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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, 2023

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, par value $0.0075	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, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

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

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

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

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, 2023, was $123,749,750.

The number of shares of Registrant's Common Stock outstanding as of March 4, 2024 was 11,625,826.

XOMA Corporation
2023 FORM 10-K ANNUAL REPORT
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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
AAA	Assignment and Assumption Agreement
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
Alora	Alora Pharmaceuticals
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
Aptevo	Aptevo Therapeutics Inc.
Aptevo CPPA	the Company’s Payment Interest Purchase Agreement with Aptevo dated March 29, 2023, referred to herein as “Aptevo Commercial Payment Purchase Agreement” or “Aptevo CPPA”
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 326	ASC Topic 326, Financial Instruments – Credit Losses
ASC 450	ASC Topic 450, Contingencies
ASC 606	ASC Topic 606, Revenue from Contracts with Customers
ASC 805	ASC Topic 805, Business Combinations
ASC 815	ASC Topic 815, Derivatives and Hedging
ASC 842	ASC Topic 842, Leases
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
Blue Owl	Blue Owl Capital Corporation
Blue Owl Loan	Loan pursuant to the Blue Owl Loan Agreement
Blue Owl Loan Agreement	Loan agreement dated as of December 15, 2023, between XRL, the lenders from time to time party thereto and Blue Owl, as administrative agent
Board	the Company’s Board of Directors

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 Practice
Chiesi	Chiesi Farmaceutici S.p.A.
Company	XOMA Corporation, including its subsidiaries
CPPA	Commercial Payment Purchase Agreement
CPRA	California Privacy Rights Act
Dsuvia®	sufentanil sublingual tablet
DoD	U.S. Department of Defense
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
FDCA	The Federal Food, Drug, and Cosmetic Act
FDIC	Federal Deposit Insurance Corporation
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
ImmunityBio	ImmunityBio, Inc. (formerly NantCell, Inc.)
ImmunityBio License Agreement	Out-license agreement to ImmunityBio from LadRx dated July 27, 2017, related to the development and commercialization of Aldoxorubicin, as amended on September 27, 2018
IP	Intellectual Property
Janssen	Janssen Biotech, Inc.
Kinnate	Kinnate Biopharma 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
LadRx	LadRx Corporation (formerly CytRx Corporation)
LadRx Agreements	LadRx AAA and LadRx RPA
LadRx AAA	the Company’s Assignment and Assumption Agreement with LadRx dated June 21, 2023
LadRx RPA	the Company’s Royalty Purchase Agreement with LadRx dated June 21, 2023
Medexus	Medexus Pharmaceuticals, Inc.
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 IP Acquisition 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	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.
PSU	Performance stock unit
R&D	Research and development
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	U.S. 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
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

Talphera	Talphera, Inc.
TGFβ	transforming growth factor beta
U.S.	United States
VABYSMO®	faricimab-svoa
Viracta	Viracta Therapeutics, Inc.
Viracta RPA	the Company's Royalty Purchase Agreement with Viracta dated March 22, 2021, as amended March 4, 2024
XOMA	XOMA Corporation, a Delaware corporation, including subsidiaries
XRL	XRL 1 LLC, a wholly-owned subsidiary of XOMA
Zevra	Zevra Therapeutics, Inc. (formerly KemPharm Denmark A/S)
Zevra APA	Asset Purchase Agreement dated May 13, 2011 between LadRx and Orphazyme ApS, and assigned to Zevra as of June 1, 2022, related to the sale of arimoclomol from LadRx to Zevra (assumed by the Company as part of LadRx AAA)

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, (the "Securities Act"), Section 21E of the Securities Exchange Act of 1934, as amended, (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 current expectations, estimates and forecasts, as well as our management's beliefs and assumptions and on information currently available to them, and are subject to risks and uncertainties that are difficult to predict. In some cases you can identify forward-looking statements by words such as "may," "will," "should," "might," "could," "would," "expects," "plans," "anticipates," "believes," "estimates," "projects," "predicts," "potential," "intend" "goal," "strategy," "continue," "design" and similar words, expressions or the negative of such terms intended to identify forward-looking statements. Examples of these statements include, but are not limited to, statements regarding: trend analyses and statements regarding future events, future financial performance, anticipated growth, and industry prospects, 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, our ability to locate suitable assets to acquire, our ability to complete (on a timely basis or at all) and realize the benefits from acquisitions, uncertainties related to the acquisition of interest in development-stage and clinical-stage product candidates, fluctuations in, our ability to predict our operating results and cash flows, and the sufficiency of our capital resources. Forward-looking 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, and uncertainties that may cause our actual results or outcomes to differ materially and adversely from those expressed in our forward-looking statements, including those related to current economic and financial market conditions, are identified below 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.

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. Except as required by law, we do not undertake any obligation to revise or update publicly any 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, or otherwise.

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 product candidates in development.

We use our trademarks, trade names and services marks in this Annual Report on Form 10-K 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 or milestone payments may not produce anticipated revenues.
- We may not successfully complete or realize the expected business or financial benefits of our acquisitions or investments in companies that hold royalty assets.
- Many of our potential royalty acquisitions may be associated with product candidates that are in clinical development and have not yet been commercialized. If our potential royalty providers' therapeutic product candidates do not receive regulatory approval, our potential royalty providers will be unable to market them.
- Actual or threatened epidemics, pandemics, outbreaks of disease, or other public health crises, natural disasters, public health crises, political crises and other catastrophic events, and unstable market and macroeconomic conditions have and may in the future, adversely affect us, our licensees or royalty-agreement counterparties or their licensees.
- Biopharmaceutical products are subject to sales risks and substantial competition and the volatility of the biotechnology industry may affect us indirectly as well as directly.
- We depend on our third parties for the determination of royalty and milestone payments.
- The lack of liquidity of our acquisitions of future potential milestones and royalties may adversely affect us.
- 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.
- We have sustained losses in the past, and we expect to sustain losses in the foreseeable future.
- Our royalty aggregator strategy may require us to raise additional funds.
- We have an obligation to pay quarterly dividends to holders of our Series A Preferred Stock and Series B Preferred Stock, and these stockholders have rights senior to those of our common stockholders.
- Information available to us about the intellectual property or biopharmaceutical products underlying the potential royalties we buy may be limited and our future income is dependent on numerous potential milestone and royalty-specific assumptions that may prove not to be accurate.
- A large percentage of the calculated net present value of our portfolio is represented by a limited number of products, and the royalties that we acquire may fall outside the biopharmaceutical industry.
- We may not be able to successfully identify and acquire potential milestone and royalty streams, and we may not be able to successfully manage the risks associated with integration.
- Biological products and product candidates of our potential milestone and royalty providers may face more intense competition or competition sooner than anticipated.

- Our potential royalty providers may be unable to price our products effectively or obtain coverage and adequate reimbursement for sales of our products.
- 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.
- Product liability claims may diminish the returns on biopharmaceutical products.
- We and our potential royalty providers may be unable to protect our or their intellectual property, and litigation regarding intellectual property can be costly.
- We and our partners rely heavily on license and collaboration relationships and our potential milestone and royalty providers may rely on other third parties to provide services.
- The marketers of biopharmaceutical products are substantially responsible for the ongoing regulatory approval, commercialization, manufacturing and marketing of products.
- 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 may not be able to attract and retain qualified personnel, and our employees may engage in misconduct or other improper activities.
- Our information technology systems or data or those of our partners or contractors could be compromised, and our actual or perceived failure to comply with any data privacy or 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; and other adverse consequences.
- 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.
- Healthcare reform measures and other statutory or regulatory changes could adversely affect our business.
- We are subject to the U.S. Foreign Corrupt Practices Act and other anti-corruption laws, and as we or our potential milestone and royalty providers do more business internationally, we expect to become subject to additional political, economic and regulatory uncertainties.
- Our share price may be volatile, which may subject us to litigation.
- Our results of operations and liquidity needs could be materially negatively affected by market fluctuations or an economic downturn.
- We may issue additional equity securities from time to time, and we may sell additional debt securities.
- Our organizational documents contain provisions that may prevent transactions that could be beneficial to our stockholders and may insulate our management from removal.
- 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.
- 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 an adverse effect on us.

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 the acquisition of rights to future milestones, royalties and commercial payments since our royalty aggregator business model was implemented in 2017 combined with out-licensing our proprietary products and platforms from our legacy discovery and development business. Our royalty aggregator business is primarily focused on early to mid-stage clinical assets, primarily in Phase 1 and 2, with significant commercial sales potential that are licensed to larger pharmaceutical partners. We also acquire milestone and royalty revenue streams on late-stage clinical assets or commercial assets that are designed to address unmet markets or have a therapeutic advantage, have long duration of market exclusivity, and are expected to generate royalty or milestone payments to us in a short timeframe. We expect most of our future revenue to be based on payments we may receive for milestones and royalties associated with these programs.

Our strategy is to expand our portfolio by acquiring additional potential milestone and royalty revenue streams from product candidates from third parties. We believe that expanding our portfolio through these acquisitions allows for further diversification across therapeutic areas and development stages.

Royalty Portfolio

The following tables highlight key assets included in our portfolio of potential future milestone and royalty payment streams. These tables do not include all assets because certain assets are subject to confidentiality agreements.

KEY PORTFOLIO ASSETS

COMPANY	ASSET NAME	TARGET	ROYALTY RATE
Alora	DSUVIA® (sufentanil sublingual tablet)	mreceptors	15% (Commercial) 37.5-75% (DoD)
Day One	DAY101 (tovorafenib)	Pan-RAF	Mid-single-digit
Janssen Biotech	JNJ-63723283 (cetrelimab)	PD-1	0.75%
Medexus	IXINITY® [coagulation factor IX (recombinant)]	Factor IX	Mid-single-digit
Rezolute	RZ358	INSR	High single-digit to mid-teens
Roche	VABYSMO® (faricimab-svoa)	Angiopoietin-2 and VEGF-A	0.5%
Takeda	TAK-079 (mezagitamab)	CD-38	4%
Zevra	arimoclomol	Heat-shock protein 70	Mid-single-digit

LARGE PHARMA ASSETS

COMPANY	ASSET NAME	TARGET	ROYALTY RATE
AstraZeneca	AZD2936	TIGIT/PD-1	Confidential
Bayer	BAY-1213790 (osocimab)	Factor XIa	Low single-digit
LG Chem (AVEO Oncology)	AV-299 (ficlatuzumab)	HGF	Low single-digit
Novartis	CFZ533 (iscalimab)	CD-40	Mid-single-digit to low-teens
Regeneron	CMP-001 (vidutolimod)	TLR9	High single-digit to double-digit

BIOTECH ASSETS

COMPANY	ASSET NAME	TARGET	ROYALTY RATE
Affimed	AFM13 (acimtamig)	CD30/CD16A	Confidential
Affimed	AFM24	EGRF/CD16A	Confidential
Aronora	AB023 (gruticibart)	Factor XI	Low single-digit
Aronora	AB002 (E-WE thrombin)	E-WE thrombin	Low single-digit
Aronora	AB054	Factor XII	Low single-digit
AVEO Oncology	AV-299 (ficlatuzumab)	HGF	Low single-digit
Compugen	COM902	TIGIT	Confidential
Denovo Biopharma	vosaroxin	topoisomerase II	High single-digit
ImmunityBio	aldoxorubicin	Albumin-linked formulation of doxorubicin	Mid-single-digits to mid-teens
Incyte	INCAGN2385	LAG-3	Low to mid-single-digit
Incyte	INCAGN02390	TIM-3	Low to mid-single-digit
Monopar Therapeutics	MNPR-101	uPAR	None
Palobiofarma	PBF-680	Adenosine A1 receptor	Low single-digit
Palobiofarma	PBF-677	Adenosine A3 receptor	Low single-digit
Palobiofarma	PBF-999	Adenosine A2a receptor/ Phosphodiesterase 10 (PDE-10)	Low single-digit
Palobiofarma	PBF-1129	Adenosine A2b receptor	Low single-digit
Palobiofarma	PBF-1650	Adenosine A3 receptor	Low single-digit
National Resilience	G03-52-01	Botulinum neurotoxins	15%
Rezolute	RZ402	Plasma kallikrein	Low single-digit

Acquisitions – Commercial Programs

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 VABYSMO® (faricimab-svoa) from Affitech for an upfront payment of $6.0 million. We are eligible to receive commercial payments from Roche consisting of 0.5% of future net sales of faricimab for a ten-year period following the first commercial sales in each applicable jurisdiction. In 2022, VABYSMO was approved by the FDA and the EMA for the treatment of wet, or neovascular, age-related macular degeneration and diabetic macular edema. In 2022, pursuant to the Affitech CPPA, we paid Affitech $8.0 million in milestone payments tied to these marketing approvals. In October 2023, the FDA approved VABYSMO for the treatment of retinal vein occlusion.

Pursuant to the Affitech CPPA, we received commercial payments totaling $7.3 million and $0.5 million in 2023 and 2022, respectively. Based on net sales of VABYSMO in 2023, we paid Affitech additional milestones totaling $6.0 million in March 2024, and we may pay up to an additional $6.0 million in milestones based on the achievement of certain sales thresholds in future periods.

Aptevo Commercial Payment Purchase Agreement

In March 2023, we entered into the Aptevo CPPA, pursuant to which we acquired the full commercial payment stream and a portion of the milestone rights to IXINITY® [coagulation factor IX (recombinant)], which is marketed by Medexus for the control and prevention of bleeding episodes and postoperative management in people with Hemophilia B. We expect to receive a mid-single digit percentage payment stream on all IXINITY sales from January 1, 2023 until the first quarter of 2035, and also expect to be entitled to receive milestone payments. Under the terms of the Aptevo CPPA, in 2023 we paid Aptevo a $9.6 million upfront payment plus a $50,000 one-time payment when the first commercial payment exceeded $0.5 million.

Pursuant to the Aptevo CPPA, we received commercial payments totaling $1.7 million in 2023.

Talphera Commercial Payment Purchase Agreement

In January 2024, we acquired an economic interest in DSUVIA® (sufentanil sublingual tablet) from Talphera, for $8.0 million. DSUVIA was approved in 2018 by the FDA for use in adults in certified medically supervised healthcare settings. In April 2023, Talphera divested DSUVIA to Alora Pharmaceuticals for an upfront payment, a 15% royalty on commercial net sales, a 75% royalty on net sales to the DoD, and up to $116.5 million in milestone payments. Under the terms of the agreement, we are entitled to receive 100% of all royalties and milestones related to DSUVIA sales until we receive $20.0 million. Once we receive $20.0 million, the 75% royalties generated from DoD purchases and the remaining $116.5 million in potential milestone payments due from Alora will be shared equally between us and Talphera. We will fully retain the 15% royalty associated with DSUVIA commercial sales.

Acquisitions - Pre-Commercial Programs

LadRx Agreements

In June 2023, we entered into the LadRx AAA pursuant to the which we acquired from LadRx all of its rights, title and interests related to arimoclomol under the Zevra RPA. We also entered into the LadRx RPA, pursuant to which we acquired the right to receive all of the future royalties, regulatory and commercial milestone payments as well as other related payments due to LadRx from ImmunityBio related to aldoxorubicin under the ImmunityBio License Agreement. The purchased rights related to arimoclomol include potential regulatory and commercial milestone payments of up to $52.5 million (net of certain payment obligations of up to $9.5 million based on a portion of the regulatory and commercial milestone payments) and potential royalty payments in low single-digit percentages of aggregate net sales associated with arimoclomol. The purchased payments related to aldoxorubicin include potential regulatory and commercial milestone payments of up to $342.7 million and royalty payments on aggregate net sales of aldoxorubicin in the low to mid-teens for sales of orphan indications and mid to high single-digit percentages for sales of other licensed products.

Upon closing of the LadRx Agreements, we paid LadRx an upfront payment of $5.0 million. In January 2024, Zevra announced the FDA accepted its NDA resubmission for arimoclomol, and pursuant to the LadRx RPA, we paid LadRx a $1.0 million milestone payment. We may pay up to an additional $1.0 million commercial milestone payment related to arimoclomol and an additional $4.0 million regulatory milestone payment related to aldoxorubicin.

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 milestone payments 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, milestone payments, and other payments related to two clinical-stage drug candidates for an upfront payment of $13.5 million. The first candidate, DAY101 (a pan-RAF kinase inhibitor), is being developed by Day One Biopharmaceuticals, and the second candidate, vosaroxin (a topoisomerase II inhibitor), is being developed by Denovo Biopharma. We acquired the right to receive (i) up to $54.0 million in potential milestone payments, potential royalties on sales, if approved, and other payments related to DAY101, excluding up to $5.0 million retained by Viracta, and (ii) up to $57.0 million in potential regulatory and commercial milestone payments and high single-digit royalties on sales related to vosaroxin, if approved.

In October 2023, we earned a $5.0 million milestone payment related to the FDA's acceptance of Day One Biopharmaceuticals' NDA for tovorafenib as a monotherapy in relapsed or progressive pediatric low-grade glioma.

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 milestone payments on sales of certain 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 milestone payments on sales of MK-4830, an immuno-oncology product. Pursuant to the Agenus RPA, 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 RPA, we paid Agenus an upfront payment of $15.0 million.

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

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 product candidates in development: three candidates subject to Aronora's collaboration with 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 in June 2019, and in September 2019 we made an additional $3.0 million payment for the three Bayer Products that were active as of September 2019. Pursuant to the Aronora RPA, if we receive at least $25.0 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 are also entitled to 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 a 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 economic terms 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 product 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. Under the terms of the Palo RPA, we paid Palo an upfront payment of $10.0 million for the rights to potential royalty payments on future potential sales of the Palo Licensed Products.

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, we were eligible to receive up to $475.0 million in payments for ebopiprant development, commercialization and sales-based milestones, and royalties that range from low to mid-teens from Organon. If ebopiprant was successfully commercialized, we would have been required to make mid-single-digit royalty payments to Merck KGaA. We paid ObsEva a $15.0 million upfront payment at closing and would have paid potential earn-out payments of up to $97.5 million for development, regulatory and sales-based milestones, representing a portion of what we would have received pursuant to the Organon License Agreement.

On October 23, 2023, Organon notified us of its intent to terminate the Organon License Agreement, which we assumed pursuant to the ObsEva IP Acquisition Agreement. The termination was effective as of January 21, 2024, and we will not be entitled to any milestone payments with respect to any milestone achieved by Organon following the notice of termination. We evaluated the related intangible asset balance for impairment and recorded an impairment charge of $14.2 million as of December 31, 2023.

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 were 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 would have been required to make contingent future cash payments of up to $0.2 million to Bioasis if and when the licensed product candidates reached certain development milestones. 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 were being developed pursuant to a research collaboration and license agreement between Bioasis and Chiesi. We paid Bioasis $1.2 million upon the closing of the Second Bioasis RPA for the purchased rights. In June 2023, Bioasis announced the suspension of all of its operations and the termination of the research collaboration and license agreement between Bioasis and Chiesi. We do not expect to receive any milestone, royalty or other payments under the Biosis RPA or Second Bioasis RPA. In June 2023, we recorded an impairment charge of $1.6 million.

Selected Programs Underlying Our Portfolio

The following is a summary of significant licenses and collaboration agreements related to our legacy product candidates and technologies.

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 product candidates for the treatment of cancer, and such agreement was replaced with the Chiron Collaboration Agreement entered into in May 2005. The Chiron Collaboration Agreement was a risk-sharing arrangement whereby Chiron and we shared expenses and revenues on a 70-30 basis, with our share being 30%. It included a loan facility from Chiron to us, secured by our 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 remaining outstanding shares of Chiron. This transaction closed in 2006 at which time Novartis acquired Chiron's interest in the Chiron Collaboration Agreement. In July 2008, Novartis and we 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, as successor to Chiron, was granted, among other things, control over the product development collaborations remaining thereunder, including iscalimab. In September 2015, we and Novartis agreed to reduce the royalty-style payments that we were eligible to receive on sales of Novartis' clinical-stage anti-CD40 antibodies (such as iscalimab). These royalty-style payments were previously tiered based on sales levels, and were amended to 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.

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 of an aggregate of up to $19.0 million relating to TAK-079 (mezagitamab) and a 4% royalty on future sales of all 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 receive 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 milestone payments of 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 RZ358 (previously known as "X358") products for all indications. In addition, we entered into a common stock purchase agreement with Rezolute pursuant to which Rezolute agreed to issue to us, as consideration for receiving the license for RZ358, a certain number of its common stock in connection with any future equity 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 an aggregate of $232.0 million 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 later of the date of expiration of the last valid patent claim covering the product in each country, or 12 years from the date of the first commercial sale of the product in each country. Rezolute's future royalty obligations in the U.S. will be reduced by 20% if the manufacture, use or sale of a licensed product is not covered by a valid patent claim, until such a claim is granted.

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 study. Rezolute's obligation to pay royalties with respect to a particular Rezolute product and country will continue for the longer of 12 years from the date of the first commercial sale of the product in each country or for so long as Rezolute or its licensee is selling such product in any 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 each 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 any future equity 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 equity 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 us pursuant to the Rezolute License Agreement, as amended.

In December 2023, Rezolute announced it had initiated a Phase 3 clinical study for RZ358 in congenital hyperinsulinism.

Janssen

In August 2019, we entered into an agreement with Janssen pursuant to which we granted a non-exclusive license to Janssen to develop and commercialize certain product candidates, including our patents and know-how. Under the agreement, Janssen made a one-time payment of $2.5 million to us. Additionally, for each product 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 milestones. Additional milestone payments may be due for product 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 agreement will remain in effect unless terminated by mutual written agreement.

In 2023, we earned a total of $1.5 million in milestone payments from Janssen, which included five milestone payments for IND filings and one milestone payment upon dosing of the first patient in a Phase 3 clinical trial evaluating one of Janssen's biologic assets.

Competition

The biotechnology and pharmaceutical industries are subject to significant technological change. Some of the drugs our licensees or milestone and royalty partners are developing may compete with existing therapies or other product candidates 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 competitor 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 successfully 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 studies and human clinical trials, obtaining FDA and other regulatory approvals and manufacturing and marketing pharmaceutical products.

For a discussion of the risks associated with our competitive environment, refer to Part I, Item 1A, "Risk Factors."

Government Regulation and Environmental Matters

The research and development, manufacturing and marketing of pharmaceutical and biological products are subject to regulation by numerous governmental authorities in the U.S. and other countries. We and our partners and licensees, depending on specific activities performed, are subject to these regulations. In the U.S., pharmaceuticals and biological products are subject to regulation by both federal and various state authorities, including the FDA. The Federal Food, Drug and Cosmetic Act and, for biological products, the Public Health Service Act, govern the testing, manufacture, safety, efficacy, purity, potency, labeling, storage, recordkeeping, approval, reporting, tracking and tracing, importing and exporting, and advertising, marketing and promotion of pharmaceutical and biological products, and there are other comparable laws and regulations that apply at the state level. Further, various other state and federal healthcare laws and regulations, including the federal Anti-Kickback Statute, the federal False Claims Act and state and federal data privacy and security laws and regulations, may also apply. There are similar regulations in other countries as well. For both currently marketed products and product candidates 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 product candidates 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 U.S., 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 U.S., 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 U.S. 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 U.S., 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 significant 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 our compliance with government regulations, see Part 1, 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 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 U.S. 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. Furthermore, there can be no assurance that our royalties will expire when expected. Any reductions in the duration of royalties relative to our estimates may adversely affect our financial condition and results of operations. 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 Patent Family
Rezolute	Anti-INSR	US 9,944,698 EP 2 480 254 JP 5849050	Insulin receptor-modulating antibodies having the functional properties of RZ358	2030

Licensee	Program	Representative Patents/Applications	Subject Matter	Expected Last Expiration in Patent Family
		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
		WO2023225657A2*	RZ358 formulations	2043
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
AVEO	Anti-HGF	US 7,649,083**	Human-Engineered anti-HGF antibodies and uses thereof	2028
Amolyt	Anti-PTH1R	US 10,519,250 EP 3 490 600A1	Parathyroid Hormone Receptor 1 Antibodies and Uses Thereof	2037
Seeking out-license	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 Rezolute, Inc.
** Jointly owned with AVEO Pharmaceuticals, Inc.
***Owned by Merck Serono S.A.

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 product candidates incorporating our technology. There can be no assurance that such licenses, if required, will be available on acceptable terms, if at all. 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 seek to 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 partner funded programs from which we could potentially receive royalties or other payments if the programs achieve marketability. 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 operations.

Corporate Information

We were incorporated in Delaware in 1981 and redomiciled as a Bermuda-exempted company in December 1998. Effective December 31, 2011, we redomiciled from Bermuda to Delaware and changed our name from XOMA Ltd. to XOMA Corporation. References to the "Company" and "XOMA" before December 31, 1998 or after December 31, 2011, refer to XOMA Corporation, a Delaware corporation; references to the "Company" and "XOMA" between December 31, 1998 and December 31, 2011 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.

Employees

We rely on a small number of skilled, experienced, and innovative employees to conduct the operations of our Company. As of March 4, 2024, we employed 13 full-time employees who were 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 or that we currently believe to be immaterial, also may impair our business operations. If any of the following risks or uncertainties 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 routinely review opportunities to acquire future royalties, milestone payments 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. These unsuccessful attempts to acquire new royalties could result in significant costs to us, could hurt our reputation and divert management and financial resources. 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, including financial institution instability, may limit our licensees or royalty-agreement counterparties' (or their licensees') 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.

As we acquire and invest in companies that hold royalty assets, we may not realize the expected business or financial benefits and the acquisitions could prove difficult to integrate, disrupt our business, dilute stockholder value and adversely affect our operating results and the market value of our common stock.

Additionally, we may not be able to complete or realize the expected business or financial benefits from our potential acquisitions or investments in companies that hold royalty assets, including our planned acquisition of Kinnate. Acquisitions and other similar transactions, arrangements and investments involve numerous risks and could create unforeseen operating difficulties and expenditures, including:

- the possibility that competing offers will be made;
- potential failure to successfully complete the acquisition or transaction in a timely manner, or at all, which may in turn, adversely affect us or our target's business and the price of us or their respective common stock;
- potential failure to achieve the expected benefits on a timely basis or at all;
- our ability to integrate the acquired assets into our business;
- brand or reputational harm associated with our strategic investments or acquired companies;
- challenges converting the acquired company's revenue recognition policies and forecasting the related revenues;
- division of financial and managerial resources from existing operations;
- challenges entering into new markets in which we have little or no experience or where competitors may have stronger market positions;
- difficulties and strain on resources in integrating acquired operations, technologies, assets and personnel;
- regulatory challenges from antitrust or other regulatory authorities that may block, delay or impose conditions (such as divestitures, ownership or operational restrictions or other structural or behavioral remedies) on the completion of transactions or the integration of acquired operations;

- failure to fully assimilate, integrate or retrain acquired employees, which may lead to retention risk with respect to both key acquired employees and our existing key employees or disruption to existing teams;
- inability to generate sufficient revenue to offset acquisition or investment costs;
- challenges with the acquired company's customers and partners, including the inability to maintain such relationships and changes to perception of the acquired business as a result of the acquisition;
- potential for acquired products to impact the profitability of existing products;
- unanticipated expenses related to acquired assets or its integration into our business;
- known and potential unknown liabilities associated with the acquired businesses, including due to litigation;
- difficulties in and financial costs of addressing acquired compensation structures inconsistent with our compensation structure;
- additional stock-based compensation issued or assumed in connection with the acquisition, including the impact on stockholder dilution and our results of operations;
- ineffective or inadequate controls, procedures and policies at the acquired company; and
- the tax effects of any such acquisitions including related integration and business operation changes, and assessment of the impact on the realizability of our future tax assets or liabilities.

Any of these risks could harm our business or negatively impact our results of operations. In addition, to facilitate acquisitions or investments, we may seek additional equity or debt financing, which may not be available on terms favorable to us or at all, which may affect our ability to complete subsequent acquisitions or investments, and which may affect the risks of owning our common stock. For example, if we finance acquisitions by issuing equity or convertible or other debt securities or loans, our existing stockholders may be diluted, or we could face constraints related to the terms of, and repayment obligation related to, the incurrence of indebtedness that could affect the market price of our common stock.

Many of our potential royalty acquisitions may be associated with product candidates 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 additional uncertainties.

As part of our royalty aggregator strategy, we may continue to purchase future potential milestone and royalty streams associated with product candidates 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 can be brought to market on a timely basis or at all, or that the market will be receptive to such products. To the extent that any such product candidates are not successfully developed and subsequently commercialized, the value of our acquired potential milestone and royalty streams may be negatively affected. The ultimate success of our royalty aggregator strategy depends 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 may negatively affect potential 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 prosecution, maintenance and protection of a patent estate, adequate reporting and other protections, and their failure to do so could 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, which could negatively impact potential royalty and/or milestone payments.

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 such programs are continued at all. 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 may 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 to pursue, and may expand, this strategy of acquiring development-stage product candidates. While we believe that we can reasonably evaluate the likelihood of a development-stage product candidate's achievement of regulatory approval and potential sales, there can be no assurance that our assumptions, estimates, forecasts and expectations will prove correct. We may have limited information concerning the intellectual property or products generating the royalties we are evaluating for acquisition and therefore, there may be material information that relates to such intellectual property products that we do not have. In addition, market data that we obtain may also prove to be incomplete or incorrect. In addition, there can be no assurance that regulatory authorities will approve such development-stage product candidates, that such development-stage product candidates will be brought to market on a timely basis or at all, or that such products will achieve commercial success. Any of these factors could have a material effect on our business, financial condition and results of operations.

Actual or threatened epidemics, pandemics, outbreaks of disease, or other public health crises have and may in the future, adversely affect us 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.

Actual or threatened epidemics, pandemics, outbreaks of disease, or other public health crises have in the past and may in the future adversely impact us, our licensees or royalty-agreement counterparties or their licensees, which have 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. These 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 patient dosing and data analysis;

- 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;
- other delays in development of product candidates underlying our biopharmaceutical assets;
- 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; and
- difficulty accessing capital or credit markets on favorable terms, if at all, which could affect our ability to fund our business operations.

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, including lack of acceptance by healthcare programs or insurance plans, changes in our licensees' or royalty-agreement counterparties' strategic priorities, obsolescence, loss of patent protection, government regulations 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;

- market acceptance;
- manufacturing, supply and distribution;
- intellectual property protections;
- 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, more effective commercialization, 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 (and their licensees) 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 (and their licensees), our 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 (and their licensees) may be uncooperative or have insufficient records, which may complicate and delay the audit process.

Although we intend to 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 (and their licensees) 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' (and their licensees') 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 more quickly than planned or in connection with a forced liquidation, we may realize significantly less than the value we anticipate or 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 as not to be considered an "investment company," and we do not believe we are an "investment company" under applicable SEC rules, we can provide no assurance that the SEC will not take the position that the Company is 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 in a manner such 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. However, if we were to be considered an "investment company" and become 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. Additionally, we may need to take various actions which we might otherwise not pursue in order to not come within scope of the '40 Act. These actions may include, among others, 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 U.S. and internationally. If any of their facilities is affected by natural disasters, such as earthquakes, tsunamis, power shortages or outages, floods, monsoons or wild fires, public health crises, such as pandemics and epidemics, geopolitical instability, crises such as terrorism, war, political instability, labor disputes or strikes, other conflict, including the ongoing conflict in Ukraine, conflict in the Middle East and surrounding areas and rising tensions between China and Taiwan, 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 industry, the volatility of that industry 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. We generated net losses of $40.8 million and negative cash flows from operations of $18.2 million for the year ended December 31, 2023, and we had an accumulated deficit of $1.2 billion as of December 31, 2023. 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 depends, 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 may 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 macroeconomic conditions, including adverse developments affecting the financial services industry, such as actual events or concerns involving liquidity, defaults or non-performance by financial institutions or transactional counterparties, 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 trade and other international disputes, significant natural disasters (including as a result of climate change), new or increased tariffs and other barriers to trade, changes to fiscal and monetary policy or government budget dynamics (particularly in the pharmaceutical and biotechnology industries), tighter credit, high interest rates, and economic inflation, which has included diminished liquidity and credit availability, declines in consumer confidence, declines in economic growth or recession, 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 geopolitical instability, including military conflict, acts of terrorism or other geopolitical events. Sanctions imposed by the U.S. and other countries in response to such conflicts, including the one in Ukraine and the Middle East, 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.

In addition, actual events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions, transactional counterparties or other companies in the financial services industry or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks, have in the past and may in the future lead to market-wide liquidity problems. For example, in March 2023, Silicon Valley Bank, Signature Bank and Silvergate Capital Corp. were each swept into receivership.

Although we assess our banking relationships as we believe necessary or appropriate, our access to funding sources in amounts adequate to finance or capitalize our current and projected future business operations could be significantly impaired by factors that affect us, the financial institutions with which we have arrangements directly, or the financial services industry or economy in general. These factors could involve financial institutions or financial services industry companies with which we have financial or business relationships but could also include factors involving financial markets or the financial services industry generally.

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 additional 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 we raise additional funds through borrowings, we have in the past and may in the future repay the principal and interest of the loan from certain of our royalty payments and/or use our royalties as collateral for such borrowings. For example, on December 15, 2023, we, through XRL, a newly formed, wholly-owned subsidiary, entered into a non-dilutive, non-recourse, royalty-backed loan for up to $140.0 million of capital with certain funds managed by the credit platform of Blue Owl Capital Inc. In the event of a default under such secured borrowings, one or more of our creditors or their assignees could obtain control of certain of our royalties and, in the event of a distressed sale, these creditors could dispose of these royalties for significantly less value than we could realize for them.

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, participants, growth rate, level of competition or financing methods, 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, such as the underlying products, or intellectual property, other competitive products, market conditions, or the structure of the transaction. 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 an obligation to pay quarterly dividends to holders of our Series A Preferred Stock and Series B Preferred Stock, which we expect to 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, 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 accumulate and are cumulative from, and including, the date of original issuance by us of the Series A Preferred Stock. Dividends are 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, 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 of Series B Preferred Stock or $2.09375 per year per depositary share). Dividends on the Series B Preferred Stock accumulate and are cumulative from, and including, the date of original issuance 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 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, 2023, we had 984,000 shares of Series A Preferred Stock issued and outstanding 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, 2023, we had 1,600,000 depositary shares issued and outstanding, 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 intellectual property or 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 intellectual property or products generating the future potential milestones and royalties we are evaluating for acquisition. The information we have regarding intellectual property or 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 intellectual property or 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 or others or the nature or number of any complaints from doctors or users of such products or the nature or number of adverse effects 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 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 in circumstances 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 terms or 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, such as uncertainties around the patent

estate and the terms of the license agreement, as well as the development, labeling, regulatory approval, commercialization, manufacturing and supply of product candidates. 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 operations 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 operations.

The amount and duration of a royalty varies on a country-by-country basis and depends 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 product candidate, 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 operations.

Our asset portfolio is not 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 operations. 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, and in July 2023, Novartis announced that it is discontinuing its Phase 3 trial investigating NIS793 in first-line metastatic pancreatic ductal adenocarcinoma. In August 2023, Novartis communicated to us that it intends to discontinue development activities related to NIS793 and will cease enrolling patients in the remaining active clinical studies. This, and any future deterioration in cash flows from the top products in our asset portfolio, could adversely affect our business and financial conditions.

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 operations.

The royalties that we acquire may fall outside the biopharmaceutical industry, and any such assets, and the cash flows therefrom, may not resemble the assets in our current portfolio.

We have discretion as to the types of assets that we may acquire. While we expect to acquire assets that primarily fall within the biopharmaceutical industry, we are not obligated to do so and may acquire other types of assets that are peripheral to or outside of the biopharmaceutical industry. Consequently, our asset acquisitions in the future, and the cash flows from such assets, may not resemble those of the assets in our current portfolio. There can be no assurance that assets acquired in the future will have returns similar to the returns expected of the assets in our current portfolio or be profitable at all.

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 potential milestone and royalty streams or companies and/or to in-license rights to potential products, product candidates, and programs. 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 or are otherwise unable to mitigate or prevent. Any failure in identifying and managing these risks and uncertainties could 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 could 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 U.S. 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 U.S., the FDA regulates pharmaceutical products under the FDCA 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 the requirements of the 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 may require developing authorized 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 determining that the product is safe and effective, or in the case of a biologic, safe, pure, and potent, for its intended use, 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 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.

Our potential milestone and royalty providers may seek to obtain orphan drug designation for certain future product candidates, but they may be unable to ultimately obtain such designations or to maintain the benefits associated with orphan drug designation, including market exclusivity, which may cause our milestone or royalty revenue, if any, to be reduced.

Some of our potential milestone or royalty providers may obtain orphan drug designation for their product candidates. Under the Orphan Drug Act, the FDA may designate a drug or biological product as an orphan drug if it is intended to treat a rare disease or condition, defined as a patient population of fewer than 200,000 in the U.S., or a patient population greater than 200,000 in the U.S. where there is no reasonable expectation that the cost of developing the drug will be recovered from sales in the U.S. Orphan drug designation must be requested before submitting a BLA. In the European Union, the EMA's Committee for Orphan Medicinal Products grants orphan drug designation to promote the development of products that are intended for the diagnosis, prevention, or treatment of a life-threatening or chronically debilitating condition affecting not more than five in 10,000 persons in the European Union. Additionally, designation is granted for products intended for the diagnosis, prevention, or treatment of a life-threatening, seriously debilitating or serious and chronic condition when, without incentives, it is unlikely that sales of the drug in the European Union would be sufficient to justify the necessary investment in developing the drug or biological product or where there is no satisfactory method of diagnosis, prevention, or treatment, or, if such a method exists, the medicine must be of significant benefit to those affected by the condition.

In the U.S., orphan drug designation entitles a party to financial incentives such as opportunities for grant funding towards clinical trial costs, tax advantages, and application fee waivers. After the FDA grants orphan drug designation, the generic identity of the drug and its potential orphan use are disclosed publicly by the FDA.

In addition, if a product receives the first FDA approval for the indication for which it has orphan designation, the product is entitled to orphan drug exclusivity, which means the FDA may not approve any other application to market the same drug for the same indication for a period of seven years, except in limited circumstances, such as a showing of clinical superiority over the product with orphan exclusivity or where the manufacturer is unable to assure sufficient product quantity for the orphan patient population. Exclusive marketing rights in the U.S. may also be unavailable if our royalty providers seek approval for an indication broader than the orphan designated indication and may be lost if the FDA later determines that the request for designation was materially defective. In the European Union, orphan drug designation entitles a party to financial incentives such as reduction of fees or fee waivers and ten years of market exclusivity following drug or biological product approval. This period may be reduced to six years if the orphan drug designation criteria are no longer met, including where it is shown that the product is sufficiently profitable not to justify maintenance of market exclusivity.

Even with an orphan drug designation for its current and potential future product candidates, our royalty providers may not be the first to obtain marketing approval for any particular orphan indication due to the uncertainties associated with developing pharmaceutical products. Further, even if a royalty provider obtains orphan drug exclusivity for an existing or future product candidate, that exclusivity may not effectively protect the product from competition because different drugs with different active moieties still can be approved for the same condition even with an orphan drug designation. Even after an orphan drug is approved, the FDA can subsequently approve the same drug with the same active moiety for the same condition if the FDA concludes that the later drug is clinically superior in that it is safer, more effective, or makes a major contribution to patient care. Orphan drug designation neither shortens the development time or regulatory review time of a drug or biologic nor gives the drug or biologic any advantage in the regulatory review or approval process.

The FDA's interpretation of the scope of orphan drug exclusivity may change. The FDA's longstanding interpretation of the Orphan Drug Act is that exclusivity is specific to the orphan indication for which the drug was actually approved. As a result, the scope of exclusivity has been narrow and protected only against competition from the same "use or indication" rather than the broader "disease or condition." In the September 2021 case Catalyst Pharmaceuticals, Inc. v. FDA, a federal circuit court set aside the FDA's narrow interpretation and ruled that orphan drug exclusivity covers the full scope of the orphan-designated disease or condition regardless of whether the drug obtains approval only for a narrower use. The decision concerned amifampridine, a drug used to treat Lambert-Eaton myasthenic syndrome (LEMS). Depending on how the FDA applies the decision beyond this case, it may limit the drugs that can receive exclusivity.

The ability of our potential milestone and royalty providers to obtain and maintain orphan drug designation and the benefits thereof, including orphan drug exclusivity, may materially impact the potential milestones and royalties we receive.

Biological products and product candidates of our potential milestone and royalty providers may face competition sooner than anticipated, which may materially impact the potential milestones and royalties we receive.

The ACA includes a subtitle called the Biologics Price Competition and Innovation Act of 2009 ("BPCIA"), which created an abbreviated approval pathway for biological products that are biosimilar to or interchangeable with an FDA-licensed reference biological product. Under the BPCIA, an application for a highly similar or "biosimilar" product may not be submitted to the FDA until four years following the date that the reference product was first approved by the FDA. In addition, the approval of a biosimilar product may not be made effective by the FDA until 12 years from the date on which the reference product was first approved. During this 12-year period of exclusivity, another company may still market a competing version of the reference product if the FDA approves a full BLA for the competing product containing the sponsor's own preclinical data and data from adequate and well-controlled clinical trials to demonstrate the safety, purity and potency of its product.

The biological products and, if approved, product candidates of our royalty providers could be considered reference products entitled to 12-year exclusivity. However, there is a risk that this exclusivity could be shortened due to congressional action or otherwise, or that the FDA will not consider a product candidate to be a reference product for competing products, potentially creating the opportunity for competition sooner than anticipated. Other aspects of the BPCIA, some of which may impact the BPCIA exclusivity provisions, have also been the subject of recent litigation. Moreover, the extent to which a biosimilar, once approved, will be substituted for any reference products in a way that is similar to traditional generic substitution for non-biological products is not yet clear, and will depend on a number of marketplace and regulatory factors that are still developing. Any of these events may materially impact the potential milestones and royalties we receive.

If the FDA or comparable foreign regulatory authorities approve generic versions of any of the products or product candidates of our potential milestone or royalty providers that receive marketing approval under NDAs, or such authorities do not grant their product candidates appropriate periods of data or market exclusivity before approving generic versions of our product candidates, the sales of their product candidates could be adversely affected, which may materially affect the potential milestones and royalties we receive.

Once an NDA is approved, the drug covered thereby becomes a "reference-listed drug" in the FDA's publication, "Approved Drug Products with Therapeutic Equivalence Evaluations." Manufacturers may seek marketing approval of generic versions of reference-listed drugs through submission of abbreviated new drug applications ("ANDAs") in the U.S. In support of an ANDA, a generic manufacturer need not conduct clinical trials demonstrating safety and efficacy. Rather, the applicant generally must show that its drug is pharmaceutically equivalent to the reference listed drug, in that it has the same active ingredient(s), dosage form, strength, route of administration and conditions of use or labeling as the reference-listed drug, and that the generic version is bioequivalent to the reference-listed drug, meaning it is absorbed in the body at the same rate and to the same extent. Generic drugs may be significantly less costly to bring to market than the reference-listed drug and companies that produce generic drugs are generally able to offer them at lower prices. Thus, following the introduction of a generic drug, a significant percentage of the sales of any branded product or reference-listed drug is typically lost to the generic drug.

The FDA may not approve an ANDA for a generic drug until any applicable period of non-patent exclusivity for the reference-listed drug has expired. The FDCA provides a period of five years of non-patent exclusivity for a new drug containing a new chemical entity, or NCE. During the exclusivity period, the FDA may not accept for review an ANDA or a 505(b)(2) NDA submitted by another company for another version of such product candidate where the applicant does not own or have a legal right of reference to all the data required for approval. However, an application may be submitted after four years if it contains a certification of patent invalidity or non-infringement. The FDCA also provides three years of marketing exclusivity for an NDA, 505(b)(2) NDA or supplement to an approved NDA if new clinical investigations, other than bioavailability studies, that were conducted or sponsored by the applicant are deemed by the FDA to be essential to the approval of the application, for example, for new indications, dosages or strengths of an existing product candidate.

This three-year exclusivity covers only the conditions associated with the new clinical investigations and does not prohibit the FDA from approving ANDAs for product candidates containing the original active agent for other conditions of use. Five-year and three-year exclusivity will not delay the submission or approval of a full NDA. However, an applicant submitting a full NDA would be required to conduct or obtain a right of reference to all of the nonclinical studies and adequate and well-controlled clinical trials necessary to demonstrate safety and effectiveness. Manufacturers may seek to launch these generic drugs following the expiration of the marketing exclusivity period, even if our potential milestone or royalty providers still have patent protection for our drug competition, and their products may therefore face from generic versions of their products and, if approved, their product candidates. This could materially and adversely impact their future revenue, profitability and cash flows and substantially limit their ability to obtain a return on the investments we have made in those products and, if approved, product candidates. Their future revenues, profitability and cash flows could also be materially and adversely affected and our ability to obtain a return on their investments in those product candidates may be substantially limited if their products are not afforded the appropriate periods of non-patent exclusivity. Any of these events may materially impact the potential milestones and royalties we receive.

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 and evolving. 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 and other 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 current or potential royalty providers succeed in bringing 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 U.S. 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 pharmaceutical products can differ significantly from payor to payor as there is no uniform policy of coverage and reimbursement for pharmaceutical products among third-party payors in the U.S. 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 U.S., there have been, and we expect, 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 U.S. has increased and, we expect to 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. Our potential royalty providers may not have sales, marketing or distribution capabilities or may not be able to develop these capabilities in an effective manner, or at all. 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.

Product liability claims may diminish the returns on biopharmaceutical products.

The developer, manufacturer or marketer of a product could become subject to product liability claims. A product liability claim, regardless of its merits, could adversely affect the sales of the product and the amount of any related royalty payments, and consequently, could adversely affect the ability of a payor to make payments with respect to a royalty.

Although we believe we should not bear responsibility in the event of a product liability claim against the developer, manufacturer, marketer or other seller of a product that generates our royalty, such claims could adversely affect our business, financial condition and results of operations due to the lower than expected cash flows from the royalty.

If we and our potential royalty providers are unable to protect our or their 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 deter others from duplicating our or their 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 using technologies or solutions similar to those incorporated into our products or product candidates, or those of our potential royalty providers in jurisdictions where we have not obtained patent protection and, further, exporting infringing products to territories where we have patent protection but where our enforcement efforts may be inadequate and protection in general of patented technology may be less robust than it is in the U.S.;
- 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 U.S. 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 the patents of our royalty providers 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 U.S.

If our, and our potential royalty providers intellectual property rights are not protected adequately, our potential royalty providers or our licensees 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' or our licensees' 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.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain foreign countries do not favor the enforcement of patents and other intellectual property protection, which could make it difficult for us or our royalty providers to stop the infringement of our or their patents or the marketing of competing products in violation of our or their proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and could divert our efforts and attention from other aspects of our business.

Furthermore, in some instances, we have no ability to control the prosecution, maintenance, enforcement or defense of patent rights of our royalty providers. In such instances, there can be no assurance that they will vigorously prosecute, maintain, enforce or defend such rights, or that they will be successful in doing so. Any infringement of their intellectual property may adversely affect our royalty interest and consequently adversely affect our business, financial condition and results of operations.

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 U.S. 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. Patent terms may be inadequate to protect our competitive position for an adequate amount of time. Significant patents in our portfolio are expected to 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. Furthermore, there can be no assurance that our partners will seek extensions of their patent terms.

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 or royalty agreement counterparties. 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 royalty agreement counterparties) 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.

For example, in June 2021, we initiated a binding arbitration proceeding with one of our licensees (the "Licensee") at the American Arbitration Association/International Centre for Dispute Resolution, seeking milestone and royalty payments under our license agreement. A hearing before a panel of arbitrators was held in November 2022, and the parties submitted post-hearing briefs. On March 21, 2023, we received an adverse decision in this arbitration proceeding. The panel of arbitrators declined to award us damages and ruled that the license agreement has expired. The panel ruled that we were responsible for the Licensee's costs as well as arbitrators' and administrative fees previously incurred by the Licensee of $4.1 million, which we paid in April 2023.

In addition, we may be subject to claims that we, or our licensees or our royalty agreement counterparties' licensees, are infringing other parties' patents. If such claims are resolved against us, we or our licensees or our royalty agreement counterparties' licensees may be enjoined from developing, manufacturing, selling or importing products, processes or services unless we or our licensees or our royalty agreement counterparties' licensees 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 or our royalty agreement counterparties' licensees, from using or licensing 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 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 operations.

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 have in the past been and may in the future 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.

On October 23, 2023, Organon notified us of its intent to terminate the Organon License Agreement, which we assumed pursuant to the ObsEva IP Acquisition Agreement. The termination was effective as of January 21, 2024, and we will not be entitled to any milestone payments with respect to any milestone achieved by Organon following the notice of termination. We evaluated the related intangible asset balance for impairment and recorded an impairment charge of $14.2 million as of December 31, 2023.

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 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, milestone payments 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 operations. 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 operations 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. For example, in June 2023, Bioasis announced the suspension of all its operations and the termination of the research collaboration and license agreement between Bioasis and Chiesi. As a result, we do not expect to receive any milestone, royalty or other payments under the Biosis RPA or Second Bioasis RPA.

Generally, our current licensees 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.

In addition, we could face significant competition in seeking appropriate collaborators and the negotiation process is time-consuming and complex. Our ability to reach a definitive collaborative agreement with any such new party will depend, among other factors, upon our assessment of the collaborator's resources and expertise, the terms and conditions of the proposed collaboration and the proposed collaborator's evaluation of a number of factors. We cannot be certain that, following a strategic transaction or license, we will achieve the revenue or specific net income that justifies such transaction.

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 product candidates, our potential milestone and royalty providers' development programs and receipt of any potential resulting income may be delayed.

The marketers of biopharmaceutical products are, in certain instances, substantially responsible for the ongoing regulatory approval, commercialization, manufacturing and marketing of products.

In certain instances, the holders of royalties on products have granted regulatory approval, commercialization, manufacturing and marketing rights to the licensees of such products. Such licensees have substantial control over those efforts and discretion to determine the extent and priority of the resources they will commit to their program for a product. Accordingly, the successful commercialization of a product depends on the licensee's efforts and is beyond our control. If a licensee does not devote adequate resources to the ongoing regulatory approval, commercialization and manufacture of a product, or if a licensee engages in illegal or otherwise unauthorized practices, the product's sales may not generate sufficient royalties, or the product's sales may be suspended, and consequently, could adversely affect our business. In addition, if licensees of biopharmaceutical products decide to discontinue product programs or we believe the commercial prospects of assets have been reduced, we may recognize material non-cash impairment charges related to the financial royalty asset associated with those programs or assets.

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 apply related to activities relevant 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 or otherwise compel them to perform.

We do not know whether we or our licensees will be able to 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 Practice 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' 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 for 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, cause our licensees to 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(s), 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 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 of one or more key members of our staff. We currently do not have key person insurance on any of our employees. Changes in management, including due to potential acquisitions, may cause disruptions 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 biotech royalty aggregator with limited resources, we may not be able to attract and retain qualified personnel.

We had 13 full-time employees as of March 4, 2024. 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.

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.

If our information technology systems or data or those of our partners or contractors are compromised, our business could experience adverse consequences, including regulatory investigations or actions; litigation; fines and penalties; a disruption of our business operations; reputational harm; and loss of revenue or profits.

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. In the ordinary course of our business, we maintain sensitive data on our networks, including personal information of our employees, legacy clinical trial patients, vendors and others, 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.

Cybersecurity threats have generally increased in sophistication, scale, and frequency in recent years. While we have implemented security measures that are intended to protect our data and information technology systems, our computer systems, and those of the third parties on which we rely, are still vulnerable to damage from data breaches, security incidents or other unauthorized intrusions or access, including cyberattacks or computer viruses, or from natural disasters, terrorism, war and telecommunication and electrical failures. Moreover, the prevalence of remote work on mobile devices that access confidential and sensitive information increases the risk of such an event occurring. Threats to our systems and personal, confidential and proprietary information can come from a variety of sources, ranging in sophistication. Such threats also may be intentional or accidental. It is often difficult to anticipate or immediately identify these threats and the damage might cause.

Data breaches, security incidents and other unauthorized intrusions or access to our data or systems, or those of the third parties on which we rely, could result in system disruptions, downtime or the compromise of personal information, our intellectual property and sensitive business information, all of which may interrupt our normal business operations and require substantial expenditure of financial and administrative resources to remedy. Such events could have a material adverse effect on our business, financial condition and results of operations. 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. Furthermore, to the extent that any disruption, security breach, or other event were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of personal, confidential or proprietary information, we may be required to comply with notification requirements, be subject to litigation or regulatory action, or otherwise be subject to liability under applicable laws. These risks would expose us to significant expense and cause significant harm to our reputation and business.

While we have insurance coverage, we cannot be sure that our policy 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 for future claims.

Compliance with the stringent and changing obligations related to data privacy and security is an onerous and resource-intensive process. Our actual or perceived failure to comply with any data privacy or 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.

Federal, state, local and foreign legislators and/or regulators are increasingly regulating data privacy and security and may impose significant penalties for failure to comply with these requirements. For example, in the U.S., the California Consumer Privacy Act of 2018 ("CCPA") establishes a privacy framework for covered businesses, which applies to a broad range of personal information and entities who conduct business in California. Further, the California Privacy Rights Act ("CPRA"), which amends the CCPA, became fully operative on January 1, 2023 and expands upon the CCPA, imposing additional data protection obligations on covered businesses. The CCPA/CPRA gives California residents certain

rights related to their personal information, including the rights to request the correction of, access to 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. If we, or the third parties on which we rely, fail to comply with the CCPA/CPRA, we may face significant fines, penalties and regulatory enforcement costs that could adversely affect our reputation, business, financial condition and results of operations. The CCPA/CPRA provides for civil penalties of up to $2,500 per violation, and $7,500 per intentional violation, following investigation by the state Attorney General and allows private litigants affected by certain data breaches to recover significant statutory damages. Similar comprehensive state privacy laws are now in effect in Virginia, Colorado, Connecticut, and Utah, and many have passed in other states.

Compliance with laws, regulations, rules, guidance, industry standards, and contractual obligations concerning data privacy, security, governance and protection is an onerous and resource-intensive process, that may require us to put in place additional mechanisms and incur substantial expenditure. Achieving compliance could also require us to change our business practices in a manner that does not align with our business objectives. Furthermore, the regulatory landscape continues to evolve, making it difficult to maintain compliance. Further, in the event that we, or one of the third parties on which we rely, is subject to a data breach, security incident, or other unauthorized intrusion or access that leads to the 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; remediation measures taken to respond to the event and prevent similar events from occurring in the future; additional compliance obligations under federal, state or foreign laws (including notification obligations); 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 as described above. While we have implemented security measures to protect our data and information technology systems, such measures may not prevent such events. We also cannot guarantee that we are in compliance with all applicable data privacy, security and protection laws and regulations as they are enforced now or as they evolve.

Our potential acquisitions of other companies could increase our exposure to litigation risk.

Our exposure to risks associated with various claims, including claims related to the use of intellectual property as well as securities and related stockholder derivative claims, may be increased as a result of our acquisitions of other companies, including our potential acquisition of Kinnate, and we may ultimately be subject to liability or settlement costs. Additionally, we may have a lower level of visibility into the development process with respect to intellectual property or the care taken to safeguard against infringement risks with respect to acquired companies or assets. In addition, third parties may make claims in connection with our acquisitions, and they may also make infringement and similar or related claims after we have acquired assets that had not been asserted prior to our acquisition.

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 U.S. 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 U.S. 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 U.S., 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.

