30 per share (the "Additional Option"). The Additional Option shall vest monthly over three years (subject to Employee's continuous service). The FMV Option and the Additional Option shall be issued outside of, but subject in all respects to the terms and conditions of the Company's Equity Incentive Plan (the "Plan"), and shall be governed in all respects by the terms of the Plan as if granted thereunder, the grant notice and the option agreement. The Company intends for the FMV Option and the Additional Option to each be a material inducement to Employee entering into employment with the Company within the meaning of Listing Rule 5635(c)(4) of The Nasdaq Stock Market LLC. Employee may be eligible for additional annual equity grants at the discretion of the Board.

(c) Reimbursement of Expenses. XOMA shall reimburse Employee for all reasonable travel and other expenses incurred in performing Employee's obligations under this Agreement in a manner consistent with XOMA policies.

5. Participation in Benefit Plans. Employee shall not be eligible for benefits under any employee benefit plan of XOMA due to his part-time status, except as required by law.

6. Compliance with Proprietary Information Agreement and XOMA Policies. As a condition of employment with XOMA, Employee must sign and comply with the Employee Confidential Information and Inventions Assignment Agreement attached hereto as Exhibit A (the "Confidentiality Agreement"), which prohibits unauthorized use or disclosure of XOMA proprietary information, among other obligations. In addition, Employee is required to abide by XOMA's policies and procedures (including but not limited to XOMA's Employee Handbook), as adopted or modified from time to time within XOMA's discretion; *provided, however,* that in the event the terms of this Agreement differ from or are in conflict with XOMA's general employment policies or practices, this Agreement shall control.

7. Termination of Employment; Severance.

(a) Termination. Consistent with XOMA policy, Employee's employment relationship with XOMA is at-will. Accordingly, Employee may resign Employee's employment with XOMA at any time and for any reason whatsoever simply by notifying XOMA; and XOMA may terminate Employee's employment at any time, with or without cause or advance notice. Employee's employment will automatically end upon a new Chief Executive Officer commencing employment with the Company (unless Employee and XOMA mutually agree otherwise).

(b) Severance. If Employee's employment automatically terminates due to a new Chief Executive Officer commencing employment within one (1) year after the Agreement Effective Date, then provided that such termination of employment constitutes a "separation from service" under Treas. Reg. Section 1.409A-1(h), the Company will pay Employee severance in the form of Base Salary continuation at the rate then in effect through the one-year anniversary of the Agreement Effective Date. Such severance payments will be paid on the Company's ordinary payroll dates (starting on the first payroll date after the Release Agreement (defined below) becomes effective) and will be subject to standard deductions and withholdings. As a condition receiving such severance benefits, Employee shall execute and deliver to XOMA a release of claims in favor of XOMA substantially in the form attached hereto as Exhibit B (the "Release

Agreement") within the timeframe set forth in the Release Agreement, but not later than forty-five (45) days following Employee's employment termination date, and allow the Release Agreement to become effective according to its terms (by not invoking any legal right to revoke it) within any applicable time period set forth in the Release Agreement. If the period during which Employee may elect to execute the Release and have it become effective may occur in more than one taxable year, then the first payroll date after the Release Agreement becomes effective will be deemed to occur in the second of such taxable years. Any such severance payments that would have been made from the date of such termination to the first payroll date following the effective date of the Release will be made on such first payroll date.

8. Binding Agreement. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and assigns.

9. Compliance with Section 409A of the Code.

(a) It is intended that this Agreement will comply with Section 409A of the Code and its regulations and guidelines (collectively, "Section 409A"), to the extent the Agreement is subject to Section 409A, and the Agreement shall be interpreted on a basis consistent with such intent. If an amendment of the Agreement is necessary in order for it to comply with Section 409A, the Parties will negotiate in good faith to amend the Agreement in a manner that preserves the original intent of the Parties to the extent reasonably possible. No action or failure to act under this Section 9 shall subject XOMA to any claim, liability, or expense, and XOMA shall not have any obligation to indemnify or otherwise protect Employee from the obligation to pay any taxes, interest or penalties under Section 409A.

(b) With respect to any reimbursement or in-kind benefit arrangements of XOMA and its subsidiaries that constitute deferred compensation for purposes of Section 409A, except as otherwise permitted by Section 409A, the following conditions shall be applicable: (A) the amount eligible for reimbursement, or in-kind benefits provided, under any such arrangement in one calendar year may not affect the amount eligible for reimbursement, or in-kind benefits to be provided, under such arrangement in any other calendar year (except that the benefit plans may impose a limit on the amount that may be reimbursed or paid), (B) any reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and (C) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. Whenever payments under this Agreement are to be made in installments, each such installment shall be deemed to be a separate payment for purposes of Section 409A.

(c) If Employee is deemed on the date of "separation from service" (under Treas. Reg. Section 1.409A-1(h)) to be a "specified employee" (under Treas. Reg. Section 1.409A-1(i)), then with regard to any payment or benefit that is considered deferred compensation under Section 409A of the Code payable on account of a "separation from service" that is required to be delayed under Section 409A(a)(2)(B) of the Code (after taking into account any applicable exceptions to such requirement), such payment or benefit shall be made or provided on the earlier of (i) the expiration of the six (6)-month period measured from the date of Employee's "separation from service," or (ii) the date of Employee's death ("Delay Period"). Upon expiration of the Delay Period, all payments and benefits delayed under this Section 9(c) shall be paid or reimbursed to

Employee in a lump sum and any remaining payments and benefits due under this Agreement shall be paid or provided on the payment dates specified. For purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment, references to Employee's "termination of employment" (and corollary terms) shall be construed to refer to Employee's "separation from service" (under Treas. Reg. Section 1.409A-1(h)).

10. Notices. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given upon actual confirmed receipt by mail, courier or email. In the case of Employee, mailed notices shall be addressed to Employee at the home or personal email address that Employee most recently communicated to XOMA in writing. In the case of XOMA, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

11. Successors.

(a) XOMA's Successors. Any successor to XOMA (direct or indirect, by purchase, lease, merger, amalgamation, consolidation, liquidation or otherwise) to all or substantially all of XOMA's business or assets shall assume XOMA's obligations under this Agreement and agree expressly to perform XOMA's obligations under this Agreement in the same manner and to the same extent as XOMA would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term "XOMA" shall include any successor to XOMA's business or assets which executes and delivers the assumption agreement described in this Section 11(a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Employee's Successors. Without the written consent of XOMA, Employee shall not assign or transfer this Agreement or any right or obligation under this Agreement to any other person or entity. However, except as otherwise set forth herein, the terms of this Agreement and all rights of Employee shall inure to the benefit of, and be enforceable by, Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

12. Amendment of Agreement. Changes in Employee's employment terms, other than those changes expressly reserved to XOMA's or the Board's discretion in this Agreement, require a written modification approved by XOMA and signed by Employee and a duly authorized officer of XOMA other than Employee.

13. Waiver. Any party's failure to enforce any provision or provisions of the Agreement will not in any way be construed as a waiver of any such provision or provisions, nor prevent any party from thereafter enforcing each and every other provision of the Agreement. The rights granted to the Parties herein are cumulative and will not constitute a waiver of any party's right to assert all other legal remedies available to it under the circumstances.

14. Severability. In the event any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any remaining part of such provision or any other provision of this Agreement and the provision in question shall be

modified so as to be rendered enforceable in a manner consistent with the intent of the Parties insofar as possible under applicable law.

15. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to conflicts of law principles. Employee expressly consents to personal jurisdiction and venue in the state and federal courts for Alameda County, California for any lawsuit filed there against Employee by XOMA arising from or related to this Agreement.

16. Fees and Costs. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Agreement.

17. Counterparts. This Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile and electronic signatures shall be equivalent to original signatures.

18. Arbitration. To ensure the timely and economical resolution of disputes that may arise between Employee and the Company, both Employee and the Company mutually agree that pursuant to the Federal Arbitration Act, 9 U.S.C. §1-16, and to the fullest extent permitted by applicable law, Employee will submit solely to final, binding and confidential arbitration any and all disputes, claims, or causes of action arising from or relating to: the negotiation, execution, interpretation, performance, breach or enforcement of this Agreement; or Employee's employment with the Company (including but not limited to all statutory claims); or the termination of Employee's employment with the Company (including but not limited to all statutory claims). BY AGREEING TO THIS ARBITRATION PROCEDURE, BOTH EMPLOYEE AND THE COMPANY WAIVE THE RIGHT TO RESOLVE ANY SUCH DISPUTES THROUGH A TRIAL BY JURY OR JUDGE OR THROUGH AN ADMINISTRATIVE PROCEEDING. The Arbitrator will have the sole and exclusive authority to determine whether a dispute, claim or cause of action is subject to arbitration under this section and to determine any procedural questions which grow out of such disputes, claims or causes of action and bear on their final disposition. All claims, disputes, or causes of action under this section, whether by Employee or the Company, must be brought solely in an individual capacity, and will not be brought as a plaintiff (or claimant) or class member in any purported class or representative proceeding, nor joined or consolidated with the claims of any other person or entity. The Arbitrator may not consolidate the claims of more than one person or entity, and may not preside over any form of representative or class proceeding. To the extent that the preceding sentences in this paragraph are found to violate applicable law or are otherwise found unenforceable, any claim(s) alleged or brought on behalf of a class will proceed in a court of law rather than by arbitration. Any arbitration proceeding under this Arbitration section will be presided over by a single arbitrator and conducted by JAMS, Inc. ("JAMS") in San Francisco, CA under the then applicable JAMS rules for the resolution of employment disputes (available upon request and also currently available at http://www.jamsadr.com/rules-employment-arbitration/). Employee and the Company both have the right to be represented by legal counsel at any arbitration proceeding, at each party's own expense. The Arbitrator will: (a) have the authority to compel adequate discovery for the resolution of the dispute; (b) issue a written arbitration decision, to include the arbitrator's essential findings and conclusions and a statement of the award; and (c) be authorized to award any or all remedies that Employee or the Company would be entitled to seek in a court of law. The Company

will pay all JAMS arbitration fees in excess of the amount of court fees that would be required of Employee if the dispute were decided in a court of law. This section will not apply to any action or claim that cannot be subject to mandatory arbitration as a matter of law, including, without limitation, claims brought pursuant to the California Private Attorneys General Act of 2004, as amended, the California Fair Employment and Housing Act, as amended, and the California Labor Code, as amended, to the extent such claims are not permitted by applicable law to be submitted to mandatory arbitration and such applicable law is not preempted by the Federal Arbitration Act or otherwise invalid (collectively, the "Excluded Claims"). In the event Employee brings multiple claims, including one of the Excluded Claims listed above, the Excluded Claims may be filed with a court, while any other claims will remain subject to mandatory arbitration. Nothing in this section is intended to prevent either Employee or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Any final award in any arbitration proceeding hereunder may be entered as a judgment in the federal and state courts of any competent jurisdiction and enforced accordingly.

19. Indemnification. Employee shall execute the Company's standard form of indemnification agreement provided herewith.

20. Complete Agreement. This Agreement, together with Employee's Confidentiality Agreement and the other agreements referenced herein, forms the complete and exclusive embodiment of the entire agreement between the Parties with regard to this subject matter, and supersedes and replaces any other agreements or promises made to Employee by anyone, whether oral or written.

[signature page to follow]

COMPANY: **XOMA CORPORATION**

By: /s/ W. Denman Van Ness
W. Denman Van Ness
Lead Independent Director

EMPLOYEE: /s/ Owen Hughes
Owen Hughes

EXHIBIT A

EMPLOYEE CONFIDENTIAL INFORMATION AND INVENTIONS ASSIGNMENT AGREEMENT

EXHIBIT B

FORM RELEASE OF CLAIMS AGREEMENT

This Release of Claims Agreement ("Release Agreement") is entered into between XOMA Corporation ("XOMA") and Owen Hughes ("Employee"). XOMA and Employee (collectively, the "Parties") are parties to an Officer Employment Agreement ("Employment Agreement") and agree as follows:

1. Termination. Employee's employment with XOMA terminated on _____, 20__.

2. Release of Claims. In exchange for the compensation, benefits and other consideration to be provided to Employee under the Employment Agreement that Employee is not otherwise entitled to receive, Employee hereby generally and completely releases XOMA and XOMA (US) LLC, and their past and present officers, agents, directors, employees, investors, shareholders, administrators, partners, attorneys, agents, insurers, affiliates, divisions, subsidiaries, parents, predecessor and successor corporations, and assigns (collectively, the "Released Parties"), from, and agrees not to sue or otherwise institute any legal or administrative proceedings concerning, any and all claims, duties, liabilities, obligations and causes of action, both known and unknown, that arise out of or are in any way related to events, acts, conduct or omissions occurring prior to or on the date Employee signs this Release Agreement (collectively, the "Released Claims").

The Released Claims include but are not limited to:

(a) all claims arising out of or in any way related to Employee's employment with XOMA or the termination of that employment;

(b) all claims related to compensation or benefits from XOMA, including salary, bonuses, commissions, vacation, paid time off, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership, equity or profits interests in XOMA (including but not limited to any right to purchase, or actual purchase, of shares of stock of XOMA);

(c) all claims for breach of contract, wrongful termination and breach of the implied covenant of good faith and fair dealing;

(d) all tort claims, including claims for fraud, defamation, emotional distress and discharge in violation of public policy;

(e) all federal, state and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees or other claims arising under the Federal Civil Rights Act of 1964, the federal Civil Rights Act of 1991, the federal Age Discrimination in Employment Act of 1967 (the "ADEA"), the federal Americans with Disabilities Act of 1990, the federal Fair Labor Standards Act, the federal the Employee Retirement Income Security Act of 1974, the federal Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act and the California Labor Code, and all amendments to and regulations issued under each such statute;

(f) all claims for violation of the federal or any state constitution;

(g) all claims arising out of any other laws and regulations relating to employment or employment discrimination; and

(h) all claims for attorneys' fees and costs.

3. Acknowledgment of Waiver of Claims under ADEA. Employee acknowledges that Employee is knowingly and voluntarily waiving and releasing any rights Employee may have under the ADEA, and that the consideration given for the waiver and release in this Section 3 is in addition to anything of value to which Employee is already entitled. Employee further acknowledges that Employee has been advised, as required by the ADEA, that: (a) Employee's waiver and release do not apply to any rights or claims that may arise after the date Employee signs this Release Agreement; (b) Employee should consult with an attorney prior to signing this Release Agreement (although Employee may choose voluntarily not to do so); (c) Employee has twenty-one (21) days to consider this Release Agreement (although Employee may choose voluntarily to sign it earlier); (d) Employee has seven (7) days following the date Employee signs this Release Agreement to revoke the Release Agreement (by providing written notice of Employee's revocation to the Legal Department at XOMA); and (e) this Release Agreement will not be effective until the date upon which the revocation period has expired, which will be the eighth (8th) day after the date that this Release Agreement is signed by Employee provided that Employee does not revoke it (the "Effective Date").

4. Waiver of Unknown Claims. In giving the releases set forth in this Release Agreement, which include claims which may be unknown to Employee at present, Employee acknowledges that Employee has read and understands Section 1542 of the California Civil Code which reads as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Employee hereby expressly waives and relinquishes all rights and benefits under that section and any law or legal principle of similar effect in any jurisdiction with respect to Employee's release of claims herein, including but not limited to the release of unknown and unsuspected claims.

5. Excluded Claims. Notwithstanding the foregoing, the following are not included in the Released Claims (the "Excluded Claims"): (a) any rights or claims for indemnification Employee may have pursuant to any written indemnification agreement with XOMA to which Employee is a party or under applicable law; (b) any rights which cannot be waived as a matter of law; (c) any rights Employee has to file or pursue a claim for workers' compensation or unemployment insurance; and (d) any claims for breach of the Employment Agreement or this Release Agreement. **In addition, nothing in this Release Agreement prevents Employee from filing, cooperating with or participating in any proceedings before the Equal Employment**

Opportunity Commission, the Department of Labor, the California Department of Fair Employment and Housing or any analogous federal or state government agency, except that Employee acknowledges and agrees that Employee hereby waives Employee's right to any monetary benefits in connection with any such claim, charge or proceeding. Employee represents and warrants that, other than the Excluded Claims, Employee is not aware of any claims Employee has or might have against any of the Released Parties that are not included in the Released Claims.

6. Representations. Employee represents that Employee has been paid all compensation owed and for all time worked; Employee has received all the leave and leave benefits and protections for which Employee is eligible pursuant to the federal Family and Medical Leave Act, the California Family Rights Act, any applicable law or XOMA policy; and Employee has not suffered any on the job injury for which Employee has not already filed a workers' compensation claim.

7. Nondisparagement. Employee agrees not to disparage XOMA, and XOMA's officers, directors, employees, shareholder, members and agents, in any manner likely to be harmful to them or their business, business reputation or personal reputation. Similarly, Employee understands that XOMA agrees to direct its directors and officers not to disparage Employee in any manner likely to be harmful to Employee's business reputation or personal reputation. Nothing in this provision, however, shall prevent either Employee or XOMA from responding accurately and fully to any request for information if required by legal process or in connection with a government investigation. In addition, nothing in this provision or this Release Agreement is intended to prohibit or restrain Employee in any manner from making disclosures that are protected under the whistleblower provisions of federal law or regulation or under other applicable law or regulation.

8. No Voluntary Adverse Action. Employee agrees that Employee will not voluntarily provide assistance, information or advice, directly or indirectly (including through agents or attorneys), to any person or entity in connection with any proposed or pending litigation, arbitration, administrative claim, cause of action, or other formal proceeding of any kind brought against XOMA, its parent or subsidiary entities, affiliates, officers, directors, employees or agents, nor shall Employee induce or encourage any person or entity to bring any such claims; *provided, however,* that Employee must respond accurately and truthfully to any question, inquiry or request for information when required by legal process (e.g., a valid subpoena or other similar compulsion of law) or as part of a government investigation.

9. Return of XOMA Property; Compliance with Proprietary Information Agreement. Employee represents that Employee has complied fully with Section 7(g) of the Employment Agreement and the provisions of Employee's Employee Confidential Information and Invention Assignment Agreement with XOMA (the "Confidentiality Agreement"), and further agrees to continue to abide by Employee's continuing obligations under the Confidentiality Agreement.

10. Fees and Costs. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Release Agreement.

11. No Representations. Employee represents that Employee has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the

provisions of this Release Agreement. Neither Party has relied upon any representations or statements made by the other Party which are not specifically set forth in this Release Agreement.

12. Severability. In the event any provision of this Release Agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any remaining part of such provision or any other provision of this Release Agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the Parties insofar as possible under applicable law.

13. Entire Agreement. This Release Agreement, together with the Employment Agreement, forms the complete and exclusive embodiment of the entire agreement between the Parties with regard to this subject matter. This Release Agreement may only be modified or amended in a writing signed by Employee and a duly authorized officer of XOMA other than Employee.

14. Governing Law. This Release Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to conflicts of law principles. Employee expressly consents to personal jurisdiction and venue in the state and federal courts for Alameda County, California for any lawsuit filed there against Employee by XOMA arising from or related to this Release Agreement.

15. Counterparts. This Release Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile and electronic signatures shall be equivalent to original signatures.

COMPANY:

XOMA CORPORATION

By: /s/ W. Denman Van Ness
W. Denman Van Ness
Lead Independent Director

EMPLOYEE:

/s/ Owen Hughes
Owen Hughes

Exhibit 10.16

OFFICER EMPLOYMENT AGREEMENT

This Officer Employment Agreement ("Agreement") between Bradley Sitko ("Employee") and XOMA Corporation ("XOMA" or "the Company") (collectively, the "Parties") is effective as of January 3, 2023 (the "Agreement Effective Date").

1. Employment. Employee's employment with XOMA in the position of Chief Investment Officer shall commence on the Agreement Effective Date. Employee's employment with XOMA will be governed by the terms set forth in this Agreement.

2. Position and Responsibilities. Employee shall devote reasonable best efforts and substantially all of Employee's working time and attention to employment with XOMA. Employee shall perform those duties and responsibilities associated with Chief Investment Officer and as may be directed by the Executive Chairman (the "Chairman"), to whom Employee will report. While employed by XOMA, Employee may not accept consulting or other business or non-profit opportunities without first obtaining written approval from the Chairman. In addition, while employed by XOMA, except on behalf of XOMA, Employee will not directly or indirectly serve as an officer, director, stockholder, employee, partner, proprietor, investor, joint venturer, associate, representative or consultant of any other person, corporation, firm, partnership or other entity whatsoever known by Employee to compete with XOMA (or that is planning or preparing to compete with XOMA), anywhere in the world, in any line of business engaged in (or planned to be engaged in) by XOMA; *provided, however,* that Employee may purchase or otherwise acquire up to (but not more than) five percent (5%) of any class of securities of any enterprise (but without participating in the activities of such enterprise) if such securities are listed on any national or regional securities exchange. Notwithstanding the foregoing, Employee is permitted to provide consulting services to his former employer during the first thirty (30) days of Employee's employment with the Company provided such consulting services are limited to ten (10) hours per week and do not otherwise interfere with Employee's legal and contractual obligations to the Company in any material respect.

3. Term of Employment. The term of Employee's employment with XOMA shall be the period from the Agreement Effective Date until Employee's employment is terminated pursuant to Section 7. Consistent with XOMA policy, Employee's employment relationship with XOMA is at-will. Accordingly, Employee may resign Employee's employment with XOMA at any time and for any reason whatsoever simply by notifying XOMA; and XOMA may terminate Employee's employment at any time, with or without Cause (as defined in Section 7(d)) or advance notice, subject to the provisions of Sections 7, 8 and 9.

4. Compensation and Reimbursement of Expenses.

(a) Compensation. Employee will receive for services to be rendered hereunder a base salary paid at the rate of $500,000 per year, less applicable payroll deductions and withholdings (the "Base Salary"), paid on XOMA's ordinary payroll cycle. In addition, Employee shall be eligible to participate in XOMA's Corporate Achievement Goals plan ("CAGs"), as it may be amended from time to time in accordance with its terms, with an initial target rate of 50% of Base Salary (the "Target Bonus"), which can be adjusted from time to time by the Board of Directors (the "Board").

(b) Equity Awards. On the Agreement Effective Date, the Company will grant Employee a non-qualified option to purchase 300,000 shares of the Company's common stock with an exercise price equal to the fair market value of the common stock (the "FMV Option"). The FMV Option shall vest over a four-year period, with one-quarter of the shares vesting on the one-year anniversary of the Agreement Effective Date, and then equal monthly installments thereafter (subject to Employee's continuous service). On the Agreement Effective Date, the Company will also grant Employee a non-qualified option to purchase 250,000 shares of the Company's common stock with an exercise price of $30 per share (the "Additional Option"). The Additional Option shall vest over a four-year period, with one-quarter of the shares vesting on the one-year anniversary of the Agreement Effective Date, and then equal monthly installments thereafter (subject to Employee's continuous service). The FMV Option and the Additional Option shall be issued outside of, but subject in all respects to the terms and conditions of the Company's Equity Incentive Plan (the "Plan"), and shall be governed in all respects by the terms of the Plan as if granted thereunder, the grant notice and the option agreement. The Company intends for the FMV Option and the Additional Option each to be a material inducement to Employee entering into employment with the Company within the meaning of Listing Rule 5635(c)(4) of The Nasdaq Stock Market LLC. Employee may be eligible for additional annual equity grants at the discretion of the Board.

(c) Signing Bonus. The Company will pay Employee a signing bonus equal to $110,000. This amount will be paid within thirty (30) days after the Agreement Effective Date and will be subject to standard deductions and withholdings. If Employee resigns without Good Reason (as defined herein) or if Employee is terminated for Cause (as defined herein), in either case, within one (1) year after the Agreement Effective Date, then Employee will be required to repay the signing bonus to the Company, based on the gross amount, but prorated on a daily basis for the time employed, to be paid to the Company within sixty (60) days after Employee's termination date.

(d) Reimbursement of Expenses. XOMA shall reimburse Employee for all reasonable travel and other expenses incurred in performing Employee's obligations under this Agreement in a manner consistent with XOMA policies.

5. Participation in Benefit Plans. The payments provided in Section 4 are in addition to benefits Employee is entitled to under any employee benefit plan of XOMA for which Employee is or becomes eligible. The Employee shall be entitled to participate in any benefit plan for which key executives of the Company are eligible.

6. Compliance with Proprietary Information Agreement and XOMA Policies. As a condition of employment with XOMA, Employee must sign and comply with the Employee Confidential Information and Inventions Assignment Agreement attached hereto as Exhibit A (the "Confidentiality Agreement"), which prohibits unauthorized use or disclosure of XOMA proprietary information, among other obligations. In addition, Employee is required to abide by XOMA's policies and procedures (including but not limited to XOMA's Employee Handbook), as adopted or modified from time to time within XOMA's discretion; *provided, however,* that in the event the terms of this Agreement differ from or are in conflict with XOMA's general employment policies or practices, this Agreement shall control.

7. Termination of Employment.

(a) Termination by Employee. As provided in Section 3, Employee may resign Employee's employment with XOMA at any time and for any reason. Employee will not be entitled to any of the severance benefits set forth in Section 8 or 9 if Employee resigns, unless such resignation is for Good Reason. For purposes of this Agreement, Employee shall have "Good Reason" for resignation from employment with XOMA if any of the following actions are taken by XOMA without Employee's prior express written consent: (i) a reduction in Employee's Target Bonus unless consistent to target bonus reductions for all other member of XOMA's senior management team, (ii) a reduction in Employee's Base Salary or Target Bonus, in each case, by more than 10%; (iii) a material reduction in Employee's title or duties (including responsibilities and/or authorities); (iv) a required relocation of Executive's principal place of employment to a location outside of the New York City metropolitan area; or (v) any other material breach of this Agreement. In order for Employee to resign for Good Reason, each of the following requirements must be met: (A) Employee must provide written notice to the Board within ninety (90) days after the occurrence of the event giving rise to Good Reason setting forth the basis for Employee's resignation, (B) Employee must allow XOMA at least thirty (30) days from receipt of such written notice to cure such event, (C) such event is not reasonably cured by XOMA within such thirty (30) day period (the "Cure Period"), and (D) Employee must resign from all positions Employee then holds with XOMA not later than thirty (30) days after the expiration of the Cure Period. If Employee resigns for Good Reason, Employee shall be entitled to the severance benefits set forth in Section 8 or 9, as applicable.

(b) Termination by XOMA Without Cause. Employee may be terminated by XOMA without Cause, but in such case, Employee shall be entitled to the severance benefits set forth in Section 8 or 9, as applicable.

(c) Termination Upon Death or Permanent Disability. Except as required by law and as provided in Section 8, all benefits and other rights of Employee under this Agreement shall be terminated by Employee's death or Permanent Disability. For purposes of this Agreement, "Permanent Disability" is defined as Employee being incapable of performing duties to XOMA by reason of any medically determined physical or mental impairment that can be expected to last for a period of more than six (6) consecutive months from the first date of Employee's absence due to the disability. XOMA will give Employee at least four (4) weeks written notice of termination due to such disability.

(d) Termination by XOMA for Cause. XOMA may terminate Employee's employment for Cause, in which case, Employee will not be entitled to any severance benefits under Section 8 or 9. For purposes of this Agreement, XOMA will have Cause to terminate Employee's employment as the result of:

(i) willful material fraud or material dishonesty in connection with Employee's performance under this Agreement;

(ii) material breach of this Agreement or of XOMA's Code of Ethics;

(iii) misappropriation of a material business opportunity of XOMA ;

(iv) misappropriation of any XOMA funds or property ; or

(v) conviction of, or the entering of a plea of guilty or no contest with respect to, a felony.

(e) Notice and Opportunity to Cure. It shall be a condition precedent to XOMA's right to terminate Employee's employment for the reasons set forth in Section 7(d)(ii) of this Agreement that (i) XOMA shall first have given Employee written notice stating with specificity the reason for the termination ("Breach") and (ii) if such Breach is capable of cure or remedy, Employee will have a period of thirty (30 days after the notice is given to remedy the Breach.

(f) Resignation from any XOMA Boards. Upon termination of employment for any reason, and as a precondition to Employee's receipt of the severance benefits set forth in Section 8 or 9, Employee shall resign from any and all positions Employee holds with any board of any XOMA entity, including any XOMA subsidiaries, to be effective no later than the date of Employee's employment termination (or such other date requested or permitted by the Chairman).

(g) Return of XOMA Property. Upon termination of employment for any reason, and as a precondition to Employee's receipt of the severance benefits set forth in Section 8 or 9, Employee shall immediately return to XOMA all documents, telephones, computers, keys, credit cards, other property and records of XOMA, and shall return or destroy all copies, within Employee's possession, custody or control.

(h) Release of Claims. As a condition of entering into this Agreement and receiving the severance benefits set forth in Section 8 or 9, Employee shall execute and deliver to XOMA a release of claims in favor of XOMA substantially in the form attached hereto as Exhibit B (the "Release Agreement") within the timeframe set forth in the Release Agreement, but not later than forty-five (45) days following Employee's employment termination date, and allow the Release Agreement to become effective according to its terms (by not invoking any legal right to revoke it) within any applicable time period set forth in the Release Agreement.

8. Severance Benefits Outside of Change of Control Protection Period. Subject to Sections 7(f), 7(g) and 7(h) and Employee's continued compliance with the terms of this Agreement, the following provisions of this Section 8 shall apply upon the occurrence of an event of termination of Employee's employment with XOMA as provided in Section 7(a) for Good Reason outside of a Change of Control Protection Period, Section 7(b) for termination without Cause outside of a Change of Control Protection Period, or Section 7(c) due to death or Permanent Disability at any time (whether inside or outside of a Change of Control Protection Period), in each case, provided that the termination of Employee's employment with XOMA constitutes a "separation from service" as provided in Treas. Reg. Section 1.409A-1(h).

(a) Cash Severance. XOMA shall pay Employee, or in the event of Employee's death or Permanent Disability, Employee's beneficiaries, as severance pay: (i) one (1x) times Employee's Base Salary in effect as of Employee's employment termination date (disregarding any reduction in the Employee's Base Salary that would give rise to Employee's

right to resign with Good Reason); and (ii) a prorated portion of Employee's Target Bonus for the fiscal year in which the termination occurs, calculated by multiplying the annual Target Bonus by a fraction, the numerator of which shall be the number of months (including a portion of a month) of the fiscal year during which Employee was employed prior to the occurrence of the termination, and the denominator of which shall be twelve (12). In addition, if Employee is terminated without Cause after the completion of any fiscal year for which Employee was eligible to receive a bonus payment under CAGs, but before such CAGs payment is made, Employee shall be entitled to receive a bonus payment for such year consistent with Employee's performance against CAGs objectives and the good faith determination by the Board that CAGs bonuses are payable for such year. The severance payment described in Section 8(a)(i) shall be paid in monthly installments over twelve (12) months, with the first two (2) of such monthly installments being paid in a lump sum sixty (60) days after Employee's employment termination date, and the remaining installments being paid monthly thereafter until fully paid. The severance payments described in Section 8(a)(ii) shall be paid in a lump sum sixty (60) days after Employee's employment termination date.

(b) Group Health Coverage and Certain Other Benefits. For a period of twelve (12) months following an event of termination under Section 7(a) for Good Reason or under Section 7(b) without Cause (the "COBRA Premium Period"), XOMA shall pay the full cost of COBRA continuation coverage (the "COBRA Premiums") of Employee and Employee's spouse and eligible dependents (collectively "Covered Persons"), *provided, however,* that (A) each Covered Person constitutes a qualified beneficiary, as defined in Section 4980B(g)(1) of the Internal Revenue Code of 1986, as amended ("Code"); and (B) Employee elects continuation coverage within the prescribed time period under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"). The payments by XOMA for such group health coverage shall cease prior to the expiration of the twelve (12) month period in this Section 8(b), upon commencement of substantially similar coverage for all Covered Persons as a result of the employment of Employee by another employer, or when Employee ceases to be eligible for COBRA continuation coverage for any reason, including plan termination. Notwithstanding the foregoing, if XOMA determines, in its sole discretion, that it cannot pay the COBRA Premiums without potentially incurring financial costs or penalties under applicable law (including, without limitation, Section 2716 of the Public Health Service Act), regardless of whether Covered Persons elect or are eligible for COBRA coverage, XOMA instead shall pay to Employee, on the first day of each calendar month following Employee's employment termination date, a fully taxable cash payment equal to the applicable COBRA premiums for that month (including the amount of COBRA premiums for all Covered Persons and an additional amount to pay for the taxes on all such amounts), less required payroll deductions and withholdings (such amount, the "Special Cash Payment"), for the remainder of the COBRA Premium Period. Employee may, but is not obligated to, use such Special Cash Payments toward the cost of COBRA premiums.

(c) Outplacement Program. Upon the occurrence of an event of termination under Section 7(a) for Good Reason only or under Section 7(b) without Cause, Employee will be entitled to participate in a twelve (12)-month executive outplacement program provided by an executive coaching or outplacement service, at XOMA's expense not to exceed $15,000 and paid directly to the coach or outplacement service (the "Outplacement Services"). The Outplacement Services will commence after the Effective Date of the Release Agreement (as defined therein).

9. Severance Benefits During a Change of Control Protection Period. Subject to Sections 7(f), 7(g) and 7(h) and Employee's continued compliance with the terms of this Agreement, the following provisions of this Section 9 shall apply upon the occurrence of an event of termination of Employee's employment with XOMA as provided in Section 7(a) for Good Reason during a Change of Control Protection Period or Section 7(b) for termination without Cause during a Change of Control Protection Period, in each case, provided that the termination of Employee's employment with XOMA constitutes a "separation from service" as provided in Treas. Reg. Section 1.409A-1(h).

(a) Cash Severance. Employee shall be entitled to receive a severance payment of (i) one and a half (1.5) times Employee's Base Salary in effect immediately prior to termination of employment (disregarding any reduction in the Employee's Base Salary that would give rise to Employee's right to resign with Good Reason), (ii) one and a half (1.5) times Employee's Target Bonus in effect for the fiscal year in which the termination occurs; and (iii) any earned but unpaid bonus for any prior performance period. The severance payment shall be paid in a lump sum sixty (60) days after Employee's employment termination date.

(b) Group Health Coverage and Certain Other Benefits. For a period of eighteen (18) months, XOMA shall pay the full cost of the COBRA Premiums of the Covered Persons, subject to the same terms and conditions set forth in Section 8(b).

(c) Outplacement Program. Employee will be entitled to the Outplacement Services for twelve (12) months, subject to the same terms and conditions set forth in Section 8(c).

(d) Equity Acceleration and Extended Option Exercise Period. The vesting of all time-based equity awards granted to Employee by XOMA (including any such options granted or assumed by the surviving or continuing entity of the Change of Control) and still outstanding ("Time-Based Awards") shall automatically be accelerated so that all the Time-Based Awards may be exercised (if applicable) immediately upon Employee's termination date for any or all of the subject shares, and the post-termination exercise period of each Time-Based Award (if applicable) shall be extended to the earlier of sixty (60) months after the date of such termination and the remainder of the maximum term of such Time-Based Award); and (B) with respect to any performance-based stock awards ("Performance Awards") at the time of such termination, the Board (or its Compensation Committee) will assess in good faith the level of achievement of any performance goals for such Performance Awards and will determine in its sole discretion the degree of achievement of the performance goal(s) underlying such Performance Awards and accelerate a pro rata portion of such Performance Awards based on (x) the number of days that have elapsed during the applicable performance period divided by the total number of days in the performance period and (y) the deemed level of achievement of such performance goal(s). The Time-Based Awards and Performance Awards shall continue to be subject to all other terms and conditions of the applicable equity incentive or share option plans and the applicable award agreements between the Parties.

(e) For purposes of this Agreement, "Change of Control" means the occurrence of any of the following events:

(i) a merger, amalgamation or acquisition in which XOMA is not the surviving or continuing entity, except for a transaction the principal purpose of which is to change the jurisdiction of XOMA's organization;

(ii) the sale, transfer or other disposition of all or substantially all of the assets of XOMA;

(iii) any other reorganization or business combination in which fifty percent (50%) or more of XOMA's outstanding voting securities are transferred to different holders in a single or series of related transactions;

(iv) approval by the shareholders of XOMA of a plan of complete liquidation of XOMA;

(v) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) becoming the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of XOMA representing more than fifty percent (50%) of the total voting power represented by XOMA's then outstanding voting securities; or

(vi) a change in the composition of the Board, as a result of which fewer than a majority of directors are Incumbent Directors. "Incumbent Directors" shall mean directors who (A) are directors of XOMA as of the date hereof, (B) are elected, or nominated for election, to the Board with the affirmative votes of the directors of XOMA as of the date hereof, or (C) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of those directors whose election or nomination was not in connection with any transaction described in subsections (i) through (v) or in connection with an actual or threatened proxy contest relating to the election of directors of XOMA.

(f) For purposes of this Agreement, the "Change of Control Protection Period" means the period commencing two (2) months prior to the execution of the definitive agreement for a Change of Control and terminating twelve (12) months following the closing of a Change of Control.

(g) Excise Tax.

(i) In the event that the benefits provided for in this Section 9 would constitute a "parachute payment" within the meaning of Section 280G of the Code, and but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code ("Excise Tax")(a "280G Payment"), then any such 280G Payment (the "Payment") shall be equal to the Reduced Amount. The "Reduced Amount" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment (after reduction) being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount (i.e., the amount determined by clause (x) or by clause (y)), after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in Employee's receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in a Payment is required pursuant to the preceding sentence and

the Reduced Amount is determined pursuant to clause (x) of the preceding sentence, the reduction shall occur in the manner (the "Reduction Method") that results in the greatest economic benefit for Employee. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata (the "Pro Rata Reduction Method").