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. HHS has and will continue to issue and update guidance as these programs are implemented. These provisions will take effect progressively starting in fiscal year 2023. On August 29, 2023, HHS announced the list of the first ten drugs that will be subject to price negotiations, although the Medicare drug price negotiation program is currently subject to legal challenges. It is currently unclear how the IRA will be implemented but it is likely to have a significant impact on the pharmaceutical industry. Further, in response to the Biden administration's October 2022 executive order, on February 14, 2023, HHS released a report outlining three new models for testing by the Center for Medicare and Medicaid Innovation which will be evaluated on their ability to lower the cost of drugs, promote accessibility, and improve quality of care. It is unclear whether the models will be utilized in any health reform measures in the future. 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 pharmaceutical 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, state analogues of those laws, and various 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 implicated. 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 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 U.S. 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 U.S. or other authorities could also have an adverse impact on our reputation, our business, financial condition and results of operations.

Efforts to confirm that our business arrangements with third parties comply with applicable healthcare laws and regulations may 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 royalties 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 enforcement landscape 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 expect to become 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 are expected to become 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 U.S. Foreign regulatory agencies often establish standards different from those in the U.S., and an inability to obtain foreign regulatory approvals on a timely basis, if at all, 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 or conflict;
- trade restrictions;
- international disputes;
- changes in tariffs;
- restrictions on repatriating profits;
- exchange rate fluctuations;
- evolving government regulations, including those related to healthcare reimbursement and data privacy and security; and

- withholding and other taxation.

General Risk Factors

If securities or industry analysts do not publish research reports about our business or if they make adverse recommendations regarding an investment in our stock, our stock price and trading volume may decline.

The trading market for our common stock can be influenced by the research and reports that industry or securities analysts publish about our business. Currently, coverage of our Company by industry and securities analysts is limited. Investors have many investment opportunities and may limit their investments to companies that receive greater coverage from analysts. If additional industry or securities analysts do not commence coverage of the Company, the trading price of our stock could be negatively impacted. If one or more of the analysts downgrade our stock or comment negatively on our prospects, our stock price may decline. If one or more of these analysts cease to cover our industry or us or fail to publish reports about the Company regularly, our common stock could lose visibility in the financial markets, which could also cause our stock price or trading volume to decline. Further, incorrect judgments, estimates or assumptions made by research analysts may adversely affect our stock price, particularly if subsequent performance falls below the levels that were projected by the research analyst(s), even if we did not set or endorse such expectations. Any of these events could cause further volatility in our stock price and could result in substantial declines in the value of our stock.

Our share price may be volatile, which may subject us to litigation, 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, and are affected by a number of factors, including:

- fluctuations in our operating results;
- general market and macroeconomic conditions, including market conditions in our industry and the industries of our collaborators;
- the coverage of our common stock by the financial media, including television, radio and press reports and blogs;
- recruitment or departure of key personnel;
- our ability to realize benefits from strategic partnerships, acquisitions or investments;
- trading activity or positions by a limited number of stockholders who together beneficially own a significant portion of our outstanding common stock;
- the issuance of shares of common stock by us, including as consideration in or in conjunction with acquisitions;
- the inability to execute on our share repurchase program as planned, including failure to meet internal or external expectations around the timing or price of share repurchases, and any reductions or discontinuances of repurchases thereunder;
- issuance of debt or other convertible securities, including as consideration in or in conjunction with acquisitions;
- the inability to conclude that our internal controls over financial reporting are effective;

- changes to our credit ratings; and
- market perception or investment sentiment regarding us or our business strategy.

We have experienced significant volatility in the price of our common stock in the past. From January 1, 2023, through March 4, 2024, the share price of our common stock has ranged from a high of $25.91 to a low of $13.48. From January 1, 2023, through March 4, 2024, the share price of our Series A Preferred Stock has ranged from a high of $25.98 to a low of $21.40. From January 1, 2023, through March 4, 2024, the share price of our Series B Preferred Stock has ranged from a high of $25.37 to a low of $20.43. Additionally, we currently 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 those holders were to 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 and adversely affected by macroeconomic conditions generally, both in the U.S. and elsewhere around the world. Concerns over inflation, slower growth or recession, new or increased tariffs or other barriers to trade, changes in fiscal and monetary policy or government budget dynamics, interest rates, high unemployment, labor availability constraints, currency fluctuations, epidemics and other public health crises (such as the COVID-19 pandemic), significant natural disasters (including as a result of climate change), rising energy costs, geopolitical conflict, such as the ongoing conflict in Ukraine, the Middle East and surrounding areas and the rising tensions between China and Taiwan, the availability and cost of credit, and the volatility in 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 U.S. and global 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, 2023, 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 is 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 Stock 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 Listing Rule 5635(b), to the extent then applicable. If holders of our Series X 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 of the 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, 2023, BVF owned approximately 31.6% of our total outstanding shares of common stock, and if all of its shares of the Series X Preferred Stock were converted (without taking into account beneficial ownership limitations), BVF would own 52.3% of our total outstanding shares of common stock. Additionally, as of December 31, 2023, 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, 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, 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 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 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 U.S., 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, 2023, we had U.S. federal NOL carryforwards of $137.8 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 (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. As of December 31, 2023, we had $55.4 million in federal net operating loss carryforwards subject to an annual limitation of $0.9 million. Of this amount, $13.6 million will begin to expire in 2036, if not utilized.

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, and could be increased as a result of our acquisitions of other companies, including our potential acquisition of Kinnate.

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 any such 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, increased insurance costs, 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 1C. CYBERSECURITY

Risk Management and Strategy

We evaluate our cybersecurity strategy annually, including our processes designed to assess, identify, and manage risks from potential unauthorized occurrences on or through our information technology systems that may result in adverse effects on the confidentiality, integrity, and availability of these systems and the data residing therein, within our overall enterprise risk management framework. Our cybersecurity strategy takes a multi-faceted approach, one which focuses on the following key areas: (i) the human element within the organization; (ii) perimeter security; (iii) network security; (iv) application security; (v) endpoint security; and (vi) data security. We use a wide array of processes, mechanisms, controls, technologies, systems, strategies and tools in each of these areas, including but not limited to: routine security awareness training, formal evaluations of third-party applications, password strength policies, antivirus software, firewalls, routine patch management, encryption software, data backups and data redundancies, email security software, multi-factor authentication tools, network security monitoring, and web vulnerability scanning.

We engage outside consultants on a regular basis to help us design internal controls and processes to address cybersecurity risks. We also leverage these outside consultants and other third parties, when appropriate, to implement appropriate processes, policies, and internal controls designed to help prevent, detect, and/or mitigate these cyberthreats.

In the last fiscal year, we have not identified risks from known cybersecurity threats, including as a result of any prior cybersecurity incidents, that have materially affected us, but we face certain ongoing cybersecurity threats that, if realized, are reasonably likely to materially affect us. These threats include but are not limited to: (i) ransomware and malware attacks; (ii) endpoint attacks; (iii) compromised business email and other social engineering threats; and (iv) vulnerabilities related to inadequate patch management. Our licensees, suppliers, contractors, and consultants also face similar cybersecurity risks, which could have an adverse impact on our business. Additional information on cybersecurity risks we face is discussed in Part I, Item 1A, "Risk Factors," under the headings "If our information technology systems or data or those of our partners or contractors are compromised, our business could experience adverse consequences, including regulatory investigations or actions; litigation; fines and penalties; a disruption of our business operations; reputational harm; and loss of revenue or profits" and "Compliance with the stringent and changing obligations related to data privacy and security is an onerous and resource-intensive process. Our actual or perceived failure to comply with any data privacy or 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."

Governance

Our management, led by our Chief Executive Officer and the Senior Vice President, Finance and Chief Financial Officer, is responsible for assessing cybersecurity risks and for confirming we have an appropriate cybersecurity strategy to assess and manage those risks, including responding to attacks or breaches. Our Chief Executive Officer and the Senior Vice President, Finance and Chief Financial Officer each have experience in senior leadership roles in which they have been responsible for the entity's enterprise risk management, including management of cybersecurity risks. The Chief Executive Officer and the Senior Vice President, Finance and Chief Financial Officer meet regularly with the individuals charged with the day-to-day IT operations and infrastructure, and at least quarterly to review and assess potential cybersecurity threats to determine whether any changes need to be made to our cybersecurity strategy. The Chief Executive Officer and the Senior Vice President, Finance and Chief Financial Officer sponsor periodic cybersecurity awareness training for all employees.

We also maintain an Incident Response Plan that sets forth a protocol in the event we are exposed to a cyber-attack or breach. The Incident Response Plan provides a framework for our response, including the appropriate communication and escalation channels.

The Board, as a whole and at the committee level, has oversight for the most significant risks facing us and for our processes to identify, prioritize, assess, manage, and mitigate those risks. The Audit Committee of the Board, which is comprised solely of independent directors, has been designated by our Board to oversee cybersecurity risks. Management provides regular updates to the Audit Committee of the Board regarding risk assessments, developing threats, and the current and planned cybersecurity strategy, and promptly provides notification of significant attacks or breaches as part of the Incident Response Plan. The Board also receives updates from management and the Audit Committee on cybersecurity risks on at least an annual basis.

Item 2. PROPERTIES

We lease space for our corporate headquarters in Emeryville, California. As of December 31, 2023, we expect to incur incremental undiscounted costs of $0.5 million associated with our building lease until it expires in April 2029. We believe our facilities are adequate to meet our current requirements.

Item 3. LEGAL PROCEEDINGS

We are not currently engaged in any legal proceedings that, in the opinion of our management, if determined adversely to us, would individually or taken together, have a material adverse effect on our business, results of operations, financial position or cash flows. However, from time to time, we may become involved in litigation, arbitration or other proceedings relating to claims arising from the ordinary course of business.

We may become involved in material legal proceedings in the future, and the potential impact on us of any on-going proceeding which we do not currently believe to be material could become material. 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 ("Nasdaq") under the symbol "XOMA." On March 4, 2024, there were 188 stockholders of record of our common stock, one of which was Cede & Co., a nominee for Depository Trust Company ("DTC"). 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., and we are unable to estimate the total number of stockholders represented by these record holders.

Dividend Policy

We have not paid dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future. Holders of shares of our Series A Preferred Stock are entitled to receive, when and as declared by our Board, 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, 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 of Series B Preferred Stock or $2.09375 per year per depositary share).

Recent Sales of Unregistered Securities

None.

Issuer Purchases of Equity 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 commercial and pre-commercial therapeutic candidates. Our portfolio was built through the acquisition of rights to future milestones, royalties and commercial payments, since our royalty aggregator business model was implemented in 2017, combined with out-licensing our proprietary products and platforms from our legacy discovery and development business. Our royalty aggregator business is primarily 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 also acquire milestone and royalty revenue streams on late-stage clinical assets and commercial assets that are designed to address unmet markets or have a therapeutic advantage, have long duration of market exclusivity, and are expected to deliver a financial return to us in a short timeframe. We expect most of our future revenue to be based on payments we may receive for milestones and royalties associated with these programs.

The generation of future revenues related to licenses, milestone payments, and royalties is dependent on the achievement of milestones or product sales by our existing licensees. We generated a net loss of $40.8 million and net cash used in operating activities was $18.2 million for the year ended December 31, 2023, and we had an accumulated deficit of $1.2 billion as of December 31, 2023. We generated a net loss of $17.1 million and net cash used in operating activities was $12.9 million for the year ended December 31, 2022.

Significant Business Developments

Kinnate Acquisition

On February 16, 2024, we entered into an agreement to acquire Kinnate for a base cash purchase price of $2.3352 per share and an additional cash payment amount of up to $0.2527 per share upon the closing of the merger plus a non-transferable contingent value right per share, representing the right to receive 85% of the net proceeds, if any, from any out license or sale of the Kinnate programs effected within one year of closing of the merger and 100% of the net proceeds, if any, from any out license or sale of certain Kinnate programs entered into prior to the closing of the merger. We expect this acquisition to provide additional cash to our balance sheet and potentially add several programs to our portfolio. This merger is expected to close in April 2024.

Blue Owl Loan Agreement

On December 15, 2023, our wholly owned subsidiary, XRL, entered into the Blue Owl Loan Agreement, pursuant to which we borrowed $130.0 million. We received a net cash amount of $119.6 million after the payment of $4.1 million in fees and lender expenses and $6.3 million that was deposited into reserve accounts to pay interest, administrative fees and XRL's operating expenses. We also incurred $0.6 million in direct issuance costs related to the Blue Owl Loan Agreement. The Blue Owl Loan is secured by, and is expected to be repaid based upon, commercial payments from Roche's VABYSMO, pursuant to the Affitech CPPA (see Note 8 to the consolidated financial statements). The carrying value of the short and long-term portion of the initial term loan was $5.5 million and $118.5 million, respectively as of December 31, 2023.

In connection with the Blue Owl Loan Agreement, we issued warrants to certain funds associated with Blue Owl to purchase (i) up to 40,000 shares of our common stock at an exercise price of $35.00 per share; (ii) up to 40,000 shares of our common stock at an exercise price of $42.50 per share; and (iii) up to 40,000 shares of our common stock at an exercise price of $50.00 per share (collectively, the "Blue Owl Warrants") (see Note 12 to the consolidated financial statements).

Owen Hughes Appointed as Chief Executive Officer

On January 7, 2024, the Board appointed Owen Hughes as our Chief Executive Officer (principal executive officer) and Jack L. Wyszomierski as Chairman of the Board. Mr. Hughes previously served as our Executive Chairman and Interim Chief Executive Officer beginning on January 1, 2023. In connection with his appointment, Mr. Hughes will receive an annual base salary of $575,000 and will be eligible to receive an annual discretionary cash bonus with a target amount equal to 60% of his annual base salary upon the achievement of annual performance milestones to be established by the Board.

Stock Repurchase Program

In January 2024, our Board authorized our first stock repurchase program, which permits us to purchase up to $50.0 million of our common stock through January 2027. Under the program, we have discretion in determining the conditions under which shares may be purchased from time to time, including through transactions in the open market, in privately negotiated transactions, under plans compliant with Rule 10b5-1 under the Exchange Act, as part of accelerated share repurchases or by other means in accordance with applicable laws. The manner, number, price, structure, and timing of the repurchases, if any, will be determined at our sole discretion and repurchases, if any, depend on a variety of factors, including legal requirements, price and economic and market conditions, royalty and milestone acquisition opportunities, and other factors. The repurchase authorization does not obligate us to acquire any particular amount of our common stock. The Board may suspend, modify, or terminate the stock repurchase program at any time without prior notice. As of March 4, 2024, we have purchased 660 shares of common stock pursuant to this stock repurchase program.

Portfolio Updates – Royalty and Commercial Payment Purchase Agreements

Talphera Commercial Payment Purchase Agreement

In January 2024, we acquired an economic interest in DSUVIA from Talphera, for $8.0 million. DSUVIA was approved in 2018 by the FDA for use in adults in certified medically supervised healthcare settings. In April 2023, Talphera divested DSUVIA to Alora Pharmaceuticals for an upfront payment, a 15% royalty on commercial net sales, a 75% royalty on net sales to the DoD, and up to $116.5 million in milestone payments. Under the terms of the agreement, we are entitled to receive 100% of all royalties and milestones related to DSUVIA sales until we receive $20.0 million. Once we receive $20.0 million, the 75% royalties generated from DoD purchases and the remaining $116.5 million in potential milestone payments due from Alora will be shared equally between us and Talphera. We will fully retain the 15% royalty associated with DSUVIA commercial sales.

LadRx Agreements

In June 2023, we entered into the LadRx AAA pursuant to the which we acquired from LadRx all of its rights, title and interests related to arimoclomol under the Zevra RPA. We also entered into the LadRx RPA, pursuant to which we acquired the right to receive all of the future royalties, regulatory and commercial milestone payments as well as other related payments due to LadRx from ImmunityBio related to aldoxorubicin under the ImmunityBio License Agreement. The purchased rights related to arimoclomol include potential regulatory and commercial milestone payments of up to $52.5 million (net of certain payment obligations of up to $9.5 million based on a portion of the regulatory and commercial milestone payments) and potential royalty payments in low single-digit percentages of aggregate net sales associated with arimoclomol. The purchased payments related to aldoxorubicin include potential regulatory and commercial milestone payments of up to $342.7 million and royalty payments on aggregate net sales of aldoxorubicin in the low to mid-teens for sales of orphan indications and mid to high single-digit percentages for sales of other licensed products. Upon closing of the LadRx Agreements, we paid LadRx an upfront payment of $5.0 million.

In January 2024, Zevra announced the FDA accepted its NDA resubmission for arimoclomol, and pursuant to the LadRx RPA, we paid LadRx a $1.0 million milestone payment in January 2024. We may pay up to an additional $1.0 million commercial milestone related to arimoclomol and an additional $4.0 million regulatory milestone related to aldoxorubicin.

Viracta Royalty Purchase Agreement

In October 2023, we earned a $5.0 million milestone payment related to the FDA's acceptance of Day One Biopharmaceuticals' NDA for tovorafenib as a monotherapy in relapsed or progressive pediatric low-grade glioma.

Affitech Commercial Payment Purchase Agreement

Pursuant to our Affitech CPPA, we are eligible to receive commercial payments from Roche consisting of 0.5% of net sales of VABYSMO for a ten-year period following the first commercial sale in each applicable jurisdiction. In 2022, VABYSMO was approved by the FDA and the EMA for the treatment of wet, or neovascular, age-related macular degeneration and diabetic macular edema. In October 2023, the FDA approved VABYSMO for the treatment of retinal vein occlusion.

Payments are due from Roche within 60 days of December 31 and June 30 of each year. In 2023 and 2022, we received commercial payments totaling $7.3 million and $0.5 million, respectively, and in February 2024, we received $7.4 million. Based on net sales of VABYSMO in 2023, we paid Affitech sales milestones totaling $6.0 million in March 2024, and we may pay up to an additional $6.0 million in milestones based on the achievement of certain sales thresholds in future periods.

Aptevo Commercial Payment Purchase Agreement

In March 2023, we entered into the Aptevo CPPA, pursuant to which we acquired the full commercial payment stream and a portion of the milestone rights to IXINITY, which is marketed by Medexus for the control and prevention of bleeding episodes and postoperative management in people with Hemophilia B. We are eligible to receive a mid-single digit percentage payment stream on all IXINITY sales from January 1, 2023 until the first quarter of 2035, and also expect to be entitled to receive milestone payments. Under the terms of the Aptevo CPPA, in 2023 we paid Aptevo a $9.6 million upfront payment plus a $50,000 one-time payment when the first commercial payment exceeded $0.5 million. In 2023, we received $1.7 million in commercial payments pursuant to this agreement.

ObsEva IP Acquisition Agreement

In October 2023, Organon notified us of its intent to terminate the Organon License Agreement effective as of January 21, 2024, which we assumed pursuant to the ObsEva IP Acquisition Agreement dated November 21, 2022. We were not entitled to any milestone payments with respect to any milestone achieved by Organon following the termination date. We evaluated the related intangible asset balance for impairment in the fourth quarter of 2023 and recorded an impairment charge of $14.2 million as of December 31, 2023 (see note 4 to the consolidated financial statements).

Bioasis Royalty Purchase Agreement

In June 2023, Bioasis announced the suspension of all of its operations and the termination of the research collaboration and license agreement between Bioasis and Chiesi. We do not expect to receive any milestone, royalty or other payments under the Biosis RPA or Second Bioasis RPA and accordingly, we recorded an impairment charge of $1.6 million in the second quarter of 2023.

Portfolio Updates - License and Collaboration Agreements

In April 2023, we earned a $0.5 million milestone payment from Janssen, upon dosing of the first patient in a Phase 3 clinical trial evaluating one of Janssen's biologic assets. In addition, during 2023, we also earned $1.0 million in milestone payments for five additional milestones related to IND filings, pursuant to our agreement with Janssen.

Critical Accounting Estimates

The preparation of financial statements in accordance with 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 routinely evaluate our estimates. 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 milestone payments, royalties and option fees on sales of products currently in clinical development or recently commercialized. We acquire such rights from various entities and record 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 (see Note 5 to the consolidated financial statements).

Receivables

We account for milestone and royalty rights related to developmental pipeline or recently commercialized products on a non-accrual basis using the cost recovery method. Except for VABYSMO and IXINITY, our other developmental pipeline products are non-commercialized, non-approved products that require FDA or other regulatory approval, and thus have uncertain cash flows. 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. In October 2023, the FDA approved VABYSMO for the treatment of retinal vein occlusion. As of December 31, 2023, these recently commercialized products have not yet established a reliable sales pattern under the respective royalty term. The carrying balances of receivables for VABYSMO and IXINITY are classified as current receivables based on whether payments to be received in the near term are presumed to become probable and reasonably estimable. 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 milestones, fees upon exercise of options related to future licensed products and sales-based milestones. The contingent payments are evaluated to determine if 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 during each reporting period. Any changes in the estimated fair value are recorded in the consolidated statements of operations and comprehensive loss. Contingent consideration payments that do not fall within the scope of ASC 815 are recognized when the amount is probable and estimable according to ASC 450.

Allowance for Current Expected Credit Losses

We review our allowance for current expected credit losses for impairment on a quarterly basis based on 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. In June 2023, Bioasis announced the suspension of all its operations and the termination of the research collaboration and license agreement between Bioasis and Chiesi and, as a result, we recorded an impairment charge of $1.6 million (see Note 5 to the consolidated financial statements).

Intangible Assets

Our intangible assets consist of IP acquired in the ObsEva IP Acquisition Agreement in 2022. We review our intangible assets 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. In October 2023, Organon notified us of its intent to terminate the Organon License Agreement effective as of January 21, 2024, which we assumed pursuant to the ObsEva IP Acquisition Agreement. As such, in the fourth quarter of 2023 we recorded an impairment charge of $14.2 million (see Note 4 to the consolidated financial statements).

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 on 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 expense 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 U.S. Treasury zero-coupon issues. Forfeitures are recognized as they occur.

The grant date fair values of PSUs with market conditions are determined using the Monte Carlo valuation model. This model requires highly complex and subjective inputs, such as probability estimates. We record compensation expense for PSUs based on graded expense attribution over the requisite service periods.

We review our valuation assumptions quarterly and update our valuation assumptions used to value stock-based awards granted in future periods utilizing then-current data. In future periods, as additional empirical evidence regarding 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, 2023 and 2022, were as follows (in thousands):

	Year Ended December 31,		
	2023	2022	Change
Revenue from contracts with customers	$ 2,650	$ 4,150	$ (1,500)
Revenue recognized under units-of-revenue method	2,108	1,877	231
Total revenues	$ 4,758	$ 6,027	$ (1,269)

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. Revenue from contracts with customers for the year ended December 31, 2023 primarily included milestone payments of $1.5 million and $1.0 million pursuant to the license agreements with Janssen and an undisclosed licensee, respectively. Revenue from contracts with customers for the

year ended December 31, 2022 primarily included milestone payments 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 an undisclosed licensee and $0.5 million pursuant to our Sonnet Collaboration Agreement.

Revenue Recognized under Units-of-Revenue Method

Revenue recognized under the units-of-revenue method includes the amortization of unearned revenue from the sale of royalty interests to HCRP in 2016. The increase for the year ended December 31, 2023 compared with the year ended December 31, 2022 was due to increased sales of products underlying the agreements with HCRP.

R&D Expenses

R&D expense was $0.1 million for the year ended December 31, 2023, which was consistent with $0.2 million for the year ended December 31, 2022. We expect our R&D expenses to increase in 2024 related to our acquisition of Kinnate.

G&A Expenses

G&A expenses include salaries and related personnel costs, professional fees, and facilities costs. For the year ended December 31, 2023, G&A expenses were $25.6 million compared with $23.2 million for the year ended December 31, 2022. The increase of $2.4 million was primarily due to a $5.5 million increase in stock-based compensation, partially offset by a $2.1 million decrease in consulting and legal expenses and a $0.9 million decrease in salaries and related expenses. We expect G&A expenses to increase in 2024 due to the appointment of Mr. Hughes as our full-time Chief Executive Officer in January 2024. We expect G&A expenses to further increase due to an anticipated increase in activity related to our evaluation of potential royalty acquisitions.

Impairment Charges

Impairment charges of $15.8 million for the year ended December 31, 2023 consisted of the impairment recorded related to our Bioasis RPAs of $1.6 million in the second quarter of 2023 and the impairment of our ObsEva intangible asset of $14.2 million in the fourth quarter of 2023.

Arbitration Settlement Costs

Arbitration settlement costs of $4.1 million for the year ended December 31, 2023 consisted of the costs incurred related to the settlement of an arbitration proceeding with one of our licensees in the first quarter of 2023.

Other Income (Expense)

Interest Expense

The accretion of debt discount and debt issuance costs is included in interest expense. Interest expense is shown below for the years ended December 31, 2023 and 2022 (in thousands):

	Year Ended December 31,		
	2023	2022	Change
Accrued interest expense	$ 535	$ —	$ 535
Accretion of debt discount and debt issuance costs	34	—	34
Total interest expense	$ 569	$ —	$ 569

For the periods presented, we had no debt outstanding or interest expense incurred until we executed the Blue Owl Loan Agreement on December 15, 2023. The $0.6 million interest expense reported for the year ended December

31, 2023, represents interest incurred on the Blue Owl Loan since its inception. Interest expense is expected to increase in future years so long as the Blue Owl Loan remains outstanding.

Other Income (Expense), Net

The following table shows our activity in other income (expense), net for the years ended December 31, 2023 and 2022 (in thousands):

	Year Ended December 31,		
	2023	2022	Change
Other income (expense), net			
Investment income	$ 1,685	$ 694	$ 991
Change in fair value of equity securities	(174)	(439)	265
Change in fair value of contingent consideration	75	—	75
Other	—	40	(40)
Total other income (expense), net	$ 1,586	$ 295	$ 1,291

Investment income increased by $1.0 million for the year ended December 31, 2023 compared with the year ended December 31, 2022 due to higher market interest rates. For the years ended December 31, 2023 and 2022, the change in fair value of equity securities was due to the change in market price of shares of Rezolute's common stock. For the year ended December 31, 2023, the change in fair value of contingent consideration was due to the reduction in the fair value of the $75,000 contingent consideration to zero related to the Bioasis RPA (see Note 5 to the consolidated financial statements).

Provision for Income Taxes

We recorded no income tax provision for the year ended December 31, 2023 and an income tax benefit of $15,000 for the year ended December 31, 2022. 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 and cash equivalents, our working capital and our cash flow activities as of and for each of the periods presented (in thousands):

	Year Ended December 31,		
	2023	2022	Change
Unrestricted cash and cash equivalents	$ 153,290	$ 57,826	$ 95,464
Working capital	$ 149,814	$ 54,435	$ 95,379

	Year Ended December 31,		
	2023	2022	Change
Net cash used in operating activities	$ (18,158)	$ (12,879)	$ (5,279)
Net cash used in investing activities	(711)	(20,221)	19,510
Net provided by (used in) financing activities	120,593	(4,451)	125,044
Net increase (decrease) in cash, cash equivalents and restricted cash	$ 101,724	$ (37,551)	$ 139,275

Net cash used in operating activities for the year ended December 31, 2023 was $18.2 million and primarily included our operating expenses of $46.6 million partially offset by non-cash expenses of $26.2 million, which primarily

included stock-based compensation of $9.1 million and impairment charges of $15.8 million, a $1.5 million milestone payment received from Janssen and a $1.0 million milestone payment received from an undisclosed licensee. Net cash used in operating activities for the year ended December 31, 2022 was $12.9 million and primarily included our operating expenses of $23.4 million, partially offset by non-cash expenses of $4.4 million, which primarily included 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 an undisclosed licensee.

Net cash used in investing activities for the year ended December 31, 2023 was $0.7 million, and primarily included a $9.6 million payment to Aptevo for the acquisition of payment rights pursuant to the Aptevo CPPA in March 2023 and a $5.0 million payment to LadRx for the acquisition of payment rights pursuant to the LadRx Agreements in June 2023, partially offset by $7.3 million in commercial payments from sales of VABYSMO, $1.7 million in commercial payments from sales attributable to IXINITY and $5.0 million in milestone payments pursuant to the Viracta RPA. Net cash used in investing activities for the year ended December 31, 2022 was $20.2 million, and primarily included $15.2 million paid for the IP acquired pursuant to the ObsEva IP Acquisition Agreement in November 2022 and $8.0 million of regulatory milestone payments pursuant to the Affitech CPPA, partially offset by a $2.5 million milestone payment received from Kuros in July 2022 and a $0.5 million commercial payment received from Roche in August 2022.

Net cash provided by financing activities for the year ended December 31, 2023 was $120.6 million and primarily included net proceeds of $125.7 million after the payment of $4.3 million of debt issuance costs and fees paid related to the Blue Owl Loan, partially offset by a payment of dividends of $5.5 million on our Series A and Series B Preferred Stock. Net cash used in financing activities for the year ended December 31, 2022 was $4.5 million and primarily included 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.

Capital Resources

We have incurred significant operating losses since our inception and as of December 31, 2023, we had an accumulated deficit of $1.2 billion. As of December 31, 2023, we had $153.3 million in unrestricted cash and cash equivalents and $6.3 in restricted cash. Based on our current cash balance and our planned discretionary spending, such as royalty acquisitions, we believe that our current financial resources are 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 debt facilities, the issuance of our common stock, Series A and Series B Preferred Stock, and amounts received as milestone payments under our license agreements. In December 2023, XRL entered into the Blue Owl Loan Agreement (see further details below in “Long-Term Debt”). We intend to use the net cash received from the Blue Owl Loan, together with our existing capital resources, to fund our ongoing company operations, to repurchase common stock and for working capital and other general corporate purposes.

The generation of future revenues related to licenses, milestone payments, and royalties is dependent on the achievement of milestones or product sales by our existing licensees. Milestone payments earned in the years ended December 31, 2022 and 2023 are not indicative of anticipated milestone payments in future periods. We may seek additional capital through our 2018 Common Stock ATM Agreement or our 2021 Series B Preferred Stock ATM Agreement (see Note 12 to 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 whether were are able to raise such additional capital at a price or on terms that are favorable to us, if at all. 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:

Operating expenditures: Our primary uses of cash and our operating expenses include employee and related costs, consultant fees to support our administrative and business development efforts, legal and accounting fees, insurance

costs and costs associated with our investor relations and IT services. Our planned spending includes increased personnel-related costs associated with the appointment of Mr. Hughes to Chief Executive Officer in a full-time capacity.

To support our royalty aggregator business model, we engage third parties to assist in the evaluation of potential acquisitions of milestone payments and royalty streams. Additional operating expenses, including consulting and legal costs, may increase in 2024 in response to an anticipated increase in the volume of acquisition targets evaluated or completed.

In June 2023 we entered into a lease for our headquarters in Emeryville, California. The lease commenced in November 2023 and has a term of 65 months. As of December 31, 2023, we expect to incur incremental undiscounted costs of $0.5 million associated with our building lease.

Long-Term Debt: Under the Blue Owl Loan Agreement, the outstanding principal balance will bear interest at an annual rate of 9.875%. XRL is expected to make payments of interest under the Blue Owl Loan Agreement semi-annually, beginning in March 2024 using the royalties received on worldwide net sales of VABYSMO, pursuant to the Affitech CPPA. On each interest payment date, any shortfall in interest payment will be paid from the interest reserve, any uncured shortfall in interest payment that exceeds the interest reserve will increase the outstanding principal amount of the loan, and any royalty payments in excess of accrued interest on the loan will be used to repay the principal of the loan until the balance is fully repaid. As of December 31, 2023, XRL held restricted cash of $6.3 million in reserve accounts that may only be used to pay interest and administrative fees and XRL's operating expenses pursuant to the Blue Owl Loan Agreement. As of December 31, 2023, the current and non-current portion of the initial term loan was $5.5 million and $118.5 million, respectively, and $0.2 million and $6.1 million of the restricted cash is classified as current and non-current, respectively.

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

We have potential contingent consideration of $7.0 million recorded on our consolidated balance sheets as of December 31, 2023, which consists of $6.0 million for sales milestones due under our agreement with Affitech and $1.0 million for a milestone payment due under our agreement with LadRx. We have up to an additional $6.0 million and $5.0 million in milestone payments that may become due under the Affitech CPPA and LadRx Agreement, respectively.

In addition, we have potential sales-based milestone payments that may become due under our agreements with Aronora and Kuros. 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 we expect these payments to be fully funded by the related royalty or commercial payment receipts.

Collaborative Agreements, Royalties and Milestone Payments: We may need to make potential future milestone payments and pay legal fees to third parties as part of our 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, 2023. 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. We expect all payments due to be funded by a portion of the related milestone or royalty revenue we receive or we expect these payments to be reimbursed by our licensees.

Dividends: Holders of our Series A Preferred Stock are entitled to receive, when and as declared by our Board, 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, 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 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 Chief Executive Officer (our principal executive officer) and our Senior Vice President, Finance and Chief Financial Officer (our principal financial and accounting officer), we conducted an evaluation of our disclosure controls and procedures, as defined in Exchange Act Rules 13a-15(e) and 15d-15(e), as of the end of the period covered by this report. Our disclosure controls and procedures are intended to help ensure that the information we are required to disclose in the reports that we file or submit under the Exchange Act 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 our Chief Executive Officer and Senior Vice President, Finance and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures. Based on this evaluation, our Chief Executive Officer 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 Chief 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 defined in Exchange Act Rules 13a-15(f) and 15d-15(f)). The Company's internal control system was designed to provide reasonable assurance to our management and Board regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with accounting principles generally accepted in the U.S.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2023. 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 this assessment, management concluded that, as of December 31, 2023, our internal control over financial reporting was effective.

This Annual Report does not include an attestation report from our registered public accounting firm regarding our internal control over financial reporting due to an exemption for "non-accelerated filers."

Changes in Internal Control over Financial Reporting

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

Item 9B. OTHER INFORMATION

(b) Trading Plans

During the fiscal quarter ended December 31, 2023, no director or Section 16 officer adopted or terminated any Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement (in each case, as defined in Item 408(a) of Regulation S-K).

Item 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Directors

Our Board currently consists of seven members. The following is a brief biography of each member of our Board. There are no family relationships among any of our directors or executive officers.

Name	Title	Age
Owen Hughes	Chief Executive Officer	49
Jack L. Wyszomierski	Chairman of the Board	68
Heather L. Franklin	Director	58
Natasha Hernday	Director	52
Barbara Kosacz	Director	66
Joseph M. Limber	Director	71
Matthew Perry	Director	51

Owen Hughes was appointed full-time Chief Executive Officer in January 2024 after serving as our Executive Chairman of the Board and Interim Chief Executive Officer since January 2023. Mr. Hughes has served as the Chief Executive Officer of Sail Bio, Inc., a private biotechnology company focused on addressing toxic proteinopathies, since February 2022 and served as the Chief Executive Officer and co-founder of Cullinan Oncology, Inc., a publicly-traded oncology company, from September 2017 to October 2021. Previously, Mr. Hughes served as the Chief Business Officer and Head of Corporate Development at Intarcia Therapeutics, Inc., a biotechnology company focused on type II diabetes, from February 2013 to August 2017. Prior to his operating roles, Mr. Hughes spent 16 years on Wall Street in various capacities, including roles at Brookside Capital, an operating division of Bain Capital and Pyramis Global Advisors, a Fidelity Investments Company. Mr. Hughes has served on the Board of Ikena Oncology, Inc., a publicly-traded oncology

company, since December 2022 and as a member of the Board of Directors of C4 Therapeutics since December 2023. Mr. Hughes served on the Board of Radius Health, Inc., a publicly-traded biopharmaceutical company, from April 2013 to August 2022 until its sale to Gurnet Point Capital and Patient Square Capital; Translate Bio, Inc., a messenger RNA therapeutics company, from July 2016 until its acquisition by Sanofi in September 2021; and FS Development Corp. II, a special purpose acquisition company sponsored by Foresite Capital, from February 2021 to December 2021. Mr. Hughes received a B.A. in History from Dartmouth College. Mr. Hughes has significant experience with biopharmaceutical companies and brings the unique perspective of the Chief Executive Officer of the Company to the Board.

Heather L. Franklin has been a director since August 2021. Ms. Franklin has over 30 years of broad biotechnology expertise. She founded Blaze Bioscience, Inc. in 2011 and has led the company from its infancy to becoming a late clinical stage company. She has served as its Executive Board Chair since January 2024 and served as its President and Chief Executive Officer from 2011 through 2023. Prior to establishing Blaze, Ms. Franklin spent 10 years at ZymoGenetics in positions of increasing responsibility, ultimately serving as senior vice president, business development. She was a member of the executive management team and was responsible for business development including structuring and negotiating in- and out-licenses and collaboration agreements for products at all stages of development from research through commercial. Her other responsibilities included alliance management, strategic planning, portfolio management and pipeline marketing. Earlier in her career, she held roles in program management at Amgen and Targeted Genetics. Ms. Franklin received her M.B.A. from The Wharton School of the University of Pennsylvania, her M.S. from the University of Washington and her B.S. from University of North Carolina at Chapel Hill. Ms. Franklin brings to the Board extensive executive management experience including early to late-stage licensing expertise and financial oversight in the biotechnology industry.

Natasha Hernday has been a director since July 2020. Ms. Hernday was the Chief Business Officer and a member of the Executive Committee for the publicly traded biotechnology company Seagen, Inc., where she worked from 2011 to 2023. She helped execute the sale of Seagen to Pfizer in 2023 and was a member of the executive integration planning team to merge the two oncology businesses. From 1994 through 2010, after starting her career in molecular and mammalian cell biology, Ms. Hernday served in various roles of increasing responsibility at Amgen Inc., including as Director, Mergers & Acquisitions and as Director, Out-Partnering. She serves on the Board for Alpine Immune Sciences, Inc. and on the Knight Campus External Advisory Board for the University of Oregon. Ms. Hernday previously served on the Board of PDL BioPharma, Inc. Ms. Hernday received her BA in microbiology from the University of California at Santa Barbara and M.B.A. from Pepperdine University. Ms. Hernday brings to the Board extensive experience in advising biotechnology companies on matters of leadership, corporate strategy, collaborations and acquisition.

Barbara Kosacz has been a director since January 2019. From July 2020 until February 2024, Ms. Kosacz served as Chief Operating Officer and General Counsel of Kronos Bio, Inc., where she continues as a strategic advisor. Ms. Kosacz was previously a partner at Cooley LLP since 2002, where she currently serves as a Senior Counsel, and has more than 25 years of experience in counseling clients in the life sciences arena, ranging from early-stage startups to larger public companies, venture funds, investment banks and non-profit institutions. She serves on the Board of Directors of Athira Pharma, Inc., where she serves as Chair of the compensation committee, and has also served on the Board of Directors of Phoenix Biotech Acquisition Corp., Locus Walk Acquisition Corp., and Arsenal Biosciences, Inc. She also has served as a member of the BIO Emerging Companies' Section Governing Board, the Board of Trustees of the Keck Graduate Institute, and the advisory board of Locust Walk Partners. Ms. Kosacz has been a speaker at multiple life sciences-related conferences, as well as guest lecturer at the University of California, Berkeley School of Law, Stanford University, the University of Pennsylvania and Columbia University on biotechnology law, biotech business models, corporate partnering negotiations and deal structures and bioethics. Recognized by Best Lawyers in America since 2008, Ms. Kosacz and was listed as a "leading lawyer" for healthcare and life sciences in the 2018 Legal 500, as a "Band 1" attorney in the 2018 edition of Chambers USA: America's Leading Lawyers for Business and recognized as a "highly recommended transactions" lawyer by IAM Patent 1000 for her "nearly three decades advising diverse companies in the industry at a deeply strategic and commercial level and overseeing their most complex and profitable deals." She received her Juris Doctor degree from the University of California, Berkeley School of Law, and her bachelor's degree from Stanford University. Ms. Kosacz brings extensive experience in structuring and negotiating strategic combinations and business development transactions and advising biotechnology companies to the Board.

Joseph M. Limber has been a director since December 2012. Mr. Limber currently serves as President and Chief Executive Officer and a member of the Board of Secura Bio, Inc., a position he has held since February 2019. Prior to that, Mr. Limber served as President and Chief Executive Officer of Genoptix, Inc. from March 2017 through December 2018. Mr. Limber served as Executive Chairman of ImaginAb from January 2016 through November 2017. Mr. Limber served as President and Chief Executive Officer of Gradalis, Inc. from July 2013 through April 2015. Mr. Limber served as President and Chief Executive Officer of Prometheus Laboratories Inc., a subsidiary of Nestlé Health Science, from December 2003 through April 2013 and as a member of its Board from January 2004 through April 2013. From January 2003 to July 2003, Mr. Limber was a consultant and interim Chief Executive Officer for Deltagen, Inc., a provider of drug discovery tools and services to the biopharmaceutical industry. From April 1998 to December 2002, Mr. Limber was the President and Chief Executive Officer of ACLARA BioSciences, Inc. (now Monogram Biosciences, Inc.), a developer of assay technologies and lab-on-a-chip systems for life science research. From 1996 to 1998, he was the President and Chief Operating Officer of Praecis Pharmaceuticals, Inc. (acquired by GlaxoSmithKline plc), a biotechnology company focused on the discovery and development of pharmaceutical products. Prior to Praecis, Mr. Limber served as Executive Vice President of SEQUUS Pharmaceuticals, Inc. (acquired by Alza Corporation and now part of the Johnson & Johnson family of companies). He also held management positions in marketing and sales with Syntex Corporation (now F. Hoffmann-La Roche Ltd.) and with Ciba-Geigy Corporation (now Novartis AG). Mr. Limber holds a B.A. from Duquesne University. Mr. Limber brings to the Board his experience in successfully developing markets for specialty pharmaceutical products and managing the critical transition from research organization to commercial entity.

Matthew Perry has been a director since February 2017. Mr. Perry was the President of Biotechnology Value Fund Partners L.P. ("BVF") and portfolio manager for the underlying funds managed by the firm. BVF Partners is a private investment partnership that has focused on small-cap, value-oriented investment opportunities for more than 20 years. Mr. Perry joined BVF Partners in December 1996 and has been a successful lead investor in dozens of transactions. He has positively influenced corporate direction for numerous biotechnology companies during the course of his career. In January 2016, Mr. Perry was named to CTI BioPharma Corp.'s Board and was a member of its Compensation Committee until the company was sold in June 2023.. Mr. Perry is also a co-founder and director of Nordic Biotech Advisors ApS, a venture capital firm based in Copenhagen, Denmark. He holds a B.S. degree from the Biology Department at the College of William and Mary. Mr. Perry brings extensive management consulting experience and experience investing in biotechnology companies to the Board.

Jack L. Wyszomierski has been a director since August 2010 and was appointed Chairman of the Board in January 2024. From 2004 until his retirement in 2009, Mr. Wyszomierski was Executive Vice President and Chief Financial Officer of VWR International, LLC, a global laboratory supply, equipment and distribution business that serves the world's pharmaceutical and biotechnology companies, as well as industrial and governmental organizations. At Schering-Plough, a global health care company which had worldwide sales of over $8 billion in 2004, Mr. Wyszomierski held positions of increasing responsibility from 1982 to 2004 culminating in his appointment as Executive Vice President and Chief Financial Officer. Mr. Wyszomierski also serves on the Board of Athersys, Inc., Exelixis, Inc. and SiteOne Landscape Supply, Inc., and served on the Board of Unigene Laboratories, Inc. from 2012 to 2013. He holds an M.S. in Industrial Administration and a B.S. in Administration, Management Science and Economics from Carnegie Mellon University. Mr. Wyszomierski brings his considerable financial expertise to the Board, the Audit Committee and the Compensation Committee.

Executive Officers

Biographical and other information regarding our executive officers is set forth below. For Mr. Hughes' biographical information, see "Directors" above.

Thomas Burns, age 50, has been our Senior Vice President, Finance and Chief Financial Officer since March 2017. He joined the Company in August 2006 and since then has held various senior finance and accounting roles. Mr. Burns has over 25 years of experience in accounting and finance in both biotechnology and high-technology companies. Prior to his employment with the Company, he held multiple senior financial management positions at high-technology companies including Mattson Technology, IntruVert Networks (acquired by McAfee), Niku Corporation (acquired by Computer Associates) and Conner Technology. Mr. Burns received his M.B.A. from Golden Gate University and his Bachelor's degree from Santa Clara University.

Bradley Sitko, age 43, has been our Chief Investment Officer since January 2023. Mr. Sitko served as Managing Director, Strategic Finance, at RTW Investments, LP, a global, full life-cycle investment firm in the biopharmaceutical and medical technology sectors from November 2019 to January 2023 where he led the royalty monetization, structured finance and alternatives efforts of the firm. He also served as a member of the Board of such firm's Irish collective asset-management vehicle (ICAV), RTW Investments ICAV. During that same time, he was Chief Financial Officer of Ji Xing Pharmaceuticals Limited, a Shanghai-based biopharmaceutical company, incubated by RTW Investments, LP with responsibilities involving company formation, scaling operations, fundraising, and in-licensing of biotech assets. From March 2015 to November 2019, Mr. Sitko served as Vice President, Finance, Operations and Corporate Development of DNAnexus, Inc., a genetic data management company with responsibilities involving restructuring and recapitalization, fundraising, finance and operations, strategic planning and industry partnerships. Mr. Sitko also served as a Director at MTS Health Partners, an investment bank, from October 2008 to March 2015, where he advised on royalty monetization, financing, restructurings, and mergers and acquisitions within the biopharmaceutical and healthcare services sectors. Mr. Sitko received a B.A. in History and Sociology of Science from the University of Pennsylvania and an M.B.A. from Columbia Business School.

Code of Ethics

The Company has adopted a Code of Ethics that applies to all of our employees, officers and directors including the Chief Executive Officer (principal executive officer) and the Senior Vice President, Finance and Chief Financial Officer (principal financial and principal accounting officer), or persons performing similar functions. Our Code of Ethics 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 certain provisions of the Code of Ethics, or waivers of the Code of Ethics granted to executive officers, by posting such information on our website within four business days following the date of the amendment or waiver.

Delinquent Section 16(a) Reports

Section 16(a) of the Exchange Act requires the Company's directors, officers and persons who beneficially own more than 10% of a registered class of our equity securities to file initial reports of ownership and reports of changes in ownership of our equity securities with the SEC. To our knowledge, based solely on our review of Forms 3, 4 and 5 filed with the SEC or written representations that no Form 5 was required, during the year ended December 31, 2023, we believe that our directors, officers and persons who beneficially own more than 10% of a registered class of our equity securities filed the required reports on a timely basis, except that, due to administrative error, one Form 3 was filed late with respect to Mr. Hughes and one Form 4 to report grants of stock options was filed late with respect to Mr. Sitko.

Audit Committee and Audit Committee Financial Expert

Our Board has a separately designated Audit Committee comprised solely of independent directors. Each of Mr. Limber, Ms. Hernday and Mr. Wyszomierski qualifies as an "audit committee financial expert," as that term is defined in the rules and regulations established by the SEC, and all members of the Audit Committee are "financially literate" under Nasdaq listing rules.

Item 11. EXECUTIVE COMPENSATION

The primary objectives of our executive compensation program are to enable the Company to attract, motivate and retain outstanding individuals and to align their success with that of our stockholders through the creation of stockholder value. We attract and retain executives by providing an executive compensation package that is competitive with the companies with which we compete for talent. We seek to create alignment between executive compensation and the interests of our stockholders through a focus on short-term and long-term incentive compensation programs that tie each executive officer's pay to the Company's near term and longer-term performance.

Summary Compensation Table

The following table sets forth certain summary information for the years indicated concerning the compensation earned by the Company's principal executive officer and the other most highly compensated executive officers during 2023 ("named executive officers").

Name and Principal Position	Year	Salary ($)	Bonus ($) [1]	Stock Awards ($) [2]	Option Awards ($) [3]	Non-Equity Incentive Plan Compensation ($) [4]	All Other Compensation ($)	Total ($)
Owen Hughes[5] Chief Executive Officer	2023	$ 125,000	$ —	$ —	$ 2,288,985	$ 68,750	$ —	$ 2,482,735
Thomas Burns	2023	$ 453,871	$ 112,567	$ 1,509,645	$ —	$ 181,549	$ 11,250 [6]	$ 2,268,882
Senior Vice President, Finance and Chief Financial Officer	2022	$ 424,950	$ —	$ —	$ 470,850	$ 101,988	$ 10,250	$ 1,008,038
Bradley Sitko[7] Chief Investment Officer	2023	$ 500,000	$ 110,000	$ 449,276	$ 7,243,870	$ 250,000	$ 7,083 [8]	$ 8,560,229

(1) Amounts in this column for 2023 include Mr. Sitko's sign-on bonus, as described in more detail under "Employment Agreements and Change of Control Severance Agreements" below, and retention bonus payments made to Mr. Burns in January 2023 of $27,016 and October 2023 of $85,551 pursuant to the Company's Amended Retention Plan.

(2) The amounts in this column represent the aggregate grant date fair value of PSUs, calculated in accordance with FASB ASC Topic 718. See Note 10 to the consolidated financial statements for information regarding assumptions underlying valuation of PSUs.

(3) The amounts in this column represent the aggregate grant date fair value for option awards calculated in accordance with FASB ASC 718. See Note 10 to the consolidated financial statements for information regarding assumptions underlying valuation of option awards.

(4) Amounts in this column for 2023 represent the bonuses earned by the named executive officers under the 2023 Cash Bonus Plan, as described in more detail under "Narrative to Summary Compensation Table—2023 Cash Bonus Plan" below.

(5) Mr. Hughes was appointed Interim Chief Executive Officer effective January 1, 2023, and subsequently appointed Chief Executive Officer on January 7, 2024.

(6) This amount reflects the fair value on the date of contribution of 626 shares of common stock contributed by the Company to Mr. Burns' account under the Deferred Savings Plan (as defined below).

(7) Mr. Sitko was appointed Chief Investment Officer effective January 3, 2023.

(8) This amount reflects the fair value on the date of contribution of 394 shares of common stock contributed by the Company to Mr. Sitko's account under the Deferred Savings Plan (as defined below).

Narrative to Summary Compensation Table

Process for Setting Compensation

Our Compensation Committee has primary responsibility for the implementation and oversight of our executive officer compensation. The Compensation Committee considers the recommendations of Mr. Hughes on the compensation for our executive officers (other than himself) but makes the final determinations regarding executive compensation decisions. Our Compensation Committee has retained the services of Compensia to assist in the development and design of our executive compensation program. In 2023, Compensia developed a peer group to be used by our Compensation Committee in the evaluation of 2023 executive and director compensation determinations. In addition, Compensia presented peer group and industry data with respect to base salaries, target annual bonuses and equity compensation.

Base Salary

Our Compensation Committee recognizes the importance of base salary as an element of compensation that helps to attract and retain our executive officers. We provide base salary as a fixed source of cash compensation to recognize each named executive officer's day-to-day responsibilities, which is designed to provide an appropriate and competitive base level of current cash income for the named executive officers. The 2023 annual base salary of Mr. Burns was determined and approved by the Compensation Committee in February 2023, effective as of January 1, 2023. The annual base salary of Mr. Hughes and Mr. Sitko was approved by the Board in connection with the negotiation of their employment agreements effective January 2023. The 2023 base salaries were as follows:

Name	2023 Base Salary ($)
Owen Hughes[1]	$ 125,000
Thomas Burns	$ 453,871
Bradley Sitko	$ 500,000

(1) Mr. Hughes served in a part-time capacity during 2023.

2023 Cash Bonus Plan

In February 2023, the Board approved the 2023 Cash Bonus Plan for the 2023 fiscal year and approved target bonus opportunities for each named executive officer under the 2023 Cash Bonus Plan as follows:

Name and Principal Position	Target Bonus (as a % of FY23 Base Salary)
Owen Hughes	55 %
Thomas Burns	40 %
Bradley Sitko	50 %

Bonuses under the 2023 Cash Bonus Plan were based 100% upon the Company's achievement of the following corporate objectives: (a) total shareholder return, (b) acquisition of non-dilutive capital and (c) royalty asset acquisitions, each established by the Board in February 2023. The bonuses earned by each named executive officer under the 2023 Cash Bonus Plan set forth in the "Non-Equity Incentive Plan Compensation" column of the Summary Compensation Table above were approved by our Compensation Committee based on achievement of the 2023 corporate objectives at 100% of target.

Equity Compensation

We believe that our ability to grant equity-based awards is a valuable and necessary compensation tool that aligns the long-term financial interests of our executive officers with the financial interests of our stockholders. In addition, we believe that our ability to grant equity-based awards helps us to attract, retain and motivate executive officers, and encourages them to devote their best efforts to our business and financial success.

Inducement Stock Options

Pursuant to the terms of their respective employment agreements, on January 3, 2023, we granted inducement stock options to each of Mr. Hughes and Mr. Sitko in accordance with Nasdaq Listing Rule 5635(c)(4). A portion of the options were granted with an exercise price equal to the closing price on the date of grant, while the remainder were granted with an exercise price of $30.00, an over 60% premium to closing price on such date. The table below sets forth the number of shares subject to each inducement stock option grant:

Name	$18.66 Options	$30.00 Options
Owen Hughes	100,000	75,000
Bradley Sitko	300,000	250,000

The inducement options granted to Mr. Hughes with an $18.66 exercise price vested in four equal quarterly installments through December 31, 2023, and the inducement options granted to Mr. Hughes with a $30.00 exercise price vest in equal monthly installments until January 1, 2026. All of the inducement options granted to Mr. Sitko vest as to 25% on the first anniversary of the date of grant and monthly thereafter through the fourth anniversary of the date of grant.

PSUs

In May 2023, Mr. Burns and Mr. Sitko were granted 91,600 and 30,200 PSUs, respectively, under our 2010 Plan. Vesting of the PSUs requires satisfaction of both a performance requirement and a service-based requirement. The performance requirement is achieved with respect to the number of PSUs set forth in the table below when the volume-weighted average price of our common stock equals or exceeds the prices set forth below for any 30 consecutive calendar-day period prior to the earlier of the third anniversary of the date of grant or the Company's 2026 annual meeting of shareholders:

Name	$30.00 Target	$35.00 Target	$40.00 Target	$45.00 Target	Total PSUs
Thomas M. Burns	53,320	17,770	10,937	9,573	91,600
Bradley Sitko	—	10,067	10,067	10,066	30,200

The service based requirement vests as to one-third on the date the performance requirement is achieved, as to one-third on the later of the second anniversary of the date of grant or the date the performance requirement is achieved, and as to one-third on the later of the third anniversary of the date of grant or the date the performance requirement is achieved, in each case, subject to the named executive officer's continued employment.

In January 2024, pursuant to the terms of Mr. Hughes' amended and restated employment agreement, he was granted 275,000 PSUs under our 2010 Plan with the same terms as the PSUs granted to Mr. Burns in May 2023.

Name	$30.00 Target	$35.00 Target	$40.00 Target	$45.00 Target	Total PSUs
Owen Hughes	160,078	53,350	32,835	28,737	275,000

Outstanding Equity Awards as of December 31, 2023

The following table provides information as of December 31, 2023, regarding unexercised options held by each of our named executive officers.

	Option Awards					Stock Awards	
Name	Date of Grant	Number of Securities Underlying Unexercised Options Exercisable (#)	Number of Securities Underlying Unexercised Options Unexercisable (#)	Option Exercise Price ($)	Option Expiration Date	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested ($)(1)
Owen Hughes	1/3/2023 (2)	100,000	—	$ 18.66	1/3/2033	—	—
	1/3/2023 (3)	22,917	52,083	$ 30.00	1/3/2033		
Thomas M. Burns	2/27/2014	652	—	$ 178.20	2/27/2024	—	—
	6/16/2014	4,350	—	$ 93.20	6/16/2024	—	—
	2/26/2015	1,537	—	$ 76.60	2/26/2025	—	—
	4/3/2015	250	—	$ 70.00	4/3/2025	—	—
	12/22/2016	24,000	—	$ 5.50	12/22/2026	—	—
	2/10/2017	75,778	—	$ 4.03	2/10/2027	—	—
	2/10/2017	15,500	—	$ 4.03	2/10/2027	—	—
	2/10/2017	10,000	—	$ 4.03	2/10/2027	—	—
	2/10/2017	10,000	—	$ 4.03	2/10/2027	—	—
	2/10/2017	7,000	—	$ 4.03	2/10/2027	—	—
	2/14/2018	25,000	—	$ 27.41	2/14/2028	—	—
	2/13/2019	23,000	—	$ 14.33	2/13/2029	—	—
	3/13/2020	22,000	—	$ 18.84	3/13/2030	—	—
	2/17/2021 (3)	18,941	1,114	$ 38.93	2/17/2031	—	—
	2/22/2022 (3)	17,111	10,889	$ 20.22	2/22/2032	—	—
	11/8/2022 (4)	3,973	7,027	$ 18.03	11/8/2032	—	—
	5/18/2023 (5)	—	—	—		91,600	$ 1,694,600
Bradley Sitko	1/3/2023 (6)	—	300,000	$ 18.66	1/3/2033	—	—
	1/3/2023 (6)	—	250,000	$ 30.00	1/3/2033	—	—
	5/18/2023 (5)	—	—	$ —	—	30,200	$ 558,700

(1) Amounts in this column reflect the value of outstanding PSUs as of December 31, 2023, based on a per share price of $18.50, the closing price of our common stock on December 29, 2023, the last trading day of 2023.
(2) These option awards vested in a series of four equal installments on March 31, 2023, June 30, 2023, September 30, 2023 and December 31, 2023.
(3) These option awards vest in equal monthly installments over 36 months following the date of grant.
(4) One-third of the shares subject to the award vested on the first anniversary of the date of grant and the remaining shares vest monthly over the two years thereafter.
(5) These PSUs vest upon achievement of the stock price hurdles and satisfaction of the service requirement described under “Narrative to Summary Compensation Table—Equity Compensation—PSUs” above.
(6) One-fourth of the shares subject to the award vested on the first anniversary of the date of grant and the remaining shares vest monthly over the three years thereafter.

Retirement Benefits

We do not maintain and have not ever maintained a defined benefit pension plan or non-qualified deferred compensation plan. Each of our named executive officers is eligible to participate in the Company's Deferred Savings Plan, a defined contribution retirement plan under Section 401(a) of the Internal Revenue Code of 1986, on the same basis as other eligible employees. Participants may make contributions to defer up to 80% of their eligible compensation (subject to applicable limits). The Company may, at its sole discretion, make matching contributions each plan year, in cash or in shares of common stock. In January 2024, the Company made matching contributions in shares of common stock equal to 50% of each participant's 2023 deferrals. Matching contributions vest on a straight-line at 25% per year of continuous service and a participant is 100% vested after four years of continuous service.

Employment Agreements and Change of Control Severance Arrangements

Owen Hughes Employment Agreement

In connection with his appointment as Interim Chief Executive Officer, we entered into an employment agreement with Mr. Hughes (the "2023 Agreement") pursuant to which he was eligible to receive an annual base salary of $125,000 and a target annual bonus equal to 55% of his base salary. In addition, the 2023 Agreement provided for the grant of inducement stock options, as described in more detail above. In January 2024, Mr. Hughes' employment agreement was amended and restated in connection with his appointment as Chief Executive Officer (the "2024 Agreement"). Under the 2024 Agreement, Mr. Hughes is eligible to receive an annual base salary of $575,000 and a target annual bonus equal to 60% of his annual base salary. In addition, the 2024 Agreement provided for the grant of 275,000 PSUs, as described in more detail above.

Under the 2023 Agreement, if Mr. Hughes' employment has been terminated as a result of the appointment of a new Chief Executive Officer prior to January 1, 2024, then, subject to his execution of a release of claims, he would have been eligible to receive severance in the form of base salary continuation through January 1, 2024. Under the 2024 Agreement, Mr. Hughes is eligible to receive severance benefits in the event of a termination by us without cause, a resignation by Mr. Hughes for good reason or his death or disability, subject to his execution of a release of claims, as follows: (i) 1.0 times his base salary; (ii) any earned but unpaid bonus for the prior year; (iii) a pro-rata portion of his target bonus for the year of termination; (iv) subsidized continued health coverage for up to 12 months; and (v) except in the event of death or disability, 12 months of outplacement services not to exceed $15,000.

However, if the termination without cause or resignation for good reason occurs during the period beginning two months before and ending 12 months after a change in control of the Company, Mr. Hughes would instead be eligible to receive the following severance benefits: (i) 2.0 times his base salary; (ii) any earned but unpaid bonus for the prior year; (iii) 2.0 times his target bonus for the year of termination; (iv) subsidized continued health coverage for up to 24 months; (v) accelerated vesting of 100% of outstanding time-based equity awards, with the post-termination exercise period of any stock options extended for 60 months (or through the remainder of the original maximum term); (vi) accelerated vesting of a pro-rated portion of outstanding performance-based awards, based on actual performance through the date of such termination; and (vii) 12 months of outplacement services not to exceed $15,000.

Thomas Burns Employment Agreement

On August 7, 2017, the Company entered into an amended and restated employment agreement with Mr. Burns, which was subsequently amended on April 4, 2022 and November 1, 2022. Under the employment agreement, upon a termination of Mr. Burns' employment by the Company without cause, due to his death or permanent disability, or upon his resignation for good reason, in each case subject to execution or a release of claims, Mr. Burns will be entitled to: (i) a severance payment equal to 75% of his base salary; (ii) a severance payment equal to the pro-rated portion of his target bonus for the year of termination; (iii) payment of any earned but unpaid bonus for the prior performance period; (iv) if elected, the full cost of continuation coverage under the Company's group health plans for up to nine months; and (v) outplacement services for nine months not to exceed $15,000 in value. Pursuant to his employment agreement, all payments and benefits to Mr. Burns thereunder are subject to his compliance with the confidentiality and non-competition

provisions thereof. Under the amendments to his employment agreement, Mr. Burns was deemed "retirement eligible" for purposes of his equity awards under the terms of his equity award agreements.

Thomas Burns Change of Control Severance Agreement

Mr. Burns has also entered into a change of control severance agreement with the Company, which provides for severance benefits (in lieu of those described under his employment agreement) if his employment is terminated by the Company without cause or if he resigns with good reason, in either case, within two months prior to signing an agreement for a change of control or within 12 months after a change of control. Subject to execution of a release of claims, these severance payments and benefits include: (i) accelerated vesting of 100% of outstanding time-based equity awards, with the post-termination exercise period of any stock options extended for 60 months (or through the remainder of the original maximum term); (ii) accelerated vesting of a pro-rated portion of outstanding performance-based awards, based on actual performance through the date of such termination; (iii) a severance payment equal to 1.5x his base salary and 1.5x his target bonus for the year of termination; (iv) if elected, the full cost of continuation coverage under the Company's group health plans for up to 18 months; and (v) outplacement services for 12 months not to exceed $15,000 in value. The agreement also includes a "better after-tax" provision, pursuant to which payments to Mr. Burns are either reduced or paid in full, whichever results in a greater economic benefit to the executive officer (after calculation of all taxes, including any excise taxes, on such payments).

Under the change of control severance agreement, a "change of control" is generally defined as the occurrence of any of the following events: (i) a merger, amalgamation or acquisition in which the Company is not the surviving or continuing entity, except for a transaction the principal purpose of which is to change the jurisdiction of the Company's organization; (ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company; (iii) any other reorganization or business combination in which 50% or more of the Company's outstanding voting securities are transferred to different holders in a single transaction or series of related transactions; (iv) any approval by the stockholders of the Company of a plan of complete liquidation of the Company; (v) any person becoming the "beneficial owner," directly or indirectly, of securities of the Company representing more than 50% of the total voting power represented by the Company'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 the directors are incumbent directors.

Bradley Sitko Employment Agreement

In connection with his appointment as Chief Investment Officer, we entered into an employment agreement with Mr. Sitko, pursuant to which he was eligible to receive an annual base salary of $500,000, a target annual bonus equal to 50% of his base salary, and a $110,000 signing bonus. The signing bonus was subject to repayment if Mr. Sitko resigned without good reason or was terminated for cause prior to January 3, 2024. In addition, the employment agreement provided for the grant of inducement stock options, as described in more detail above.

Under his employment agreement, Mr. Sitko is eligible to receive severance benefits in the event of a termination by us without cause, a resignation by Mr. Sitko for good reason or his death or disability, subject to his execution of a release of claims, as follows: (i) 1.0 times his base salary; (ii) a pro-rata portion of his target bonus for the year of termination; (iii) any earned but unpaid bonus for the prior year; (iv) subsidized continued health coverage for up to 12 months; and (v) except in the event of death or disability, 12 months of outplacement services not to exceed $15,000.

However, if the termination without cause or resignation for good reason occurs during the period beginning two months before and ending 12 months after a change in control of the Company, Mr. Sitko would instead be eligible to receive the following severance benefits: (i) 1.5 times his base salary; (ii) 1.5 times his target bonus for the year of termination; (iii) any earned but unpaid bonus for the prior year; (iv) subsidized continued health coverage for up to 18 months; (v) accelerated vesting of 100% of outstanding time-based equity awards, with the post-termination exercise period of any stock options extended for 60 months (or through the remainder of the original maximum term); (vi) accelerated vesting of a pro-rated portion of outstanding performance-based awards, based on actual performance through the date of such termination; and (vii) 12 months of outplacement services not to exceed $15,000.

Director Compensation

Our director compensation program is designed to attract and retain non-employee directors while aligning the interests of our non-employee directors with those of our stockholders. Our Compensation Committee, in consultation with Compensia, evaluates our director compensation policy on an annual basis in consideration of the director compensation programs at the companies in our Peer Group.

Director Compensation Policy

After consultation with Compensia and pursuant to the compensation review process described above, the Compensation Committee made certain changes to the non-employee director compensation program which were effective as of May 17, 2023. Specifically, the annual equity grant to continuing directors was increased from $100,000 to $150,000.

During 2023, each non-employee director was entitled to receive an annual retainer of $40,000, plus an additional (1) $20,000, in the case of the Chair of the Audit Committee, (2) $9,000, in the case of any other member of the Audit Committee, (3) $15,000, in the case of the Chair of the Compensation Committee, (4) $7,500, in the case of any other member of the Compensation Committee, (5) $12,000, in the case of the Chair of the Nominating & Governance Committee, (6) $6,000, in the case of any other member of the Nominating & Governance Committee and (7) $40,000, in the case of the Chairman of the Board or Lead Independent Director. The Company's directors do not receive meeting fees.

Each non-employee director whose service continues following the annual meeting is entitled to receive an annual option grant valued at $150,000 that vests monthly over one year. Each new non-employee director is entitled to receive an initial option grant valued at $250,000 that vests monthly over three years and a pro-rata portion of the annual option grant that vests monthly from grant date until the next annual grant.

Directors who are employees of the Company receive no additional compensation for services as members of the Board.

The 2010 Plan limits director compensation, including cash fees and the grant date fair value of any stock awards, to $750,000 for each calendar year.

Director Compensation Table

The table below sets forth the 2023 compensation for non-employee directors who served at any time during 2023.

Name	Fees Earned or Paid in Cash ($)	Option Awards ($)[1]	Total
Heather L. Franklin	$ 53,912	$ 150,037	$ 203,949
Natasha Hernday	$ 57,603	$ 150,037	$ 207,640
Barbara Kosacz	$ 46,000	$ 150,037	$ 196,037
Joseph M. Limber	$ 60,000	$ 150,037	$ 210,037
Matthew Perry	$ 47,500	$ 150,037	$ 197,537
W. Denman Van Ness[2]	$ 38,693	$ —	$ 38,693
Jack L. Wyszomierski	$ 82,488	$ 150,037	$ 232,525

(1) The amounts in this column represent the aggregate grant date fair value for option awards computed in accordance with FASB ASC Topic 718. See Note 10 to the consolidated financial statements for information regarding assumptions underlying valuation of equity awards. As of December 31, 2023, the aggregate number of options outstanding for each non-employee director were as follows: Ms. Franklin: 37,245, Ms. Hernday: 38,315, Ms. Kosacz: 59,362, Mr. Limber: 60,600, Mr. Perry: 59,657 and Mr. Wyszomierski: 60,600.

(2) Mr. Van Ness did not stand for re-election at the 2023 annual meeting of stockholders.

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

The following table sets forth certain information regarding: (i) each stockholder or group of stockholders known by the Company to be the beneficial owner of more than 5% of the Company's issued and outstanding Common Stock, (ii) each of our directors and nominees, (iii) each of our named executive officers and (iv) all of our current directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the SEC, and thus represents voting or investment power with respect to our securities. Under such rules, beneficial ownership includes any shares over which the individual has sole or shared voting power or investment power as well as any shares that the individual has the right to acquire within 60 days after January 31, 2024. The percentages in the table below are based on an aggregate of 11,550,728 shares of Common Stock issued and outstanding as of January 31, 2024 (plus any shares that such person has the right to acquire within 60 days after the date of this table). Except as otherwise indicated in the footnotes, amounts are as of January 31, 2024, and, to our knowledge, each of the stockholders has sole voting and investment power with respect to all shares of Common Stock beneficially owned, subject to community property laws where applicable. The address for each director and executive officer listed in the table below is c/o XOMA Corporation, 2200 Powell Street, Suite 310, Emeryville, California 94608.

Name	Number of Shares of Common Stock Beneficially Owned	Percentage of Common Stock Beneficially Owned(%)
5% Stockholders		
Entities affiliated with BVF Inc.[1]	3,633,743	31.5 %
FMR LLC[2]	1,155,033	10.0 %
Named Executive Officers and Directors:		
Thomas Burns[3]	275,564	2.3 %
Bradley Sitko[4]	167,911	1.4 %
Owen Hughes[5]	132,667	1.1 %
Matthew D. Perry[6]	69,628	*
Jack L. Wyszomierski[7]	65,237	*
Joseph M. Limber[8]	64,982	*
Barbara A. Kosacz[9]	57,534	*
Natasha Hernday[10]	36,487	*
Heather L. Franklin[11]	33,593	*
All directors and current executive officers as a group as of the record date (9 persons)[12]	903,603	7.3 %

* Indicates less than 1%.

(1) Based on a Schedule 13D/A filed on January 16, 2024. Consists of (i) 1,789,844 shares held by Biotechnology Value Fund, L.P. ("BVF"), (ii) 1,618,637 shares held by Biotechnology Value Fund II, L.P. ("BVF2"), (iii) 75,287 shares held by Biotechnology Value Trading Fund OS, L.P. ("Trading Fund OS") and (iv) 149,975 shares held in certain partners managed accounts (the "Partners Managed Accounts"). Excludes 5,003,000 shares issuable upon the conversion of 5,003 shares of Series X Preferred Stock, the conversion of which is subject to a beneficial ownership limitation of 19.99% of the outstanding common stock. BVF I GP LLC ("BVF GP"), as the general partner of BVF, may be deemed to beneficially own the shares beneficially owned by BVF. BVF II GP LLC ("BVF2 GP"), as the general partner of BVF2, may be deemed to beneficially own the shares beneficially owned by BVF2. BVF Partners OS Ltd. ("Partners OS") as the general partner of Trading Fund OS, may be deemed to beneficially own the shares beneficially owned by Trading Fund OS. BVF GP Holdings LLC ("BVF GPH") as the sole member of each of BVF GP and BVF2 GP, may be deemed to beneficially own the shares beneficially owned in the aggregate by BVF and BVF2. BVF Partners L.P. ("Partners") as the investment manager of BVF, BVF2, Trading Fund OS and the Partners Managed Accounts, and the sole member of Partners OS, may be deemed to beneficially own the shares beneficially owned in the aggregate by BVF, BVF2 and Trading Fund OS and held in the Partners Managed Accounts. BVF Inc., as the general partner of Partners, may be deemed to beneficially own the shares beneficially owned by Partners. Mr. Lampert, as a director and officer of BVF Inc., may be deemed to

beneficially own the shares beneficially owned by BVF Inc. Each of BVF, BVF2 and Trading Fund OS shares with Partners voting and dispositive power over the shares each entity beneficially owns. BVF shares with BVF GP voting and dispositive power over the shares beneficially owned by BVF. BVF2 shares with BVF2 GP voting and dispositive power over the shares beneficially owned by BVF2. Each of BVF GP and BVF2 GP shares with BVF GPH voting and dispositive power over the shares each such entity beneficially owns. Trading Fund OS shares with Partners OS voting and dispositive power over the shares beneficially owned by Trading Fund OS. Partners, BVF Inc. and Mr. Lampert share voting and dispositive power over the shares they may be deemed to beneficially own with BVF, BVF GP, BVF2, BVF2 GP, Trading Fund OS, Partners OS, BVF GPH and held in the Partners Managed Accounts. Each of Mr. Lampert and the entities specifically disclaims beneficial ownership of the securities that he or it does not directly own. The address of BVF, BVF GP, BVF2, BVF2 GP, BVF GPH, Partners, BVF Inc. and Mr. Lampert is 44 Montgomery St., 40th Floor, San Francisco, California 94104. The address of Trading Fund OS and Partners OS is P.O. Box 309 Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

(2) Based on the Schedule 13G/A filed on February 9, 2024 by FMR LLC ("FMR") and Abigail P. Johnson, and consists of shares held by subsidiaries of FMR. Ms. Johnson is a director, the Chairman and Chief Executive Officer of FMR. Members of the Johnson family, including Ms. Johnson, are the predominant owners, directly or through trusts, of Series B voting common shares of FMR, representing 49% of the voting power of FMR. The Johnson family group and all other Series B shareholders have entered into a shareholders' voting agreement under which all Series B voting common shares will be voted in accordance with the majority vote of Series B voting common shares. Accordingly, through their ownership of voting common shares and the execution of the shareholders' voting agreement, members of the Johnson family
may be deemed, under the Investment Company Act of 1940, to form a controlling group with respect to FMR. FMR and Ms. Johnson have the sole power to dispose or direct the disposition of 1,155,033 shares of Common Stock. The business address of each person and entity listed above is 245 Summer Street, Boston, Massachusetts 02210.

(3) Includes 263,455 shares of Common Stock underlying options exercisable within 60 days of the date of this table, and 5,554 shares of Common Stock that are held in an account under the Company's Deferred Savings Plan.

(4) Includes 160,417 shares of Common Stock underlying options exercisable within 60 days of the date of this table, and 394 shares of Common Stock that are held in an account under the Company's Deferred Savings Plan.

(5) Includes 129,167 shares of Common Stock underlying options exercisable within 60 days of the date of this table.

(6) Includes 57,829 shares of Common Stock underlying options exercisable within 60 days of the date of this table.

(7) Includes 58,772 shares of Common Stock underlying options exercisable within 60 days of the date of this table.

(8) Includes 58,772 shares of Common Stock underlying options exercisable within 60 days of the date of this table.

(9) Includes 57,534 shares of Common Stock underlying options exercisable within 60 days of the date of this table.

(10) Includes 36,487 shares of Common Stock underlying options exercisable within 60 days of the date of this table.

(11) Includes 33,593 shares of Common Stock underlying options exercisable within 60 days of the date of this table.

(12) Includes 856,026 shares of Common Stock underlying options exercisable within 60 days of the date of this table.

Equity Compensation Plan Information

The following table provides certain information with respect to our equity compensation plans in effect as of December 31, 2023.

Name	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by stockholders:	2,453,668 (1)	$ 19.85 (2)	634,363 (3)
Equity compensation plans not approved by stockholders:	725,000 (4)	$ 23.74 (5)	—
Total	3,178,668	$ 20.88	634,363

(1) Includes outstanding stock options and PSUs granted under the 2010 Plan.

(2) Reflects the weighted-average exercise price of stock options granted under the 2010 Plan. PSUs reflected in column (a) are not included in this column as they do not have an exercise price.

(3) Includes (i) 409,477 shares of Common Stock available for issuance under our 2010 Plan and (ii) 224,886 shares of Common Stock available for issuance under our 2015 Employee Stock Purchase Plan.

(4) Includes outstanding stock options granted as inducement awards in compliance with Nasdaq Listing Rule 5635(c)(4).

(5) Reflects the weighted-average exercise price of stock options granted as inducement awards.

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

Except as disclosed below, there were no reportable transactions with related persons during fiscal years 2023 or 2022. We or a subsidiary may occasionally enter into transactions with certain related persons, such as executive officers, directors or nominees for directors, their immediate family members or beneficial owners of more than 5% of our outstanding Common Stock, in which the related party has a direct or indirect material interest. Each such transaction is subject to review and pre-approval by the Audit Committee.

Indemnification Agreements

We have entered into agreements to indemnify our directors and executive officers. These agreements, among other things, require us to indemnify these individuals for certain expenses (including attorneys' fees), judgments, fines and settlement amounts reasonably incurred by such person in any action or proceeding, including any action by or in our right, on account of any services undertaken by such person on behalf of the Company or that person's status as a member of our Board or as an officer, as applicable, to the maximum extent allowed under Delaware law.

Procedures for Approval of Related Party Transactions

Our Board reviews the relationships that each director has with the Company and shall endeavor to have a majority of directors that are "independent directors" as defined by the SEC and Nasdaq rules, the Board also reviews the relationships that each officer has with the Company. As part of the review process, the Company distributes and collects questionnaires that solicit information about any direct or indirect transactions with the Company from each of our directors and officers and legal counsel reviews the responses to these questionnaires and reports any related party transactions to the Audit Committee. We may enter into arrangements in the ordinary course of our business that involve the Company's receiving or providing goods or services on a non-exclusive basis and at arm's length negotiated rates or in accordance with regulated price schedules with corporations and other organizations in which a Company director, executive officer or nominee for director may also be a director, trustee or investor, or have some other direct or indirect relationship.

Our Code of Ethics requires all directors, officers and employees to avoid any situation that involves an actual or potential conflict of interest with the Company's objectives and best interests. Employees are encouraged to direct any questions regarding conflicts of interest to the Company's Chief Financial Officer or legal department. All related party transactions involving the Company's directors or executive officers or members of their immediate families must be reviewed and approved in writing in advance by the Audit Committee.

Board Independence

As required under the Nasdaq listing standards, a majority of the members of a listed company's Board must be comprised of "independent" directors, as affirmatively determined by the Board. In addition, Nasdaq listing rules require that, subject to specified exceptions, each member of a listed company's audit, compensation and nominating committees must be independent within the meaning of Nasdaq listing rules. Audit Committee members must also satisfy heightened independence criteria under the Exchange Act and Nasdaq listing rules. Our Board undertook a review of the independence of each director and considered whether any director has a material relationship with us that could compromise his or her ability to exercise independent judgment in carrying out his or her responsibilities as a director. Based upon information requested from and provided by each director concerning his or her background, employment and affiliations, including the beneficial ownership of our Common Stock by each non-employee director, our Board determined that each of Ms. Franklin, Ms. Hernday, Ms. Kosacz, Mr. Limber, Mr. Perry and Mr. Wyszomierski qualifies as an "independent" director within the meaning of the Nasdaq listing rules. Mr. Hughes is not deemed to be independent under Nasdaq listing rules by virtue of his employment with the Company.

Our Board also determined that each of the directors currently serving on the Audit Committee and the Compensation Committee satisfy the heightened independence standards for audit committees and compensation committees, as applicable, established by the SEC and Nasdaq listing rules.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Deloitte & Touche LLP has served as our independent registered public accounting firm since 2018. The total fees billed and expected to be billed by Deloitte & Touche LLP, our current independent registered public accounting firm, for the services rendered during the last two fiscal years are as follows:

	Year Ended December 31,	
	2023	2022
Audit Fees[1]	$ 897,065	$ 659,895
Audit Related Fees	—	—
Tax Fees	—	—
All Other Fees[2]	1,895	1,895
Total Fees	$ 898,960	$ 661,790

(1) Audit Fees include the audit of annual financial statements included in the Annual Report on Form 10-K, reviews of quarterly financial statements included in Quarterly Reports on Form 10-Q, consultations on matters addressed during the audit or quarterly reviews, and services provided in connection with SEC filings, including consents and comfort letters.

(2) All Other Fees include fees for a technical research tool subscription service.

Pre-Approval Policies and Procedures

The Audit Committee has adopted procedures requiring the pre-approval of all audit and permissible non-audit services provided by the Company's independent accountants. Pre-approval generally is provided for up to one year, is detailed as to the particular service or category of services and generally is subject to a specific budget. The Audit Committee may also pre-approve particular services on a case-by-case basis. In assessing requests for services by the independent accountants, the Audit Committee considers whether such services are consistent with the auditor's independence, whether the independent accountants are likely to provide the most effective and efficient service based on their familiarity with the Company, and whether the services could enhance the Company's ability to manage or control risk or improve audit quality. The Audit Committee has delegated pre-approval authority to its Chair, who must report any decisions to the Audit Committee at its next scheduled meeting.

The Audit Committee pre-approved 100% of all audit and other services provided by Deloitte & Touche LLP, our current independent registered public accounting firm, in 2022 and 2023, in accordance with these procedures.

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 Annual 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:

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.

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

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
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
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	Form of Warrant (December 2023) ($35.00 Exercise Price)	8-K	001-39801	4.1	12/19/2023
4.7	Form of Warrant (December 2023) ($42.50 Exercise Price)	8-K	001-39801	4.2	12/19/2023
4.8	Form of Warrant (December 2023) ($50.00 Exercise Price)	8-K	001-39801	4.3	12/19/2023
4.9+	Description of Registrant's Securities				
10.1*	Amended and Restated 2010 Long Term Incentive and Stock Award Plan	DEF 14A	001-39801	Appendix A	04/04/2023
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*	Form of Performance Stock Unit Agreement under the Amended and Restated 2010 Long Term Incentive and Stock Award Plan	8-K	001-39801	10.1	05/18/2023
10.4*	2016 Non-Equity Incentive Compensation Plan	10-Q	000-14710	10.1	05/04/2016
10.5*	Amended 2015 Employee Share Purchase Plan	8-K	000-14710	10.2	05/24/2017
10.6*	Form of Subscription Agreement and Authorization of Deduction under the 2015 Employee Stock Purchase Plan	S-8	333-204367	99.2	05/21/2015

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.7*	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
10.8*	Officer Employment Agreement, dated August 7, 2017, between XOMA Corporation and Thomas Burns	10-Q	000-14710	10.8	11/06/2017
10.9#*	Letter Amendment to Officer Employment Agreement dated April 1, 2022, 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-K	001-39801	10.14	03/09/2023
10.15*	Officer Employment Agreement, dated January 3, 2023, between XOMA Corporation and Owen Hughes	10-K	001-39801	10.15	03/09/2023
10.16+*	Amended and Restated Officer Employment Agreement, dated January 8, 2024, between XOMA Corporation and Owen Hughes				
10.17*	Officer Employment Agreement, dated January 3, 2023, between XOMA Corporation and Bradley Sitko	10-K	001-39801	10.16	03/09/2023
10.18*	Inducement Stock Option Agreement, by and between XOMA Corporation and Owen Hughes	S-8	333-269459	99.2	01/30/2023
10.19*	Inducement Stock Option Agreement, by and between XOMA Corporation and Owen Hughes	S-8	333-269459	99.3	01/30/2023

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.20*	Inducement Stock Option Agreement, by and between XOMA Corporation and Bradley Sitko	S-8	333-269459	99.4	01/30/2023
10.21*	Inducement Stock Option Agreement, by and between XOMA Corporation and Bradley Sitko	S-8	333-269459	99.5	01/30/2023
10.22#	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
10.23	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
10.24†	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
10.25†	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
10.26†	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
10.27†	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
10.28†	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
10.29†	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

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.30†	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
10.31#	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
10.32	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
10.33#	License Agreement between the Company and Novartis International Pharmaceutical Ltd., dated September 30, 2015	10-Q	000-14710	10.1	11/05/2020
10.34#	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
10.35#	License Agreement, dated August 24, 2017, by and between XOMA Corporation and Novartis Pharma AG	10-Q	001-39801	10.2	11/03/2022
10.36†	License Agreement, dated December 6, 2017, between XOMA (US) LLC and Rezolute, Inc. (formerly AntriaBio)	10-K	000-14710	10.66	03/07/2018
10.37†	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
10.38†	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
10.39	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

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.40#	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
10.41#	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 Inc., now a wholly owned subsidiary of National Resilience, Inc.)	10-Q	001-39801	10.4	11/03/2022
10.42	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
10.43	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
10.44	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
10.45	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

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.46	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
10.47	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
10.48	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
10.49#	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
10.50†	Royalty Purchase Agreement dated September 20, 2018, between XOMA Corporation and Agenus Inc.	10-Q	000-14710	10.9	11/07/2018
10.51#	Royalty Purchase Agreement dated April 7, 2019, between XOMA (US) LLC and Aronora, Inc.	10-Q	000-14710	10.1	08/06/2019
10.52#	Royalty Purchase Agreement dated September 26, 2019, between XOMA (US) LLC and Palobiofarma, S.L	10-Q	000-14710	10.1	11/05/2019
10.53#	Royalty Purchase Agreement dated March 22, 2021 between XOMA (US) LLC and Viracta Therapeutics, Inc.	10-Q	001-39801	10.1	05/06/2021
10.54#	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
10.55#	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
10.56#	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
10.57#	Intellectual Property Acquisition Agreement, dated November 21, 2022 between XOMA Corporation and ObsEva, SA	10-K	001-39801	10.56	03/09/2023

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.58#	License Agreement, dated July 26, 2021, between ObsEva, SA and Organon International GmbH	10-K	001-39801	10.57	03/09/2023
10.59#	License Agreement, dated June 10, 2015, between ObsEva, SA and Ares Trading S.A.	10-K	001-39801	10.58	03/09/2023
10.60#	Payment Interest Purchase Agreement, dated March 29, 2023, by and between Aptevo Therapeutics Inc. and XOMA (US) LLC	10-Q	001-39801	10.7	05/09/2023
10.61#	Assignment and Assumption Agreement, dated as of June 21, 2023, by and between XOMA (US) LLC and LadRx Corporation	10-Q	001-39801	10.3	08/08/2023
10.62#	Royalty Purchase Agreement, dated as of June 21, 2023, by and between XOMA (US) LLC and LadRx Corporation	10-Q	001-39801	10.4	08/08/2023
10.63#+	Loan Agreement dated December 15, 2023, between XRL 1 LLC, the lenders from time to time party thereto and Blue Owl Capital Corporation				
10.64#+	Sale, Contribution and Servicing Agreement dated as of December 15, 2023 by and among XOMA (US) LLC, as Seller, and solely for purposes of Section 2.03 and Section 4.03(b)(ii) therein, XOMA CORPORATION, as Parent, on the one hand and XRL 1 LLC, as Purchaser, on the other hand				
10.65#+	Office Lease dated June 27, 2023 between KBSIII Towers at Emeryville, LLC and XOMA (US) LLC				
21.1+	Subsidiaries of the Company				
23.1+	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm				
31.1+	Certification of Chief Executive Officer, as required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934				
31.2+	Certification of Chief Financial Officer, as required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934				

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
32.1(1)	Certifications of Chief Executive Officer and Chief Financial Officer, as required by Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. §1350				
97+	Incentive Compensation Clawback Policy				
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) Furnished herewith. The certifications that accompany this Annual Report on Form 10-K are not deemed filed with the SEC and are 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 this Annual Report on Form 10-K), irrespective of any general incorporation language contained in such filing.

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 8th day of March 2024.

XOMA Corporation

By: /s/ OWEN HUGHES
Owen Hughes
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 or she 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)**	Chief Executive Officer (Principal Executive Officer)	March 8, 2024
/s/ Thomas Burns **(Thomas Burns)**	Senior Vice President, Finance and Chief Financial Officer (Principal Financial and Principal Accounting Officer)	March 8, 2024
/s/ Jack L. Wyszomierski **(Jack L. Wyszomierski)**	Chairman of the Board	March 8, 2024
/s/ Heather L. Franklin **(Heather L. Franklin)**	Director	March 8, 2024
/s/ Natasha Hernday **(Natasha Hernday)**	Director	March 8, 2024
 (Barbara Kosacz)	Director	March 8, 2024
/s/ Joseph M. Limber **(Joseph M. Limber)**	Director	March 8, 2024
/s/ Matthew Perry **(Matthew Perry)**	Director	March 8, 2024

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, 2023 and 2022, the related consolidated statements of operations and comprehensive loss, 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, 2023 and 2022, and the results of its operations and its cash flows for the each of the two years in the period ended December 31, 2023, 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.

Long-term royalty and commercial payment receivables — 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 $58.0 million as of December 31, 2023. 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 products have 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 the long-term royalty and commercial payment receivables for current expected credit losses and records an impairment as an allowance expense that increases the long-term royalty and commercial payment receivable asset's cumulative allowance, which reduces the net carrying value of the long-term royalty and commercial payment receivable asset.

The determination of current expected credit losses 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 expected credit losses 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 expected credit losses 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 indicator of expected credit losses 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 Company's expected credit losses 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 expected credit loss conclusions.
- We evaluated the Company's assessment of expected credit losses by developing an independent expectation of expected credit losses 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 Company's 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 8, 2024

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

XOMA CORPORATION
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)

	December 31, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	$ 153,290	$ 57,826
Short-term restricted cash	160	—
Short-term equity securities	161	335
Trade and other receivables, net	1,004	1
Short-term royalty and commercial payment receivables	14,215	2,366
Prepaid expenses and other current assets	483	725
Total current assets	169,313	61,253
Long-term restricted cash	6,100	—
Property and equipment, net	25	7
Operating lease right-of-use assets	378	29
Long-term royalty and commercial payment receivables	57,952	63,683
Intangible assets, net	—	15,150
Other assets - long term	533	260
Total assets	$ 234,301	$ 140,382
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 653	$ 524
Accrued and other liabilities	2,768	2,918
Contingent consideration under RPAs, AAAs and CPPAs	7,000	75
Operating lease liabilities	54	34
Unearned revenue recognized under units-of-revenue method	2,113	1,899
Preferred stock dividend accrual	1,368	1,368
Current portion of long-term debt	5,543	—
Total current liabilities	19,499	6,818
Unearned revenue recognized under units-of-revenue method – long-term	7,228	9,550
Long-term operating lease liabilities	335	—
Long-term debt	118,518	—
Total liabilities	145,580	16,368
Commitments and Contingencies (Note 13)		
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, 2023 and December 31, 2022	49	49
8.375% Series B cumulative, perpetual preferred stock, 1,600 shares issued and outstanding at December 31, 2023 and December 31, 2022	—	—
Convertible preferred stock, 5,003 shares issued and outstanding at December 31, 2023 and December 31, 2022	—	—
Common stock, $0.0075 par value, 277,333,332 shares authorized, 11,495,492 and 11,454,025 shares issued and outstanding at December 31, 2023 and December 31, 2022, respectively	86	86
Additional paid-in capital	1,311,809	1,306,271
Accumulated deficit	(1,223,223)	(1,182,392)
Total stockholders' equity	88,721	124,014
Total liabilities and stockholders' equity	$ 234,301	$ 140,382

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

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

	Year Ended December 31,	
	2023	**2022**
Revenues:		
Revenue from contracts with customers	$ 2,650	$ 4,150
Revenue recognized under units-of-revenue method	2,108	1,877
Total revenues	4,758	6,027
Operating expenses:		
Research and development	143	153
General and administrative	25,606	23,191
Impairment charges (Note 4, Note 5)	15,828	—
Arbitration settlement costs (Note 3)	4,132	—
Amortization of intangible assets	897	97
Total operating expenses	46,606	23,441
Loss from operations	(41,848)	(17,414)
Other income (expense):		
Interest expense	(569)	—
Other income (expense), net	1,586	295
Loss before income tax	(40,831)	(17,119)
Income tax benefit	—	15
Net loss and comprehensive loss	$ (40,831)	$ (17,104)
Net loss and comprehensive loss attributable to common stockholders, basic and diluted	$ (46,303)	$ (22,576)
Basic and diluted net loss per share attributable to common stockholders	$ (4.04)	$ (1.98)
Weighted average shares used in computing basic and diluted net loss per share attributable to common stockholders	11,471	11,413

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, 2022	984	$ 49	2	$ —	5	$ —	11,454	$ 86	$ 1,306,271	$ (1,182,392)	$ 124,014
Exercise of stock options	—	—	—	—	—	—	28	—	235	—	235
Stock-based compensation expense	—	—	—	—	—	—	—	—	9,099	—	9,099
Issuance of common stock warrants	—	—	—	—	—	—	—	—	1,470	—	1,470
Issuance of common stock related to 401(k) contribution and ESPP	—	—	—	—	—	—	13	—	206	—	206
Preferred stock dividends	—	—	—	—	—	—	—	—	(5,472)	—	(5,472)
Net loss and comprehensive loss	—	—	—	—	—	—	—	—	—	(40,831)	(40,831)
Balance, December 31, 2023	984	$ 49	2	$ —	5	$ —	11,495	$ 86	$ 1,311,809	$ (1,223,223)	$ 88,721

	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

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,	
	2023	**2022**
Cash flows from operating activities:		
Net loss	$ (40,831)	$ (17,104)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense	9,099	3,608
Impairment charges	15,828	—
Change in fair value of contingent consideration under RPAs, AAAs, and CPPAs	(75)	—
Common stock contribution to 401(k)	123	85
Amortization of intangible assets	897	97
Depreciation	3	7
Accretion of long-term debt	34	—
Non-cash lease expense	119	170
Change in fair value of equity securities	174	439
Changes in assets and liabilities:		
Trade and other receivables, net	(1,003)	208
Prepaid expenses and other assets	219	(71)
Accounts payable and accrued liabilities	(523)	1,845
Income taxes payable	—	(91)
Operating lease liabilities	(114)	(195)
Unearned revenue recognized under units-of-revenue method	(2,108)	(1,877)
Net cash used in operating activities	(18,158)	(12,879)
Cash flows from investing activities:		
Payments of consideration under RPAs, AAAs and CPPAs	(14,650)	(8,000)
Receipts under RPAs, AAAs and CPPAs	13,956	3,026
Payment for IP acquired under the ObsEva IP Acquisition Agreement	—	(15,247)
Purchase of property and equipment	(17)	—
Net cash used in investing activities	(711)	(20,221)
Cash flows from financing activities:		
Proceeds from issuance of long-term debt	130,000	—
Debt issuance costs and loan fees	(4,253)	—
Payment of preferred stock dividends	(5,472)	(5,472)
Proceeds from exercise of options and other share-based compensation	466	2,419
Taxes paid related to net share settlement of equity awards	(148)	(1,398)
Net cash provided by (used in) financing activities	120,593	(4,451)
Net increase (decrease) in cash, cash equivalents and restricted cash	101,724	(37,551)
Cash, cash equivalents at the beginning of the period	57,826	95,377
Cash, cash equivalents and restricted cash at the end of the period	$ 159,550	$ 57,826
Supplemental Cash Flow Information:		
Cash paid for taxes	$ —	$ 76
Right-of-use assets obtained in exchange for operating lease liabilities	$ 468	$ —
Non-cash investing and financing activities:		
Issuance of common stock warrants in connection with long-term debt	$ 1,470	$ —
Accrued issuance costs in connection with issuance of long-term debt	$ 501	$ —
Preferred stock dividend accrual	$ 1,368	$ 1,368
Estimated fair value of contingent consideration under the LadRx Agreements	$ 1,000	$ —
Accrued transaction costs in connection with ObsEva IP Acquisition	$ —	$ 122
Accrual of contingent consideration under the Affitech CPPA	$ 6,000	$ —

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

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Description of Business

XOMA Corporation, 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 milestone payments, royalties and commercial payments, since its royalty aggregator business model was implemented in 2017 combined with out-licensing its proprietary products and platforms from its legacy discovery and development business. XOMA also acquires milestone and royalty revenue streams on late-stage or commercial assets that are designed to address unmet markets or have a therapeutic advantage, have long duration of market exclusivity, and are expected to generate royalty or milestone payments to the Company in a relatively short timeframe. The Company's drug royalty aggregator business is primarily focused on early to mid-stage clinical assets in Phase 1 and 2 with significant commercial sales potential that are licensed to large-cap partners. The Company expects most of its future revenue to be based on milestone payments the Company may receive for milestones and royalties associated with 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, 2023, the Company had unrestricted and restricted cash and cash equivalents of $159.6 million primarily related to financing cash inflows received in December 2023 pursuant to the Blue Owl Loan Agreement (see Note 8).

As of December 31, 2023, the Company had unrestricted cash and cash equivalents of $153.3 million and restricted cash of $6.3 million. As of December 31, 2023, $0.2 million of restricted cash was classified as current and $6.1 million was classified as non-current. The restricted cash balance may only be used to pay interest expense, administrative fees and other allowable expenses pursuant to the Blue Owl Loan.

Based on the Company's current cash balance and its planned 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 U.S. GAAP 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 U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosures. Management routinely 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, amortization of the Blue Owl Loan, valuation of warrants, accrued expenses 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, including 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. In addition, the Company's amortization of the Blue Owl Loan is calculated based on the commercial payments expected to be received from Roche for VABYSMO under the Affitech CPPA. Any changes to the estimated commercial payments from Roche can result in a material adjustment to the interest expense and term loan balance reported.

Unrestricted and Restricted Cash and Cash Equivalents

The following table provides a reconciliation of unrestricted and restricted cash and cash equivalents reported within the consolidated statements of cash flows (in thousands):

	December 31,	
	2023	2022
Unrestricted cash and cash equivalents	$ 153,290	$ 57,826
Restricted cash	6,260	—
Total unrestricted and restricted cash and cash equivalents	$ 159,550	$ 57,826

Cash consists of bank deposits held in business checking and interest-bearing deposit accounts. Cash equivalent balances are 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. Cash equivalents held by the Company are generally in money market funds.

Unrestricted Cash and Cash Equivalents

As of December 31, 2023, the Company had an unrestricted cash balance of $124.9 million and an unrestricted cash equivalent balance of $28.4 million. As of December 31, 2022, the Company had an unrestricted cash balance of $27.5 million and an unrestricted cash equivalent balance of $30.3 million.

Restricted Cash

Cash accounts with any type of restriction are classified as restricted cash. If restrictions are expected to be lifted or to be used to pay a third party in the next twelve months, the restricted cash account is classified as current.

On December 15, 2023, XRL deposited $6.3 million into reserve accounts in connection with the funding of the Blue Owl Loan (see Note 8), of which $5.8 million was deposited into a reserve account for interest and administrative fees and $0.5 million was deposited into an operating reserve account to cover operating expenses of XRL. As of December 31, 2023, the Company had a short-term restricted cash balance of $0.2 million and a long-term restricted cash balance of $6.1 million on its consolidated balance sheet.

Payments of interest under the Blue Owl Loan Agreement are made semi-annually using commercial payments received since the immediately preceding interest payment date under the Affitech CPPA. On each interest payment date, if the commercial payments received are less than the total interest due for the respective quarter, XRL is expected to cover the shortfall in interest payment due from the reserve account.

Payments of administrative fees under the Blue Owl Loan Agreement are made semi-annually on January 1 and July 1 of each year from the reserve account. XOMA will be required to fund an additional $0.8 million into the administrative fee escrow account on July 1, 2027.

As of December 31, 2022, the Company had no restricted cash or cash equivalent balances.

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 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 on whether each promised good or service is distinct to determine those that are performance obligations. 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 the 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 the 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 U.S. 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.

The grant date fair value of PSUs with market conditions is determined using the Monte Carlo valuation model. The Company records compensation expenses for PSUs based on graded expense attribution over the requisite service periods.

Equity Securities

The Company entered into a license agreement with Rezolute in December 2017, in which it received shares of common stock from Rezolute (see 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 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 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 or recently commercialized. The Company acquired such rights from various entities and recorded the amount paid for these rights as long-term royalty receivables (see 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 to determine if 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 are subject to remeasurement to fair value each reporting period. Any changes in the estimated fair value are recorded in the consolidated statements of operations and comprehensive loss. Contingent consideration payments that do not fall within the scope of ASC 815 are recognized when the amounts are probable and estimable according to ASC 450.

The Company accounts for milestone and royalty rights related to developmental pipeline or recently commercialized products on a non-accrual basis using the cost recovery method. Developmental pipeline products are non-commercialized, non-approved products that require FDA or other regulatory approval, and thus have uncertain cash flows. Recently commercialized products do not have an established reliable sales pattern, and thus have uncertain cash flows. The Company is not yet able to reliably forecast future cash flows given their stages of development and commercialization. The related receivable balance is classified as noncurrent or current based on whether payments are probable and reasonably estimable 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.

Allowance for Current Expected Credit Losses

The Company evaluates the long-term royalty and commercial payment receivables on a collective (i.e., pool) basis if they share similar risk characteristics. The Company evaluates a royalty and commercial payment receivable individually if its risk characteristics are not similar to other royalty and commercial payment receivables. 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 and commercial payment receivable asset. At each reporting date, if 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 an impairment charge. The impairment charge will be recognized as an allowance expense that increases the long-term royalty and commercial payment receivable asset's cumulative allowance, which reduces the net carrying value of the long-term royalty and commercial payment receivable asset. In a subsequent period, if there is an increase in expected future cash flows, or if the actual cash flows are greater than previously expected, the Company will reduce the previously established cumulative allowance. Amounts not expected to be collected are written off against the allowance at the time that such a determination is made.

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 (see 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 are 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 statements of operations and comprehensive loss. Contingent consideration payments that do not fall within the scope of ASC 815 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 statements of cash flows.

Intangible Assets

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

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. As of December 31, 2023, the termination of the Organon License agreement indicated that the carrying amount of $14.2 million was not recoverable and the Company wrote off the entire finite-lived intangible asset in the consolidated balance sheet and included a $14.2 million impairment charge in the consolidated statement of operations and comprehensive loss.

Leases

The Company leases its headquarters 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 estimated its incremental borrowing rate by adjusting the interest rate on its fully collateralized debt for the lease term length.

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

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 are recognized in rent expense when incurred.

The Company has also elected not to record on the consolidated balance sheets a lease for which the term is 12 months or less and does not include a purchase option that the Company is reasonably certain to exercise.

Long-Term Debt

Long-term debt represents the Company's term loan under the Blue Owl Loan Agreement, which the Company has accounted for as a debt financing arrangement. Interest expense is accrued using the effective interest rate method over the estimated period the loan will be repaid. The allocated debt discount and debt issuance costs have been recorded as a

direct deduction from the carrying amount of the related debt in the consolidated balance sheets and are being amortized and recorded as interest expense throughout the expected life of the Blue Owl Loan using the effective interest rate method. The Company considered whether there were any embedded features in the Blue Owl Loan Agreement that require bifurcation and separate accounting as derivative financial instruments pursuant to ASC 815. See Note 8.

Warrants

The Company has issued warrants to purchase shares of its common stock in connection with its financing activities. The Company classifies these warrants as equity and recorded the warrants at fair value as of the date of issuance on the Company's consolidated balance sheet with no subsequent remeasurement. The issuance date fair value of the outstanding warrants was estimated using the Black-Scholes Model. The Black-Scholes Model required inputs such as the expected term of the warrants, expected volatility and risk-free interest rate. These inputs were subjective and required significant analysis and judgment. For the estimate of the expected term, the Company used the full remaining contractual term of the warrant. The estimate of expected volatility assumption is based on the historical price volatility observed on the Company's common stock. The risk-free rate is based on the yield available on U.S. Treasury zero-coupon issues corresponding to the expected term of the warrants.

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 are expected to 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 per Share Attributable to Common Stockholders

The Company calculates basic and diluted loss per share attributable to common stockholders using the two-class method. The Company's convertible Series X Preferred Stock 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 per share attributable to common stockholders is then calculated by dividing the net loss 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 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 June 2016, the FASB issued ASU 2016-13, Financial Instruments-Credit Losses (ASC 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. The Company adopted ASU 2016-13 and related updates on January 1, 2023. The adoption of ASU 2016-13 had no impact on the 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 ASC 606 as if they had originated the contracts, as opposed to at fair value on the acquisition date. The Company adopted ASU 2021-08 and related updates on January 1, 2023. The adoption of ASU 2021-08 had no impact on the consolidated financial statements.

Recent Accounting Pronouncements Not Yet Adopted

In October 2023, the FASB issued ASU 2023-06, Disclosure Improvements: Codification Amendments in Response to the Securities and Exchange Commission's Disclosure Update and Simplification Initiative. ASU 2023-06 incorporates 14 of the 27 disclosure requirements published in SEC Release No. 33-10532: Disclosure Update and Simplification into various topics within the ASC. ASU 2023-06's amendments represent clarifications to, or technical corrections of, current requirements. For SEC registrants, the effective date for each amendment will be the date on which the SEC removes that related disclosure from its rules. Early adoption is prohibited. The Company does not expect the standard to have a material impact on its consolidated financial statements and disclosures.

In November 2023, the FASB issued ASU 2023-07, Segment Reporting, which expands annual and interim disclosure requirements for reportable segments, primarily through enhanced disclosures about significant segment expenses. The amendments in ASU 2023-07 are effective for all public entities for fiscal years beginning after December 15, 2023 and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. The Company plans to adopt annual requirements under ASU 2023-07 on January 1, 2024 and interim requirements under ASU 2023-07 on January 1, 2025. The Company is currently evaluating the impact that the updated standard will have on its financial statement disclosures.

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures, which includes amendments that further enhance income tax disclosures, primarily through standardization and disaggregation of rate reconciliation categories and income taxes paid by jurisdiction. The amendments are effective for all public entities for fiscal years beginning after December 15, 2024. Early adoption is permitted and should be applied either prospectively or retrospectively. The Company plans to adopt ASU 2023-09 and related updates on January 1, 2025. The Company is currently evaluating the impact that the updated standard will have on its financial statement disclosures.

3. Consolidated Financial Statement Details

Equity Securities

As of December 31, 2023 and 2022, equity securities consisted of an investment in Rezolute's common stock of $0.2 million and $0.3 million, respectively (see Note 4). For the years ended December 31, 2023 and 2022, the Company recognized a loss of $0.2 million and $0.4 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.

Intangible Assets, Net

The following table summarizes cost, accumulated amortization, impairment charge and net carrying value of the Company's intangible assets as of December 31, 2023 (in thousands):

	Cost	Accumulated Amortization	Impairment Charge [1]	Net Carrying Value
As of December 31, 2023				
Ebopiprant IP (Note 4)	$ 15,247	$ 994	$ 14,253	$ —
Total intangible assets	$ 15,247	$ 994	$ 14,253	$ —

(1) As of December 31, 2023, the termination of the Organon License agreement indicated that the carrying amount of $14.2 million for the Ebopiprant IP was not recoverable and the Company wrote off the entire finite-lived intangible asset in the consolidated balance sheets and included a $14.2 million impairment charge in the consolidated statements of operations and comprehensive loss.

The following table summarizes cost, accumulated amortization, and net carrying value of 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

Accrued and Other Liabilities

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

	December 31, 2023	December 31, 2022
Accrued incentive compensation	1,203	562
Accrued legal and accounting fees	791	867
Accrued payroll, severance and retention costs	149	1,449
Other accrued liabilities	625	40
Total	$ 2,768	$ 2,918

Arbitration Proceeding

In June 2021, the Company initiated a binding arbitration proceeding with one of its licensees (the "Licensee") at the American Arbitration Association/International Centre for Dispute Resolution, and sought milestone and royalty payments under its license agreement. A hearing before a panel of arbitrators was held in November 2022, and the parties submitted post-hearing briefs. On March 21, 2023, the Company received an adverse decision in this arbitration proceeding. The panel of arbitrators declined to award the Company damages and ruled that the license agreement had

expired. The panel ruled that the Company was responsible for the Licensee's costs as well as arbitrators' fees and administrative fees previously incurred by the Licensee of $4.1 million, which the Company paid in April 2023.

4. Licensing and Other Arrangements

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 an aggregate of up to $19.0 million relating to TAK-079 (mezagitamab) and low single-digit royalties on future sales of all products subject to this license. The Company's right to receive 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 receive 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 receive 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 receive 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.

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, the Company earned a development milestone pursuant to the Takeda Collaboration and recognized $0.8 million as revenue from contracts with customers in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2022. No milestone revenue was recognized for the year ended December 31, 2023.

The Company recognized annual license fee revenue of $0.1 million from Takeda in the consolidated statement of operations and comprehensive loss for the each of the years ended December 31, 2023 and 2022.

As of December 31, 2023 and 2022, 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 has received $3.0 million of milestone payments since the inception of the agreement and is eligible to receive additional milestone payments of up to $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 RZ358 (previously known as "X358") products for all indications. In addition, the Company entered into a common stock purchase agreement with

Rezolute 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 in connection with any future equity 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 an aggregate of $232.0 million 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's obligation to pay royalties with respect to a particular RZ358 product and country will continue for the later of the date of expiration of the last valid patent claim covering the product in each country, or 12 years from the date of the first commercial sale of the product in each country. Rezolute's future royalty obligations in the U.S. will be reduced by 20% if the manufacture, use or sale of a licensed product is not covered by a valid patent claim, until such a claim is confirmed.

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 study. Rezolute's obligation to pay royalties with respect to a particular Rezolute product and country will continue for the longer of 12 years from the date of the first commercial sale of the product in each country or for so long as Rezolute or its licensee is selling such product in any 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 each 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 any future equity 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 equity financing activities 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, as amended.

No revenue was recognized for the year ended December 31, 2023. The Company recognized $2.0 million from contracts with customers in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2022.

As of December 31, 2023 and 2022, 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

In August 2019, the Company entered into an agreement with Janssen pursuant to which the Company granted a non-exclusive license to Janssen to develop and commercialize certain product candidates, including XOMA's patents and know-how. Under the agreement, Janssen made a one-time payment of $2.5 million to XOMA. Additionally, for each product 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 milestones. Additional milestone payments may be due for product 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 agreement will remain in effect unless terminated by mutual written agreement.

The Company concluded that the 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.

As of December 31, 2023 and 2022, 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 milestone payments of $1.5 million in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2023. The Company did not recognize any revenue related to this arrangement in 2022.

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 was eligible to receive up to $475.0 million in payments for ebopiprant development, commercialization and sales-based milestones. If ebopiprant was successfully commercialized, the Company would have been entitled to receive royalties on net sales that range from low to mid-teens from Organon and would have been required to make mid-single-digit royalty payments on net sales to Merck KGaA. The Company paid ObsEva a $15.0 million upfront payment at closing and would have paid potential earn-out payments of up to $97.5 million for development, regulatory and sales-based milestones, representing a portion of what the Company would have received pursuant to the Organon License Agreement.

The transaction was treated as an acquisition of a finite-lived intangible asset (see Note 2). As such, the Company's cost to acquire said intangible asset was $15.2 million, which consisted of $15.0 million cash paid upon closing of the ObsEva IP Acquisition Agreement and direct incremental transaction costs of $0.2 million, which 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. No impairment indicators were identified, and no impairment was recorded as of December 31, 2022. The Company recognized $0.9 million and $0.1 million of amortization expense in the consolidated statements of operations and comprehensive loss for the years ended December 31, 2023 and 2022, respectively.

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 did not meet the definition of a derivative under ASC 815 and a liability would have been recognized at the time that the underlying revenue was recognized under the Organon License Agreement for the corresponding development and regulatory milestone payments, sales-based milestone payments, and royalty payments. ASC 450 would 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 expected the contingent payments to be probable of payment at the same time that revenue from the Organon License Agreement would have been recorded.