(ii) Notwithstanding any provision to the contrary, if the Reduction Method or the Pro Rata Reduction Method would result in any portion of the Payment being subject to taxes pursuant to Section 409A that would not otherwise be subject to taxes pursuant to Section 409A, then the Reduction Method and/or the Pro Rata Reduction Method, as the case may be, shall be modified so as to avoid the imposition of taxes pursuant to Section 409A as follows: (A) as a first priority, the modification shall preserve to the greatest extent possible, the greatest economic benefit for Employee as determined on an after-tax basis; (B) as a second priority, Payments that are contingent on future events (e.g., being terminated without Cause), shall be reduced (or eliminated) before Payments that are not contingent on future events; and (C) as a third priority, Payments that are "deferred compensation" within the meaning of Section 409A shall be reduced (or eliminated) before Payments that are not deferred compensation within the meaning of Section 409A.

(iii) Unless Employee and XOMA agree on an alternative accounting firm, the accountants shall perform the foregoing calculations. If the accountants are serving as accountant or auditor for the individual, entity or group effecting the Change of Control transaction, XOMA shall appoint a nationally recognized accounting firm to make the determinations required by this Section. For purposes of making the calculations required by this Section, the accountants may make reasonable assumptions and approximations and may rely on interpretations concerning the application of the Code for which there is a "substantial authority" tax reporting position. The Parties shall furnish such information and documents as the accountants may reasonably request in order to make a determination under this Section. XOMA shall bear all reasonable costs the accountants incur in connection with calculations contemplated by this Section. XOMA shall use commercially reasonable efforts to cause the accountants to make the determinations hereunder to provide its calculations, together with detailed supporting documentation, to Employee and XOMA within fifteen (15) calendar days after the date on which Employee's right to a 280G Payment becomes reasonably likely to occur (if requested at that time by Employee or XOMA) or such other time as requested by Employee or XOMA.

(iv) If Employee receives a Payment for which the Reduced Amount was determined pursuant to clause (x) of Section 9(g)(i) and the Internal Revenue Service determines thereafter that some portion of the Payment is subject to the Excise Tax, Employee agrees to promptly return to XOMA a sufficient amount of the Payment (after reduction pursuant to clause (x) of Section 9(g)(i)) so that no portion of the remaining Payment is subject to the Excise Tax. For the avoidance of doubt, if the Reduced Amount was determined pursuant to clause (y), Employee shall have no obligation to return any portion of the Payment pursuant to the preceding sentence.

10. Binding Agreement. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and assigns.

11. Compliance with Section 409A of the Code.

(a) It is intended that this Agreement will comply with Section 409A of the Code and its regulations and guidelines (collectively, "Section 409A"), to the extent the Agreement is subject to Section 409A, and the Agreement shall be interpreted on a basis consistent with such intent. If an amendment of the Agreement is necessary in order for it to comply with Section 409A, the Parties will negotiate in good faith to amend the Agreement in a manner that preserves the original intent of the Parties to the extent reasonably possible. No action or failure to act under this Section 11 shall subject XOMA to any claim, liability, or expense, and XOMA shall not have any obligation to indemnify or otherwise protect Employee from the obligation to pay any taxes, interest or penalties under Section 409A.

(b) With respect to any reimbursement or in-kind benefit arrangements of XOMA and its subsidiaries that constitute deferred compensation for purposes of Section 409A, except as otherwise permitted by Section 409A, the following conditions shall be applicable: (A) the amount eligible for reimbursement, or in-kind benefits provided, under any such arrangement in one calendar year may not affect the amount eligible for reimbursement, or in-kind benefits to be provided, under such arrangement in any other calendar year (except that the benefit plans may impose a limit on the amount that may be reimbursed or paid), (B) any reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and (C) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. Whenever payments under this Agreement are to be made in installments, each such installment shall be deemed to be a separate payment for purposes of Section 409A.

(c) If Employee is deemed on the date of "separation from service" (under Treas. Reg. Section 1.409A-1(h)) to be a "specified employee" (under Treas. Reg. Section 1.409A-1(i)), then with regard to any payment or benefit that is considered deferred compensation under Section 409A of the Code payable on account of a "separation from service" that is required to be delayed under Section 409A(a)(2)(B) of the Code (after taking into account any applicable exceptions to such requirement), such payment or benefit shall be made or provided on the earlier of (i) the expiration of the six (6)-month period measured from the date of Employee's "separation from service," or (ii) the date of Employee's death ("Delay Period"). Upon expiration of the Delay Period, all payments and benefits delayed under this Section 11(c) shall be paid or reimbursed to Employee in a lump sum and any remaining payments and benefits due under this Agreement shall be paid or provided on the payment dates specified. For purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment, references to Employee's "termination of employment" (and corollary terms) shall be construed to refer to Employee's "separation from service" (under Treas. Reg. Section 1.409A-1(h)).

12. Notices. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given upon actual confirmed receipt by mail, courier or email. In the case of Employee, mailed notices shall be addressed to Employee at the home or personal email address that Employee most recently communicated to XOMA in writing. In the case of XOMA, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

13. Successors.

(a) XOMA's Successors. Any successor to XOMA (direct or indirect, by purchase, lease, merger, amalgamation, consolidation, liquidation or otherwise) to all or substantially all of XOMA's business or assets shall assume XOMA's obligations under this Agreement and agree expressly to perform XOMA's obligations under this Agreement in the same manner and to the same extent as XOMA would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term "XOMA" shall include any successor to XOMA's business or assets which executes and delivers the assumption agreement described in this Section 13(a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Employee's Successors. Without the written consent of XOMA, Employee shall not assign or transfer this Agreement or any right or obligation under this Agreement to any other person or entity. However, except as otherwise set forth herein, the terms of this Agreement and all rights of Employee shall inure to the benefit of, and be enforceable by, Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

14. Amendment of Agreement. Changes in Employee's employment terms, other than those changes expressly reserved to XOMA's or the Board's discretion in this Agreement, require a written modification approved by XOMA and signed by Employee and a duly authorized officer of XOMA other than Employee.

15. Waiver. Any party's failure to enforce any provision or provisions of the Agreement will not in any way be construed as a waiver of any such provision or provisions, nor prevent any party from thereafter enforcing each and every other provision of the Agreement. The rights granted to the Parties herein are cumulative and will not constitute a waiver of any party's right to assert all other legal remedies available to it under the circumstances.

16. Severability. In the event any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any remaining part of such provision or any other provision of this Agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the Parties insofar as possible under applicable law.

17. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to conflicts of law principles. Employee expressly consents to personal jurisdiction and venue in the state and federal courts for Alameda County, California for any lawsuit filed there against Employee by XOMA arising from or related to this Agreement.

18. Fees and Costs. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Agreement.

19. Counterparts. This Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile and electronic signatures shall be equivalent to original signatures.

20. Arbitration. To ensure the timely and economical resolution of disputes that may arise between Employee and the Company, both Employee and the Company mutually agree that pursuant to the Federal Arbitration Act, 9 U.S.C. §1-16, and to the fullest extent permitted by applicable law, Employee will submit solely to final, binding and confidential arbitration any and all disputes, claims, or causes of action arising from or relating to: the negotiation, execution, interpretation, performance, breach or enforcement of this Agreement; or Employee's employment with the Company (including but not limited to all statutory claims); or the termination of Employee's employment with the Company (including but not limited to all statutory claims). BY AGREEING TO THIS ARBITRATION PROCEDURE, BOTH EMPLOYEE AND THE COMPANY WAIVE THE RIGHT TO RESOLVE ANY SUCH DISPUTES THROUGH A TRIAL BY JURY OR JUDGE OR THROUGH AN ADMINISTRATIVE PROCEEDING. The Arbitrator will have the sole and exclusive authority to determine whether a dispute, claim or cause of action is subject to arbitration under this section and to determine any procedural questions which grow out of such disputes, claims or causes of action and bear on their final disposition. All claims, disputes, or causes of action under this section, whether by Employee or the Company, must be brought solely in an individual capacity, and will not be brought as a plaintiff (or claimant) or class member in any purported class or representative proceeding, nor joined or consolidated with the claims of any other person or entity. The Arbitrator may not consolidate the claims of more than one person or entity, and may not preside over any form of representative or class proceeding. To the extent that the preceding sentences in this paragraph are found to violate applicable law or are otherwise found unenforceable, any claim(s) alleged or brought on behalf of a class will proceed in a court of law rather than by arbitration. Any arbitration proceeding under this Arbitration section will be presided over by a single arbitrator and conducted by JAMS, Inc. ("JAMS") in San Francisco, CA under the then applicable JAMS rules for the resolution of employment disputes (available upon request and also currently available at http://www.jamsadr.com/rules-employment-arbitration/). Employee and the Company both have the right to be represented by legal counsel at any arbitration proceeding, at each party's own expense. The Arbitrator will: (a) have the authority to compel adequate discovery for the resolution of the dispute; (b) issue a written arbitration decision, to include the arbitrator's essential findings and conclusions and a statement of the award; and (c) be authorized to award any or all remedies that Employee or the Company would be entitled to seek in a court of law. The Company will pay all JAMS arbitration fees in excess of the amount of court fees that would be required of Employee if the dispute were decided in a court of law. This section will not apply to any action or claim that cannot be subject to mandatory arbitration as a matter of law, including, without limitation, claims brought pursuant to the California Private Attorneys General Act of 2004, as amended, the California Fair Employment and Housing Act, as amended, and the California Labor Code, as amended, to the extent such claims are not permitted by applicable law to be submitted to mandatory arbitration and such applicable law is not preempted by the Federal Arbitration Act or otherwise invalid (collectively, the "Excluded Claims"). In the event Employee brings multiple claims, including one of the Excluded Claims listed above, the Excluded Claims may be filed with a court, while any other claims will remain subject to mandatory arbitration. Nothing in this section is intended to prevent either Employee or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Any final award in any arbitration proceeding hereunder may be entered as a judgment in the federal and state courts of any competent jurisdiction and enforced accordingly.

21. Indemnification. Employee shall execute the Company's standard form of indemnification agreement provided herewith.

22. Complete Agreement. This Agreement, together with Employee's Confidentiality Agreement and the other agreements referenced herein, forms the complete and exclusive embodiment of the entire agreement between the Parties with regard to this subject matter, and supersedes and replaces any other agreements or promises made to Employee by anyone, whether oral or written.

[signature page to follow]

COMPANY: **XOMA CORPORATION**

By: /s/ W. Denman Van Ness
W. Denman Van Ness
Lead Independent Director

EMPLOYEE: /s/ Bradley Sitko
Bradley Sitko

EXHIBIT A

EMPLOYEE CONFIDENTIAL INFORMATION AND INVENTIONS ASSIGNMENT AGREEMENT

EXHIBIT B

FORM RELEASE OF CLAIMS AGREEMENT

This Release of Claims Agreement ("Release Agreement") is entered into between XOMA Corporation ("XOMA") and Bradley Sitko ("Employee"). XOMA and Employee (collectively, the "Parties") are parties to an Officer Employment Agreement ("Employment Agreement") and agree as follows:

1. Termination. Employee's employment with XOMA terminated on _____, 20__.

2. Release of Claims. In exchange for the compensation, benefits and other consideration to be provided to Employee under the Employment Agreement that Employee is not otherwise entitled to receive, Employee hereby generally and completely releases XOMA and XOMA (US) LLC, and their past and present officers, agents, directors, employees, investors, shareholders, administrators, partners, attorneys, agents, insurers, affiliates, divisions, subsidiaries, parents, predecessor and successor corporations, and assigns (collectively, the "Released Parties"), from, and agrees not to sue or otherwise institute any legal or administrative proceedings concerning, any and all claims, duties, liabilities, obligations and causes of action, both known and unknown, that arise out of or are in any way related to events, acts, conduct or omissions occurring prior to or on the date Employee signs this Release Agreement (collectively, the "Released Claims").

The Released Claims include but are not limited to:

(a) all claims arising out of or in any way related to Employee's employment with XOMA or the termination of that employment;

(b) all claims related to compensation or benefits from XOMA, including salary, bonuses, commissions, vacation, paid time off, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership, equity or profits interests in XOMA (including but not limited to any right to purchase, or actual purchase, of shares of stock of XOMA);

(c) all claims for breach of contract, wrongful termination and breach of the implied covenant of good faith and fair dealing;

(d) all tort claims, including claims for fraud, defamation, emotional distress and discharge in violation of public policy;

(e) all federal, state and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees or other claims arising under the Federal Civil Rights Act of 1964, the federal Civil Rights Act of 1991, the federal Age Discrimination in Employment Act of 1967 (the "ADEA"), the federal Americans with Disabilities Act of 1990, the federal Fair Labor Standards Act, the federal the Employee Retirement Income Security Act of 1974, the federal Worker Adjustment and Retraining Notification Act, the California Fair

Employment and Housing Act and the California Labor Code, and all amendments to and regulations issued under each such statute;

(f) all claims for violation of the federal or any state constitution;

(g) all claims arising out of any other laws and regulations relating to employment or employment discrimination; and

(h) all claims for attorneys' fees and costs.

3. Acknowledgment of Waiver of Claims under ADEA. Employee acknowledges that Employee is knowingly and voluntarily waiving and releasing any rights Employee may have under the ADEA, and that the consideration given for the waiver and release in this Section 3 is in addition to anything of value to which Employee is already entitled. Employee further acknowledges that Employee has been advised, as required by the ADEA, that: (a) Employee's waiver and release do not apply to any rights or claims that may arise after the date Employee signs this Release Agreement; (b) Employee should consult with an attorney prior to signing this Release Agreement (although Employee may choose voluntarily not to do so); (c) Employee has twenty-one (21) days to consider this Release Agreement (although Employee may choose voluntarily to sign it earlier); (d) Employee has seven (7) days following the date Employee signs this Release Agreement to revoke the Release Agreement (by providing written notice of Employee's revocation to the Legal Department at XOMA); and (e) this Release Agreement will not be effective until the date upon which the revocation period has expired, which will be the eighth (8th) day after the date that this Release Agreement is signed by Employee provided that Employee does not revoke it (the "Effective Date").

4. Waiver of Unknown Claims. In giving the releases set forth in this Release Agreement, which include claims which may be unknown to Employee at present, Employee acknowledges that Employee has read and understands Section 1542 of the California Civil Code which reads as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Employee hereby expressly waives and relinquishes all rights and benefits under that section and any law or legal principle of similar effect in any jurisdiction with respect to Employee's release of claims herein, including but not limited to the release of unknown and unsuspected claims.

5. Excluded Claims. Notwithstanding the foregoing, the following are not included in the Released Claims (the "Excluded Claims"): (a) any rights or claims for indemnification Employee may have pursuant to any written indemnification agreement with XOMA to which Employee is a party or under applicable law; (b) any rights which cannot be waived as a matter of law; (c) any rights Employee has to file or pursue a claim for workers' compensation or

unemployment insurance; and (d) any claims for breach of the Employment Agreement or this Release Agreement. **In addition, nothing in this Release Agreement prevents Employee from filing, cooperating with or participating in any proceedings before the Equal Employment Opportunity Commission, the Department of Labor, the California Department of Fair Employment and Housing or any analogous federal or state government agency, except that Employee acknowledges and agrees that Employee hereby waives Employee's right to any monetary benefits in connection with any such claim, charge or proceeding.** Employee represents and warrants that, other than the Excluded Claims, Employee is not aware of any claims Employee has or might have against any of the Released Parties that are not included in the Released Claims.

6. Representations. Employee represents that Employee has been paid all compensation owed and for all time worked; Employee has received all the leave and leave benefits and protections for which Employee is eligible pursuant to the federal Family and Medical Leave Act, the California Family Rights Act, any applicable law or XOMA policy; and Employee has not suffered any on the job injury for which Employee has not already filed a workers' compensation claim.

7. Nondisparagement. Employee agrees not to make any statement intending disparage XOMA, and XOMA's officers, directors, employees, shareholder, members and agents, in any manner likely to be harmful to them or their business, business reputation or personal reputation. XOMA agrees that its directors and officers will not make any statements intending to disparage Employee in any manner likely to be harmful to Employee's business reputation or personal reputation. Nothing in this provision, however, shall prevent either Employee or XOMA from responding accurately and fully to any request for information if required by legal process or in connection with a government investigation. In addition, nothing in this provision or this Release Agreement is intended to prohibit or restrain Employee in any manner from making disclosures that are protected under the whistleblower provisions of federal law or regulation or under other applicable law or regulation.

8. No Voluntary Adverse Action. Employee agrees that Employee will not voluntarily provide assistance, information or advice, directly or indirectly (including through agents or attorneys), to any person or entity in connection with any proposed or pending litigation, arbitration, administrative claim, cause of action, or other formal proceeding of any kind brought against XOMA, its parent or subsidiary entities, affiliates, officers, directors, employees or agents, nor shall Employee induce or encourage any person or entity to bring any such claims; *provided, however,* that Employee must respond accurately and truthfully to any question, inquiry or request for information when required by legal process (e.g., a valid subpoena or other similar compulsion of law) or as part of a government investigation.

9. Return of XOMA Property; Compliance with Proprietary Information Agreement. Employee represents that Employee has complied fully with Section 7(g) of the Employment Agreement and the provisions of Employee's Employee Confidential Information and Invention Assignment Agreement with XOMA (the "Confidentiality Agreement"), and further agrees to continue to abide by Employee's continuing obligations under the Confidentiality Agreement.

10. Fees and Costs. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Release Agreement.

11. No Representations. Employee represents that Employee has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Release Agreement. Neither Party has relied upon any representations or statements made by the other Party which are not specifically set forth in this Release Agreement.

12. Severability. In the event any provision of this Release Agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any remaining part of such provision or any other provision of this Release Agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the Parties insofar as possible under applicable law.

13. Entire Agreement. This Release Agreement, together with the Employment Agreement, forms the complete and exclusive embodiment of the entire agreement between the Parties with regard to this subject matter. This Release Agreement may only be modified or amended in a writing signed by Employee and a duly authorized officer of XOMA other than Employee.

14. Governing Law. This Release Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to conflicts of law principles. Employee expressly consents to personal jurisdiction and venue in the state and federal courts for Alameda County, California for any lawsuit filed there against Employee by XOMA arising from or related to this Release Agreement.

15. Counterparts. This Release Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile and electronic signatures shall be equivalent to original signatures.

COMPANY:

XOMA CORPORATION

By: /s/ W. Denman Van Ness
W. Denman Van Ness
Lead Independent Director

EMPLOYEE:

/s/ Bradley Sitko
Bradley Sitko

Exhibit 10.56

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.

IP ACQUISITION AGREEMENT

This **IP ACQUISITION AGREEMENT** (this "**Agreement**"), dated as of November 21, 2022 (the "**Effective Date**"), is made by and between **OBSEVA, SA**, a Swiss corporation having its principal place of business at Chemin des Aulx, 12, 1228 Plan-les-Ouates, Geneva, Switzerland ("**Seller**"), and **XOMA (US) LLC**, a Delaware limited liability company having its principal place of business at 2200 Powell Street, Suite 310, Emeryville, CA 94608 ("**Buyer**").

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, all of Seller's right, title, and interest in and to certain Acquired Patents (as defined below) and Acquired Know-How (as defined below) and obtain an assignment of the Licenses (as defined below), in each case, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Purchase of Assets and Assumption of Licenses. Subject to the terms and conditions set forth herein, Seller hereby irrevocably sells, assigns, transfers, and conveys to Buyer, and Buyer hereby accepts, all right, title, and interest in and to the following (collectively, the "**Acquired Rights**"):

(a) the patents and patent applications listed in Schedule 1, and all patents that issue from such patent applications, and all continuations, and continuations-in-part, and divisionals, and extensions, and substitutions, and reissues, and re-examinations, and renewals, of any of the foregoing, and rights to apply for new patents with respect to any of the foregoing ("**Patents**"), and any other patents or patent applications that claim a benefit or priority from any Patents, and inventions disclosed and claimed in any of the foregoing (collectively, the "**Acquired Patents**");

(b) all Know-How as defined in the Organon License (as defined below) that is owned or has been developed by Obseva relating to the subject matter of the Organon License and/or the Merck Serono License (as defined below), including, but not limited to the general description of same set forth in Schedule 2 (collectively, the "**Acquired Know-How**");

(c) those certain license agreements listed on Schedule 3 (individually, the **"Organon License"** and the "**Merck Serono License"**) and all other licenses and similar contractual rights reasonably necessary for the use, exploitation, or commercialization of the Acquired Patents (collectively with the Organon License and Merck Serono License, the "**Licenses**");

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(d) all milestones, royalties, fees, income, payments, and other proceeds now or hereafter due or payable to Seller under the Licenses;

(e) all claims and causes of action with respect to any of the foregoing, whether accruing before, on, or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement, misappropriation, violation, breach, or default; and

(f) all other rights, privileges, and protections of any kind whatsoever of Seller accruing under any of the foregoing provided by any applicable law, treaty, or international convention throughout the world.

2. Assumption of Licenses/No Liabilities. Subject to the terms and conditions set forth herein, Buyer hereby accepts Seller's assignment of the Licenses, assumes all of Seller's duties and obligations under the Licenses, and agrees to pay, perform, and discharge, as and when due, all of the liabilities and obligations of Seller under the Licenses accruing after the Effective Date, but only to the extent that such liabilities and obligations do not relate to any breach, default, or violation by Seller on or prior to the Effective Date (the "**Assumed Liabilities**"). Other than the Assumed Liabilities, Buyer neither assumes nor is otherwise liable for any obligations, claims, or liabilities of Seller of any kind, whether known or unknown, contingent, matured, or otherwise, whether currently existing or hereafter arising (collectively, "**Excluded Liabilities**"), including, for the avoidance of doubt, any obligations, claims, or liabilities arising from or in connection with any circumstances, causes of action, breach, violation, default, or failure to perform by or of Seller with respect to the Licenses on or prior to the Effective Date.

3. Purchase Price.

(a) The aggregate purchase price for the Acquired Rights shall be FIFTEEN MILLION US Dollars (US$15,000,000) (the "**Purchase Price**").

(b) At Closing, Buyer shall pay, or cause to be paid, the Purchase Price, minus the Expense Reimbursement Amount in accordance with Section 12, to Seller. Payment shall be made in US dollars by wire transfer of immediately available funds to Seller's bank account identified in the wire transfer instructions previously provided to Buyer.

If Buyer fails to make timely and proper payment of the Purchase Price, Seller may terminate this Agreement effective immediately on written notice to Buyer.

(c) **Earn-out Payments.** As additional consideration for Buyer's purchase of the Acquired Rights, at such times as provided in Section 3(d), Buyer (or, at the direction

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of Buyer, a designee of Buyer so long as Buyer remains an obligor thereof) shall pay to Seller during the term of the Licenses the following amounts (each, an "**Earn-Out Payment**" and collectively, the "**Earn-Out Payments**"):

(i) [*] of all future Non-Sales Milestones payable to Buyer under section 7.2(a) of the Organon License; and

(ii) [*] of all future Sales-Based Milestones #[*] and #[*] payable to Buyer under section 7.3(a) of the Organon License (i.e., the Sales Milestones payable upon Net Sales in a given calendar year equaling or exceeding [*] and the Sales Milestones payable upon Net Sales in a given calendar year exceeding [*]).

For purposes of this Section 3(c), terms used and not otherwise defined herein shall have the meanings set forth in the Organon License.

(d) **Timing of Payment of Earn-out Payments.** Subject to Section 3(e), each Earn-out Payment that Buyer is required to make pursuant to Section 3(c) hereof shall be paid in full no later than [*] business days following the date upon which Buyer receives any of the payments specified therein pursuant to the Organon License.

(e) **Right of Set-off**. Buyer shall have the right to withhold and set off against any amount otherwise due to be paid pursuant to this Section 3, the amount of any Losses of a Buyer Indemnified Party that are determined by a final and enforceable decision to be due and payable to such Buyer Indemnified Party by Seller in accordance with Section 8 of this Agreement.

(f) **No Security.** The parties hereto understand and agree that (i) the contingent rights to receive any Earn-out Payment shall not be represented by any form of certificate or other instrument, are not transferable and do not constitute an equity or ownership interest in Buyer or any of its affiliates, (ii) Seller shall not have any rights as a securityholder of Buyer or any of its affiliates as a result of Seller's contingent right to receive any Earn-out Payment hereunder, and (iii) no interest is payable with respect to any Earn-out Payment.

(g) **Interest on Late Payments.** If Seller does not receive payment of any sum due to it on or before the due date, interest shall thereafter accrue on the sum due to Seller until the date of payment at the per annum rate of [*] over the then-current prime rate reported in The Wall Street Journal or the maximum rate allowable by applicable laws, whichever is lower, with such interest compounded quarterly.

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(h) **Audit Rights.** Following the Effective Time and continuing thereafter through the term of the Licenses, Buyer shall maintain reasonably complete and accurate records in sufficient detail to permit Seller to confirm the receipt of the milestone events under the Organon License. Upon reasonable prior written notice, in any event no less than [*] days prior written notice, such records shall be available for examination during regular business hours and in a manner that does not interfere with Buyer's business activities for a period of [*] years from the end of the calendar year to which they pertain, and not more often than once each calendar year, by an internationally-recognized independent certified public accountant selected by Seller and reasonably acceptable to Buyer, for the sole purpose of verifying the accuracy of any payments due under this Agreement. Once examined, such records shall no longer be subject to further examination. Any such auditor shall not disclose Buyer's Confidential Information, except to the extent such disclosure is necessary to verify the accuracy of the amount of payments due under this Agreement. Any amounts shown to be owed but unpaid shall be paid within [*] days from the accountant's report, plus interest (as set forth in Section 3(f)) from the original due date. Seller shall bear the full cost of such audit unless such audit discloses a failure by Buyer to pay any amount due for the audited period, in which case Buyer shall bear the full cost of such audit.

4. Closing and Deliverables. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "**Closing**") will occur on the date hereof, immediately after the execution of this Agreement, and will take place by the exchange and release of pdfs of manually executed signature pages delivered by e-mail or other electronic means.

(a) At or prior to the Closing, Seller shall deliver to Buyer the following:

(i) an assignment in the form of Exhibit A (the "**Assignment**") and duly executed by Seller, transferring all of Seller's right, title, and interest in and to the Acquired Rights to Buyer;

(ii) the complete prosecution files, including original granted patents, for all Acquired Patents in such form and medium as reasonably requested by Buyer, together with a list of local prosecution counsel contacts, and all such other documents, correspondence, and information as are reasonably requested by Buyer to register, prosecute to issuance, own, enforce, or otherwise use the Acquired Rights, including any maintenance fees due and deadlines for actions to be taken concerning prosecution and maintenance of all Acquired Patents in the [*] period following the date hereof;

(iii) all documents and files (whether paper or stored electronically) in Seller's possession that describe, contain or reflect (x) the Acquired Know-How

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and (y) the Merck Serono Know-How as defined in the Merck Serono License, including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations experimental data and results, assay protocols, designs, formulas, experimental procedures and specifications; and

(iv) a consent in the form of Exhibit B and duly executed by JGB (Cayman) Port Ellen Ltd. with respect to the consummation of the transactions contemplated by this Agreement.

(b) Substantially simultaneously with the Closing, and in any event, no later than by the end of the business day on which the Closing occurs, Seller shall deliver to Buyer evidence reasonably satisfactory to Buyer that Seller has paid each payee of an account payable the amount set out opposite its name in Schedule 4, unless otherwise noted therein.

(c) At the Closing, Buyer shall pay to Seller the Purchase Price, minus the Expense Reimbursement Amount, in accordance with Section 3(b) and Section 12.

5. Further Assurances; Recordation; Covenants.

(a) From and after the date hereof, each of the parties hereto shall, at their own expense, execute and deliver such additional documents, instruments, conveyances, and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the documents to be delivered hereunder.

(b) No later than the end of the business day on which the Closing occurs, Seller shall pay each payee of an account payable the amount set out opposite its name in Schedule 4 (unless otherwise noted therein) and provide confirmation of each such payoff, as applicable, to Buyer in a form acceptable to Buyer in its reasonable judgment.

(c) Without limiting the foregoing, and without limiting Section 4(a), Seller shall execute and deliver to Buyer, such assignments and other documents, certificates, and instruments of conveyance in a form satisfactory to Buyer and suitable for filing with the United States Patent and Trademark Office ("**USPTO**") and the registries and other recording governmental authorities in all applicable jurisdictions (including with respect to legalization, notarization, apostille, certification, and other authentication) as reasonably necessary to record and perfect the Assignment, and to vest in Buyer all right, title, and interest in and to the Acquired Rights in accordance with applicable law. As between Seller and Buyer, Buyer shall be responsible, at Buyer's expense, for filing the Assignment, and other documents, certificates, and instruments of conveyance with the applicable governmental authorities; provided that, upon Buyer's reasonable request,

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Seller shall take such steps and actions, and provide such cooperation and assistance, at Seller's expense, to Buyer and its successors, assigns, and legal representatives, including the execution and delivery of any affidavits, declarations, oaths, exhibits, assignments, powers of attorney, or other documents, as may be reasonably necessary to effect, evidence, or perfect the assignment of the Acquired Rights to Buyer, or any of Buyer's successors or assigns.

(d) Seller acknowledges that under the terms and conditions of the Licenses, Buyer, as the assignee thereof, is obligated to be a member of and participate in joint advisory committees, to have alliance managers, and to otherwise have skilled and knowledgeable representation with respect to its activities with its counterparties under and in furtherance of the Licenses (collectively, the "**Representative Activities**"). As such, to assist Buyer in the performance and assumption of the Representative Activities, Seller shall, at no charge to Buyer, make available to Buyer on a transition basis those of Seller's personnel who have represented Seller in connection with the Representative Activities, and, if requested by Buyer, such personnel shall represent Buyer in connection with such Representative Activities for a period of not more than [*] following the Effective Date (as may be shortened or lengthened as mutually agreed upon by the parties). In all cases such personnel shall represent Buyer in good faith, to the best of their abilities, and in the same manner as such personnel represented Seller in connection with the Representative Activities prior to the Effective Date. Such personnel shall work in conjunction and consult with Buyer in connection with their participation in all Representative Activities and will strictly follow any feedback or instructions given by Buyer with respect to the Representative Activities. Such personnel shall not undertake any activities which would cause Buyer to breach any License. Buyer shall transition all Representative Activities to personnel of Buyer within [*] after the Effective Date. All information learned or observed by Seller's personnel in the course of performing the Representative Activities is and will be deemed to be Buyer's confidential information.

(e) Within [*] after the Effective Date, Seller shall, and shall cause its affiliates to, without additional compensation, disclose and make available to Buyer or its designee, in electronic or hard copy form, as Buyer may reasonably request, all Acquired Know-How and Merck Serono Know-How to the extent not already delivered at Closing pursuant to Section 4(a)(iii). In connection with such transfer, Seller, in a timely manner and at no charge to Buyer, shall assist Buyer in the use and understanding of the Acquired Know-How and Merck Serono Know-How, including providing technical assistance and making its technical personnel available to Buyer or its designee. Without prejudice to the generality of the foregoing, if visits of Seller's representatives to Buyer's or its designee's facilities are reasonably requested by Buyer for purposes of transferring the Acquired Know-How and Merck Serono Know-How or for purposes of Buyer acquiring expertise on the practical application of such Acquired Know-How and Merck Serono Know-How or assisting on issues arising during the exploitation of any Acquired Know-How and Merck Serono Know-How, Seller shall send appropriate representatives to Buyer's or its designee's facilities [*]. Notwithstanding the foregoing, Seller's

assistance shall not exceed [*] during such [*] period without Seller's prior consent (which consent shall not be unreasonably withheld, conditioned or delayed).

(f) Notwithstanding the transfer and assignment of the Acquired Rights from Seller to Buyer, Seller shall, [*], perform any and all [*] obligations applicable to or binding on Buyer under the Licenses, including, without limitation, [*] (as such terms are defined in the Organon License) in accordance with all of the terms and conditions set forth in the Organon License as if Seller continued to be a party thereto. Seller shall continue to fulfill all of its obligations under, and shall not breach, that certain [*] Agreement between Seller and Organon International GmbH ("**Organon**") dated [*] (the "**Organon [*] Agreement**"). In connection with Seller's obligation to [*], Buyer hereby grants to Seller a royalty-free, fully paid-up, worldwide, non-exclusive license, with the right to grant sublicenses, under the Acquired Rights solely for [*] pursuant to the Organon License [*].

6. Representations and Warranties of Seller. Seller represents and warrants to Buyer that the statements contained in this Section 6 are true and correct as of the date hereof, except as set forth in the correspondingly numbered sections of the Seller disclosure schedules, attached hereto. For purposes of this Section 6, "Seller's knowledge," "knowledge of Seller," and similar phrases shall mean the actual or constructive knowledge of any director or officer of Seller, after due inquiry.

(a) Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of Switzerland and has all necessary power and authority, and all licenses, permits, franchises, authorizations, consents and approvals, required to own its property and conduct its business as now conducted. Seller is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification or good standing is required by all applicable laws, rules, regulations and orders of any governmental authority applicable to Seller or any of its properties or assets.

(b) Authority of Seller; Enforceability. Seller has the full right, power, and authority to enter into this Agreement and perform its obligations hereunder. The execution, delivery, and performance of this Agreement by Seller has been duly authorized by all necessary organizational action of Seller and no other act or proceeding on the part of Seller is necessary to authorize the execution, delivery, or performance by Seller of this Agreement or any other agreement contemplated hereby or thereby. This Agreement has been duly executed and delivered by Seller and, assuming the due execution and delivery of this Agreement and the other agreements contemplated hereby by the other parties hereto and thereto, this Agreement constitutes, and the other agreements contemplated hereby upon execution and delivery by Seller will each constitute, a valid and binding obligation of Seller, enforceable against Seller in accordance with its and their terms.

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(c) No Conflicts; Consents. The execution, delivery, and performance by Seller of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (i) violate or conflict with the certificate of incorporation, by-laws, or other organizational documents of Seller; (ii) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule, or regulation; (iii) conflict with, or result in (with or without notice or lapse of time or both), any violation of or default under, or give rise to a right of termination, acceleration, or modification of any obligation or loss of any benefit under, any contract or other instrument to which this Agreement or any of the Acquired Rights are subject (including any License); or (iv) result in the creation or imposition of any encumbrances on the Acquired Rights. No consent, approval, waiver, or authorization is required to be obtained by Seller from its stockholders or any other person, group of persons, or entity (including any legal or governmental authority) in connection with the execution, delivery, and performance by Seller of this Agreement, or to enable Buyer to register, own, and use the Acquired Rights.

(d) Ownership. Except as set forth on Schedule 1, Seller is the exclusive owner of all right, title, and interest in and to the Acquired Patents and Acquired Know-How, free and clear of all title defects or objections, liens, security interests, and other encumbrances. Seller is in full compliance with all legal requirements applicable to the Acquired Rights and Seller's ownership and use thereof.

(e) Patents and Applications. Schedule 1 contains a correct, current, and complete list of all patents and patent applications related to the Licenses, including the Acquired Patents and the Merck Serono Patents (as defined in the Merck Serono License), specifying as to each, as applicable, the title, the record owner, the jurisdiction in which it has been issued or filed, the patent number or application serial or publication number, and the issue or application filing date. All required filings and fees related to the Acquired Patents listed on Schedule 1 have been timely filed with and paid to the USPTO and other relevant governmental authorities and authorized registrars, and all such patents and patent applications have at all times been and remain in good standing. Seller has provided Buyer with true and complete copies of all documents, certificates, office actions, responses, correspondence, and other filings and materials related to all such Acquired Patents. Seller has satisfied, and will continue to satisfy, all of its obligations to the inventors of the Acquired Patents (if any).

(f) Know-How. Seller has taken commercially reasonable steps to protect the rights of Seller in the Acquired Know-How and, except under confidentiality obligations contained in the Licenses, there has not been any disclosure by Seller of any Acquired Know-How to any third party.

(g) Validity and Enforceability. No claim in any of the Acquired Patents has been deemed invalid by a court of competent jurisdiction, and the Acquired Patents are subsisting, and enforceable by Seller in all applicable jurisdictions. The Acquired Patents

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are not subject to any pending or threatened (in writing) challenge or claim to their validity, subsistence, or enforceability. Without limiting the foregoing, neither the inventors of the Acquired Patents nor their counsel (i) intentionally failed to disclose any material, non-cumulative prior art references to the United States Patent and Trademark Office (the "**PTO**") or any foreign patent offices requiring such disclosure in connection with the prosecution of any Acquired Patents, (ii) made any material misstatements or misrepresentations to the PTO or any foreign patent offices in connection with the prosecution of any of the Acquired Patents, or (iii) engaged in any act or omission inconsistent with the duty of candor to the PTO. The inventions and discoveries described in the Acquired Patents were made solely by the inventors named in the Acquired Patents, without misappropriation of any trade secrets, confidential information, or other rights of any person. The inventors named in the Acquired Patents that are employees or agents of Seller had no obligation to assign the inventions claimed by the Acquired Patents to any third party based on any form of employment and/or consulting agreement or relationship. Seller is not aware of any prior art that must be disclosed to any governmental office in which a given patent application has been filed (based on relevant disclosure obligations). Seller and those authorized by Seller to make, offer for sale, sell or import into the United States any article covered by the Acquired Patents have complied with the marking provisions of 35 U.S.C. section 287(a) with respect to the Acquired Patents.

(h) Legal Actions. There are no actions (including any US Patent Trial and Appeal Board proceedings or European Opposition Proceedings) settled, pending, or threatened in writing (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation of the intellectual property rights of any third party based on the use or exploitation of any Acquired Rights; (ii) challenging the validity, patentability, enforceability, issuance, inventorship or ownership of any Acquired Patents or Acquired Know-How or Seller's rights with respect thereto; or (iii) by Seller alleging any infringement, misappropriation, or other violation by any third party of any Acquired Rights.