On October 23, 2023, Organon notified the Company of its intent to terminate for convenience the Organon License Agreement, which XOMA assumed pursuant to the ObsEva IP Acquisition Agreement dated November 21, 2022. The termination was effective as of January 21, 2024. The Company will not be entitled to any milestone payments with respect to any milestone achieved by Organon following the notice of termination. No material early termination penalties will be payable by either party. The Company evaluated the related intangible asset balance for impairment in the fourth quarter of 2023 and recorded an impairment charge of $14.2 million, writing off the entire finite-lived intangible asset in the consolidated balance sheet and recognizing an intangible asset impairment in its consolidated statement of operations and comprehensive loss.

The Company did not recognize any revenue related to this arrangement during the years ended December 31, 2023 and 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 upon 180 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.

In August 2023, Novartis communicated to the Company that it intends to discontinue development activities related to NIS793. Novartis will cease enrolling patients in the remaining active TGFß clinical studies and will collect all data upon conclusion of these studies.

As of December 31, 2023 and 2022, 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 did not recognize any revenue related to this arrangement during the years ended December 31, 2023 and 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, 2023 and 2022, 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, 2023 and 2022.

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 Royalty Sale 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 under the 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 Royalty Sale 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 $2.1 million and $1.9 million as revenue under the units-of-revenue method under these arrangements during the years ended December 31, 2023 and 2022, 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. As of December 31, 2023, the Company classified $2.1 million and $7.2 million as current and non-current unearned revenue recognized under the units-of-revenue method, respectively.

5. Royalty and Commercial Payment Purchase Agreements

Short-term royalty and commercial payment receivables were $14.2 million and $2.4 million as of December 31, 2023 and 2022, respectively. Long-term royalty and commercial payment receivables were $58.0 million and $63.7 million as of December 31, 2023 and 2022, respectively.

LadRx Agreements

On June 21, 2023, the Company entered into the LadRx AAA pursuant to which the Company acquired from LadRx all of its rights, title and interest related to arimoclomol under an asset purchase agreement dated May 13, 2011 between Zevra and LadRx. The Company also entered into the LadRx RPA, pursuant to which the Company acquired the right to receive all of the future royalties, regulatory and commercial milestone payments as well as other related payments due to LadRx from ImmunityBio related to aldoxorubicin under a license agreement dated July 27, 2017, as amended on September 27, 2018, between ImmunityBio and LadRx.

The purchased rights related to arimoclomol include potential regulatory and commercial milestone payments of up to $52.5 million (net of certain payment obligations of up to $9.5 million based on a portion of the regulatory and commercial milestone payments) and potential royalty payments in low single-digit percentages of aggregate net sales associated with arimoclomol.

The purchased payments related to aldoxorubicin include potential regulatory and commercial milestone payments of up to $342.7 million and royalty payments on aggregate net sales of aldoxorubicin in the low to mid-teens for sales of orphan indications and mid to high single-digit percentages for sales of other licensed products.

Upon closing of the LadRx Agreements, the Company paid LadRx an upfront payment of $5.0 million and may pay up to an additional $6.0 million in regulatory and commercial sales milestone payments which included $5.0 million related to regulatory milestone payments and $1.0 million related to commercial sales milestone payments. The Company concluded that the regulatory milestone payments of $5.0 million met the definition of a derivative under ASC 815 and should be accounted for at fair value and recorded as a current liability at the inception of the transaction. The fair value

of the regulatory milestone payments was estimated to be $1.0 million. The Company concluded the commercial milestone payment of $1.0 million did not meet the definition of a derivative under ASC 815 and a liability will be recognized when probable and estimable.

At the inception of the LadRx Agreements, the Company recorded $6.0 million as long-term royalty receivables related to the aggregate of the arimoclomol and aldoxorubicin payment rights acquired, which included the $5.0 million upfront payment and $1.0 million for the estimated fair value of the regulatory milestone payments.

As of December 31, 2023, there was no change in the estimated fair value of the regulatory milestone payments from the initial value. On January 11, 2024, the milestone was achieved and the Company made a $1.0 million milestone payment to LadRx (see Note 15).

Under the cost recovery method, the Company does not expect to recognize any income related to royalties, milestone payments and other payments until the purchase price has been fully collected. The Company performed its impairment assessment and no allowance for credit losses was recorded as of December 31, 2023.

Aptevo Commercial Payment Purchase Agreement

On March 29, 2023, the Company entered into the Aptevo CPPA, pursuant to which the Company acquired from Aptevo a portion of its milestone and commercial payment rights under a sale agreement dated February 28, 2020 between Aptevo and Medexus, related to IXINITY, which is marketed by Medexus for the control and prevention of bleeding episodes and postoperative management in people with Hemophilia B.

The Company is eligible to receive a mid-single digit percentage of all IXINITY quarterly net sales from January 1, 2023 until the first quarter of 2035, and will be entitled to milestone payments of up to $5.3 million.

At the inception of the Aptevo CPPA, the Company recorded $9.7 million as long-term royalty receivables in its consolidated balance sheet which included a $9.6 million upfront payment and a $50,000 one-time payment, which would be due if XOMA received more than $0.5 million in receipts for first quarter 2023 sales of IXINITY. At inception of the agreement, the Company concluded the one-time payment of $50,000 was probable and reasonably estimable. Therefore, the payment was recorded as a contingent liability under ASC 450 in the consolidated balance sheet (the "Aptevo Contingent Consideration") at inception. The Company paid the one-time payment of $50,000 in June 2023 when related receipts exceeded $0.5 million.

In 2023, the Company received total commercial payments pursuant to the Aptevo CPPA of $1.7 million. In accordance with the cost recovery method, the cash received was recorded as a direct reduction of the long-term royalty receivable balance.

Though the Company is unable to reasonably estimate its commercial payment stream from sales of future net sales and the commercial payments to be received under the agreement, it has a more accurate projection of the commercial payments expected for the twelve-month period following the consolidated balance sheet date of December 31, 2023 and, as such, $2.0 million was recorded as short-term royalty and commercial payment receivables.

Under the cost recovery method, the Company does not expect to recognize any income related to milestones and commercial payment received until the purchase price has been fully collected. The Company performed its impairment assessment and no allowance for credit losses was recorded as of December 31, 2023.

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 milestone payments 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 percentages 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, 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 an upfront payment of $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 payment 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 payment received was recorded as a direct reduction of the recorded long-term royalty receivable balance.

As of December 31, 2023, no payments were probable to be received under the Agenus RPA in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to milestone and royalty payments received until the purchase price has been fully collected. The Company performed its impairment assessment and no allowance for credit losses was recorded as of December 31, 2023.

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 were being developed pursuant to a license agreement between Bioasis and Prothena Biosciences Limited.

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 contingent future cash payments upon achievement of certain development milestones (the "Bioasis Contingent Consideration") of $75,000.

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 were being developed pursuant to a research collaboration and license agreement between Bioasis and Chiesi. The Company paid Bioasis $1.2 million upon the 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.

On June 20, 2023, Bioasis announced the suspension of all of its operations and the termination of the research collaboration and license agreement between Bioasis and Chiesi. As a result, the Company recorded an impairment charge of $1.6 million in its consolidated statement of operations and comprehensive loss and a reduction of $1.6 million under long-term royalty receivables related to the Bioasis RPA and Second Bioasis RPA. Due to the assessment that the credit loss will not potentially reverse in the future, the Company wrote off the royalty asset receivable and no allowance for credit losses was recorded as of December 31, 2023. The fair value of the Bioasis Contingent Consideration was reduced to zero with the change in the estimated fair value recognized in other income (expense), net in the consolidated statement of operations and comprehensive loss.

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 product 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 a 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 economic terms 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 at least $25.0 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.

As of December 31, 2023, no payments were probable to be received under the Aronora RPA 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 assessment and no allowance for credit losses was recorded as of December 31, 2023.

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 product 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.

Under the terms of the Palo RPA, the Company paid Palo an upfront payment of $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.

As of December 31, 2023, no payments were probable to be received under the Palo RPA 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 impairment assessment and no allowance for credit losses was recorded as of December 31, 2023.

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, milestone payments and other payments related to two clinical-stage drug candidates for an upfront payment of $13.5 million. The first candidate, DAY101 (a pan-RAF kinase inhibitor), is being developed by Day One Biopharmaceuticals, and the second candidate, vosaroxin (a topoisomerase II inhibitor), is being developed by Denovo Biopharma. The Company acquired the right to receive (i) up to $54.0 million in potential milestone payments, potential royalties on sales, if approved, and other payments related to DAY101, excluding up to $5.0 million 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.

On October 30, 2023, the Company earned a $5.0 million milestone payment pursuant to the Viracta RPA related to the FDA's acceptance of Day One Biopharmaceuticals' NDA for tovorafenib. In accordance with the cost recovery method, the $5.0 million milestone payment received was recorded as a direct reduction of the recorded long-term royalty receivable balance. As of December 31, 2023, no further payments were 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, milestone payments and other payments until the purchase price has been fully collected. The Company performed its impairment assessment and no allowance for credit losses was recorded as of December 31, 2023.

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 milestone payments.

At the inception of the Kuros RPA, the Company recorded $7.0 million as long-term royalty receivables in its consolidated balance sheet.

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, 2023, no payments were probable to be received under the Kuros RPA in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to royalties, milestone payments and other payments until the purchase price has been fully collected. The Company performed its impairment assessment and no allowance for credit losses was recorded as of December 31, 2023.

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 0.5% of future net sales of faricimab for a ten-year period following the first commercial sales in each applicable jurisdiction. Under the terms of the Affitech CPPA, 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 included the $6.0 million

upfront payment and $8.0 million in regulatory milestone payments 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 up to $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, Roche 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. In September 2022, Roche received approval from the European Commission to commercialize VABYSMO for the treatment of wet, or neovascular, age-related macular degeneration and visual impairment due to diabetic macular edema. Pursuant to the Affitech CPPA, the Company paid Affitech a $5.0 million milestone payment tied to the U.S. marketing approvals and a $3.0 million milestone payment tied to the EC approvals.

Commercial payments are due from Roche within 60 days of December 31 and June 30 of each year. In accordance with the cost recovery method, commercial payments received are recorded as direct reductions of short-term and long-term receivable balances, as applicable. During the years ended December 31, 2022 and 2023, the Company received $0.5 million and $7.3 million from Roche, respectively.

Though the Company is unable to reasonably estimate its commercial payment stream from sales of future net sales and the commercial payments to be received under the agreement, it had a more accurate projection of the commercial payments expected for the twelve-month period following the consolidated balance sheet date of December 31, 2023 and, as such, $12.2 million was recorded as short-term royalty and commercial payment receivables.

The achievement of the first and second sales-based milestone payment under the Affitech CPPA was considered probable as of December 31, 2023, and the Company recognized a $6.0 million contingent liability in the consolidated balance sheet. The Company may pay up to $6.0 million in additional sales-based milestone payments upon the achievement of certain incremental sales milestones in the future which are not assessed as probable and as a result not recorded as a contingent liability as of December 31, 2023.

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 impairment assessment and no allowance for credit losses was recorded as of December 31, 2023.

The following table summarizes the royalty and commercial payment receivable activities during the years ended December 31, 2023 and 2022 (in thousands):

	Short-Term	Long-Term
Balance as of January 1, 2022	$ —	$ 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 as of December 31, 2022	$ 2,366	$ 63,683
Acquisition of royalty and commercial payment receivables:		
Aptevo	—	9,650
LadRx	—	6,000
Receipt of royalty and commercial payments:		
Affitech	(7,284)	—
Aptevo	—	(1,673)
Viracta		(5,000)
Impairment of royalty and commercial payment receivables:		
Bioasis	—	(1,575)
Reclassification to short-term royalty and commercial payment receivables:		
Affitech	17,109	(17,109)
Aptevo	2,024	(2,024)
Recognition of contingent consideration:		
Affitech	—	6,000
Balance as of December 31, 2023	$ 14,215	$ 57,952

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, 2023 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	$ 28,352	$ —	$ —	$ 28,352
Total cash equivalents	28,352	—	—	28,352
Equity securities	161	—	—	161
Total financial assets	$ 28,513	$ —	$ —	$ 28,513
Liabilities:				
Contingent consideration under RPAs, AAAs and CPPAs, measured at fair value	$ —	$ —	$ 1,000	$ 1,000

	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, AAAs and CPPAs, measured at fair value	$ —	$ —	$ 75	$ 75

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, 2023 and 2022. 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. As of December 31, 2023 and 2022, the Company valued the equity securities using the closing price for Rezolute's common stock traded on the Nasdaq Stock Market of $0.99 and $2.07, 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 LadRx contingent consideration liability of $1.0 million at the inception of the LadRx Agreements represents the future consideration that is contingent upon the achievement of specified regulatory milestones for the product candidates related to arimoclomol and aldoxorubicin. The fair value measurement is based on significant Level 3 inputs such as anticipated timelines and probability of achieving development milestones of each product candidate. Such contingent consideration is remeasured at fair value at 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 until settlement. As of December 31, 2023, there were no changes in the estimated fair value from the initial value of $1.0 million.

The $0.1 million of contingent consideration as of December 31, 2022 recorded pursuant to the Bioasis RPA was written off during the second quarter of 2023 (see Note 5).

7. Lease Agreement

The Company leases one facility in Emeryville, California under an operating lease. In January 2023, the Company amended the original lease to extend the lease term five months from its original expiration of February 28, 2023 to July 31, 2023 (the "amended lease agreement" or the "amended lease").

The Company retained no option to further extend, renew or terminate the amended lease under the amended terms and all other material terms and conditions, including the monthly base rent, remained consistent with the original lease.

In accordance with ASC 842, the Company accounted for the amendment to extend the lease term as a modification of the original lease and, as such, remeasured the lease liability and recognized a corresponding adjustment to the right-of-use asset of $0.1 million to reflect the changes in the lease payments due to the extended lease term.

On June 27, 2023, the Company executed the second lease amendment for its corporate headquarters lease in Emeryville, California with the same counterparty, in a different location in the same building to replace its existing amended lease which expired in July 2023 (the "new lease agreement" or the "new lease"). The new lease agreement commenced November 10, 2023 and has a term of 65 months.

Under the new lease agreement, the Company retained access to its original premises under the amended lease which expired in July 2023, until the new premise became available on November 10, 2023. Payments made between when the lease expired in July 2023 and the commencement date of the new premises of November 10, 2023 were recorded as variable lease costs in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2023.

In accordance with ASC 842, the Company accounted for the new lease as a separate contract and the Company recognized an operating lease right-of-use assets of $0.4 million and operating lease liabilities of $0.4 million on November 10, 2023, the commencement date of the lease.

The following table summarizes maturity of the new lease through the 65-month term of the Company's operating lease liabilities as of December 31, 2023 (in thousands):

Year Ending December 31,	Rent Payments
2024	$ 83
2025	85
2026	88
2027	91
2028	102
Thereafter	36
Total undiscounted lease payments	485
Present value adjustment	(96)
Total net lease liability	$ 389

As of December 31, 2023 and 2022, the total net lease liability was $0.4 million and $34,000, respectively.

As of December 31, 2023 the Company's current and non-current operating lease liabilities were $0.1 million and $0.3 million, respectively. As of December 31, 2022 the Company's $34,000 lease liability was classified as a current liability.

The following table summarizes the cost components of the Company's operating leases for the years ended December 31, 2023 and 2022, respectively (in thousands):

	Year Ended December 31,	
	2023	2022
Lease costs:		
Operating lease cost	$ 131	$ 177
Variable lease cost [1]	44	12
Total lease costs	$ 175	$ 189

(1) Under the terms of the original, amended and new lease agreements, 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 consolidated statements of cash flows related to operating leases (in thousands):

	Year Ended December 31,	
	2023	2022
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows under operating leases	$ 126	$ 202

The present value assumptions used in calculating the present value of the lease payments for the Company's new and original operating lease as of December 31, 2023 and 2022, respectively, were as follows:

	December 31, 2023	December 31, 2022
Weighted-average remaining lease term	5.33 years [2]	0.17 years [1]
Weighted-average discount rate	8.50 %	5.51 %

(1) Prior to the extension of the end of the lease term from February 28, 2023 to July 31, 2023.
(2) The new lease that commenced November 10, 2023 has a lease term of 65 months.

8. Long-Term Debt

On December 15, 2023, XOMA transferred to XRL, a newly formed wholly owned subsidiary, all its rights, title and interest in the commercial payments from Roche's VABYSMO under the Affitech CPPA and related assets (the "Commercial Payments"). The VABYSMO-related assets and rights transferred to XRL are referred to herein as the "Transferred Assets."

Simultaneously, XRL entered into the Blue Owl Loan Agreement with Blue Owl and lenders, pursuant to which XRL was extended certain senior secured credit facilities in an aggregate principal amount of up to $140.0 million. The principal and interest of the loan are to be paid from the Commercial Payments. XRL is obligated to make semi-annual interest payments, starting in March 2024, at a fixed rate of 9.875% per annum until the commercial payment-backed loan is repaid, at which time the Commercial Payments will revert back to XOMA. On each interest payment date, any shortfall in interest payment will be paid from the interest reserve, any uncured shortfall in interest payment that exceeds the interest reserve will increase the outstanding principal amount of the loan, and any Commercial Payment in excess of accrued interest on the loan will be used to repay the principal of the loan until the balance is fully repaid.

The loan matures on December 15, 2038, provided that XRL may repay it in full at any time prior to December 15, 2038, subject to the terms of the Blue Owl Loan Agreement. The Blue Owl Loan includes (i) an initial term loan in an aggregate principal amount equal to $130.0 million and (ii) a delayed draw term loan in an aggregate principal amount of

$10.0 million to be funded at the option of the XRL upon receipt by the lenders of payments of principal and interest from the proceeds of Commercial Payments in excess of an agreed upon amount on or prior to March 15, 2026.

The payment obligations under the Blue Owl Loan Agreement are limited to XRL, and Blue Owl has no recourse under the Blue Owl Loan Agreement against XOMA or any assets other than the Transferred Assets and XOMA's equity interest in XRL. In connection with the Blue Owl Loan Agreement, (i) XRL granted Blue Owl a first-priority perfected lien on, and security interest in, (a) the Commercial Payments and the proceeds thereof, in each case under the Affitech CPPA and (b) all other assets of XRL and (ii) XOMA granted Blue Owl a first-priority perfected lien on, and security interest in 100% of the equity of XRL. The Blue Owl Loan Agreement contains other customary terms and conditions, including representations and warranties, as well as indemnification obligations in favor of Blue Owl.

On December 15, 2023, the Company borrowed the initial term loan of $130.0 million and received $119.6 million, net of $4.1 million in fees and lender expenses and $6.3 million that was deposited into reserve accounts to pay interest, administrative fees and XRL's operating expenses (see Note 2). The Company also incurred $0.6 million of direct issuance costs related to the Blue Owl Loan Agreement.

In connection with the Blue Owl Loan Agreement, XOMA issued to Blue Owl and certain funds affiliated with Blue Owl warrants to purchase: (i) up to 40,000 shares of XOMA's common stock at an exercise price of $35.00 per share; (ii) up to 40,000 shares of XOMA's common stock at an exercise price of $42.50 per share; and (iii) up to 40,000 shares of XOMA's common stock at an exercise price of $50.00 per share (collectively, the "Blue Owl Warrants") (see Note 12). The fair value of the Blue Owl Warrants was determined using the Black-Scholes Model (see Note 2) and was estimated to be $1.5 million. As of December 31, 2023, all Blue Owl Warrants were outstanding.

The initial term loan of $130.0 million is carried at amortized cost. Amortization of the initial term loan is applied under the expected-effective-yield approach using the retrospective interest method. As of December 31, 2023, the effective interest rate was determined to be 11.01%. The Company recorded a debt discount of $5.3 million, which included $3.8 million in allocated fees and lender expenses and $1.5 million for the fair value of the Blue Owl Warrants. The Company also recorded $0.6 million in direct debt issuance costs allocated to the initial term loan. The Company will accrete both the debt discount of $5.3 million and $0.6 million of direct debt issuance costs over the expected term of the initial term loan.

As of the closing date of December 15, 2023, the Company recorded the $0.3 million allocated costs for the delayed draw term loan commitment as a non-current asset in other assets - long term in the consolidated balance sheet and will reclassify the amount as a debt discount when the delayed draw term loan is drawn. As of December 31, 2023, no amount had been drawn from the delayed draw term loan.

The carrying value of the short and long-term portion of the initial term loan was $5.5 million and $118.5 million, respectively as of December 31, 2023. The Company recorded $0.6 million in interest expense during the year ended December 31, 2023.

The following table summarizes the impact of the initial term loan on the Company's consolidated balance sheet as of December 31, 2023 (in thousands):

	December 31, 2023
Gross principal	$ 130,000
Unaccreted debt discount and debt issuance costs	(5,939)
Total carrying value net of unaccreted debt discount and debt issuance costs	124,061
Less: current portion of long-term debt	(5,543)
Long-term debt	$ 118,518

Long-term debt on the Company's consolidated balance sheet as of December 31, 2023 includes only the carrying value of the Blue Owl Loan. There was no long-term debt on the Company's consolidated balance sheet as of December 31, 2022.

Aggregate projected future principal payments of the initial term loan as of December 31, 2023, are as follows (in thousands):

Year Ending December 31,	Payments
2024	$ 6,594
2025	8,767
2026	14,200
2027	19,155
2028	23,872
Thereafter	57,412
Total payments	$ 130,000

Accretion of debt discounts and issuance costs are included in interest expense. Interest expense in the consolidated statements of operations and comprehensive loss for the year ended December 31, 2023 relates to the initial term loan (in thousands):

	Year Ended December 31,	
	2023	2022
Accrued interest expense	$ 535	$ —
Accretion of debt discount and debt issuance costs	34	—
Total interest expense	$ 569	$ —

9. Income Taxes

The Company had pre-tax book loss of $40.8 million and $17.1 million for the years ended December 31, 2023 and 2022, respectively. The Company had no income tax provision for the year ended December 31, 2023 and a $15,000 income tax benefit for the year ended December 31, 2022.

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

	Year Ended December 31,	
	2023	2022
Federal	$ —	$ (15)
State	—	—
Total	$ —	$ (15)

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,	
	2023	2022[1]
Federal tax at statutory rate	21 %	21 %
Stock compensation and other permanent differences	(1)%	— %
Nondeductible executive compensation	(1)%	(1)%
Valuation allowance	(19)%	(20)%
Total	— %	— %

(1) Presentation for the fiscal year ended 2022 adjusted to conform with the fiscal year ended 2023

The significant components of net deferred tax assets at December 31, 2023 and 2022 were as follows (in thousands):

	December 31,	
	2023	2022
Capitalized research and development expenses	$ 2,336	$ 4,732
Net operating loss carryforwards	30,130	23,974
Research and development and other tax credit carryforwards	13,176	13,176
Stock compensation	5,864	4,715
Unearned revenue	1,984	2,408
Royalty Receivable	4,080	466
Other	756	858
Total deferred tax assets	58,326	50,329
Valuation allowance	(58,326)	(50,329)
Net deferred tax assets	$ —	$ —

The net increase in the valuation allowance was $8.0 million and $3.3 million, for the years ended December 31, 2023 and 2022, 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, 2023 and 2022. 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, 2023, the Company had federal NOL carry-forwards of approximately $137.8 million and state NOL carry-forwards of approximately $22.1 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 U.S. 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 2020 and beyond remain subject to examination by the Internal Revenue Service. The Company's state income tax returns for tax years 2019 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,	
	2023	2022
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, 2023, 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, 2023, the Company has not accrued interest or penalties related to uncertain tax positions.

10. Stock Based Compensation and Other Benefit Plans

The Company may grant qualified and non-qualified stock options, common stock, PSUs 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 initially provided for six-month offering periods ending on May 31 and November 30 of each year. At the end of each offering period, employees were 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 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, 2023, the Company had 224,886 remaining authorized shares available for purchase under the ESPP.

Effective December 1, 2023, the 2015 ESPP consists of consecutive 24-month overlapping offering periods that begin on December 1 and June 1 and end 24 months later on November 30 and May 31, respectively. Each offering period

is comprised of four consecutive six-month purchase periods starting on December 1 and June 1 and ending on November 30 and May 31, respectively. 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 purchase period. The plan includes a rollover mechanism for the purchase price if the fair market value of the Company's common stock on the purchase date is less than the fair market value of the Company's common stock on the first trading day of the offering period.

During the years ended December 31, 2023 and 2022, employees purchased 6,051 and 6,090 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 has adopted 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 2023 and 2022 of $22,500 and $20,500, respectively (or $30,000 and $27,000, 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, 2023 and 2022, and 100% was paid in common stock for each year. When available, the Company applies shares from plan forfeitures of terminated employees toward the Company's matching contribution.

Stock Option Plans

2010 Plan Stock Options

In May 2010, the Compensation Committee and Board 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, 2023, the Company had 409,477 shares available for grant under the 2010 Plan. As of December 31, 2023, options to purchase 2,730,068 shares of common stock were outstanding under the 2010 Plan.

Stock options issued under the 2010 Plan 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.

Fair Value Assumptions of 2010 Plan Stock Options

The fair value of the stock options granted under the 2010 Plan during the years ended December 31, 2023 and 2022, was estimated based on the following weighted average assumptions:

	Year Ended December 31,	
	2023	2022
Dividend yield	0 %	0 %
Expected volatility	70 %	69 %
Risk-free interest rate	3.71 %	2.68 %
Expected term	5.79 years	5.64 years

The weighted-average grant-date fair value per share of the options granted under the 2010 Plan during the year ended December 31, 2023 and 2022 was $13.18 and $12.01, respectively.

Stock Option Inducement Awards

On December 30, 2022, the Board appointed Owen Hughes as Executive Chairman of the Board and Interim Chief Executive Officer and Bradley Sitko as the Company's Chief Investment Officer, effective as of January 1, 2023. Pursuant to the terms of their respective employment agreements, Mr. Hughes and Mr. Sitko were each granted two separate awards of non-qualified stock options on January 3, 2023 (collectively, the "Stock Option Inducement Awards") when the Company's stock price was $18.66 per share. The Stock Option Inducement Awards were granted to Mr. Hughes and Mr. Sitko outside the 2010 Plan as an inducement material to entering into their respective employment with the Company in accordance with Nasdaq Listing Rule 5635(c)(4) but are subject to the terms and conditions of the 2010 Plan.

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 a fair market value exercise price of $18.66 per share that vested in a series of four equal installments on March 31, 2023, June 30, 2023, September 30, 2023 and December 31, 2023 and (ii) 75,000 shares of the Company's common stock at an above fair market value exercise price of $30.00 per share that will vest in a series of 36 successive equal monthly installments from January 1, 2023.

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 a fair market value exercise price of $18.66 per share and (ii) 250,000 shares of the Company's common stock at an above fair market value exercise price of $30.00 per share. 25% of the shares subject to Mr. Sitko's option grants vested and became exercisable on January 3, 2024, and the balance of the shares will vest and become exercisable in a series of 36 successive equal monthly installments thereafter.

Fair Value Assumptions of Stock Option Inducement Awards

The fair value of the stock options granted to Mr. Hughes and Mr. Sitko at an exercise price of $18.66 per share during the year ended December 31, 2023, was estimated based on the following weighted average assumptions:

	Year Ended December 31,	
	2023	2022[1]
Dividend yield	0 %	—
Expected volatility	69 %	—
Risk-free interest rate	3.92 %	—
Expected term	5.79 years	—

(1) No Stock Option Inducement Awards were granted during the year ended December 31, 2022.

The weighted-average grant-date fair value per share of options granted to Mr. Hughes and Mr. Sitko at an exercise price of $18.66 per share in January 2023 was $11.91.

The fair value of the stock options granted to Mr. Hughes and Mr. Sitko at an exercise price of $30.00 per share in January 2023 was estimated based on the following weighted average assumptions:

	Year Ended December 31,	
	2023	2022[1]
Dividend yield	0 %	—
Expected volatility	91 %	—
Risk-free interest rate	3.86 %	—
Expected term	8.01 years	—

(1) No Stock Option Inducement Awards were granted during the year ended December 31, 2022.

The weighted-average grant-date fair value per share of options granted to Mr. Hughes and Mr. Sitko at an exercise price of $30.00 per share during January 2023 was $14.68.

The activity for all stock options for the year ended December 31, 2023, was as follows:

	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, 2023	2,025,542	$ 20.24	6.10	$ 10,804
Granted	804,302	23.44		
Exercised	(28,473)	8.27		
Forfeited, expired or cancelled	(71,303)	36.51		
Outstanding at December 31, 2023	2,730,068	$ 20.88	6.29	$ 10,638
Exercisable at December 31, 2023	1,961,143	$ 19.73	5.27	$ 10,606

The aggregate intrinsic value of stock options exercised during the years ended December 31, 2023 and 2022 was $0.3 million and $2.8 million, respectively.

As of December 31, 2023, $8.0 million of total unrecognized compensation expense related to stock options is expected to be recognized over a weighted average period of 2.64 years.

Performance Stock Unit Awards

In May 2023, the Company granted employees 430,400 PSUs under the 2010 Plan.

The PSUs are subject to market-based vesting conditions and the number of PSUs vested will be based on the stock price of the Company's common stock as compared to four stock price hurdles over a three-year period from the May 2023 grant date (the "performance period"). A stock price hurdle is considered attained when, at any time during the performance period, the Company's volume-weighted average stock price equals or exceeds the hurdle stock price value for 30 consecutive calendar days. Upon attainment of a stock price hurdle, one third of the earned PSUs will vest immediately upon achievement, one third will vest upon the two-year anniversary of the grant date and one third will vest on the three-year anniversary of the grant date. If no stock price hurdle is attained during the performance period, then no PSUs will vest.

In October 2023, the Company granted an additional 18,200 PSUs under the 2010 Plan with generally the same terms as the May 2023 PSU grants.

Fair Value Assumptions of Performance Stock Unit Awards

The fair value of the PSUs granted was estimated based on Monte Carlo valuation model which incorporates into the valuation the possibility that the stock price hurdles may not be satisfied.

The range of grant date fair values of the PSUs granted during the year ended December 31, 2023 was estimated as follows:

Hurdle Price Per Share	Number of PSUs	Fair Value Per Share	Derived Service Period (in years)
$ 30.00	243,550	$ 11.42-17.45	0.69-2.59
$ 35.00	91,239	$ 10.16-16.07	0.93-2.59
$ 40.00	60,024	$ 9.07-14.84	1.12-2.59
$ 45.00	53,787	$ 8.12-13.72	1.27-2.59
	448,600		

The Company estimates that it will recognize total stock-based compensation expense of approximately $6.9 million in aggregate for the PSUs granted in May and October 2023 using the graded expense attribution method over the requisite service period of each tranche. If the stock price hurdles are met sooner than the requisite service period, the stock-based compensation expense for the respective stock price hurdle will be accelerated. Stock-based compensation expense will be recognized over the requisite service period if the grantees continue to provide service to the Company, regardless of whether the PSU stock price hurdles are achieved.

The activity for all PSUs for the year ended December 31, 2023, was as follows:

	Number of Unvested PSUs	Weighted Average Grant Date Fair Value Per Share
Unvested balance at January 1, 2023	—	$ —
Granted	448,600	15.40
Vested	—	—
Forfeited	—	—
Unvested balance at December 31, 2023	448,600	$ 15.40

The Company recorded $2.8 million of stock-based compensation expense related to the PSUs during the year ended December 31, 2023. As of December 31, 2023, there was $4.1 million in unrecognized stock-based compensation expense related to outstanding PSUs granted to employees, with a weighted-average remaining recognition period of 1.38 years.

Stock-based Compensation Expense

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 (in thousands):

	Year Ended December 31, 2023	2022
Total stock-based compensation expense included in G&A	$ 9,099	$ 3,608

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 remained employed by the Company for a twelve-month period beginning on November 1, 2022, he would 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. The unrecognized stock-based compensation cost for the unvested stock options as of November 1, 2022 was recognized over the shorter of (1) twelve months and (2) the remaining original vesting period (the "Revised Vesting Term"). During the years ended December 31, 2023 and 2022, the Company recognized stock-based compensation expense of $1.4 million and $0.6 million, respectively, related to Mr. Burns' option awards. As of December 31, 2023, there was no unrecognized compensation expense related to Mr. Burns' stock options.

Employee Retention Bonus

In October 2022, the Company approved the Amended Retention Plan which provided that each of its then current employees, excluding the Chief Executive Officer, would 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 remained consistent with the Retention Plan. The Company accrued and recognized the cost of the cash retention bonus as expense on a straight-line basis from November 1, 2022 through October 31, 2023.

The Company recognized $0.6 million and $0.1 million for cash retention bonuses in operating expenses in the consolidated statements of operations and comprehensive loss during the years ended December 31, 2023 and 2022, respectively. As of December 31, 2022, the Company had $0.1 million of cash retention bonuses recorded in accrued and other liabilities in the consolidated balance sheet. All cash retention bonuses were paid in full on October 31, 2023.

James R. Neal Departure and Continuity Incentive

James R. Neal retired as the Company's Chief Executive Officer effective as of December 31, 2022 (the "Departure Date") and resigned as a member of the Board and Chairman of the Board, effective 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 was entitled to a cash payment of $1.2 million (the "Continuity Incentive") which was made in equal monthly installments starting in January 2023 through December 2023, less deductions and withholdings. The Company recorded the full $1.2 million Continuity Incentive in operating expenses in the consolidated statement of operations and comprehensive loss during the year ended December 31, 2022. The unpaid accrued Continuity Incentive recorded in accrued and other liabilities in the consolidated balance sheets as of December 31, 2022 was $1.2 million. The Continuity Incentive was paid in full as of December 31, 2023.

11. Net Loss Per Share Attributable to Common Stockholders

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

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

	Year Ended December 31,	
	2023	2022
Convertible preferred stock	5,003	5,003
Common stock options	1,793	885
Warrants for common stock	17	6
Total	6,813	5,894

For PSUs with market conditions, if the market conditions have not been satisfied by the end of the reporting period, the number of shares that would be issuable based on the market price at the end of the reporting period, as if the end of the reporting period were the end of the contingency period, will be included in the calculation of diluted earnings per share if the effect is dilutive. No shares would be issuable based on the market price of $18.50 per share as of December 31, 2023.

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

	Year Ended December 31,	
	2023	2022
Numerator		
Net loss	$ (40,831)	$ (17,104)
Less: Series A accumulated dividends	(2,122)	(2,122)
Less: Series B accumulated dividends	(3,350)	(3,350)
Net loss attributable to common stockholders, basic and diluted	$ (46,303)	(22,576)
Denominator		
Weighted average shares used in computing basic and diluted net loss per share attributable to common stockholders	11,471	11,413
Basic and diluted net loss per share attributable to common stockholders	$ (4.04)	$ (1.98)

12. 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 Convertible Preferred Stock into common stock on April 15, 2020.

As of December 31, 2023 and 2022, 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 Convertible Preferred Stock 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— Series X and Series Y 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 shares of Series X and Series Y Convertible Preferred Stock 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 Series X and Series Y 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, 2023 and 2022, 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 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 (ii) the amount of any accrued and unpaid dividends to, but not including, the event date, as applicable, divided by (iii) 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 Series A 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 Chief Executive Officer and Chairman of the Board, 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, 2023 and 2022, 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 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 Series B 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, 2023, the Company's Board 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 26, 2022	$ 0.53906	$ 0.52344	January 17, 2023
February 22, 2023	$ 0.53906	$ 0.52344	April 17, 2023
May 17, 2023	$ 0.53906	$ 0.52344	July 17, 2023
July 26, 2023	$ 0.53906	$ 0.52344	October 16, 2023
October 18, 2023	$ 0.53906	$ 0.52344	January 15, 2024

BVF Ownership

As of December 31, 2023, BVF owned approximately 31.6% of the Company's total outstanding shares of common stock, and if all the shares of Series X Convertible Preferred Stock were converted (without taking into account beneficial ownership limitations), 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, 2023, 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, 2023 and 2022, the following common stock warrants were outstanding:

Issuance Date	Expiration Date	Balance Sheet Classification	Exercise Price per Share	December 31, 2023	December 31, 2022
May 2018	May 2028	Stockholders' equity	$ 23.69	6,332	6,332
March 2019	March 2029	Stockholders' equity	$ 14.71	4,845	4,845
December 2023	December 2033	Stockholders' equity	$ 35.00	40,000	—
December 2023	December 2033	Stockholders' equity	$ 42.50	40,000	—
December 2023	December 2033	Stockholders' equity	$ 50.00	40,000	—
				131,177	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. The warrant is classified in stockholders' equity on the consolidated balance sheets.

In December 2023, in connection with the Blue Owl Loan, the Company issued the Blue Owl Warrants to certain funds affiliated with Blue Owl, which are exercisable in whole or in part to purchase up to an aggregate of 120,000 shares of the Company's common stock, inclusive of warrants to purchase (i) up to 40,000 shares of XOMA's common stock at an exercise price of $35.00 per share; (ii) up to 40,000 shares of XOMA's common stock at an exercise price of $42.50 per share; and (iii) up to 40,000 shares of XOMA's common stock at an exercise price of $50.00 per share. The Blue Owl Warrants may be exercised on a cashless basis and are exercisable within 10 years from the date of issuance or upon the consummation of certain acquisitions of the Company.

The fair value per share of Blue Owl Warrants issued at the exercise prices of $35.00, $42.50 and $50.00 per share during the fourth quarter of 2023 was determined using the Black-Scholes Model to be $12.53, $12.23 and $11.97 per share, respectively, based on the following weighted average assumptions:

	Year Ended December 31,	
	2023	2022
Dividend yield	0 %	— %
Expected volatility	87 %	— %
Risk-free interest rate	3.91 %	— %
Expected term	10 years	—

The aggregate fair value of the Blue Owl Warrants of $1.5 million is classified in stockholders' equity on the consolidated balance sheets.

13. 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, 2023.

Contingent Consideration

Pursuant to the Company's agreements with Bioasis, Aronora, Kuros, Affitech, ObsEva and Aptevo the Company has committed to pay the Bioasis Contingent Consideration, the Aronora Royalty Milestones, the Kuros Sales Milestones, the Affitech Sales Milestones and the Aptevo Contingent Consideration.

The Company included $75,000 for the Bioasis Contingent Consideration that represented the estimated fair value of the potential future payments of the Bioasis RPA as of December 31, 2022. The Bioasis Contingent Consideration was remeasured at fair value at each reporting period, with changes in fair value recorded in other income (expense), net. During the second quarter of 2023, the estimated fair value of the Bioasis Contingent Consideration was reduced to $0 and, as such, no balance remains as of December 31, 2023.

The Company recorded $1.0 million for the LadRx contingent consideration that represents the estimated fair value of the potential future payments upon the achievement of regulatory milestones related to arimoclomol and aldoxorubicin at the inception of the LadRx Agreements. Such contingent consideration related to regulatory milestones is remeasured at fair value at each reporting period, with changes in fair value recorded in other income (expense), net. As of December 31, 2023, there has been no change in the estimated fair value from the initial value.

In the first quarter of 2023, the Company recorded a contingent liability of $50,000 under ASC 450 for the Aptevo Contingent Consideration at the inception of the Aptevo CPPA. During the year ended December 31, 2023, the contingent liability recorded pursuant to the Aptevo CPPA decreased to zero after the Company paid Aptevo $50,000 upon achievement of the related commercial sales milestone.

During the year ended December 31, 2023, certain sales milestones related to VABYSMO pursuant to the Affitech CPPA were assessed to be probable under ASC 450. As such, a $6.0 million liability was recorded in contingent consideration under RPAs, AAAs and CPPAs and a corresponding $6.0 million asset was recorded under long-term royalty and commercial payment receivables on the consolidated balance sheet.

The liability for future Aronora Royalty Milestones, Kuros Sales Milestones, remaining Affitech Sales Milestones and LadRx milestones will be recorded when the amounts, by product, are estimable and probable.

As of December 31, 2023, none of the Aronora Royalty Milestones, Kuros Sales Milestones, remaining Affitech Sales Milestones or LadRx milestones were assessed to be probable and as such, no liability was recorded on the consolidated balance sheet**.**

14. Concentration of Risk, Segment and Geographic Information

Concentration of Risk

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

The Company maintains cash balances at commercial banks. Balances commonly exceed the amount insured by the FDIC. The Company has not experienced any losses in such accounts.

The Company monitors the creditworthiness of its customers to which it grants credit terms in the normal course of business but does not generally require collateral on receivables.

For the year ended December 31, 2023, three partners represented 44%, 32% and 21% of total revenues. For the year ended December 31, 2022, four partners represented 33%, 31%, 13% and 12% of total revenues. One partner represented 100% of the trade receivables, net balance as of December 31, 2023. There were no trade receivables, net balance as of December 31, 2022.

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,	
	2023	2022
U.S.	$ 3,658	$ 4,477
Asia Pacific	1,100	1,550
Total	$ 4,758	$ 6,027

The Company's property and equipment is held in the U.S.

15. Subsequent Events

Stock Repurchase Program

On January 2, 2024, the Board authorized the Company's first stock repurchase program, which permits the Company to purchase up to $50.0 million of its common stock through January 2027. Under the program, the Company has discretion in determining the conditions under which shares may be purchased from time to time, including through transactions in the open market, in privately negotiated transactions, under plans compliant with Rule 10b5-1 under the Exchange Act, as part of accelerated share repurchases or by other means in accordance with applicable laws. The manner, number, price, structure, and timing of the repurchases, if any, will be determined at the Company's sole discretion and repurchases, if any, depend on a variety of factors, including legal requirements, price and economic and market

conditions, royalty and milestone acquisition opportunities, and other factors. The repurchase authorization does not obligate the Company to acquire any particular amount of its common stock. The Board may suspend, modify, or terminate the stock repurchase program at any time without prior notice. As of March 4, 2024, the Company has purchased a total of 660 shares of its common stock pursuant to the stock repurchase plan.

Appointment of Owen Hughes as Chief Executive Officer

On January 7, 2024, the Board appointed Owen Hughes, previously Interim Chief Executive Officer, to serve as the Company's full-time Chief Executive Officer. In connection with this appointment, the Company and Mr. Hughes entered into an amendment and restatement of Mr. Hughes' employment agreement (the "Amended and Restated Employment Agreement"), pursuant to which his annual base salary was increased to $575,000 and his initial target annual cash bonus amount was increased to 60% of his base salary, subject to the achievement of annual performance milestones to be established by the Board. Mr. Hughes is also eligible to receive certain termination benefits. On January 9, 2024, the Company granted Mr. Hughes a target award of 275,000 performance share units that will vest upon the Company's achievement of specified stock price performance conditions established by the Board and which are granted pursuant to, and are subject to the terms and conditions of, the Company's 2010 Plan.

Acquisition of Economic Interest in DSUVIA

In January 2024, the Company acquired an economic interest in DSUVIA (sufentanil sublingual tablet) from Talphera, for $8.0 million. DSUVIA was approved in 2018 by the FDA for use in adults with indication in certified medically supervised healthcare settings. In April 2023, Talphera divested DSUVIA to Alora for an upfront payment, a 15% royalty on commercial net sales, a 75% royalty on net sales to the DoD, and up to $116.5 million in milestone payments. Under the terms of the agreement, the Company will receive 100% of all royalties and milestones related to DSUVIA sales until the Company receives $20.0 million. Thereafter, the Company fully retains the 15% royalty associated with DSUVIA commercial sales. The 75% royalties generated from DoD purchases and the remaining $116.5 million in potential milestone payments due from Alora will be shared equally between the Company and Talphera.

FDA Acceptance of Arimoclomol NDA Resubmission

On January 11, 2024, Zevra announced that the FDA accepted its NDA resubmission for arimoclomol and pursuant to the LadRx RPA, the Company made a $1.0 million milestone payment to LadRx in January 2024. As of December 31, 2023, the $1.0 million milestone payment was accrued in contingent consideration under RPAs, AAAs, and CPPAs in the consolidated balance sheet.

Kinnate Acquisition

On February 16, 2024, the Company entered into an Agreement and Plan of Merger with Kinnate and XRA 1 Corp., a Delaware corporation and a wholly-owned subsidiary of the Company, pursuant to which the Company expects to acquire Kinnate through a cash tender offer (the "Offer") for a cash amount of between $2.3352 and $2.5879 per outstanding share of Kinnate common stock, par value $0.0001 per share (each, a "Kinnate Share"), consisting of a base price per Kinnate Share of $2.3352 and an additional price per Kinnate Share of up to $0.2527, plus one non-transferable contingent value right per Kinnate Share, representing the right to receive one or more potential cash payments equal to (i) 100% of net proceeds payable, if any, from any license, sale or disposition (each, a "Disposition") entered into by Kinnate prior to the expiration of the Offer related to exarafenib, an inhibitor for the treatment of patients with lung cancer, melanoma and other solid tumors, and/or any other pan-RAF inhibitor, and (ii) 85% of net proceeds payable, if any, from any Disposition entered into by the Company or any of its affiliates after expiration of the Offer related to exarafenib or any other research program active at Kinnate at the closing of the related merger.

Exhibit 4.9

DESCRIPTION OF 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 ("***we***," "***us***," "***our***" or the "***Company***"). The Common Stock, 8.625% Series A Cumulative Perpetual Preferred Stock, $0.05 par value (the "***Series A Preferred Stock***"), and the depositary shares (the "***Series B Depositary Shares***") each representing a 1/1000th interest in a share of the Company's 8.375% Series B Cumulative Perpetual Preferred Stock, $0.05 par value (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. All outstanding shares of Common Stock are validly issued, fully paid and nonassessable. The following description is based on (i) the Company's Certificate of Incorporation, as amended (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 (our "***Board***"), 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 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 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 ratably in the assets remaining and available for distribution after payment of all liabilities 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 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 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 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, 2023, 5,003 shares of Series X Convertible Preferred Stock, $0.05 par value (the "***Series X Preferred Stock***"), 984,000 shares of Series A Preferred Stock and 1,600,000 Series B Depositary Shares, representing 1,600 shares of Series B Preferred Stock, 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, 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 immediately preceding or 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 we have earnings, whether or not there are funds legally available for the payment of such dividends, and whether or not such dividends are authorized or declared.

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 any accumulated but unpaid dividends with respect to such shares up to but excluding the date of payment.

Optional Redemption. On and after December 15, 2021, but prior to December 15, 2022, the shares of Series A Preferred Stock were 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 but prior to December 15, 2023, the shares of Series A Preferred Stock were 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 but prior to December 15, 2024, 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 but prior to December 15, 2025, 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 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 Stock Market (the "***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 stock entitling that person to exercise more than 50% of the total voting power of all shares of our stock 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 American depositary receipts ("***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 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 (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 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 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 per $25.00 of liquidation preference.

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, at the rate of 8.375% per annum of the $25,000.00 liquidation preference ($25.00 per Series B Depository Share) per year (equivalent to $2,093.75 per share of Series B Preferred Stock per year or $2.09375 per Series B Depository 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 immediately preceding business day or 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 we have earnings, whether or not there are funds legally available for the payment of such dividends, and whether or not such dividends are authorized or declared.

Liquidation Preference. The liquidation preference of each share of Series B Preferred Stock is $25,000.00 ($25.00 per Series B Depository 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 any accumulated but unpaid dividends with respect to such shares up to but excluding the date of payment.

Optional Redemption. On and after April 15, 2022 but prior to April 15, 2023, the shares of Series B Preferred Stock were redeemable at our option, in whole or in part, at a redemption price equal to $26,000.00 per share ($26.00 per Series B Depository Share), plus any accrued and unpaid dividends. On and after April 15, 2023 but prior to 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 $25,750.00 per share ($25.75 per Series B Depository Share), plus any accrued and unpaid dividends. On and after April 15, 2024 but prior to 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 $25,500.00 per share ($25.50 per Series B Depository Share), plus any accrued and unpaid dividends. On and after April 15, 2025 but prior to 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 $25,250.00 per share ($25.25 per Series B Depository Share), plus any accrued and unpaid dividends. On and after April 15, 2026 but prior to April 15, 2027, 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 Series B Depository 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 Series B Depository 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 reporting requirements of 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 Series B Depository 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 stock entitling that person to exercise more than 50% of the total voting power of all shares of our stock 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 Series B 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 Series B Depository 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 Series B 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 1,000. 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 underlying Series B Preferred Stock and the Series B Depositary Shares, "***Change of Control Conversion Date***" means a business day fixed by our Board 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 underlying Series B Preferred Stock and the 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 (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 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 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 per $25,000.00 of liquidation preference. As a result, each Series B Depository 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.

Liquidation Preference. In the event of our liquidation, dissolution, or winding up, holders of our Series X Preferred Stock will rank: (i) senior to any class or series of our capital stock specifically ranked by its terms junior to any Series X Preferred Stock; (ii) on parity with the Common Stock and any other class or series of capital stock specifically ranked by its terms on parity with the Series X Preferred Stock; and (iii) junior to any class or series of capital stock specifically ranked by its terms senior to any Series X Preferred 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 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 shares of Common Stock with respect to the then outstanding shares of Common Stock, 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 not held by us or any other person making such offer is converted or exchanged into other securities, cash or property; 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 at least 50% of the authorized 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 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 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 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 is able to elect a director to fill a vacancy created by the expansion of the Board 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. 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 provision. 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 2/3% 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 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

Exhibit 10.16

AMENDED AND RESTATED OFFICER EMPLOYMENT AGREEMENT

This Amended and Restated Officer Employment Agreement ("Agreement") between Owen Hughes ("Employee") and XOMA Corporation ("XOMA" or "the Company") (collectively, the "Parties") is effective as of January 8, 2024 (the "Agreement Effective Date").

WHEREAS, Employee is currently employed by the Company as its Interim Chief Executive Officer, and the Company desires to change Employee's title to Chief Executive Officer commencing on the Agreement Effective Date, and Employee desires to serve in such capacity, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed by and between the parties hereto as follows:

1. Employment. Employee's employment with XOMA in the position of 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 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 Executive Officer and as may be directed by the Board of Directors of XOMA (the "Board") and the Non-Executive Chairman of the Board or Lead Independent Director, if any, 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 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. 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 $575,000 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 60% of Base Salary (the "Target Bonus"), which can be adjusted from time to time by the Board.

(b) Equity Awards. On the Agreement Effective Date, the Company will grant Employee an award of performance units pursuant to the Company's Equity Incentive Plan (the "Plan") covering a target number of shares of the Company's common stock equal to 275,000 shares (the "Performance Units"). The Performance Units shall vest based upon the achievement of performance-based vesting criteria set forth in the award agreement evidencing the grant (subject to Employee's continuous service). 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. 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 under this Agreement, Employee will continue to be bound by the obligations set forth in that certain Employee Confidential Information and Inventions Assignment Agreement dated December 27, 2022 by and between the Company and Employee (the "Confidentiality Agreement"). 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 members of XOMA's senior management team, (ii) a reduction in Employee's Base Salary by more than 10%; (iii) a material reduction in Employee's title or duties (including responsibilities and/or authorities); or (iv) 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 Board).

(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 A (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 (as defined below in Section 9(f)), 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 (1) 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, if applicable) 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, the "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) two (2) 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) two (2) 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 (Sections 9(a)(i)-(iii) collectively the "Change in Control Protection Period Severance Payments"). The Change in Control Protection Period Severance Payments 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 twenty-four (24) 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. 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, XOMA's 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 will continue to be bound by the obligations set forth in that certain indemnification agreement dated January 1, 2023 by and between the Company and Employee.

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/ Jack L. Wyszomierski
Jack L. Wyszomierski
Chairman of the Board

EMPLOYEE:

By: /s/ Owen Hughes
Owen Hughes

EXHIBIT A

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 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. Nothing in this Release Agreement prevents Employee from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Employee has reason to believe is unlawful.

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:_____

EMPLOYEE:

_____

Owen Hughes

Exhibit 10.63

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THE LOAN UNDER THIS AGREEMENT ARE TREATED AS HAVING BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID") WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), AND THIS LEGEND IS REQUIRED BY SECTION 1275(c) OF THE CODE. INFORMATION INCLUDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE AND THE YIELD TO MATURITY WILL BE PROVIDED IN WRITING TO A LENDER PROMPTLY UPON REQUEST TO THE BORROWER AT 2200 POWELL STREET, SUITE 310 EMERYVILLE, CA 94608 [***].

LOAN AGREEMENT

dated as of December 15, 2023

among

XRL 1 LLC,
as Borrower,

THE LENDERS FROM TIME TO TIME PARTY HERETO

and

BLUE OWL CAPITAL CORPORATION
as Administrative Agent

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This **LOAN AGREEMENT** (this "Agreement") dated as of December 15, 2023, is entered into by and among XRL 1 LLC, a Delaware limited liability company ("Borrower"), the Lenders from time to time party hereto, and BLUE OWL CAPITAL CORPORATION ("Blue Owl"), as administrative agent for the Lenders (in such capacity, "Administrative Agent").

RECITALS

WHEREAS, the Lenders have agreed to extend certain senior secured credit facilities to Borrower, in an aggregate principal amount not to exceed $140,000,000, consisting of (a) an initial term loan in an aggregate principal amount equal to $130,000,000 and (b) a delayed draw term loan in an aggregate principal amount of $10,000,000, in each case, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

Article I
CERTAIN DEFINITIONS

Section 1.01 Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"Account Bank" means Silicon Valley Bank, a division of First-Citizens Bank & Trust Company ("Initial Account Bank"), any institution listed on Schedule 1.01(a) hereto and such other bank or financial institution requested by Borrower and approved by the Administrative Agent.

"Accreted Principal" has the meaning set forth in Section 3.01(c).

"Act" means the Securities Act of 1933, as amended.

"Administrative Agent" shall have the meaning set forth in the preamble hereto.

"Administrative Fee Escrow Amount" means the sum of (i) $[***] (the "Initial Administrative Fee Escrow Amount"), *plus* (ii) such additional amounts as deposited into the Reserve Account after the Closing Date designated, in writing to the Administrative Agent, as additional Administrative Fee Escrow Amounts.

"Affiliate" means any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another Person. Any reference to an Affiliate of Blue Owl (or its Affiliates) shall include any Person that is controlled or managed by Blue Owl, or where Blue Owl has a direct or indirect majority economic interest therein.

"Affitech Assignment Agreement" means that certain Assignment Agreement, made as of October 6, 2021, by and among Affitech Research AS, Company, F. Hoffmann-La Roche Ltd, and Hoffman-La Roche Inc., as amended from time to time (but subject to the terms of this Agreement with respect to the amendment thereof) and to the extent sold and assigned to Borrower on the Closing Date pursuant to the Sale Agreement.

"Aggregate Accrual" has the meaning set forth in Section 3.02(a)(v).

"Agreement" has the meaning set forth in the preamble hereto.

"Amortization Payments" means the principal payments of the Term Loan due under Section 4.05(a) hereof.

"Applicable Law" means, with respect to any Person, all laws, rules, regulations and orders of Governmental Authorities applicable to such Person or any of its properties or assets.

"Assigned Commercial Payment Reports" means the reports to be delivered by Roche to Borrower (as successor to Company) pursuant to Section 3.7 of the Affitech Assignment Agreement.

"Assignee" means any other Person to which a Lender has assigned or is assigning its rights and obligations hereunder, whether in whole or in part.

"Assignment and Acceptance" means a written instrument of assignment in the form set forth in Exhibit A hereto, executed by and between the parties to an assignment under Section 12.01 hereof.

"Bankruptcy Law" means Title 11 of the United States Code entitled "Bankruptcy" and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions (domestic or foreign) from time to time in effect and affecting the rights of creditors generally.

"Bill of Sale" means the Bill of Sale and Assumption Agreement, dated as of the Closing Date, delivered by Company to Borrower under the Sale Agreement with respect to the Transferred Assets.

"Blue Owl" shall have the meaning set forth in the preamble hereto.

"Blue Owl Lenders" means Lenders that are Blue Owl, its Affiliates or any Person that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by Blue Owl or its Affiliates.

"Blocked Account Control Agreement" means any agreement entered into by the Account Bank, Borrower and the Administrative Agent, in form and substance reasonably satisfactory to Administrative Agent (it being understood that the form attached hereto as Exhibit G is satisfactory to the Administrative Agent), pursuant to which, among other things, Administrative Agent shall have sole dominion and control over the Reserve Account identified therein (within the meaning of Section 9-104 of the UCC).

"Borrower" shall have the meaning set forth in the preamble hereto.

"Borrower's Organizational Documents" means the certificate of formation and operating agreement (or similar documents) of Borrower or the functional equivalent of the foregoing.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Applicable Law to remain closed.

"Capital Stock" of any Person means any and all shares, interests, memberships, ownership interest units, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any preferred stock, and including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, and including, if such Person is a limited liability company, membership interests and any

other interest or participation that confers on a Person the right to receive an interest in the profits and losses of, or distributions of property of, such limited liability company, in each case whether outstanding on the date hereof or issued after the date hereof, but excluding any Indebtedness convertible into or exchangeable for such equity.

"Change of Control" means:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) of more than thirty-five percent (35%) of the equity interests of Parent entitled to vote for members of its board of directors of Parent on a fully diluted basis (and taking into account all such securities that such person or group has the right to acquire by conversion or exercise of other securities or option rights, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition);

(b) consummation of any transaction or series of related transactions that results in the sale, disposition or other transfer of all or substantially all of the assets of Parent and its Subsidiaries on a consolidated basis to a Person that is not a Subsidiary of Parent;

(c) Parent shall cease to beneficially own and control 100% on a fully diluted basis of the economic and voting interest in the Capital Stock of Company; or

(d) Company shall cease to beneficially own and control 100% on a fully diluted basis of the economic and voting interest in the Capital Stock of Borrower, free and clear of all Liens other than the Lien granted to Administrative Agent.

"Closing Date" means December 15, 2023.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means all of Borrower's right, title and interest in, to and under, the following property, whether now owned or hereafter acquired and wherever located:

(a) the Transferred Assets, the Sale Agreement, and the Bill of Sale;

(b) the Operating Account, the Collection Account and the Reserve Account and all money and other property deposited or maintained in the Operating Account, Collection Account and the Reserve Account;

(c) all accounts, chattel paper, deposit accounts (and all money and other property deposited or maintained therein), documents, equipment, fixtures, general intangibles, goods, instruments (including intercompany promissory notes), inventory, investment property, letter-of-credit rights, letters of credit, commercial tort claims, money, and supporting obligations;

(d) all rights (contractual and otherwise and whether constituting accounts, contract rights, financial assets, cash, investment property or general intangibles) arising under, connected with or in any way related to the assets described in the foregoing clauses (a), (b), or (c) (including, without limitation, (i) the right to receive the Assigned Commercial Payment Reports, (ii) the right to audit as described in Section 3.10 of the Affitech Assignment Agreement, and (iii) the right to make claims against a Covered Agreement Counterparty for breach of a Covered Agreement);

(e) all accessions, substitutions and replacements for, and all rents, profits and products of, any assets described in the foregoing clauses (a), (b), (c), or (d);

(f) all proceeds of any assets described in the foregoing clauses (a), (b), (c), (d), or (e); and

(g) all books and records related to any assets described in the foregoing clauses (a), (b), (c), (d), (e), or (f).

Notwithstanding anything to the contrary herein or in the Loan Documents, Collateral shall not include the Excluded Assets.

"Collateral Documents" means the Security Agreement, the Pledge Agreement, each Control Agreement and all other instruments, documents and agreements delivered by any Loan Party pursuant to this Agreement or any of the other Loan Documents in order to grant to Administrative Agent a Lien on any Collateral, in each case, as such Collateral Documents may be amended or otherwise modified from time to time.

"Collection Account" means that certain deposit account ending in [***] established and maintained by Borrower at the Initial Account Bank, subject to a Springing Account Control Agreement, solely for the purpose of receiving remittance of Commercial Payments of Borrower pursuant to the Covered Agreements and disbursement thereof as provided herein, and any other Collection Account entered into in accordance with Section 4.04.

"Commercial Payments" means all payments (together with the right to receive such payments) in respect of the Transferred Assets (including in each case payments constituting royalties, settlement payments, judgments (net of any reasonable and documented out-of-pocket expenses incurred in connection with the litigation that gave rise to such judgments), securities, consideration or any other remuneration of any kind payable or received in respect of, or in substitution or compensation for, or otherwise in lieu of, such payments under the Covered Agreements and all "accounts" and "payment intangibles" (as such terms are defined in the UCC) in respect of the Transferred Assets evidencing or giving rise to any of the foregoing). For the avoidance of doubt, Commercial Payments includes all amounts due to Borrower under Sections 6.1(b)(i) and 6.1(b)(iii) of the Commercial Payment Purchase Agreement, Sections 2.1 and 3.10 of the Affitech Assignment Agreement, and Sections 4.01(j)(iii), 4.01(j)(v) and 4.03(b) of the Sale Agreement.

"Commercial Payment Interest" means the right to receive Commercial Payments.

"Commercial Payment Purchase Agreement" means that certain Commercial Payment Purchase Agreement, dated as of October 6, 2021, between Affitech Research AS, as Seller and Company, as Purchaser, as amended from time to time (but subject to the terms of this Agreement and the Sale Agreement with respect to the amendment thereof).

"Company" means XOMA (US) LLC, a Delaware limited liability company, provided that at the election of the Company and with the consent of the Administrative Agent (not to be unreasonably withheld), the Company may be replaced by an Affiliate of the Company pursuant to joinder, assignment and/or other documentation (including legal opinions) with respect to the Loan Documents, reasonably requested by, and reasonably acceptable to, the Administrative Agent.

"Confidential Information" means any and all non-public, proprietary or confidential information provided by either Party to the other (including, without limitation, any notices or other

information provided pursuant to Section 8.08), either directly or indirectly, whether in graphic, written, electronic, tangible, intangible or oral form, and marked or identified at the time of disclosure as confidential, or which by its context would reasonably be deemed to be confidential, including without limitation information relating to a Party's revenues, net sales, costs, technology, products and services, and any business, financial or customer information relating to a Party. Confidential Information shall not include any information that a Party can demonstrate was: (i) known to the general public at the time of its disclosure to such Party or its Affiliates, or thereafter became generally known to the general public, other than as a result of actions or omissions of the receiving Party, its Affiliates, or anyone to whom the receiving Party or its Affiliates disclosed such portion; (ii) known by the receiving Party or its Affiliates prior to the date of disclosure by the disclosing Party; (iii) disclosed to the receiving Party or its Affiliates on an non-confidential basis from a source unrelated to the disclosing Party and not known by the receiving Party or its Affiliates (after due inquiry) to be under a duty of confidentiality to the disclosing Party; or (iv) independently developed by the receiving Party or its Affiliates by personnel that did not use the Confidential Information of the disclosing Party in connection with such development. For clarity, this Agreement shall supersede the Confidentiality Agreement and the Confidentiality Agreement shall cease to be of any force and effect following the execution of this Agreement; provided, however, that all information falling within the definition of "Confidential Information" set forth in the Confidentiality Agreement shall also be deemed Confidential Information disclosed pursuant to this Agreement, and the use and disclosure of such Confidential Information following the date of this Agreement shall be subject to the provisions of Section 13.17.

"Confidentiality Agreement" means that certain Confidentiality Agreement, dated as of February 7, 2023, by and between Owl Rock Capital Advisors LLC and Parent.

"Contract" means any agreement, contract, lease, commitment, license and other arrangement that is legally binding.

"Control Agreement" means a Blocked Account Control Agreement or a Springing Account Control Agreement, in form and substance reasonably satisfactory to Administrative Agent, it being understood that the form attached hereto as Exhibit G and Exhibit H are satisfactory to the Administrative Agent.

"Controlled Affiliate" with respect to any Person means any other Person directly or indirectly controlling, controlled by or under common control with, such Person. For the purposes of this Agreement, "control" (including, with correlative meaning, the terms "controlling" and "controlled") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Covered Agreement Counterparty" means, with respect to any Covered Agreement, the party or parties thereto other than Borrower or any of its Affiliates.

"Covered Agreements" means, collectively, the Commercial Payment Purchase Agreement and the Affitech Assignment Agreement.

"Credit Date" means the date of a Credit Extension.

"Credit Extension" means the making of a Term Loan.

"Default" means any condition or event which constitutes an Event of Default or which, with the giving of notice or the lapse of time or both (in each case to the extent described in the relevant

sub-clauses of the definition of "Event of Default") would, unless cured or waived, become an Event of Default.

"Default Rate" means, for any period for which an amount is overdue, a rate per annum equal for each day in such period to the lesser of (i) [***] plus the rate of interest otherwise applicable to the Term Loan as provided in Section 4.01 and the definition of "Fixed Interest" and (ii) the maximum rate of interest permitted under Applicable Law.

"Deficiency Amount" has the meaning set forth in Section 3.01(c).

"Delayed Draw Commitment Period" means the time period commencing on Closing Date through and including the Delayed Draw Commitment Termination Date.

"Delayed Draw Commitment Termination Date" means March 27, 2026.

"Delayed Draw Funding Milestone" means the Lenders shall have received, as of any Interest Payment Date occurring on or prior to March 15, 2026, together with all principal and interest paid to the Lenders using the proceeds of Commercial Payments on the immediately preceding Interest Payment Date, payments of principal and interest paid from the proceeds of Commercial Payments [***].

"Delayed Draw Term Loan Commitment" means the commitment of a Lender to make or otherwise fund the Delayed Draw Term Loan. The amount of each Lender's Delayed Draw Term Loan Commitment, if any, is set forth on Appendix A or in the applicable Assignment and Acceptance, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Delayed Draw Term Loan Commitments as of the Closing Date is $10,000,000.

"Delayed Draw Term Loans" means the Term Loans funded after the Closing Date pursuant to Section 2.01(a)(ii).

"Disqualified Capital Stock" of any Person means any class of Capital Stock of such Person that, by its terms, or by the terms of any related agreement or of any security into which it is convertible, puttable or exchangeable, is, or upon the happening of any event (other than an event that would constitute a Change of Control) or the passage of time would be, required to be redeemed by such Person, whether or not at the option of the holder thereof, or matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, in whole or in part, on or prior to the date which is ninety one (91) days after the Scheduled Maturity Date; provided, however, that any class of Capital Stock of such Person that, by its terms, authorizes such Person to satisfy in full its obligations with respect to the payment of dividends or upon maturity, redemption (pursuant to a sinking fund or otherwise) or repurchase thereof or otherwise by the delivery of Capital Stock that is not Disqualified Capital Stock, and that is not convertible, puttable or exchangeable for Disqualified Capital Stock or Indebtedness, will not be deemed to be Disqualified Capital Stock.

"Dollars" or "$" means lawful money of the United States of America.

"Employee Benefit Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"Erroneous Payment" has the meaning specified in Section 12.11(a).

"Erroneous Payment Subrogation Rights" has the meaning specified in Section 12.11(d).

"Event of Default" means the occurrence of one or more of the following:

(a) Borrower fails to pay any principal of the Term Loan within three (3) Business Days after the same becomes due and payable (it being understood that, other than a failure to pay on the Maturity Date, unless the Term Loans have been accelerated in accordance with Section 10.02, such principal amount shall be due and payable in accordance with Section 4.05(a)), whether on the Maturity Date or otherwise (excluding any prepayment of principal of the Term Loan pursuant to Section 3.02(b)).

(b) (i) Except as permitted by Section 3.01 or 4.01, Borrower fails to pay any interest on the Term Loan (including, without limitation, Fixed Interest) (it being understood that, other than a failure to pay on the Maturity Date, unless the Term Loans have been accelerated in accordance with Section 10.02, such interest to the extent not accreted shall be due and payable in accordance with Section 4.05(a)) or make payment of any other amounts payable and written notice of such other amounts being so due and payable shall have been provided under this Agreement within ten (10) Business Days after the same becomes due and payable or (ii) Company fails to make any payment due under the Fee Letter within three (3) Business Days after the same becomes due and payable.

(c) Any representation or warranty of a Loan Party in any Loan Document to which it is party or in any certificate or other document delivered by a Loan Party in connection with the Loan Documents to Administrative Agent proves to have been incorrect in any material respect at the time it was made or deemed made (except that any representation or warranty that is qualified as to "materiality" or "Material Adverse Effect", or by reference to an objective standard (e.g., a specified Dollar amount), shall be true and correct in all respects); provided, that if the consequences of the failure of such representation or warranty to be true and correct can be cured, such failure continues for a period of thirty (30) days without such cure after the earlier of (x) the date Borrower becomes aware of such failure or (y) the date Lender provides Notice of such failure to Borrower.

(d) Borrower fails to perform or observe (i) any covenant or agreement contained in Section 8.01, 8.02, 8.06, or 8.08(a), or Article IX (other than Section 9.03, which is covered under clause (e) below) or (ii) any covenant or agreement contained in Section 4.05 and, in the case of this clause (ii) only, such failure continues for a period of ten (10) Business Days.

(e) Borrower fails to perform or observe any other covenant or agreement contained in the Loan Documents to which it is a party (other than those referred to in the preceding clauses of this definition) and, solely if the consequences of the failure to perform or observe such covenant or agreement can be cured, such failure continues for a period of thirty (30) days without such cure after the earlier of (x) the date Borrower becomes aware of such failure and (y) the date Administrative Agent provides notice of such failure to Borrower.

(f) A Seller Event of Default occurs and is continuing.

(g) Borrower (i) fails to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) any Indebtedness (other than the Obligations hereunder) of $50,000 or more or (ii) fails to perform or observe any covenant or agreement to be performed or observed by it contained in any agreement or in any instrument evidencing any of its Indebtedness (other than the Obligations hereunder) of $50,000 or more and, as a result of such failure, any other party to that

agreement or instrument is entitled to exercise the right to accelerate the maturity of any Indebtedness thereunder.

(h) Any uninsured judgment, decree or order in an amount in excess of $50,000 shall be rendered against Borrower and either (i) enforcement proceedings shall have been commenced upon such judgment, decree or order or (ii) such judgment, decree or order shall not have been stayed or bonded pending appeal, vacated or discharged, within thirty (30) days from entry.

(i) An Insolvency Event occurs.

(j) (i) Any of the Loan Documents ceases to be in full force and effect, (ii) the validity or enforceability of any Loan Document is disaffirmed or challenged in writing by Borrower, Company or any of their respective Affiliates, or by any Person (other than Lender) asserting an interest in any portion of the Collateral and such written disaffirmation or challenge is not withdrawn or disavowed by such Person within thirty (30) days after its communication or Borrower has not brought appropriate proceedings for declaratory or other relief negating such disaffirmation or challenge within thirty (30) days after such communication and has not obtained an order granting such relief within one hundred twenty (120) days after commencement of such proceedings, or (iii) this Agreement, the Security Agreement or the Pledge Agreement ceases to give the Administrative Agent or Lender the rights purported to be created hereby or thereby (including a first priority perfected Lien on the assets of Borrower that constitute Collateral (except as otherwise expressly provided herein and therein)) other than as a direct result of any action by Administrative Agent or failure of Administrative Agent to perform an obligation of Administrative Agent hereunder or thereunder.

(k) Borrower fails to perform or observe any covenant or agreement contained in any Material Contract to which it is a party or any of Borrower's Organizational Documents, and such failure is not cured or waived within any applicable grace period, and in the case of any provision in Borrower's Organizational Documents, if not cured, is not waived by Lender, or any Material Contract shall cease to be in full force and effect, and in the case of any provision in a Material Contract, such failure to perform or observe results in a termination of such Material Contract and any such failure, cessation or termination could reasonably be expected to have a Material Adverse Effect.

(l) A Covered Agreement is terminated.

(m) Roche or Company exercise or otherwise assert a contractual right under Section 5.3.2 of the Roche APA to convert any portion of the Assigned Commercial Payments (as defined in the Affitech Assignment Agreement) into a Final Payment (as defined in the Affitech Assignment Agreement) other than in connection with a transaction that results in concurrent Payment in Full.

(n) Any security interest purported to be created by a Collateral Document ceases to be in full force and effect, or shall cease to give the rights, powers and privileges purported to be created and granted hereunder or thereunder (including a perfected first priority security interest in and Lien on the Collateral (except as otherwise expressly provided herein and therein)) in favor of Lender pursuant hereto or thereto (other than as a result of the failure by the Administrative Agent or a Lender of taking any action required to maintain the perfection of such security interests), or shall be asserted by Borrower not to be a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Agreement) security interest in the Collateral and/or Borrower takes any action that could reasonably be expected to impair Administrative Agent's security interest in any of the Collateral (other than granting Permitted Liens or permitting such Permitted Liens to exist).

(o) The occurrence of a Change of Control.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the regulations promulgated thereunder.

"Excluded Assets" means those assets described in clause (d) of Purchased Commercial Payments (as defined in the Commercial Payment Purchase Agreement).

"Excluded Taxes" means any of the following Taxes imposed on or with respect to or required to be withheld or deducted from a payment to any Lender, (i) any Taxes imposed on (or measured by) net income (however denominated), branch profits Taxes, or any franchise or similar Taxes imposed in lieu thereof, imposed by any Governmental Authority, in each case (x) as a result of such Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (y) that are Other Connection Taxes, (ii) any U.S. federal withholding Tax imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Term Loan or commitment pursuant to a law in effect on the date on which (x) such Lender acquires such interest in such commitment or (y) such Lender designates a new lending office, except in each case to the extent that amounts with respect to such Taxes were payable pursuant to Section 5.01 or Section 5.04 either to such Lender's assignor immediately before such Lender acquired such applicable interest in the Term Loan or commitment (as applicable) or to such Lender immediately before it changed its lending office, as applicable, (iii) any Tax that is attributable to such Lender's failure to comply with Section 5.01(b) and (iv) any Tax withheld pursuant to FATCA.

"Expense Reserve Amount" means $[***].

"Expenses" means any and all reasonable and documented out-of-pocket fees, costs and expenses of Borrower, including (i) the reasonable fees, costs, expenses and indemnities of the Servicer (provided, that, with respect to the Servicer, such expenses shall be limited to the Servicing Fee and reasonable out-of-pocket costs and expenses), (ii) reasonable and customary directors and officers liability insurance for any managers and officers of Borrower, (iii) the fees and out-of-pocket expenses of the Independent Manager and of counsel to the Independent Manager due pursuant to the Independent Manager Engagement Letter, (iv) the fees, expenses and charges of any Account Bank in connection with the Reserve Account, Operating Account or Collection Account, (v) the fees and out-of-pocket expenses of Borrower incurred after the Closing Date in connection with the transactions contemplated by the Transaction Documents, and (vi) any expenses incurred in connection with the exercise of audit rights at the direction of Administrative Agent pursuant to Section 8.03(d) of this Agreement or otherwise by the Borrower.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code (or any amended or successor version described above) and any fiscal or regulatory legislation, or official administrative rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"Fee Letter" means, collectively, (i) that certain Fee Letter, dated as of the Closing Date, between Parent, Borrower and Administrative Agent and (ii) that certain Arranger Fee Letter, dated as of the Closing Date, between Borrower and ORCA I LLC.

"Financial Statements" means as of the Closing Date, (a) the audited financial statements of Parent and its Subsidiaries, for the fiscal years ended December 31, 2021 and December 31, 2022, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such fiscal year, and (b) the financial statements of Parent and its Subsidiaries for the fiscal

quarter ended September 30, 2023, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such fiscal quarter.

"Fixed Interest" means interest with respect to the Term Loan, accruing with respect to the outstanding principal balance thereof at a rate *per annum* equal to 9.875%.

"Foreign Lender" means any Lender which is not a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"Funding Notice" means a written notice substantially in the form of Exhibit B.

"GAAP" means the generally accepted accounting principles in the United States of America in effect from time to time; provided, that in the event such principles change after the Closing Date in a manner which affects compliance with this Agreement by Borrower (including without limitation in the determination of Commercial Payments), such change shall be ignored for the purpose of determining such compliance.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government.

"Guarantee" means, as to any Person: (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part); or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person.

"Included Commercial Payments" means, with respect to each Semi-Annual Period, commencing with the Semi-Annual Period ending December 31, 2023, the Commercial Payments received in respect of such Semi-Annual Period.

"Indebtedness" with respect to any Person means (i) all indebtedness pursuant to an agreement or instrument involving or evidencing money borrowed, the advance of credit, a conditional sale or a transfer with recourse or with an obligation to repurchase (but excluding trade credit and accounts payable in the ordinary course of business), (ii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments (iii) all capitalized lease obligations, (iv) all obligations with respect to Disqualified Capital Stock, (v) all indebtedness of a third party secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on assets owned or acquired by such Person, whether or not the indebtedness secured thereby has been assumed (but only to the extent of such Lien), (vi) net amounts owing pursuant to an interest rate protection agreement, foreign currency exchange agreement or other hedging arrangement, (vii) all reimbursement obligations under letters of credit issued for the account of such Person, and (viii) all Guarantees with respect to Indebtedness

of the types specified in clauses (i) through (vii) above of another Person. For the avoidance of doubt, the Indebtedness of any Person shall include the Indebtedness of any other entity to the extent such Person is directly liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Liabilities" means, collectively, any and all liabilities, obligations, losses, damages, penalties, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and whether or not such Indemnitee is required by Applicable Law to be involved therein, and any fees or expenses actually incurred by Indemnitees in enforcing the indemnity provided herein), whether direct, indirect or consequential, whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations), on common law or equitable cause or on contract or otherwise, imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby (including any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the Collateral)).

"Indemnified Taxes" means all (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Documents and (ii) to the extent not otherwise described in (i), Other Taxes.

"Indemnitee" means each Lender and its Affiliates and their respective officers, partners, directors, trustees, employees, agents and controlling Persons.

"Independent Manager" has the meaning given the Limited Liability Company Agreement.

"Independent Manager Engagement Letter" means that certain engagement letter, by and between CT Corporation Staffing, Inc., a Delaware corporation and Borrower, as in effect on the date hereof.

"Initial Funding Date" means the Closing Date.

"Initial Term Loan" means the Term Loan funded on the Initial Funding Date pursuant to Section 2.01(a)(i).

"Initial Term Loan Commitment" means the commitment of a Lender to make or otherwise fund the Initial Term Loan and "Initial Term Loan Commitments" means such commitments of all such Lenders in the aggregate. The amount of each Lender's Initial Term Loan Commitment, if any, is set forth on Appendix A or in the applicable Assignment and Acceptance, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Initial Term Loan Commitments as of the Closing Date is $130,000,000.

"Insolvency Event" means the occurrence of any of the following with respect to any Transaction Party:

(i) (A) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (x) relief in respect of such Transaction Party, or of a substantial part of the property of such Transaction Party, under any Bankruptcy Law now or hereafter in effect, (y) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for

such Transaction Party for a substantial part of the property of such Transaction Party or (z) the winding-up or liquidation of such Transaction Party, which proceeding or petition shall continue undismissed for sixty (60) calendar days or (B) an order of a court of competent jurisdiction approving or ordering any of the foregoing shall be entered;

(ii) such Transaction Party shall (A) voluntarily commence any proceeding or file any petition seeking relief under any Bankruptcy Law now or hereafter in effect, (B) apply for the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official itself or for a substantial part of its property, (C) fail to contest in a timely and appropriate manner any proceeding or the filing of any petition described in clause (i) of this definition, (D) file an answer admitting the material allegations of a petition filed against it in any proceeding described in clause (i) of this definition, (E) make a general assignment for the benefit of creditors or (F) wind up or liquidate (except as permitted under this Agreement);

(iii) such Transaction Party shall take any action in furtherance of or for the purpose of effecting, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i) or (ii) of this definition; or

(iv) such Transaction Party shall become unable, admit in writing its inability, or fail generally, to pay its debts as they become due.

"Interest Payment Date" means, for each applicable Semi-Annual Period, each of March 31 and September 30, or if any such day is not a Business Day, on the next succeeding Business Day, beginning on March 31, 2024.

"Interest Reserve Amount" means $[***].

"Knowledge" means, with respect to any Transaction Party, the actual knowledge, after due inquiry, of the Chief Executive Officer, Chief Financial Officer, Chief Investment Officer, General Counsel or President of any such Transaction Party, or to the extent such officer does not exist, the actual knowledge of another person with similar responsibility, regardless of title, of any Transaction Party, respectively, relating to a particular matter; provided, however, that a person charged with responsibility for the aspect of the business relevant or related to the matter at issue shall be deemed to have knowledge of a particular matter if, in the prudent exercise of his or her duties and responsibilities in the ordinary course of business, such person should have known of such matter.

"Law" means any federal, state, local or foreign law, including common law, and any regulation, rule, requirement, policy, judgment, order, writ, decree, ruling, award, approval, authorization, consent, license, waiver, variance, guideline or permit of, or any agreement with, any Governmental Authority.

"Lender" means each lender listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment and Acceptance other than any Person that ceases to be a party hereto pursuant to any Assignment and Acceptance.

"Lender Expenses" means (a) all reasonable and documented out-of-pocket costs and expenses of preparation, negotiation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto incurred by the Administrative Agent and/or the Lenders; (b) all the reasonable and documented fees, expenses and disbursements of counsel (limited to one (1) counsel for each relevant jurisdiction (as determined by the Administrative Agent), other then in the case of conflicts) to the Administrative Agent and the Lenders in connection with the negotiation,

preparation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower; (c) all the actual out-of-pocket costs and reasonable expenses of creating and perfecting Liens in favor of the Administrative Agent including filing and recording fees, out-of-pocket expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable and documented fees, expenses and disbursements of counsel to the Administrative Agent; and (d) after the occurrence of an Event of Default, all costs and expenses, including reasonable and documented attorneys' fees and costs of settlement, incurred by the Administrative Agent and/or the Lenders in enforcing any Obligations of or in collecting any payments due from Borrower hereunder or under the other Loan Documents by reason of such Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or in connection with any refinancing or restructuring of the Obligations in the nature of a "work out" or pursuant to any insolvency or bankruptcy cases or proceedings).

"Lender Register" has the meaning set forth in Section 13.01(e).

"Lien" means any mortgage or deed of trust, pledge, hypothecation, lien, charge, attachment, set-off, encumbrance or other security interest in the nature thereof (including any conditional sale agreement, equipment trust agreement or other title retention agreement, a lease with substantially the same economic effect as any such agreement or a transfer or other restriction) or other encumbrance, right or claim of any nature whatsoever.

"Limited Liability Company Agreement" means the Amended and Restated Limited Liability Company Agreement of Borrower, dated as of the Closing Date.

"Loan Documents" means this Agreement, each Fee Letter, the Security Agreement, the Pledge Agreement, the Sale Agreement, the Bill of Sale, each Control Agreement, each Payment Date Distribution Report, and all other documents (excluding, for the avoidance of doubt, any Warrant and any document, certificate or writing delivered in connection therewith) delivered in connection therewith.

"Loan Party" means each of Borrower and Company.

"Material Adverse Effect" means (a) an Insolvency Event, (b) a material adverse change in the business, operations, properties, results of operations or financial condition of Borrower, taken as a whole; (c) a material adverse effect on the validity or enforceability of the Loan Documents taken as a whole or any material provision hereof or thereof; (d) a material adverse effect on the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents, or on the ability of any Loan Party to perform its obligations under the Loan Documents to which it is a party; (e) a material adverse effect on the rights or remedies of Administrative Agent or the Lenders under any of the Loan Documents, taken as a whole; or (f) an adverse effect in any material respect on any of the timing, amount or duration of (i) the Commercial Payments or the Commercial Payment Interest or (ii) the right of Administrative Agent to receive payments based on the Commercial Payments or the Commercial Payment Interest.

"Material Contract" means, collectively, any Contract to which Borrower or Company, as the case may be in the context in which used, is a party or any of the respective assets or properties of Borrower or Company are bound or committed (other than the Transaction Documents) and solely in the case of Company, for which any breach, violation, nonperformance or early cancellation could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Material Contracts as of the date hereof are identified on Schedule 1.01(c).

"Material Contract Counterparty" means a counterparty to any Material Contract.

"Maturity Date" means the earlier of (i) the Scheduled Maturity Date and (ii) the date of satisfaction in full of the Term Loan.

"Maximum Accrual" has the meaning set forth in Section 3.02(a)(v).

"Maximum Lawful Rate" means the highest rate of interest permissible under Applicable Law.

"Notice and Instruction Letters" has the meaning set forth in the Sale Agreement.

"Notice of Prepayment" means a written notice of prepayment, in the form of Exhibit C hereto or such other form as approved by the Administrative Agent.

"Notices" means, collectively, notices, consents, approvals, reports, designations, requests, waivers, elections and other communications.

"Obligations" means, without duplication, the Term Loan, Fixed Interest and all present and future Indebtedness, taxes, liabilities, obligations, covenants, duties, and debts, owing by Borrower to Lender, arising under or pursuant to the Loan Documents, including all principal, interest, premium, charges, expenses, fees, Erroneous Payment Subrogation Rights and any other sums chargeable to Borrower hereunder and under the other Loan Documents (and including any interest, fees and other charges that would accrue but for the filing of a bankruptcy action with respect to Borrower, whether or not such claim is allowed in such bankruptcy action).

"Operating Account" means that certain deposit account ending in [***] established and maintained by Borrower at the Initial Account Bank, subject to a Springing Account Control Agreement, solely for the purpose of holding the Expense Reserve Amount, holding the proceeds of capital contributions from the Company and making disbursements of the same and any successor Operating Account entered into in accordance with Section 4.03.

"Organizational Document" means, with respect to any Person, (i) in the case of any corporation, the certificate of incorporation and by-laws (or similar documents) of such Person, (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such Person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such Person, (iv) in the case of any general partnership, the partnership agreement (or similar document) of such Person, and (v) in any other case, the functional equivalent of the foregoing. For the avoidance of doubt, the Organization Documents of Borrower include the (i) Limited Liability Company Agreement and (ii) the Management Agreement executed in connection therewith.

"Other Connection Taxes" means, with respect to any Lender, Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in the Term Loan, commitment or Loan Document).

"Other Taxes" has the meaning set forth in Section 5.03.

"Parent" means XOMA Corporation, a Delaware corporation and its successors reasonably consented to by the Administrative Agent.

"Participant Register" has the meaning set forth in Section 13.01(e).

"Party" and "Parties" means Administrative Agent, the Lenders and Borrower, individually and collectively.

"Patriot Act" means the USA Patriot Act, Public Law No. 107-56.

"Payment Account" means such account of Administrative Agent maintained at such banking institution as Administrative Agent may specify in its discretion from time to time in writing to Borrower at least five (5) Business Day prior to any Interest Payment Date or other date on which payments are to be made to pursuant to the Loan Documents.

"Payment Date Distribution Report" means any Payment Date Distribution Report, in the form of Exhibit D hereto.

"Payment in Full" means the payment in full in good funds of the Term Loan and other Obligations (other than contingent indemnification obligations for which no claims have been made).

"Payments" means due and owing payments of Amortization Payments and Fixed Interest (each under Section 4.05 hereof), including, in each case any default, additional interest or prepayment premium charged hereunder.

"Permitted Liens" means:

(a) Liens created pursuant to any Loan Document;

(b) Liens in favor of a banking or other financial institution arising as a matter of law or under customary contractual provisions encumbering deposits or other funds maintained with such banking or other financial institution (including the right of set off and grants of security interests in deposits and/or securities held by such banking or other financial institution) and that are within the general parameters customary in the banking industry;

(c) Liens securing Taxes, assessments, fees or other governmental charges or levies which are being contested in good faith and by appropriate proceedings diligently conducted and in respect of which adequate reserves with respect thereto are maintained by Borrower in accordance with GAAP and other similar Liens (other than any Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or by ERISA) arising in connection with court proceedings so long as the enforcement of such Liens is effectively stayed and the judgment claims secured thereby do not otherwise constitute an Event of Default under clause (i) of the definition of "Event of Default"; and

(d) banker's liens for collection or rights of set off or similar rights and remedies as to deposit accounts or other funds maintained with depositary institutions; provided that such deposit accounts or funds are not established or deposited for the purpose of providing collateral for any Indebtedness and are not subject to restrictions on access by Borrower in excess of those required by applicable banking regulations.

"Person" means any natural person, firm, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or any other legal entity, including public bodies, whether acting in an individual, fiduciary or other capacity.

"Plan Assets" means assets of any (i) Employee Benefit Plan subject to the fiduciary responsibility provisions of Title I of ERISA, (ii) plan (as defined in Section 4975(e)(1) of the Code) subject to Section 4975 of the Code or (iii) entity whose underlying assets include assets of any such employee benefit plan or plan by reason of the investment by an employee benefit plan or plan in such entity.

"Pledge Agreement" means the Pledge and Security Agreement, dated as of the Closing Date, between Company and Administrative Agent pursuant to which the Capital Stock of Borrower is pledged to Administrative Agent, as supplemented by any amendments or supplements thereto.

"Principal Amount" means, as to each Term Loan, as of any date of determination, and without duplication, the amount equal to the sum of: (i) the original amount of such Term Loan, plus, (ii) any Accreted Principal accrued as of such date, minus, (iii) any payment in respect of principal as provided for in Section 3.01, 3.02 or 4.05.

"Pro Rata Share" means, with respect to:

(a) (i) a Lender's obligation to make the Initial Term Loan, the percentage obtained by dividing (A) such Lender's Initial Term Loan Commitment by (B) the Total Initial Term Loan Commitment and (ii) a Lender's obligation to make a Delayed Draw Term Loan, the percentage obtained by dividing (A) such Lender's Delayed Draw Term Loan Commitment by (B) the aggregate amount of the Lenders' Delayed Draw Term Loan Commitments;

(b) a Lender's right to receive payments of interest, fees and principal with respect to a Term Loan, the percentage obtained by dividing (i) the aggregate unpaid principal amount of such Lender's portion of the Term Loan, by (ii) the aggregate unpaid principal amount of the Term Loan; and

(c) all other matters, the percentage obtained by dividing (i) the sum of such Lender's Delayed Draw Term Loan Commitment and the unpaid principal amount of such Lender's portion of the Term Loan, by (ii) the sum of the Total Delayed Draw Term Loan Commitment and the aggregate unpaid principal amount of the Term Loan.

"Proceeding" means an action or proceeding brought against a Party as a defendant, for purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby.

"Purpose" has the meaning set forth in Section 12.17(a).

"Register" means a record of ownership in which Borrower registers by book entry the interests (including any rights to receive payment hereunder) of each Lender in the Term Loan and any assignment of any such interest, obligation or right.

"Regulatory Change" means (i) the adoption after the date hereof (or with respect to any Lender that becomes a Lender after the date hereof, after the date such Lender becomes a Lender) of any applicable law, rule or regulation or any change therein after the date hereof, or (ii) any change after the date hereof in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, either generally or as effected through compliance with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency.

"Representative" means, with respect to any Person, directors, officers, employees, agents, co-investors, advisors, potential investors, underwriters, rating agencies, permitted assignees, sources of financing and trustees of such Person.

"Required Lenders" means (i) at any time (other than when the Blue Owl Lenders constitute the Required Lenders pursuant to clause (ii) below) when there are three (3) or fewer Lenders, all Lenders and (ii) at all other times, Lenders whose Pro Rata Share (calculated in accordance with clause (c) of the definition thereof) aggregate at least 50.1%.

"Reserve Account" means that certain deposit account ending in [***] established and maintained by Borrower at the Initial Account Bank, subject to a Blocked Account Control Agreement, solely for the purpose of holding the Interest Reserve Amount and the Administrative Fee Escrow Amount, and/or any successor Reserve Account entered into in accordance with Section 4.03.

"Roche" has the meaning given in the Affitech Assignment Agreement (together with any successors or permitted assigns of Roche pursuant to the Affitech Assignment Agreement).

"Roche APA" has the meaning set forth in the Affitech Assignment Agreement.

"Sale" means the sale, transfer, assignment, contribution and conveyance of the Transferred Assets pursuant to the Sale Agreement.

"Sale Agreement" means the Sale, Contribution and Servicing Agreement, dated as of the Closing Date, between Parent, Company and Borrower.

"Scheduled Maturity Date" means December 15, 2038.

"SEC" means the United States Securities and Exchange Commission.

"Seller Event of Default" has the meaning set forth in the Sale Agreement.

"Security Agreement" means the Security Agreement, dated as of the Closing Date, between Administrative Agent and Borrower, securing the Obligations of Borrower hereunder and the other Loan Documents (other than the Warrant), as supplemented by any amendments or supplements thereto.

"Semi-Annual Interest Shortfall" has the meaning set forth in Section 4.05(a).

"Semi-Annual Period" means each six month period commencing on January 1 and July 1 of each year.

"Senior Officer" means any President, Vice President, Secretary, Treasurer, Chief Executive Officer, Chief Financial Officer, or Chief Investment Officer.

"Servicer" has the meaning set forth in the Sale Agreement.

"Servicing Fee" has the meaning set forth in the Sale Agreement.

"Set-off" means any right of set off, rescission, counterclaim, reduction, deduction or defense.

"Springing Account Control Agreement" means any agreement entered into by the Account Bank, Borrower and the Administrative Agent, in the form and substance reasonably satisfactory

to Administrative Agent (it being understood that the form attached hereto as Exhibit H is satisfactory to the Administrative Agent), pursuant to which, among other things, Administrative Agent shall have control over the Collection Account and Operating Account identified therein (within the meaning of Section 9-104 of the UCC), which such form, for the avoidance of doubt, shall provide for "springing" or "shifting control".

"Subsidiary" means, with respect to any Person, at any time, any entity of which more than fifty percent (50%) of the outstanding voting stock or other equity interest entitled ordinarily to vote in the election of the directors or other governing body (however designated) is at the time beneficially owned or controlled directly or indirectly by such Person, by one or more such entities or by such Person and one or more such entities.

"Surviving Person" means, with respect to any Person involved in or that makes any disposition, the Person formed by or surviving such disposition or the Person to which such disposition is made.

"Taxes" means all present and future taxes, levies, duties, imposts, deductions, charges, fees or withholdings (including backup withholdings), and all interest, penalties and additions to tax with respect thereto, that are imposed by any Governmental Authority.

"Term Loan" means, collectively, the Initial Term Loan and each Delayed Draw Term Loan (together with all Accreted Principal on any such Term Loan).

"Term Loan Commitments" means, collectively, the Initial Term Loan Commitments and the Delayed Draw Term Loan Commitments.

"Third Party" means any Person other than Borrower or its Affiliates.

"Total Delayed Draw Term Loan Commitment" means the sum of the amounts of the Lenders' Delayed Draw Term Loan Commitments.

"Total Initial Term Loan Commitment" means the sum of the amounts of the Lenders' Initial Term Loan Commitments.

"Transaction Documents" means the Loan Documents and the Organizational Documents.

"Transaction Parties" means, collectively, Parent, Company and Borrower.

"Transferred Assets" has the meaning set forth in the Sale Agreement.

"U.S." means the United States of America.

"UCC" means the Uniform Commercial Code as in effect from time to time in New York; provided, that, if, with respect to any financing statement or by reason of any provisions of Applicable Law, the perfection or the effect of perfection or non-perfection of the security interest or any portion thereof granted pursuant to the Loan Documents is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, then "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of this Agreement and any financing statement relating to such perfection or effect of perfection or non-perfection.

"Warrant" means, collectively, each Warrant to Purchase Stock set forth on Schedule 1.01(b).

Section 1.02 Rules of Construction. Unless the context otherwise requires, in this Agreement:

(a) An accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.

(b) Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders.

(c) The definitions of terms shall apply equally to the singular and plural forms of the terms defined.

(d) The terms "include", "including" and similar terms shall be construed as if followed by the phrase "without limitation".

(e) Unless otherwise specified, references to an agreement or other document include references to such agreement or document as from time to time amended, restated, reformed, supplemented or otherwise modified in accordance with the terms thereof (subject to any restrictions on such amendments, restatements, reformations, supplements or modifications set forth herein or in any of the other Transaction Documents) and include any annexes, exhibits and schedules attached thereto.

(f) References to any Applicable Law shall include such Applicable Law as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(g) References to any Person shall be construed to include such Person's successors and permitted assigns (subject to any restrictions on assignment, transfer or delegation set forth herein or in any of the other Transaction Documents), and any reference to a Person in a particular capacity excludes such Person in other capacities.

(h) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(i) The words "hereof", "herein", "hereunder" and similar terms when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision hereof, and Article, Section and Exhibit references herein are references to Articles and Sections of, and Exhibits to, this Agreement unless otherwise specified.

(j) In the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and each of the words "to" and "until" means "to but excluding".

(k) Where any payment is to be made, any funds are to be applied or any calculation is to be made under this Agreement on a day that is not a Business Day, unless this Agreement otherwise provides, such payment shall be made, such funds shall be applied and such calculation shall be made on the succeeding Business Day, and payments shall be adjusted accordingly.

Article II
TERM LOANS; DISBURSEMENT; CERTAIN FEES

Section 2.01 Term Loans.

(a) Initial Term Loans; Delayed Draw Term Loans. Subject to the terms and conditions hereof:

(i) each Lender severally agrees to make, on the Initial Funding Date, an Initial Term Loan to Borrower in an amount equal to such Lender's Initial Term Loan Commitment; and

(ii) each Lender severally agrees to make, on one occasion during the Delayed Draw Commitment Period, Delayed Draw Term Loans to Borrower in an aggregate amount not to exceed such Lender's Delayed Draw Term Loan Commitment.

Borrower may make only one borrowing under the Initial Term Loan Commitment, which shall be on the Initial Funding Date, and may make only one borrowing under the Delayed Draw Term Loan Commitment. Any amount borrowed under this Section 2.01(a) and subsequently repaid or prepaid may not be reborrowed. Each Lender's Initial Term Loan Commitment and Delayed Draw Term Loan Commitment shall terminate immediately and without further action on the Credit Date on which such Lender funds Initial Term Loans or Delayed Draw Term Loans, respectively, after giving effect to the funding of such Term Loans on such Credit Date.

(b) Borrowing Mechanics for Term Loans.

(i) Borrower shall deliver to Administrative Agent a fully executed Funding Notice no later than three (3) Business Days prior to the Initial Funding Date (or such shorter period permitted by Administrative Agent) with respect to Term Loans made on the Initial Funding Date. Following the Initial Funding Date (and subject to the conditions set forth in Article VI), whenever Borrower desires that Lenders make the Delayed Draw Term Loan, Borrower shall deliver to Administrative Agent a fully executed and delivered Funding Notice no later than 10:00 a.m. (New York City time) at least ten (10) Business Days in advance of the proposed Credit Date. Each such Funding Notice shall be irrevocable once delivered to Administrative Agent. Promptly upon receipt by Administrative Agent of any such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing. Administrative Agent and Lenders (A) may act without liability upon the basis of written or emailed notice believed by Administrative Agent in good faith to be from Borrower (or from any Senior Officer thereof designated in writing purportedly from Borrower to Administrative Agent), (B) shall be entitled to rely conclusively on any Senior Officer's authority to request a Term Loan on behalf of Borrower until Administrative Agent receives written notice to the contrary, and (C) shall have no duty to verify the authenticity of the signature appearing on any written Funding Notice.

(ii) Each Lender shall make its applicable Term Loan available to Administrative Agent not later than 12:00 p.m. on the applicable Credit Date, by wire transfer of same day funds in Dollars to Administrative Agent. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the applicable Term Loans available to Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Term Loans received by Administrative Agent from Lenders to be credited to the account of Borrower or to such other account as may be designated in writing to Administrative Agent by Borrower; provided, however, that the Initial Term Loans shall be funded net of: (i) the fees set forth in the Fee Letter and required to be paid on the Closing Date, and (ii) accrued Lender Expenses to the extent invoiced at least one (1) Business Day prior to the Closing Date. It is understood that the Initial Administrative Fee

Escrow Amount and the Interest Reserve Amount shall be funded into the Reserve Account and the Expense Reserve Amount shall be funded into the Operating Account, in each case, on the Closing Date.

(iii) During the Delayed Draw Commitment Period, Borrower may make one (1) draw of Delayed Draw Term Loans in a minimum amount of $10,000,000.

(c) Pro Rata Shares; Availability of Funds.

(i) Pro Rata Shares. All Term Loans shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Term Loan requested hereunder nor shall any Term Loan Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Term Loan requested hereunder or purchase a participation required hereby.

(ii) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Term Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Borrower and Borrower shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the rate payable hereunder. Nothing in this Section 2.01(c)(ii) shall be deemed to relieve any Lender from its obligation to fulfill its Term Loan Commitments hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by such Lender hereunder.

Article III
REPAYMENT

Section 3.01 Amortization; Maturity Date.

(a) If not earlier repaid in full, the unpaid balance of the outstanding Principal Amount of the Term Loan, together with any accrued and unpaid interest, and all other Obligations then outstanding, shall be due and payable in cash to the Payment Account on the Maturity Date.

(b) The outstanding principal balance of the Term Loan and any interest or premium due with respect thereto shall be repayable solely from Commercial Payments except (i) in connection with voluntary prepayment of the Term Loan pursuant to Section 3.02(b) or Section 3.03 or (ii) in connection with prepayments required pursuant to Section 3.02(a).

(c) If the remaining Interest Reserve Amount in the Reserve Account for any Interest Payment Date is insufficient to satisfy the Semi-Annual Interest Shortfall (the difference between the Semi-Annual Interest Shortfall and the remaining Interest Reserve Amount in the Reserve Account the "Deficiency Amount"), then any such Deficiency Amount, unless paid in cash by Borrower on the Interest

Payment Date with the proceeds of a substantially concurrent capital contribution from Company, shall increase the outstanding Principal Amount of the Term Loan by an amount equal to the Deficiency Amount for the applicable Interest Payment Date (rounded up to the nearest whole dollar) and each Lender shall be deemed to have made an additional term loan in a Principal Amount equal to its Pro Rata Share of the aggregate amount of such Deficiency Amount (such additional term loan, "Accreted Principal"). Accreted Principal shall be deemed to be part of the Term Loan made to Borrower for all purposes under this Agreement, and the Term Loan shall bear interest on such increased Principal Amount from and after the applicable Interest Payment Date in accordance with Section 4.01. In the event of any repayment or prepayment of the Term Loan (including, without limitation, principal payments due under Section 4.05(a)(ii)), accrued and unpaid Fixed Interest on the Principal Amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

Section 3.02 Mandatory Prepayment; Voluntary Prepayment.

(a) Mandatory Prepayment.

(i) During the continuance of an Event of Default the Administrative Agent may declare the outstanding Principal Amount of the Term Loan, *plus* any accrued and unpaid interest thereon, to be immediately due and payable hereunder, in whole but not in part, to the extent permitted by law, together with all other Obligations, including those fees set forth in the Fee Letter and payable upon such prepayment, then outstanding or due in connection therewith, to the Payment Account.

(ii) In connection with the prepayment in full of the Term Loan outstanding under Section 3.02(a), any unpaid amounts in respect of such prepaid Term Loan not consisting of principal or Fixed Interest (i.e., any unpaid amounts for indemnification, tax gross-up, default interest, expense reimbursement and other amounts not consisting of principal or interest) shall be immediately due and payable.

(iii) In connection with any prepayment under this Section 3.02(a), Borrower shall provide to Administrative Agent a Notice of Prepayment showing the calculation of the amount to be prepaid and all other amounts payable in connection therewith under this Section 3.02(a).

(iv) Notwithstanding anything in this Agreement or in any other Loan Document to the contrary, if the Term Loan shall remain outstanding after the fifth (5th) anniversary of the initial issuance thereof and the aggregate amount that would be includible in the gross income of a Lender with respect to the Term Loan (within the meaning of Section 163(i) of the Code or any successor provision) for the periods ending on or before any Interest Payment Date that occurs after such fifth (5th) anniversary (the "Aggregate Accrual") would otherwise exceed an amount equal to the sum of (i) the aggregate amount of interest to be paid (within the meaning of Section 163 (i) of the Code) under the Term Loan on or before such Interest Payment Date, and (ii) the product of (A) the issue price (as defined in Section 1273(b) of the Code) of the Term Loan and (B) the yield to maturity (interpreted in accordance with Section 163(i) of the Code) of the Term Loan (such sum, the "Maximum Accrual"), then Borrower shall pay on each applicable Interest Payment Date occurring after such fifth (5th) anniversary that portion of the outstanding Principal Amount of the Term Loan necessary to prevent the Term Loan from constituting an "applicable high yield discount obligation" within the meaning of Section 163(i) of the Code, up to an amount equal to the excess, if any, of the Aggregate Accrual over the Maximum Accrual (each such payment, the "AHYDO Payment") and the amount of such AHYDO Payment and any interest thereon shall be treated for U.S. federal income tax purposes as an amount of interest to be paid (within the meaning of Section 163(i)(2)(B)(i) of the Code) under the Term Loan. This provision is intended to prevent the Term Loan from being classified as an "applicable high yield discount obligation," as defined in Section 163(i) of the Code, and shall be interpreted consistently therewith.

(b) Voluntary Prepayment.

(i) Subject to the terms of the Fee Letter, Borrower may prepay the outstanding Principal Amount of the Term Loan, *plus* any accrued and unpaid interest thereon, in whole but not in part, to the extent permitted by law, together with all other Obligations, including those fees set forth in the Fee Letter and payable in connection with such prepayment, then outstanding or due in connection therewith, to the Payment Account.

(ii) In connection with the prepayment in full of the Term Loan outstanding under this Section 3.02(b), any unpaid amounts in respect of such prepaid Term Loan not consisting of principal or Fixed Interest (i.e., any unpaid amounts for indemnification, tax gross-up, default interest, expense reimbursement and other amounts not consisting of principal or interest) shall be immediately due and payable.

(iii) The date of prepayment of the Term Loan and any other amounts due to Lender under this Section 3.02(b), shall be a Business Day not more than 10 Business Days following the date Borrower has provided to Administrative Agent a Notice of Prepayment showing the calculation of the amount to be prepaid and all other amounts payable in connection therewith under this Section 3.02(b). Such Notice of Prepayment shall constitute Borrower's irrevocable commitment to prepay the Term Loan outstanding and all such other amounts on such prepayment date; provided, however, that such Notice of Prepayment may state that such notice is conditioned upon the effectiveness of any credit facilities or one or more other events specified therein (including the occurrence of a Change of Control), in which case such notice may be revoked by Borrower (by notice to Lender on or prior to the specified effective date) if such condition is not satisfied.

Section 3.03 Increased Cost.

(a) If any Regulatory Change occurs that has or would have the effect of:

(i) imposing, modifying or deeming applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, Lender;

(ii) subjecting Lender to any Taxes (other than (A) Indemnified Taxes or (B) Excluded Taxes) with respect to the Term Loan, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) imposing on Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Term Loan made by Lender;

and the result of any of the foregoing shall be to reduce the rate of return on the capital of Lender as a consequence of its obligations hereunder or arising in connection herewith to a level below that which Lender could have achieved but for such introduction, change or compliance (taking into consideration the policies of Lender with respect to capital adequacy) by an amount deemed by Lender to be material, then from time to time, on the first Interest Payment Date occurring at least thirty (30) days after demand by Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a description of the computation of such demand), Borrower shall pay directly to Lender such additional amount or amounts as will compensate Lender for such reduction. Lender will take such actions reasonably requested by Borrower, at the expense of Borrower, if such actions will avoid the need for, or reduce the amount of, such compensation and will not, in the judgment of Lender, be otherwise disadvantageous to it or inconsistent with its internal policies and procedures. In no event will Lender be expected or required to

monitor the occurrence of any of the events or contingencies described in this Section 3.03(a). Notwithstanding the foregoing, in no event shall Borrower be required to compensate Lender pursuant to this Section 3.03 for any amounts under this Section 3.03 incurred more than one hundred and eighty (180) days prior to the date that Lender notifies Borrower of such amount and of Lender's intention to claim compensation therefor.

(b) In determining any amount provided for in this Section 3.03, Lender shall use commercially reasonable averaging and attribution methods. If Lender makes a claim under this Section 3.03, it shall submit to Borrower a certificate setting forth the basis for such demand and a description of the computation of such demand as to such additional or increased cost or reduction, which certificate shall be conclusive absent manifest error.

(c) If a Lender submits a demand in writing to Borrower to pay any additional amounts pursuant to this Section 3.03, Borrower may elect, in its sole discretion, upon ten (10) Business Days prior written notice to such Lender and the Administrative Agent, to repay the Loan held by such Lender in full in accordance with Section 3.02(b) and such repayment may be on a non-pro rata basis; provided that such demand has not been rescinded in writing by such Lender or any permitted Assignee prior to the making of such repayment.

Article IV
INTEREST; FEES; EXPENSES; MAKING OF PAYMENTS

Section 4.01 Interest Rate; Fees.

(a) The outstanding Principal Amount of the Term Loan shall bear interest consisting of Fixed Interest, which shall be paid in cash as provided in this Section 4.01 or accreted as set forth in Section 3.01.

(b) Borrower agrees to pay all fees payable by it in the Fee Letter in the amounts and at the times specified therein.

(c) All interest hereunder in respect of Fixed Interest and all fees referred to in this Section 4.01(b) shall be computed on the basis of a 360-day year of twelve 30-day months.

(d) Fixed Interest on the Term Loan shall be payable solely from the Commercial Payments, except (i) in connection with voluntary prepayment of the Term Loan pursuant to Section 3.02(b) or Section 3.03 and (ii) in connection with prepayments required pursuant to Section 3.02(a).

(e) For the avoidance of doubt, Fixed Interest that is not paid in cash on the date due but that is added to the Principal Amount of the Term Loan as Accreted Principal in accordance with Section 3.01(c) shall accrue Fixed Interest from the date at which it is incorporated as Accreted Principal.

Section 4.02 Reserve Account.

(a) On or before the Closing Date, Borrower (i) shall establish with an Account Bank the Reserve Account and (ii) together with Administrative Agent and such Account Bank, enter into a Blocked Account Control Agreement. In accordance with Section 2.01(b)(ii), Administrative Agent shall deposit the Interest Reserve Amount and the Initial Administrative Fee Escrow Amount from the proceeds of the Initial Term Loan into the Reserve Account on the Initial Funding Date.

(b) Borrower shall promptly pay for any fees, expenses and charges of the Account Bank required to be made to the Account Bank with respect to the Reserve Account and pursuant to the

terms of the Blocked Account Control Agreement by transferring from the Operating Account sufficient funds into the Reserve Account when such fees, expenses and charges are due.

(c) Prior to the Payment in Full, Borrower shall have no right to (i) terminate the Reserve Account or (ii) direct the use of balances on deposit therein, except, with respect to this clause (ii) only, as set forth in the immediately following clause (d) and in Section 4.05(a)(iv).

(d) On any Interest Payment Date on which the Included Commercial Payments to be applied to Fixed Interest and Amortization Payments is equal to or greater than $[***], Borrower may elect, by written notice to Administrative Agent, for a portion of the Interest Reserve Amount not to exceed $[***] to be either (x) released to the Operating Account (for distribution to Company) or (y) applied in repayment of the principal amount of the Term Loan and any fees due in respect of such prepayment.

Section 4.03 Operating Account.