(i) Licenses. Seller has provided Buyer with true and complete copies of all Licenses (or in the case of any oral agreements, a complete and accurate written description thereof), including all modifications, amendments, and supplements thereto and waivers thereunder. Each License is valid, binding, in full force and effect, and enforceable between Seller and the other parties thereto, and neither Seller nor, to Seller's knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) any License, or has provided or received any written notice of breach of, default under, or any actual or intended termination of any License, nor to Seller's knowledge, is there any basis to provide or receive any such notice. Seller has not received any written notice from Organon or any affiliate thereof that Organon intends to wind-down, limit, or suspend its commercialization activities under the Organon License or otherwise take any action that would adversely effect the sale of Licensed Products (as defined in the Organon License), nor is Seller aware of any basis

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for such conduct or any such notice. Seller has not waived or relinquished any rights under any License.

(j) Accounts Payable. There are no liabilities, debts, claims or obligations of any nature of Seller, whether known, unknown, accrued, absolute, direct or indirect, contingent, determined, determinable or otherwise, whether due or to become due, except (i) the convertible notes issued to JGB (Cayman) Port Ellen Ltd. and (ii) the accounts payable set forth on Schedule 4.

7. Representations and Warranties of Buyer. Buyer represents and warrants to Seller that the statements contained in this Section 7 are true and correct as of the date hereof, except as set forth in the correspondingly numbered sections of the Buyer disclosure schedules, attached hereto.

(a) Organization. Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all powers and authority, and all licenses, permits, franchises, authorizations, consents and approvals of all applicable governmental authorities, required to own its property and conduct its business as now conducted.

(b) Authority of Buyer; Enforceability. Buyer has the full right, power, and authority to enter into this Agreement and perform its obligations hereunder. The execution, delivery, and performance of this Agreement by Buyer have been duly authorized by all necessary organizational action of Buyer, and no other act or proceeding on the part of Buyer is necessary to authorize the execution, delivery, or performance by Buyer of this Agreement or any other agreement contemplated hereby or thereby. This Agreement has been duly executed and delivered by Buyer and, assuming the due execution and delivery of this Agreement and the other agreements contemplated hereby by the other parties hereto and thereto, this Agreement constitutes, and the other agreements contemplated hereby upon execution and delivery by Buyer will each constitute, a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its and their terms.

(c) No Conflicts; Consents. The execution, delivery, and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (i) violate or conflict with the certificate of incorporation, by-laws, or other organizational documents of Buyer; (ii) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule, or regulation; or (iii) conflict with, or result in (with or without notice or lapse of time, or both), any violation of or default under, or give rise to a right of termination, acceleration, or modification of, any obligation or loss of any benefit under, any contract or other instrument to which this Agreement is subject. No consent, approval, waiver, or authorization is required to be obtained by Buyer from

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any person or entity (including any governmental authority) in connection with the execution, delivery, and performance by Buyer of this Agreement.

8. Indemnification.

(a) Survival. Subject to Section 8(a)(i) and 8(a)(ii) hereto, all representations and warranties contained herein and all related rights to indemnification shall continue in full force and effect until 11:59 p.m. (Eastern time) on the date that is [*] from Closing. The covenants and agreements contained in this Agreement shall survive the Closing until fully performed in accordance with their respective terms.

(i) The representations and warranties of Seller in [*] shall survive [*] following the Closing; and

(ii) The representations and warranties of Buyer in [*] shall survive [*] following the Closing.

Notwithstanding the foregoing or anything to the contrary in this Agreement, (i) if an indemnification claim is made prior to the expiration of the applicable survival period in accordance with the terms of this Section 8, then such applicable representation, warranty, covenant or agreement shall survive as to such claim until all Losses (as defined below) arising out of or resulting from such claim have been fully paid in accordance with the terms of this Agreement, and (ii) none of the survival periods or limitations contained in this Section 8 shall apply to any claims relating to fraud or intentional misrepresentation.

(b) Agreement to Indemnify. Each party (the "**Indemnifying Party**") shall defend, indemnify, and hold harmless the other party, its affiliates, and their respective shareholders, directors, officers, and employees (each, an "**Indemnified Party**") from and against all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, fees, costs, or expenses of whatever kind, including reasonable attorneys' fees, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or in connection with (i) any breach or alleged breach of any representation, warranty or certification made by the Indemnifying Party in, or pursuant to, this Agreement, (ii) any breach or default by the Indemnifying Party in respect of any covenant or agreement made by the Indemnifying Party in this Agreement, (iii) any Excluded Liabilities, and (iv) any third-party claim, suit, action, or proceeding (each, a "**Third-Party Claim**") arising on or after the date hereof and asserted against the Indemnified Party relating to the transactions contemplated in this Agreement, as applicable.

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(c) Limitations. Notwithstanding anything in this Agreement to the contrary, the aggregate amount required to be paid by the Indemnifying Party to the Indemnified Party under Section 8(b)(i) for any breach or alleged breach of any representation, warranty or certification, or pursuant to, this Agreement shall not exceed an amount equal to [*], provided, however, that the limitation set forth in this Section 8(c) shall not be applicable to claims for fraud or intentional misrepresentation.

(d) Indemnification Procedures.

(i) Notice of Claim. An Indemnified Party may assert a claim for indemnification, whether for its own Losses or for Losses incurred by any other Indemnified Party by giving the Indemnifying Party written notice thereof ("**Notice of Claim**"). Each Notice of Claim given pursuant to this Section 8(d) shall contain a description, in reasonable detail to the extent known to the Indemnified Party, of the facts, circumstances or events giving rise to such claim, together with (to the extent in the Indemnified Party's possession and permitted by applicable law) copies of any formal written demand or complaint from any third party claimant and an estimate of the amount, if reasonably practicable, of the Losses that have been or may be sustained by the Indemnified Party. No failure or delay on the part of the Indemnified Party in giving the Indemnifying Party a Notice of Claim shall relieve, waive or otherwise release Seller from any of its obligations under this Section 8 unless (and then only to the extent that) the Indemnifying Party is adversely and materially prejudiced thereby in terms of the amount of Losses for which such Indemnifying Party is obligated to indemnify the Indemnified Party, and then, only to the extent of such prejudice.

(ii) Direct Claims. Any claim by an Indemnified Party on account of Losses which do not result from a Third-Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party Notice of Claim with respect thereto. The Indemnifying Party shall have [*] days after its receipt of such Notice of Claim to respond in writing to such Direct Claim. During such [*]-day period, the Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim and whether and to what extent any amount is payable in respect of the Direct Claim, and the Indemnified Party shall reasonably cooperate with the Indemnifying Party's investigation by giving such information and assistance (including the right to examine any documents or records exclusively related to such Direct Claim) as the Indemnifying Party or any of its professional advisors may reasonably request. If Seller does not so respond within such [*]-day period, the Indemnifying Party shall be deemed to have rejected such Direct Claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement. To object to all or a portion of any Direct Claim

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made in a Notice of Claim, the Indemnifying Party must deliver a written objection to the Buyer Indemnified Party within [*] business days after receipt of such Notice of Claim expressing such objection and explaining in reasonable detail and in good faith the basis therefor (an "**Objection Notice**"). Following receipt by the Indemnified Party of the Objection Notice, if any, the Indemnified Party and the Indemnifying Part shall promptly, and within [*] business days, meet to attempt to resolve the rights of the respective parties that is the subject of the Objection Notice. If the Indemnifying Part and the Indemnified Party resolve the dispute, then as promptly as practicable (and in any event within [*] Business Days) following the resolution of the Direct Claim, the Indemnified Party and the Indemnifying Part shall execute and deliver a memorandum setting forth the aggregate Dollar amount of such Losses payable to the Indemnified Party (the "**Stipulated Amount**"), and such Stipulated Amount shall be paid in the manner set forth in Section 8(e). In the event that the Indemnified Party and the Indemnifying Part do not execute a memorandum as contemplated above within [*] business days of receipt by the Indemnified Party of the Objection Notice, then the Buyer Indemnified Party may commence an action to resolve such dispute and enforce its rights with respect thereto in any court available therefor (such action, a "**Litigated Dispute**"). Upon the resolution of a Litigated Dispute, the amount awarded to the Indemnified Party, if any, in such Litigated Dispute (the "**Award Amount**") shall be paid in the manner set forth in Section 8(e).

(iii) Third-Party Claims. Any claim by an Indemnified Party on account of Losses resulting from a Third-Party Claim shall be asserted by the Indemnified Party giving the Indemnifying Part a Notice of Claim with respect thereto. The Indemnifying Part shall promptly assume control of the defense and investigation of the Third-Party Claim, with counsel reasonably acceptable to the Indemnified Party, and the Indemnified Party shall fully cooperate with the Indemnified Party in connection therewith, in each case at the Indemnified Party's sole cost and expense. The Indemnified Party may participate in the defense of such Third-Party Claim, with counsel of its own choosing and at its own cost and expense. the Indemnifying Party shall not settle any Third-Party Claim without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld, conditioned, or delayed). If the Indemnifying Part fails or refuses to assume control of the defense of such Third-Party Claim, the Indemnified Party shall have the right, but no obligation, to defend against such Third-Party Claim, including settling such Third-Party Claim after giving notice to Seller, in each case in such manner and on such terms as the Indemnified Party may deem appropriate. Neither the Indemnified Party's failure to perform any obligation under this Section 8(d), nor any act or omission of the Indemnified Party in the defense or settlement of any Third-Party Claim shall relieve Seller of its obligations under this Section 8, including with respect to any Losses, except to the extent that Seller can demonstrate that it has been materially prejudiced as a result thereof.

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(e) Payment of Losses. With respect to any Losses for which an Indemnified Party is entitled to indemnification, any and all payments in respect of such Losses shall be satisfied, in whole or in part and at such Indemnified Party's election, by: (i) in the case of the Seller, setting off such Losses against any Earn-out Payments that become payable to Seller in accordance with the provisions of Section 3(e), as applicable, or (ii) wire transfer of immediately available funds from the Indemnifying Party within ten (10) business days after such amounts are finally determined to be due and payable to such Indemnified Party.

9. Equitable Remedies. Each party acknowledges that (a) a breach or threatened breach by such party of any of its obligations under this Agreement would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy; and (b) if a breach or a threatened breach by each party of any such obligations occurs, the other party will, in addition to any and all other rights and remedies that may be available to such party at law, at equity, or otherwise in respect of such breach, be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction, without any requirement to (i) post a bond or other security; or (ii) prove actual damages or that monetary damages will not afford an adequate remedy.

10. Confidentiality.

(a) Confidentiality and Use. Seller agrees: (i) not to use any information that is of a sensitive, proprietary, or confidential nature, whether written or oral, concerning the Acquired Rights, other than as strictly necessary to exercise its rights or perform its obligations under this Agreement; (ii) not to use any such information, directly or indirectly, in any manner to the detriment of Buyer or to obtain any competitive advantage relative to Buyer; and (iii) to maintain such information in strict confidence, and not to disclose such information without Buyer's prior written consent. Both parties agree to comply with the confidentiality obligations contained in the Licenses. The Mutual Non-Disclosure Agreement between Buyer and Seller dated [*], is hereby superseded in its entirety by the provisions of this Section 10.

(b) Compelled Disclosures. If either party is compelled to disclose any information with respect to the financial terms of this Agreement, or Seller is compelled to disclose any information that is of a sensitive, proprietary, or confidential nature concerning the Acquired Rights, by judicial or administrative process or by other requirements of law, such party shall: (i) promptly notify the other party in writing; (ii) disclose only that portion of such information that it is advised by counsel in writing is legally required to be disclosed; and (iii) use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

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(c) Permitted Disclosures. Notwithstanding anything to the contrary in this Section 10, each party shall be permitted to disclose any information with respect to this Agreement (i) to the extent required by applicable law, applicable regulations, or applicable rules of any stock exchange or quotation system on which Buyer, Seller, or any of their respective affiliates lists or trades securities from and after the date hereof, and (ii) to their respective representatives as necessary in the ordinary course of business (as long as such persons agree to or are bound by contract or professional obligation to keep the terms of this Agreement confidential and not use any such terms except as necessary in connection with such ordinary conduct).

11. Miscellaneous.

(a) Interpretation. For purposes of this Agreement, (i) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; and (iii) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, and Exhibits refer to the Sections of, and Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement is intended to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein are intended to be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient; and (iv) on the day after the date mailed, by certified or registered mail (in each case, return receipt requested, postage prepaid). Such communications must be sent to the respective parties at the following addresses or at such other address for a party as shall be specified in a notice given in accordance with this Section 11(b):

If to Seller:	Address:	Chemin des Aulx, 12, 1228 Plan-les-Outes, Geneva, Switzerland

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	Facsimile:	+41 (0)22 884 1556
	Email:	[*]
	Attention:	Chief Financial Officer
If to Buyer:	Address:	2200 Powell Street, Suite 310
	Email:	[*]
	Attention:	Chief Financial Officer

(c) Entire Agreement. This Agreement, together with Licenses and the documents to be delivered hereunder, and all related exhibits and schedules, constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

(d) Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(e) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(f) Governing Law; Venue. All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the Borough of Manhattan and County of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding.

(g) Amendment and Modification. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto.

(h) Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; and any single or partial exercise of any right, remedy, power, or privilege hereunder shall not preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

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(i) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

12. Expense Reimbursement. Seller agrees to reimburse Buyer for up to [*] of expenses incurred by Buyer in connection with the transactions contemplated by this Agreement (the "**Expense Reimbursement Amount**"). Such Expense Reimbursement Amount shall be set off from the Purchase Price in accordance with Section 3(b).

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed as of the date first written above by their respective duly authorized officers.

OBSEVA S.A.

By: /s/ Will Brown
Name: Will Brown
Title: Chief Financial Officer

XOMA (US) LLC

By: /s/ James R. Neal
Name: James R. Neal
Title: Chief Executive Officer

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Exhibit 10.57

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

LICENSE AGREEMENT
(EBOPIPRANT)

This License Agreement (the "**Agreement**") is entered into as of July 26, 2021 (the "**Effective Date**"), by and between ObsEva SA, having an address at Chemin des Aulx 12, 1228 Plan-Les-Ouates, Switzerland ("**ObsEva**") and Organon International GmbH, having an address at Weystrasse 20, 6006 Lucerne, Switzerland ("**Organon**"). ObsEva and Organon may be referred to herein individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

Whereas, ObsEva Controls (as defined below) certain patents, know-how and other intellectual property rights relating to Licensed Compound and Licensed Products (as such terms are defined below);

Whereas, Organon possesses resources and expertise in the development and commercialization of pharmaceutical products;

Whereas, Organon desires to obtain an exclusive license and sublicense to Develop, Manufacture, Commercialize and otherwise Exploit the Licensed Compounds and Licensed Products in the Field in the Territory (as such terms are defined below) and ObsEva desires to grant to Organon such license and sublicense.

AGREEMENT

Now, Therefore, in consideration of the foregoing premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Organon and ObsEva hereby agree as follows:

1. DEFINITIONS

1.1 "**Acceptance**" means, with respect to a Drug Approval Application, receipt of written notice from the applicable Regulatory Authority indicating that such Drug Approval Application has been accepted for filing and further Regulatory Authority review.

1.2 "**Accounting Standards**" means United States Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS), as consistently applied by Organon or its Affiliates or Sublicensees, as applicable.

1.3 "**Action**" has the meaning set forth in Section 9.5(e).

1.4 "**Affiliate**" means a Person or entity that controls, is controlled by or is under common control with a Party, but only for so long as such control exists. For the purposes of this Section 1.4, the word "**control**" (including, with correlative meaning, the terms "**controlled by**" or "**under the common control with**") means the actual power, either directly or indirectly through one or more intermediaries, to

direct the management and policies of such Person or entity, whether by the ownership of more than fifty percent (50%) of the voting stock of such entity, or by contract or otherwise. The Parties acknowledge that in the case of certain entities organized under the laws of certain countries outside of the United States, the maximum percentage ownership permitted by law for a foreign investor may be less than fifty percent (50%), and that in such case such lower percentage shall be substituted in the preceding sentence, provided that such foreign investor has the power to direct the management or policies of such entity.

1.5 "**Alliance Manager**" has the meaning set forth in Section 3.5.

1.6 "**Anti-Corruption Laws**" means any Applicable Laws regarding corruption, bribery, ethical business conduct, money laundering, political contributions, gifts and gratuities, or lawful expenses to Public Officials or private persons, agency relationships, commissions, lobbying, books and records, and financial controls, including the United States Foreign Corrupt Practices Act, 15 U.S.C. §78-dd-1, et seq., the Bribery Act 2010, the Criminal Law and Anti-Unfair Competition Law of the People's Republic of China, and laws implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; each as may be amended or supplemented from time to time

1.7 "**Applicable Laws**" means applicable laws, statutes, ordinances, rules, regulations, guidances and orders of any Governmental Authority (including court orders) having jurisdiction over or related to the subject item.

1.8 "**Bankruptcy Event**" means: (a) voluntary or involuntary proceedings by or against a Party instituted in bankruptcy under any insolvency law, which proceedings, if involuntary, shall not have been dismissed within sixty (60) days after the date of filing; (b) a receiver or custodian is appointed for a Party; (c) proceedings are instituted by or against a Party for corporate reorganization, dissolution, liquidation or winding-up of such Party, which proceedings, if involuntary, shall not have been dismissed within sixty (60) days after the date of filing; or (d) substantially all of the assets of a Party are seized or attached and not released within sixty (60) days thereafter.

1.9 "**Bayh-Dole Act**" means the Patent and Trademark Law Amendments Act of 1980 codified at 35 U.S.C. §§ 200-212, as amended, as well as any regulations promulgated pursuant thereto, including in 37 C.F.R. Part 401.

1.10 "**Business Day**" means a day other than a Saturday or Sunday on which banking institutions in Lucerne, Switzerland and New York, New York are open for business.

1.11 "**Calendar Quarter**" means each three (3) month period commencing January 1, April 1, July 1 or October 1, provided however that (a) the first Calendar Quarter of the Term shall extend from the Effective Date to the end of the first full Calendar Quarter thereafter, and (b) the last Calendar Quarter of the Term shall end upon the expiration of this Agreement.

1.12 "**Calendar Year**" means the period beginning on the 1st of January and ending on the 31st of December of the same year, provided however that (a) the first Calendar Year of the Term shall commence on the Effective Date and end on December 31, 2021 and (b) the last Calendar Year of the Term shall commence on January 1 of the Calendar Year in which this Agreement terminates or expires and ends on the date of termination or expiration of this Agreement.

1.13 "**Change of Control**," has the meaning set forth in Section 14.1(b).

1.14 "**China**" means the People's Republic of China, which includes mainland China, [*].

1.15 "**Claim**" has the meaning set forth in Section 12.1.

1.16 "**Clinical Trial**" means a clinical trial of a pharmaceutical product in humans which has been approved by a Regulatory Authority to be commenced and is designed to (a) establish that such pharmaceutical product is reasonably safe for continued testing; (b) investigate the safety and efficacy of such pharmaceutical product for its intended use, and to define warnings, precautions and adverse reactions that may be associated with such pharmaceutical product in the dosage range to be prescribed; (c) investigate the safety/tolerability, pharmacokinetics and pharmacodynamics of such pharmaceutical product; (d) support Regulatory Approval of such pharmaceutical product or label expansion of such pharmaceutical product; or (e) obtain, support or maintain Regulatory Approval, including any post-marketing commitments.

1.17 "**CMOs**" means Third Party contract manufacturers.

1.18 "**Combination Product**" means a product containing a Licensed Compound together with one or more active ingredients, or with one or more products, devices, equipment or components (each, an "**Other Product**").

1.19 "**Commercialization**" or "**Commercialize**" means any and all activities undertaken prior to and after receipt of Regulatory Approval for a particular Licensed Product and that relate to the pricing and reimbursement (including obtaining and maintaining Reimbursement Approval), marketing, promoting, distributing, importing for sale, offering for sale, and selling of the Licensed Product, including Phase 4 Trials that are voluntarily undertaken and are not mandated by a Regulatory Authority as a condition of receiving or maintaining Regulatory Approval.

1.20 "**Commercially Reasonable Efforts**" means, (a) with respect to the efforts to be expended by a Party with respect to any objective, such reasonable, diligent, and good faith efforts as [*] Party would normally use to accomplish a similar objective under similar circumstances, and (b) with respect to any obligation relating to Development or Commercialization of a Licensed Product by Organon, the application by [*].

1.21 "**Confidential Information**" of a Party means (a) the terms of this Agreement and (b) with respect to each Party, any information relating to the business, operations and products of a Party or any of its Affiliates, including any technical information, Know-How, trade secrets, or inventions (whether patentable or not), not known or generally available to the public, that such Party discloses to the other Party under this Agreement (including information disclosed prior to the Effective Date pursuant to that certain letter agreement between the Parties or their respective Affiliates dated March 8, 2021), or otherwise becomes known to the other Party by virtue of this Agreement. Notwithstanding the foregoing, all Regulatory Documentation owned by Organon pursuant to Section 4.6(b) shall be deemed to be the Confidential Information of Organon, and Organon shall be deemed to be the disclosing Party and ObsEva shall be deemed to be the receiving Party with respect thereto.

1.22 "**Consent**" has the meaning set forth in Section 11.1(g).

1.23 "**Control**" (including any variations such as "**Controlled**" and "**Controlling**") means, with respect to a Party and (a) Patent Rights, (b) Know-How or (c) biological, chemical or physical material, that such Party or one of its Affiliates owns or has a license or sublicense to such right, item, or material (or in the case of material, has the right to physical possession of such material, and, in each case of the foregoing, other than by operation of the license and other grants in Section 2.1) and the ability to grant a

license or sublicense to, or assign its right, title and interest in and to, such right, item or material as provided for in this Agreement, without breaching the terms of any then-existing agreement with a Third Party.

1.24 "**Controlling Party**" has the meaning set forth in Section 9.6(c).

1.25 "**Cover**," "**Covering**" or "**Covered**" means, with respect to a Licensed Product and a country, that the making, using, selling, or offering for sale of such Licensed Product would, but for a license granted in this Agreement under the Licensed Patents, infringe a Valid Claim of the Licensed Patents in the country in which the activity occurs.

1.26 "**Development**" or "**Develop**" means, with respect to Licensed Compound or a Licensed Product, all research and development activities, including the performance of pre-clinical and clinical development (including toxicology, pharmacokinetic and pharmacological studies, statistical analyses, protocol design, test method development and stability testing, process development, formulation development, and quality control development), Clinical Trials, Phase 4 Trials that are mandated by Regulatory Authority as a condition of receiving or maintaining Regulatory Approval (but no other Phase 4 Trials or Clinical Trials conducted after receipt of Regulatory Approval) and all regulatory affairs related to any of the foregoing, including regulatory activities that are required to obtain Regulatory Approval of the Licensed Product.

1.27 "**Development Plan**" has the meaning set forth in Section 4.2(a).

1.28 "**Dispute**" has the meaning set forth in Section 14.3.

1.29 "**Dollar**" or "**$**" means U.S. dollars.

1.30 "**Drug Approval Application**" means (a) Marketing Authorization Application ("**MAA**") submitted to EMA for the purpose of obtaining European Commission approval for the marketing of the Licensed Product for the countries located within the European Union, (b) a New Drug Application ("**NDA**") or a Biologics License Application filed pursuant to the requirements of the FDA, as more fully defined in the FFDCA, or (c) any equivalent registration application filed to the applicable Regulatory Authority for approval to market the Licensed Product in any country other than the European Union or the United States, in each case, including all additions, deletions or supplements thereto.

1.31 "**EMA**" means the European Medicines Agency, or any successor thereto.

1.32 "**Enforcing Party**" has the meaning set forth in Section 9.5(c).

1.33 "**European Union**" or "**E.U.**" means the economic, scientific, and political organization of member states known as the European Union, as its membership may be altered from time to time, and any successor thereto; provided that for the purposes of this Agreement, the European Union shall be deemed to include the United Kingdom.

1.34 "**Executive Officer**" means, with respect to ObsEva, the Chief Executive Officer of ObsEva or his or her designee and, with respect to Organon, the Executive Vice President, Head of Research and Development of Organon or his or her designee.

1.35 "**Existing INDs**" has the meaning set forth in Section 4.6(b).

1.36 "**Existing Know-How**" means the Licensed Know-How existing as of the Effective Date.

1.37 "**Existing Patents**" has the meaning set forth in Section 11.1(d).

1.38 "**Exploit**" means to Develop, make, have made and otherwise Manufacture, import, export, use, have used, register, sell, offer for sale, distribute, promote, market, have sold and otherwise Commercialize, modify, enhance, improve, or keep (whether for disposal or otherwise), transport or otherwise dispose of. "**Exploitation**" has correlative meaning.

1.39 "**FDA**" means the United States Food and Drug Administration, or any successor thereto.

1.40 "**FFDCA**" means, as applicable, the United States Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 et seq., and the Public Health Service Act, 42 U.S.C. §§ 262 et seq., as amended from time to time.

1.41 "**Field**" means all therapeutic, prophylactic, palliative and diagnostic uses in humans and animals.

1.42 "**First Commercial Sale**" means the first sale for monetary value to a Third Party for use or consumption of the Licensed Product by Organon or its Affiliate(s) or Sublicensee(s). For the avoidance of doubt, a First Commercial Sale may only occur after the Licensed Product has received Regulatory Approval for the country in which the First Commercial Sale occurs, and First Commercial Sale excludes any sale or other distribution of a Licensed Product for Clinical Trial or other Development purposes or for early access programs (such as pursuant to treatment INDs or protocols, named patient programs or compassionate use programs) or any similar use, in each case to provide patients with such Licensed Product prior to Regulatory Approval.

1.43 "**Force Majeure**" has the meaning set forth in Section 14.13.

1.44 "**Generic Product**" means, with respect to a Licensed Product and a country in the Territory, any product that (a) is approved for use in an indication that is the same as an indication for such Licensed Product in such country by a Regulatory Authority in reliance, in whole or in part, on the Regulatory Approval (or on safety or efficacy data submitted in support of the Regulatory Approval) of such Licensed Product in such country, (b) contains the Licensed Compound as an active ingredient, and (c) is sold in such country by a Third Party that is not a Sublicensee and did not purchase such product or Licensed Compound from Organon or its Affiliates or Sublicensees.

1.45 "**Governmental Authority**" means any: (a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, representative, organization, unit, body or entity and any court or other tribunal); (d) multinational or supranational organization or body; or (e) individual, entity, or body, including any court, exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

1.46 "**GxP**" means, collectively, all relevant good practice quality guidelines and regulations, encompassing such internationally recognized standards as Good Manufacturing Practice (GMP), Good Clinical Practice (GCP), Good Laboratory Practice (GLP), Good Distribution Practice (GDP), and Good Review Practice (GRP), in each case (a) as such terms are defined from time to time by the FDA and other applicable Governmental Authorities pursuant to its regulations, guidelines or otherwise and (b) applicable

from time to time to the Development or Manufacturing of a Licensed Compound or Licensed Product or any intermediate thereof pursuant to Applicable Law.

1.47 "**IND**" means an investigational new drug application filed with the FDA or the equivalent application or filing filed with any equivalent agency or Governmental Authority outside the United States (including any supra-national entity such as in the European Union) for approval to commence Clinical Trials in such jurisdiction such as a clinical trial application or a clinical trial notification, and including all regulations at Title 21 of the Code of Federal Regulations Part 312 et seq. and equivalent foreign regulations.

1.48 "**IND Acceptance**" means, with respect to a particular Licensed Product, that the IND for the Clinical Trial for such Licensed Product filed hereunder by Organon with the FDA was accepted by the FDA, as evidenced by no objection by the FDA within thirty (30) days after the date of the IND submission (or any amended submission if the initial IND-filing was not accepted and such amendment restarted the applicable 30-day period).

1.49 "**Indemnified Party**" has the meaning set forth in Section 12.3.

1.50 "**Indemnifying Party**" has the meaning set forth in Section 12.3.

1.51 "**Infringing Licensed Product**" has the meaning set forth in Section 7.4(c)(v).

1.52 "**Initiation**" means, with respect to a Clinical Trial, the first dosing of the first (1st) human subject in such Clinical Trial.

1.53 "**Inventions**" means all inventions, whether or not patentable, discovered, made, developed, generated, conceived or reduced to practice in the course of conducting activities under this Agreement or through the exercise of a license granted in this Agreement, together with all intellectual property rights therein.

1.54 "**Joint Advisory Committee**" or "**JAC**" has the meaning set forth in Section 3.1.

1.55 "**Know-How**" means all present and future scientific, technical, or commercial information, results and data of any type whatsoever that is not in the public domain or otherwise publicly known, including databases, inventions, improvements, practices, research, methods, discoveries, developments, technology, protocols, specifications, formulae, software, algorithms, knowledge, know-how, trade secrets, processes, assays, skills, experience, chemical or biological materials, reagents, formulations, expertise, techniques, results of experimentation and testing, data (including pharmacological, biological, chemical, biochemical, toxicological, pre-clinical and clinical data and analytical and quality control data, stability data and other study data), CMC information, manufacturing process and development, and results in all cases, whether or not patentable, in written, electronic, tangible, intangible or any other form now known or hereafter developed, but excluding any Patent Rights and Trademarks.

1.56 "**Knowledge**" means, with respect to a particular fact or matter, the knowledge, following reasonable inquiry, of any [*] of ObsEva who has responsibility for such fact or matter; provided that such reasonable inquiry shall not require ObsEva or [*] to perform any freedom to operate analysis with respect to any Patents.

1.57 "**Legal Action**" has the meaning set forth in Section 9.5(b).

1.58 "**Licensed Compound(s)**" means the compound known as Ebopiprant [*].

1.59 "**Licensed Know-How**" means Know-How Controlled by ObsEva or any of its Affiliates as of the Effective Date or at any time during the Term that is necessary or reasonably useful for the Development, Manufacture, Commercialization or other Exploitation of a Licensed Compound or Licensed Product.

1.60 "**Licensed Patents**" means Patent Rights Controlled by ObsEva or any of its Affiliates as of the Effective Date or at any time during the Term that claim [*]. The Licensed Patents existing as of the Effective Date are set forth on Schedule 1.60 and include the Merck Serono Patents.

1.61 "**Licensed Product**" means any product that contains, comprises or incorporates a Licensed Compound, whether alone or in combination with other active ingredients, in all current and future formulations, and in any dosage form, presentation or package configuration, and for any mode of administration.

1.62 "**Licensed Product CMO**" has the meaning set forth in Section 5.3(a).

1.63 "**Licensed Technology**" means, collectively, the Licensed Know-How and the Licensed Patents.

1.64 [*]

1.65 "**Losses**" has the meaning set forth in Section 12.1.

1.66 "**MAA**" has the meaning set forth in the definition of "Drug Approval Application."

1.67 "**Major Market**" means each of [*].

1.68 "**Manufacture**" and "**Manufacturing**" means all activities related to the synthesis, making, production, processing, purifying, formulating, filling, finishing, packaging, labelling, shipping, and holding of a Licensed Compound or Licensed Product or any intermediate thereof, including process development, process qualification and validation, scale-up, pre-clinical, clinical and commercial production and analytic development, product characterization, supply chain, stability testing, quality assurance testing and release, investigations, risk assessments, corrective actions, and quality control.

1.69 "**Manufacturing Process**" has the meaning set forth in Section 4.4(c).

1.70 "**Manufacturing Technology Transfer**" has the meaning set forth in Section 4.4(c).

1.71 "**Manufacturing Transfer Plan**" means the plan covering the Manufacturing Technology Transfer to Organon which the Parties shall agree upon as promptly as practicable after the Effective Date, but in no event longer than [*] days after the Effective Date.

1.72 "**Merck Serono**" has the meaning set forth in the definition of "Merck Serono Agreement."

1.73 "**Merck Serono Agreement**" means the License Agreement dated June 10, 2015 by and between Ares Trading S.A. ("Merck Serono") and ObsEva, as amended by the First Amendment to the License Agreement dated July 8, 2016.

1.74 "**Merck Serono Confidential Information**" has the meaning set forth in Section 10.1.

1.75 "**Merck Serono Patent Infringement**" has the meaning set forth in Section 9.5(a).

1.76 "**Merck Serono Patents**" means the Patent Rights listed on Schedule 1.60.

1.77 "**NDA**" has the meaning set forth in the definition of "Drug Approval Application."

1.78 "**Net Sales**" means the amounts invoiced by Organon or its Affiliates or Sublicensees for sales of Licensed Products to a Third Party (other than a Sublicensee) (whether a sales agent, a service provider, a hospital, an end user, a distributor, a pharmacy or otherwise), less the following:

(a) [*];

(b) [*];

(c) [*];

(d) [*].

[*]. For the avoidance of doubt, Net Sales may only occur after the Licensed Product has received Regulatory Approval for the country in which the Net Sales occur.

(e) [*].

1.79 "**NMPA**" means the National Medical Licensed Products Administration in China, and local counterparts thereto, or any successor entity thereto.

1.80 "**ObsEva Indemnitee**" has the meaning set forth in Section 12.1.

1.81 "**ObsEva Patent Infringement**" has the meaning set forth in Section 9.5(a).

1.82 "**ObsEva Patents**" means all Licensed Patents in the Territory other than the Merck Serono Patents.

1.83 "**Organon Improvement Know-How**" means any and all Know-How (including any improvement, Invention or discovery) that is Controlled by Organon or its Affiliates that is discovered, made, developed, generated, conceived or reduced to practice by one or more employees of Organon or its Affiliates or Sublicensees (or a Third Party acting on its or their behalf) in the course of conducting activities under this Agreement and that relates solely to a Licensed Compound or Licensed Product [*], including new or improved methods of manufacture, formulas, uses, indications, delivery methods or dosage forms thereof.

1.84 "**Organon Improvement Patents**" means any and all Patent Rights Controlled by Organon or its Affiliates that claim (a) any Organon Improvement Know-How, (b) a Licensed Compound, or (c) any Licensed Product (or, with respect to Patent applications, would claim any of the foregoing if such Patent applications were to issue as Patents).

1.85 "**Organon Improvement Technology**" means, collectively, the Organon Improvement Know-How and the Organon Improvement Patents.

1.86 "**Organon Indemnitee**" has the meaning set forth in Section 12.1(c).

1.87 "**Organon Know-How**" means any Know-How that is (a) Controlled by Organon or any of its Affiliates as of the effective date of the applicable termination of this Agreement, (b) actually used by Organon or its Affiliates or Sublicensees in the Exploitation of or otherwise with respect to or incorporated in a Licensed Compound or any Licensed Product as it exists as of such effective date of termination, and (c) necessary to Develop, have Developed, Manufacture, have Manufactured, Commercialize or otherwise Exploit any Licensed Product as it exists as of such effective date of termination, but in each case (i) solely with respect to any such Licensed Product that is the subject of Development or Commercialization in the Territory as of the effective date of such termination, and (ii), if such Licensed Product is a Combination Product [*], excluding any such Know-How related to any such Other Product, including any active ingredient other than the Licensed Compound, in such Combination Product.

1.88 "**Organon Patents**" means any Patents that (a) are Controlled by Organon or any of its Affiliates as of the effective date of the applicable termination of this Agreement, and (b) either (i) include one (1) or more claim(s) that claim or cover Organon Know-How or (ii) are actually used by Organon or its Affiliates or Sublicensees in the Exploitation of any Licensed Product as it exists as of such effective date of termination and are necessary to Develop, have Developed, Manufacture, have Manufactured, Commercialize or otherwise Exploit any Licensed Product as it exists as of such effective date of termination, but in each case (A) solely with respect to any such Licensed Product that is the subject of Development or Commercialization in the Territory as of the effective date of such termination, and (B), if such Licensed Product is a Combination Product [*], excluding any such Patents that cover any such Other Product, including any active ingredient other than the Licensed Compound, in such Combination Product, and in all cases, in no event shall Organon Patents include any Patent Controlled by Organon or any of its Affiliates that claims or covers the composition of any Other Product in a Combination Product.

1.89 "**Organon Technology**" means, collectively, the Organon Know-How and the Organon Patents.

1.90 "**Other Product**" has the meaning set forth in the definition of "Combination Product."

1.91 "**Patent**" or "**Patent Right(s)**" means: (a) an issued or granted patent, including any extension, supplementary protection certificate, registration, confirmation, reissue, reexamination, extension or renewal thereof; (b) a pending patent application, including any continuation, divisional, continuation-in-part, substitute or provisional application thereof; and (c) all counterparts or foreign equivalents of any of the foregoing issued by or filed in any country or other jurisdiction.

1.92 "**Patent Challenge**" has the meaning set forth in Section 13.3(a).

1.93 "**Person**" means any natural person, corporation, firm, business trust, joint venture, association, organization, company, partnership or other business entity, or any Governmental Authority, government or agency or political subdivision thereof.

1.94 "**Phase 3 Trial**" means a Clinical Trial of a Licensed Product which Clinical Trial the FDA permits to be conducted under an open IND, and which is designed to: (a) establish that the Licensed Product is safe and efficacious for its intended use; (b) define warnings, precautions, and adverse reactions that are associated with the Licensed Product in the dosage range to be prescribed; and (c) enable the submission of an NDA to the FDA for the Licensed Product, and that satisfies the requirements of U.S. federal regulation 21 C.F.R. § 312.21(c) and its successor regulation.

1.95 "**Phase 4 Trial**" means a study of the Licensed Product conducted after Regulatory Approval: (a) due to a request or requirement of a Regulatory Authority as a condition of receiving or maintaining such Regulatory Approval; or (b) voluntarily by a Party to enhance marketing or scientific knowledge of the Licensed Product (including, for clarity, any post-marketing surveillance studies and registries sponsored by a Party, epidemiological models, or pharmacoeconomic studies).

1.96 "**Privacy Laws**" means any Applicable Laws regarding the collection, use, transfer, storage, protection, deletion, processing (both by computer and manually), combination, or other use of Clinical Trial subject or patient data (sometimes referred to as protected health information) or other personal data.

1.97 "**Product Trademarks**" has the meaning set forth in Section 9.8.

1.98 "**Prosecution**" means, with respect to any Patent, the preparation, filing, prosecution and maintenance (including any interferences, reissue proceedings, reexaminations, inter partes review, oppositions, invalidation proceedings and defense of validity or enforceability challenges) of such Patent.

1.99 "**Public Official**" means (a) any elected or appointed officer, employee or representative of any regional, federal, state, provincial, county or municipal Governmental Authority, agency or other division; (b) any officer, employee or representative of any commercial enterprise that is owned or controlled by a Governmental Authority, including any state-owned or controlled veterinary, laboratory research or medical facility; (c) any political party officer, candidate for public office, or political party employees or individuals acting for or on behalf of a political party or candidate for public office; (d) any officer, employee or representative of any public international organization, such as the African Union, the International Monetary Fund, the United Nations or the World Bank; and (e) any person acting in an official capacity for any Government Authority, enterprise or organization identified above. For clarity, healthcare providers employed by government-owned or -controlled hospitals, or a person serving on a healthcare committee that advises a Governmental Authority, will be considered Public Officials.

1.100 "**Reduction Circumstances**" has the meaning set forth in Section 7.4(c)(iii).

1.101 "**Regulatory Approval**" means approval of a Drug Approval Application by the applicable Regulatory Authority for marketing and sale of a Licensed Product in the Territory. For clarity, Regulatory Approval does not include Reimbursement Approval.

1.102 "**Regulatory Authority**" means (a) the FDA, (b) the EMA or the European Commission, (c) the NMPA, or (d) any regulatory body with similar regulatory authority over pharmaceutical or biotechnology products in any other jurisdiction anywhere in the world.

1.103 "**Regulatory Documentation**" means (a) all Regulatory Filings, (b) correspondence and reports submitted to or received from Regulatory Authorities (including minutes and official contact reports relating to any communications with any Regulatory Authority) and all supporting documents with respect thereto, including all regulatory drug lists, advertising and promotion documents, adverse event files, and complaint files, and (c) data contained or relied upon in any of the foregoing, in each case ((a), (b), and (c)) relating to a Licensed Compound or Licensed Product.

1.104 "**Regulatory Exclusivity**" means any exclusive marketing rights or data exclusivity rights conferred by any Regulatory Authority with respect to a Licensed Product, other than Patents, including rights conferred in the U.S. under the Hatch-Waxman Act or the FDA Modernization Act of 1997 (including

pediatric exclusivity), or rights similar thereto outside the U.S., such as Directive 2001/83/EC (as amended) in the European Union.

1.105 "**Regulatory Filing**" means all applications, filings, submissions, approvals, licenses, registrations, permits, notifications, and authorizations (or waivers) with respect to the testing, Development, Manufacture, or Commercialization of any Licensed Product made to or received from any Regulatory Authority in a given country, including INDs, Drug Approval Applications, Regulatory Approvals and Reimbursement Approvals.

1.106 "**Reimbursement Approval**" means any governmental approval, agreement, determination, or decision establishing prices for a Licensed Product that can be charged or reimbursed in regulatory jurisdictions where the applicable Regulatory Authorities approve or determine the price or reimbursement of pharmaceutical products.

1.107 [*]

1.108 "**Reversion Licenses**" has the meaning set forth in Section 13.6(f).

1.109 "**Reversion Royalty Dispute**" has the meaning set forth in Section 13.6(f).

1.110 "**Royalty Term**" has the meaning set forth in Section 7.4(b).

1.111 "**Rules**" has the meaning set forth in Section 14.3.

1.112 "**Safety Concern**" means, with respect to a Licensed Product, (a) any safety concern required to be reported under 21 C.F.R. § 312.32(c)(1)(iii) or the equivalent in any non-U.S. jurisdiction, or (b) a material toxicity or material drug safety issue or a Serious Adverse Event reasonably related to a Licensed Product.

1.113 "**Safety Reason**" means that there is an unacceptable risk for harm in humans based upon (a) preclinical safety data, including data from animal toxicology studies, (b) the observation of serious adverse effects in humans after the Licensed Product has been administered to humans, such as during a Clinical Trial of a Licensed Product, or (c) other Safety Concerns.

1.114 "**Step-In Prosecuted Patent**" has the meaning set forth in Section 7.4(c)(iv).

1.115 "**Sublicensee**" means a Third Party to whom Organon grants a sublicense under any of the Licensed Technology licensed under Section 2.1, as permitted in accordance with Section 2.2, excluding contract research organizations, CMOs and similar service providers, and wholesalers, distributors and similar physical distributors that do not promote the sale of the Licensed Product.

1.116 "**Supply Agreements**" has the meaning set forth in Section 5.3(a).

1.117 "**Supply Period**" has the meaning set forth in Section 5.3(a).

1.118 "**Term**" has the meaning set forth in Section 13.1(a).

1.119 "**Territory**" means all of the countries in the world, and their territories and possessions.

1.120 "**Third Party**" shall mean any Person that is not a Party or an Affiliate of a Party.

1.121 "**Third Party Action**" has the meaning set forth in Section 9.6(a).

1.122 "**Third Party License**" has the meaning set forth in Section 7.4(c)(v).

1.123 "**Third Party License Agreement**" has the meaning set forth in Section 9.7.

1.124 "**Trademarks**" means any word, name, symbol, color, designation or device or any combination thereof that functions as a source identifier, including any trademark, trade dress, brand mark, service mark, trade name, brand name, logo, business symbol or domain names, whether or not registered.

1.125 "**United States**" or "U.S." means the United States of America, including its territories and possessions.

1.126 "**Upfront Payment**" has the meaning set forth in Section 7.1.

1.127 "**Valid Claim**" means any claim in any [*] unexpired and issued Licensed Patent that has not been disclaimed, revoked or held invalid by a final non-appealable decision of a court or other governmental agency of competent jurisdiction [*].

2. LICENSE GRANTS

2.1 License Grant to Organon. Subject to the terms and conditions of this Agreement, ObsEva (on behalf of itself and its Affiliates) hereby grants to Organon and its Affiliates an exclusive (even as to ObsEva and its Affiliates, subject to Section 2.5), sublicensable (solely in accordance with Section 2.2), non-transferable (except as provided in Section 14.9) license and sublicense under the Licensed Technology to Develop, Manufacture, have Manufactured, Commercialize and otherwise Exploit Licensed Compound and Licensed Products in the Field and in the Territory.

2.2 Sublicenses. Organon shall have the right to grant sublicenses under the license granted in Section 2.1, subject to ObsEva being duly informed in writing by Organon in advance of the execution of any sublicense agreement by Organon with each Sublicensee; provided, however, that, [*]. Each sublicense granted by Organon pursuant to this Section 2.2 shall be consistent with the terms and conditions of this Agreement and shall include obligations of confidentiality and non-use applicable to the Confidential Information of ObsEva that are substantially similar to those set forth in Article 10, and include the applicable reporting and record keeping requirements set forth in Article 8. The granting by Organon of a sublicense to a Sublicensee shall not relieve Organon of its obligations hereunder and Organon shall remain directly liable to ObsEva with respect to the performance of its obligations under, and Organon's compliance with all provisions of, this Agreement, including ensuring that the performance by any of its Sublicensees of such obligations is in accordance with the applicable terms of this Agreement. Organon shall promptly provide ObsEva with a copy of each fully executed sublicense agreement executed by Organon with each Sublicensee, provided that the commercial and financial terms of such sublicense may be redacted, and ObsEva hereby undertakes to treat such redacted sublicense agreement as Confidential Information of Organon. For the avoidance of doubt, (i) Organon may grant sublicenses on a country-by-country basis or worldwide and (ii) contract research organizations, CMOs and similar service providers, and wholesalers, distributors and similar physical distributors that do not promote the sale of the Licensed Product shall not need a sublicense and shall be handled in accordance with the subcontracting provision of Section 5.6.

2.3 Merck Serono Agreement.

(a) The Parties acknowledge and agree that the sublicense granted under this Article 2 under certain Licensed Technology that is not owned by ObsEva or its Affiliates are subject to the limitations, obligations, and reservations imposed on ObsEva or its Affiliates in the Merck Serono Agreement. [*]. Organon acknowledges that it has received a copy of the Merck Serono Agreement.

(b) ObsEva represents and warrants to Organon, as of the Effective Date, that (i) Schedule 2.3 contains a complete and accurate list of all requirements applicable to Organon of the Merck Serono Agreement, and (ii) a copy of the Merck Serono Agreement and all associated amendments related to the performance of obligations thereunder was included in the electronic data room that has been made available to Organon.

(c) With respect to the Merck Serono Agreement, ObsEva represents and warrants to Organon, as of the Effective Date, that: (i) it is in full force and effect; (ii) neither ObsEva nor any of its Affiliates is in material breach thereof; (iii) neither ObsEva nor any of its Affiliates has received any notice from Merck Serono of any material breach or notice of threatened material breach thereof; (iv) neither ObsEva nor any of its Affiliates has received any notice from Merck Serono of any intent to reduce the scope of the field thereunder or render any of the licenses thereunder non-exclusive or otherwise terminate the Merck Serono Agreement, and, to ObsEva's Knowledge no event, act or omission has occurred which would reasonably give rise to the right of Merck Serono to reduce the scope of the field thereof or render any of the licenses thereunder non-exclusive or otherwise terminate such agreement or any licenses thereunder (including with respect to any particular Patents or other intellectual property); (v) neither ObsEva nor any of its Affiliates have waived or relinquished any rights thereunder; and (vi) entering into this Agreement and granting the rights and licenses granted (or purported to be granted) to Organon hereunder complies with and will not result in a breach of the terms and conditions of the Merck Serono Agreement.

(d) ObsEva will inform Organon of any action it may take under the Merck Serono Agreement to the extent such action may impact Organon's interest hereunder and will consult with Organon with respect thereto. Without limiting the foregoing, ObsEva shall: (i) fulfill in all material respects all of its obligations, including its payment obligations, under, and shall not otherwise breach in any material respect, the Merck Serono Agreement and shall maintain same in full force and affect; (ii) not assign (except an assignment to a party to which this Agreement has been assigned as permitted under Section 14.9), amend, restate, amend and restate, terminate in whole or in part, or otherwise modify the Merck Serono Agreement, or otherwise waive any rights under the Merck Serono Agreement, in each case, without the prior written consent of Organon, such consent not to be unreasonably withheld, conditioned or delayed; (iii) provide Organon with prompt notice of any claim by Merck Serono or ObsEva, respectively, of ObsEva's or Merck Serono's breach under the Merck Serono Agreement or notice from Merck Serono or ObsEva of termination of the Merck Serono Agreement; (iv) promptly send to Organon copies of all other material correspondence from ObsEva to Merck Serono or from Merck Serono to ObsEva with respect to the Merck Serono Agreement. Without limiting any other right or remedy of Organon under this Agreement and in order to prevent, ameliorate, mitigate or cure a breach of the Merck Serono Agreement, in the event that ObsEva becomes aware (either on its own, or by notice from Merck Serono) of its material failure to perform any of its obligations under the Merck Serono Agreement (including where a breach or alleged breach by Organon of its obligations under this Agreement or any other act or omission by Organon prevents such performance by ObsEva or is the cause of ObsEva's failure to perform such obligation), it shall so promptly notify Organon in writing. Except to the extent that a breach or alleged breach by Organon (or its Affiliate or Sublicensee) of its obligations under this Agreement or any other act or omission by Organon or its Affiliate or Sublicensee prevents such performance by ObsEva or is the cause of ObsEva's failure to perform such obligation, ObsEva's notice shall include ObsEva's proposed plan to remediate or cure such material failure for Organon's review and approval, and if such failure is not cured

within [*] days after written notice to Organon, Organon shall have the right, but not the obligation, to perform such obligation on behalf of ObsEva [*] For clarity, if and to the extent ObsEva is prevented from performing any of its obligations under the Merck Serono Agreement as a result of, or ObsEva's material failure to perform any of its obligations under the Merck Serono Agreement is caused by, a breach or alleged breach by Organon (or its Affiliate or Sublicensee) of its obligations under this Agreement or any other act or omission by Organon or its Affiliate or Sublicensee, the preceding sentence shall not apply.

(e) Without limiting the provisions of the foregoing clause (d), ObsEva will enforce (or otherwise take the actions necessary to enable Organon to enforce) ObsEva's rights and benefits under the Merck Serono Agreement, and the obligations of Merck Serono under the Merck Serono Agreement, in each case, that may impact the rights, benefits and obligations of Organon hereunder, including taking such actions and exercising such rights under the Merck Serono Agreement as Organon may reasonably request. ObsEva shall provide notice to Organon of any discussions or other interactions with Merck Serono related to any Licensed Compound or Licensed Product, or the Merck Serono Agreement, and allow Organon to participate in such discussions and interactions, and will not make any decisions with Merck Serono with respect to any Licensed Compound or Licensed Product without the prior consent of Organon, such consent not to be unreasonably withheld, conditioned or delayed.

(f) If Organon reasonably requests amendments to the Merck Serono Agreement that are reasonably necessary to facilitate Development and Commercialization of Licensed Compounds and Licensed Products, ObsEva shall, together with Organon, negotiate with Merck Serono to enter into an appropriate amendment to implement the requested modifications to the Merck Serono Agreement. For clarity, Organon shall participate, and at ObsEva's request take the lead, in such negotiations, and any such amendments shall be subject to the approval of Organon and ObsEva, which approval shall not be unreasonably withheld, conditioned or delayed by either Party.

(g) ObsEva will bear and will be responsible for all of its payment obligations, including royalty payments to Merck Serono, under the Merck Serono Agreement.

2.4 Additional In-License Agreements. During the Term, neither ObsEva nor any of its Affiliates shall, without Organon's prior written consent, enter into any agreement with a Third Party related to Know-How, Regulatory Documentation, material, Patents, or other intellectual property rights directed primarily to a Licensed Compound or Licensed Product.

2.5 Reserved Rights. Notwithstanding the exclusive licenses granted to Organon hereunder, ObsEva hereby reserves the right to practice, and to grant licenses under, the Licensed Technology to perform its obligations under this Agreement and any ancillary agreement.

2.6 No Implied Licenses. Except as set forth in this Agreement, neither Party shall acquire any license or other intellectual property interest, by implication or otherwise, under or to any Patents, Know-How, or other intellectual property owned or controlled by the other Party.

3. GOVERNANCE

3.1 Joint Advisory Committee. Within [*], the Parties shall establish a Joint Advisory Committee (the "Joint Advisory Committee" or the "JAC") to act as a consultative body, and provide input and oversight, with respect to the Development of the Licensed Product in the Territory. In particular, the JAC shall:

(a) review and discuss the Development Plan and amendments thereto;

(b) oversee the Development activities performed pursuant to the Development Plan;

(c) facilitate the transfer of Licensed Know-How to Organon under Section 4.4;

(d) review and discuss draft protocols or synopses of protocols for Clinical Trials and Phase 4 Trials; and

(e) perform such other functions as the Parties may mutually agree in writing from time to time, except where in conflict with any provisions of this Agreement.

3.2 JAC Membership and Meetings.

(a) JAC Representatives. The JAC shall be comprised of an equal number of up to three (3) representatives from each Party. Each Party's JAC representatives will have appropriate scientific, clinical, regulatory or commercial expertise and ongoing familiarity with the activities hereunder as are required to fulfill their obligations as members of the JAC. Each Party may replace its representatives on the JAC on written notice to the other Party. Organon shall appoint the chairperson of the JAC. The chairperson shall prepare and circulate agendas to JAC members at least five (5) days before each JAC meeting and shall direct the preparation of reasonably detailed minutes for each JAC meeting, which shall be approved by the chairperson and circulated to JAC members within thirty (30) days after such meeting.

(b) Meetings. The JAC shall hold meetings at such times as it elects to do so, but no less frequently than once per Calendar Year. Notwithstanding the foregoing, either Party may request that a special ad hoc meeting of the JAC be convened to address matters that cannot reasonably be postponed until the next scheduled meeting of the JAC, and the Parties may mutually agree upon alternative meeting schedules, including less frequently. Meetings may be conducted in person or by teleconference, videoconference or other similar communications equipment. In-person meetings shall be held at locations alternately selected by the Parties. Each Party shall be responsible for its own expenses of participating in any JAC meeting.

(c) Non-Member Attendance. Each Party may from time to time invite a reasonable number of participants, in addition to its representatives, to attend the JAC meetings; provided that if either Party intends to have any Third Party (including any consultant) attend such a meeting, such Party shall provide reasonable prior written notice to the other Party. The Party inviting a Third Party to attend a JAC meeting shall ensure that such Third Party is bound by written confidentiality and non-use obligations consistent with the terms of this Agreement.

3.3 Limitations on Authority. The JAC shall be an advisory body, and its decisions will not be binding on or enforceable against either Party, and each Party shall remain responsible for such Party's decisions relating to the conduct of those activities for which it has a performance or other obligation hereunder, in each case in a manner consistent with the terms and conditions of this Agreement. Notwithstanding the foregoing, if [*], then, within [*] days after the applicable meeting of the JAC, ObsEva may submit such matter to the Party's respective Executive Officers who shall discuss such matter in good faith as soon as practicable; provided that, if the Executive Officers are unable to reach agreement after such good faith discussions within a period of [*] days after such matter is so submitted, then Organon's Executive Officer shall have the final decision-making authority with respect to such matter. Without limiting the generality of the foregoing, (a) the JAC shall not have the power to amend this Agreement, (b) no decision by the JAC or by either Party may be in contravention of any terms or conditions of this Agreement, and (c) neither the JAC nor a Party will have the authority to (i) amend or modify, or waive compliance with this Agreement, (ii) obligate either Party to violate Applicable Law, the requirements of

any Regulatory Authority or any agreement with any Third Party, or (iii) impose any obligation on either Party that would be in violation of such Party's written standard operating procedures, written business policies, or written compliance policies or procedure.

3.4 Discontinuation of the JAC. The activities of the JAC shall solely relate to governance under this Agreement, and are not intended to be or involve the delivery of services. Subject to Section 14.1(b), the JAC shall continue to exist until the earlier of (a) the Parties mutually agreeing to disband the JAC, (b) ObsEva's election to withdraw its participation and remove its members from the JAC, or (c) [*]. At such time, the JAC shall automatically dissolve and have no further responsibilities under this Agreement, and each Party shall designate a contact person for the exchange of information under this Agreement. Following discontinuation of the JAC, any information, documents or reports that a Party is otherwise required to provide to the JAC pursuant to this Agreement shall be provided directly to the other Party.

3.5 Alliance Managers. Promptly after the Effective Date, each Party shall appoint an individual who shall serve as the main point of contact for each Party to exchange information, facilitate communication and coordinate the Parties' activities hereunder (each, an "**Alliance Manager**"). The Alliance Managers shall oversee communications between the Parties for all matters between meetings of the JAC and after the JAC is discontinued, and shall have such other responsibilities as the Parties may agree in writing after the Effective Date. Each Party may replace its Alliance Manager at any time by providing prior written notice (which may be by email) to the other Party. Each Party shall bear the costs of its Alliance Manager.

4. DEVELOPMENT; REGULATORY

4.1 General. Subject to the terms and conditions of this Agreement, including Section 6.1, Organon shall have sole right and responsibility, at its sole cost and expense, to Develop the Licensed Compounds and Licensed Products in the Territory, including, for clarity, formulation development, GMP manufacturing, regulatory dossier development, non-clinical studies, Clinical Trial development and execution, quality control and quality management, submission of Regulatory Filings, and interactions with relevant Regulatory Authorities.

4.2 Development Plan; Performance.

(a) Organon shall prepare, and shall provide to the JAC for review and discussion, a plan setting forth the Development activities (including regulatory activities) to be undertaken by Organon or its Affiliates or Sublicensees and intended to achieve Regulatory Approval of the Licensed Products in the Field in the Major Markets ("Development Plan"). Organon shall prepare an update to the Development Plan at least [*], and shall provide such amended Development Plan to the JAC for review and discussion.

(b) Organon shall perform, and will ensure that its Affiliates, Sublicensees and Third Party contractors perform, all Development activities under this Agreement in sound scientific manner, in material compliance with all Applicable Laws, and in accordance with, as applicable, ICH and GxP

4.3 Development Reports. In advance of each regularly scheduled JAC meeting, or in writing provided to ObsEva's Alliance Manager at least [*] if the JAC is discontinued, Organon shall provide ObsEva with a high-level report (by means of a slide presentation or otherwise) summarizing Organon's and its Affiliates and Sublicensees' significant Development activities in the Major Markets, and the results of such activities, during the period since the previous such report. At each meeting of the JAC, Organon will present and the Parties will discuss such report and a summary of Organon's and its Affiliates' and

Sublicensees' significant Development efforts and updates on their Development progress with respect to the Licensed Compounds and the Licensed Products in the Major Markets during the period since the previous JAC meeting. In addition, Organon will promptly provide ObsEva, through the JAC or ObsEva's Alliance Manager if the JAC is discontinued, with written notice and a reasonably detailed description of any significant Development events (e.g., Clinical Trial Initiation, termination or completion, clinical holds, Safety Concerns or receipt of Regulatory Approvals) arising in the course of Organon's or its Affiliate's or Sublicensee's Development of Licensed Products in the Major Markets. Without limiting the foregoing, [*], Organon shall provide ObsEva a written report summarizing its Development activities [*], in the format reasonably requested by ObsEva, [*].

4.4 Technology Transfer.

(a) Within [*] after the Effective Date, to the extent not done so already, ObsEva shall, and shall cause its Affiliates to, without additional compensation, disclose and make available to Organon, in electronic or hard copy form, as Organon may reasonably request, Licensed Know-How and any other Know-How claimed or Covered by any Licensed Patent or otherwise relating to any Licensed Compound or Licensed Product.

(b) In connection with such transfer, ObsEva, in a timely manner, shall assist Organon in the use and understanding of such Licensed Know-How, including providing technical assistance and making its technical personnel available to Organon. Without prejudice to the generality of the foregoing, if visits of ObsEva's representatives to Organon's facilities are reasonably requested by Organon for purposes of transferring the Licensed Know-How or other Know-How to Organon or for purposes of Organon acquiring expertise on the practical application of such Know-How or assisting on issues arising during the Exploitation of any Licensed Compound or any Licensed Product, ObsEva shall send appropriate representatives to Organon's facilities.

(c) In addition, in accordance with the Manufacturing Transfer Plan, ObsEva shall effect a full transfer to Organon or its designee (which designee may be an Affiliate or a CMO) of all Licensed Know-How relating to the then-current process for the Manufacture of the Licensed Compounds and Licensed Products (the "**Manufacturing Process**") and to implement the Manufacturing Process at facilities designated by Organon (such transfer and implementation, as more fully described in this Section 4.4(c), the "**Manufacturing Technology Transfer**"). ObsEva shall provide, and shall [*] cause its CMOs to provide, all assistance requested by Organon to enable Organon (or its Affiliate or designated CMO, as applicable) to implement the Manufacturing Process at the facilities designated by Organon. If requested by Organon, such assistance shall include providing an introduction to ObsEva's CMOs and facilitating the entering into of agreements with applicable Third Party suppliers relating to the Licensed Compounds and Licensed Products. Without limitation to the foregoing, in connection with the Manufacturing Technology Transfer:

(i) ObsEva shall make available, [*], to Organon (or its Affiliate or designated CMO, as applicable) from time to time as Organon may reasonably request during the period of the Manufacturing Technology Transfer (as set forth in Section 4.4(d)), all Manufacturing-related Licensed Know-How and materials relating to the Manufacturing Process, and all documentation constituting material support, performance advice, shop practice, standard operating procedures, specifications as to materials to be used and control methods, that are necessary or reasonably useful to enable Organon (or its Affiliate or designated CMO, as applicable) to use and practice the Manufacturing Process;

(ii) ObsEva shall cause all appropriate employees and representatives of ObsEva and its Affiliates to meet with, [*] cause all appropriate employees and representatives of its CMOs

to meet with, employees or representatives of Organon (or its Affiliate or designated CMO, as applicable) at the applicable manufacturing facility at mutually convenient times during the period of the Manufacturing Technology Transfer (as set forth in Section 4.4(d)) to assist with the working up and use of the Manufacturing Process and with the training of the personnel of Organon (or its Affiliate or designated CMO, as applicable) to the extent necessary or reasonably useful (as reasonably requested by Organon) to enable Organon (or its Affiliate or designated CMO, as applicable) to use and practice the Manufacturing Process; and

(iii) Without limiting the generality of clause (ii) above, during the period of the Manufacturing Technology Transfer (as set forth in Section 4.4(d)), ObsEva shall cause all appropriate analytical and quality control laboratory employees and representatives of ObsEva and its Affiliates to meet with, [*] cause all appropriate analytical and quality control employees and representatives of its CMOs to meet with, employees or representatives of Organon (or its Affiliate or designated CMO, as applicable) at the applicable manufacturing facility and make available all necessary equipment, at mutually convenient times, to support and execute the transfer of all applicable analytical methods and the validation thereof.

(d) ObsEva's obligations under this Section 4.4, including its obligations to provide support or assistance pursuant to Section 4.4(b) and to carry out the Manufacturing Technology Transfer pursuant to Section 4.4(c), shall terminate on the earlier of (i) completion of the Manufacturing Technology Transfer in accordance with the Manufacturing Transfer Plan or (ii) the date that is [*] after the Effective Date. ObsEva shall provide up to an aggregate of [*] full-time equivalent hours of ObsEva (or its Affiliate(s)) employees to support and assist pursuant to Section 4.4(b) and Section 4.4(c) without additional compensation, [*]. Thereafter, Organon shall reimburse ObsEva for its full-time equivalent costs of ObsEva (or its Affiliate(s)) (at an hourly rate of [*] per hour) (where such full-time equivalent costs are in excess of the [*] full-time equivalent hours set forth in the preceding sentence) and any reasonable and verifiable out-of-pocket costs incurred by ObsEva in providing such support and assistance; [*] Organon shall reimburse all documented and verifiable out-of-pocket costs paid by ObsEva to CMOs in connection with the Manufacturing Technology Transfer, including during the period in which ObsEva provides full-time equivalent hours free of charge to Organon pursuant to this Section 4.4(c). ObsEva shall invoice Organon for amounts owed by Organon pursuant to this Section 4.4(c), together with supporting documentation, once per Calendar Quarter, which invoiced amounts shall be payable by Organon within [*] days after its receipt of such invoice.

(e) Without limiting the foregoing, in the event that ObsEva makes any invention, discovery, or improvement relating to the Manufacture of a Licensed Compound or a Licensed Product during the Term, ObsEva shall promptly disclose such invention, discovery, or improvement to Organon, and shall, at Organon's request, perform technology transfer with respect to such invention, discovery, or improvement in the same manner as provided in Section 4.4(c) and Section 4.4(d).

(f) Nothing in this Section 4.4 shall obligate ObsEva to (i) create any new invention, discovery, improvement or other Know-How, (ii) purchase, lease or otherwise procure any additional equipment, software or other resources, or (iii) take any actions that would result in the breach of any agreement with a Third Party.

4.5 Inventory. ObsEva shall, at Organon's request, transfer, assign and deliver to Organon any remaining inventory (as and to the extent requested by Organon) of GMP and non-GMP Licensed Product and bulk Licensed Compound in ObsEva's (or its Affiliates' or its Third Party contract manufacturer's) inventory as of the Effective Date, [*]. ObsEva hereby represents to Organon that Schedule 4.5 sets forth a complete and accurate list of the total quantities of such inventory as of the Effective Date (and indicating whether such inventory is GMP or non-GMP). ObsEva shall make available to Organon,

directly or by enabling Organon to conduct an on-site or direct inspection of, documentation demonstrating that all such inventory to be provided to Organon was Manufactured in accordance with GMPs. ObsEva shall and hereby does, represent to Organon that such inventory was Manufactured in accordance with GMPs, Applicable Laws and the specifications therefor. In furtherance of and without limiting the foregoing, ObsEva shall provide to Organon, as soon as reasonably practicable following the Effective Date (but in all cases, within [*] days thereafter), reasonable supporting documentation with respect to such inventory, including batch records, release records and other documentation demonstrating the quality of such inventory. Organon may elect to take possession of less than the inventory remaining at the Effective Date for any reason, including if Organon or its Affiliates believes that any such inventory was not (and at all times up until delivery of such inventory to Organon hereunder did not remain) Manufactured in accordance with all Applicable Laws (including, as applicable, GMPs), and the specifications therefor, or that such inventory were adulterated or misbranded within the meaning of the FFDCA or any similar Applicable Laws of any applicable jurisdiction or were articles that could not, under the provisions of the Applicable Law, be introduced into interstate commerce. If Organon elects to take possession of less than the remaining inventory, Organon shall so notify ObsEva and ObsEva shall transfer, assign and deliver to Organon only such inventory as requested by Organon. Except as otherwise set forth in this Section 4.5, [*].

4.6 Regulatory Responsibilities.

(a) Subject to the terms and conditions of this Agreement, including Section 6.1, Organon shall have the sole right and responsibility, at its sole cost and expense, to seek to obtain and to maintain Regulatory Approvals for the Licensed Products in the Field in the Territory and to conduct all related regulatory affairs, including communications with Regulatory Authorities in the Territory relating to the Licensed Compounds and Licensed Products. ObsEva shall support Organon, as may be reasonably necessary, in obtaining all Regulatory Approval for the Licensed Products, and in the activities in support thereof, including providing necessary documents or other materials required by Applicable Law to obtain all Regulatory Approval.

(b) Organon (or its Affiliate or Sublicensee) shall be the holder of and shall own all Regulatory Filings, including INDs, Drug Approval Applications and Regulatory Approvals, for the Licensed Products in the Territory in the name of Organon (or its Affiliate or Sublicensee, as applicable). Upon the request of Organon, ObsEva shall execute all documents and take all actions as are necessary or reasonably requested by Organon to transfer and vest title to Organon in all Regulatory Filings for a Licensed Compound or Licensed Product owned or controlled by ObsEva (or any of its Affiliates), including the INDs set forth on Schedule 4.6(a) (collectively, the "**Existing INDs**").

4.7 Adverse Event Reporting.

(a) Following the transfer of any Existing IND from ObsEva to Organon hereunder, or if there are no Existing INDs to transfer then on and after the Effective Date, Organon shall be solely responsible for the collection, review, assessment, tracking, submission, and filing of information related to adverse events ("AEs") and serious adverse events ("SAEs") associated with the Licensed Compounds and Licensed Products, in accordance with 21 CFR 312.32, 314.80 and comparable regulations, guidance, directives and the like governing AEs/SAEs associated with such Licensed Compound or Licensed Product.

(b) Within [*] of the Effective Date, ObsEva will provide Organon with all legacy AE and SAE reports in the form of a mutually agreed format (electronic copy of CIOMS I form or E2B format).

(c) Following receipt, and completion of processing, by Organon of all AE and SAE reports required to be provided under Section 4.7(b), Organon will assume the role of global safety database holder, and shall be responsible for maintaining, at its sole cost and expense, the global safety database, for the Licensed Compounds and Licensed Products.

5. COMMERCIALIZATION; MANUFACTURE; SUBCONTRACTING

5.1 Commercialization. Subject to the terms and conditions of this Agreement, including Section 6.2, Organon shall have the sole right and responsibility, at its sole cost and expense, to Commercialize the Licensed Products in the Territory and to conduct market access activities relating to the Licensed Products, including: (a) developing and executing a commercial launch and pre-launch plan; (b) negotiating Reimbursement Approvals with Governmental Authorities; (c) marketing, advertising and promotion; (d) distribution and performance of related services; (e) handling order processing, invoicing and collection, inventory and receivables; (f) determining pricing and terms of sale of Licensed Product; and (g) providing customer support.

5.2 Medical Affairs. Subject to the terms and conditions of this Agreement, including Section 6.2, Organon shall have the sole right and responsibility, at its sole cost and expense, to conduct medical affairs relating to Licensed Products.

5.3 Manufacture.

(a) Supply of Licensed Compounds and Licensed Products Prior to Manufacturing Technology Transfer. During the period beginning on the Effective Date and ending on the date that is [*] after the Effective Date or, if earlier, ending on the date the facilities designated by Organon pursuant to Section 4.4(c) are fully qualified and validated following completion of Manufacturing Technology Transfer (the "**Supply Period**"), pursuant to supply agreements and associated quality agreements (collectively, "**Supply Agreements**") to be entered into by the Parties [*] as soon as practicable (with a goal of no later than [*] days) after the Effective Date, unless otherwise agreed to in writing by the Parties, ObsEva shall have Manufactured and supplied to Organon or its designee, through ObsEva's existing CMO that manufactures Licensed Compound and Licensed Products ("**Licensed Product CMO**"), the Licensed Compound and the Licensed Products [*] for Development purposes throughout the Territory. [*] The Supply Agreements will include the terms set forth on Schedule 5.3(a) (as applicable to Manufacture and supply of the Licensed Compound and/or the Licensed Product) and other terms customary for supply arrangements between partners. ObsEva shall use [*] to ensure that ObsEva's agreements with the Licensed Product CMO are consistent with such terms, provided that in the event ObsEva and the Licensed Product CMO are unable to mutually agree to include such terms, the Parties will discuss in good faith any necessary amendments to Schedule 5.3(a) prior to ObsEva entering into an agreement or work order or similar arrangement with any such Licensed Product CMO. The Supply Agreements will provide (i) that ObsEva's agreements with the Licensed Product CMO will require such CMO to Manufacture the Licensed Compounds and Licensed Products in accordance with GMPs and the specifications therefor and [*] In all cases, the price for the supply shall be [*].

(b) Supply of Licensed Compounds and Licensed Products after the Supply Period. As between the Parties, following expiration of the Supply Period, Organon shall have the sole right and responsibility to Manufacture the Licensed Compounds and Licensed Products for all purposes under this Agreement, including supply of Licensed Compound and Licensed Product to Organon's Affiliates and Sublicensees.

5.4 Reports. Once per Calendar Year, in advance of a regularly scheduled JAC meeting, or in writing to ObsEva's Alliance Manager if the JAC is discontinued, Organon shall provide ObsEva with (a) a high-level report (by means of a slide presentation or otherwise) summarizing Organon's and its Affiliates and Sublicensees' significant Commercialization and medical affairs activities in the Major Markets during the period since the previous such report, and (b) [*]. At such JAC meeting or through the Parties' Alliance Managers, Organon will present and the Parties will discuss such report and a summary of Organon's and its Affiliates' and Sublicensees' significant Commercialization and medical affairs activities with respect to the Licensed Products in the Territory. Further, on or before June 1st of each Calendar Year, Organon shall provide ObsEva a written report summarizing its Manufacturing and as applicable Commercialization activities in the Territory during the preceding Calendar Year, in the format reasonably requested by ObsEva, [*].

5.5 Performance. Organon shall perform, and will ensure that its Affiliates, Sublicensees and Third Party contractors perform, all Commercialization, medical affairs and Manufacturing activities under this Agreement in compliance with all Applicable Laws, including, as applicable, GxP standards.

5.6 Subcontracting. Organon shall have the right to engage any Third Party subcontractor to perform any or all of its obligations hereunder, including contract research organizations, contract manufacturing organizations and similar service providers. The applicable provisions of each agreement between Organon and a Third Party subcontractor shall be materially consistent with the corresponding provisions of this Agreement and shall include confidentiality and non-use provisions at least as stringent as those set forth in Article 10. Organon's engagement of any subcontractor pursuant to this Section 5.6 shall not relieve Organon of its obligations under this Agreement and Organon shall be fully responsible for any acts or omissions of its subcontractors, including compliance by such subcontractors with Anti-Corruption Laws, Privacy Laws and GxP standards, as applicable, and for compliance with all provisions of this Agreement.

6. DILIGENCE

6.1 Development Diligence. Organon, itself or through its Affiliates or Sublicensees, shall use Commercially Reasonable Efforts to [*].

6.2 Commercialization Diligence. Organon, itself or through its Affiliates or Sublicensees, shall use Commercially Reasonable Efforts to (a) [*].

7. FINANCIAL PROVISIONS

7.1 Upfront Payment. Organon shall pay to ObsEva a one-time, non-refundable, noncreditable payment equal to Twenty-Five Million Dollars ($25,000,000) (the "**Upfront Payment**"), payable within [*] after the Effective Date.

7.2 Non-Sales Milestones Payments.

(a) Non-Sales Milestones. Subject to the remainder of this Section 7.2 and Section 7.5, Organon shall pay to ObsEva the one-time, non-refundable, non-creditable milestone payments set forth in the table below upon the first achievement of the applicable milestone event by the first Licensed Product (whether by or on behalf of Organon or its Affiliates or Sublicensees):

Non-Sales Milestone Event	Non-Sales Milestone Payment
[*]	[*]

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]

(b) Non-Sales Milestone Cap. Each milestone payment in this Section 7.2 shall be payable one time only upon the first achievement of such milestone by the first Licensed Product and no amounts shall be due for subsequent or repeated achievements of such milestone, whether for the same or a different Licensed Compound or Licensed Product. The maximum aggregate amount payable by Organon pursuant to this Section is [*]. [*].

(c) Notice and Payment. Organon shall notify ObsEva in writing and pay to ObsEva the applicable development milestone payment within [*]. If, notwithstanding the fact that Organon has not provided ObsEva notice of the achievement of any milestone event set forth in this Section 7.2, ObsEva believes that any such milestone event has been achieved, it shall so notify Organon in writing and the Parties shall promptly meet and discuss in good faith whether such milestone has been achieved. Any dispute under this this Section 7.2 regarding whether or not such a milestone event has been achieved shall be subject to resolution in accordance with Section 14.3.

7.3 Sales-Based Milestones Payments.

(a) Sales Milestones. Subject to the remainder of this Section 7.3 and Section 7.5, in the event the aggregate Net Sales of all Licensed Products made by Organon or any of its Affiliates or Sublicensees in the Territory in a given Calendar Year first exceeds each of the sales milestone events set forth in the left-hand column of the table immediately below, Organon shall pay to ObsEva the sales milestone payment in the corresponding amount set forth in the right-hand column of the table within [*].