(a) On or before the Closing Date, Borrower shall (i) establish with the Account Bank the Operating Account and (ii) together with Administrative Agent and the Account Bank, enter into a Springing Account Control Agreement. In accordance with Section 2.01(b)(ii), Administrative Agent shall deposit the Expense Reserve Amount into the Operating Account on the Initial Funding Date simultaneous with the funding of the Initial Term Loan.

(b) Prior to the Payment in Full, Borrower shall have no right to terminate the Operating Account. The Operating Account shall be used solely for (i) holding the Expense Reserve Amount, (ii) holding the proceeds of capital contributions from Company and (iii) making payments (including as contemplated by Section 4.02(b)) with respect to Taxes and Expenses.

(c) Prior to the Payment in Full, Borrower shall have no right to terminate the Operating Account without Administrative Agent's prior written consent; provided that, without Lender's consent, Borrower shall have the right from time to time to establish a replacement Operating Account with a replacement Account Bank, provided that such replacement Account Bank has entered into a Springing Account Control Agreement with the Administrative Agent with respect to such replacement account effective no later than the date of such replacement.

For purposes of this Agreement, any reference to the "Operating Account," or the Springing Account Control Agreement entered into in connection therewith shall refer to such replacement Operating Account and Springing Account Control Agreement or Account Bank, as the context require.

Section 4.04 Collection Account.

(a) On or before the Closing Date or such later date as Administrative Agent may agree in is sole discretion, Borrower shall (i) establish with the Account Bank the Collection Account and (ii) together with Administrative Agent and the Account Bank, enter into a Springing Account Control Agreement with the Account Bank.

(b) Borrower shall promptly pay for all fees, expenses and charges of the Account Bank required to be made to the Account Bank with respect to the Collection Account and pursuant to the terms of the applicable Springing Account Control Agreement by depositing sufficient funds into the Collection Account when such fees, expenses and charges are due (it being understood that such amounts may be disbursed out of the Operating Account in accordance with Section 4.05).

(c) Prior to the Payment in Full, Borrower shall have no right to terminate the Collection Account without Administrative Agent's prior written consent; provided that, without Lender's consent to the change of location of such accounts (provided such location is in the United States), Borrower shall have the right from time to time to establish a replacement Collection Account with a replacement Account Bank, provided that such replacement Account Bank entered into a Springing Account Control Agreement with respect to such replacement accounts effective no later than the date of replacement, and Borrower instructs the applicable Covered Agreement Counterparties to make payments to such new accounts.

For purposes of this Agreement, any reference to the "Collection Account," or the Springing Account Control Agreement entered into in connection therewith shall refer to such replacement Collection Account and Springing Account Control Agreement or Account Bank, as the context requires.

(d) On or before the Closing Date, Borrower shall deliver a written notice to each Covered Agreement Counterparty as to the sale and assignment of the Transferred Assets to Borrower and instructions for payment thereafter with respect to all payments that are due and payable to Borrower in respect of or derived from the Covered Agreements (which notice and instructions shall be in the form attached to the Sale Agreement or otherwise reasonably satisfactory to Administrative Agent) and shall provide that each Covered Agreement Counterparty is to remit all amounts payable to Borrower in respect thereof to the Collection Account.

(e) To the extent any Commercial Payments are paid directly to Borrower (other than to the Collection Account), Borrower shall (i) remit to the Collection Account all such amounts within five (5) Business Days of receipt of any such funds, (ii) promptly instruct such Covered Agreement Counterparty to remit any future payments to the Collection Account and (iii) promptly provide to Administrative Agent a copy of such notice.

Section 4.05 Application of Payments; Ratable Sharing.

(a) On each Interest Payment Date, the Borrower shall (1) promptly deliver to the Administrative Agent the Payment Date Distribution Report and (2) distribute from the Collection Account all Included Commercial Payments received since the immediately preceding Interest Payment Date in the order of priority set forth below but, in each case, only to the extent that all amounts then required to be paid ranking prior thereto have been paid in full:

(i) first, to the Operating Account such amount as necessary, when taken together with all amounts then on deposit in the Operating Account, for payment of all Taxes then due and payable by Borrower, if any, in the amount shown in all supporting documentation attached to the Payment Date Distribution Report;

(ii) second, to the Payment Account for application to all accrued and unpaid Lender Expenses (it being understood that invoices for such Lender Expenses shall have been provided at least ten (10) Business Days prior to the applicable Interest Payment Date);

(iii) third, to the Operating Account such amount as necessary, when taken together with all amounts then on deposit in the Operating Account, for the payment of all Expenses not previously paid or reimbursed, in the amount requested by the Borrower and shown in supporting documentation attached to the Payment Date Distribution Report; provided, however, that: (1) unless and until a Servicer Termination Event (as defined in the Sale Agreement) has occurred and a new Servicer (as defined in the Sale Agreement) that is not an Affiliate of Borrower has been appointed in accordance with Section 5.05 of the Sale Agreement, no Servicing Fee shall be permitted to be paid under this Section

4.05(a)(iii) and (2) all fees payable under this Section 4.05(a)(iii) for any Semi-Annual Period shall not exceed the lesser of (x) an amount necessary, after application of all amounts then on deposit in the Operating Account, to pay such Expenses and (y) $25,000;

(iv) fourth, to the Payment Account for application, on the Interest Payment Date, to all accrued and unpaid Fixed Interest on the Term Loan for the period from and including the prior Interest Payment Date to and including the day before the current Interest Payment Date; provided, however, that if Included Commercial Payments for such period are insufficient to pay all amounts of Fixed Interest due on the Term Loan for such period (the amount of such shortfall, the "Semi-Annual Interest Shortfall"), Administrative Agent shall instruct the Account Bank, with respect to the Interest Reserve Amount, to release to Administrative Agent, for distribution to the Lenders in payment of Fixed Interest, an amount equal to the Semi-Annual Interest Shortfall or, if the Interest Reserve Amount remaining in the Reserve Account is less than the Semi-Annual Interest Shortfall, all remaining Interest Reserve Amounts in the Reserve Account (it being understood that any Fixed Interest remaining unpaid after application of all Interest Reserve Amounts shall not be required to be paid in cash and shall instead become Accredited Principal in accordance with Section 3.01);

(v) fifth, to the extent the Included Commercial Payments for such period exceeds the amounts payable under the foregoing clauses (i)-(iv) (such amount, the "Amortization Payment"), the Amortization Payment shall be disbursed to the Payment Account and applied by the Administrative Agent to repay, on a pro rata basis, principal on the Term Loans outstanding at par.

(b) Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, a copy of the Payment Date Distribution Report and such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due with respect thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Administrative Agent.

(c) Lenders hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Term Loans made and applied in accordance with the terms hereof), through the exercise of any right of set off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Loan Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Loan Documents (collectively, the "Aggregate Amounts Due" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender having Term Loans, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders having Term Loans in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set off or counterclaim with respect to any and all monies owing by Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

Section 4.06 Interest on Late Payments.

If any amount payable by Borrower to Administrative Agent hereunder is not paid (or accreted in accordance with Section 3.01(c)) when due (whether at stated maturity, by acceleration or otherwise), interest shall accrue on any such unpaid amounts, both before and after judgment during the period from and including the applicable due date, to but excluding the day the overdue amount is paid in full, at a rate per annum equal to the Default Rate. Interest accruing under this Section 4.06 shall be payable on demand of Administrative Agent acting at the direction of the Required Lenders.

For the avoidance of doubt, any Accreted Principal shall also accrue interest at the Default Rate in the event that Fixed Interest that is not paid in cash on the date due but that is added to the Principal Amount of the Term Loan as Accreted Principal in accordance with Section 3.01(c) shall accrue Fixed Interest from the date at which it is incorporated as Accreted Principal and shall thereafter accrue interest at the Default Rate in the event that the Principal Amount of the Term Loan generally bears interest at the Default Rate.

Section 4.07 Administration and Enforcement Expenses.

Borrower shall promptly reimburse Administrative Agent and each Lender on demand for all Lender Expenses.

Section 4.08 Making of Payments.

Notwithstanding anything to the contrary contained herein, any payment stated to be due hereunder on a given day in a specified month shall be made or shall end (as the case may be), (i) if there is no such given day or corresponding day, on the last Business Day of such month or (ii) if such given day or corresponding day is not a Business Day, on the next succeeding Business Day.

Section 4.09 Setoff or Counterclaim.

Each payment by Borrower under this Agreement and the Fee Letter shall be made without setoff, deduction or counterclaim. Administrative Agent and each Lender shall have the right to set off any and all amounts owed by Borrower under this Agreement as provided in Section 10.03.

Article V
TAXES

Section 5.01 Taxes.

(a) Except as otherwise required by Applicable Law, all payments by Borrower under this Agreement or any other Loan Document (including payments with respect to the Term Loan) shall be made free and clear of and without deduction for any present or future Taxes. If Borrower or any other applicable withholding agent shall be required by Applicable Law to deduct any Taxes from or in respect of any sum payable to Administrative Agent or any Lender under this Agreement or any other Loan Document, (i) if such Taxes are Indemnified Taxes, the sum payable by Borrower shall be increased as necessary so that after all required deductions for Indemnified Taxes have been made by the applicable withholding agent (including deductions applicable to additional sums payable under this Section 5.01(a)), Administrative Agent or such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions and (iii) the applicable withholding agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to any payments made under any Loan Document shall deliver to Borrower, at the time or times reasonably requested by Borrower, such properly completed and executed documentation reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower as will enable Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(ii) Without limiting the generality of the foregoing:

(1) If a Lender is a Foreign Lender, then such Lender shall provide to Borrower (i) in the case of a Foreign Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest," (x) two accurate and complete original signed copies of IRS Form W-8BEN-E or IRS Form W-8BEN (or a successor form), as applicable, properly completed and duly executed by such Foreign Lender and (y) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the Code or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code, (ii) if the payments receivable by the Foreign Lender are effectively connected with the conduct of a trade or business in the United States, two accurate and complete original signed copies of IRS Form W-8ECI (or a successor form), (iii) in the case of a Foreign Lender that is entitled to benefits under an income tax treaty to which the United States is a party, two accurate and complete original signed copies of IRS Form W-8BEN-E or IRS Form W-8BEN, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the applicable article(s) of such tax treaty or (iv) to the extent a Foreign Lender is not the beneficial owner, two accurate and complete original signed copies of IRS Form W-8IMY, accompanied by two accurate and complete copies of IRS Form W-8ECI, IRS Form W-8BEN, or IRS Form W-8BEN-E, as applicable, a certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a certificate substantially in the form of Exhibit E-4 on behalf of such direct and indirect partner(s). Such forms or certificates shall be delivered by such Foreign Lender on or prior to the date that it becomes a Lender under this Agreement, at any time thereafter if any form or certification previously delivered expires or becomes obsolete or inaccurate in any respect, and upon a reasonable written request of Borrower. Notwithstanding any other provision of this Section 5.01(b), no Foreign Lender shall be required to deliver any form pursuant to this Section 5.01(b) that such Foreign Lender is not legally eligible to deliver.

(2) Each Lender that is not a Foreign Lender shall provide two properly completed and duly executed copies of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax on or prior to the date on which such Lender becomes a Lender under this Agreement, at any time thereafter if any form or certification previously delivered expires or becomes obsolete or inaccurate in any respect, and upon a reasonable written request of Borrower.

(3) Any Foreign Lender shall, to the extent it is legally eligible to do so, deliver to Borrower (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time

thereafter upon the reasonable request of Borrower), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrower to determine the withholding or deduction required to be made; and

(4) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower at the time or times prescribed by Applicable Law and at such time or times reasonably requested by Borrower such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower as may be necessary for Borrower to comply with its obligations under FATCA, to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender having assigned its rights and obligations hereunder in whole or in part shall collect from such assignee at the time of the assignment the documents described in Sections 5.01(b)(ii)(1) and (b)(ii)(2) as applicable.

Section 5.02 Receipt of Payment.

Within thirty (30) days after the date of any payment of Taxes by Borrower pursuant to this Article V, Borrower shall furnish to Administrative Agent the original or a certified copy of a receipt evidencing payment thereof or other evidence reasonably satisfactory to Administrative Agent.

Section 5.03 Other Taxes.

Borrower shall promptly pay any registration, transfer, stamp or documentary, recording or similar Taxes arising from any payment made under any Loan Document, or from the execution, delivery, performance, enforcement or registration of, the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes with respect to an assignment by a Lender that are Other Connection Taxes (all such non-excluded Taxes, "Other Taxes"), to the relevant Governmental Authority in accordance with Applicable Law.

Section 5.04 Indemnification.

If Administrative Agent or any Lender pays any Indemnified Taxes that Borrower is required to pay pursuant to this Article V, Borrower shall indemnify Administrative Agent or such Lender on demand in full (including any Indemnified Taxes imposed by any jurisdiction on amounts payable under this Section 5.04), whether or not such Taxes were correctly or legally asserted. A certificate of Administrative Agent or any affected Lender claiming any compensation under this Section 5.04, setting forth the amounts to be paid thereunder and delivered to Borrower, shall be conclusive, binding and final for all purposes, absent manifest error.

Section 5.05 Registered Obligation.

(a) Borrower shall establish and maintain, at its address referred to in Section 12.03, (i) a Register in which Borrower agrees to register by book entry the interests (including any rights to receive payment hereunder) of Lender in the Term Loan, each of its obligations under this Agreement to

participate in the Term Loan, and any assignment of any such interest, obligation or right, and (ii) accounts in the Register in accordance with its usual practice in which it shall record (1) the names and addresses of Lender(s) (and each change thereto pursuant to Sections 12.01 and 12.02), (2) the amount of the Term Loan described in clause (i) above, (3) the amount of any principal or interest due and payable or paid, and (4) any other payment received and its application to the Term Loan. The entries in the Register shall be conclusive, in the absence of manifest error, and Borrower and each Lender shall treat each person whose name is recorded in the Register as the owner of the Term Loans for all purposes of this Agreement, notwithstanding notice to the contrary. No error in the Register shall diminish any of Borrower's obligations to any Lender under this Agreement.

(b) Notwithstanding anything to the contrary contained in this Agreement or elsewhere, the Term Loan (including any note evidencing such Term Loan) are registered obligations, the right, title and interest of Lender and its assignees in and to the Term Loan shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. The parties hereto intend that the Term Loan will be at all times maintained in "registered form" within the meaning of Section 5f.103-1(c) of the U.S. Treasury Regulations, Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any successor provisions).

Section 5.06 Tax Treatment.

For U.S. federal income and applicable state and local income tax purposes, the Parties agree to the following:

(a) the Term Loan is debt;

(b) any contingency associated with the Term Loan is described in Treasury Regulation Section 1.1272-1(c) and/or Treasury Regulations Section 1.1275-2(h) and therefore the Term Loan is not governed by the rules set out in Treasury Regulations Section 1.1275-4;

(c) interest payable on the Term Loan is not contingent interest within the meaning of Sections 871(h)(4) and 881(c)(4) of the Code;

(d) the Term Loan and Warrant constitutes an investment unit within the meaning of Section 1273 of the Code;

(e) the Parties shall determine the fair market value of the Warrant as promptly as practicable after the Closing Date; and

(f) this Agreement is not intended to create a partnership, association or joint venture between or among Lender and/or Borrower or any Subsidiary and each Party agrees not to refer to the other as a "partner" or the relationship as a "partnership" or "joint venture".

Each Party agrees not to take any position that is inconsistent with the intended tax treatment set forth in this Section 5.06 on any Tax return or in any audit or other administrative or judicial proceeding unless (i) each other Party has consented to such actions; or (ii) as a result of a material change in Applicable Law following the date of this Agreement, counsel for such Party has advised it in writing that taking such a position would, notwithstanding compliance with all applicable reporting requirements and disclosure obligations, subject such Party to penalties under the Code.

Section 5.07 Treatment of Certain Refunds.

If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Article V (including by the payment of additional amounts pursuant to this Article V), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Article V with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 5.07 (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 5.07, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 5.07 the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 5.07 shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

Article VI
CONDITIONS PRECEDENT

Section 6.01 Closing Date.

The effectiveness of this Agreement, and the obligation of each Lender to make a Credit Extension on the Initial Funding Date, is subject to the satisfaction of the following conditions on or before the Closing Date:

(a) This Agreement and the other Loan Documents shall have been executed and delivered to Administrative Agent by each party thereto.

(b) Administrative Agent shall have received an executed copy of:

(i) an opinion of counsel to the Transaction Parties, dated the Closing Date in form and substance reasonably satisfactory to Administrative Agent and each Lender;

(ii) a certificate of each Loan Party, executed respectively by a Senior Officer thereof, dated the Closing Date, substantially in the form of Exhibit F hereto; and

(iii) Each Notice and Instruction Letter.

(c) Each Loan Party shall have delivered to Lender a certificate, dated the Closing Date, of a Senior Officer (the statements in which shall be true and correct on and as of the Closing Date): (i) attaching copies, certified by such officer as true and complete, of such party's certificate of incorporation or other organizational documents (together with any and all amendments thereto) certified by the appropriate Governmental Authority as being true, correct and complete copies; (ii) attaching copies, certified by such officer as true and complete, of resolutions of the Board of Directors (or similar governing body) of such party authorizing and approving the execution, delivery and performance by such party of the Loan Documents to which it is a party and the transactions contemplated herein and therein; (iii) setting

forth the incumbency of the officer of such party who executed and delivered such Loan Documents, including therein a signature specimen of each such officer; and (iv) attaching copies, certified by such officer as true and complete, of certificates of the appropriate Governmental Authority of the jurisdiction of formation, stating that such party was in good standing under the laws of such jurisdiction as of the Closing Date (or a date immediately prior thereto acceptable to Lender).

(d) The Transaction Documents shall be in full force and effect.

(e) All necessary governmental and third-party approvals, consents and filings, including in connection with the Term Loan, the Security Agreement, the Sale Agreement and the other Loan Documents shall have been obtained or made and shall remain in full force and effect.

(f) Borrower shall have delivered to Administrative Agent certified copies of UCC, tax and judgment lien searches, or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents that name Borrower as debtor and that are filed in those state and county jurisdictions in which Borrower is organized or maintains its principal place of business and such other searches that Administrative Agent deems necessary or appropriate, none of which encumber the Collateral covered or intended to be covered by the Loan Documents (other than any Permitted Liens).

(g) Administrative Agent shall have received all UCC financing statements in appropriate form for filing under the UCC, and all other certificates, agreements, instruments, filings, recordings and other actions, that are necessary or reasonably requested by Administrative Agent in order to establish, protect, preserve and perfect the security interest in the assets of Borrower constituting Collateral as provided in the Security Agreement as a valid and perfected first priority security interest with respect to such assets shall have been duly effected (or arrangements therefor satisfactory to Lender shall have been made).

(h) Administrative Agent and each Lender shall have received all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act, including and the information described in Section 12.18.

(i) Parent shall have executed and delivered the Warrants.

(j) Borrower shall have paid (or caused to be paid) all fees, costs and expenses (including legal fees and expenses) agreed in writing to be paid by it to Administrative Agent in connection herewith (including pursuant to the Fee Letter) to the extent due on the closing date; provided that any invoices shall be provided at least one (1) Business Days prior to the Closing Date.

(k) Administrative Agent shall have received such other approvals, opinions, documents or materials as it may reasonably request.

Section 6.02 Conditions to Each Credit Extension.

The obligation of each Lender to make the Initial Term Loan on the Initial Funding Date or any other Term Loan on any date following the Closing Date is subject to the satisfaction or waiver of the following conditions precedent:

(a) Administrative Agent shall have received a fully executed and delivered Funding Notice as and when required by Section 2.01(b)(i).

(b) As of as of the applicable Credit Date, no event shall have occurred and be continuing that (i) constitutes a Default or an Event of Default or (ii) could reasonably be expected to constitute a Material Adverse Effect (without giving effect to the cure period applicable to an Event of Default based thereon), in each case both at the time of, and immediately after giving effect to, the making of any Term Loan.

(c) As of as of the applicable Credit Date, the representations and warranties contained herein and in each other Loan Document, certificate or other writing delivered to Administrative Agent or any Lender pursuant hereto or thereto on or prior to the Credit Date shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date.

(d) On each Credit Date, the Loan Parties shall have paid all fees, costs and expenses then payable by the Loan Parties pursuant to this Agreement and the other Loan Documents; provided that any invoices shall be provided at least one (1) Business Days prior to the applicable Credit Date.

(e) With respect to the Delayed Draw Term Loan, on or prior to such Credit Date, Administrative Agent shall have received, upon request, evidence reasonably satisfactory to it that the Delayed Draw Funding Milestone has been satisfied.

Article VII
REPRESENTATIONS AND WARRANTIES

Section 7.01 Representations and Warranties of Borrower.

In order to induce Administrative Agent and Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, Borrower represents and warrants to Administrative Agent and Lender, on the Closing Date and on each Credit Date, that the following statements are true and correct:

(a) Borrower 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 Governmental Authorities, required to own its property and conduct its business as now conducted. Borrower is duly qualified to transact business and is in good standing in every jurisdiction in which such qualification or good standing is required by Applicable Law (except where the failure to be so qualified or in good standing would not result in, and could not reasonably be expected to have resulted in a Material Adverse Effect).

(b) None of the execution and delivery by Borrower of any of the Loan Documents to which Borrower is party, the performance by Borrower of the obligations contemplated hereby or thereby or the consummation of the transactions contemplated hereby or thereby will: (i) contravene, conflict with, result in a breach, violation, cancellation or termination of, constitute a default (with or without notice or lapse of time, or both) under, require prepayment under, give any Person the right to exercise any remedy (including termination, cancellation or acceleration) or obtain any additional rights under, or accelerate the maturity or performance of or payment under, in any respect, (A) any Applicable Law or any judgment,

order, writ, decree, permit or license of any Governmental Authority to which Borrower or any of its assets or properties may be subject or bound, (B) any term or provision of any contract, agreement, indenture, lease, license, deed, commitment, obligation or instrument to which Borrower is a party or by which Borrower or any of its assets or properties is bound or committed or (C) any term or provision of any of the organizational documents of Borrower, except in the case of clause (A) or (B) where any such event would not result in a Material Adverse Effect; or (ii), except as provided in or contemplated by any of the Transaction Documents, result in or require the creation or imposition of any Lien.

(c) Other than pursuant to the Loan Documents, Borrower has not granted or agreed to grant any Lien on the Transferred Assets (other than, after the Closing Date, Permitted Liens), nor does there exist any Lien on the Transferred Assets or its Capital Stock (other than, after the Closing Date, Permitted Liens).

(d) Borrower has all powers and authority to execute and deliver, and perform its obligations under, the Loan Documents to which it is party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of each of the Loan Documents to which Borrower is party and the performance by Borrower of its obligations hereunder and thereunder have been duly authorized by Borrower. Each of the Loan Documents to which Borrower is party has been duly executed and delivered by Borrower. Each of the Loan Documents to which Borrower is party constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar Applicable Laws affecting creditors' rights generally, general equitable principles and principles of public policy.

(e) Upon giving effect to the Sale (and subject to the terms and conditions thereof), Borrower shall be the exclusive owner of the entire right, title (legal and equitable) and interest in, to and under the Collateral, free and clear of all Liens, other than Permitted Liens, and Borrower shall be entitled to be the sole recipient of all Commercial Payments. Upon granting by Borrower of the security interests in the Collateral to Administrative Agent, Administrative Agent shall acquire a first priority security interest in the Collateral, free and clear of all Liens, other than Permitted Liens. Borrower has not caused, and to the Knowledge of Borrower no other Person has caused, the claims and rights of Administrative Agent or any Lender created by any Loan Document in and to the Collateral, to be subordinated to any creditor or any other Person.

(f) The execution and delivery by Borrower of the Loan Documents to which Borrower is party, the performance by Borrower of its obligations hereunder and thereunder and the consummation of any of the transactions contemplated hereunder and thereunder (including the granting of security interests in the Collateral to Administrative Agent) do not require any consent, approval, license, order, authorization or declaration from, notice to, action or registration by or filing with any Governmental Authority or any other Person, except for (i) the filing of any applicable notices under securities laws, (ii) the filings necessary to perfect Liens created by the Loan Documents, (iii) those previously obtained and in full force and effect, and (iv) consents, filings and registrations in connection with the Sale as contemplated by the Sale Agreement.

(g) There is no action, suit, arbitration proceeding, claim, citation, summons, subpoena, investigation or other proceeding (whether civil, criminal, administrative, regulatory, investigative or informal, and including by or before a Governmental Authority) pending or, to the Knowledge of Borrower, threatened in writing (or, in the case of a threat by a Governmental Authority, threatened orally or in writing) by or against Borrower or any of its Subsidiaries, at law or in equity, that (i) if adversely determined, would result in a Material Adverse Effect or (ii) challenges or seeks to prevent

or delay the consummation of any of the transactions contemplated by any of the Loan Documents to which Borrower is party.

(h) Upon consummation of the transactions contemplated by the Loan Documents and the application of the proceeds of the Term Loan to be made on the applicable Credit Date, (i) the present fair saleable value of the properties and assets of Borrower will be greater than the sum of its debts, liabilities and other obligations, including contingent liabilities, (ii) the present fair saleable value of the properties and assets of Borrower will not be less than the amount that would be required to pay its probable liabilities on its existing debts, liabilities and other obligations, including contingent liabilities, as they become absolute and matured, (iii) Borrower will be generally able to realize upon its assets and pay its debts, liabilities and other obligations, including contingent obligations, as they become absolute and matured, (iv) Borrower will not have unreasonably small capital with which to engage in its business as now conducted, (v) Borrower has not incurred debts or other obligations or liabilities beyond its ability to pay such debts or other obligations or liabilities as they become absolute and matured, (vi) Borrower will not have become subject to any Insolvency Event and (vii) Borrower will not have been rendered insolvent within the meaning of any Applicable Law. No step has been taken by Borrower or, to its Knowledge, any other Person to make Borrower subject to an Insolvency Event.

(i) No Default or Event of Default has occurred and is continuing, and no such event will occur upon the making of the Term Loan to be made on the applicable Credit Date.

(j) Borrower has timely filed (or caused to be filed) all Tax returns and reports required by Applicable Law to have been filed by it and has paid all Taxes required to be paid by it (including in its capacity as a withholding agent), except any such Taxes that are being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books or where any such failure to file or pay would not result, individually or in the aggregate, in a Material Adverse Effect. None of the payments received (or to be received) by Borrower in respect of the Commercial Payment Interest has been, or under current Law will be, subject to any deduction or withholding of any Tax.

(k) Borrower has not taken any action that would entitle any person or entity to any commission or broker's fee in connection with the transactions contemplated by this Agreement.

(l) Borrower (i) has not violated, is not in violation of, is not under investigation with respect to, and has not been threatened to be charged with or been given notice of any violation of, any Applicable Law or any judgment, order, writ, decree, injunction, stipulation, consent order, permit or license granted, issued or entered by any Governmental Authority and (ii) is not subject to any judgment, order, writ, decree, injunction, stipulation, consent order, permit or license granted, issued or entered by any Governmental Authority, in each case, that would result in a Material Adverse Effect. Borrower is in compliance with the requirements of all Applicable Laws, a breach of any of which would result in a Material Adverse Effect.

(m) Borrower is not engaged in the business of extending credit for the purpose of buying or carrying margin stock, and no portion of the Term Loan shall be used by Borrower for a purpose that violates Regulation T, U or X promulgated by the Board of Governors of the Federal Reserve System from time to time.

(n) As of the Closing Date, Borrower is not a party to any Material Contract (other than, (i) after giving effect to the Sale thereof under the Sale Agreement, the Affitech Assignment Agreement and (ii) the Transaction Documents).

(o) Neither Borrower nor, to the Knowledge of Borrower, any Covered Agreement Counterparty, as applicable, has taken any action or omitted to take any action that would adversely impact the right of Lender to take a security interest in the Collateral.

(p) Each Covered Agreement is in full force and effect and has not been waived, altered or modified in any respect, whether by consent or otherwise. No party to any Covered Agreement has been released, in whole or in part, from any of its obligations under such Covered Agreement. No Covered Agreement has been satisfied in full, discharged, canceled, terminated, subordinated or rescinded, in whole or in part. Each Covered Agreement is the entire agreement among the parties thereto relating to the subject matter thereof.

(q) Borrower has not received (i) any written notice or, to the Knowledge of Borrower, oral communication of any Covered Agreement Counterparty's intention to terminate a Covered Agreement in whole or in part, or (ii) any written notice or, to the Knowledge of Borrower, oral communication requesting any amendment, alteration or modification to any Covered Agreement.

(r) To the Knowledge of Borrower, nothing has occurred and no condition exists that would adversely impact the right of Borrower to receive any Commercial Payments.

(s) To the Knowledge of Borrower, all Commercial Payments required to be made under the Covered Agreements have been made. To the Knowledge of Borrower, no Commercial Payment has been subject to any claim pursuant to any right of rescission, set-off, counterclaim, reduction or defense and except as otherwise expressly provided under any Covered Agreement, no Covered Agreement Counterparty has a right of set-off, rescission, counterclaim, reduction, deduction or defense against the Commercial Payment Interest or any Commercial Payments thereunder.

(t) The execution, delivery and performance of the Covered Agreements was and is within the corporate powers or other organizational power of Company and its Affiliates and, to the Knowledge of Borrower, each Covered Agreement Counterparty. Each Covered Agreement was duly authorized by all necessary action on the part of, and validly executed and delivered by, Company and its Affiliates and, to the Knowledge of Borrower, each Covered Agreement Counterparty. There is no breach or default, or event which upon notice or the passage of time, or both, could give rise to any breach or default, in the performance of any Covered Agreement by Borrower, Company or its Affiliate or, to the Knowledge of Borrower, each Covered Agreement Counterparty, that could reasonably be expected to have a Material Adverse Effect.

(u) Neither Borrower nor, to Borrower's Knowledge, any Material Contract Counterparty is in breach or default of any Material Contract and no circumstances or grounds exist that would, upon the giving of notice, the passage of time or both, give rise (i) to a claim by Borrower or any Material Contract Counterparty of a breach or default of any Material Contract, or (ii) to a right of rescission, termination, revision, setoff, or any other rights, by any Person, in, to or under any Material Contract. Borrower has not received from, or delivered to, any Material Contract Counterparty, any notice alleging a breach or default under any Material Contract, which breach or default has not been cured as of the date hereof.

(v) Upon the Sale thereof to, and assumption thereof by, Borrower, the Affitech Assignment Agreement shall be a valid and binding obligation of Borrower and, to the Knowledge of Borrower, of the applicable Covered Agreement Counterparties, enforceable against each of Borrower and, to the Knowledge of Borrower, each applicable Covered Agreement Counterparty in accordance with its terms, except as may be limited by general principles of equity (regardless of whether considered in a proceeding at law or in equity) and by applicable bankruptcy, insolvency, moratorium and other similar

laws of general application relating to or affecting creditors' rights generally. Borrower has not received any notice from any Material Contract Counterparty or any other Person challenging the validity or enforceability of any Material Contract. Neither Borrower, nor to the Knowledge of Borrower, any other Person, has delivered or intends to deliver any written notice to Borrower or a Material Contract Counterparty challenging the validity or enforceability of any Material Contract.

(w) Neither Borrower nor to the Knowledge of Borrower, any Material Contract Counterparty, is contemplating to commence any case, proceeding or other action relating to Material Contract Counterparty's bankruptcy, insolvency, liquidation or dissolution or reorganization by any of the foregoing means.

(x) No Capital Stock has been issued by Borrower other than the Capital Stock issued to Company that is subject to the pledge to Administrative Agent under the Pledge Agreement.

(y) The chief place of business, the chief executive office and each office where Borrower keeps its records regarding the Commercial Payment Interest are, as of the date hereof, each located at 2200 Powell Street, Suite 310, Emeryville, CA 94608.

(z) Borrower (or any predecessor by merger or otherwise) has not, within the five (5) year period preceding the date hereof, had a name that differs from its name as of the date hereof.

(aa) Borrower is not an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940.

(bb) All written information heretofore or herein supplied by or on behalf of Borrower or Company to Administrative Agent or any Lender is accurate and complete in all material respects; provided that all written information heretofore or herein supplied by or on behalf of Borrower to Lender and produced by any Third Party is accurate and complete in all material respects to the Knowledge of Borrower. There is no fact or circumstance known to Borrower that could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed to Administrative Agent and each Lender or in required reports and other information filed with the SEC under the Act and the Exchange Act (to the extent publicly available).

Section 7.02 [Reserved].

Section 7.03 Survival of Representations and Warranties.

All representations and warranties by Borrower, whether with respect to Borrower, Company, any respective Affiliate or any asset or property, contained in this Agreement shall survive the execution, delivery and acceptance thereof by the Parties and the closing of the transactions described in this Agreement and continue in effect until payment of all amounts due to Lender under the Loan Documents.

Article VIII
AFFIRMATIVE COVENANTS

Borrower covenants and agrees with Lender that, until Payment in Full:

Section 8.01 Maintenance of Existence.

Borrower shall at all times (a) preserve, renew and maintain in full force and effect its legal existence (except as otherwise permitted pursuant to Section 9.02(a) hereof) and good standing as a

corporation under the Laws of the jurisdiction of its organization; (b) not change its name or its chief executive office as set forth herein without having given Lender the notice thereof required under Section 8.13; and (c) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 8.02 Use of Proceeds.

Borrower shall use the net proceeds of the Term Loan received by it to (i) acquire assets from Company pursuant to the Sale Agreement, (ii) pay the fees and Lender Expenses due pursuant to the Loan Documents and (iii) fund the Reserve Account.

Section 8.03 Financial Statements and Information.

(a) In the event that any such information need not be filed with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, Borrower shall furnish to Administrative Agent, on or before the forty-fifth (45th) day after the close of each of the first three quarters of each fiscal year, the unaudited consolidated balance sheet of Parent as at the close of such quarter and unaudited consolidated statement of operations and comprehensive loss and cash flows of Parent for such quarter, duly certified by the chief financial officer of Parent as having been prepared in accordance with GAAP. In the event that such quarterly financial statement is required to be filed with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, Borrower shall furnish such statement to Administrative Agent concurrently with such filing (which requirement may be satisfied by Borrower sending Lender a hyperlink to EDGAR where such information is available). Concurrently with the delivery or filing of the statements described in the preceding two sentences, Borrower shall furnish to Administrative Agent a certificate of the chief financial officer of Parent, which certificate shall include a statement that such officer has no knowledge, except as specifically stated, of any condition, event or act which constitutes a Default or Event of Default.

(b) In the event that any such information need not be filed with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, Borrower shall furnish to Administrative Agent, on or before the 75th day after the close of each fiscal year, Parent's audited financial statements as at the close of such fiscal year, including the consolidated balance sheet as at the end of such fiscal year and consolidated statement of operations and cash flows of Parent for such fiscal year, in each case accompanied by the report thereon of independent registered public accountant of nationally recognized standing reasonably satisfactory to Administrative Agent. In the event that such annual financial statement is required to be filed with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, Borrower shall furnish such statement to Administrative Agent concurrently with such filing (which requirement may be satisfied by Borrower sending Lender a hyperlink to EDGAR where such information is available). Concurrently with delivery or filing of the documents described in the preceding sentence, Borrower shall furnish to Administrative Agent a certificate of the chief financial officer of Parent, which certificate shall include a statement that such officer has no knowledge, except as specifically stated, of any condition, event or act which constitutes a Default or Event of Default.

(c) Borrower shall, promptly upon receipt thereof, forward or cause to be forwarded to Administrative Agent copies of all Notices, reports, updates and other data or information (i) pertaining to the Commercial Payment Interest and other Collateral, (ii) received from any Third Party which relate to events or circumstances that could reasonably be expected to have a Material Adverse Effect, or (iii) that Administrative Agent reasonably requests.

(d) For each Semi-Annual Period ending after the Closing Date, Borrower shall, within five (5) Business Days following receipt thereof, deliver or cause to be delivered to Administrative

Agent a true copy of the Assigned Commercial Payment Report for such Semi-Annual Period, together with a certificate of a Senior Officer of Borrower, certifying that to the Knowledge of Borrower such Assigned Commercial Payment Report is a true, correct and complete copy of the Assigned Commercial Payment Report as provided to Borrower by Roche, and such additional information as is reasonably requested by Administrative Agent. Administrative Agent shall have the right to direct Borrower to exercise the audit rights under Section 3.10 of the Affitech Assignment Agreement (subject to all restrictions and limitations thereon contained therein). Borrower shall not have the right to exercise the audit rights under Section 3.10 of the Affitech Assignment Agreement without the prior written consent of Administrative Agent. Any additional Commercial Payments due from Roche in connection with any such audit shall be paid by the Roche to the Collection Account, and any refund due to Roche from any overpayment in respect of the Commercial Payment Interest determined in any such audit shall be paid by Parent in accordance with the Affitech Assignment Agreement. Borrower and Administrative Agent will each provide reasonable prior written notice of its intent to exercise such audit rights and will reasonably cooperate in the exercise of such audit rights in order to avoid unnecessary limitations on the timing, scope and conduct of such audits within the parameters specified in the Affitech Assignment Agreement.

(e) Administrative Agent and its Representatives shall have the right, from time to time, not more than once per calendar quarter, during normal business hours and upon at least ten (10) Business Days' prior written notice to Borrower (provided that, after the occurrence and during the continuance of an Event of Default, Lender shall have the right, as often, at such times and with such prior notice, as Administrative Agent determines in its reasonable discretion), to visit the offices and properties of Borrower and Company where books and records relating or pertaining to the Commercial Payment Interest and the Collateral are kept and maintained (or, at Administrative Agent's option, to conduct a meeting by telecommunications), to discuss, with officers of Borrower and Company, the business, operations, properties and financial and other condition of Borrower and Company, to discuss the Covered Agreement, to discuss the Assigned Commercial Payment Report, to verify compliance with the provisions of the Loan Documents regarding receipt and application of the Commercial Payments and, upon physical visits, to inspect and make extracts from and copies of the books and records of Borrower and Company relating or pertaining to the Commercial Payment Interest and the Collateral.

(f) All written information supplied by or on behalf of Borrower to Administrative Agent and the Lenders pursuant to this Section 8.03 (other than Sections 8.03(a) and 8.03(b)) shall be accurate and complete in all material respects as of its date or the date so supplied and the financial statements provided pursuant to Sections 8.03(a) and 8.03(b) fairly present in all material respects the financial positions and results of operations as of the dates indicated therein. For the avoidance of doubt, Borrower makes no representations or warranties regarding the accuracy or completeness of any information it receives from a Third Party that it is required to furnish to Administrative Agent or Lenders pursuant to this Section 8.03, unless to the Knowledge of Borrower or Parent such information is inaccurate or incomplete, in which case Borrower or Parent shall specify such inaccuracy or incompleteness.

Section 8.04 Books and Records.

Borrower shall keep proper books, records and accounts in which entries in conformity with sound business practices and all requirements of Law applicable to it shall be made of all dealings and transactions in relation to its business, assets and activities and as shall permit the preparation of the consolidated financial statements of Borrower in accordance with GAAP.

Section 8.05 Governmental Authorizations.

Borrower shall obtain, make and keep in full force and effect all authorizations from and registrations with Governmental Authorities that may be required for the validity or enforceability against Borrower of this Agreement and the other Loan Documents to which it is a party.

Section 8.06 Compliance with Laws and Contracts.

(a) Borrower shall comply with all Applicable Laws and perform its obligations under all Material Contracts, if any, entered into after the Closing Date relative to the conduct of its business, except where the failure to comply could not reasonably be expected to result in a Material Adverse Effect. Borrower shall use commercially reasonable efforts to take all actions necessary to enforce its rights under each Material Contract, and perform all of its material obligations under each Material Contract, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect (subject to Section 9.01(a)).

(b) Borrower shall at all times comply with the margin requirements set forth in Section 7 of the Exchange Act and any regulations issued pursuant thereto, including, without limitation, Regulations T, U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II.

Section 8.07 Plan Assets.

Borrower shall not take any action that causes its assets to be deemed to be Plan Assets at any time.

Section 8.08 Notices.

Borrower shall, promptly after an officer becomes aware thereof, give written Notice to Administrative Agent of:

(a) of each Default, Event of Default and each other event that has or could reasonably be expected to have a Material Adverse Effect; provided that in any of the foregoing situations where Borrower knows a press release or other public disclosure is to be made, Borrower shall use all commercially reasonable efforts to provide such information to Lender as early as possible but in no event later than simultaneously with such release or other public disclosure.

(b) of any default or event of default under any Material Contracts.

(c) any litigation or proceedings to which Borrower is a party or which could reasonably be expected to have a Material Adverse Effect.

(d) any litigation or proceedings challenging the validity of any Covered Agreement or otherwise required under a Covered Agreement, the Transaction Documents or any of the transactions contemplated therein.

(e) any representation or warranty made or deemed made by Borrower in any of the Loan Documents or in any certificate delivered to Administrative Agent pursuant hereto shall prove to be untrue, inaccurate or incomplete in any material respect on the date as of which made or deemed made.

(f) the occurrence of any Material Adverse Effect.

(g) receipt of any written notice from a Covered Agreement Counterparty of an event which has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, provide a copy of such notice to Administrative Agent together with a summary of Borrower's intended response to such Covered Agreement Counterparty.

Section 8.09 Payment of Taxes.

Borrower shall pay all material Taxes imposed on or in respect of Borrower's income or assets that are due and payable and before any Lien on any of its assets exists as a result of nonpayment except as provided in Section 9.03 hereof and except for Taxes contested in good faith by appropriate proceedings and for which adequate reserves are maintained in accordance with GAAP.

Section 8.10 Waiver of Stay, Extension or Usury Laws.

Notwithstanding any other provision of this Agreement or the other Loan Documents, if at any time the rate of interest payable by any Person under the Loan Documents exceeds the Maximum Lawful Rate, then, so long as the Maximum Lawful Rate would be exceeded, such rate of interest shall be equal to the Maximum Lawful Rate. If at any time thereafter the rate of interest so payable is less than the Maximum Lawful Rate, such Person shall continue to pay interest at the Maximum Lawful Rate until such time as the total interest received from such Person is equal to the total interest that would have been received had applicable law not limited the interest rate so payable. In no event shall the total interest received by Lender under this Agreement and the other Loan Documents exceed the amount which such Lender could lawfully have received, had the interest due been calculated from the Closing Date at the Maximum Lawful Rate. Without limiting the foregoing, Borrower will not at any time, to the extent that it may lawfully not do so, insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or other law that would prohibit or forgive Borrower from paying all or any portion of the principal of or premium, if any, or interest on the Term Loan as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Agreement; and, to the extent that it may lawfully do so, Borrower hereby expressly waives all benefit or advantage of any such law and expressly agrees that it will not hinder, delay or impede the execution of any power herein granted to Lender, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 8.11 [Reserved].

Section 8.12 Security Documents; Further Assurances.

Borrower shall promptly, upon the reasonable request of Administrative Agent, at Borrower's expense, (a) execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Loan Documents or otherwise deemed by Lender reasonably necessary or desirable for the continued validity, perfection and priority of the Liens on the Collateral covered thereby subject to no other Liens except as permitted by the applicable Loan Document, or obtain any consents or waivers as may be necessary or appropriate in connection therewith; (b) deliver or cause to be delivered to Administrative Agent from time to time such other documentation, consents, authorizations, approvals and orders in form and substance reasonably satisfactory to Administrative Agent and Administrative Agent shall reasonably deem necessary to perfect or maintain the Liens on the Collateral pursuant to the Loan Documents; and (c) upon the exercise by Administrative Agent of any power, right, privilege or remedy pursuant to any Loan Document which requires any consent, approval, registration, qualification or authorization of any Governmental Authority execute and deliver all applications, certifications, instruments and other documents and papers that Lender

may require. In addition, subject to Section 8.12(b), Borrower shall promptly, at its sole cost and expense, execute and deliver to Administrative Agent such further instruments and documents, and take such further action, as Administrative Agent may, at any time and from time to time, reasonably request in order to carry out the intent and purpose of this Agreement and the other Loan Documents to which it is a party and to establish and protect the rights, interests and remedies created, or intended to be created, in favor of Administrative Agent hereby and thereby.

Section 8.13 Information Regarding Collateral.

Borrower shall not effect any change (i) in its legal name, (ii) in the location of its chief executive office, (iii) in its identity or organizational structure, or (iv) in its federal Taxpayer Identification Number or organizational identification number, if any (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), until (A) it shall have given Administrative Agent not less than ten (10) days prior written notice (in the form of an certificate of a duly authorized officer of Borrower), or such lesser notice period agreed to by Administrative Agent, of its intention so to do, clearly describing such change and providing such other information in connection therewith as Administrative Agent may reasonably request and (B) it shall have taken all action reasonably satisfactory to Administrative Agent to maintain the perfection and priority of the security interest of Administrative Agent in the Collateral, if applicable (subject to the limitations set forth in Section 8.12(b)). Borrower shall not effect any change in its jurisdiction of organization. Borrower agrees to provide promptly to Administrative Agent with certified Borrower's Organizational Documents reflecting any of the changes described in the preceding sentence. Borrower also agrees to notify promptly Administrative Agent of any change in the location of any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which any portion of Collateral is located (including the establishment of any such new office or facility).

Section 8.14 Additional Collateral.

With respect to any Collateral acquired after the Closing Date by Borrower that is not already subject to the Lien created by any of the Loan Documents or specifically excluded from the requirement to be subject to such Lien in the Loan Documents, Borrower shall promptly (and in any event within 30 days after the acquisition thereof) (i) execute and deliver to Administrative Agent such amendments or supplements to the relevant Loan Documents or such other documents as Administrative Agent shall deem necessary or advisable to grant for its benefit, a Lien on such property subject to no Liens other than Permitted Liens, and (ii) take all actions necessary to cause such Lien to be duly perfected in accordance with all applicable requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by Administrative Agent. Borrower shall otherwise take such actions and execute and/or deliver to Lender such documents as Administrative Agent shall reasonably require to confirm the validity, perfection and priority of the Lien of the Security Agreement on such after-acquired Collateral.

Article IX
NEGATIVE COVENANTS

Borrower covenants and agrees with Lender that, until Payment in Full:

Section 9.01 Activities of Borrower.

(a) Borrower shall not (i) amend, modify, waive or terminate any provision of, or permit or agree to the amendment, modification, waiver or termination (other than expiration in accordance with its terms) of any provision of any of the Transaction Documents or any Covered Agreement other than

a change in the party names by way of assignment as permitted under the Sale Agreement and not materially adverse to the interests of the Lenders), without the consent of Administrative Agent and each Lender in its sole and absolute discretion or (ii) take any action to amend, waive, supplement, restate, cancel, terminate, discharge, compromise or otherwise modify in any respect the Commercial Payment Interest. Borrower shall not establish or acquire any Subsidiaries or acquire any assets other than capital contributions permitted pursuant to the Transaction Documents and the Transferred Assets (and any proceeds thereof and assets relating thereto).

(b) Borrower shall not:

(i) fail to hold itself out to the public and all other persons as a legal entity separate from the owners of its Capital Stock and from any other person (it being understood that customary activities resulting from or relating to consolidation for tax or accounting purposes shall in no event be deemed a breach of this requirement);

(ii) commingle its assets with assets of any other Person, except to the extent expressly permitted under the Sale Agreement (it being understood that the fact that the Covered Agreements include Transferred Assets and non-Transferred Assets shall in no event be deemed a breach of this requirement);

(iii) fail to conduct its business only in its own name, nor fail to comply with all organizational formalities necessary to maintain its separate existence;

(iv) fail to maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other person nor have its assets listed on any financial statement of any other person; provided, however, that Borrower's assets may be included in a consolidated financial statement of its Affiliates in conformity with applicable provisions of GAAP (provided that such assets shall also be listed on Borrower's own separate balance sheet);

(v) fail to pay its own liabilities and expenses only out of its own funds; provided that the foregoing shall not prohibit the payment of any liabilities and expenses by Company on behalf of Borrower so long as such payments are subject to reimbursement or are otherwise recorded as capital contributions or intercompany loans;

(vi) enter into any transaction with an Affiliate except transactions that are at prices and on terms and conditions that could be obtained on an arm's-length basis (or at least as favorable basis) from unrelated Third Parties (other than capital contributions made by the Company to the Borrower);

(vii) issue any securities of any kind except as contemplated by this Agreement and the other Transaction Documents;

(viii) fail to correct any known misunderstanding regarding its separate identity and not identify itself as a department or division of any other Person;

(ix) fail to maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, that the foregoing shall not require the holders of its Capital Stock to make additional capital contributions to Borrower;

(x) fail to cause the representatives of Borrower to act at all times with respect to Borrower consistently and in furtherance of the foregoing and in the best interests of Borrower;

(xi) make any payment or distribution of assets with respect to any obligation of any other person;

(xii) engage in any business activity other than exercising its rights under the Covered Agreements and the payment and repayment of amounts provided for hereunder and under the other Loan Documents and any activities ancillary or related thereto;

(xiii) fail to file any tax returns and pay any taxes as may be required under Law (except for taxes contested in good faith by appropriate proceedings and for which adequate reserves are maintained in accordance with GAAP); or

(xiv) except as required by applicable law, employ any employees.

(c) Borrower shall not issue any Capital Stock in certificated form.

Section 9.02 Merger; Sale of Assets.

(a) Borrower shall not merge or consolidate with or into (whether or not Borrower is the Surviving Person) any other Person.

(b) Borrower shall not sell, assign, convey, transfer, lease, sublease, license, sublicense or otherwise dispose of (including by way of merger or consolidation) any right, title or interest in or to, any of its assets, including, without limitation, the Covered Agreement or the Commercial Payment Interest, other than by virtue of Liens that constitute Permitted Liens.

Section 9.03 Liens.

Borrower shall not create or suffer to exist any Lien on or with respect to any of its properties or assets, except for Permitted Liens.

Section 9.04 Investment Company Act.

Neither Borrower nor any of its Subsidiaries shall be or become an investment company subject to registration under the Investment Company Act of 1940.

Section 9.05 Limitation on Additional Indebtedness.

Borrower shall not, directly or indirectly, incur or suffer to exist any Indebtedness except for:

(a) Indebtedness under this Agreement;

(b) unsecured Indebtedness to trade creditors incurred in the ordinary course of business and not overdue (unless subject to a good faith dispute); and

(c) Indebtedness consisting of the financing of insurance premiums with the providers of such insurance or their affiliates in the ordinary course of business.

Section 9.06 Limitation on Transactions with Controlled Affiliates.

Borrower shall not, directly or indirectly, enter into any transaction or series of related transactions or participate in any arrangement (including any purchase, sale, lease or exchange of assets or

the rendering of any service) with any Controlled Affiliate other than the Transaction Documents or in the ordinary course of business of Borrower upon fair and reasonable terms no less favorable to Borrower than it would obtain in a comparable arm's-length transaction with a non-Controlled Affiliate.

Section 9.07 ERISA.

(a) Borrower shall not sponsor, maintain or contribute to, or agree to sponsor, maintain or contribute to, any Employee Benefit Plan whether or not subject to ERISA (or take any action or fail to take any action with respect to such Employee Benefit Plan), that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or result in the imposition of a Lien.

(b) Borrower shall not engage in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or in any transaction that, assuming that no assets of Lender are or are deemed to be Plan Assets, would cause any obligation or action taken or to be taken hereunder (or the exercise by Lender of any of its rights under this Agreement or the other Loan Documents) to be a non-exempt prohibited transaction under such provisions.

(c) Borrower shall not incur any liability with respect to any obligation to provide medical benefits with respect to any person beyond their retirement or other termination of service, other than coverage mandated by law, that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.08 Dividends and Distributions.

Borrower will not, directly or indirectly, make any dividends or other distributions to holders of its Capital Stock.

Section 9.09 Roche APA.

Borrower acknowledges and agrees that damages may be difficult to establish and Administrative Agent and Lenders will have no adequate remedy at law if Borrower fails to enforce the obligations under Sections 4.01 and 4.03 of the Sale Agreement and Section 2.5 of the Affitech Assignment Agreement. In such event, Borrower agrees that the other Parties shall have the right, in addition to any other rights it may have (whether at law or in equity), to seek specific performance of this Agreement, Sections 4.01 and 4.03 of the Sale Agreement, Section 2.5 of the Affitech Assignment Agreement and to pursue any other equitable remedies including an injunction, without being required to prove actual damages or post any bond. In furtherance of the foregoing, Borrower hereby designates, makes, constitutes and appoints Administrative Agent, and each of its designees or agents, as its true and lawful proxy and attorney-in-fact (coupled with an interest), irrevocably and with power of substitution, and with authority to take any and all appropriate action and to execute any and all documents and instruments that may be necessary to cause this Agreement, Sections 4.01 and 4.03 of the Sale Agreement, and/or Section 2.5 of the Affitech Assignment Agreement to be specifically performed by Borrower and each Covered Agreement Counterparty or to seek an injunction against any pending or proposed violation of this Agreement, Sections 4.01 and 4.03 of the Sale Agreement and/or Section 2.5 of the Affitech Assignment Agreement.

If, notwithstanding the foregoing and the prohibition contained in Section 2.5 of the Affitech Assignment Agreement, Borrower receives any Final Payment, Borrower hereby agrees to: (i) hold such amount in trust for the Lenders and (ii) deposit such amount in the Collection Account.

THE POWER OF ATTORNEY AND PROXY GRANTED IN THIS SECTION ARE COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL PAYMENT IN FULL. THIS POWER OF

ATTORNEY IS CONFERRED ON THE ADMINISTRATIVE AGENT SOLELY, DURING THE CONTINUANCE OF AN EVENT OF DEFAULT, TO PROTECT, PRESERVE AND REALIZE UPON ITS RIGHTS UNDER THIS AGREEMENT AND SHALL NOT IMPOSE ANY DUTY UPON THE ADMINISTRATIVE AGENT TO EXERCISE ANY SUCH POWERS.

Article X
EVENTS OF DEFAULT

Section 10.01 Events of Default.

If one or more of Events of Default occurs and is continuing, Administrative Agent shall be entitled to the remedies set forth in Section 10.02.

Section 10.02 Default Remedies.

If any Event of Default shall occur and be continuing, Administrative Agent may, or at the direction of the Required Lenders shall, by Notice to Borrower, (a) exercise all rights and remedies available to Lender hereunder and under the other Loan Documents and applicable law (which exercise may be determined in its sole discretion and which such exercise shall not constitute an election of remedies), including enforcement of the security interests created thereby, (b) declare the Term Loan, all interest thereon and all other Obligations to be immediately due and payable, whereupon all such amounts shall become immediately due and payable, all without diligence, presentment, demand of payment, protest or further notice of any kind, which are expressly waived by Borrower and (c) declare the obligations of Lender hereunder to be terminated, whereupon such obligations shall terminate; provided, however, that if any event of any kind referred to in clause (i) of the definition of "Event of Default" herein occurs, the obligations of Lender hereunder shall immediately terminate, all amounts payable hereunder by Borrower shall become immediately due and payable and Administrative Agent shall be entitled to exercise rights and remedies under the Loan Documents and applicable law without diligence, presentment, demand of payment, protest or notice of any kind (including any notice by Administrative Agent or the Required Lenders of a declaration requiring prepayment of the Term Loan under Section 3.02(a), should Administrative Agent or Required Lenders so elect), all of which are hereby expressly waived by Borrower. Each Notice delivered pursuant to this Section 10.02 shall be effective when sent.

Section 10.03 Right of Set-off; Sharing of Set-off.