Sales Milestone Event	Sales Milestone Payment
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]

(b) Sales Milestone Cap. Each milestone payment in this Section 7.3 shall be payable only upon the first achievement of such milestone in a Calendar Year, and no amounts shall be due for subsequent or repeated achievements of such milestone in subsequent Calendar Years, whether for the same or a different Licensed Compound or Licensed Product. The maximum aggregate amount payable by Organon pursuant to this Section 7.3 is [*].

(c) Expiration of Royalty Term. With respect to each Licensed Product in each country in the Territory, from and after the expiration of the Royalty Term for such Licensed Product in such country, Net Sales of such Licensed Product in such country shall be excluded for purposes of

calculating the Net Sales thresholds set forth in this Section 7.3. Following the expiration of the final Royalty Term, Organon will have no obligation to pay any milestone payments pursuant to this Section 7.3.

(d) Notice and Payment. As part of the report in Section 8.1, Organon shall provide written notice to ObsEva upon the annual Net Sales of the Licensed Products reaching the values set forth in Section 7.3(a) above. If, notwithstanding the fact that Organon has not provided ObsEva notice of the achievement of any milestone event set forth in this Section 7.3, ObsEva believes that any such milestone event has been achieved, it shall so notify Organon in writing and the Parties shall promptly meet and discuss in good faith whether such milestone has been achieved. Any dispute under this Section 7.3 regarding whether or not such a milestone event has been achieved shall be subject to resolution in accordance with Section 14.3.

7.4 Royalty Payments.

(a) Royalty Rate. Subject to the remainder of this Section 7.4 and Section 7.5, during the Royalty Term, Organon shall make quarterly non-refundable, non-creditable royalty payments to ObsEva on the aggregate Net Sales of all Licensed Products made by Organon or any of its Affiliates or Sublicensees in the Territory (excluding Net Sales of each Licensed Product in any country in the Territory for which the Royalty Term for such Licensed Product in such country has expired) in a Calendar Year on a tiered basis at the applicable incremental royalty rate set forth in the table below.

Portion of Aggregate Net Sales of all Licensed Products in the Territory in a Calendar Year	Royalty Rate
[*]	[*]
[*]	[*]
[*]	[*]

(b) Royalty Term. The royalties set forth in Section 7.4(a) shall be paid on a Licensed Product-by-Licensed Product and country-by-country basis from the First Commercial Sale of such Licensed Product in such country by or on behalf of Organon, its Affiliates, or Sublicensees, until the last to occur of [*] (the "**Royalty Term**"). With respect to each Licensed Product in each country in the Territory, from and after the expiration of the Royalty Term for such Licensed Product in such country, Net Sales of such Licensed Product in such country shall be excluded for purposes of calculating the Net Sales thresholds and ceilings set forth in Section 7.4(a).

(c) Royalty Reductions.

(i) After Expiration of Royalty Term. Organon shall have no obligation to pay any royalty with respect to Net Sales of any Licensed Product in any country after the Royalty Term for such Licensed Product in such country has expired.

(ii) Generic Product Sales. On a Licensed Product-by-Licensed Product and country-by-country basis during the Royalty Term, and subject to Section 7.4(c)(vi), if one or more Generic Products is sold in such country and (A) if the aggregate [*] of all such Generic Products sold in such country in a Calendar Year exceed [*] of all such Generic Products and Licensed Product sold in such country in such Calendar Year, then commencing at the beginning of the Calendar Quarter in which such [*] of Generic Products sold exceed [*], the royalty rates set forth in Section 7.4(a) for such Licensed Product shall be reduced in such country by [*] for the remainder of the Royalty Term. [*] Notwithstanding the foregoing, [*].

(iii) Reduction Circumstances. Subject to Section 7.4(c)(vi), on a Licensed Product-by-Licensed Product and country-by-country basis, if during any Calendar Quarter within the applicable Royalty Term for such Licensed Product in such country, [*] (the "**Reduction Circumstances**"), then, [*], the royalty rates set forth in Section 7.4(a) applicable to the Net Sales of such Licensed Product in such country will be reduced by [*]; *provided that*, [*], then [*]. For clarity, the maximum reduction in the royalty rates under this Section 7.4(c)(iii) is [*].

(iv) Step-In Prosecuted Patent. If, during the Royalty Term, Organon assumes the Prosecution of an ObsEva Patent pursuant to Section 9.4(b)(i) or assumes the Prosecution of a Merck Serono Patent pursuant to Section 9.4(b)(ii) (each, a "**Step-In Prosecuted Patent**"), then on a Licensed Product-by-Licensed Product and country-by-country basis, such Step-In Prosecuted Patent shall cease to be included in the Licensed Patents for purposes of determining the Royalty Term applicable to such Licensed Product in such country.

(v) Third Party Payments. In the event that Organon enters into a Third Party License Agreement pursuant to Section 9.7 in order to obtain a license under [*] (in each case of clause (A) and (B), an "**Infringing Licensed Product**" and such Third Party License Agreement, a "**Third Party License**"), then, subject to Section 7.4(c)(vi) and Section 7.5, on an Infringing Licensed Product-by-Infringing Licensed Product and country-by-country or jurisdiction-by-jurisdiction basis, Organon shall be entitled to deduct from any royalties payable hereunder with respect to that Infringing Licensed Product and country or other jurisdiction [*] actually paid to such Third Party under such Third Party License directly as a result of the Development, Manufacture or Commercialization of such Infringing Licensed Product in such country or jurisdiction; provided that, the royalty rate that otherwise would be applicable under Section 7.4(a) to Net Sales of such Infringing Licensed Product in such country or jurisdiction in a Calendar Quarter may not be reduced by more than [*] as a result of any deduction under this Section 7.4(c)(v); provided further that, Organon may carry forward any such deductions permitted under this Section 7.4(c)(v) that are incurred or accrued in a Calendar Quarter but are not deducted from royalties due to ObsEva in such Calendar Quarter as a result of the foregoing proviso and apply such amounts against royalties due to ObsEva in any subsequent Calendar Quarter (subject to the minimum floor set forth in Section 7.4(c)(vi)) until the amount of such permitted deduction has been fully applied against royalties due to ObsEva.

(vi) Royalty Floor. Notwithstanding the above, on a Licensed Product-by-Licensed Product and country-by-country basis during the Royalty Term, in no event will (A) the royalty rate that otherwise would be applicable under Section 7.4(a) to such Licensed Product in such country in a Calendar Quarter be reduced by more than [*] as a result of the operation of subclauses (ii), (iii), and (v) above, individually or in combination and (B) [*]. For clarity, on a Licensed Product-by-Licensed Product and country-by-country basis, in no event will ObsEva receive less than [*] of the amount of royalties that otherwise would have been due and payable to ObsEva for such Licensed Product in such country in any Calendar Quarter at the royalty rates applicable under Section 7.4(a)).

7.5 [*].

8. PAYMENT; RECORDS; AUDITS

8.1 Payment; Reports. Royalty payments due from Organon to ObsEva under Section 7.4 shall be calculated and reported for each Calendar Quarter during the Term. Royalty payments due under Section 7.4 shall be paid within [*] days after the end of each Calendar Quarter and shall be accompanied by a report setting forth [*].

8.2 Exchange Rate; Manner and Place of Payment. The Upfront Payment and all milestone payments to be made by Organon to ObsEva under this Agreement shall be made in Dollars, and all royalty payments to be made by Organon to ObsEva under this Agreement shall be made in Euros, and each shall be made by bank wire transfer in immediately available funds to the bank account set forth on Schedule 8.2. In the case of sales that are not in Dollars or Euros (as applicable), the rate of exchange to be used in computing the monthly amount of currency equivalent in Dollars or Euros (as applicable) due ObsEva shall be made at the monthly rate of exchange utilized by Organon in its worldwide accounting system consistent with Accounting Standards and Organon's conversion procedures used in preparing its financial statements applied on a consistent basis.

8.3 Taxes. Organon shall inform ObsEva of any withholding tax obligation imposed by taxing authorities on payments due to ObsEva under this Agreement. The Parties agree to cooperate in good faith to provide one another with such documents and certifications as are reasonably necessary to enable the Parties to minimize or recover any withholding tax payment. If any Applicable Laws require that taxes be deducted and withheld from royalties or other payments payable by Organon to ObsEva under this Agreement, Organon shall (a) deduct those taxes from the payment owed by Organon hereunder; (b) pay those taxes to the proper Governmental Authority; (c) send evidence of the obligation together with proof of payment to ObsEva within thirty (30) days following such payment; (d) remit the net amount, after deductions or withholding made under this Section 8.3; and (e) cooperate with ObsEva in any way reasonably requested by ObsEva to obtain available reductions, credits or refunds of such taxes. For clarity, Organon shall be solely responsible for (i) [*] (and related tax returns) applicable to payments and transactions under this Agreement and (ii) all customs duties, import tariffs, taxes, freight, insurance, inspection costs and the like attributed to or for the transport and importation of any Licensed Product under this Agreement or the Supply Agreements. Notwithstanding the foregoing, [*].

8.4 Records; Audit.

(a) Organon shall keep, and shall require its Affiliates and Sublicensees (as provided below) to keep, complete and accurate records pertaining to the sale or other disposition of Licensed Products in sufficient detail to permit ObsEva to confirm the accuracy of any sales milestone or royalty payment due hereunder. Organon will keep, and shall require its Affiliates and Sublicensees (as provided below) to keep, such books and records for [*] following the Calendar Year to which they pertain, [*].

(b) Upon the written request of ObsEva and not more than once in each Calendar Year, Organon shall permit an independent certified public accounting firm of nationally recognized standing selected by ObsEva [*] and reasonably acceptable to Organon, at ObsEva's expense (except as set forth below), to have access during normal business hours to such of the records of Organon as may be reasonably necessary to verify the accuracy of the reports under Section 8.1 pertaining to the [*] preceding the date of such request. The accounting firm shall disclose to ObsEva [*] only whether the reports under Section 8.1 are correct or incorrect and the amount of any discrepancy. No other information shall be provided to ObsEva [*]. If such accounting firm correctly identifies a discrepancy made during such period, then (i) in the case of an underpayment, Organon shall pay the underpaid amount within [*] of the date ObsEva delivers to Organon such accounting firm's written report so correctly concluding, or as otherwise agreed upon by the Parties, and (ii) in the case of an overpayment, the overpaid amount shall be credited against amounts payable by Organon in subsequent payment periods, or if there are no subsequent payment periods at that time, shall be reimbursed to Organon by ObsEva within [*] days of the date ObsEva delivers to Organon such accounting firm's written report so correctly concluding, or as otherwise agreed upon by the Parties. The fees charged by such accounting firm shall be paid by ObsEva unless the accounting firm identifies an underpayment by Organon of [*] or more for the audited period, in which case Organon shall reimburse ObsEva for the reasonable fees charged by such accounting firm.

(c) Organon shall include in each sublicense granted by it to a Sublicensee a provision requiring the Sublicensee to make reports to Organon, to keep and maintain records of sales made pursuant to such sublicense and to grant access to such records by ObsEva's independent accountant to the same extent required of Organon under this Agreement. ObsEva shall treat all financial information subject to review under this Section 8.4 or under any sublicense agreement with a Sublicensee in accordance with the confidentiality and non-use provisions of this Agreement, and shall cause its accounting firm to enter into an acceptable confidentiality agreement with Organon, its Affiliates or Sublicensees obligating it to retain all such information in confidence pursuant to such confidentiality agreement.

(d) Late Payments. If any payment due under this Agreement is not paid when due in accordance with the applicable provisions of this Agreement (including any underpayments of royalties found during an audit under Section 8.4), such payment shall accrue interest from [*].

9. INTELLECTUAL PROPERTY

9.1 Ownership of Inventions. Inventorship of all Inventions shall be determined in accordance with U.S. patent laws without regard to conflict of law, irrespective of where or when such Invention occurs. Subject to the license grants and other rights herein, as between the Parties, each Party shall own and retain all right, title and interest in and to any and all Inventions that are discovered, made, developed, generated, conceived or reduced to practice solely by or on behalf of such Party (or its Affiliates or its or their (sub)licensees), whether or not patented or patentable, and any and all Patents and other intellectual property rights with respect thereto.

9.2 Certification Under Drug Price Competition and Patent Restoration Act. Each Party shall immediately give written notice to the other Party of any certification of which they become aware filed pursuant to 21 U.S. Code Section 355(b)(2)(A) in the U.S. or any comparable law or regulation in any jurisdiction in the Territory other than the U.S. (or any amendment or successor thereto) claiming that any Licensed Patents in the Territory Covering the Licensed Compounds or Licensed Products, or the manufacture or use thereof, are invalid or unenforceable, or that infringement will not arise from the manufacture, use or sale of a product by a Third Party.

9.3 Listing of Patents. [*] shall determine which of the [*] Patents, if any, shall be listed for inclusion in the Approved Drug Products with Therapeutic Equivalence Evaluations pursuant to 21 U.S. Code Section 355 in the U.S. or any comparable law or regulation in any jurisdiction in the Territory other than the U.S. (or any amendment or successor thereto). [*] shall have the right to propose to [*] any [*] Patents for such listing and [*] shall propose such [*] Patents to [*] for such listing, provided that [*] shall have the right to determine whether any [*] Patents will be listed.

9.4 Patent Prosecution.

(a) Prosecution of [*] Patents and [*] Patents.

(i) As between the Parties, [*] shall have the first right, but not the obligation, to control Prosecution of the Licensed Patents in the Territory [*]. With respect to Prosecution of [*] Patents, [*] shall keep [*] fully informed of all steps with regard to the preparation, filing, prosecution, and maintenance of [*] Patents, including by providing [*] with a copy of material communications to and from any patent authority in the Territory regarding such [*] Patents, and by providing [*] drafts of any material filings or responses to be made to such patent authorities in the Territory sufficiently in advance of submitting such filings or responses so as to allow for a reasonable opportunity for [*] to review and

comment thereon. [*] shall consider in good faith the requests and suggestions of [*] with respect to such [*] drafts and with respect to strategies for filing and prosecuting the [*] Patents in the Territory.

(ii) [*] shall keep [*] informed of the course of the Prosecution of [*] Serono Patents or related proceedings (e.g., interferences, oppositions, reexaminations, releases, revocations or nullifications) [*]. With respect to each [*] Patent [*] shall keep [*] fully informed of all steps with regard to the preparation, filing, prosecution, and maintenance of such [*] Patent, including by providing [*] with a copy of material communications to and from any patent authority in the Territory regarding such [*] Patent, and by providing [*] drafts of any material filings or responses to be made to such patent authorities in the Territory sufficiently in advance of submitting such filings or responses so as to allow for a reasonable opportunity for [*] to review and comment thereon. [*] shall consider in good faith the requests and suggestions of [*] with respect to such [*] drafts and with respect to strategies for filing and prosecuting such [*] in the Territory.

(b) Abandonment of [*] Patents and [*] Patents.

(i) If [*] desires to irrevocably abandon or cease prosecution or maintenance of any [*] Patent, it shall provide reasonable prior written notice to [*] of such intention to abandon [*].

(ii) If [*] receives written notice [*] that [*].

(c) Patent Term Extensions. [*] shall have the right to make decisions regarding, and to file for and seek to obtain, [*], patent term extensions or supplementary protection certificates or their equivalents and any other extensions that are now or become available in the future, in any country in the Territory with respect to the [*]. [*] shall keep [*] reasonably informed of its efforts to obtain such extension or supplementary protection certificate. [*] shall provide prompt and reasonable assistance, as requested by [*], including by taking such action as patent holder as is required under any Applicable Laws to obtain such patent extension or supplementary protection certificate. With respect to [*], [*] shall be responsible for obtaining patent term extensions wherever available and [*] shall provide [*], in order for [*] to provide [*], with all relevant information and documentation in this respect, and all such information and documentation shall be provided by [*] promptly and in a manner that will ensure all such patent term extensions are obtained wherever legally permissible and to the maximum extent available. In the event any election with respect to obtaining patent term extensions is to be made for any [*], [*] shall have the right to make such elections and shall inform [*] of such elections in order for [*] to inform [*] of such elections as if such elections were made by [*] pursuant to the [*].

(d) Organon Improvement Patents. As between the Parties, [*] shall have the sole right, but not the obligation, to control Prosecution of Organon Improvement Patents [*]. [*].

9.5 Patent Enforcement.

(a) Notice. Each Party shall promptly notify the other Party after becoming aware of any alleged or threatened infringement by a Third Party of any [*] Patents in the Territory, which infringement adversely affects or is expected to adversely affect any Licensed Product in the Field in the Territory, including any such alleged or threatened infringement by reason of the Third Party making, using, offering to sell, selling or importing any product that is competitive with a Licensed Product in the Field in the Territory (collectively, "**[*] Patent Infringement**"). In addition, if either Party believes a [*] Patent is being infringed by a Third Party or if a Third Party claims that any [*] Patent is invalid or unenforceable ("**[*] Patent Infringement**"), such Party shall notify the other Party and provide details of such [*] Patent Infringement.

(b) Enforcement Right. [*] shall have the first right, but not the obligation, to bring and control any legal action with respect to an [*] Patent Infringement in the Territory ("**Legal Action**") [*].

(c) Collaboration. Each Party shall provide to the Party that brings a Legal Action pursuant to Section 9.5(b) (the "**Enforcing Party**") reasonable assistance, and shall cooperate fully, in such Legal Action, [*], including to be named in such action if required by Applicable Laws to pursue such action. The Enforcing Party shall keep the other Party regularly informed of the status and progress of such enforcement efforts and shall reasonably consider the other Party's comments on any such efforts, including determination of litigation strategy and filing of material papers to the court. The non-enforcing Party shall be entitled to separate representation in such Legal Action by counsel of its own choice [*], but such Party shall at all times cooperate fully with the Enforcing Party. [*].

(d) Expense and Recovery. [*] incurred by such Party as a result of a Legal Action with respect to an ObsEva Patent Infringement. If the Enforcing Party recovers monetary damages in such Legal Action, such recovery shall be allocated [*].

(e) [*] Patent Infringement. The Parties acknowledge [*].

9.6 Infringement of Third Party Rights.

(a) Notice. If either Party becomes aware of any claim or action by a Third Party against either Party, its Affiliates or sublicensees that claims that the Licensed Product, or its use, Development, Manufacture, importation or sale infringes such Third Party's intellectual property rights in a jurisdiction in the Territory ("**Third Party Action**"), such Party shall promptly notify the other Party and shall provide all details regarding the Third Party Action that is reasonably available to such Party.

(b) Right to Defend. The Parties acknowledge that, [*].

(c) Consultation. As between the Parties, the Party defending a Third Party Action pursuant to Section 9.6(b) shall be the "**Controlling Party**." The Controlling Party shall consult with the non-Controlling Party on all material aspects of the defense. The non-Controlling Party shall have a reasonable opportunity for meaningful participation in decision-making and formulation of defense strategy. The Parties shall reasonably cooperate with each other in all such actions or proceedings. The non-Controlling Party will be entitled to be represented by independent counsel of its own choice at its own expense.

(d) Appeal. In the event that a judgment in a Third Party Action is entered against the Controlling Party and an appeal is available, the Controlling Party shall have the first right, but not the obligation, to file such appeal [*]. If the Controlling Party does not desire to file such an appeal, it will promptly, in a reasonable time period (i.e., with sufficient time for the non-Controlling Party to take whatever action may be necessary) prior to the date on which such right to appeal will lapse or otherwise diminish, permit the non-Controlling Party to pursue such appeal [*]. The non-Controlling Party shall then become the Controlling Party. If Applicable Law requires the non-Controlling Party's involvement in an appeal, the non-Controlling Party shall be a nominal party of the appeal and shall provide reasonable cooperation to the Controlling Party at the Controlling Party's expense.

(e) No Settlement Without Consent. No Controlling Party shall settle or otherwise compromise any Third Party Action by admitting that any Licensed Patent is invalid or unenforceable without the non-Controlling Party's [*] prior written consent.

9.7 Third Party License Agreements. [*].

9.8 Product Trademarks. Organon shall have the sole right to determine and own the Trademark(s) to be used for the Licensed Products in the Territory, including a global unitary Trademark for each Licensed Product and any other Trademarks to be used for the Licensed Products in any country in the Territory (the "**Product Trademarks**"). Organon shall have the sole right, at its cost and expense, for the filing, prosecution, registration and maintenance (including the defense of any opposition proceeding or equivalent proceeding) of the Product Trademarks throughout the Territory and for enforcement of the Product Trademarks against any known or suspected infringement or unauthorized use or misappropriation by a Third Party of any Product Trademarks in the Territory.

10. CONFIDENTIALITY

10.1 Confidential Information. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Parties, the Parties agree that, during the Term and for [*] thereafter, the receiving Party shall keep confidential and shall not publish or otherwise disclose, and shall not use for any purpose other than as expressly provided for in this Agreement, any Confidential Information of the other Party, and both Parties shall keep confidential and, subject to the remainder of this Article 10, shall not publish or otherwise disclose the terms of this Agreement. Each Party will use at least the same standard of care as it uses to protect proprietary or confidential information of its own (but no less than reasonable care) to ensure that its employees, agents, consultants, contractors, licensees, sublicensees, and other representatives do not disclose or make any unauthorized use of the other Party's Confidential Information. Each Party will promptly notify the other upon discovery of any loss or unauthorized use or disclosure of the other Party's Confidential Information. The terms of Section 10.1 through Section 10.3, inclusive, shall apply to and be binding on Organon with respect to any Merck Serono Confidential Information (as defined below), and Organon shall be deemed the receiving Party of any such Merck Serono Confidential Information. "**Merck Serono Confidential Information**" means any information relating to the business, operations and products of Merck Serono or any of its Affiliates, including any technical information, Know-How, trade secrets or inventions (whether patentable or not), not known or generally available to the public, that is disclosed to Organon pursuant to this Agreement and identified as Merck Serono Confidential Information at the time of such disclosure. ObsEva shall use reasonable, good faith efforts to determine and identify as Merck Serono Confidential Information only that information relating to the business, operations and products of Merck Serono or any of its Affiliates that was disclosed to ObsEva by Merck Serono pursuant to the Merck Serono Agreement or that otherwise became known to ObsEva by virtue of the Merck Serono Agreement.

10.2 Exceptions. The obligations of confidentiality and restriction on use under Section 10.1 will not apply to any information that the receiving Party can prove by competent written evidence:

(a) is now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, generally known or available to the public;

(b) is known by the receiving Party at the time of receiving such information, other than by previous disclosure of the disclosing Party, or its Affiliates, employees, agents, consultants, or contractors; provided that the foregoing exception shall not apply with respect to Regulatory Documentation;

(c) is hereafter furnished to the receiving Party without restriction by a Third Party who has no obligation of confidentiality or limitations on use with respect thereto, as a matter of right; or

(d) is independently discovered or developed by the receiving Party without the use of the disclosing Party's Confidential Information; provided that the foregoing exception shall not apply with respect to Regulatory Documentation.

10.3 Authorized Disclosure. Each Party may disclose Confidential Information belonging to the other Party as expressly permitted by this Agreement or if and to the extent such disclosure is reasonably necessary in the following instances:

(a) to a patent authority in connection with filing, prosecuting, and maintaining Patents, in each case as contemplated by, and in accordance with the terms of, this Agreement;

(b) to Governmental Authorities in connection with filing Regulatory Filings and seeking Regulatory Approval for Licensed Products in accordance with this Agreement;

(c) prosecuting or defending litigation as permitted by this Agreement;

(d) disclosure as required to comply with Applicable Law (including regulations promulgated by securities exchanges) or court or administrative orders;

(e) disclosure of the financial terms of this Agreement to actual and bona fide potential investors, acquirors, licensees, and other financial or commercial partners solely for the purpose of evaluating or carrying out an actual or potential investment, acquisition, or collaboration, in each case under written obligations of confidentiality and non-use at least as stringent as those herein;

(f) disclosure by Organon or its Affiliates or Sublicensees to its or their employees, consultants, contractors, agents, licensees, sublicensees or other Third Parties, in each case as may be necessary or useful in connection with the Development, Manufacture, Commercialization or other Exploitation of the Licensed Compounds and Licensed Products in accordance with the terms of this Agreement or otherwise in connection with the performance of its obligations or exercise of its rights as contemplated by this Agreement, in each case under written obligations of confidentiality and non-use at least as stringent as those herein; provided that disclosure pursuant to this clause (f) shall not be permitted with respect to Merck Serono Confidential Information except to the extent such disclosure is reasonably necessary in connection with conducting pre-clinical studies or Clinical Trials of Licensed Products or seeking Regulatory Approval of Licensed Products; and

(g) disclosure made by ObsEva or its Affiliates after receiving advanced approval from Organon, to its employees, consultants, contractors, agents, licensees, or sublicensees to the extent necessary in assisting with ObsEva's activities contemplated by this Agreement, in each case under written obligations of confidentiality and non-use at least as stringent as those herein.

Notwithstanding the foregoing, in the event that a Party is required to make a disclosure of the other Party's Confidential Information pursuant to Section 10.3(c) or Section 10.3(d), it will, except to the extent prohibited by Applicable Law or judicial or administrative process, give advance notice as promptly as reasonably practicable (and to the extent possible, at least [*] notice) to the other Party of such disclosure and provide a draft of the disclosure to the other Party reasonably in advance of such filing or disclosure to give the other Party a reasonable opportunity to take whatever action available to it under Applicable Law that it deems necessary to protect its Confidential Information (for example, quash such order or to obtain a protective order or confidential treatment requiring that the Confidential Information and documents that are the subject of such order be held in confidence by the applicable court or governmental body or, if disclosed, be used only for the purposes for which the order was issued). The other Party will provide any

comments as soon as practicable, in no event later than [*] from such notice, and such Party will consider in good faith any timely comments provided by the other Party, but without any obligation to accept such comments. In any event, the Party required to make such disclosure will use efforts to secure confidential treatment of such Confidential Information at least as diligent as such Party would use to protect its own confidential information of a similar nature, but in no event less than reasonable efforts, and the Parties agree to take all reasonable action to avoid disclosure of Confidential Information, and in the event that no protective order or other remedy is obtained, or the disclosing Party waives compliance with the terms of this Agreement, the receiving Party shall furnish only that portion of Confidential Information which the receiving Party is advised by counsel is legally required to be disclosed. Any information disclosed pursuant to any of the foregoing subsections shall remain Confidential Information and subject to the foregoing provisions of this Article 10.

10.4 Licensed Know-How. ObsEva agrees to keep all Licensed Know-How confidential subject to Section 10.2 except for disclosures (a) reasonably necessary in connection with filing, prosecuting and maintaining Patents as contemplated by, and in accordance with the terms of, this Agreement and the Merck Serono Agreement and (b) as required to comply with Applicable Law (including regulations promulgated by securities exchanges) or court or administrative orders, provided that the terms of the last paragraph of Section 10.3 will apply to such disclosures, mutatis mutandis.

10.5 Publications. [*].

10.6 Clinical Trial Registration. In all cases, Organon shall have the right to register Clinical Trials and publish the results or summaries of results of any Clinical Trials conducted hereunder with respect to Licensed Compound or Licensed Product on clinicaltrials.gov or other similar registry.

10.7 Disclosures to Merck Serono. Notwithstanding anything to the contrary herein, ObsEva shall be entitled to provide a copy of this Agreement to Merck Serono, subject to redaction of the financial terms set forth herein.

10.8 Press Releases and Public Disclosures. The Parties have agreed on a joint press release announcing the execution of this Agreement as set forth on Schedule 10.8. Subject to obtaining consent from Merck Serono in accordance with the Merck Serono Agreement, the Parties shall issue such joint press release on the date and at the time(s) agreed by the Parties. Other than such initial joint press release, except as set forth in this Section 10.8, neither Party may make any press release or public announcements regarding any matter covered by this Agreement, including the Development or Commercialization of Licensed Products, without the prior written consent of the other Party and Merck Serono (which consent shall not be unreasonably withheld). Organon shall provide a draft of any such proposed press release or public announcement to ObsEva at least [*] prior to the desired date of issuance. ObsEva will promptly submit such press release or public announcement to Merck Serono, and ObsEva will notify Organon if Merck Serono objects. If neither ObsEva nor Merck Serono objects to such press release or public announcement within the [*] deadline, such press release or public announcement shall be deemed to be approved by ObsEva and Merck Serono. If Organon is a publicly-traded company and believes it is required to issue a press release or make any other public announcement to comply with applicable law as a publicly-traded company, Organon may issue such press release or public announcement, provided that, if time allows, Organon shall submit the proposed press release or public announcement in writing to ObsEva no less than [*] prior to the anticipated date of disclosure so as to provide ObsEva and Merck Serono a reasonable opportunity to comment thereon.

10.9 Equitable Relief. Given the nature of the Confidential Information and the competitive damage that a Party would suffer upon unauthorized disclosure, use, or transfer of its Confidential

Information to any Third Party, the Parties agree that monetary damages may not be a sufficient remedy for any breach of this Article 10. In addition to all other remedies, a Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any breach or threatened breach of this Article 10.

11. REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 ObsEva Representations and Warranties. ObsEva represents and warrants to Organon as of the Effective Date that:

(a) ObsEva has the full power, authority and right to enter into this Agreement and to perform its obligations hereunder in accordance with the terms and conditions hereof, and all requisite corporate action has been taken to authorize ObsEva's execution, delivery and performance of this Agreement;

(b) The execution, delivery and performance of this Agreement by ObsEva does not breach, violate, contravene or constitute a default under any contract, arrangement or commitment to which ObsEva is a party or by which it is bound, or violate any statute, law or regulation or any order, writ, judgement, injunction, decree, determination, or award of any court, governmental body or administrative or other agency having jurisdiction over ObsEva;

(c) All consents, approvals and authorizations from all governmental authorities or other Third Parties required to be obtained by ObsEva in connection with the execution, delivery and performance of this Agreement have been obtained;

(d) All Licensed Patents existing as of the Effective Date are listed on Schedule 1.60 (the "**Existing Patents**"). The Existing Patents are subsisting and, to ObsEva's Knowledge, are not invalid or unenforceable, in whole or in part; to ObsEva's Knowledge, the Existing Patents are being diligently prosecuted in the respective patent offices in the Territory in accordance with Applicable Law; the Existing Patents have been filed and maintained properly and correctly and all applicable fees have been paid on or before the due date for payment;

(e) ObsEva is the sole owner or exclusive licensee under the Merck Serono Agreement of the Licensed Technology; ObsEva is entitled to grant the rights and licenses it grants to Organon under this Agreement with respect to the Licensed Technology, free and clear of any rights therein granted to any Third Party;

(f) [*], neither ObsEva nor any of its Affiliates has previously entered into any agreement, whether written or oral, with respect to the assignment, transfer, license, conveyance or encumbrance of, or otherwise assigned, transferred, licensed, conveyed or encumbered its right, title, or interest in or to the Licensed Technology, the Licensed Compounds, or the Licensed Products (including by granting any covenant not to sue with respect thereto) or any Patent or other intellectual property or proprietary right or Know-How that would be an Existing Patent or Existing Know-How but for such assignment, transfer, license, conveyance, or encumbrance and it will not enter into any such agreements or grant any such right, title, or interest to any Person that is inconsistent with the rights and licenses granted to Organon under this Agreement;

(i) [*]

(1) [*]

(2) [*].

(3) [*].

(ii) [*]

(iii) [*]

(g) The Merck Serono Agreement is the only agreement between ObsEva (or its Affiliate) and a Third Party entered into prior to the Effective Date pursuant to which ObsEva (or its Affiliate) Controls any Patents or Know-How included within the Licensed Patents or Licensed Know-How (other than (i) agreements with ObsEva's (or its Affiliate's) employees and agreements with independent contractors and service providers entered into in the ordinary course of ObsEva's (or its Affiliate's) business, in each case, pursuant to which such employee, independent contractor or service provider, as applicable, assigns its right, title and interest to such Patents and Know-How to ObsEva (or its Affiliate), and (ii) agreements entered into in the ordinary course of business with service providers under which ObsEva (or its Affiliate) is granted customary licenses to the provider's proprietary technology);

(h) Except for (A) the Merck Serono Agreement [*], the Development or Commercialization of a Licensed Compound or Licensed Product by or on behalf of Organon or its Affiliates will not require or result in any financial payment by ObsEva, Organon or any of their respective Affiliates under any agreement or other arrangement by which ObsEva or any of its Affiliates is bound; except for the Merck Serono Agreement, ObsEva is not obligated under any contract or other agreement to make any payments by way of royalties, fees, or otherwise to any owner or licensor of, or other claimant to, any Patent or other intellectual property or proprietary right or Know-How;

(i) To ObsEva's Knowledge, no Person is infringing or threatening to infringe or misappropriating or threatening to misappropriate the Existing Patents or Existing Know-How;

(j) ObsEva has not received any written notice from a Third Party that the Development of any Licensed Compound or Licensed Product conducted prior to the Effective Date has infringed any Patents or misappropriated any Know-How of any Third Party;

(k) There are no claims, judgments, or settlements against, or amounts with respect thereto, owed by ObsEva or any of its Affiliates relating to the Existing Patents or the Existing Know-How. No claim or action has been brought or, to ObsEva's Knowledge as of the Effective Date, threatened, by any Third Party alleging that (i) any of the Existing Patents are invalid or unenforceable, or (ii) the Existing Patents or the Existing Know-How, or the disclosing, copying, making, assigning, licensing or use of the Existing Patents or Existing Know-How, or the Development, Commercialization or other Exploitation of the Licensed Compounds or Licensed Products as contemplated herein, does or will infringe or misappropriate, or would infringe or misappropriate, any Patent or other intellectual property right of any Third Party;

(l) To ObsEva's Knowledge, other than the Merck Serono Patents, ObsEva is not aware of any Third Party Patent that claims (i) the composition of matter of any Licensed Compound, or (ii) a method of use of any Licensed Compound, as such method is described in the Existing Patents;

(m) To ObsEva's Knowledge, other than the Merck Serono Patents, ObsEva is not aware of any Third Party Patent or Know-How that is used in the Manufacture of Licensed Compound or Licensed Product;

(n) There are no Trademarks Controlled by ObsEva or any of its Affiliates that have been used by ObsEva or any of its Affiliates in connection with Licensed Compound or Licensed Product or the Development thereof;

(o) To ObsEva's Knowledge, the practice by Organon under the Licensed Technology or the Exploitation by Organon (or its Affiliates or Sublicensees) of any Licensed Compound or Licensed Product, in each case, as contemplated under this Agreement, does not and will not infringe, misappropriate, or otherwise violate any intellectual property of any Third Party;

(p) ObsEva and its Affiliates have generated, prepared, maintained, and retained all Regulatory Documentation that is required to be maintained or retained prior to the Effective Date pursuant to and in accordance with GLP and GCP and Applicable Laws;

(q) Each Existing IND is in full force and good standing, and neither ObsEva nor any of its Affiliates has received any notice in writing, or otherwise has Knowledge of any facts, which have, or reasonably could have, led ObsEva (or its Affiliate) to believe that any Existing IND is not currently in, or may not remain in, good standing with the FDA or other applicable Regulatory Authority;

(r) The Existing Know-How has been kept confidential or has been disclosed to Third Parties only under terms of confidentiality. To the Knowledge of ObsEva, no breach of such confidentiality has been committed by any Third Party;

(s) To ObsEva's Knowledge (i) ObsEva has made (and will make) available to Organon all Regulatory Documentation and Licensed Know-How and other information in its possession or Control regarding or related to the Licensed Compounds or the Licensed Products, and (ii) all such Regulatory Documentation and Licensed Know-How and other information are (and, if made available after the Effective Date, will be) true, complete, and correct. ObsEva has provided Organon with the opportunity to review all written material data in ObsEva's possession relating to the subject matter of this Agreement, and has not intentionally concealed from Organon any such material data;

(t) to ObsEva's Knowledge: (i) there are no scientific or technical facts or circumstances that have not been disclosed to Organon, and that would materially adversely affect the scientific, therapeutic, or commercial potential of the Licensed Products; and (ii) there is nothing within ObsEva's control that has not been disclosed to Organon and that could materially adversely affect the acceptance, or the subsequent approval, by any Regulatory Authority of any Regulatory Submissions with respect to any Licensed Product;

(u) ObsEva has provided to Organon true, complete, and correct (redacted) copies of all material agreements relating to the Licensed Technology or the Development of the Licensed Compounds and Licensed Products and components thereof (as applicable) that are in effect as of the Effective Date;

(v) ObsEva has provided Organon access to all material correspondence between ObsEva (or any of its Affiliates) and the FDA (or other Governmental Authority) regarding the Licensed Compounds and Licensed Products in ObsEva's possession or control or of which ObsEva is aware, including (i) reports of inspection observations from any Governmental Authority related to Manufacturing facilities where the Licensed Compounds or any Licensed Product is being Manufactured, (ii) establishment inspection reports from any Governmental Authority, (iii) any FDA Form 483s relating to the Licensed Compounds or Licensed Products or any equivalent thereto from any Governmental Authority in any applicable jurisdiction, (iv) safety inquiries from any Governmental Authority, (v) any input from any

Governmental Authority related to trial approvability, post-approval obligations, and notice of clinical hold, and (v) any notice, warning letter, regulatory letter, Section 305 notice, or any other similar communication to ObsEva or any of the Affiliates stating that their businesses were or are in material violation of any Applicable Law, or were or are the subject of any material pending, threatened or anticipated administrative agency or governmental or regulatory authority investigation, proceeding, review or inquiry; in each case ((i) through (v)), with respect to the Licensed Compounds or Licensed Products;

(w) The Licensed Technology has not been created pursuant to, and is not subject to, any funding agreement with any Governmental Authority or any Third Party, and is not subject to the requirements of the Bayh-Dole Act or any similar provision of any Applicable Laws;

(x) Other than as provided under the Merck Serono Agreement, the process used by ObsEva to Manufacture the Licensed Compounds or Licensed Products (as applicable) as of the Effective Date does not require the use of any Third Party intellectual property right;

(y) ObsEva has provided to Organon true, complete, and correct (redacted) copies of all agreements relating to the Manufacture or supply of the Licensed Compounds and Licensed Products and components thereof (as applicable) that are in effect as of the Effective Date, a complete list of which appears on Schedule 11.1(z);

(z) Neither ObsEva nor any of its Affiliates, and, to ObsEva's Knowledge, none of its or their respective officers, employees, or agents, has made an untrue statement of material fact or fraudulent statement to the FDA or any other Regulatory Authority with respect to the Development of the Licensed Compounds or the Licensed Products, failed to disclose a material fact required to be disclosed to the FDA or any other Regulatory Authority with respect to the Development of the Licensed Compounds or the Licensed Products, or committed an act, made a statement, or failed to make a statement with respect to the Development of the Licensed Compounds or the Licensed Products that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto or any analogous laws or policies in the Territory;

(aa) ObsEva and its Affiliates have conducted, and, to ObsEva's Knowledge, their respective contractors and consultants have conducted, all Manufacture and Development of the Licensed Compounds or the Licensed Products that they have conducted prior to the Effective Date in accordance with GxP and Applicable Law. ObsEva has conducted, and has caused its contractors and consultants to conduct, any and all pre-clinical and Clinical Trials related to the Licensed Compounds and Licensed Products in accordance with GxP and Applicable Law, and, to ObsEva's Knowledge, all Licensed Compounds and Licensed Products used in Clinical Trials conducted by or on behalf of ObsEva or its Affiliates prior to the Effective Date were Manufactured in accordance with all Applicable Laws (including GMPs);

(bb) To ObsEva's Knowledge, no investigation or proceedings have been carried out by Regulatory Authorities with respect to the Licensed Product or any ObsEva facilities and the facilities of its CMOs; and

(cc) ObsEva represents and warrants that it and its Affiliates have not ever been, are not currently, nor are they the subject of a proceeding that could lead to it or its Affiliates becoming a Debarred Entity, Excluded Entity or Convicted Entity and it and its Affiliates will not use in any capacity, in connection with the obligations to be performed under this Agreement, any person who is a Debarred

Individual, Excluded Individual or a Convicted Individual. For purposes of this provision, the following definitions shall apply:

(i) A "**Debarred Individual**" is an individual who has been debarred by the FDA pursuant to 21 U.S.C. §335a (a) or (b) from providing services in any capacity to a Person that has an approved or pending drug or biological product application.

(ii) A "**Debarred Entity**" is a corporation, partnership or association that has been debarred by the FDA pursuant to 21 U.S.C. §335a (a) or (b) from submitting or assisting in the submission of any abbreviated drug application, or a subsidiary or affiliate of a Debarred Entity.

(iii) An "**Excluded Individual**" or "**Excluded Entity**" is (A) an individual or entity, as applicable, who has been excluded, debarred, suspended or is otherwise ineligible to participate in federal health care programs such as Medicare or Medicaid by the Office of the Inspector General (OIG/HHS) of the U.S. Department of Health and Human Services, or (B) is an individual or entity, as applicable, who has been excluded, debarred, suspended or is otherwise ineligible to participate in U.S. federal procurement and non-procurement programs, including those produced by the U.S. General Services Administration (GSA).

(iv) A "**Convicted Individual**" or "**Convicted Entity**" is an individual or entity, as applicable, who has been convicted of a criminal offense that falls within the ambit of 21 U.S.C. §335a (a) or 42 U.S.C. §1320a - 7(a), but has not yet been excluded, debarred, suspended or otherwise declared ineligible.

11.2 Organon Representations and Warranties. Organon represents and warrants to ObsEva as of the Effective Date that:

(a) Organon has the full power, authority and right to enter into this Agreement and to perform its obligations hereunder in accordance with the terms and conditions hereof, and all requisite corporate action has been taken to authorize Organon's execution, delivery and performance of this Agreement;

(b) The execution, delivery and performance of this Agreement by Organon does not breach, violate, contravene or constitute a default under any contract, arrangement or commitment to which Organon is a party or by which it is bound, or violate any statute, law or regulation or any order, writ, judgement, injunction, decree, determination, or award of any court, governmental body or administrative or other agency having jurisdiction over Organon;

(c) All consents, approvals and authorizations from all governmental authorities or other Third Parties required to be obtained by Organon in connection with the execution, delivery and performance of this Agreement have been obtained;

(d) it and its Affiliates are not currently, nor are they the subject of a proceeding that could lead to it or its Affiliates becoming, a Debarred Entity, Excluded Entity or Convicted Entity. For purposes of this provision, the definitions in Section 11.1(dd) shall apply; and

(e) Organon has (either itself or through Third Parties) the ability, capacity, knowledge, resources and experience to use, import, Develop, register, Manufacture, market, promote, distribute, offer for sale, Commercialize and otherwise Exploit the Licensed Product in the Field in the Major Markets.

11.3 Covenants.

(a) Each Party hereby covenants to the other Party that, in the performance of its obligations under this Agreement, such Party shall comply, and shall cause its and its Affiliates' and sublicensees' and its and their employees and subcontractors to comply, with all Applicable Laws, including (i) all Anti-Corruption Laws, (ii) all Privacy Laws, (iii) all current governmental regulations concerning GxP, as applicable, and (iv) national and international pharmaceutical industry codes of practice.

(b) Each Party hereby covenants to the other Party that it and its Affiliates' employees and contractors shall not, in connection with the performance of its obligations under this Agreement, directly or indirectly through Third Parties, pay, promise, or offer to pay, or authorize the payment of, any money or give any promise or offer to give, or authorize the giving of anything of value to a Public Official or other person for purpose of obtaining or retaining business for or with, or directing business to, any person, and shall not directly or indirectly promise, offer, or provide any corrupt payment, gratuity, emolument, bribe, kickback, illicit gift, or hospitality or other illegal or unethical benefit to a Public Official or any other person in connection with the performance of its obligations under this Agreement.

(c) Each Party hereby covenants to the other Party that it shall immediately notify the other Party if such Party has any information or suspicion that there may be a violation of any Anti-Corruption Laws, any Privacy Laws, or any other Applicable Laws in connection with its performance of this Agreement or its or its Affiliates' or sublicensees' Development, Manufacture, Commercialization or other Exploitation of any Licensed Product.

(d) Organon hereby covenants to ObsEva that (i) it and its Affiliates shall, at all times during the Term, maintain and enforce a compliance and ethics program containing adequate systems, policies and procedures for the detection, investigation, documentation, and remediation of any allegations, reports or findings related to a potential violation of Applicable Laws, including Anti-Corruption Laws, with respect to the Licensed Products and payments and activities under this Agreement, (ii) such policies and procedures will set out rules governing interactions with healthcare providers, Public Officials, the engagement of Third Parties, and where appropriate, conducting due diligence, and the investigation, documentation and remediation of any allegations, reports or findings related to a potential violation of Applicable Laws, and (iii) Organon shall comply and shall cause its and its Affiliates' employees and contractors to comply with all such policies and procedures in connection with the performance of its obligations under this Agreement.

(e) ObsEva hereby covenants to Organon that it shall, at all times during the Term, maintain a Code of Business Conduct and Ethics approved by its Board of Directors of a scope substantially equivalent to, and in any event no less stringent than, ObsEva's Code of Business Conduct and Ethics that is in effect as of the Effective Date and, in the performance of its obligations under this Agreement, ObsEva shall comply and shall require its and its Affiliates' employees and contractors to comply with such Code of Business Conduct and Ethics.

(f) During the Term, ObsEva will not enter into any assignment, transfer, license, conveyance or encumbrance of, or otherwise assign, transfer, license, convey or encumber, its right, title, or interest in or to the Licensed Technology or grant to any Person any such right, title, or interest, in each case that is inconsistent with the rights and licenses granted to Organon under this Agreement.

(g) During the Term, Organon and it and its Affiliates will not knowingly use in any capacity, in connection with the obligations to be performed under this Agreement, any person who is a

Debarred Individual, Excluded Individual or a Convicted Individual. For purposes of this provision, the definitions in Section 11.1(dd) shall apply.

(h) [*]

(i) Within [*], ObsEva will, together with Organon, negotiate with Merck Serono to enter into a side letter agreement or other agreement to amend Section 6.1 of the Merck Serono Agreement in order to permit disclosures of Merck Serono Confidential Information consistent with the terms of Section 10.3(f) of this Agreement (excluding the proviso therein), and following execution of such an agreement between ObsEva and Merck Serono, the Parties will enter into an amendment to this Agreement to amend applicable terms of Article 10, including to remove or amend the proviso in Section 10.3(f).

11.4 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICES, IN ALL CASES WITH RESPECT THERETO. NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, THAT ANY OF THE DEVELOPMENT, MANUFACTURING, OR COMMERCIALIZATION EFFORTS WITH REGARD TO ANY LICENSED COMPOUND OR LICENSED PRODUCT WILL BE SUCCESSFUL.

12. INDEMNIFICATION

12.1 Indemnification by Organon. Organon shall defend, indemnify, and hold harmless ObsEva and its Affiliates and their respective directors, officers, employees, and agents (each, an "**ObsEva Indemnitee**") from and against any and all liabilities, expenses, and losses, including reasonable legal expenses and attorneys' fees (collectively, "**Losses**"), to which any ObsEva Indemnitee may become subject as a result of any claim, demand, action, or other proceeding by any Third Party (each, a "**Claim**") to the extent such Losses arise out of:

(a) the Development, use, Manufacture, Commercialization, or other Exploitation of any Licensed Compound or Licensed Product by Organon or its Affiliates or Sublicensees [*];

(b) the negligence or willful misconduct of any Organon Indemnitee; or

(c) the breach by Organon of any warranty, representation, covenant, or agreement made by Organon in this Agreement;

except, in each case (a)-(c), to the extent such Losses arise out of any activities set forth in Section 12.2 for which ObsEva is obligated to indemnify any Organon Indemnitee under Section 12.2.

12.2 Indemnification by ObsEva. ObsEva shall defend, indemnify, and hold harmless Organon and its Affiliates and their respective directors, officers, employees, and agents (each, an "**Organon Indemnitee**") from and against any and all Losses to which any Organon Indemnitee may become subject as a result of any Claim to the extent such Losses arise out of:

(a) the negligence or willful misconduct of any ObsEva Indemnitee;

(b) the breach by ObsEva of any warranty, representation, covenant, or agreement made by ObsEva in this Agreement;

(c) the Development or Manufacture of the Licensed Products or Licensed Compounds by or on behalf of, or for, ObsEva or its Affiliates anywhere in the world prior to the Effective Date; or

(d) the Development, Commercialization, Manufacture, or other Exploitation of any Licensed Products or Licensed Compound by or on behalf of, or for, ObsEva or its Affiliates or (sub)licensees anywhere in the world after the Term, for clarity, excluding Development, Commercialization, Manufacture, or other Exploitation conducted by, on behalf of, or for Organon or its Affiliates or Sublicensees as permitted hereunder;

except, in each case (a)-(d), to the extent such Losses arise out of any activities set forth in Section 12.1 for which Organon is obligated to indemnify any ObsEva Indemnitee under Section 12.1.

12.3 Indemnification Procedure.

(a) The Party claiming indemnity under this Article 12 (the "**Indemnified Party**") shall give written notice to the Party from whom indemnity is being sought (the "**Indemnifying Party**") promptly after learning of such Claim.

(b) The Indemnified Party shall provide the Indemnifying Party with reasonable assistance, at the Indemnifying Party's expense, in connection with the defense of the Claim for which indemnity is being sought. The Indemnified Party may participate in and monitor such defense with counsel of its own choice at its own expense; provided, however, that the Indemnifying Party shall have the right to assume and conduct the defense of the Claim with counsel of its choice.

(c) The Indemnifying Party shall not settle any Claim without the prior written consent of the Indemnified Party, unless the settlement involves only the payment of money, no admission of wrong-doing or fault by the Indemnified Party, and no restriction on the future actions or activities of the Indemnified Party. So long as the Indemnifying Party is actively defending the Claim in good faith, the Indemnified Party shall not settle such Claim without the prior written consent of the Indemnifying Party.

(d) If the Indemnifying Party does not assume and conduct the defense of the Claim as provided above, (i) the Indemnified Party may defend against and consent to the entry of any judgment, or enter into any settlement with respect to, the Claim in any manner the Indemnified Party may deem reasonably appropriate (and the Indemnified Party need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith), and (ii) the Indemnifying Party will remain responsible to indemnify the Indemnified Party as provided in this Article 12.

12.4 Insurance. Each Party, at its own expense, shall maintain insurance (or self-insurance), including commercial general liability insurance, product liability insurance and other appropriate insurance, in amounts consistent with sound business practice and reasonable in light of its obligations under this Agreement. Each Party shall maintain such insurance for the period commencing on the Effective Date until [*] after expiration or termination of this Agreement. Each Party shall provide a certificate of insurance evidencing such coverage to the other Party upon request. It is understood that such insurance shall not be construed to create any limit of either Party's obligations or liabilities with respect to its indemnification obligations under this Agreement.

12.5 Limitation of Liability. EXCEPT FOR DAMAGES THAT (A) ARISE IN CONNECTION WITH A PARTY'S (I) WILLFUL MISCONDUCT OR FRAUD, (II) BREACH OF ITS OBLIGATIONS UNDER ARTICLE 10, [*] (B) ARE SUBJECT TO INDEMNIFICATION UNDER SECTION 12.1 OR SECTION 12.2, NEITHER PARTY SHALL BE LIABLE IN CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY DUTY, OR OTHERWISE FOR ANY SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS SUFFERED BY THE OTHER PARTY (OR ITS AFFILIATES OR (SUB)LICENSEES), REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

13. TERM AND TERMINATION

13.1 Term.

(a) This Agreement shall commence on the Effective Date and, unless terminated earlier as provided in this Article 13, shall continue in force and effect until the date of expiration of the last Royalty Term for the last Licensed Product (the "**Term**").

(b) Following the expiration of the Term, the grants in Section 2.1 shall become fully-paid, royalty-free and irrevocable.

13.2 Termination for Breach.

(a) Either Party may terminate this Agreement in its entirety at any time upon written notice to the other Party if the other Party is in material breach of this Agreement and such material breach is not cured within [*] (in the case of a payment breach) or [*] days (in the case of all other breaches) after written notice thereof is delivered to the defaulting or breaching Party; provided, however, if such breach (other than a payment breach) is not reasonably curable within [*] days and if the breaching Party is making a bona fide effort to cure such breach, such termination shall be delayed for a time period to be agreed by the Parties in order to permit the breaching Party a reasonable period of time to cure such breach (but in no event will such additional time period be more than [*] days). Any notice provided pursuant to this Section 13.2 shall identify with particularity the alleged breach and state the non-breaching Party's intent to terminate this Agreement if such breach is not cured.

(b) If the allegedly breaching Party disputes in good faith the allegation that there has been a material breach, then such Party may contest the allegation in accordance with Section 14.3 and, provided that the allegedly breaching Party gives written notice to the other Party of such dispute and initiates dispute resolution procedures under Section 14.3 during the applicable cure period, such cure period will toll upon the initiation of such dispute resolution procedures. If, as a result of such dispute resolution process, it is finally determined pursuant to Section 14.3 that the breaching Party committed a material breach of this Agreement, then the applicable cure period will resume and if the breaching Party does not cure such material breach within the remainder of such cure period (as such cure period may be extended pursuant to Section 13.2(a)), then this Agreement will terminate effective as of the expiration of such cure period. This Agreement will remain in full force and effect during the pendency of any such dispute resolution proceeding and the applicable cure period. Any such dispute resolution proceeding will not suspend any obligations of either Party hereunder and each Party will use reasonable efforts to mitigate any damages. If, as a result of such dispute resolution proceeding, it is determined that the breaching Party did not commit such material breach (or such material breach was cured in accordance with Section 13.2(a)), then no termination of this Agreement will be effective, and this Agreement will continue in full force and effect.

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

13.3 Termination by ObsEva.

(a) Termination for Patent Challenge. In the event that Organon or any of its Affiliates or Sublicensees, anywhere in the world, institutes, prosecutes or otherwise participates in (or in any way aids any Third Party in instituting, prosecuting or participating in), at law or in equity or before any administrative or regulatory body, including the U.S. Patent and Trademark Office or its foreign counterparts, any claim, demand, action or cause of action for declaratory relief, damages or any other remedy, or for an enjoinment, injunction or any other equitable remedy, including any interference, reexamination, opposition or any similar proceeding, alleging that any claim in a Licensed Patent is invalid, unenforceable or otherwise not patentable ("**Patent Challenge**"), [*].

(b) Termination for [*] Commercialization. [*].

13.4 Termination by Organon.

(a) For Cause. Organon may terminate this Agreement in its entirety effective immediately upon written notice to ObsEva if Organon reasonably believes in good faith, after due inquiry and in a manner consistent with Organon's then-current decision-making process with respect to such a determination, that Development or Commercialization of Licensed Compounds and Licensed Products should be terminated due to a Safety Reason; provided that [*].

(b) For Convenience. Organon shall have the right to terminate this Agreement in its entirety, for any or no reason, at any time prior to First Commercial Sale of the first Licensed Product, upon [*] prior written notice to ObsEva.

13.5 No Immediate Termination on Bankruptcy. To the extent permitted by Applicable Law, all rights and licenses granted pursuant to this Agreement by a Party to the other Party shall not be terminated upon a Bankruptcy Event of such Party or its Affiliates, and each Party hereby claims the benefit of any Applicable Law which may enable it to prevent such termination, provided that such a Bankruptcy Event shall not bring material adverse effect to the transactions contemplated hereunder. In the event of a Bankruptcy Event of Organon, Organon shall, during the [*] period following such Bankruptcy Event, seek to enter into one or several sublicenses for each of [*]. Any such sublicense shall be subject to the terms of Section 2.2. If, upon expiry of the [*] period Organon has failed to enter into a definitive sublicense agreement [*], ObsEva shall have the right to terminate this Agreement with respect to [*] immediately upon written notice. In the event of a termination of this Agreement [*] by ObsEva pursuant to this Section 13.5, all rights and licenses granted by ObsEva hereunder (i) shall [*] and (ii) shall [*].

13.6 Effects of Termination.

(a) General Consequences. In the event of termination of this Agreement for any reason prior to expiration of the Term, except for the surviving provisions set forth in this Section 13.6 or Section 13.11, the rights, licenses and obligations of the Parties hereunder shall terminate and be of no further force or effect as of the effective date of such termination and the terms of this Section 13.6 shall apply.

(b) Confidential Information. Upon termination of this Agreement in its entirety, either Party may request in writing, and the other Party shall either promptly return to the first Party, or as soon as reasonably practicable delete or destroy, all relevant records and materials in such Party's possession or control containing Confidential Information of the other Party to which such first Party does not retain rights under the surviving provisions of this Agreement; provided that a Party may keep one copy

of such materials for legal archival purposes subject to continuing confidentiality obligations. Notwithstanding the foregoing, such other Party also shall be permitted to retain such additional copies of or any computer records or files containing such Confidential Information that have been created solely by such Party's automatic archiving and back-up procedures, to the extent created and retained in a manner consistent with such other Party's standard archiving and back-up procedures, but not for any other use or purpose.

(c) Sublicenses. In the event of termination of this Agreement prior to expiration of the Term, at the request of a Sublicensee within [*] days after the effective date of termination, provided such Sublicensee is not then in default of its obligations under its sublicense agreement, such sublicense agreement will survive in accordance with its terms for such period of [*] days during which period ObsEva shall negotiate and enter into a continuing license with such Sublicensee granting such Sublicensee rights under the Licensed Technology (or the subset of the Licensed Technology that was sublicensed to such Sublicensee) on reasonable terms that (i) do not impose any additional obligations on ObsEva to those obligations contained in this Agreement and (ii) fully preserve ObsEva's rights under this Agreement, including ObsEva's rights to receive payments under Article 7 on terms that are at least as favorable as those herein.

(d) Commercial Inventory. In the event of termination of this Agreement by Organon pursuant to Section 13.2 prior to expiration of the Term and after First Commercial Sale of a Licensed Product, Organon and its Affiliates shall be entitled, during the [*] period following the effective date of termination, to sell any commercial inventory of Licensed Products which remains on hand as of the effective date of the termination, so long as Organon pays to ObsEva the royalties applicable to such post-termination sales in accordance with the terms and conditions set forth in this Agreement. In the event of termination of this Agreement prior to expiration of the Term by ObsEva pursuant to Section 13.2 or Section 13.3 or by Organon pursuant to Section 13.4(b), any commercial inventory of Licensed Products which remains on hand as of the effective date of the termination shall be offered for sale to ObsEva, to the extent licensed under Section 13.6(f), at a price to be mutually agreed upon between the Parties in good faith [*]; provided that, if ObsEva elects not to purchase the entire commercial inventory, Organon shall be entitled, for a period of [*], to sell any unpurchased commercial inventory of Licensed Products so long as Organon pays to ObsEva the royalties applicable to such post-termination sales in accordance with the terms and conditions set forth in this Agreement.

(e) License to Organon. In the event of termination of this Agreement prior to expiration of the Term, the license granted by ObsEva to Organon under Section 2.1 shall automatically terminate, provided that ObsEva grants to Organon, its Affiliates and Sublicensees (as the case may be) any licenses or rights of reference to any Licensed Technology reasonably necessary for Organon, its Affiliates or Sublicensees to exercise its rights or fulfill its obligations set forth in this Section 13.6.

(f) Reversion License. In the event of termination of this Agreement prior to the expiration of the Term by ObsEva pursuant to Section 13.2 or Section 13.3 or by Organon pursuant to Section 13.4(b), Organon shall, and hereby does, grant to ObsEva, effective on the effective date of termination, [*] (the license grants under clauses (i) and (ii), the "**Reversion Licenses**"). In all cases, the Reversion Licenses exclude [*]. The royalty(ies) to be paid under the Reversion Licenses shall be commercially reasonable taking into account the relative value of the Organon Improvement Technology and the Organon Technology. If the Parties are unable to agree upon such commercially reasonable royalty(ies) within [*] days after the effective date of termination (or such longer period as the Parties may agree) ("**Reversion Royalty Dispute**"), the Reversion Royalty Dispute shall be resolved in accordance with Section 14.3. With respect to any Organon Technology that is licensed by Organon from Third Parties, (A) Organon shall notify ObsEva (which notice shall describe the terms and conditions of the Third Party

agreement that are applicable to the grant to ObsEva of the Reversion License under such Organon Technology or to the exercise of such Reversion License by ObsEva or any of its Affiliates or sublicensees, including payment terms), (B) ObsEva shall be responsible for (x) making any payments (including royalties, milestones and other amounts) that are payable by Organon to the Third Parties under any Third Party agreements with respect to and allocable to the Organon Technology that is the subject of such Reversion License by making such payments directly to Organon and, in each instance, ObsEva shall make the requisite payments to Organon and provide the necessary reporting information to Organon in sufficient time to enable Organon to comply with its obligations under such Third Party agreements (provided Organon has notified ObsEva of such obligations), and (y) complying with any other obligations included in such Third Party agreements that are applicable to the grant to ObsEva of the Reversion License under the applicable Organon Technology or to the exercise of such Reversion License by ObsEva or any of its Affiliates or sublicensees (provided Organon has notified ObsEva of such obligations), and the granting by ObsEva of a sublicense under the Reversion Licenses shall not relieve ObsEva of its obligations under this subclause (B); and (C) Organon shall timely pay and provide to such Third Parties all payments and reports made or provided by ObsEva under subclause (B).

(g) Assignments. In the event of termination of this Agreement prior to expiration of the Term by ObsEva pursuant to Section 13.2 or Section 13.3 or by Organon pursuant to Section 13.4(b), Organon shall promptly (i) where permitted by Applicable Law [*] then owned by Organon or its Affiliates and in its or their name solely relating to the Licensed Compounds or Licensed Products in the Territory that are subject of the license grant in Section 13.6(f), including [*], (ii) [*], (iii) at ObsEva's option, transfer to ObsEva any and all chemical, biological and other physical materials solely relating to or comprising the Licensed Products that are subject of the license grant in Section 13.6(f), including clinical supplies of Licensed Products, that are in Organon's or its Affiliates' possession or control, and (iv) assign to ObsEva or its designee all of Organon's and its Affiliates' rights, title, and interest in and to all Product Trademarks and all domain names associated with the Product Trademarks, in each case solely relating to the Licensed Products in the Territory that are subject of the license grant in Section 13.6(f) (if any). [*].

(h) Ongoing Clinical Trials. Unless expressly prohibited by any Regulatory Authority or Applicable Law, if any Clinical Trials involving Licensed Products sponsored by Organon or its Affiliate or Sublicensee are being conducted by Organon as of the effective date of termination, at ObsEva's reasonable written request made within [*] days after the effective date of termination (i) Organon shall, and shall cause its Affiliates and Sublicensees to, wind down such Clinical Trials in accordance with Applicable Law (provided that such winding down would not be inconsistent with Organon's ethical obligations or reasonable internal policies), or (ii) [*].

(i) Organon Improvement Know-How. In the event of termination of this Agreement prior to expiration of the Term by ObsEva pursuant to Section 13.2 or Section 13.3 or by Organon pursuant to Section 13.4(b), Organon shall disclose and transfer to ObsEva (to the extent included in the Reversion Licenses) (i) all Organon Know-How and (ii) any Organon Improvement Know-How that is necessary to Develop, have Developed, Manufacture, have Manufactured, Commercialize or otherwise Exploit any Licensed Compound or Licensed Product.

(j) Supply Obligation. Unless otherwise agreed by both Parties, Organon will have no obligation to Manufacture or supply to ObsEva Licensed Compound or Licensed Product for ObsEva's continued Development and Commercialization of such Licensed Compounds and Licensed Products.

13.7 Transition Agreement. In the event of termination of this Agreement in its entirety by ObsEva pursuant to Section 13.2 or Section 13.3 or by Organon pursuant to Section 13.4(b), unless ObsEva informs Organon that ObsEva will not (itself or with or through its Affiliates or a Third Party) continue

Development, Commercialization or other Exploitation of any Licensed Product in the Territory, ObsEva and Organon shall negotiate in good faith the terms and conditions of a written transition agreement pursuant to which Organon and ObsEva will effectuate and coordinate a smooth and efficient transition of relevant obligations and rights to ObsEva as reasonably necessary for ObsEva to exercise its license pursuant to Section 13.6(f) with respect to the Licensed Products after termination of this Agreement as and to the extent set forth in this Article 13, which terms and conditions shall be consistent with those set forth in this Article 13 and include duration and full time equivalent limits for the services to be provided to the extent not set forth in this Article 13. [*].

13.8 Termination for Safety Reasons. Notwithstanding the foregoing, if this Agreement is terminated by Organon pursuant to Section 13.4(a), [*].

13.9 Remedies. Except as otherwise expressly provided herein, termination of this Agreement in accordance with the provisions hereof shall not limit remedies that may otherwise be available in law or equity.

13.10 Milestone Payments. Notwithstanding anything to the contrary contained herein, if notice of termination of this Agreement is given prior to achievement of a given milestone set forth in Section 7.2, Organon shall not be obligated to make any milestone payment in Section 7.2 to ObsEva with respect to any milestone achieved following the notice of such termination; provided that, [*].

13.11 Survival; Accrued Rights. The obligations and rights of the Parties under the following provisions of this Agreement shall survive expiration or termination of this Agreement: 2.6, 8.1 (with respect to payment obligations accruing during the Term), 8.2 through 8.5, 9.1, 11.4, 13.6 through 13.11, 14.2, 14.3, 14.4, 14.5, 14.7, 14.9, 14.10, 14.11, 14.12, 14.14, 14.15 and Article 1, Article 10 and Article 12.

In any event, expiration or termination of this Agreement will not relieve the Parties of any liability that accrued hereunder prior to the effective date of such expiration or termination nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement, nor prejudice either Party's right to obtain performance of any obligation that accrued hereunder prior to the effective date of such expiration or termination (including the rights to receive payments accrued or due prior to the effective date of such termination).

14. GENERAL PROVISIONS

14.1 Change of Control of ObsEva.

(a) ObsEva (or its successor) shall provide Organon with written notice of any Change of Control of ObsEva within [*] following the closing date of such transaction.

(b) In the event of a Change of Control of ObsEva: all Licensed Technology Controlled by ObsEva immediately before such Change of Control shall continue to be Licensed Technology but ObsEva and its Affiliates will not be deemed to "Control" any Know-How or Patent that, prior to the closing date of such Change of Control is owned, in-licensed or otherwise controlled by a Third Party (and such Third Party's Affiliates that existed prior to such closing date), that becomes an Affiliate of ObsEva after the Effective Date as a result of such Change of Control unless such Know-How or Patent was so included in or subject to this Agreement prior to the closing date of such Change of Control or is used by such acquired Party or any of its Affiliates after the closing date of such Change of Control in the Development, Manufacture, Commercialization or other Exploitation of Licensed Products pursuant to this

Agreement, in which case such Know-How or Patent will be "Controlled" by ObsEva for purposes of this Agreement.

(c) In the event of a Change of Control of ObsEva or other assignment of this Agreement by ObsEva to a Third Party pursuant to Section 14.9(a) that involves [*], then (i) at the request of Organon, (x) the JAC shall be disbanded, (y) any or all provisions of this Agreement providing for any delivery by Organon to ObsEva of information relating to activities contemplated by this Agreement shall terminate, save only for the provisions of Section 8.1, and (z) ObsEva and its acquirer in the Change of Control will adopt reasonable procedures to be agreed upon in writing to prevent disclosure of Confidential Information of Organon to such acquirer; and (ii) any information, documents or reports provided by Organon that ObsEva is otherwise required to provide to Merck Serono pursuant to this Agreement shall be provided directly to Merck Serono by Organon. As used herein, "**Change of Control**" means, with respect to ObsEva, a transaction with a Third Party(ies) involving, (A) the acquisition, merger or consolidation, directly or indirectly, of ObsEva, and, immediately following the consummation of such transaction, the shareholders or other owners of ObsEva, immediately prior thereto hold, directly or indirectly, as applicable, shares of capital stock of the surviving company representing less than fifty percent (50%) of the outstanding shares of such surviving or continuing company, (B) the sale of all or substantially all of the assets or business of ObsEva, or (C) a Person, or group of Persons acting in concert, acquire more than fifty percent (50%) of the voting equity securities or management control of ObsEva.

(d) For clarity, a Change of Control does not include (i) an internal consolidation, merger, share exchange or other reorganization of ObsEva between it and one or more of its Affiliates, (ii) a sale of assets, merger, or other transaction effected with an Affiliate of ObsEva exclusively for the purpose of changing domicile of ObsEva, (iii) a transfer or assignment of any Patents or other intellectual property rights to a wholly-owned subsidiary of ObsEva; or (iv) any public offering of ObsEva's equity securities or other issuance of stock by ObsEva in an equity financing.

14.2 Governing Law. This Agreement, and all questions regarding the existence, validity, interpretation, breach, or performance of this Agreement, shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

14.3 Dispute Resolution. Any dispute between the Parties in connection with or relating to this Agreement or any document or instrument delivered in connection herewith (a "**Dispute**") shall first be referred to the Executive Officers of the Parties, who shall confer in good faith on the resolution of the Dispute. Any final decision mutually agreed upon by the Executive Officers shall be conclusive and binding on the Parties. If the Executive Officers are not able to agree on the resolution of a Dispute within [*] (or such other period of time as mutually agreed by the Executive Officers) after such Dispute was first referred to them, then such Dispute shall be resolved by binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce in force on the date on which the Notice of Arbitration is submitted (the "**Rules**"). The arbitration will be conducted by a panel of three (3) arbitrators appointed in accordance with the Rules; provided that each Party will, [*] after the institution of the arbitration proceedings, appoint an arbitrator, and such arbitrators will together, within [*], select a third (3rd) arbitrator as the chairperson of the arbitration panel. The seat of the arbitration shall be Geneva. The arbitral proceedings shall be conducted in English. Except as may be required by Applicable Law or to protect or pursue a legal right, neither a Party nor any arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of both Parties. Each Party shall bear its own legal costs for its counsel and other expenses, and the Parties shall equally share the costs of the arbitration; provided that the arbitral tribunal shall have the discretion to provide that the losing Party is responsible for all or a portion of such arbitration and legal costs, and in such case the arbitral award will so provide. The arbitrators shall have no power to award damages excluded pursuant to Section 12.5. The

arbitral award shall be final and binding on the Parties and the Parties shall carry out the award without delay. Judgment on the award so rendered may be entered in any court of competent jurisdiction. Notwithstanding anything to the contrary herein, nothing in this Section 14.3 shall preclude either Party from seeking interim or provisional relief, including a temporary restraining order, preliminary injunction, or other interim equitable relief concerning a Dispute in any court of competent jurisdiction before or after the initiation of an arbitration as set forth herein, if necessary to protect the interests of such Party. The Parties agree that any dispute concerning the propriety of the commencement of the arbitration or the scope and applicability of the agreement to arbitrate shall be determined by the arbitrators. Notwithstanding the foregoing, the Parties agree that a Reversion Royalty Dispute shall be resolved by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules and the Final Offer Supplementary Arbitration Rules, and the number of arbitrators in such arbitration shall be one (1).

14.4 Entire Agreement; Modification. This Agreement, including the Schedules hereto, is both a final expression of the Parties' agreement and a complete and exclusive statement with respect to all of its terms. This Agreement supersedes all prior and contemporaneous agreements and communications, whether oral, written, or otherwise, concerning any and all matters contained herein (including [*]. This Agreement may only be modified or supplemented in a writing expressly stated for such purpose and signed by the Parties to this Agreement.

14.5 Relationship Between the Parties. The Parties' relationship, as established by this Agreement, is solely that of independent contractors. This Agreement does not create any partnership, joint venture, or similar business relationship between the Parties. Neither Party is a legal representative of the other Party, and neither Party can assume or create any obligation, representation, warranty, or guarantee, express or implied, on behalf of the other Party for any purpose whatsoever.

14.6 Performance by Affiliates. Organon may discharge any obligations and exercise any right under this Agreement through any of its Affiliates, and such Organon Affiliates are expressly granted certain rights herein; provided that each such Affiliate shall be bound by the corresponding obligations of Organon and, subject to an assignment to such Affiliate pursuant to Section 14.9, Organon shall remain liable hereunder for the prompt payment and performance of all their respective obligations hereunder.

14.7 Waiver. The waiver by either Party of any right under this Agreement or of the failure to perform or of a breach by the other Party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by such other Party whether of a similar nature or otherwise. Any waiver by a Party of a particular term or condition will be effective only if set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition.

14.8 Further Assurances. Each Party shall duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including the filing of such assignments, agreements, documents, and instruments, as may be necessary or as the other Party may reasonably request in connection with this Agreement or to carry out more effectively the provisions and purposes hereof, or to better assure and confirm unto such other Party its rights and remedies under this Agreement.

14.9 Assignment. Except as expressly provided herein, neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by either Party, in whole or in part, without the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed); except that each Party may assign or otherwise transfer this Agreement and its rights and obligations hereunder without the other Party's consent as follows:

(a) in connection with a sale of all or substantially all of the business or assets of such Party to which this Agreement relates, whether by merger, consolidation, divesture, sale of stock, sale of assets, or otherwise; or

(b) to an Affiliate, provided that if the entity to which this Agreement is assigned ceases to be an Affiliate of the assigning Party, this Agreement shall be automatically assigned back to the assigning Party or its successor.

The rights and obligations of the Parties under this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties specified above, and the name of a Party appearing herein will be deemed to include the name of such Party's successors and permitted assigns to the extent necessary to carry out the intent of this Section 14.9. Any assignment not in accordance with this Section 14.9 shall be null and void and of no legal force or effect.

14.10 Accounting Standards. Each Party shall calculate all amounts hereunder and perform other accounting procedures required hereunder applicable to it in accordance with the Accounting Standards normally used by such Party to calculate its financial position, in each case consistently applied by such Party.

14.11 Severability. If, for any reason, any part of this Agreement is adjudicated invalid, unenforceable, or illegal by a court of competent jurisdiction, such adjudication shall not affect or impair, in whole or in part, the validity, enforceability, or legality of any remaining portions of this Agreement. The Parties will in such an instance use their best efforts to replace the invalid, unenforceable, or illegal provision(s) with valid, enforceable, and legal provision(s) that best implement the original intent of the Parties and purposes of this Agreement.

14.12 Notices. Any notice to be given under this Agreement must be in writing and delivered either in person, or by registered or certified mail (postage prepaid) requiring return receipt, or by internationally recognized overnight delivery service, in each case to the Party to be notified at its address given below, or at any other address such Party may designate by prior written notice to the other in accordance with this Section 14.12. Notice shall be deemed sufficiently given for all purposes upon the earliest of: (a) if personally delivered, the date of actual receipt; (b) if delivered by registered or certified mail, five (5) Business Days after the date of postmark; or (c) if delivered by overnight delivery service, the next day the overnight delivery service regularly makes deliveries.

If to ObsEva, notices must be addressed to:

ObsEva SA
Chemin des Aulx 12,
1228 Plan-Les-Ouates, Switzerland
Attention: Chief Executive Officer

with a copy to:

ObsEva SA
Chemin des Aulx 12,
1228 Plan-Les-Ouates, Switzerland
Attention: Chief Administrative Officer

If to Organon, notices must be addressed to:

Organon International GmbH
Weystrasse 20,
6006 Lucerne, Switzerland
Attention: [*]

with a copy to:

Organon LLC
30 Hudson Street
33rd Floor
Jersey City, NJ (USA) 07302
Attention: SVP, Head of Business Development
Attention: Officer of the Secretary

14.13 Force Majeure. Neither Party shall be liable to the other for failure or delay in the performance of any of its obligations under this Agreement for the time and to the extent such failure or delay is caused by acts of God, earthquake, riot, civil commotion, terrorism, war, strikes or other labor disputes, fire, flood, epidemics, pandemics, the spread of infectious diseases, quarantines, failure or delay of transportation, default by suppliers or unavailability of raw materials, governmental acts or restrictions or any other reason which is beyond the control of the respective Party ("**Force Majeure**"). A Force Majeure may include reasonable measures affirmatively taken by a Party or its Affiliates to respond to any epidemic, pandemic, or spread of infectious disease, such as requiring employees to stay home, closures of facilities, delays of Clinical Trials, or cessation of activities in response to an epidemic or other Force Majeure event, to the extent such measures cause a failure or delay in the performance of a Party's obligations under this Agreement. The Party affected by Force Majeure shall provide the other Party with full particulars thereof as soon as it becomes aware of the same (including its best estimate of the likely extent and duration of the interference with its activities), and will use Commercially Reasonable Efforts to overcome the difficulties created thereby and to resume performance of its obligations hereunder as soon as practicable.