(a) If any amount payable hereunder is not paid as and when due, Borrower irrevocably authorizes Administrative Agent and each Lender (i) to proceed, to the fullest extent permitted by Applicable Law, without prior notice, by right of set-off, bankers' lien, counterclaim or otherwise, against any assets of Borrower in any currency that may at any time be in the possession of Administrative Agent or such Lender or any Affiliate thereof, to the full extent of all amounts payable to Administrative Agent or such Lender hereunder or (ii) to charge to Borrower's account with Administrative Agent or such Lender, or any Affiliate of thereof, to the full extent of all amounts payable by Borrower to Administrative Agent or such Lender hereunder; provided, however, that Administrative Agent or such Lender shall notify Borrower of the exercise of such right promptly following such exercise.

(b) Any payments obtained under this Section 10.03 shall be subject to the provisions of Section 4.05(c).

Section 10.04 Rights Not Exclusive.

The rights provided for herein are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by Law.

Article XI
INDEMNIFICATION

Section 11.01 Losses.

(a) Borrower agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Indemnitee from and against any and all Indemnified Liabilities, in all cases, arising, in whole or in part, out of or relating to any claim, notice, suit or proceeding commenced or threatened in writing (including, without limitation, by electronic means) by any Person (including any Governmental Authority) other than Borrower, Company or any of Administrative Agent's or Lender's Affiliates; provided Borrower shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of such Indemnitee or the breach by Lender of its obligations to make the Term Loan. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 11.01 may be unenforceable in whole or in part because they violate of any law or public policy, Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. This Section 11.01 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(b) To the extent permitted by applicable law, no Party shall assert, and each Party hereby waives, any claim against each other Party and such Party's Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, the Term Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Party hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 11.02 Assumption of Defense; Settlements.

If Administrative Agent or any Lender is entitled to indemnification under this Article XI with respect to any action or proceeding brought by a third party that is also brought against Borrower, Borrower shall be entitled to assume the defense of any such action or proceeding with counsel reasonably satisfactory to Administrative Agent and/or such Lender. Upon assumption by Borrower of the defense of any such action or proceeding, Administrative Agent and/or Lender, as applicable, shall have the right to participate in such action or proceeding and to retain its own counsel but Borrower shall not be liable for any legal expenses of other counsel subsequently incurred by such Party in connection with the defense thereof unless (i) Borrower has otherwise agreed to pay such fees and expenses, (ii) Borrower shall have failed to employ counsel reasonably satisfactory to Administrative Agent and/or Lender, as applicable, in a timely manner or (iii) Administrative Agent and/or Lender, as applicable, shall have been advised by counsel that there are actual or potential conflicting interests between Borrower and Administrative Agent or Lender, as applicable, including situations in which there are one or more legal defenses available to Administrative Agent and/or Lender, as applicable, that are different from or additional to those available

to Borrower; provided, however, that Borrower shall not, in connection with any one such action or proceeding or separate but substantially similar actions or proceedings arising out of the same general allegations, be liable for the fees and expenses of more than one separate firm of attorneys at any time for Administrative Agent and/or Lender, as applicable, except to the extent that local counsel, in addition to its regular counsel, is required in order to effectively defend against such action or proceeding. Borrower shall not consent to the terms of any compromise or settlement of any action defended by Borrower in accordance with the foregoing without the prior written consent of Administrative Agent and/or Lender, as applicable, unless such compromise or settlement (x) includes an unconditional release of Administrative Agent and/or Lender, as applicable, from all liability arising out of such action and (y) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of Administrative Agent and/or Lender, as applicable. Borrower shall not be required to indemnify Administrative Agent or Lender for any amount paid or payable by Administrative Agent or Lender in the settlement of any action, proceeding or investigation without the written consent of Borrower, which consent shall not be unreasonably withheld, conditioned or delayed.

Article XII
ADMINISTRATIVE AGENT

Section 12.01 Appointment of Administrative Agent.

(a) Blue Owl is hereby appointed Administrative Agent hereunder and under the other Loan Documents and each Lender hereby authorizes Blue Owl, in such capacity, to act as its agent in accordance with the terms hereof and the other Loan Documents to perform, exercise and enforce any and all other rights and remedies of the Lenders with respect to the Loan Parties, the Obligations or otherwise related to any of same to the extent reasonably incidental to the exercise by Administrative Agent of the rights and remedies specifically authorized to be exercised by Administrative Agent by the terms of this Agreement or any other Loan Parties.

(b) Administrative Agent hereby agrees to act upon the express conditions contained herein and the other Loan Documents, as applicable. The provisions of this Article XII are solely for the benefit of Administrative Agent and Lenders and no Loan Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, Administrative Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Borrower or any of its Subsidiaries.

Section 12.02 Powers and Duties.

Each Lender irrevocably authorizes Administrative Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to Administrative Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Administrative Agent shall have only those duties and responsibilities that are expressly specified herein and the other Loan Documents. Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees Administrative Agent shall not have, by reason hereof or any of the other Loan Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon Administrative Agent any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein.

Section 12.03 General Immunity.

(a) No Responsibility for Certain Matters. Administrative Agent shall not be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by Administrative Agent to Lenders or by or on behalf of any Loan Party to Administrative Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, nor shall Administrative Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Term Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Term Loans or the component amounts thereof.

(b) Exculpatory Provisions. Neither Administrative Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by Administrative Agent under or in connection with any of the Loan Documents except to the extent caused by Administrative Agent's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. Administrative Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until Administrative Agent shall have received instructions in respect thereof from Required Lenders (or such other Lenders as may be required to give such instructions under Section 13.05) and, upon receipt of such instructions from Required Lenders (or such other Lenders, as the case may be), Administrative Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Borrower and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent acting or (where so instructed) refraining from acting hereunder or any of the other Loan Documents in accordance with the instructions of Required Lenders (or such other Lenders as may be required to give such instructions under Section 13.05).

(c) Notice of Default. Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to Events of Default in the payment of principal, interest and fees required to be paid to Administrative Agent for the account of the Lenders, unless Administrative Agent shall have received written notice from a Lender or the Loan Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." Administrative Agent will notify the Lenders of its receipt of any such notice. Administrative Agent shall take such action with respect to any such Default or Event of Default as may be directed by the Required Lenders in accordance with Article X; provided, however, that unless and until Administrative Agent has received any such direction, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Lenders.

Section 12.04 Administrative Agent Entitled to Act as Lender.

The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, Administrative Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Term Loans, Administrative Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include Administrative Agent in its individual capacity. Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Borrower or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection herewith and otherwise without having to account for the same to Lenders.

Section 12.05 Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Borrower and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Borrower and its Subsidiaries. Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Term Loans or at any time or times thereafter, and Administrative Agent shall not have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement and funding its Term Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by Administrative Agent, Required Lenders or Lenders, as applicable on the Closing Date.

(c) Each Lender (i) represents and warrants that as of the Closing Date neither such Lender nor its Affiliates or Related Funds owns or controls, or owns or controls any Person owning or controlling, any trade debt or Indebtedness of any Loan Party other than the Obligations or any Capital Stock of any Loan Party and (ii) covenants and agrees that from and after the Closing Date neither such Lender nor its Affiliates and Related Funds shall purchase any trade debt or Indebtedness of any Loan Party other than the Obligations or Capital Stock described in clause (i) above without the prior written consent of Administrative Agent.

Section 12.06 Right to Indemnity.

EACH LENDER, IN PROPORTION TO ITS PRO RATA SHARE, SEVERALLY AGREES TO INDEMNIFY ADMINISTRATIVE AGENT, ITS AFFILIATES AND ITS RESPECTIVE OFFICERS, PARTNERS, DIRECTORS, TRUSTEES, EMPLOYEES AND AGENTS OF ADMINISTRATIVE AGENT (EACH, AN "INDEMNITEE AGENT PARTY"), TO THE EXTENT THAT SUCH INDEMNITEE AGENT PARTY SHALL NOT HAVE BEEN REIMBURSED BY ANY LOAN PARTY, FOR AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES (INCLUDING COUNSEL FEES AND DISBURSEMENTS) OR DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER WHICH MAY BE IMPOSED ON, INCURRED BY OR ASSERTED AGAINST SUCH INDEMNITEE AGENT PARTY IN EXERCISING ITS POWERS, RIGHTS AND REMEDIES OR PERFORMING ITS DUTIES HEREUNDER OR UNDER THE OTHER LOAN DOCUMENTS OR

OTHERWISE IN ITS CAPACITY AS SUCH INDEMNITEE AGENT PARTY IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY; PROVIDED, NO LENDER SHALL BE LIABLE FOR ANY PORTION OF SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES OR DISBURSEMENTS RESULTING FROM SUCH INDEMNITEE AGENT PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL, NON-APPEALABLE ORDER. IF ANY INDEMNITY FURNISHED TO ANY INDEMNITEE AGENT PARTY FOR ANY PURPOSE SHALL, IN THE OPINION OF SUCH INDEMNITEE AGENT PARTY, BE INSUFFICIENT OR BECOME IMPAIRED, SUCH INDEMNITEE AGENT PARTY MAY CALL FOR ADDITIONAL INDEMNITY AND CEASE, OR NOT COMMENCE, TO DO THE ACTS INDEMNIFIED AGAINST UNTIL SUCH ADDITIONAL INDEMNITY IS FURNISHED; PROVIDED, IN NO EVENT SHALL THIS SENTENCE REQUIRE ANY LENDER TO INDEMNIFY ANY INDEMNITEE AGENT PARTY AGAINST ANY LIABILITY, OBLIGATION, LOSS, DAMAGE, PENALTY, ACTION, JUDGMENT, SUIT, COST, EXPENSE OR DISBURSEMENT IN EXCESS OF SUCH LENDER'S PRO RATA SHARE THEREOF; AND PROVIDED FURTHER, THIS SENTENCE SHALL NOT BE DEEMED TO REQUIRE ANY LENDER TO INDEMNIFY ANY INDEMNITEE AGENT PARTY AGAINST ANY LIABILITY, OBLIGATION, LOSS, DAMAGE, PENALTY, ACTION, JUDGMENT, SUIT, COST, EXPENSE OR DISBURSEMENT DESCRIBED IN THE PROVISO IN THE IMMEDIATELY PRECEDING SENTENCE.

Section 12.07 Successor Administrative Agent.

(a) Administrative Agent may resign at any time by giving thirty days' (or such shorter period as shall be agreed by the Required Lenders) prior written notice thereof to Lenders and Borrower. Upon any such notice of resignation, Required Lenders shall have the right, upon five Business Days' notice to Borrower, to appoint a successor Administrative Agent. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders appoint a successor Administrative Agent from among the Lenders. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, securities or Capital Stock and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Loan Documents, and (ii) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article XII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder.

(b) Notwithstanding anything herein to the contrary, Administrative Agent may assign its rights and duties as Administrative Agent, as applicable, hereunder to an Affiliate of Blue Owl without the prior written consent of, or prior written notice to, Borrower or the Lenders; provided that Borrower and the Lenders may deem and treat such assigning Administrative Agent as Administrative Agent for all purposes hereof, unless and until such assigning Administrative Agent provides written notice to Borrower

and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Administrative Agent hereunder and under the other Loan Documents.

(c) Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Loan Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of Section 12.03, Section 12.06 and of this Section 12.07 shall apply to any of the Affiliates of Administrative Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. All of the rights, benefits and privileges (including the exculpatory and indemnification provisions) of Section 12.03, Section 12.06 and of this Section 12.07 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory and rights to indemnification) and shall have all of the rights, benefits and privileges of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to Administrative Agent and not to any Loan Party, Lender or any other Person and no Loan Party, Lender or any other Person shall have the rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

Section 12.08 Collateral Documents.

(a) Administrative Agent under Collateral Documents. Each Lender hereby further authorizes Administrative Agent on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect the Collateral and the Collateral Documents.

(b) Right to Realize on Collateral. Anything contained in any of the Loan Documents to the contrary notwithstanding, Company, Administrative Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Administrative Agent, and (ii) in the event of a foreclosure by Administrative Agent on any of the Collateral pursuant to a public or private sale or any sale of the Collateral in a case under the Bankruptcy Code, Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Administrative Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Administrative Agent at such sale.

Section 12.09 Agency for Perfection.

Administrative Agent and each Lender hereby appoints each other Lender as agent and bailee for the purpose of perfection the security interests in and liens upon the Collateral in assets which, in

accordance with Article 9 of the UCC, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and Administrative Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Lenders as secured party. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Administrative Agent thereof, and, promptly upon Administrative Agent's request therefore shall deliver such Collateral to Administrative Agent or in accordance with Administrative Agent's instructions. In addition, Administrative Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Loan Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 12.10 Reports and Other Information; Confidentiality; Disclaimers.

By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Administrative Agent furnish such Lender or Administrative Agent, promptly after it becomes available, a copy of each report with respect to Borrower or its Subsidiaries (each a "Report" and collectively, "Reports") prepared by or at the request of Administrative Agent, and Administrative Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Administrative Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Administrative Agent or other party performing any audit or examination will inspect only specific information regarding Borrower and its Subsidiaries and will rely significantly upon Borrower's and its Subsidiaries' books and records, as well as on representations of such Person's personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Parent and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 13.17, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Administrative Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Company, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Company, and (ii) to pay and protect, and indemnify, defend and hold Administrative Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Administrative Agent and any such other Lender or agent preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender or Administrative Agent.

In addition to the foregoing: (x) any Lender may from time to time request of Administrative Agent in writing that Administrative Agent provide to such Lender a copy of any report or document provided by Parent or its Subsidiaries to Administrative Agent that has not been contemporaneously provided by Parent or such Subsidiary to such Lender, and, upon receipt of such request, Administrative Agent promptly shall

provide a copy of same to such Lender, (y) to the extent that Administrative Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Parent or its Subsidiaries, any Lender may, from time to time, reasonably request Administrative Agent to exercise such right as specified in such Lender's notice to Administrative Agent, whereupon Administrative Agent promptly shall request the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Parent or such Subsidiary, Administrative Agent promptly shall provide a copy of same to such Lender, and (z) any time that Administrative Agent renders to Company a statement regarding the Loan Account, Administrative Agent shall send a copy of such statement to each Lender.

Section 12.11 Erroneous Payments.

(a) If Administrative Agent (x) notifies a Lender or any Person who has received funds on behalf of a Lender (any such Lender or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from Administrative Agent) received by such Payment Recipient from Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of Administrative Agent pending its return or repayment as contemplated below in this Section 12.11 and held in trust for the benefit of Administrative Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as Administrative Agent may, in its sole discretion, specify in writing), return to Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender or any Person who has received funds on behalf of a Lender (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender shall (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying Administrative Agent pursuant to this Section 12.11(b).

For the avoidance of doubt, the failure to deliver a notice to Administrative Agent pursuant to this Section 12.11(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 12.11(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender hereby authorizes Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by Administrative Agent to such Lender under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d) The parties hereto agree that (x) irrespective of whether Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, to the rights and interests of such Lender, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower; provided that this Section 12.11 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by Administrative Agent from, or on behalf of (including through the exercise of remedies under any Loan Document), the Borrower for the purpose of a payment on the Obligations.

(e) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

Each party's obligations, agreements and waivers under this Section 12.11 shall survive the resignation or replacement of Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

Article XIII
MISCELLANEOUS

Section 13.01 Assignments.

(a) Borrower shall not be permitted to assign this Agreement without the prior written consent of Lender (in the event such assignment is to be to an Affiliate of Borrower, such consent not to be unreasonably withheld) and any purported assignment in violation of this Section 13.01 shall be null and void.

(b) Lender may at any time assign its rights and obligations hereunder, in whole or in part, to an Assignee solely with the consent of the Borrower (such consent not to be unreasonably withheld); provided that no such consent of the Borrower shall be required (a) for assignments by a Lender to an Affiliate of such Lender or any Person that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by such Lender or its Affiliates, (b) if an Event of Default is continuing [***]. Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(c) The parties to each assignment shall execute and deliver to Borrower an Assignment and Acceptance. Upon the effectiveness of a permitted assignment pursuant to Section 13.01(a) or an assignment pursuant to Section 13.01(b) hereunder, (i) each reference in this Agreement to "Lender" shall be deemed to be a reference to the assignor and the assignee to the extent of their respective interests, (ii) such assignee shall be a Lender party to this Agreement and shall have all the rights and obligations of a Lender and (iii) the assignor shall be released from its obligations hereunder to a corresponding extent of the assignment, and no further consent or action by any party shall be required.

(d) Borrower and Lender shall, from time to time at the request of the other party hereto, execute and deliver any documents that are necessary to give full force and effect to an assignment permitted hereunder.

(e) Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Loan Parties, shall maintain at its office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount (and stated interest) of the Term Loan owing to, such Lender pursuant to the terms hereof (the "Lender Register"). The entries in such Lender Register shall be conclusive, absent manifest error, and Loan Parties, Administrative Agent and Lenders shall treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Lender Register shall be available for inspection by Loan Parties and any Lender, at any reasonable time upon reasonable prior notice to Administrative Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Loan Parties maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Obligations (each, a "Participant Register"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Loan Parties and Administrative Agent at any reasonable time upon reasonable prior notice to the applicable Lender; provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person (including Loan Parties) except to the extent that such disclosure is

necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

Section 13.02 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 13.03 Notices.

All Notices authorized or required to be given pursuant to this Agreement shall be given in writing and either personally delivered to the Party to whom it is given or delivered by an established delivery service by which receipts are given or mailed by registered or certified mail, postage prepaid, or sent by electronic mail with a copy sent on the following Business Day by one of the other methods of giving notice described herein, addressed to the Party at its address listed below:

(a) If to Borrower:

XRL 1 LLC
2200 Powell Street, Suite 310
Emeryville, CA 94608
Attention: Legal Group
Email: [***]
With a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166-0193

Attention: Jin Hee Kim
Email: JhKim@gibsondunn.com

(b) If to Administrative Agent:

Blue Owl Capital Corporation
399 Park Avenue, 37th Floor
New York, NY 10022
Email: [***]
with a copy (which shall not constitute notice) to:

Cooley LLP
1299 Pennsylvania Avenue, NW, Suite 700
Washington, DC 20004-2400
Attention: Michael Tollini
Email: mtollini@cooley.com

Any Party may change its address for the receipt of Notices at any time by giving Notice thereof to the other Party. Except as otherwise provided herein, any Notice authorized or required to be given by this Agreement shall be effective when received.

Section 13.04 Entire Agreement.

This Agreement, together with the Exhibits and Schedules hereto (which are incorporated herein by reference), and the other Loan Documents constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements (including the Confidentiality Agreement), understandings and negotiations, both written and oral, between the Parties with respect to the subject matter of this Agreement.

Section 13.05 Modification.

No Loan Document or provision thereof may be waived, amended or modified except, in the case of this Agreement, by an agreement or agreements in writing executed by Borrower and Lender or, in the case of any other Loan Document, by an agreement or agreements in writing entered into by the parties thereto with the prior written consent of Lender.

Section 13.06 No Delay; Waivers; etc.

No delay on the part of Lender in exercising any power or right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof or the exercise of any other power or right. Lender shall not be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by Lender.

Section 13.07 Severability.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall nevertheless be given full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree by a court of competent jurisdiction shall remain in full force and effect to the extent not held invalid or unenforceable.

Section 13.08 Determinations.

Each determination or calculation by Lender hereunder shall, in the absence of manifest error, be conclusive and binding on the Parties.

Section 13.09 Recourse.

Except as otherwise expressly provided in this Agreement or in any other Loan Documents, the payment and performance of the Obligations shall be fully recourse solely to Borrower and its respective properties and assets.

Section 13.10 Governing Law.

THIS AGREEMENT AND EACH NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING GENERAL OBLIGATIONS LAW SECTIONS 5-1401 AND 5-1402 BUT OTHERWISE WITHOUT GIVING EFFECT TO LAWS CONCERNING CONFLICT OF LAWS OR CHOICE OF FORUM THAT WOULD REQUIRE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

Section 13.11 Jurisdiction.

Each Party irrevocably submits to the jurisdiction of the courts of the State of New York and of the United States sitting in the State of New York, and of the courts of its own corporate domicile with respect to any and all Proceedings. Each Party irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any Proceeding and any claim that any Proceeding has been brought in an inconvenient forum. Any process or summons for purposes of any Proceeding may be served on Borrower by mailing a copy thereof by registered mail, or a form of mail substantially equivalent thereto, addressed to it at its address as provided for Notices hereunder.

Section 13.12 Waiver of Jury Trial.

EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM ARISING OUT OF OR RELATING TO ANY TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED UNDER ANY TRANSACTION DOCUMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO ANY TRANSACTION DOCUMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY HERETO WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.12.

Section 13.13 Waiver of Immunity.

To the extent that Borrower has or hereafter may be entitled to claim or may acquire, for itself or any of its assets, any immunity from suit, jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, or otherwise) with respect to itself or any of its property, Borrower hereby irrevocably waives such immunity in respect of its obligations hereunder to the fullest extent permitted by law.

Section 13.14 Counterparts; Delivery.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement in Portable Document Format (PDF) or by facsimile transmission shall be effective as delivery of a manually executed original counterpart of this Agreement.

Section 13.15 Limitation on Rights of Others.

Except for the Indemnitees referred to in Section 11.01, no Person other than a Party shall have any legal or equitable right, remedy or claim under or in respect of this Agreement.

Section 13.16 Survival.

The obligations of Borrower contained in Sections 4.05, 4.06, Article V, Article XI and this Section 13.16 shall survive the repayment of the Term Loan and the termination of the other obligations of Borrower hereunder.

Section 13.17 Confidentiality.

(a) Until the payment of all amounts required pursuant to Section 3.01, and for a period of three (3) years thereafter, each Party shall maintain in strict confidence all Confidential Information and materials disclosed or provided to it by the other Party, except as approved in writing in advance by the disclosing Party, and shall not use or reproduce the disclosing Party's Confidential Information for any purpose other than as required to carry out its obligations and exercise its rights pursuant to this Agreement (the "Purpose"). Notwithstanding the foregoing, the obligations of confidentiality and non-use set forth in Section 13.17 shall not apply to the extent that the receiving Party or its Affiliates: (a) discloses such Confidential Information solely on a "need to know basis" to its employees, consultants and Affiliates as well as any actual or potential acquirers, merger partners, licensees, permitted assignees, collaborators (including licensees), subcontractors, investment bankers, investors, limited partners, partners, lenders, or other financial partners, and its and their respective directors, employees, contractors and agents, on a confidential basis to the extent requested by an authorized representative of a U.S. or foreign tax authority, or (b) discloses Confidential Information in response to a routine audit or examination by, or a blanket document request from, a Governmental Authority. A Party receiving any such Confidential Information hereunder agrees to institute measures to protect the Confidential Information in a manner consistent with the measures it uses to protect its own most sensitive proprietary and confidential information, which in any event must not be less than a reasonable standard of care. Each Party shall be responsible for the breach of this Section 13.17 by its employees, consultants or Third Parties to whom such disclosure is made pursuant to this Section 13.17. Each Party shall immediately notify the other Party upon discovery of any loss or unauthorized disclosure of the other Party's Confidential Information.

(b) The obligations of confidentiality and non-use set forth in Section 13.17(a) shall not apply to the extent that the receiving Party or its Affiliates is required to disclose Confidential Information pursuant to: (i) an order of a court of competent jurisdiction; (ii) Applicable Laws; (iii) regulations or rules of a securities exchange; or (iv) requirement of a Governmental Authority.

(c) This Agreement supersedes the Confidentiality Agreement and the Confidentiality Agreement shall cease to be of any force and effect as of the Closing Date; provided, however, that all information falling within the definition of "Confidential Information" set forth in the Confidentiality Agreement shall also be deemed Confidential Information disclosed pursuant to this Agreement and subject to the provisions of Section 13.17.

Section 13.18 Patriot Act Notification.

Lender hereby notifies Borrower that, consistent with the Patriot Act, regulations promulgated thereunder and under other Applicable Law, Lender's procedures and customer due diligence standards may require it to obtain, verify and record information that identifies Borrower, including among other things name, address, information regarding Persons with authority or control over Borrower, and other information regarding Borrower, its operations and transactions with Lender. Borrower agrees to provide such information and take such actions as are reasonably requested by Lender in order to assist Lender in maintaining compliance with its procedures, the Patriot Act and any other Applicable Laws.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first above written.

XRL 1 LLC
as Borrower

By: _____
Name:
Title:

OR LENDING LLC
as a Lender

By: _____
Name:
Title:

OR LENDING II LLC
as a Lender

By: _____
Name:
Title:

OR LENDING III LLC
as a Lender

By: _____
Name:
Title:

OR LENDING IC LLC
as a Lender

By: _____
Name:
Title:

OR TECH LENDING LLC
as a Lender

By: _____
Name:
Title:

OR TECH LENDING II LLC
as a Lender

By: _____
Name:
Title:

OR TECH LENDING IC LLC
as a Lender

By: _____
Name:
Title:

BLUE OWL CAPITAL CORPORATION
as Administrative Agent

By: _____
Name:
Title:

APPENDIX A
TO LOAN AGREEMENT

Initial Term Loan Commitment

Lender	Initial Term Loan Commitment	Pro Rata Share
[***]		
Total	**$ 130,000,000.00**	**100%**

Delayed Draw Term Loan Commitments

Lender	Delayed Draw Term Loan Commitment	Pro Rata Share
[***]		
Total	**$ 10,000,000.00**	**100%**

Exhibit 10.64

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED (INDICATED BY: [***]) FROM THE EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) THE TYPE OF INFORMATION THAT THE REGISTRANT CUSTOMARILY AND ACTUALLY TREATS AS PRIVATE OR CONFIDENTIAL.

SALE, CONTRIBUTION AND SERVICING AGREEMENT

dated as of December 15, 2023

between

XOMA (US) LLC,
as Seller, and

Solely for purposes of Section 2.03 and Section 4.03(b)(ii), **XOMA CORPORATION**,
as Parent, on the one hand

and

XRL 1 LLC,
as Purchaser, on the other hand

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This **SALE**, **CONTRIBUTION AND SERVICING AGREEMENT** (this "Agreement"), dated as of December 15, 2023, is entered between XOMA (US) LLC, a Delaware limited liability company ("Seller"), and solely for purposes of Section 2.03 and Section 4.03(b)(ii), XOMA Corporation., a Delaware corporation ("Parent"), on the one hand; and XRL 1 LLC, a Delaware limited liability company ("Purchaser"), on the other hand.

RECITALS:

WHEREAS, Seller owns 100% of the equity interests of Purchaser;

WHEREAS, Seller desires to sell, contribute, assign, transfer and convey to Purchaser all its right, title and interest in, to and under the Transferred Assets in exchange for receiving from Purchaser the Purchase Price;

WHEREAS, Purchaser desires to purchase and acquire all of Seller's right, title and interest in, to and under the Transferred Assets on the Closing Date in exchange for paying to Seller the cash portion of the Purchase Price and accepting and reflecting in its financial accounts a capital contribution from Seller of the additional value of the Transferred Assets in excess of the Purchase Price;

WHEREAS, Purchaser desires Seller to manage, on behalf of Purchaser, Purchaser's relationship with any Covered Agreement Counterparty under each Covered Agreement, to administer, on Purchaser's behalf, enforcement of such Covered Agreement (including the collection and enforcement of all payments due to Purchaser under such Covered Agreement from time to time), and Seller desires to perform such services on Purchaser's behalf; and

WHEREAS, Purchaser and Seller agree that the transactions contemplated under this Agreement shall be disregarded for U.S. federal income tax purposes.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

Section 1.01. Definitions. Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Loan Agreement.

As used herein, the following terms have the following respective meanings:

"Effective Date" means the date hereof.

"Excluded Assets" means all of Seller's right, title and interest in, to and under the Purchased Assets described in clause (d) of the definition thereof set forth in the Commercial Payment Purchase Agreement.

[***]

"Indemnified Party" has the meaning set forth in Section 7.01.

"Loan Agreement" means that certain Loan Agreement, dated as of the date hereof, among Purchaser, as Borrower, the lenders from time to time party thereto (the "Lenders") and Blue Owl Capital Corporation, as administrative agent for the Lenders (in such capacity, "Administrative Agent"), as such Loan Agreement may be amended, restated, supplemented or otherwise modified from time to time, in accordance with the terms thereof.

"Losses" has the meaning set forth in Section 7.01.

"Notice and Assignment Letters" has the meaning set forth in Section 2.02(c).

"Purchase Price" means an amount equal to the sum of (i) the aggregate principal amount of the Term Loan made on Initial Funding Date under the Loan Agreement and (ii) the aggregate principal amount of any Delayed Draw Term Loan made after the Closing Date under the Loan Agreement, less the Lender Expenses.

"Recharacterization" has the meaning set forth in Section 2.01(a).

"Roche APA" has the meaning given to such term in the Commercial Payment Purchase Agreement.

"Sell" has the meaning set forth in Section 2.01(a).

"Seller Event of Default" means the occurrence of one or more of the following:

(a) Any representation or warranty of Seller in any Transaction Document to which it is party or in any certificate or other document delivered by Seller in connection with the Transaction Documents proves to have not been true and correct in all material respects at the time it was made or deemed made (except that any representation or warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects); provided, that if the consequences of the failure of such representation or warranty to be true and correct can be cured, such failure continues for a period of [***] days without such cure after the earlier of the date Seller becomes aware of such failure or the date Purchaser, or Administrative Agent on behalf of Purchaser, provides Notice of such failure to Seller.

(b) Seller fails to perform or observe any covenant or agreement contained in Sections 4.01(f), (g), (h)(i) or (j).

(c) Seller fails to perform or observe any covenant or agreement contained in the Transaction Documents to which it is a party (other than those referred to in preceding subclause (b)) and, solely if the consequences of the failure to perform or observe such covenant or agreement can be cured, such failure continues for a period of [***] days without such cure after the earlier of (x) the date Seller becomes aware of such failure and (y) the date Purchaser, or Administrative Agent on behalf of Purchaser, provides notice of such failure to Seller.

(d) (i) Any of the Transaction Documents to which Seller is a party shall cease to be in full force and effect, or (ii) the validity or enforceability of any of the Transaction Documents to which Seller is a party is disaffirmed or challenged in writing by Seller or any of its Affiliates or any Person (other than Administrative Agent or the Lenders) asserting an interest in any of the Collateral and such written disaffirmation or challenge is not withdrawn or disavowed by such Person within [***] days after its communication or Seller has not brought appropriate proceedings for declaratory or other relief negating such disaffirmation or challenge within [***] days after such communication and has not obtained an order granting such relief within [***] days after commencement of such proceedings, or (iii) this Agreement or

the Pledge Agreement shall cease to give Administrative Agent (directly or as assignee of Purchaser) the rights purported to be created hereby or thereby (including a first priority perfected Lien on all of the Collateral in the event of a Recharacterization (except as otherwise expressly provided herein and therein)) other than as a direct result of any action by Administrative Agent or failure of Administrative Agent to perform an obligation of Administrative Agent under the Loan Agreement.

(e) Any security interest purported to be created by this Agreement or the Pledge Agreement shall cease to be in full force and effect, or shall cease to give the rights, powers and privileges purported to be created and granted hereunder or thereunder (including a perfected first priority security interest in and Lien on substantially all of the Collateral in the event of a Recharacterization (except as otherwise expressly provided herein and therein)) in favor of Purchaser pursuant hereto or thereto (other than as a result of the failure by Administrative Agent or Purchaser of taking action required to maintain the perfection of such security interests), or shall be asserted by Seller not to be a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or the Pledge Agreement) security interest in the Collateral, and/or Seller takes any action which could reasonably be expected to impair Administrative Agent's security interest in any of the Collateral (other than granting Permitted Liens or permitting such Permitted Liens to exist).

(f) An Insolvency Event with respect to Seller shall occur.

"Servicer" has the meaning set forth in Section 5.01.

"Servicer Termination Event" has the meaning set forth in Section 5.05.

"Servicing Fee" means, with respect to each calendar quarter, an amount equal to [***].

"Servicing Standard" has the meaning set forth in Section 5.01.

"Transferred Assets" has the meaning set forth in Section 2.01(a).

Section 1.02. General Interpretive Principles. For purposes of this Agreement except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Agreement have the meanings assigned to them in this Agreement and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other gender;

(b) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;

(c) references herein to "Articles", "Sections", "Subsections", "paragraphs", and other subdivisions without reference to a document are to designated Articles, Sections, Subsections, paragraphs and other subdivisions of this Agreement;

(d) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall also apply to paragraphs and other subdivisions;

(e) the words "herein", "hereof", "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision; and

(f) the term "include" or "including" shall mean without limitation by reason of enumeration.

ARTICLE II.

SALE AND ASSIGNMENT OF THE TRANSFERRED ASSETS

Section 2.01. Sale and Assignment of Transferred Assets on the Closing Date.

(a) On the Closing Date, and subject to Section 2.01(b), Seller shall sell, transfer, assign, contribute and otherwise convey (collectively, "Sell") to Purchaser, and Purchaser shall purchase, acquire and accept from Seller, without recourse except to the extent provided in this Agreement, all of Seller's rights, title and interest in, to, and under the following assets:

(i) the Affitech Assignment Agreement (including Seller's right to all payments in respect of the Commercial Payments [***];

(ii) the Purchased Commercial Payments and Purchased Assets (as each such term is defined in the Commercial Payment Purchase Agreement but excluding the Excluded Assets);

(iii) any rights to erroneous payments in respect of the Purchased Assets under Section 6.1(b)(i) of the Commercial Payment Purchase Agreement and any rights to interest with respect to such erroneous payments under Section 6.1(b)(iii) of the Commercial Payment Purchase Agreement; and

(iv) all proceeds of the foregoing;

in each case free and clear of any and all Liens (such rights, title and interest, together with all proceeds thereof, collectively, the "Transferred Assets").

Seller and Purchaser intend and agree that the sale, transfer, assignment contribution and conveyance of the Transferred Assets under this Agreement shall be, and is, a true, complete, absolute and irrevocable sale, contribution, assignment, transfer, conveyance and grant by Seller to Purchaser of the Transferred Assets and that such sale, contribution, assignment, transfer, conveyance and grant shall provide Purchaser with all of Seller's rights, title and interest in and to the Transferred Assets.

(b) In full consideration of the sale, transfer, assignment contribution and conveyance of the Transferred Assets to Purchaser, Purchaser shall pay (or cause to be paid) the Purchase Price to Seller on the Closing Date, by transferring (or causing to be transferred) an amount equal to the Purchase Price to Seller to the account of Seller specified by it in writing and accepting and reflecting in its financial accounts a capital contribution from Seller in an amount equal to any additional value of the Transferred Assets in excess of the Purchase Price. Seller, concurrently with execution and delivery of this Agreement, hereby contributes to Purchaser all of the value of the Transferred Assets in excess of the Purchase Price, as a contribution to the capital of Purchaser. Purchaser acknowledges receipt of such capital contribution and its entry in the financial records of Purchaser as a capital contribution.

Section 2.02. Required Financing Statements; Marking of Records; Notice and Instruction Letters.

(a) All financing statements (or documents of similar import) shall meet the requirements of Applicable Law. Seller irrevocably authorizes Purchaser and Administrative Agent at any time and from time to time in the sole discretion of Purchaser or Administrative, and appoints Purchaser and Administrative Agent as its attorney-in-fact, to act on behalf of Seller (i) to execute on behalf of Seller

as debtor and to file financing statements necessary or appropriate in Purchaser or Administrative Agent's sole discretion to perfect and to maintain the perfection and priority of the interest of Purchaser in the Transferred Assets and (ii) to file a carbon, photographic or other reproduction of this Agreement or any financing statement with respect to the Transferred Assets as a financing statement in such offices as Purchaser or its assigns in their sole discretion deem necessary or appropriate to perfect and to maintain the perfection and priority of Purchaser's interests in such Transferred Assets. Purchaser shall provide Seller with copies of any such filings. This appointment is coupled with an interest and is irrevocable.

(b) In view of the intention of the parties hereto that the assignment and transfer of the Transferred Assets made hereunder shall constitute outright sales or contributions of the Transferred Assets rather than loans secured thereby, in connection with the transfer and conveyance of the Transferred Assets Seller has, at its own expense caused its records to be marked on the Closing Date to show that the Transferred Assets have been transferred to Purchaser in accordance with this Agreement.

(c) On the Closing Date, Seller and Purchaser shall execute and deliver (i) to Affitech, the Notice and Instruction Letter substantially in the form attached hereto as Exhibit A-1 and (ii) to Roche, the Notice and Instruction Letter substantially in the form attached hereto as Exhibit A-2 (collectively, the "Notice and Assignment Letters").

(d) On the Closing Date, Seller and Purchaser shall execute and deliver the Bill of Sale attached hereto as Exhibit B.

Section 2.03. General Provisions Regarding the Sale and Transfer of the Transferred Assets.

[***], the sale and assignment of the Transferred Assets pursuant to this Agreement shall be without recourse to Seller or Parent; it being understood that Seller shall be liable to Purchaser for all representations, warranties, covenants and indemnities made by Seller pursuant to the terms of this Agreement.

Section 2.04. Intent.

(a) Seller and Purchaser intend that the sale and transfer by Seller to Purchaser of the Transferred Assets pursuant to Section 2.01 hereof shall be true, absolute and irrevocable, shall constitute a valid transfer and conveyance by Seller of the Transferred Assets and shall provide Purchaser with the full benefits of ownership of the Transferred Assets, and that the Transferred Assets shall be removed from the estate of Seller and shall not be part of Seller's estate in the event of the insolvency or bankruptcy of Seller.

(b) Without limiting the provisions of Section 2.04(a), as a precaution to address the possibility that, notwithstanding that Seller and Purchaser expressly intend and expect that the sale, assignment, transfer, contribution and conveyance of the Transferred Assets hereunder shall be a true, absolute and irrevocable sale and assignment and a true, absolute and irrevocable contribution for all purposes, to protect the interest of Purchaser in the event that such sale and assignment is recharacterized as other than a true sale or true contribution or such sale, transfer or contribution will for any reason be ineffective or unenforceable as such, as determined in a judicial, administrative or other proceeding (any of the foregoing being a "Recharacterization"), Seller does hereby grant to Purchaser a continuing security interest (which shall be of first priority) in all of Seller's right, title and interest in, to and under the Transferred Assets, whether now or hereafter existing, and any and all "proceeds" thereof (as such term is defined in the UCC), in each case, for the benefit of Purchaser as security for the prompt and complete payment of a loan deemed to have been made in an amount equal to the Purchase Price together with the performance when due of all of Purchaser's obligations now or hereafter existing under this Agreement and

the other Transaction Documents, which security interest will, upon the filing of a duly prepared financing statement in the appropriate filing office, be perfected and prior to all other Liens on the rights of Seller to the Transferred Assets. In the event of a Recharacterization, Purchaser will have, in addition to the rights and remedies which it may have under this Agreement, all other rights and remedies provided to a secured creditor after default under the UCC and other Applicable Law, which rights and remedies will be cumulative. This Agreement shall constitute a security agreement in respect of such security interest.

(c) Seller and Purchaser intend that their operations and business would not be substantively consolidated in the event of an Insolvency Event with respect to Seller and that the separate existence of Seller and Purchaser would not be disregarded in the event of an Insolvency Event with respect to Seller. Purchaser and Seller acknowledge that the Organizational Documents of Purchaser contains provisions intended to maintain the separate existence and identity of Purchaser and the parties agree that they will duly observe such provisions and Applicable Law in support of such separate existence and identity.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES

Section 3.01. Representations and Warranties of Seller. Seller represents and warrants that the representations and warranties set forth under Section 7.02 of the Loan Agreement are true and correct, and such representations and warranties are hereby made herein by Seller as though set forth in full herein. Purchaser has relied upon such representations and warranties in accepting the conveyance of the Transferred Assets and the other parties to the transactions contemplated hereby have relied upon such representations and warranties in executing each of the Transaction Documents to which it is a party. Such representations and warranties shall survive until the Payment in Full.

Section 3.02. Survival of Representations and Warranties. All representations and warranties by Seller contained in this Agreement shall survive the execution, delivery and acceptance thereof by the Parties and the closing of the transactions contemplated in this Agreement.

ARTICLE IV.

COVENANTS OF THE SELLER AND PURCHASER; SELLER EVENT OF DEFAULT

Section 4.01. Seller Covenants. Seller hereby covenants and agrees with Purchaser, in connection with the sale, assignment and transfer of the Transferred Assets, as follows:

(a) Financial Statements and Information. Seller will facilitate Purchaser undertakings regarding financial statements (to the extent such financial statements relate to Seller) set forth in Section 8.03 of the Loan Agreement.

(b) Disclosure. All written information supplied by or on behalf of Seller to Purchaser pursuant to this Section 4.01 (other than pursuant to Sections 8.03(a) and 8.03(b) of the Loan Agreement) shall be accurate and complete in all material respects as of its date or the date so supplied and the financial statements provided pursuant to Sections 8.03(a) and 8.03(b) of the Loan Agreement fairly present in all material respects the financial positions and results of operations as of the dates indicated therein. For the avoidance of doubt, Seller makes no representations or warranties regarding the accuracy or completeness of any information it receives from a Third Party that it is required to furnish to Purchaser pursuant to this Section 4.01, unless to the actual Knowledge of Seller such information is inaccurate or incomplete, in which case Seller shall specify such inaccuracy or incompleteness.

(c) Books and Records. Seller shall keep proper books, records and accounts in which entries in conformity with sound business practices and all requirements of Law applicable to it shall be made of all dealings and transactions in relation to its business, assets and activities and as shall permit the preparation of the consolidated financial statements of Seller in accordance with GAAP.

(d) Maintenance of Insurance. Seller shall maintain coverage under its general liability and property damage insurance policies naming Purchaser and its assigns as additional insured (in the case of liability insurance) and loss payee (in the case of property insurance). Seller shall furnish to Purchaser from time to time upon written request full information as to the insurance carried.

(e) Governmental Authorizations. Seller shall obtain, make and keep in full force and effect all authorizations from and registrations with Governmental Authorities that may be required for the validity or enforceability against Seller of this Agreement and the other Transaction Documents to which it is a party.

(f) Compliance with Laws and Contracts.

(i) Seller shall comply with all Applicable Laws applicable to the Transferred Assets, and perform its obligations under all Material Contracts, if any, entered into after the date of execution of the Loan Agreement relative to the conduct of its business, except where the failure to comply could not reasonably be expected to result in a Material Adverse Effect.

(ii) Seller will comply, in all material respects, with all acts, rules, regulations, orders, decrees and directions of any Governmental Authority applicable to the Transferred Assets.

(g) Conveyance of Transferred Assets; Security Interests. Except for the transfers and conveyances hereunder and any Permitted Liens, Seller will not sell, contribute, pledge, assign, dispose of or transfer to any other Person, or grant, create, incur, assume or suffer to exist any Lien on the Covered Agreements, the Transferred Assets, the Excluded Assets or any interest therein and Seller shall defend the right, title, and interest of Purchaser and its successors and assigns in, to, and under the Covered Agreements, the Excluded Assets and Transferred Assets, against all claims of third parties claiming through or under Seller. Seller acknowledges and agrees that, having assigned and transferred the Transferred Assets to Purchaser, Seller shall not, without the prior written consent of Administrative Agent, waive, modify, amend or terminate any provision of, or grant any consent under, any Covered Agreement (including, without limitation, any consents pursuant to Section 5.2, Section 6.1(c) or Section 7.5 of the Commercial Payment Purchase Agreement) [***].Notwithstanding the foregoing, Seller's reasonable decision not to enforce its rights under any Covered Agreement for Roche's failure to timely remit any due and payable Commercial Payments during any reasonable grace period, which shall not, in any event, extend beyond [***] days, shall not constitute a waiver or consent under any Covered Agreement.

(h) Notices. Seller shall promptly:

(i) upon obtaining Knowledge of the same give written Notice to Purchaser and Administrative Agent of each Default, Event of Default, or Servicer Termination Event and each other event that has or could reasonably be expected to have a Material Adverse Effect; provided that in any of the foregoing situations where Seller knows a press release or other public disclosure is to be made by Seller or any of its Affiliates, Seller shall use all commercially reasonable efforts to provide such information to Purchaser and

Administrative Agent as early as possible but in no event later than simultaneously with such release or other public disclosure;

(ii) give written Notice to Purchaser and Administrative Agent upon receiving notice, or otherwise obtaining Knowledge, of any default or event of default under any Material Contract;

(iii) upon obtaining Knowledge thereof, give written Notice to Purchaser and Administrative Agent of any litigation or proceedings to which Seller is a party or which could reasonably be expected to have a Material Adverse Effect.

(iv) upon obtaining Knowledge thereof, give written Notice to Purchaser and Administrative Agent of any litigation or proceedings challenging the validity of any Covered Agreement, the Transaction Documents or any of the transactions contemplated therein.

(v) upon obtaining Knowledge thereof, give written Notice to Purchaser and Administrative Agent of any representation or warranty made or deemed made by Seller in any of the Transaction Documents or in any certificate delivered pursuant thereto shall prove to be untrue, inaccurate or incomplete in any material respect on the date as of which made or deemed made;

(vi) upon obtaining Knowledge thereof give written Notice to Purchaser and Administrative Agent of the occurrence of any Material Adverse Effect; and

(vii) [***]

(i) Payment of Taxes. Seller shall file all tax returns required to be filed by it and pay, discharge or otherwise satisfy all material taxes of any kind imposed on or in respect of its income or assets as the same shall become due and payable and in any event before any Lien on any of the Transferred Assets exists as a result of nonpayment except for Permitted Liens and taxes contested in good faith by appropriate proceedings or where any such failure to file or pay would not result, individually or in the aggregate, in a Material Adverse Effect.

(j) Commercial Payment Purchase Agreement; Roche APA; Turnover.

(i) Seller acknowledges and agrees that, having retained all obligations of Seller under the Covered Agreements, it shall fully perform, as and when due, all obligations of Seller under the Covered Agreements, including, without limitation, paying, as and when due, any Purchase Price (as defined in the Commercial Payment Purchase Agreement) due to Affitech under Section 2.2 of the Commercial Payment Purchase Agreement.

(ii) Unless Administrative Agent provides consent, Seller shall enforce its rights under Section 5.1 and Section 5.2 of the Commercial Payment Purchase Agreement, in each case, as and when necessary to effect the full sale of the Transferred Assets to Purchaser, free and clear of all liens, including, without limitation, seeking specific performance under Section 7.3 of the Commercial Payment Purchase Agreement. Notwithstanding the foregoing, Seller's reasonable decision not to enforce its rights under Section 5.1 and Section 5.2 of the Commercial Payment Purchase Agreement for Roche's failure to timely remit any due and payable Commercial Payments during any reasonable

grace period, which shall not, in any event, extend beyond [***] days, shall not constitute a breach of this Section 4.01(j)(ii).

(iii) [***]

(iv) [***]

(v) If any amount is paid to Seller under the Covered Agreements on account of the Transferred Assets on or after the Closing Date and prior to Payment in Full, Seller shall hold such amount in trust for Purchaser, shall segregate such amount from other funds of Seller, and shall, promptly upon receipt of such amount by Seller, turn over such amount to Purchaser in the exact form received by Seller (duly indorsed by Seller to Purchaser, if required), for deposit in the Collection Account.

(k) Security Documents; Further Assurances. Seller shall promptly, upon the reasonable request of Purchaser or Administrative Agent, at Seller's sole cost and expense, (a) execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Loan Documents or otherwise deemed by Purchaser or Administrative Agent reasonably necessary or desirable for the continued validity, perfection and priority of the assignment of the Transferred Assets or the Liens thereon secured pursuant to Section 2.04 subject to no other Liens except as permitted by the applicable Loan Document, or obtain any consents or waivers as may be necessary or appropriate in connection therewith; (b) deliver or cause to be delivered to Purchaser and Administrative Agent from time to time such other documentation, consents, authorizations, approvals and orders in form and substance reasonably satisfactory to Purchaser and the Administrative Agent as Purchaser or Administrative Agent shall reasonably deem necessary to perfect or maintain the assignment of the Transferred Assets or the Liens thereon secured pursuant to Section 2.04; and (c) upon the exercise by Purchaser or Administrative Agent of any power, right, privilege or remedy pursuant to any Loan Document which requires any consent, approval, registration, qualification or authorization of any Governmental Authority execute and deliver all applications, certifications, instruments and other documents and papers that Purchaser or Administrative Agent may require. In addition, Seller shall promptly, at its sole cost and expense, execute and deliver to Purchaser and Administrative Agent such further instruments and documents, and take such further action, as Purchaser or Administrative may, at any time and from time to time, reasonably request in order to carry out the intent and purpose of this Agreement and the other Transaction Documents to which it is a party and to establish and protect the rights, interests and remedies created, or intended to be created, in favor of Purchaser and Administrative Agent hereby and thereby.

(l) Certain Information Regarding Seller, Etc. Seller shall provide information that Purchaser or Administrative Agent reasonably request from Seller with respect to the Transferred Assets relating to any period prior to the Effective Date, including information that may be reasonably requested under the Loan Agreement.

(m) [Reserved].

(n) Certain Purchaser Covenants and Organizational Documents. Seller shall, so long as it is the sole member of Purchaser and prior to Payment in Full, cause Purchaser to be managed and operated in a manner consistent with the negative covenants contained in Section 9.01 of the Loan Agreement and the Organizational Documents of Purchaser.

(o) Capital Contributions. Prior to Payment in Full, Seller will limit capital contributions to Purchaser to [***]; provided that the foregoing shall not create an obligation to effect capital contributions, which shall be in Seller's sole discretion, and provided further that the following shall not be included in such limits and shall be permitted without restriction: (i) a capital contribution effected pursuant to Section 2.01(b) hereof, (ii) capital contributions to effect Payment in Full, (iii) capital contributions necessary to pay Lender Expenses then due and payable but only to the extent the remaining balance of the Expense Reserve Amount is insufficient to pay such amounts and (iv) capital contributions to make principal payments pursuant to Section 3.02(a)(iv) of the Loan Agreement.

Section 4.02. Purchaser Covenants. Purchaser hereby covenants and agrees with Seller as follows:

(a) Financial Statements and Information. For each Semi-Annual Period ending after the Closing Date, Purchaser shall, promptly following receipt thereof under Section 3.7 of the Affitech Assignment Agreement, deliver or cause to be delivered (or otherwise made available) to Seller a true copy of the reports contemplated thereunder for such Semi-Annual Period.

(b) No Merger, Consolidation or Reorganization of Purchaser. Purchaser shall not merge or consolidate with any other entity and shall not enter into any other transaction that results in a reorganization of Purchaser.

(c) Limitations on Additional Indebtedness of Purchaser. Purchaser shall not incur any Indebtedness other than Indebtedness under or permitted by the Loan Agreement.

(d) Compliance with Law. Purchaser will comply, in all material respects, with all acts, rules, regulations, orders, decrees and directions of any Governmental Authority applicable to the Transferred Assets or any part thereof; provided, however, that Purchaser may contest any act, regulation, order, decree or direction of any Governmental Authority in any reasonable manner which shall not have a Material Adverse Effect.

(e) [Reserved].

(f) No Amendment to the Covered Agreements. Purchaser shall not amend, modify or supplement any Covered Agreement or waive any of its rights under the foregoing or permit any amendment, modification or supplementing of such Covered Agreement with respect to the foregoing, without the prior written consent of Seller; provided an assignment of the Roche APA that solely changes the parties to Seller from Affitech Research AS (or its successors and assigns) or any of its Affiliates shall not constitute such amendment, modification or supplement.

Section 4.03. Consequences of Seller Event of Default.

(a) Each of Seller and Purchaser hereby acknowledges and agrees that damages may be difficult to establish and the Administrative Agent and Lenders will have no adequate remedy at law if a Seller Event of Default has occurred and is continuing. In any such event, the parties agree that Administrative Agent shall have the right, in addition to any other rights it may have (whether at law or in equity), to seek specific performance of this Agreement and to pursue any other equitable remedies, including an injunction, without being required to prove actual damages or post any bond. In furtherance of the foregoing, Seller hereby designates, makes, constitutes and appoints Administrative Agent, and each of its designees or agents, as its true and lawful proxy and attorney-in-fact (coupled with an interest), irrevocably and with power of substitution, and with authority to take any and all appropriate action and to execute any and all documents and instruments that may be necessary to cause this Agreement to be

specifically performed by Seller and to seek an injunction against any pending or proposed violation of Section 4.01 of this Agreement or to correct or prevent the continuation of any such Seller Event of Default

(b) [***]

(c) THE POWER OF ATTORNEY AND PROXY GRANTED IN THIS SECTION 4.03 ARE COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL PAYMENT IN FULL. THIS POWER OF ATTORNEY IS CONFERRED ON THE ADMINISTRATIVE AGENT SOLELY TO PROTECT, PRESERVE AND REALIZE UPON ITS RIGHTS UNDER THIS AGREEMENT AND SHALL NOT IMPOSE ANY DUTY UPON THE ADMINISTRATIVE AGENT TO EXERCISE ANY SUCH POWERS.

ARTICLE V.

SERVICING

Section 5.01. Appointment of Seller. Purchaser shall appoint a servicer (the "Servicer") to perform certain servicing, management and administrative functions on behalf of Purchaser with respect to the Transferred Assets.

(a) Purchaser hereby appoints Seller as the initial Servicer hereunder, and Seller hereby accepts such appointment hereunder, to perform the duties described in or by reference in this Article V.

(b) In consideration for its performing such duties hereunder, Seller, as initial Servicer, shall be entitled to receive the Servicing Fee from Purchaser. The Servicing Fee, if any, shall be payable semi-annually in arrears on each Interest Payment Date and shall be paid in accordance with Section 4.05(a)(iii) of the Loan Agreement; provided, however, that any Servicing Fee due hereunder to an Affiliate of Purchaser shall be deferred until Payment in Full. In performing such duties hereunder, Seller shall have full power and authority to do or cause to be done, on behalf of Purchaser, any and all things in connection with such servicing, management and administration which it may deem necessary or desirable, consistent with the terms hereof (including Section 5.03), any Covered Agreement and the Loan Agreement. Seller agrees that it shall service, manage, administer, and perform on behalf of Purchaser under each Covered Agreement and enforce the rights of Purchaser thereunder in good faith, with reasonable care, in accordance with Applicable Law, in compliance with Purchaser's obligations under the Transaction Documents, using substantially the same degree of diligence and skill that it uses to service and perform agreements such as the Covered Agreements (such standards and requirements of performance, the "Servicing Standard"); provided that the Seller shall not be authorized to grant any consents under this Agreement on behalf of the Purchaser, or waive any rights of the Purchaser under this Agreement or any Covered Agreement. Notwithstanding the foregoing, Seller's reasonable decision not to enforce its rights under any Covered Agreement for Roche's failure to timely remit any due and payable Commercial Payments during any reasonable grace period, which shall not, in any event, extend beyond [***]days, shall not constitute a waiver under any Covered Agreement. Seller, as Servicer on behalf of Purchaser, shall maintain any licenses or authorizations necessary to service the Transferred Assets and any Covered Agreement.

Section 5.02. Certain Seller Actions. So long as it is the Servicer, Seller will take such actions on behalf of Purchaser, in accordance with the Servicing Standard, as are necessary to protect and defend the rights of Purchaser under each Covered Agreement, including, without limitation, to the extent necessary, seeking specific performance of Section 2.5 of the Affitech Assignment Agreement and pursuing any other equitable remedies including injunction with respect to any violations of Section 2.5 of the Affitech Assignment Agreement.