14.14 Interpretation. The headings of clauses contained in this Agreement preceding the text of the sections, subsections, and paragraphs hereof are inserted solely for convenience and ease of reference only and shall not constitute any part of this Agreement, or have any effect on its interpretation or construction. All references in this Agreement to the singular shall include the plural where applicable. Unless otherwise specified, references in this Agreement to any Article shall include all Sections, subsections, and paragraphs in such Article, references to any Section shall include all subsections and paragraphs in such Section, and references in this Agreement to any subsection shall include all paragraphs in such subsection. The word "**including**" and similar words means including without limitation. The word "**or**" means "**and/or**" unless the context dictates otherwise because the subjects of the conjunction are, or are intended to be, mutually exclusive. The words "**herein**", "**hereof**", and "**hereunder**" and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision. All references to days in this Agreement mean calendar days, unless otherwise specified. Ambiguities and uncertainties in this Agreement, if any, shall not be interpreted against either Party, irrespective of which Party may be deemed to have caused the ambiguity or uncertainty to exist. This Agreement has been prepared in the English language and the English language shall control its interpretation. In addition, all notices required or permitted to be given hereunder, and all written, electronic, oral, or other communications between the Parties regarding or pursuant to this Agreement (including the disclosure of Know-How, notices, and reports and documents submitted to the JAC) shall be in the English language.

14.15 Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall be deemed to constitute one and the same agreement. The Parties agree that execution of this Agreement by industry standard electronic signature software or by exchanging executed signature pages in .pdf format via e-mail shall have the same legal force and effect as the exchange of original signatures, and that in any proceeding arising under or related to this Agreement, each Party hereby waives any right to raise any defense or waiver based upon execution of this Agreement by means of such electronic signatures or maintenance of the executed agreement electronically.

{Signature Page Follows}

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

In Witness Whereof, the Parties hereto have caused this Agreement to be executed and entered into by their duly authorized representatives as of the Effective Date.

ObsEva SA	**Organon International GmbH**
By: /s/ Brian O'Callaghan	By: /s/ Thomas Morlet
Name: Brian O'Callaghan	Name: Thomas Morlet
Title: Chief Executive Officer	Title: Managing Officer

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Schedule 1.58
Description of Licensed Compounds

[*]

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Schedule 1.60
[*] Patents

[*]

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Schedule 2.3

[*]

[*]

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Schedule 4.5
Existing Inventory

[*]

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Schedule 4.6(a)
Existing INDs

[None]

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Schedule 5.3(a)
Key Terms of Supply Agreements

[*]

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Schedule 8.2
ObsEva Bank Account Information

[*]

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Schedule 10.8
Joint Press Release

Organon and ObsEva Enter Global License Agreement to Develop and Commercialize Ebopiprant (OBE022), an Investigational Agent Being Evaluated as a First-in-Class Treatment for Preterm Labor

Every year, an estimated 15 million babies are born preterm (before 37 completed weeks of gestation)i ; agent is being studied in an area of significant unmet need

Ad hoc announcement pursuant to Art. 53 LR of the SIX Swiss Exchange

Jersey City, N.J., Geneva, Switzerland, July 27, 2021 - Organon (NYSE: OGN), a global women's health company and ObsEva (NASDAQ: OBSV) (SIX: OBSN), a biopharmaceutical company dedicated to improving women's reproductive health, today announced that the companies have entered into an agreement whereby Organon will license the global development, manufacturing and commercial rights to ebopiprant (OBE022). Ebopiprant is an investigational, orally active, selective prostaglandin F2α (PGF2α) receptor antagonist being evaluated as a potential treatment for preterm labor by reducing inflammation and uterine contractions. If approved, it has potential to be a first-in-class innovation for this common and serious condition with no approved therapies for acute treatment of preterm labor in the United States.

"This development-stage asset is being studied in one of the most crucial unmet needs for women globally. As we build Organon's women's health research and development portfolio, the agreement strengthens our path to long term growth," said Kevin Ali, Organon's Chief Executive Officer. "Organon and ObsEva share a commitment to improve the lives of women around the world. Through Organon's strong development, scientific and medical capabilities, our goal is to change the future for millions of mothers and babies."

Organon intends to work with the scientific and medical communities and regulatory authorities in major markets, including the United States, to advance the clinical development and registration of ebopiprant.

Brian O'Callaghan, CEO of ObsEva, commented, "Organon is the ideal partner for the development and commercialization of ebopiprant and we see this agreement as an important step in advancing this investigational agent. Although preterm birth rates are on the rise, there are currently no other known compounds in development. That is why we are focused on evaluating this agent in an important area of unmet need. Together with the data generated to date, this agreement underscores the value of our program, and we look forward to executing on our shared vision."

Under the terms of the agreement, Organon will gain exclusive worldwide rights to develop and commercialize ebopiprant. ObsEva is entitled to receive tiered double-digit royalties on commercial sales as well as up to $500 million in upfront and milestone payments including $25 million to be paid at signing, up to $90 million in development and regulatory milestones and up to $385 million sales based milestones. Goldman Sachs acted as exclusive financial advisor to ObsEva.

About Ebopiprant

In November 2020, ObsEva announced positive results from PROLONG, the Phase 2a proof-of-concept, randomized, double-blind, placebo-controlled trial of ebopiprant in preterm labor. In this study, 113 women with spontaneous preterm labor (gestational age between 24 and 34 weeks) were randomized and treated with atosiban (ex-U.S. standard of care) plus ebopiprant or atosiban plus placebo for 7 days. There were 83

(73%) women with singleton pregnancies and 30 (27%) with twin pregnancies. One hundred and forty-one neonates were born.

In the PROLONG study, ebopiprant reduced delivery in singleton pregnancies at 48 hours after the start of dosing by 55% compared to atosiban alone. Overall, 7/56 (12.5%) of women receiving ebopiprant delivered within 48 hours of starting treatment compared to 12/55 (21.8%) receiving placebo (OR 90% CI: 0.52 (0.22, 1.23)). In singleton pregnancies, 5/40 (12.5%) of women receiving ebopiprant delivered within 48 hours compared to 11/41 (26.8%) receiving placebo (OR 90% CI: 0.39 (0.15, 1.04)). A modest effect on delivery at 7 days was seen in the singletons.

The incidence of maternal, fetal and neonatal adverse events were comparable between subjects in the ebopiprant group and the placebo group.

Ebopiprant (OBE022) was licensed from Merck KGaA, Darmstadt, Germany, in 2015.

About ObsEva

ObsEva is a biopharmaceutical company developing and commercializing novel therapies to improve women's reproductive health and pregnancy. Through strategic in-licensing and disciplined drug development, ObsEva has established a late-stage clinical pipeline with development programs focused on new therapies for the treatment of uterine fibroids, endometriosis, and preterm labor. ObsEva is listed on the Nasdaq Global Select Market and is traded under the ticker symbol "OBSV" and on the SIX Swiss Exchange where it is traded under the ticker symbol "OBSN". For more information, please visit www.ObsEva.com.

About Organon

Organon is a global healthcare company formed through a spinoff from Merck, known as MSD outside of the United States and Canada, to focus on improving the health of women throughout their lives. Here for her health, the company has a portfolio of more than 60 medicines and products across a range of therapeutic areas. Led by the reproductive health portfolio coupled with an expanding biosimilars business and stable franchise of established medicines, Organon's products produce strong cash flows that will support investments in future growth opportunities in women's health, including business development like recently acquired Alydia Health, a medical device company focused on postpartum hemorrhage. In addition, Organon is pursuing opportunities to collaborate with biopharmaceutical innovators looking to commercialize their products by leveraging its scale and presence in fast growing international markets.

Organon has a global footprint with significant scale and geographic reach, world-class commercial capabilities, and approximately 9,000 employees with its headquarters located in Jersey City, New Jersey. For more information, visit http://www.organon.com and connect with us on LinkedIn and Instagram.

Forward-Looking Statement of Organon & Co.

Except for historical information herein, this news release of Organon & Co. (the "company") includes "forward-looking statements" within the meaning of the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995, including, but not limited to, statements about ebopiprant as a potential treatment for preterm labor, Organon's and ObsEva's ability to improve the lives of women, Organon's ability to advance the clinical development of ebopiprant, and the potential benefits of the license. Forward-looking statements may be identified by words such as "potential," "expects," "intends," "anticipates," "plans," "believes," "seeks," "estimates," "will" or words of similar meaning. These

statements are based upon the current beliefs and expectations of Organon's management and are subject to significant risks and uncertainties. If underlying assumptions prove inaccurate or risks or uncertainties materialize, actual results may differ materially from those set forth in the forward-looking statements.

Risks and uncertainties include but are not limited to, general industry conditions and competition; general economic factors, including the impact of the recent global outbreak of novel coronavirus disease (COVID-19); the impact of pharmaceutical industry regulation and health care legislation in the United States and internationally; technological advances, new products and patents attained by competitors; challenges inherent in new product development, including obtaining regulatory approval; Organon's ability to accurately predict its future financial results and performance; Organon's ability to accurately predict future market conditions; manufacturing difficulties or delays; dependence on the effectiveness of Organon's patents and other protections for innovative products; and the exposure to litigation, including patent litigation, and/or regulatory actions.

Organon does not undertake any obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise. Additional factors that could cause results to differ materially from those described in the forward-looking statements can be found in Organon's filings with the Securities and Exchange Commission ("SEC"), including its registration statement on Form 10, available at the SEC's Internet site (www.sec.gov).

Cautionary Note Regarding Forward Looking Statements of ObsEva SA

Any statements contained in this press release that do not describe historical facts may constitute forward-looking statements as that term is defined in the Private Securities Litigation Reform Act of 1995. These statements may be identified by words such as "believe", "expect", "may", "plan", "potential", "will", and similar expressions, and are based on ObsEva's current beliefs and expectations. These forward-looking statements include expectations regarding the clinical development of and commercialization plans for ObsEva's product candidates, expectations regarding regulatory and development milestones, including the potential timing of regulatory submissions to the EMA and FDA and ObsEva's ability to obtain and maintain regulatory approvals for its product candidates, and the results of interactions with regulatory authorities. These statements involve risks and uncertainties that could cause actual results to differ materially from those reflected in such statements. Risks and uncertainties that may cause actual results to differ materially include uncertainties inherent in the conduct of clinical trials and clinical development, including the risk that the results of earlier clinical trials may not be predictive of the results of later stage clinical trials, related interactions with regulators, ObsEva's reliance on third parties over which it may not always have full control, the impact of the ongoing novel coronavirus outbreak, and other risks and uncertainties that are described in the Risk Factors section of ObsEva's Annual Report on Form 20-F for the year ended December 31, 2020 filed with Securities and Exchange Commission (SEC) on March 5, 2021 and other filings ObsEva makes with the SEC. These documents are available on the Investors page of ObsEva's website at http://www.ObsEva.com. Any forward-looking statements speak only as of the date of this press release and are based on information available to ObsEva as of the date of this release, and ObsEva assumes no obligation to, and does not intend to, update any forward-looking statements, whether as a result of new information, future events or otherwise.

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[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

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Schedule 11.1(z)
CMO Agreements

[*]

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Exhibit 10.58

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LICENSE AGREEMENT

Dated June 10, 2015

By and Between

ARES TRADING S.A.

And

OBSEVA S.A.

LICENSE AGREEMENT

This License Agreement (the "***Agreement***") is dated as of June 10, 2015 (the "***Effective Date***") by and between **Ares Trading SA**, a Swiss corporation with registered offices at Zone Industrielle de l'Ouriettaz, 1108 Aubonne, Switzerland ("***Merck Serono***") and **Obseva S.A.**, a Swiss corporation with registered offices at 12, Chemin des Aulx, 1228 Plan-Les-Ouates, Geneva ("***Licensee***"). Merck Serono and Licensee may be referred to herein as a "***Party***" or, collectively, as "***Parties***".

Witnesseth:

Whereas, Licensee is active in the field of reproductive health and medicine;

Whereas, Merck Serono is engaged, among other activities, in the development of pharmaceutical products; and

Whereas, Merck Serono wishes to license to Licensee, on an exclusive worldwide basis, the right to research, develop, manufacture and commercialize products comprising the Licensed Compounds in the Field (as hereinafter defined); and

Whereas, Licensee wishes to obtain, and Merck Serono is willing to grant a license to the Merck Serono Technology upon the terms and conditions set forth herein; and

Now, Therefore, in consideration of the promises and mutual covenants contained herein, the parties agree to as follows:

ARTICLE 1

DEFINITIONS

The following terms shall have the following respective definitions:

1.1 "*Affiliate*" means a Person or entity that controls, is controlled by or is under common control with a Party, but only for so long as such control exists. For the purposes of this Section 1.1, the word "control" (including, with correlative meaning, the terms "controlled by" or "under the common control with") means the actual power, either directly or indirectly through one or more intermediaries, to direct the management and policies of such Person or entity, whether by the ownership of at least fifty percent (50%) of the voting stock of such entity, or by contract or otherwise.

1.2 "*Bankruptcy Event*" means: (a) voluntary or involuntary proceedings by or against a Party instituted in bankruptcy under any insolvency law, which proceedings, if involuntary, shall not have been dismissed within sixty (60) days after the date of filing; (b) a receiver or custodian is appointed for a Party; (c) proceedings are instituted by or against a Party for corporate reorganization, dissolution, liquidation or winding-up of such Party, which proceedings, if involuntary, shall not have been dismissed within sixty (60) days after the date of filing; or (d) substantially all of the assets of a Party are seized or attached and not released within sixty (60) days thereafter.

1.3 "*Calendar Quarter*" means each three (3) month period commencing January 1, April 1, July 1 or October 1, provided however that (i) the first Calendar Quarter of the Term shall extend from the Effective Date to the end of the first full Calendar Quarter thereafter, and (ii) the last Calendar Quarter of the Term shall end upon the expiration of this Agreement.

1.4 "*Calendar Year*" means the period beginning on the 1st of January and ending on the 31st of December of the same year, provided however that (i) the first Calendar Year of the Term shall commence on the Effective Date and end on December 31, 2015 and (ii) the last Calendar Year of the Term shall commence on

January 1 of the Calendar Year in which this Agreement terminates or expires and ends on the date of termination or expiration of this Agreement.

1.5 **"*Clinical Trial*"** means a clinical trial in human subjects that has been approved by a Regulatory Authority and is designed to measure the safety and/or efficacy of a Licensed Product. Clinical Trials shall include Phase I Trials, Phase II Trials and Phase III Trials.

1.6 **"*Combination Product*"** means a product containing the Licensed Product together with one or more active ingredient, or with one or more product, device, equipment or component.

1.7 **"*Commercialization*" or "*Commercialize*"** means any and all activities undertaken prior to and after Regulatory Approval of an NDA for a particular Licensed Product and that relate to the marketing, promoting, distributing, importing for sale, offering for sale, and selling of the Licensed Product.

1.8 **"*Commercially Reasonable Efforts*"** means, (a) with respect to the efforts to be expended by any Party with respect to any objective, such reasonable, diligent, and good faith efforts as such Party would normally use to accomplish a similar objective under similar circumstances, and (b) with respect to any obligation relating to research, Development or Commercialization of a Licensed Product by Licensee, the application by Licensee of the level of efforts required to carry out such obligation in a sustained manner consistent with the efforts a similarly situated biopharmaceutical company or pharmaceutical company, as the case may be, devotes to a product of similar market potential, profit potential or strategic value resulting from its own research efforts.

1.9 **"*Confidential Information*"** of a Party means information relating to the business, operations and products of a Party or any of its Affiliates, including but not limited to, any technical information, Know-How, trade secrets, or inventions (whether patentable or not), not known or generally available to the public, that such Party discloses to the other Party under this Agreement, or otherwise becomes known to the other Party by virtue of this Agreement.

1.10 **"*Controlled*"** means, with respect to (a) Patent Rights, (b) Know-How or (c) biological, chemical or physical material, that a Third Party or a Party or one of its Affiliates owns or has a license or sublicense to such right, item, or material (or in the case of material, has the right to physical possession of such material) and has the ability to grant a license or sublicense to, or assign its right, title and interest in and to, such right, item or material as provided for in this Agreement.

1.11 **"*Cover*"**, "***Covering***" or "***Covered***" means, with respect to a Licensed Product, that the using, selling, or offering for sale of such Licensed Product would, but for a license granted in this Agreement under the Merck Serono Patents, infringe a Valid Claim of the Merck Serono Patents in the country in which the activity occurs.

1.12 **"*Development*"** means, with respect to a Licensed Product, the performance of all pre-clinical and clinical development (including toxicology, pharmacology, test method development and stability testing, process development, formulation development, quality control development, statistical analysis), Clinical Trials (excluding clinical trials conducted after Regulatory Approval of an NDA), manufacturing and regulatory activities that are required to obtain Regulatory Approval of the Licensed Product in the Territory.

1.13 **"*Executive Officers*"** means, together, a member of the senior management of the pharmaceutical division of Merck Serono and the Chief Executive Officer of Licensee.

1.14 **"*EMA*"** means the European Medicines Agency or any successor agency.

1.15 **"*FDA*"** means the United States Food and Drug Administration, or a successor federal agency thereto.

1.16 **"*Field*"** means all prophylactic, palliative, therapeutic or diagnostic uses in humans and animals.

1.17 **"*First Commercial Sale*"** shall mean, on a country-by-country basis, the first sale for monetary value to a Third Party for use or consumption of the Licensed Product, by Licensee, its Affiliate(s) or Sublicensees. For the avoidance of doubt, a First Commercial Sale may only occur after the Licensed Product has received Regulatory Approval valid for the country in which the First Commercial Sale occurs.

1.18 **"*Governmental Body*"** means any: (a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or entity and any court or other tribunal); (d) multi-national or supranational organization or body; or (e) individual, entity, or body exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

1.19 **"*IND*"** means an investigational new drug application filed with the FDA or the equivalent application or filing filed with any equivalent agency or Governmental Body outside the United States (including any supra-national entity such as in the European Union) for approval to commence Clinical Trials in such jurisdiction, and including all regulations at 21 CFR § 312 Et. Seq. and equivalent foreign regulations.

1.20 **"*Initiation*"** of a Clinical Trial means the [*] patient with a Licensed Product in such Clinical Trial.

1.21 **"*Know-How*"** means any scientific or technical information, results and data of any type whatsoever, in any tangible form, that is not in the public domain or otherwise publicly known, including, without limitation, discoveries, inventions, trade secrets, databases, practices, protocols, regulatory filings, methods, processes, techniques, biological and other materials, reagents, specifications, formulations, formulae, data (including pharmacological, biological, chemical, toxicological and clinical information, analytical, quality control and stability data, studies and procedures), manufacturing process and development information, results and data, whether or not patentable, all to the extent not claimed or disclosed in a patent. "***Know How***" excludes Patent Rights.

1.22 **"*Licensed Compound(s)*"** means the Merck Serono's proprietary compounds known as [*] and which are listed on Schedule 1.23. For the avoidance of doubt, Licensed Compounds are prostaglandin F2 receptors antagonists.

1.23 **"*Licensed Product(s)*"** means any pharmaceutical product, in any dosage form, formulation, presentation or package configuration that is commercialized or undergoing research or pre-clinical or clinical development that contains or comprises, in part or in whole, a Licensed Compound.

1.24 **"*Licensee Know-How*"** means all Know-How that is owned or Controlled by Licensee or its Affiliates after the Effective Date and is necessary in the research, Development, manufacture, use, or Commercialization of the Licensed Products.

1.25 **"*Major Market*"** means the United States, Germany, France, Italy, the United Kingdom and Spain.

1.26 **"*Merck Serono Know-How*"** means all Know-How that is owned or Controlled by Merck Serono as of the Effective Date and is necessary in the research, Development, manufacture, use, or Commercialization of the Licensed Products. The Know-How set forth on Schedule 1.27 constitutes all of such Know-How owned or Controlled by Merck Serono on the Effective Date.

1.27 **"*Merck Serono Materials*"** means all chemical, biological or physical materials that are owned or Controlled by Merck Serono or any of its Affiliates as of the Effective Date and that are necessary in the research, Development, manufacture, use or Commercialization of the Licensed Products. The Merck Serono Materials are set forth on Schedule 1.28.

1.28 **"*Merck Serono Patents*"** means the Patent Rights listed on Schedule 1.29.

1.29 **"*Merck Serono Technology*"** means the Merck Serono Know-How, the Merck Serono Patents and the Merck Serono Materials, collectively.

1.30 **"*NDA*"** means a New Drug Application filed pursuant to the requirements of the FDA, as more fully defined in 21 CFR.§ 314.3 et seq, a Biologics License Application filed pursuant to the requirements of the FDA, as more fully defined in 21 CFR § 601, and any equivalent application filed in any country in the Territory, together, in each case, with all additions, deletions or supplements thereto.

1.31 **"*Net Sales*"** means, with respect to each country of the Territory, the amounts invoiced by Licensee or its Affiliates or Sublicensees for all sales of Licensed Products to a Third Party (whether an end user, a distributor or otherwise), less the following:

(i) trade, cash and quantities discounts, rebates (including rebates similar to Medicare or other government rebates), reimbursements, allowances and credits for expired Licensed Products;

(ii) sales, use or similar taxes (including duties or other governmental charges levied or otherwise imposed on the sale or use of such Licensed Product, including, without limitation, value added taxes or other governmental charges otherwise measured by the billing amount, but only to the extent such amount(s) is (are) included in the billing);

(iii) freight, postage, shipping, customs duties and insurance charges, but only to the extent such amount(s) is (are) included in the billing;

(iv) any other specifically identified amounts included in the Licensed Product invoice price that should be credited for reasons substantially equivalent to those listed above or as determined in accordance with Licensee's usual and customary accounting methods which are in accordance with International Accounting Standards or equivalent.

Net Sales shall not include credits or allowances actually granted for damaged goods, returns or rejections of previously sold Licensed Products and retroactive price reductions for wastage replacement, indigent patients and similar programs.

For the avoidance of doubt, Net Sales may only occur after the Licensed Product has received Regulatory Approval valid for the country in which the Net Sales occur.

In the event that a Licensed Product is sold in the form of a Combination Product, Net Sales for such Combination Product will be calculated by multiplying actual Net Sales of such Combination Product by the fraction A/(A+B) where A is the invoice price of the Licensed Product containing a Compound as the only active ingredient if sold separately, and B is the invoice price of any other active ingredient(s) or other products, devices, equipment or components in the Combination Product if sold separately. In the event that the Licensed Product or one or more of such active ingredients or other products, devices, equipment or components in the Combination Product are not sold separately, then the Net Sales for such Combination Product shall be determined by the Parties in good faith.

1.32 **"*Patent Right(s)*"** means: (a) an issued or granted patent, including any extension, supplemental protection certificate, registration, confirmation, reissue, reexamination, extension or renewal thereof; (b) a pending patent application, including any continuation, divisional, continuation-in-part, substitute or provisional application thereof; and (c) all counterparts or foreign equivalents of any of the foregoing issued by or filed in any country or other jurisdiction.

1.33 **"*Person*"** means any natural person, corporation, firm, business trust, joint venture, association, organization, company, partnership or other business entity, or any Governmental Body, government or agency or political subdivision thereof.

1.34 **"*Phase I Trial*"** means a Clinical Trial in which the Licensed Product is administered to human subjects at multiple dose levels with the primary purpose of determining safety, metabolism, and pharmacokinetic and pharmacodynamic properties of the Licensed Product, and consistent with 21 CFR § 312.21(a).

1.35 **"*Phase II Trial*"** means a Clinical Trial of the Licensed Product in human patients, the principal purposes of which are to make a preliminary determination that the Licensed Product is safe for its intended use, to determine its optimal dose, and to obtain sufficient information about the Licensed Product's efficacy to permit the design of Phase III Trials, and consistent with 21 CFR 312.21(b).

1.36 **"*Phase III Trial*"** means a human Clinical Trial of the Licensed Product, which trial is designed (a) to establish that the Licensed Product is safe and efficacious for its intended use; (b) to define warnings, precautions and adverse reactions that are associated with the Licensed Product in the dosage range to be prescribed; and (c) consistent with 21 CFR § 312.21(c).

1.37 **"*Preferred Equity*"** means, with respect to shares, equity with rights identical to existing Series A Preferred shares.

1.38 **"*Regulatory Authority*"** means (a) the FDA, (b) the EMA or the European Commission, or (c) any regulatory body with similar regulatory authority over pharmaceutical or biotechnology products in any other jurisdiction anywhere in the world.

1.39 **"*Regulatory Approval*"** means the receipt from a Regulatory Authority by Licensee, its Affiliates, or Sublicensees of approval to lawfully market a Licensed Product in the corresponding jurisdiction in the Territory.

1.40 **"*Sublicensee*"** means a Person other than an Affiliate of Licensee to which Licensee (or its Affiliate) has, pursuant to Section 2.2, granted sublicense rights under any of the Merck Serono Technology licensed under Section 2.1. "***Sublicense***" shall be construed accordingly. For the avoidance of doubt, a Third Party contract manufacturer of Licensed Products on behalf of Licensee shall not be considered a Sublicensee for the purpose of this Agreement.

1.41 **"*Territory*"** means all the countries in the world.

1.42 **"*Third Party*"** shall mean any Person that is not a Party, an Affiliate of a Party, or a Sublicensee of Licensee hereunder.

1.43 **"*Third Party License Agreement*"** means any agreement entered into by Licensee with a Third Party, or any amendment or supplement thereto, in each case following the Effective Date, whereby royalties, fees or other payments are to be made by Licensee to such Third Party in connection with the grant of rights under intellectual property rights Controlled by such Third Party, which rights are necessary to research or Develop the Licensed Compounds or Licensed Products.

1.44 **"*Valid Claim*"** means any claim in any (i) unexpired and issued patent that has not been disclaimed, revoked or held invalid by a final nonappealable decision of a court or other governmental agency of competent jurisdiction or any (ii) patent application [*].

1.45 **Other Terms.** The definition of each of the following terms is set forth in the section of the Agreement indicated below:

"*Action*" has the meaning set forth in Section 5.5 (b).

"*Controlling Party*" has the meaning set forth in Section 5.6 (c).

"***Disputes***" has the meaning set forth in Section 10.9.

"*Licensee Indemnitees*" has the meaning set forth in Section 8.1.

"***Licensee Patents***" has the meaning set forth in Section 5.4 (a).

"*Losses*" has the meaning set forth in Section 8.1.

"*Merck Serono Indemnitees*" has the meaning set forth in Section 8.2.

"***Royalty Term***" has the meaning set forth in Section 4.2 (d).

"*Term*" has the meaning set forth in Section 9.1.

"*Upfront Payment*" has the meaning set forth in Section 4.1.

ARTICLE 2

GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Merck Serono hereby grants to Licensee an exclusive (even as to Merck Serono), worldwide, royalty-bearing right and license (with the right to sublicense subject to the provisions of Section 2.2) under the Merck Serono Technology to research, Develop, make, have made, import, export, use and Commercialize the Licensed Products in the Field in the Territory.

2.2 Grant of Sublicense by Licensee. The Licensee shall have the right to grant Sublicenses under the license granted in Section 2.1, subject to Merck Serono being duly informed in writing by Licensee in advance of the execution of any Sublicense agreement. The Sublicense agreement shall be consistent with the terms and conditions of this Agreement. The granting by Licensee of a Sublicense shall not relieve Licensee of its obligations hereunder. Licensee shall promptly provide Merck Serono with a copy of the fully executed Sublicense agreement, which shall be redacted from its commercial terms, and Merck Serono hereby undertakes to treat such redacted Sublicense agreement as Confidential Information. For the avoidance of doubt, Licensee may grant Sublicenses to Sublicensees on a country-by-country basis or worldwide.

2.3 Transfer. Merck Serono shall use Commercially Reasonable Efforts to transfer to Licensee the Merck Serono Know-How and the Merck Serono Materials within thirty (30) days following the Effective Date. If within sixty (60) days after the initial transfer Licensee identifies specific items within the Merck Serono Know-How that were not transferred to Licensee, then Merck Serono will use reasonable efforts to provide the same to Licensee upon request. In addition, at Licensee's reasonable request, Merck Serono shall provide access to any raw data or report directly and exclusively related to the Licensed Product which may become necessary for the Licensee to research, manufacture and Develop any Licensed Product in the Field. Each Party hereby designates a contact person as indicated below whose responsibility it will be to oversee the transfer described in this Section 2.3:

For Licensee: [*]

For Merck Serono: [*]

ARTICLE 3

DEVELOPMENT AND COMMERCIALIZATION

3.1 Development and Commercialization of the Licensed Products by Licensee. Licensee shall have the exclusive right and responsibility to research and Develop the Licensed Products and to conduct (either itself or through its Affiliates, agents, subcontractors and/or Sublicensees) all Clinical Trials and non-clinical studies Licensee believes appropriate to obtain Regulatory Approval for the Licensed Products in any indication. In addition, Licensee shall have the exclusive right to Commercialize the Licensed Products itself or through one or more Third Parties and/or Sublicensees selected by Licensee, and shall have the responsibility in all matters relating to the Commercialization of the Licensed Products.

3.2 Manufacturing and Supply. Subject to the terms and conditions of this Agreement, Licensee shall have the exclusive right to manufacture the Licensed Compounds and the Licensed Products itself or through one or more Third Party subcontractor(s) selected by Licensee.

3.3 Regulatory Filings. Licensee shall be responsible for and shall own and maintain all regulatory filings and Regulatory Approvals for the Licensed Products, including all INDs and NDAs.

3.4 Diligence by Licensee. Licensee shall use Commercially Reasonable Efforts to (a) research and Develop at least one Licensed Product, in accordance with its development plan as updated and/or amended from time to time and (b) launch and Commercialize at least one Licensed Product in each Major Market within [*] after receiving Regulatory Approval (which for the purpose of this clause 3.4 shall include approval of pricing and reimbursement) in such Major Market.

3.5 Reporting. Licensee (or its Sublicensee, as applicable) shall, on each anniversary of the Effective Date, provide Merck Serono with a written report summarizing its research, Development, manufacturing and as applicable Commercialization activities in the Territory during the preceding Calendar Year.

3.6 Trademarks. Licensee shall have the sole authority to select trademarks for the Licensed Products and shall own all such trademarks.

ARTICLE 4

FINANCIAL TERMS

4.1 Upfront Payment. In partial consideration for the grant of the rights hereunder, Licensee shall assign 25'000 Preferred Equity shares ("***Upfront Payment***") to Merck Serono within thirty (30) days after the Initiation of the first Phase I Trial (''Phase I Equity Event''), it being specified that Merck Serono will subscribe to such Preferred Equity shares at the nominal value of CHF 1,-. In the event of any liquidation, dissolution, winding-up, sale or merger of Obseva (a "***Liquidation Event***"), irrespective of its legal qualification, before the occurrence of the Phase I Equity Event, Licensee shall automatically assign the 25'000 Preferred Equity shares to Merck Serono, it being specified that Merck Serono will subscribe to such Preferred Equity shares at the nominal value of CHF 1,- and such assignment shall take place immediately before the Liquidation Event. If additional securities are issued or sold by ObsEva prior to the occurrence of the Phase I Equity Event, Merck Serono shall have the right to maintain a percentage ownership on an as converted basis through the purchase of its pro rata share of such securities on the same terms as such securities are offered to other purchasers ("the pre-Phase I Equity Event Pre-emptive Rights"). For the calculation of the pro-rata share purchase under such "pre-Phase I Equity Event Pre-emptive Right", the 25'000 Preferred Equity Shares shall be counted as if they have been assigned to Merck Serono on the Effective Date.

4.2 Royalty Payments.

(a) Royalty Rate. As further consideration for Merck Serono's grant of the rights and licenses to the Licensee hereunder, the Licensee shall, during each applicable Royalty Term (i.e. on a country-by-country basis), pay to Merck Serono a royalty on aggregate annual worldwide Net Sales of each Licensed Product for each Calendar Year, at the percentage rate set forth below:

Royalty Rate for Annual Net Sales of Licensed Products Net Sales per Calendar Year [*]

(b) Know-How Royalty. The royalty rate set forth in Section 4.2 (a) applicable to the Net Sales of a Licensed Product in a country will be reduced by [*] during any period there exists no Valid Claim of a Merck Serono Patent in such country that Covers such Licensed Product in such country. For the avoidance of doubt, no Know-How Royalties shall be due in any country after the end of the Royalty Term pursuant to Section 4.2 (d) in such country.

(c) Third Party License Agreements. Subject to the terms and conditions of this Agreement, if Licensee enters into one or more Third Party License Agreement(s), Licensee will be entitled to deduct from any royalties payable to Merck Serono under Section 4.2 (from the amount calculated by consideration of the then

applicable royalty rate), an amount equal to not more than [*] of any amounts paid by Licensee pursuant to such Third Party License Agreement(s) in respect of the Licensed Product which gave rise to the payment obligation under Section 4.2. Notwithstanding the foregoing, under no circumstances shall the deductions under this Section 4.2 (c) result in the amount payable to Merck Serono being reduced by more than [*] compared with the amount otherwise payable under Section 4.2. In the event that Licensee is not able to deduct the full amount of the permitted deduction from the amount due to Merck Serono due to the [*] minimum amount, Licensee shall be entitled to deduct any undeducted excess amount from subsequent amounts owed to Merck Serono (subject always to Merck Serono receiving a minimum of [*] of the amount owed).

(d) Royalty Term. Royalties shall be payable on a Licensed Product-by-Licensed Product and country-by-country basis from the period from the First Commercial Sale of Licensed Product in such country until the latest of (a) the last date on which such Licensed Product is Covered by a Valid Claim within a Merck Serono Patent in such country, or (b) ten (10) years after such First Commercial Sale of Licensed Product in such country (the "***Royalty Term***").

(e) Payment of Royalties. Nothing herein contained shall obligate Licensee and/or its Sublicensees to pay or cause to be paid to Merck Serono more than one royalty on any unit of Licensed Product. Simultaneous with the delivery of the report described in Section 4.2 (f) hereof, Licensee shall pay, or cause to be paid, to Merck Serono at such place as Merck Serono may from time to time designate in writing, all royalties earned pursuant to this Section 4.2 in the preceding Calendar Quarter. All such payments shall be made in Euros.

(f) Royalty Reports; Currency Conversion. Commencing with the Calendar Quarter in which the First Commercial Sale of a Licensed Product is made by the Licensee or its Affiliate or Sublicensee, Licensee shall submit to Merck Serono with each royalty payment a report detailing its computation of royalties due on Net Sales in each country during each Calendar Quarter within sixty (60) days after the end of such Calendar Quarter (and Licensee shall cause its Sublicensees to submit royalty reports containing the same level of detail). All payments to Merck Serono hereunder shall be made by deposit of Euros in the requisite amount to such bank account as Merck Serono may from time to time designate by written notice to Licensee. With respect to sales not denominated in Euros, royalty amounts owed shall first be calculated in the currency of sale, and then such amounts shall be converted into Euro using the exchange rate of the European Central Bank on the last day of the Calendar Quarter to which the report relates. For accounting and documentation purposes, the Parties may vary the method of payment set forth herein at any time upon mutual agreement, and any change shall be consistent with the local law at the place of payment or remittance.

(g) Record Retention, Inspection. Licensee shall keep or cause its Affiliates and Sublicensee to keep complete and accurate records in sufficient detail to enable Net Sales and royalties payable under Section 4.2 to be established for a period of sixty (60) months after the date that such royalties were payable. Such records shall be consistent with Licensee's normal accounting principles. At the request and cost of Merck Serono (but not more frequently than once each Calendar Year) an independent chartered or certified public accountant chosen by Merck Serono but approved by the Licensee (which approval shall not be unreasonably withheld or delayed) shall be allowed access during ordinary business hours to such records pertaining to the preceding two (2) Calendar Year solely to verify the accuracy of any payments made to Merck Serono under Section 4.2. The accountant shall not disclose to Merck Serono any information other than that which should properly be contained in a report of matters relevant to Net Sales and royalty calculation and payment arising under Section 4.2 above. Licensee shall make Sublicensee records available to Merck to the same extent as set forth in this Section 4.2 (g).

4.3 Tax. If applicable law requires that taxes be deducted and withheld from royalties or any other payments paid under this Agreement by either Party, said Party shall (i) deduct those taxes and interests and penalties assessed thereon from the payment or from any other payment owed by said Party hereunder; (ii) pay the taxes to the proper Governmental Body; (iii) send evidence of the obligation together with proof of payment to the other Party within three (3) months following such payment; (iv) remit the net amount, after deductions or withholding made under this Section 4.3 and (v) cooperate with other Party in any way reasonably requested by said other Party, to obtain available reductions, credits or refunds of such taxes; provided, however, that the other Party shall reimburse said Party for said Party's out-of-pocket expenses incurred in providing such assistance. It is understood and agreed between the Parties that any payments made by either Party under this Agreement are exclusive of any value added or similar tax imposed upon such payment.

4.4 Late Payment. Payments not paid when due shall bear interest at a rate of [*] per annum above the three-month EURO LIBOR which applied on the day when the payment was due. Calculation of interest will be made for the exact number of days in the interest period based on a year of three hundred and sixty (360) days.