Section 5.03. Compliance with the Loan Agreement. Notwithstanding anything to the contrary herein, Seller's servicing obligations hereunder shall at all times be subject to the terms of the Loan Agreement. Seller and Purchaser agree that Seller shall take no action with respect to any Covered Agreement, nor instruct Purchaser to take any such action, that is inconsistent with the terms of the Loan Agreement, the obligations of Purchaser thereunder or the rights of Administrative Agent or the Lenders thereunder. For the avoidance of doubt, Seller will not, and will not instruct Purchaser to, take any action without the consent of Administrative Agent where such consent is required pursuant to the Loan Agreement and Seller shall not agree to, or cause or permit any amendment, waiver, termination or modification of any Covered Agreement or any Material Contract except as permitted to be effected by Purchaser under the Loan Agreement; provided an assignment of the Roche APA that solely changes the parties to Seller from Affitech Research AS (or its successors and assigns) or any of its Affiliates shall not constitute such amendment, waiver, termination or modification. Notwithstanding the foregoing, Seller's reasonable decision not to enforce its rights under any Covered Agreement for Roche's failure to timely remit any due and payable Commercial Payments during any reasonable grace period, which shall not, in any event, extend beyond [***] days, shall not constitute a waiver or consent under any Covered Agreement or a waiver or consent under this Agreement.

Section 5.04. Services as Servicer. In addition to (and not in limitation of) the provision of Section 5.01, Seller shall perform the following services on behalf of Purchaser:

(a) review all written documents, notices and other written communications under any Covered Agreement and provide such copies to Administrative Agent as are required under the Loan Agreement, together with any responses as Purchaser is required to provide in respect thereof;

(b) monitor the performance of any Covered Agreement Counterparty under any Covered Agreement, and take such actions as may be necessary to enforce the rights of Purchaser thereunder and collect amounts due to Purchaser thereunder, on behalf of Purchaser, and procure and supervise the services of any third parties necessary or appropriate in connection with the monitoring, enforcement, collection and remittance of the proceeds of the Transferred Assets;

(c) maintain each of the Operating Account, Collection Account and Interest Reserve Accounts in accordance with Purchaser's obligations under the Loan Agreement and the Control Agreements, and maintain and enforce the instructions to Roche to pay amounts due to Purchaser under the Covered Agreements;

(d) cause Purchaser to maintain its organizational existence by filing all returns required in its jurisdiction of organization, and providing for its general administrative needs and overhead relating to the Transferred Assets, subject to Section 9.01 of the Loan Agreement and its Organizational Documents;

(e) identify and forward as required under the Loan Agreement any payments that are to be made to a Collection Account but when made are made to Purchaser, Seller or any misdirected account, and in consultation with Administrative Agent, effect the transfer thereof as required under the Loan Agreement; and

(f) make on behalf of Purchaser any security filings or other actions required to perfect or ensure the continued perfection of Purchaser's rights in the Transferred Assets and Administrative Agent's rights in Collateral.

In performing as Servicer, Seller shall not instruct any Covered Agreement Counterparty or any other Person to pay amounts in respect of the Transferred Assets to any account other than the Collection Account

required under the Loan Agreement or cause any such payments to be paid to any account other than such Collection Account.

Section 5.05. Replacement Servicer. Seller may be terminated as Servicer hereunder and replaced with a new Servicer by Purchaser (or by Administrative Agent on behalf of Purchaser in the event that Purchaser shall fail to replace the Servicer within five (5) Business Days after a Servicer Termination Event, or in the event that an Event of Default has occurred and is continuing) following the occurrence of any of the following events (each, a "Servicer Termination Event"):

(a) Seller fails to perform or observe any covenant or agreement contained in this Article V and, solely if the consequences of the failure to perform or observe such covenant or agreement can be cured, in the case of any covenant or agreement contained in Sections 5.04(d), (e) or (f), such failure continues for a period of [***] Business Days without such cure after the earlier of (x) the date Seller becomes aware of such failure and (y) the date Purchaser, or Administrative Agent on behalf of Purchaser, provides notice of such failure to Seller;

(b) an Insolvency Event of Seller; or

(c) a Seller Event of Default shall occur and be continuing.

Termination of Seller as Servicer hereunder shall be without prejudice to any rights of Purchaser or Administrative Agent that may have accrued through such date. In the event that Seller is terminated as Servicer, (i) a replacement Servicer shall be appointed by Purchaser in consultation with, and with the prior written consent of, Administrative Agent, or by Administrative Agent on behalf of Purchaser as provided in the first sentence of this Section 5.05) and (ii) Seller shall cooperate reasonably with Purchaser and Administrative Agent and any replacement Servicer designated by Purchaser or Administrative Agent, to transfer any information and materials to such replacement Servicer or undertake any other reasonable and necessary actions to ensure an effective transition of services required in the servicing of the Transferred Assets to the successor Servicer.

ARTICLE VI.

TERMINATION; SURVIVAL

Section 6.01. Termination. The respective obligations and responsibilities of Seller and Purchaser created by this Agreement shall not terminate prior to Payment in Full and may terminate upon Payment in Full.

Section 6.02. Effect of Termination. No termination or rejection or failure to assume the executory obligations of this Agreement in the bankruptcy of Seller or Purchaser shall be deemed to impair or affect the obligations pertaining to any executed conveyance or executed obligations, including without limitation breaches of representations and warranties by Seller or Purchaser occurring prior to the date of such termination.

Section 6.03. Survival. Notwithstanding Section 6.01 hereof, the obligations of Seller contained in Article VII , Article VIII and this Section 6.03 (Survival) shall survive the termination of this Agreement and Payment in Full.

ARTICLE VII.

INDEMNIFICATION PAYMENTS

Section 7.01. Indemnification.

(a) Seller agrees to indemnify and hold harmless Purchaser, Administrative Agent and Lenders and their respective officers, directors, members, partners, employees and agents (each, an "Indemnified Party") against any and all liabilities, losses, damages, penalties, costs and expenses (including reasonable and documented, out of pocket costs of defense and legal fees and expenses) ("Losses") which may be incurred or suffered by such Indemnified Party (except to the extent caused by the gross negligence or willful misconduct of the Indemnified Party) awarded against, or incurred or suffered by, such Indemnified Party, whether or not involving a third party claim, demand, action, suit or proceeding, arising out of (i) the failure of any representation, warranty or certification of Seller in the Transaction Documents or any certificate given by Seller pursuant to any of the Transaction Documents, to be true when made; (ii) a breach of any covenant by Seller set forth in, or failure by Seller to perform its duties under or otherwise comply with, the Transaction Documents (whether or not a Seller Event of Default or Servicer Termination Event), or Seller's engaging in intentional misconduct, bad faith or negligence in the performance of such duties; or (iii) the transfer by Seller of any interest in the Transferred Assets to any Person other than Purchaser, or any attempt by any Person to void the transfer of the Transferred Assets to Purchaser.

It is the intention of the parties hereto that the above indemnities shall not be interpreted to provide indemnification for any damages, losses or costs that have the effect of recourse for non-payment or insufficient payment under the Transferred Assets and factors affecting the performance of the Transferred Assets and payments generated thereby that are not specifically represented, warranted or agreed to in the Transaction Documents which may include but are not limited to product obsolescence, competition, changes in government healthcare policies or other healthcare provider reimbursement, and withholding taxes related to the Transferred Assets. This Section 7.01(a) shall not apply to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(b) The provisions of this indemnity shall run directly to, and be enforceable by, an injured party and shall survive the termination of this Agreement. Without limiting the foregoing or Section 8.05 hereof, Purchaser's rights under this Section 7.01 shall be assignable by Purchaser on a non-exclusive basis to Administrative Agent pursuant to the terms of the Loan Agreement and the Security Agreement.

(c) If any claim, demand, action or proceeding (including any investigation by any Governmental Authority) shall be brought or alleged against an Indemnified Party in respect of which indemnity is to be sought pursuant to this Section, the Indemnified Party shall, promptly after receipt of notice of the commencement of any such claim, demand, action or proceeding, notify Seller in writing of the commencement of such claim, demand, action or proceeding, enclosing a copy of all papers served, if any; provided, that the omission to so notify Seller will not relieve Seller from any liability that it may have to any Indemnified Party under this Section 7.01(c) unless, and only to the extent that, Seller is actually materially prejudiced by such omission. In case any such action is brought against an Indemnified Party and it notifies Seller of the commencement thereof, Seller will be entitled, at Seller's sole cost and expense, to participate therein and, to the extent that it may wish, to assume the defense thereof, with counsel reasonably satisfactory to such Indemnified Party (who shall not, except with the consent of the Indemnified Party, be counsel to Seller), and, after notice from Seller to such Indemnified Party of its election so to assume the defense thereof, Seller will not be liable to such Indemnified Party under this Section for any legal or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof other than reasonable costs of investigation. In any such proceeding, an Indemnified Party shall

have the right to retain its own counsel, but the reasonable fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (a) Seller and the Indemnified Party shall have mutually agreed to the retention of such counsel, (b) Seller has assumed the defense of such proceeding and has failed within a reasonable time to retain counsel or (c) the named parties to any such proceeding (including any impleaded parties) include both Seller and the Indemnified Party and representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interests between them. It is agreed that Seller shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate law firm (in addition to local counsel where necessary) for all such Indemnified Parties. Seller shall not be liable for any settlement of any proceeding effected without its written consent, but, if settled with such consent or if there be a final judgment for the plaintiff, Seller agrees to indemnify the Indemnified Party from and against any Losses by reason of such settlement or judgment. Seller shall not, without the prior written consent of the Indemnified Party, effect any settlement, compromise or discharge of any claim or pending or threatened proceeding in respect of which any Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement, compromise or discharge, as the case may be, (i) includes an unconditional written release of such Indemnified Party from all liability on claims that are the subject matter of such claim or proceeding, (ii) does not include any statement as to an admission of fault, culpability or failure to act by or on behalf of any Indemnified Party and (iii) does not impose any continuing material obligation or restrictions on any Indemnified Party.

ARTICLE VIII.

MISCELLANEOUS PROVISIONS

Section 8.01. Amendment. This Agreement may be amended from time to time only by the written agreement of Seller and Purchaser and, prior to Payment in Full, Administrative Agent.

Section 8.02. Governing Law; Waiver of Trial by Jury; Jurisdiction.

(A) THIS AGREEMENT AND ANY AMENDMENTS HEREOF SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING GENERAL OBLIGATIONS LAW SECTIONS 5-1401 AND 5-1402 BUT OTHERWISE WITHOUT GIVING EFFECT TO LAWS CONCERNING CONFLICT OF LAWS OR CHOICE OF FORUM THAT WOULD REQUIRE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(B) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM ARISING OUT OF OR RELATING TO ANY TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED UNDER ANY TRANSACTION DOCUMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO ANY TRANSACTION DOCUMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY HERETO WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.02(B).

(c) Each of Purchaser and Seller irrevocably submits to the jurisdiction of the courts of the State of New York and of the United States sitting in the State of New York, and of the courts of its own corporate domicile with respect to any and all Proceedings. Each of Purchaser and Seller irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any Proceeding and any claim that any Proceeding has been brought in an inconvenient forum. Any process or summons for purposes of any Proceeding may be served on Purchaser or Seller by mailing a copy thereof by registered mail, or a form of mail substantially equivalent thereto, addressed to it at its address as provided for Notices hereunder.

(d) Notwithstanding the other terms of this Section 8.02:

(i) THE OBLIGATION TO TRANSFER ALL RIGHTS UNDER THE AFFITECH ASSIGNMENT AGREEMENT FROM SELLER TO PURCHASER AS SET FORTH IN SECTION 2.01 SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF SWITZERLAND, WITHOUT REGARD TO THE CONFLICT OF LAW RULES.

(ii) The exclusive place of jurisdiction for any disputes arising out of or in connection with the obligation to transfer all rights under the Affitech Assignment Agreement from Seller to Purchaser as set forth in Section 2.01 shall be the City of Zurich, Switzerland, venue being Zurich 1.

Section 8.03. Notices. All demands, notices, and communications under this Agreement shall be in writing personally delivered, or sent by email (provided that no undeliverable message is received in response to such email) or sent by internationally recognized overnight courier service, at the following address:

Seller:

XOMA (US) LLC
2200 Powell Street, Suite 310
Emeryville, CA 94608
Attn: [***] Legal Department
Email: [***]

with a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP
555 Mission Street
San Francisco, CA 94105
Attention: Ryan Murr; Todd Trattner
Email: rmurr@gibsondunn.com; ttrattner@gibsondunn.com

Purchaser:

XLR 1 LLC
c/o XOMA (US) LLC
2200 Powell Street, Suite 310
Emeryville, CA 94608
Attn: [***] Legal Department
Email: [***]

with a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP
555 Mission Street
San Francisco, CA 94105
Attention: Ryan Murr; Todd Trattner
Email: rmurr@gibsondunn.com; ttrattner@gibsondunn.com

Administrative Agent:

Blue Owl Capital Corporation
399 Park Avenue, 37th Floor
New York, NY 10022
Email: [***]

with a copy (which shall not constitute notice) to:

Cooley LLP
1299 Pennsylvania Avenue, NW, Suite 700
Washington, DC 20004-2400
Attention: Michael Tollini
Email: mtollini@cooley.com

or at other such address as shall be designated by such party in a written notice to the other parties. Notice shall be effective and deemed received (a) two (2) days after being delivered to the courier service, if sent by courier, or (b) when delivered, if delivered by hand or sent by email.

Wherever notice or a report is required to be given or delivered to Purchaser, a copy of such notice or report shall also be given or delivered concurrently to Administrative Agent.

Section 8.04. Severability of Provisions. If any one or more of the covenants, agreements, provisions, or terms of this Agreement shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions, or terms shall be deemed severable from the remaining covenants, agreements, provisions, or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

Section 8.05. Assignment. Notwithstanding anything to the contrary contained in this Agreement, this Agreement may not be assigned by Seller without the prior written consent of Purchaser [***] and this Agreement may not be assigned by Purchaser without the prior written consent of Administrative Agent and, so long as no Seller Event of Default has occurred and is continuing, Seller.

Section 8.06. Further Assurances. Each of Seller and Purchaser agrees to do such further acts and things and to execute and deliver such additional assignments, agreements, powers and instruments as are reasonably required to carry into effect the purposes of this Agreement.

Section 8.07. Waiver; Cumulative Remedies; Waiver of Immunities. No failure to exercise and no delay in exercising, on the part of Purchaser or Seller, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise hereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exhaustive of any rights, remedies, powers and privilege provided by law. To the extent that Seller has or

hereafter may be entitled to claim or may acquire, for itself or any of its assets, any immunity from suit, jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, or otherwise) with respect to itself or any of its property, Seller hereby irrevocably waives such immunity in respect of its obligations hereunder to the fullest extent permitted by law.

Section 8.08. Counterparts. This Agreement may be executed in two or more counterparts (and by different parties on separate counterparts), each of which shall be an original, but all of which shall constitute one and the same instrument.

Section 8.09. Binding. This Agreement will inure to the benefit of and be binding upon the parties hereto, subject to Section 8.14.

Section 8.10. Merger and Integration. Except as specifically stated otherwise herein, this Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and all prior understandings, written or oral, are superseded by this Agreement. This Agreement may not be modified, amended, waived or supplemented except as provided herein.

Section 8.11. Headings. The headings herein are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

Section 8.12. Schedules and Exhibits. The schedules and exhibits attached hereto and referred to herein shall constitute a part of this Agreement and are incorporated into this Agreement for all purposes.

Section 8.13. Non-Petition. Each of the parties hereto covenants and agrees that, prior to the date that is one year and one day after the Payment in Full, no party hereto shall institute against, or join any other Person in instituting against, either of Purchaser or Seller any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other similar proceedings under any federal, state or foreign bankruptcy or similar law.

Section 8.14. Intended Third Party Beneficiaries. Administrative Agent is a third party beneficiary of this Agreement and, as such, shall have full power and authority to enforce the provisions of this Agreement against the parties hereto. In addition, the parties hereto acknowledge that Administrative Agent is entitled under the Loan Documents to make claims directly to Seller for indemnities in favor of Purchaser, without prejudice to its rights as an Indemnified Party hereunder; and nothing herein limits the rights of Administrative Agent under the Pledge Agreement, which rights may be exercised in Administrative Agent's sole discretion from time to time whether or not it has exercised or is then exercising its rights as a third party beneficiary or its rights and remedies under Applicable Law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

XOMA(US) LLC, as Seller

By: _____
Name:
Title:

Solely for purposes of Section 2.03 and Section 4.03(b)(ii), **XOMA CORPORATION**, as Parent

By: _____
Name:
Title:

XLR 1 LLC, as Purchaser

By: _____
Name:
Title:

EXHIBIT A

Form of Notice and Instruction Letters

EXHIBIT B

Form of Bill of Sale

Exhibit 10.65

SECOND AMENDMENT TO OFFICE LEASE

This SECOND AMENDMENT TO OFFICE LEASE (this "**Amendment**"), dated as of June 27, 2023 (the "**Effective Date**"), is entered into by and between KBSIII TOWERS AT EMERYVILLE, LLC, a Delaware limited liability company ("**Landlord**"), and XOMA (US) LLC, a Delaware limited liability company ("**Tenant**").

RECITALS:

A. Pursuant to that certain Office Lease dated September 20, 2017 (the "**Original Lease**"), as amended by that certain First Amendment to Office Lease dated January 13, 2023 (the "**First Amendment**," and collectively, the "**Lease**"), Tenant currently leases from Landlord those certain premises commonly known as Suite 310 (the "**Current Premises**"), containing approximately 3,637 rentable square feet, located at 2200 Powell Street, Emeryville, California (the "**Building**"), which is part of the Towers Emeryville (the "**Project**"), as more particularly described in the Lease.

B. Capitalized terms not defined herein have the meanings given to such terms in the Lease.

C. The Lease Term is scheduled to expire by its terms on July 31, 2023.

D. The parties desire to amend the Lease in order to, among other things, extend the Lease Term, relocate Tenant to those certain premises containing approximately 1,620 rentable square feet on the third (3rd) floor of the Building, formerly known as Suite 370, as depicted on Exhibit A attached hereto (the "**New Premises**"), and further amend the Lease, pursuant to the terms and conditions set forth below.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and agreements contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of such are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. New Premises. Tenant hereby leases from Landlord, and Landlord hereby leases to Tenant, the New Premises on the terms and conditions hereinafter set forth. As of the "New Premises Commencement Date" (as defined in the Work Letter attached hereto as Exhibit B): (a) Exhibit A attached hereto depicting the New Premises is incorporated into and made a part of the Lease; (b) all references in the Lease to the defined term "Premises" shall mean and refer to the New Premises; and (c) the rentable square footage of the "Premises" (New Premises) shall be 1,620 rentable square feet. Tenant's use and occupancy of the New Premises shall be in accordance with all of the terms and conditions of the Lease, as amended by this Amendment (the "**Amended Lease**"). Landlord shall not be obligated to deliver the New Premises until Landlord has received from Tenant copies of Tenant's insurance certificates as required under the Amended Lease with respect to the New Premises; provided, however, if Landlord's delivery of the New Premises is delayed as a result of Tenant's failure to provide said insurance certificates, the New Premises Commencement Date shall remain unchanged.

2. Current Premises. Tenant shall surrender the Current Premises to Landlord in the condition required pursuant to this Section 2 no later than 11:59 p.m. on the date which is fourteen (14) days following the New Premises Commencement Date (the "**Surrender Date**"). If Tenant surrenders the Current Premises by the Surrender Date, Tenant's obligation to pay Rent and other charges for the Current Premises shall cease as of the New Premises Commencement Date, otherwise Tenant shall continue to pay Rent for the Current Premises until Tenant actually surrenders the Current Premises in accordance with the terms of the Amended Lease. Tenant agrees to surrender possession of the Current Premises to Landlord on the Surrender Date, broom clean and in good order, condition and repair, ordinary wear and tear excepted, and otherwise in compliance with the terms of the Amended Lease regarding surrender as if the Lease had

expired as to the Current Premises. Upon such surrender, all

rights of Tenant to possession and occupancy of the Current Premises and Tenant's obligations with respect to the Current Premises will terminate except as to Tenant's surviving obligations under the Amended Lease, and all of Tenant's rights and obligations under the Amended Lease shall relate solely to the New Premises; provided, however, if Tenant fails to surrender the Current Premises on or before the Surrender Date, Tenant shall be deemed in holdover of the Current Premises subject to the holdover provisions in the Lease, and such holding over shall not operate to release Tenant from its obligations with respect to the New Premises.

3. Second Extended Term. The Lease Term is hereby extended for sixty-five (65) months (the "**Second Extended Term**") commencing as of the New Premises Commencement Date and expiring on the last day of the sixty-fifth (65th) full calendar month thereafter, unless sooner terminated in accordance with the terms of the Amended Lease. Furthermore, in the event the "Tenant Improvements" are not "substantially completed" by July 31, 2023 (as each term is defined in the Work Letter attached hereto as Exhibit B), (a) Tenant shall be entitled to occupy the Current Premises until the Surrender Date, and (b) Base Rent for the Current Premises during such period of occupancy shall be reduced to
$7,533.00 per month. No such extensions shall operate to release Tenant from liability for any amounts owed or defaults which exist under the Lease prior to the New Premises Commencement Date.

4. Base Rent. Prior to the New Premises Commencement Date, Tenant shall continue to pay Base Rent for the Current Premises pursuant to the terms of the Lease. Commencing as of the New Premises Commencement Date and continuing for the duration of the Second Extended Term, Tenant shall pay Base Rent for the New Premises in accordance with the following schedule:

Lease Months	Monthly Base Rent
1* - 12	$7,533.00**
13 - 24	$7,758.99
25 - 36	$7,991.76
37 - 48	$8,231.51
49 - 60	$8,478.46
61 - 65	$8,732.81

*Includes the first full month and any partial month at the beginning of the Second Extended Term.

Notwithstanding the foregoing, provided Tenant is not in default under the Amended Lease, Landlord hereby agrees to abate Tenant's obligation to pay Base Rent during the first (1st), thirteenth (13th), twenty- fifth (25th), thirty-seventh (37th), and forty-ninth (49th) full calendar months of the Second Extended Term (such total amount of abated Base Rent being hereinafter referred to as the "Abated Amount**"). During such abatement periods, Tenant will still be responsible for the payment of all other monetary obligations under the Amended Lease, including, without limitation, parking charges and Direct Expenses. Tenant acknowledges that any default by Tenant under the Amended Lease will cause Landlord to incur costs not contemplated hereunder, the exact amount of such costs being extremely difficult and impracticable to ascertain. Therefore, should Tenant at any time during the Second Extended Term be in default under the Amended Lease beyond any applicable notice and cure period, then, in addition to all of Landlord's other rights and remedies, the total unamortized sum of such Abated Amount (amortized on a straight line basis over the Second Extended Term) so conditionally excused shall become immediately due and payable by Tenant to Landlord. Tenant acknowledges and agrees that nothing in this subsection is intended to limit any other remedies available to Landlord at law or in equity under applicable law (including, without limitation, the remedies under Civil Code Section 1951.2 and/or 1951.4 and any successor statutes or similar laws), in the event Tenant defaults under the Amended Lease beyond any applicable notice and cure period. Upon reasonable notice to Tenant at any time prior to application of the entire Abated Amount, Landlord shall have the right to purchase from Tenant any and all then remaining Abated Amount as it applies to one or more of the remaining abatement months by paying to Tenant an amount equal to the unused balance of the Abated Amount that Landlord elects to purchase back from Tenant (the "**Abated**

Amount Purchase Price"). Upon Landlord's payment to Tenant of the Abated Amount Purchase Price with respect to the applicable remaining abatement months, Tenant shall thereupon be required to pay Base Rent during such months in an amount equal to the Abated Amount that Tenant would have been entitled to receive but for Landlord's payment to Tenant of the Abated Amount Purchase Price.

5. Condition of the Premises. Tenant acknowledges that it is presently in possession of the Current Premises, it is fully aware of the condition of the Current Premises, and except as expressly provided in Exhibit B attached hereto, Landlord shall not be obligated to refurbish or improve the Current Premises or the New Premises in any manner whatsoever or to otherwise provide funds for the improvement of the Current Premises or the New Premises in conjunction with this Amendment, and Tenant hereby accepts the Premises "AS-IS". Tenant further acknowledges that except as expressly provided in the Lease or this Amendment, neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Premises, the improvements, refurbishments, or alterations therein, or the Building or the Project or with respect to the functionality thereof or the suitability of any of the foregoing for the conduct of Tenant's business and that all representations and warranties of Landlord, if any, are as set forth in the Lease and this Amendment. Pursuant to Section 1938 of the California Civil Code, Landlord hereby advises Tenant that as of the date of this Amendment neither the Current Premises, nor the New Premises, nor the Building, nor the Project has undergone inspection by a Certified Access Specialist. Further, pursuant to Section 1938 of the California Civil Code, Landlord notifies Tenant of the following: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Therefore and notwithstanding anything to the contrary contained in the Amended Lease, Landlord and Tenant agree that (a) Tenant may, at its option and at its sole cost, cause a CASp to inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under California law, (b) the parties shall mutually coordinate and reasonably approve of the timing of any such CASp inspection so that Landlord may, at its option, have a representative present during such inspection, and (c) Tenant shall be solely responsible for the cost of any repairs necessary to correct violations of construction-related accessibility standards within the Premises, the Building, or the Project identified by any such CASp inspection. Tenant shall reimburse Landlord upon demand, as Additional Rent, for any cost to Landlord of performing such alterations and repairs; provided, however, unless such repair or alterations relate solely to other alterations to the Premises which Tenant is obligated to, or elects to, remove upon the expiration or earlier termination of the Amended Lease (in which case Tenant shall simultaneously also remove any CASp-identified alterations and repairs), Tenant shall have no obligation to remove any repairs or alterations made pursuant to a CASp inspection under this Section.

6. Direct Expenses. During the Second Extended Term, Tenant shall continue to pay Tenant's Share of Direct Expenses in accordance with the Amended Lease; provided, however, (a) Tenant's Share with respect to the New Premises shall be 0.70%, based on the New Premises consisting of approximately 1,620 rentable square feet and the Building consisting of approximately 232,210 rentable square feet, and (b) the "Base Year" shall be adjusted to the calendar year 2024.

7. Security Deposit. Landlord and Tenant acknowledge that Landlord currently holds a Security Deposit under the Lease in the amount of $41,243.58. Provided that during the Lease Term preceding the New Premises Commencement Date, Tenant has not been in default under the Amended Lease, Tenant shall have the right to reduce the Security Deposit by $18,644.58 as of the New Premises Commencement Date. Notwithstanding anything to the contrary contained herein, if an Event of Default has occurred under the Amended Lease at any time prior to the New Premises Commencement Date, then

Tenant shall have no right to reduce the Security Deposit as described herein. If Tenant is entitled to a reduction in the Security Deposit, Tenant shall provide Landlord with written notice requesting that the Security Deposit be reduced as provided above (the "**Security Reduction Notice**"). If Tenant provides Landlord with a Security Reduction Notice, and Tenant is entitled to reduce the Security Deposit as provided herein, Landlord shall refund the applicable portion of the Security Deposit to Tenant within forty-five (45) days after the later to occur of (a) Landlord's receipt of the Security Reduction Notice, or
(b) the New Premises Commencement Date. In no event shall the remaining Security Deposit ever be less than $22,599.00.

8. Parking. During the Second Extended Term, Tenant shall have the right, but not the obligation, to lease up to five (5) unreserved vehicle parking spaces in the parking lot or lots of the Project designated by Landlord for the use of tenants of the Building, subject to payment of the prevailing monthly rate for such parking spaces (which is currently one hundred twenty dollars ($120.00) per unreserved parking space per month), subject to the terms of the Amended Lease. Such parking is in lieu of, not in addition to, all previous parking rights granted under the Lease. Tenant shall notify Landlord in writing of Tenant's election to lease each of the unreserved parking spaces. In the event Tenant elects not to lease some or all of its unreserved parking spaces for longer than ninety (90) days, Landlord may lease said unreserved parking spaces to other tenants, and Tenant's ability to thereafter re-lease said unreserved parking spaces shall be on a month-to-month basis and subject to availability.

9. After-Hours HVAC. For informational purposes, the current after-hours usage charge for the Building is $135.00 per hour.

10. FF&E. Effective as of the New Premises Commencement Date, Tenant shall be deemed to have conveyed to Landlord via quitclaim bill of sale and for consideration of one dollar ($1.00), the cabling, IT rack, and workstations currently existing in the Current Premises (the "**FF&E**"), with the exception of six (6) workstations which Tenant shall relocate to the New Premises. Notwithstanding anything to the contrary contained in the Amended Lease, Tenant shall leave the FF&E in the Current Premises upon surrender thereof, and Tenant's conveyance of the FF&E shall be "AS-IS" and without any representations or warranties by Tenant. Landlord shall designate the six (6) specific workstations to be relocated to the New Premises, in Landlord's sole and absolute discretion.

11. Early Access. So long as Landlord has received from Tenant certificates and endorsements satisfactory to Landlord evidencing the insurance required to be carried by Tenant under the Amended Lease, and so long as Tenant and its contractors and employees do not interfere with the completion of the Tenant Improvements, Landlord shall use reasonable efforts to permit Tenant and Tenant's designated contractors access to the New Premises approximately three (3) weeks prior to the New Premises Commencement Date (the "**Early Access Period**") for purposes of installing Tenant's furniture, fixtures, and equipment ("**Tenant's Work**"). Tenant's Work shall be performed by Tenant at Tenant's sole cost and expense. Tenant's access to the New Premises during the Early Access Period shall be subject to all terms and conditions of the Amended Lease, except that Tenant shall not be obligated to pay Rent for the New Premises during the Early Access Period until the New Premises Commencement Date. Tenant agrees to provide Landlord with prior notice of any such intended early access and to cooperate with Landlord during the Early Access Period so as not to interfere with Landlord in the completion of the Tenant Improvements. Should Landlord determine such early access interferes with the Tenant Improvements, Landlord may deny Tenant access to the New Premises until the Tenant Improvements are substantially completed. Tenant shall promptly surrender any keys or other means of access to the New Premises and otherwise comply with such denial.

12. Signage. Tenant shall have the right to have placed by Landlord, at Landlord's expense, Tenant's name and New Premises suite number on a Building-standard suite entry sign, in the elevator lobby directory board for the third (3rd) floor, and on the Building lobby main directory board. Landlord agrees to cause the New Premises suite number to remain the same as the Current Premises, i.e., Suite
310. Subsequent changes to Tenant's signs and/or any additional signs, to the extent permitted by

Landlord, shall be made or installed by Landlord at Tenant's sole cost and expense. All aspects of any such signs shall be subject to the prior written consent of Landlord.

13. Extension Option. Notwithstanding anything to the contrary contained in the First Amendment, Tenant shall continue to have one (1) Extension Option pursuant to Rider No. 1 and Rider No. 2 to the Original Lease. Landlord and Tenant hereby acknowledge and agree that any other provisions of the Lease providing for an extension or renewal of the Lease Term are hereby deleted in their entirety and Tenant has no other options to extend or renew the Second Extended Term of the Amended Lease.

14. Representations and Warranties. Tenant hereby represents, warrants, and agrees that: (a) there exists no breach, default, or event of default by Landlord under the Lease, or any event or condition which, with notice or passage of time or both, would constitute a breach, default, or event of default by Landlord under the Lease; (b) the Lease continues to be a legal, valid, and binding agreement and obligation of Tenant; and (c) Tenant has no current offset or defense to its performance or obligations under the Lease. Tenant hereby waives and releases all demands, charges, claims, accounts, or causes of action of any nature whatsoever against Landlord or Landlord's members, managers, officers, employees or agents, including without limitation, both known and unknown demands, charges, claims, accounts, and causes of action that have previously arisen out of or in connection with the Lease.

15. Authority. Each signatory of this Amendment on behalf of Tenant represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.

16. Successors and Assigns. This Amendment shall extend to, be binding upon, and inure to the benefit of, the respective successors and permitted assigns and beneficiaries of the parties hereto.

17. Broker. Tenant represents and warrants to Landlord that, with the exception of Cushman & Wakefield, it is not aware of any brokers, agents or finders who may claim a fee or commission in connection with the consummation of the transactions contemplated by this Amendment. If any claims for brokers' or finders' fees in connection with the transactions contemplated by this Amendment arise, then Tenant agrees to indemnify, protect, hold harmless and defend Landlord (with counsel reasonably satisfactory to Landlord) from and against any such claims if they shall be based upon any statement, representation or agreement made by Tenant.

18. No Other Modification. Landlord and Tenant agree that except as otherwise specifically modified in this Amendment, the Lease has not been modified, supplemented, amended, or otherwise changed in any way and the Lease remains in full force and effect between the parties hereto as modified by this Amendment. To the extent of any inconsistency between the terms and conditions of the Lease and the terms and conditions of this Amendment, the terms and conditions of this Amendment shall apply and govern the parties. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. For purposes of this Amendment, signatures by facsimile or electronic PDF shall be binding to the same extent as original signatures.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth above.

Tenant:

XOMA (US) LLC,
a Delaware limited liability company

By: _____ Name:
Tom Burns
Title: CFO

Landlord:

KBSIII TOWERS AT EMERYVILLE, LLC,
a Delaware limited liability company

By: KBS Capital Advisors, LLC,
a Delaware limited liability company Its:
Authorized Agent

By:
_____
Name: Brent Carroll
Title: Senior Vice President
Date signed: 6/27/23

EXHIBIT A

NEW PREMISES

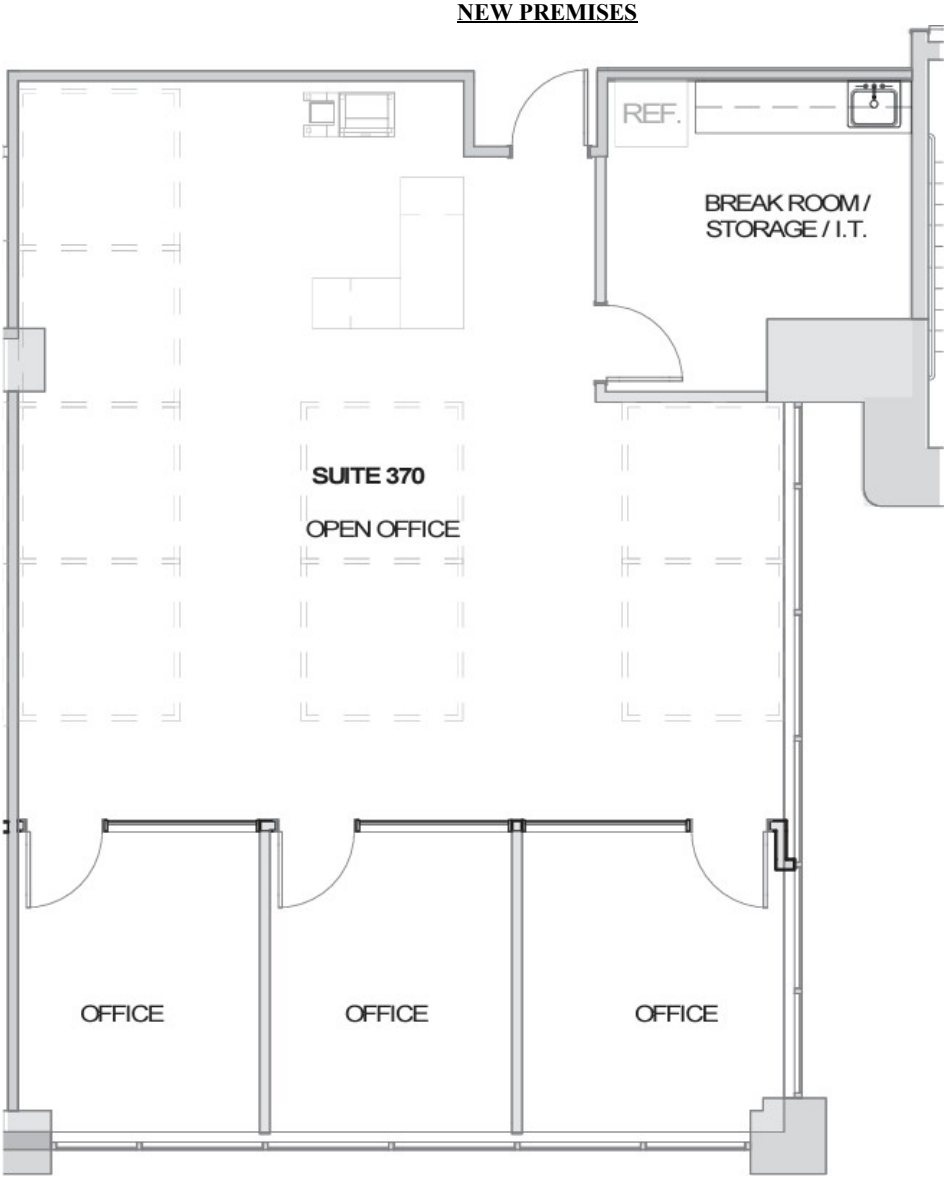

EXHIBIT B

WORK LETTER

1. **TENANT IMPROVEMENTS**. Landlord shall construct and, except as provided below to the contrary, pay for the entire cost of constructing the tenant improvements ("**Tenant Improvements**") shown in the scope of work attached hereto as Schedule 1 (the "**Scope of Work**"). Tenant may request changes to the Scope of Work provided that (a) the changes shall not be of a lesser quality than Landlord's standard specifications for tenant improvements for the Building, as the same may be changed from time to time by Landlord (the "**Standards**"); (b) the changes conform to applicable governmental regulations and necessary governmental permits and approvals can be secured; (c) the changes do not require building service beyond the levels normally provided to other tenants in the Building; (d) the changes do not have any adverse effect on the structural integrity or systems of the Building; (e) the changes will not, in Landlord's opinion, unreasonably delay construction of the Tenant Improvements; and (f) Landlord has determined in its sole discretion that the changes are of a nature and quality consistent with the overall objectives of Landlord for the Building. If Landlord approves a change requested by Tenant, then, as a condition to the effectiveness of Landlord's approval, Tenant shall pay to Landlord upon demand by Landlord the increased cost attributable to such change, as reasonably determined by Landlord. To the extent any such change results in a delay of completion of construction of the Tenant Improvements, then such delay shall constitute a delay caused by Tenant as described below.

2. **CONSTRUCTION OF TENANT IMPROVEMENTS**. Upon Tenant's payment to Landlord of the total amount of the cost of any changes to the Scope of Work, if any, Landlord's contractor shall commence and diligently proceed with the construction of the Tenant Improvements, subject to Tenant Delays (as described in Section 4 below) and Force Majeure Delays (as described in Section 5 below). Landlord may furnish Tenant with a construction schedule letter setting forth the projected completion dates therefor and showing the deadlines for any actions required to be taken by Tenant during such construction, and Landlord may from time to time during construction of the Tenant Improvements modify such schedule.

3. **NEW PREMISES COMMENCEMENT DATE AND SUBSTANTIAL COMPLETION**.

(a) **New Premises Commencement Date**. The Second Extended Term shall commence on the date (the "**New Premises Commencement Date**") which is the later of: (i) August 1, 2023, or (ii) the date the Tenant Improvements have been "substantially completed" (as defined below) in the New Premises; provided, however, that if substantial completion of the Tenant Improvements is delayed as a result of any Tenant Delays described in Section 4 below, then the New Premises Commencement Date as would otherwise have been established pursuant to this Section 3(a)(ii) shall be accelerated by the number of days of such Tenant Delays.

(b) **Substantial Completion; Punch-List**. For purposes of Section 3(a)(ii) above, the Tenant Improvements shall be deemed to be "**substantially completed**" when Landlord: (i) is able to provide Tenant reasonable access to the New Premises and (ii) has substantially performed the Tenant Improvements described in the Scope of Work, other than decoration and minor "punch-list" type items and adjustments which do not materially interfere with Tenant's access to or use of the New Premises. Within ten (10) days after such substantial completion, Tenant shall conduct a walk-through inspection of the New Premises with Landlord and provide to Landlord a written punch-list specifying those decoration and other punch-list items which require completion, which items Landlord shall thereafter diligently complete; provided, however, that Tenant shall be responsible, at Tenant's sole cost and expense, for the remediation of any items on the punch-list caused by Tenant's acts or omissions.

(c) **Delivery of Possession**. Landlord agrees to deliver possession of the New Premises to Tenant when the Tenant Improvements have been substantially completed in accordance with Section (b) above.

Tenant agrees that if Landlord is unable to deliver possession of the New Premises to Tenant on or prior to any particular date, the Amended Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom.

4. **TENANT DELAYS**. For purposes of this Work Letter, "**Tenant Delays**" shall mean any delay in the completion of the Tenant Improvements resulting from any or all of the following: (a) Tenant's failure to timely perform any of its obligations pursuant to this Work Letter, including any failure to complete, on or before the due date therefor, any action item which is Tenant's responsibility pursuant to any schedule delivered by Landlord to Tenant pursuant to this Work Letter; (b) Tenant's changes to the Scope of Work; (c) Tenant's request for materials, finishes, or installations which are not readily available or which are incompatible with the Standards; (d) any delay of Tenant in making payment to Landlord for Tenant's share of any costs in excess of the cost of the Tenant Improvements as described in the Scope of Work; or (e) any other act or failure to act by Tenant, Tenant's employees, agents, architects, independent contractors, consultants and/or any other person performing or required to perform services on behalf of Tenant.

5. **FORCE MAJEURE DELAYS**. For purposes of this Work Letter, "**Force Majeure Delays**" shall mean any actual delay beyond the reasonable control of Landlord in the construction of the Tenant Improvements, which is not a Tenant Delay and which is caused by any of the causes described in Section 29.17 of the Original Lease.

6. **IT ALLOWANCE**. Landlord shall provide to Tenant an allowance of up to $2.00 per rentable square foot of the New Premises (i.e., up to $3,240.00, based on the New Premises consisting of approximately 1,620 rentable square feet, hereinafter referred to as the "**Allowance**") to reimburse Tenant for the procurement and installation of internet and telecommunications infrastructure in the New Premises, provided that Tenant submits to Landlord copies of contracts, receipts, invoices, and other back-up documentation reasonably requested by Landlord evidencing such IT costs (collectively, the "**Cost Documentation**"), if at all, within six (6) months following the Effective Date (the "**Outside Date**"). Landlord shall not reimburse Tenant for any costs for which Tenant fails to submit Cost Documentation prior to the Outside Date. Notwithstanding anything in the Amended Lease to the contrary, Landlord shall not be obligated to pay any portion of the Allowance during the continuance of an uncured default under the Amended Lease.

SCHEDULE 1

SCOPE OF WORK

- Landlord to combine the westernmost two (2) offices into one aluminum-framed glass front conference room. The glass on the conference room to be partially frosted similar to the Current Premises.

- Electrical to be distributed where needed throughout the New Premises per a mutually agreed upon furniture plan, including outlets for 2 WAP locations in the ceiling and a connect track in the floor of the new large conference room providing electrical and data access to the conference room table from the south wall of that room.

- Landlord to install new lower and upper cabinetry, dishwasher (provided with appropriate plumbing), backsplash, and hard surface countertop in the kitchen.

- New paint to be installed throughout and the stained areas of the carpet to either be repaired (to match existing) or replaced throughout. New LVT/LVP in kitchen area.

- The wall that separates the kitchen area from the balance of the suite to be removed or substantially opened up to create an open kitchen feel.

- Landlord shall confirm the kitchen is plumbed for a refrigerator with an ice machine and that an in-sink disposal is in-place and functional. Refrigerator and other non-built-in kitchen appliances to be provided by Tenant.

- Both conference rooms to have wall (south) mount backing/strapping or painted mounting board for TV installs, which will accommodate Tenant's two (2) TV's on the south wall of the large conference room, and one (1) TV on the south wall of the small conference room. All mounts to be centered on the walls. TV's to be provided by Tenant.

Exhibit 21.1

Subsidiaries of the Company	**Jurisdiction of Organization**
XOMA Technology Ltd.	Bermuda
XOMA (US) LLC	Delaware
XOMA UK Limited	United Kingdom
XRL 1 LLC	Delaware

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, 333-265248 and 333-272054 on Form S-8 and Registration Statement No. 333-254073 on Form S-3 of our report dated March 8, 2024, relating to the consolidated financial statements of XOMA Corporation, appearing in this Annual Report on Form 10-K for the year ended December 31, 2023.

/s/ Deloitte & Touche LLP
San Francisco, California
March 8, 2024

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 8, 2024

/s/ OWEN HUGHES

Owen Hughes
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 8, 2024

/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, 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, 2023, 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 8th day of March, 2024

/s/ OWEN HUGHES
Owen Hughes
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.

Exhibit 97

XOMA CORPORATION

INCENTIVE COMPENSATION RECOUPMENT POLICY

1. INTRODUCTION

The Compensation Committee (the "***Compensation Committee***") of the Board of Directors (the "***Board***") of XOMA Corporation, a Delaware corporation (the "***Company***"), has determined that it is in the best interests of the Company and its stockholders to adopt this Incentive Compensation Recoupment Policy (this "***Policy***") providing for the Company's recoupment of Recoverable Incentive Compensation that is received by Covered Officers of the Company under certain circumstances. Certain capitalized terms used in this Policy have the meanings given to such terms in Section 3 below.

This Policy is designed to comply with, and shall be interpreted to be consistent with, Section 10D of the Exchange Act, Rule 10D-1 promulgated thereunder ("***Rule 10D-1***") and Nasdaq Listing Rule 5608 (the "***Listing Standards***").

2. EFFECTIVE DATE

This Policy shall apply to all Incentive Compensation that is received by a Covered Officer on or after October 2, 2023 (the "***Effective Date***"). Incentive Compensation is deemed "***received***" in the Company's fiscal period in which the Financial Reporting Measure specified in the Incentive Compensation award is attained, even if the payment or grant of such Incentive Compensation occurs after the end of that period.

3. DEFINITIONS

"***Accounting Restatement***" means an accounting restatement that the Company is required to prepare due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

"***Accounting Restatement Date***" means the earlier to occur of (a) the date that the Board, a committee of the Board authorized to take such action, or the officer or officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement, or (b) the date that a court, regulator or other legally authorized body directs the Company to prepare an Accounting Restatement.

"***Administrator***" means the Compensation Committee or, in the absence of such committee, the Board.

"***Code***" means the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"***Covered Officer***" means each current and former Executive Officer.

"***Exchange***" means The Nasdaq Stock Market LLC.

"***Exchange Act***" means the U.S. Securities Exchange Act of 1934, as amended.

"***Executive Officer***" means the Company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. Executive officers of the Company's parent(s) or subsidiaries are deemed executive officers of the Company if they perform such policy-making functions for the Company. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for purposes of this Policy would include at a minimum executive officers identified pursuant to Item 401(b) of Regulation S-K promulgated under the Exchange Act.

"***Financial Reporting Measures***" means measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures derived wholly or in part from such measures, including Company stock price and total stockholder return ("***TSR***"). A measure need not be presented in the Company's financial statements or included in a filing with the SEC in order to be a Financial Reporting Measure.

"***Incentive Compensation***" means any compensation that is granted, earned or vested based wholly or in part upon the attainment of a Financial Reporting Measure.

"***Lookback Period***" means the three completed fiscal years immediately preceding the Accounting Restatement Date, as well as any transition period (resulting from a change in the Company's fiscal year) within or immediately following those three completed fiscal years (except that a transition period of at least nine months shall count as a completed fiscal year). Notwithstanding the foregoing, the Lookback Period shall not include fiscal years completed prior to the Effective Date.

"***Recoverable Incentive Compensation***" means Incentive Compensation received by a Covered Officer during the Lookback Period that exceeds the amount of Incentive Compensation that would have been received had such amount been determined based on the Accounting Restatement, computed without regard to any taxes paid (*i.e.*, on a gross basis without regard to tax withholdings and other deductions). For any compensation plans or programs that take into account Incentive Compensation, the amount of Recoverable Incentive Compensation for purposes of this Policy shall include, without limitation, the amount contributed to any notional account based on Recoverable Incentive Compensation and any earnings to date on that notional amount. For any Incentive Compensation that is based on stock price or TSR, where the Recoverable Incentive Compensation is not subject to mathematical recalculation directly from the information in an Accounting Restatement, the Administrator will determine the amount of Recoverable Incentive Compensation based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or TSR upon which the Incentive Compensation was received. The Company shall maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange in accordance with the Listing Standards.

"***SEC***" means the U.S. Securities and Exchange Commission.

4. RECOUPMENT

(a) Applicability of Policy. This Policy applies to Incentive Compensation received by a Covered Officer (i) after beginning services as an Executive Officer, (ii) who served as an Executive Officer at any time during the performance period for such Incentive Compensation, (iii) while the Company had a class of securities listed on a national securities exchange or a national securities association, and (iv) during the Lookback Period.

(b) Recoupment Generally. Pursuant to the provisions of this Policy, if there is an

Accounting Restatement, the Company must reasonably promptly recoup the full amount of the Recoverable Incentive Compensation, unless the conditions of one or more subsections of Section 4(c) of this Policy are met and the Compensation Committee, or, if such committee does not consist solely of independent directors, a majority of the independent directors serving on the Board, has made a determination that recoupment would be impracticable. Recoupment is required regardless of whether the Covered Officer engaged in any misconduct and regardless of fault, and the Company's obligation to recoup Recoverable Incentive Compensation is not dependent on whether or when any restated financial statements are filed.

(c) Impracticability of Recovery. Recoupment may be determined to be impracticable if, and only if:

(i) the direct expense paid to a third party to assist in enforcing this Policy would exceed the amount of the applicable Recoverable Incentive Compensation; provided that, before concluding that it would be impracticable to recover any amount of Recoverable Incentive Compensation based on expense of enforcement, the Company shall make a reasonable attempt to recover such Recoverable Incentive Compensation, document such reasonable attempt(s) to recover, and provide that documentation to the Exchange in accordance with the Listing Standards; or

(ii) recoupment of the applicable Recoverable Incentive Compensation would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of Code Section 401(a)(13) or Code Section 411(a) and regulations thereunder.

(d) Sources of Recoupment. To the extent permitted by applicable law, the Administrator shall, in its sole discretion, determine the timing and method for recouping Recoverable Incentive Compensation hereunder, provided that such recoupment is undertaken reasonably promptly. The Administrator may, in its discretion, seek recoupment from a Covered Officer from any of the following sources or a combination thereof, whether the applicable compensation was approved, awarded, granted, payable or paid to the Covered Officer prior to, on or after the Effective Date: (i) direct repayment of Recoverable Incentive Compensation previously paid to the Covered Officer; (ii) cancelling prior cash or equity-based awards (whether vested or unvested and whether paid or unpaid); (iii) cancelling or offsetting against any planned future cash or equity-based awards; (iv) forfeiture of deferred compensation, subject to compliance with Code Section 409A; and (v) any other method authorized by applicable law or contract. Subject to compliance with any applicable law, the Administrator may effectuate recoupment under this Policy from any amount otherwise payable to the Covered Officer, including amounts payable to such individual under any otherwise applicable Company plan or program, *e.g.*, base salary, bonuses or commissions and compensation previously deferred by the Covered Officer. The Administrator need not utilize the same method of recovery for all Covered Officers or with respect to all types of Recoverable Incentive Compensation.

(e) No Indemnification of Covered Officers. Notwithstanding any indemnification agreement, applicable insurance policy or any other agreement or provision of the Company's certificate of incorporation or bylaws to the contrary, no Covered Officer shall be entitled to indemnification or advancement of expenses in connection with any enforcement of this Policy by the Company, including paying or reimbursing such Covered Officer for insurance premiums to cover potential obligations to the Company under this Policy.

(f) Indemnification of Administrator. Any members of the Administrator, and any other members of the Board who assist in the administration of this Policy, shall not be personally liable for any action, determination or interpretation made with respect to this Policy and shall be indemnified by the

Company to the fullest extent under applicable law and Company policy with respect to any such action, determination or interpretation. The foregoing sentence shall not limit any other rights to indemnification of the members of the Board under applicable law or Company policy.

(g) No "Good Reason" for Covered Officers. Any action by the Company to recoup or any recoupment of Recoverable Incentive Compensation under this Policy from a Covered Officer shall not be deemed (i) "good reason" for resignation or to serve as a basis for a claim of constructive termination under any benefits or compensation arrangement applicable to such Covered Officer, or (ii) to constitute a breach of a contract or other arrangement to which such Covered Officer is party.

5. Administration

Except as specifically set forth herein, this Policy shall be administered by the Administrator. The Administrator shall have full and final authority to make any and all determinations required under this Policy. Any determination by the Administrator with respect to this Policy shall be final, conclusive and binding on all interested parties and need not be uniform with respect to each individual covered by this Policy. In carrying out the administration of this Policy, the Administrator is authorized and directed to consult with the full Board or such other committees of the Board as may be necessary or appropriate as to matters within the scope of such other committee's responsibility and authority. Subject to applicable law, the Administrator may authorize and empower any officer or employee of the Company to take any and all actions that the Administrator, in its sole discretion, deems necessary or appropriate to carry out the purpose and intent of this Policy (other than with respect to any recovery under this Policy involving such officer or employee).

6. Severability

If any provision of this Policy or the application of any such provision to a Covered Officer shall be adjudicated to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Policy, and the invalid, illegal or unenforceable provisions shall be deemed amended to the minimum extent necessary to render any such provision or application enforceable.

7. No Impairment of Other Remedies

Nothing contained in this Policy, and no recoupment or recovery as contemplated herein, shall limit any claims, damages or other legal remedies the Company or any of its affiliates may have against a Covered Officer arising out of or resulting from any actions or omissions by the Covered Officer. This Policy does not preclude the Company from taking any other action to enforce a Covered Officer's obligations to the Company, including, without limitation, termination of employment and/or institution of civil proceedings. This Policy is in addition to the requirements of Section 304 of the Sarbanes-Oxley Act of 2002 ("***SOX 304***") that are applicable to the Company's Chief Executive Officer and Chief Financial Officer and to any other compensation recoupment policy and/or similar provisions in any employment, equity plan, equity award, or other individual agreement, to which the Company is a party or which the Company has adopted or may adopt and maintain from time to time; provided, however, that compensation recouped pursuant to this Policy shall not be duplicative of compensation recouped pursuant to SOX 304 or any such compensation recoupment policy and/or similar provisions in any such employment, equity plan, equity award, or other individual agreement except as may be required by law.

8. AMENDMENT; TERMINATION

The Administrator may amend, terminate or replace this Policy or any portion of this Policy at any time and from time to time in its sole discretion. The Administrator shall amend this Policy as it deems necessary to comply with applicable law or any Listing Standard.

9. SUCCESSORS

This Policy shall be binding and enforceable against all Covered Officers and, to the extent required by Rule 10D-1 and/or the applicable Listing Standards, their beneficiaries, heirs, executors, administrators or other legal representatives.

10. REQUIRED FILINGS

The Company shall make any disclosures and filings with respect to this Policy that are required by law, including as required by the SEC.

* * * * *

XOMA Corporation

Incentive Compensation Recoupment Policy

Form of Executive Acknowledgment

I, the undersigned, agree and acknowledge that I am bound by, and subject to, the XOMA Corporation Incentive Compensation Recoupment Policy, as may be amended, restated, supplemented or otherwise modified from time to time (the "***Policy***"). In the event of any inconsistency between the Policy and the terms of any employment agreement, offer letter or other individual agreement with XOMA Corporation (the "***Company***") to which I am a party, or the terms of any compensation plan, program or agreement, whether or not written, under which any compensation has been granted, awarded, earned or paid to me, the terms of the Policy shall govern.

In the event that the Administrator (as defined in the Policy) determines that any compensation granted, awarded, earned or paid to me must be forfeited or reimbursed to the Company pursuant to the Policy, I will promptly take any action necessary to effectuate such forfeiture and/or reimbursement. I further agree and acknowledge that I am not entitled to indemnification, and hereby waive any right to advancement of expenses, in connection with any enforcement of the Policy by the Company.

Agreed and Acknowledged:

_____

Name: _____

Title: _____

Date: _____