ARTICLE 5

INVENTIONS AND PATENTS

5.1 Certification Under Drug Price Competition and Patent Restoration Act. Each Party shall immediately give written notice to the other Party of any certification of which they become aware filed pursuant to 21 U.S.C. Section 355(b)(2)(A) (or any amendment or successor statute thereto) claiming that any Merck Serono Patents covering Licensed Compounds or Licensed Products, or the manufacture or use of each of the foregoing, are invalid or unenforceable, or that infringement will not arise from the manufacture, use or sale of a product by a Third Party.

5.2 Listing of Patents. Merck Serono shall determine which of the Merck Serono Patents, if any, shall be listed for inclusion in the Approved Drug Products with Therapeutic Equivalence Evaluations pursuant to 21 U.S.C. Section 355, or any successor law in the United States, together with any comparable laws or regulations in any other country in the Territory. Licensee shall have the right to propose Merck Serono Patents for such listing and Merck Serono shall not unreasonably reject any such proposal.

5.3 Title to Inventions. All inventions having as inventors solely employees or independent contractors of one Party in the course of the Parties' performance under this Agreement, and all intellectual property rights pertaining to such inventions shall be the property of such Party.

5.4 Patent Prosecution and Maintenance.

(a) Licensee Patents. Licensee shall have the right to file, prosecute and maintain the Patent Rights owned by Licensee pursuant to Section 5.3 or otherwise (such Patent Rights, the "***Licensee Patents***"). Licensee shall bear all costs and expenses of filing, prosecuting and maintaining Licensee Patents in the Territory. For the avoidance of doubt, Merck Serono shall have no right whatsoever regarding any Licensee Patents, including if such Licensee Patents are entirely or partially based on Merck Serono Know-How.

(b) Merck Serono Patents. Merck Serono shall have the first right, and the obligation, to file, prosecute and maintain Merck Serono Patents. Merck Serono shall bear all costs and expenses of filing, prosecuting and maintaining Merck Serono Patents in the Territory. Merck Serono shall keep Licensee informed of the course of the filing and prosecution of Merck Serono Patents or related proceedings (e.g. interferences, oppositions, reexaminations, reissues, revocations or nullifications) in the United States, the European Union, Japan, China, Canada and Australia in a timely manner, and shall take into consideration the advice and recommendations of Licensee in that respect. At Merck Serono's request, Licensee will provide Merck Serono with reasonable assistance in prosecuting Merck Serono Patents to the extent possible, including providing such data in Licensee's control that is, in Merck Serono's reasonable judgment, needed to support the prosecution of a Merck Serono Patent; provided, however, that Merck Serono shall reimburse Licensee for Licensee's out-of-pocket expenses incurred in providing such assistance.

(c) Election not to file and prosecute Merck Serono Patents. If Merck Serono elects not to file, prosecute or maintain a Merck Serono Patent in a country or possession in the Territory, then it shall notify Licensee in writing at least ninety (90) days before any deadline applicable to the filing, prosecution or maintenance of such Merck Serono Patent, as the case may be, or any other date by which an action must be taken to establish or preserve such Merck Serono Patent in such country or possession. In such case, Licensee shall have the right, but not the obligation, to pursue the filing or support the continued prosecution or maintenance of such Merck Serono Patent. If Licensee does elect to take such action in a country in the Territory, then it shall notify Merck Serono of such election, and Merck Serono shall reasonably cooperate with Licensee in this regard. If Licensee does elect to take such action in a country in the Territory, it shall also notify Merck Serono, at the time of such election, whether Licensee requests from Merck Serono the assignment of all its right, title and interest in and to any such Merck Serono Patent in such country. If Licensee does not request from Merck Serono such assignment of a Merck Serono Patent, Merck Serono shall file, prosecute or maintain a Merck Serono Patent in a country or possession in the Territory and such

Merck Serono Patent shall remain a Merck Patent under which royalty payments shall be due by Licensee under Article 4 of this Agreement. If Licensee does request from Merck Serono the assignment of Merck Serono Patent in a country or possession in the Territory, such Merck Serono Patent shall become a Licensee Patent under which no royalty payments in such country or possession in the Territory shall be due by Licensee under this Agreement, and Licensee shall thereupon be responsible for all costs of filing, prosecution and maintenance of such new Licensee Patent for aforesaid country or possession in the Territory.

(d) Patent Term Extension. Merck Serono shall be responsible for obtaining patent term extensions wherever available for Merck Serono Patents, at Merck Serono costs. Licensee shall provide Merck Serono with all relevant information, documentation and assistance in this respect. Any such assistance, supply of information and consultation shall be provided promptly and in a manner that will ensure that all patent term extensions for Licensed Products are obtained wherever legally permissible, and to the maximum extent available. In the event that any election with respect to obtaining patent term extensions is to be made, Licensee shall have the right to make such elections, and Merck Serono shall abide by all such elections.

5.5 Enforcement of Patents.

(a) Notice. If either Party believes that a Merck Serono Patent is being infringed by a Third Party or if a Third Party claims that any Merck Serono Patent is invalid or unenforceable, the Party possessing such knowledge or belief shall notify the other Party and provide it with details of such infringement or claim that are known by such Party.

(b) Right to bring an Action. Merck Serono shall have the exclusive right to attempt to resolve such infringement or claim pertaining to a Merck Serono Patent, including by filing an infringement suit, defending against such claim or taking other similar action (each, an "***Action***") and to compromise or settle such infringement or claim. If Merck Serono does not intend to prosecute or defend an Action, Merck Serono shall promptly inform Licensee in writing and Licensee shall have the right to initiate an Action. If Licensee does not initiate an Action with respect to such an infringement or claim within one hundred and eighty (180) days following notice thereof, Merck Serono shall have the right to attempt to resolve such infringement or claim. The Party initiating the Action shall have the sole and exclusive right to select counsel for any suit initiated by it pursuant to this Section 5.5. Each Party shall have the right to join an Action relating to a Merck Serono-Patent taken by the other Party, at its own expense.

(c) Costs of an Action. Subject to the respective indemnity obligations of the Parties set forth in Article 8, the Party taking an Action under Section 5.5 (b) shall pay all costs associated with such Action, other than the expenses of the other Party if the other Party elects to join such Action.

(d) Settlement. Neither Party shall settle or otherwise compromise any Action by admitting that any Merck Serono Patent is invalid or unenforceable without the other Party's prior written consent, and, in the case of Licensee, Licensee may not settle or otherwise compromise an Action in a way that adversely affects or would be reasonably expected to adversely effect Merck Serono's rights or benefits hereunder with respect to the Licensed Product, without Merck Serono's prior written consent. The settlement will be treated in accordance with the law of the country to which the settlement relates.

(e) Reasonable Assistance. The Party not enforcing or defending Merck Serono-Patents shall provide reasonable assistance to the other Party, including providing access to relevant documents and other evidence and making its employees available, subject to the other Party's reimbursement of any out-of-pocket expenses incurred by the non-enforcing or non-defending Party in providing such assistance.

(f) Distribution of Amounts Recovered. Any amounts recovered by the Party taking an Action pursuant to this Section 5.5, whether by settlement or judgment, shall be allocated in the following order: (i) to reimburse the Party taking such Action for any costs incurred, (ii) to reimburse the Party not taking such Action for its costs incurred in such Action, if it joins such Action; and (iii) the remaining amount of such recovery shall be attributed to Licensee (as if it were Net Sales), and Licensee shall pay to Merck Serono a royalty on such remaining amount based on the royalty rates set forth in Section 4.2.

5.6 Third Party Actions Claiming Infringement.

(a) Notice. If a Party becomes aware of any claim or action by a Third Party against either Party that claims that the Licensed Product, or its use, Development, manufacture or sale infringes such Third Party's intellectual property rights (each, a "***Third Party Action***"), such Party shall promptly notify the other Party of all details regarding such Third Party Action that is reasonably available to such Party.

(b) Right to Defend. Merck Serono shall have the right, at its sole expense, but not the obligation, to defend a Third Party Action through counsel of its choosing. If Merck Serono declines or fails to assert its intention to defend such Third Party Action within sixty (60) days of receipt/sending of notice under Section 5.6 (a), then Licensee shall have the right to defend such Third Party Action. The Party defending such Third Party Action shall have the sole and exclusive right to select counsel for such Third Party Action. Each Party shall have the right to join any Third Party Action defended by the other Party, at its own expense.

(c) Consultation. The Party defending a Third Party Action pursuant to Section 5.6 (b) shall be the "***Controlling Party.***" The Controlling Party shall consult with the non-Controlling Party on all material aspects of the defense. The non-Controlling Party shall have a reasonable opportunity for meaningful participation in decision-making and formulation of defense strategy. The Parties shall reasonably cooperate with each other in all such actions or proceedings. The non-Controlling Party will be entitled to be represented by independent counsel of its own choice at its own expense.

(d) Appeal. In the event that a judgment in a Third Party Action is entered against the Controlling Party and an appeal is available, the Controlling Party shall have the first right, but not the obligation, to file such appeal. In the event the Controlling Party does not desire to file such an appeal, it will promptly, in a reasonable time period (i.e., with sufficient time for the non-Controlling Party to take whatever action may be necessary) prior to the date on which such right to appeal will lapse or otherwise diminish, permit the non-Controlling Party to pursue such appeal at such non-Controlling Party's own cost and expense. The non-Controlling Party shall then become the Controlling Party. If applicable law requires the non-Controlling Party's involvement in an appeal, the non-Controlling Party shall be a nominal party of the appeal and shall provide reasonable cooperation to the Controlling Party at the Controlling Party's expense.

(e) Costs of an Action. Subject to the respective indemnity obligations of the Parties set forth in Article 8, the Controlling Party shall pay all costs associated with such Third Party Action other than the expenses of the other Party if the other Party elects to join such Action.

(f) No Settlement Without Consent. No Controlling Party shall settle or otherwise compromise any Third Party Action by admitting that any Merck Serono Patent is invalid or unenforceable without the non-Controlling Party's prior written consent.

ARTICLE 6

CONFIDENTIALITY

6.1 Confidentiality Obligations. Each Party agrees that, for the Term and for [*] years thereafter, such Party shall, and shall ensure that its officers, directors, employees, agents and Sublicensees shall keep completely confidential and not publish or otherwise disclose and not use for any purpose, except as expressly permitted hereunder, any Confidential Information disclosed to it by the other Party pursuant to this Agreement. The foregoing obligations shall not apply to any Confidential Information disclosed by a Party hereunder to the extent that the receiving Party can demonstrate that such Confidential Information:

(a) was already known to the receiving Party or its Affiliates, other than under an obligation of confidentiality, at the time of disclosure;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;

(c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party in breach of this Agreement;

(d) was subsequently lawfully disclosed to the receiving Party or its Affiliates by a Third Party without an obligation of confidentiality other than in contravention of a confidentiality obligation of such Third Party to the disclosing Party; or

(e) was developed or discovered by employees or agents of the receiving Party or its Affiliates who had no access to the Confidential Information of the disclosing Party.

Notwithstanding the above obligations of confidentiality and non-use, a Party may disclose information to the extent that such disclosure is reasonably necessary in connection with:

(i) filing or prosecuting patent applications, subject to the terms of Section 5.3;

(ii) prosecuting or defending litigation;

(iii) conducting pre-clinical studies or Clinical Trials;

(iv) seeking Regulatory Approval of the Licensed Product; or

(v) complying with applicable law, including securities law and the rules of any securities exchange or market on which a Party's securities are listed or traded;

(vi) due diligence performed by a Third Party in connection with either Party's business development activities, subject to such Third Parties being bound by written obligations of confidentiality that are at least as stringent as the ones herein.

In addition, in connection with any permitted filing by either Party of this Agreement with any Governmental Body, included but not limited to the U.S. Securities and Exchange Commission Agreement, the filing Party shall endeavor to obtain confidential treatment of economic, trade secret information and such other information as may be requested by the other Party, and shall provide the other Party with the proposed confidential treatment request with reasonable time for such other Party to provide comments, and shall include in such confidential treatment request all reasonable comments of the other Party. The filing Party shall, where reasonably practicable, give such advance notice to the other Party of such disclosure requirement as is reasonable under the circumstances and will use its reasonable efforts to cooperate with the other Party in order to secure confidential treatment of such Confidential Information required to be disclosed.

6.2 Publications. Licensee shall not publish any information relating to the Licensed Compounds or the Licensed Products without the written consent of Merck Serono, which consent shall not be unreasonably withheld. Licensee shall submit to Merck Serono for Merck Serono's written consent any publication, presentation or abstract of information related to the Licensed Product for review and approval at least thirty (30) days prior to submission. In case Merck Serono does not object to said proposed publication, presentation or abstract within said thirty (30) day deadline, Merck Serono shall be deemed to have approved said publication, presentation or abstract.

6.3 Press Releases and Disclosure. Licensee may not make any subsequent press release or public announcements regarding this Agreement or any matter covered by this Agreement, including the Development or Commercialization of Licensed Products, without the prior written consent of Merck Serono (which consent shall not be unreasonably withheld). In case Merck Serono does not object to said press release within ten (10) business days' deadline, Merck Serono shall be deemed to have approved the said Press Release. In the event that Licensee believes it is required to issue a press release or make an other public announcement to comply with applicable law as a publicly-traded company and Merck Serono does not believe such public announcement is so required, Licensee may only issue such press release if (a) it obtains an opinion of legal counsel, from a reputable law firm approved by Merck Serono, that it is required to make such disclosure to comply with applicable law and (b) after receiving such opinion,

provides the text of such planned disclosure to Merck Serono no less than seven (7) days prior to disclosure, and has incorporated all reasonable comments of Merck Serono regarding such disclosure.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Merck Serono representations and warranties. Merck Serono represents and warranties to the Licensee that:

(a) Merck Serono has the full power, authority and right to enter into this Agreement and to perform its obligations hereunder in accordance with the terms and conditions hereof, and all requisite corporate action has been taken to authorize Merck Serono's execution, delivery and performance of this Agreement;

(b) The execution, delivery and performance of this Agreement by Merck Serono does not breach, violate, contravene or constitute a default under any contract, arrangement or commitment to which Merck Serono is a party or by which it is bound, or violate any statute, law or regulation or any court, governmental body or administrative or other agency having jurisdiction over Merck Serono; and

(c) All consents, approvals and authorizations from all governmental authorities or other Third Parties required to be obtained by Merck Serono in connection with the execution, delivery and performance of this Agreement have been obtained.

(d) Merck Serono has all right, title and interest in and to the Merck Serono Technology, and Merck Serono has not previously licensed, assigned, transferred, or otherwise conveyed any right, title or interest in and to the Merck Serono Technology to any Third Party, including but not limited to any rights to any Licensed Compounds and Licensed Products; the Merck Serono Technology is free and clear of any liens, charges, encumbrances or rights of others to possession or use.

(e) No claims have been asserted, or, to Merck Serono's knowledge, threatened by any Person, nor are there any valid grounds for any claim of any such kind (i) challenging the validity, effectiveness, or ownership of Merck Serono Technology, and/or (ii) to the effect that the use, reproduction, modification, manufacturing, distribution, licensing, sublicensing, sale or any other exercise of rights in any of Merck Serono Technology infringes or will infringe on any intellectual property right of any Person. No such claims have been asserted or, to the knowledge of Merck Serono, are threatened.

(f) MERCK SERONO DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES TO TITLE OR NON-INFRINGEMENT, TO FREEDOM TO OPERATE, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF LICENSED COMPOUND/LICENSED PRODUCT FOR A PARTICULAR PURPOSE.

7.2 Licensee representations and warranties. Licensee represents and warranties to Merck Serono that:

(a) Licensee has the full power, authority and right to enter into this Agreement and to perform its obligations hereunder in accordance with the terms and conditions hereof, and all requisite corporate action has been taken to authorize Licensee's execution, delivery and performance of this Agreement;

(b) The execution, delivery and performance of this Agreement by Licensee does not breach, violate, contravene or constitute a default under any contract, arrangement or commitment to which Licensee is a party or by which it is bound, or violate any statute, law or regulation or any court, governmental body or administrative or other agency having jurisdiction over Licensee; and

(c) All consents, approvals and authorizations from all governmental authorities or other Third Parties required to be obtained by Licensee in connection with the execution, delivery and performance of this Agreement have been obtained.

ARTICLE 8

INDEMNIFICATION

8.1 Indemnification by Merck Serono. Merck Serono shall defend, indemnify and hold harmless Licensee, its Affiliates, directors, employees and agents (the "***Licensee Indemnitees***") from and against any and all liability, damage, loss, cost or expense (including reasonable attorney's fees and expenses of litigation) ("***Losses***") arising or resulting from any claims made or suits brought by Third Parties to the extent such Losses arise or result from the breach of any provision of this Agreement by Merck Serono, including a breach of any of the Merck Serono representations and warranties set forth in Section 7.1 of this Agreement. In the event of a claim against the Licensee Indemnitees which may be subject to the foregoing indemnification obligation, the Licensee Indemnitees agree to notify Merck Serono promptly of such claim and Merck Serono shall provide Licensee Indemnitees with any assistance Licensee Indemnitees may reasonably require in the defense of such action, at Merck Serono's cost and expense.

8.2 Indemnification by Licensee. Licensee shall defend, indemnify and hold harmless Merck Serono, its Affiliates, directors, employees and agents (the "***Merck Serono Indemnitees***") from and against any and all Losses arising or resulting from any claims made or suits brought by Third Parties to the extent such Losses arise or result from (i) the breach of any provision of this Agreement by Licensee, including a breach of any of the Licensee representations and warranties set forth in Section 7.2 of this Agreement, and (ii) a product liability claim relating to the Licensed Product. In the event of a claim against the Merck Serono Indemnitees which may be subject to the foregoing indemnification obligation, the Merck Serono Indemnitees agree to notify Licensee promptly of such claim and Licensee shall provide Merck Serono Indemnitees with any assistance Merck Serono Indemnitees may reasonably require in the defense of such action, at Licensee's cost and expense.

ARTICLE 9

TERM AND TERMINATION

9.1 Term of Agreement. This Agreement shall come into force on the Effective Date and shall continue in full force and effect until the end of the last-to-expire Royalty Term in any country with respect to a Licensed Product, unless the Agreement is terminated at an earlier date pursuant to Article 9.2 to 9.6 below (the "***Term***"). As of the effective date of expiration of the Royalty Term in any country of the Territory, the license from Merck Serono to Licensee under Article 2 in such country shall convert to a fully paid, royalty free, irrevocable, perpetual, exclusive, and sublicensable license under the Merck Serono Technology to research, Develop, manufacture, make, have made, use, import, export, Commercialize, offer for sale and sell the Licensed Products in said country.

9.2 Termination of the Agreement by Licensee for convenience. At any time during the Term, Licensee may, at its convenience, terminate this Agreement in its entirety upon ninety (90) days prior written notice to Merck Serono.

9.3 Termination for Non-Payment. If Licensee has not paid the Upfront Payment or a royalty payment by the required respective payment dates set forth in Section 4.1 and 4.2, Merck Serono shall have the right to terminate this Agreement with ninety (90) days prior notice to Licensee, unless Licensee has proceeded to payment within the period of such notice. Such termination shall be in addition to and not in lieu of any other remedies available to Merck Serono, at law and in equity.

9.4 Termination for Breach Either Party may terminate this Agreement, and the rights and licenses granted hereunder, with ninety (90) days prior notice to the other Party if the other Party breaches any material provision of this Agreement, unless the other Party cures such breach within the period of such notice.

9.5 No Immediate Termination on Bankruptcy. To the extent permitted by applicable law, all rights and licenses granted pursuant to this Agreement by a Party to the other Party shall not be terminated upon a Bankruptcy Event of such Party or its Affiliates, and each Party hereby claims the benefit of any applicable law which may enable it to prevent such termination. In the event of a Bankruptcy Event of Licensee, the Licensee shall, during the 24-month period following such Bankruptcy Event, seek to enter into one or several Sublicense agreements for the Territory with one or several Sublicensees. Any such Sublicense shall be subject to the terms of Section 2.2. If, upon expiry of the 24-month period Licensee has failed to enter into one or more definitive Sublicense agreement(s), Merck Serono shall have the right to terminate this Agreement and to exercise its rights under Section 9.7. During the aforementioned 24-month period, Licensee shall continue to prosecute and maintain the Licensee Patents, if any, and shall use appropriate safeguards in order for the value and usefulness of the Licensee Know-How to be preserved.

9.6 No Challenge. In the event that Licensee or any of its Affiliates or Sublicensee, anywhere in the world, institutes, prosecutes or otherwise participates in (or in any way aids any Third Party in instituting, prosecuting or participating in), at law or in equity or before any administrative or regulatory body, including the U.S. Patent and Trademark Office or its foreign counterparts, any claim, demand, action or cause of action for declaratory relief, damages or any other remedy, or for an enjoinment, injunction or any other equitable remedy, including any interference, re-examination, opposition or any similar proceeding, alleging that any claim in a Merck Serono Patent is invalid, unenforceable or otherwise not patentable, except in the case where asserted as a defense or counterclaim to an action brought by Merck Serono against Licensee or any of its Affiliates or Sublicensee, Merck Serono shall have the right (i) to terminate this Agreement as a whole or (ii) to terminate the license granted to Licensee or Sublicensee under such challenged Merck Serono Patent on a patent-by-patent basis.

9.7 Effects of Termination.

(a) Accrued Rights and Obligations. Termination of this Agreement shall not release either Party from its obligations accrued prior to the effective date of termination nor deprive either Party from any rights that this Agreement provides shall survive termination. The provisions of Article 6 (Confidentiality), Article 8 (Indemnification), Section 9.6 (No Challenge) and 9.7 (Effects of Termination) shall survive any termination of this Agreement.

(b) Termination by Licensee pursuant to Section 9.2 or by Merck Serono pursuant to Sections 9.3, 9.4, 9.5 or 9.6. Upon any termination of this Agreement by Licensee pursuant to Section 9.2 or by Merck Serono pursuant to Sections 9.3, 9.4, 9.5 or 9.6 (being understood that the effects mentioned below will occur only to the extent permitted by applicable law if the termination results from the application of Section 9.5 on bankruptcy):

(1) all licenses granted to Licensee under Section 2.1 shall terminate;

(2) Licensee shall return to Merck Serono (or at Merck Serono's request, destroy) all relevant records and materials (including Merck Serono Materials) in its possession or control containing or comprising the Merck Serono Know-How or such other Confidential Information of Merck Serono.

(3) Licensee shall automatically grant Merck Serono an exclusive, sublicensable, royalty-free license under the Licensee Patents and the Licensee Know-How, if any, to research, Develop, make, have made, import, export, use and Commercialize the Licensed Products in the Field in the Territory.

(4) Licensee shall promptly and fully disclose and transfer to Merck Serono the Licensee Know How;

(5) Licensee shall, upon written request by Merck Serono and subject to Merck Serono assuming legal responsibility for any Clinical Trials of the Licensed Product then ongoing, transfer to Merck Serono, at Licensee's cost and expense, all regulatory documentation and Regulatory Approvals prepared or obtained by or on behalf of Licensee prior to the date of such termination, to the extent solely related to Licensed Products and transferable;

(6) To the extent not prohibited by law, Licensee shall either wind down any ongoing Clinical Trials with respect to the Licensed Product, or at Merck Serono's option, transfer such Clinical Trials to Merck Serono at Licensee's cost;

(7) Licensee shall, at Merck Serono's option, transfer to Merck Serono free of charge any and all chemical, biological or physical materials relating to or comprising the Licensed Products, including clinical supplies of Licensed Products, that are owned or Controlled by Licensee.

(8) Licensee and its Affiliates and Sublicensees shall be entitled, during the eighteen (18) month period following such termination, to sell any commercial inventory of Licensed Products which remains on hand as of the date of the termination, so long as Licensee pays to Merck Serono the royalties applicable to said subsequent sales in accordance with the terms and conditions set forth in this Agreement. Any commercial inventory remaining following such eighteen (18) month period shall be offered for sale to Merck Serono, at a price equal to be mutually agreed upon between the Parties in good faith.

(c) Save as set forth in Section 9.7 and to the extent permitted by applicable law, upon any termination of this Agreement, each of Licensee's Sublicensees shall continue to have the rights and license set forth in their respective Sublicense agreements, which agreements shall be automatically assigned to Merck Serono, provided however, that such Sublicensee is not then in breach of any of its material obligations under its Sublicense agreement and provided further that the terms of the Sublicense are at least as favourable as the ones herein and do not impose any obligations on Merck Serono that are not expressly set forth herein.

ARTICLE 10

MISCELLANEOUS

10.1 Relationship of the Parties. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, joint venture or employer-employee relationship between the Parties.

10.2 Assignment.

(a) Except as expressly provided herein, neither this Agreement nor any interest hereunder shall be assignable, nor any other obligation delegable, by Licensee without the prior written consent of Merck Serono (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, Licensee may assign this Agreement in whole without the consent of Merck Serono to (a) any Affiliate or (b) a successor to substantially all of the business of the Licensee to which this Agreement relates, in connection with any company merger, company trade sale, sale of stock, sale of assets or other similar transaction.

(b) Merck Serono may assign this Agreement, in whole or in part, to any Affiliate or a successor in interest without the consent of Licensee. Merck Serono shall give written notice to Licensee promptly following any such assignment.

(c) No assignment under this Section 10.2 shall relieve the assigning party of any of its responsibilities or obligations hereunder and provided, further, that as a condition of such assignment, the assignee shall agree to be bound by all obligations of the assigning Party hereunder.

(d) This Agreement shall be binding upon the successors and permitted assigns of the Parties.

(e) Any assignment not in accordance with this Section 10.2 shall be void.

10.3 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments and to do all such other acts as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

10.4 Accounting Procedures. Each Party shall calculate all amounts hereunder and perform other accounting procedures required hereunder and applicable to it in accordance with either, as applicable (a) United States generally accepted accounting principles (US GAAP) or (b) International Financial Reporting Standard (IFRS), whichever is normally used by such Party to calculate its financial position, and in each case consistently applied by such Party.

10.5 Force Majeure. Neither Party shall be liable to the other for failure or delay in the performance of any of its obligations under this Agreement for the time and to the extent such failure or delay is caused by acts of God, earthquake, riot, civil commotion, terrorism, war, strikes or other labor disputes, fire, flood, failure or delay of transportation, default by suppliers or unavailability of raw materials, governmental acts or restrictions or any other reason which is beyond the control of the respective Party. The Party affected by force majeure shall provide the other Party with full particulars thereof as soon as it becomes aware of the same (including its best estimate of the likely extent and duration of the interference with its activities), and will use Commercially Reasonable Efforts to overcome the difficulties created thereby and to resume performance of its obligations hereunder as soon as practicable.

10.6 No Trademark Rights. No right, express or implied, is granted by this Agreement to a Party to use in any manner the name or any other trade name or trademark of the other Party in connection with the performance of this Agreement or otherwise**.**

10.7 Entire Agreement of the Parties; Amendments. This Agreement and the schedules and exhibits hereto constitute and contain the entire understanding and agreement of the Parties respecting the subject matter hereof and cancel and supersede any and all prior negotiations, correspondence, understandings and agreements between the Parties, whether oral or written, regarding such subject matter. No waiver, modification or amendment of any provision of this Agreement shall be valid or effective unless made in a writing referencing this Agreement and signed by a duly authorized officer of each Party.

10.8 Captions. The captions to this Agreement are for convenience only, and are to be of no force or effect in construing or interpreting any of the provisions of this Agreement.

10.9 Disputes. If a dispute or difference arises under or in connection with this Agreement or hereunder between Merck Serono and the Licensee, including but not limited to any dispute or difference as to its interpretation, validity or termination (a "***Dispute***") the Parties agree first to use all reasonable endeavours in good faith to settle the Dispute. A Party claiming that a Dispute has arisen must give notice to the other Party specifying the nature of the Dispute and requesting that the Dispute be resolved by the Executive Officers within fifteen (15) days of their first consideration of such dispute. If the Executive Officers cannot resolve such dispute within fifteen (15) days of their first consideration of such dispute, then, at any time after such fifteen (15) days period, either Party may proceed to enforce any and all of its rights with respect to such dispute.

10.10 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of Switzerland, and will be subject to the exclusive jurisdiction of the courts of competent jurisdiction located in the Canton of Geneva.

10.11 Notices and Deliveries. Any notice, request, approval or consent required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered in person, transmitted by facsimile (receipt verified) or by express courier service (signature required) to the Party to which it is directed at its address or facsimile number shown below or such other address or facsimile number as such Party shall have last given by notice to the other Party.

If to Merck Serono, addressed to:

ARES TRADING SA

Zone Industrielle de l'Ouriettaz
1170 Aubonne
Switzerland

Facsimile: [*]

With a copy to:

Merck Serono S.A.

Zone Industrielle de l'Ouriettaz
1170 Aubonne
Switzerland
Attn: Legal Department
Facsimile: [*]

If to Licensee, addressed to:

OBSEVA S.A.

12, Chemin des Aulx
1228 Plan-Les-Ouates, Geneva
Switzerland
Attn: [*]

10.12 Waiver. A waiver by either Party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any other term or condition hereof. All rights, remedies, undertakings, obligations and agreements contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either Party.

10.13 Severability. When possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. The Parties shall make a good faith effort to replace the invalid or unenforceable provision with a valid one which in its economic effect is most consistent with the invalid or unenforceable provision.

10.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which together will be deemed to be one and the same instrument. A facsimile or a portable document format (PDF) copy of this Agreement, including the signature pages, will be deemed an original.

{Signature page to follow}

In Witness Whereof, the parties hereto have caused this Agreement to be executed and delivered in duplicate by their duly authorized representatives with legal and binding effect as of the date first above written.

OBSEVA S.A.	**ARES TRADING SA**
By: */s/ Ernest Loumaye*	By: */s/ James Singleton*
Name: Ernest Loumaye	Name: James Singleton
Title: CEO	Title: Authorized Representative
10.06.2015	
By: */s/ Fabien de Ladonchamps*	By: */s/ Cedric Hyde*
Name: Fabien de Ladonchamps	Name: Cedric Hyde
Title: Finance Director	Title: Authorized Representative

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

Schedule 1.23

Licensed Compounds

- [*] Thiazolidine Carboxamide Derivatives as Modulators of the Prostaglandin F Receptor
- [*] Thiazolidine Carboxamide Derivatives as Modulators of the Prostaglandin F Receptor

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

Schedule 1.27

Merck Serono Know-How

[*]

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Schedule 1.28

Merck Serono Materials

[*]

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Schedule 1.29

Merck Serono Patents

[*]

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FIRST AMENDMENT TO THE LICENSE AGREEMENT

This Amendment N°1 To The License Agreement ("***First Amendment***"), effective as of July 8, 2016 ("***First Amendment Effective Date***"), is made and entered into by and between **Ares Trading SA**, a Swiss corporation with registered offices at Zone Industrielle de l'Ouriettaz, 1170 Aubonne, Switzerland ("***Merck Serono***") and **Obseva S.A.**, a Swiss corporation with registered offices at Chemin des Aulx, 12, 1228 Plan-les-Ouates, Geneva, Switzerland ("***Licensee***"). Merck Serono and Licensee may be referred to herein as the "***Party***" or, collectively, as the "***Parties***".

Whereas, the Parties entered into a License Agreement on 10 June 2015 ("***License Agreement***"**)** concerning Merck Serono's proprietary compounds known as [*];

Whereas, [*], is not claimed by and not specifically disclosed in the Merck Serono Patents listed on Schedule 1.29 of the License Agreement;

Whereas, Licensee wishes and Merck Serono agrees to seek patent protection for [*] and Licensee instructed Clark and Elbing LLP, a law firm with registered offices at 101 Federal Street Fl, 1500 Boston, MA02110, US ("***C&E***") to prepare and file two new US patent applications covering [*] which were agreed upon by the Parties and of which the abstracts are attached hereto as Exhibit A;

Whereas, the two patent applications were filed on 4 January 2016 and the U.S. Patent Application No.: [*] under attorney docket [*] contains only Merck Serono Know-How and compounds and the U.S. Patent Application No.: [*] under attorney docket [*] contains both, Merck Serono Know-How and Licensee Know-How;

WHEREAS, the Parties agree that the patent application [*] shall be a Merck Serono Patent according to Section 5.3 of the License Agreement and that the patent application [*] shall be a Licensee Patent according to Section 5.4(a) of the License Agreement; and

Whereas, the Parties therefore wish to amend the License Agreement as set forth herein.

Now, Therefore, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the Parties hereto, intending to be legally bound, hereby agree as follows:

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the License Agreement.

I. Modification of Schedule 1.29. The following patent application shall be added to the Merck Serono Patents in Schedule 1.29 of the License Agreement:

[*]

II. Reimbursement. According to Section 5.4(b) of the License Agreement Merck Serono shall reimburse Licensee $8'989.75 for patent expenses incurred by Licensee in the preparation and filing of the patent application [*] and Merck shall bear all further costs and expenses of filing, prosecution and maintaining this patent application in the Territory.

For the avoidance of doubt and in accordance with Section 5.4(a) of the License Agreement, Licensee shall solely bear all costs and expenses of filing, prosecution and maintaining the patent application [*] in the Territory.

III. Patent Maintenance. Contrary to what is provided by Section 5.4(b) of the License Agreement, Merck Serono agrees that the filing, prosecution, and maintenance of patent application [*] shall be under the responsibility of Licensee, provided that (i) Licensee coordinates all responses to office actions, country selection, filing strategy, enforcement activities and any other matter related to patent application [*] with the Merck Patent

Department in Darmstadt (hereinafter "***Merck Patent GmbH***") and (ii) Merck Serono via Merck Patent GmbH shall reimburse Licensee for all reasonable costs and out-of-pocket expenses related to the filing, prosecution, and maintenance of patent application [*] after approval by a Merck Patent GmbH patent attorney, it being specified that such approval shall not unreasonably be withheld. Invoices can only be processed if they are addressed to Merck Patent GmbH.

For the coordination activities described in the preceding paragraph:

(a) Merck Patent GmbH's contact person is [*], it being specified that Merck Patent GmbH shall be allowed to change such contact person provided that (i) it informs Licensee in a written notice prior to such change and (ii) the newly appointed contact person shall have the same skills and competences as the previous contact person; and

(b) Licensee shall inform Merck Patent GmbH about the coordination activities and Merck shall participate in the coordination activities, both in a timely manner (in particular in view of any relevant process timelines); in the event Merck Patent GmbH fails to do so, it is understood by the Parties that Licensee shall have the right to proceed further in such relevant process.

For the avoidance of doubt, Licensee is solely responsible for filing, prosecution, maintaining and enforcement of the patent application [*] in the Territory.

IV. Effectiveness. This First Amendment shall become effective as of the First Amendment Effective Date.

V. Counterparts; Fax; Signatures. This First Amendment may be executed in two (2) counterparts, including by facsimile or PDF, each of which, when signed and executed, shall be deemed to be an original and both of which together shall constitute the one and same document.

VI. Full Force and Effect. Except as set forth in this First Amendment, the License Agreement shall remain unchanged. This First Amendment, including its Exhibit A, shall be incorporated into and deemed part of the License Agreement from the First Amendment Effective Date on, and any future reference to the License Agreement shall include the terms and conditions of this First Amendment.

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

In Witness Whereof, the Parties have caused this First Amendment to be executed by their duly authorized representatives.

OBSEVA S.A.	**ARES TRADING SA**
By: */s/ Ernest Loumaye*	By: */s/ Cedric Hyde*
Name: Ernest Loumaye	Name: Cedric Hyde
Title: CEO	Title: Authorized Representative
By: */s/ Fabien de Ladonchamps*	By: */s/ Sebastien Boutte*
Name: Fabien de Ladonchamps	Name: Sebastien Boutte
Title: VP Finance	Title: Authorized Representative

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EXHIBIT A

[*]

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Exhibit 21.1

Subsidiaries of the Company	**Jurisdiction of Organization**
XOMA Technology Ltd.	Bermuda
XOMA (US) LLC	Delaware
XOMA UK Limited	United Kingdom

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-269459, 333-151416, 333-171429, 333-174730, 333-181849, 333-198719, 333-204367, 333-212238, 333-218378, 333-232398 and 333-265248 on Form S-8 and Registration Statement No. 333-254073 on Form S-3 of our report dated March 9, 2023, relating to the consolidated financial statements of XOMA Corporation, appearing in this Annual Report on Form 10-K for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP
San Francisco, California
March 9, 2023

Exhibit 31.1

Certification

I, Owen Hughes, certify that:

1. I have reviewed this annual report on Form 10-K of XOMA Corporation;

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 officers 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))) for the registrant and we 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 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 officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 9, 2023

/s/ OWEN HUGHES

Owen Hughes
Executive Chairman of the Board of Directors and Interim Chief Executive Officer

Exhibit 31.2

Certification

I, Thomas Burns, certify that:

1. I have reviewed this annual report on Form 10-K of XOMA Corporation;

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 officers 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))) for the registrant and we 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 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 officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 9, 2023

/s/ THOMAS BURNS

Thomas Burns

Senior Vice President, Finance and Chief Financial Officer

Exhibit 32.1

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Owen Hughes, Executive Chairman of the Board of Directors and Interim Chief Executive Officer of XOMA Corporation (the "Company"), and Thomas Burns, Senior Vice President, Finance and Chief Financial Officer of the Company, each hereby certifies that, to the best of his or her knowledge:

1. The Company's Annual Report on Form 10-K for the year ended December 31, 2022, to which this Certification is attached as Exhibit 32.1, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in Exhibit 32.1 fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, the undersigned have set their hands hereto as of the 9th day of March, 2023

/s/ OWEN HUGHES

Owen Hughes
Executive Chairman of the Board of Directors and Interim Chief Executive Officer

/s/ THOMAS BURNS

Thomas Burns
Senior Vice President, Finance and Chief Financial Officer

3. This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of XOMA Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.