UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 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, 2021

or

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

For the transition period from to

Commission File Number 000-51122

EyePoint Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**26-2774444**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
480 Pleasant Street Watertown, MA	**02472**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (617) 926-5000

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 $0.001	EYPT	The Nasdaq Stock Market LLC (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 Section 15(d) of the Act. Yes ☐ No ☒

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

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

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

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

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

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

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

The aggregate market value of the common stock held by non-affiliates of the registrant, computed by reference to the closing price of the common stock on the Nasdaq Global Market on June 30, 2021, the last trading day of the registrant's most recently completed second fiscal quarter, was approximately $192,416,944.

There were 34,044,255 shares of the registrant's common stock, $0.001 par value, outstanding as of March 4, 2022.

DOCUMENTS INCORPORATED BY REFERENCE

Part III of this Annual Report on Form 10-K incorporates certain information by reference from the registrant's proxy statement for the 2022 annual meeting of stockholders to be filed no later than 120 days after the end of the registrant's fiscal year ended December 31, 2021.

EyePoint Pharmaceuticals, Inc.
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For the Fiscal Year Ended December 31, 2021
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Preliminary Note Regarding Forward-Looking Statements

Various statements made in this Annual Report on Form 10-K are forward-looking and involve risks and uncertainties. All statements that address activities, events or developments that we intend, expect or believe may occur in the future are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements give our current expectations or forecasts of future events and are not statements of historical or current facts. These statements include, among others, statements about:

- the potential for EYP-1901, as a six-month sustained delivery intravitreal anti-VEGF treatment targeting wet age-related macular degeneration ("wet AMD"), diabetic retinopathy ("DR") and retinal vein occlusion ("RVO");
- our expectations regarding the timing and outcome of Phase 2 clinical trials for EYP-1901 for the treatment of wet AMD, DR and RVO;
- our expectations regarding the timing and clinical development of our product candidates, including EYP-1901 and YUTIQ 50;
- the extent to which our business, the medical community and the global economy will continue to be materially and adversely impacted by the effects of the COVID-19 pandemic (the "Pandemic"), or by other pandemics, epidemics or outbreaks;
- our cash flow expectations from commercial sales of YUTIQ and DEXYCU;
- our ability to manufacture YUTIQ, DEXYCU, EYP-1901 or any future products or product candidates, in sufficient quantities and quality;
- our belief that our cash, cash equivalents, and investments in marketable securities of $211.6 million at December 31, 2021, and anticipated net cash inflows from product sales will fund our operating plan into the second half of 2024, under current expectations regarding the timing and outcomes of our Phase 2 clinical trials for EYP-1901;
- our ability to obtain additional capital in sufficient amounts and on terms acceptable to us, and the consequences of failing to do so;
- our future expenses and capital expenditures;
- our expectations regarding our ability to obtain and adequately maintain sufficient intellectual property protection for EYP-1901, YUTIQ, DEXYCU and YUTIQ 50 and any future products or product candidates, and to avoid claims of infringement of third-party intellectual property rights;
- our expectation that we will continue to incur significant expenses and that our operating losses and our net cash outflows to fund operations will continue for the foreseeable future;
- our expectations regarding our expanded commercial alliance with ImprimisRx for the sales and marketing of DEXYCU, and ImprimisRx's ability to execute on sales and marketing activities for the brand; and
- the effect of legal and regulatory developments.

Forward-looking statements also include statements other than statements of current or historical fact, including, without limitation, all statements related to any expectations of revenues, expenses, cash flows, earnings or losses from operations, cash required to maintain current and planned operations, capital or other financial items; any statements of the plans, strategies and objectives of management for future operations; any plans or expectations with respect to product research, development and commercialization, including regulatory approvals; any other statements of expectations, plans, intentions or beliefs; and any statements of assumptions underlying any of the foregoing. We often, although not always, identify forward-looking statements by using words or phrases such as "likely", "expect", "intend", "anticipate", "believe", "estimate", "plan", "project", "forecast" and "outlook".

The following are some of the factors that could cause actual results to differ materially from the anticipated results or other expectations expressed, anticipated or implied in our forward-looking statements:

- the extent to which the Pandemic impacts our business, the medical community and the global economy;
- the effectiveness and timeliness of our preclinical studies and clinical trials, and the usefulness of the data;
- our expectations regarding the timing and clinical development of our product candidates, including EYP-1901, and the potential for EYP-1901 as a six-month treatment for serious eye diseases, including wet AMD, DR and RVO;
- our ability to achieve profitable operations and access to needed capital;
- fluctuations in our operating results;
- our ability to successfully produce sufficient commercial quantities of YUTIQ and DEXYCU and to successfully commercialize YUTIQ and DEXYCU in the U.S.;
- our ability to sustain and enhance an effective commercial infrastructure and enter into and maintain commercial agreements for the commercialization of YUTIQ and DEXYCU;
- consequences of fluocinolone acetonide side effects for YUTIQ;

- consequences of dexamethasone side effects for DEXYCU;
- the success of current and future license and collaboration agreements, including our agreements with Ocumension Therapeutics ("Ocumension") and Equinox Science, LLC ("Equinox");
- our dependence on contract research organizations, contract sales organizations, vendors and investigators;
- effects of competition and other developments affecting sales of products;
- market acceptance of our products;
- protection of intellectual property and avoiding intellectual property infringement;
- product liability; and
- other factors described in our filings with the SEC.

We cannot guarantee that the results and other expectations expressed, anticipated or implied in any forward-looking statement will be realized. The risks set forth under Item 1A of this Annual Report on Form 10-K describe major risks to our business, and you should read and interpret any forward-looking statements together with these risks. A variety of factors, including these risks, could cause our actual results and other expectations to differ materially from the anticipated results or other expectations expressed, anticipated or implied in our forward-looking statements. Should known or unknown risks materialize, or should underlying assumptions prove inaccurate, actual results could differ materially from past results and those anticipated, estimated or projected in the forward-looking statements. You should bear this in mind as you consider any forward-looking statements.

Our forward-looking statements speak only as of the dates on which they are made. We do not undertake any obligation to publicly update or revise our forward-looking statements even if experience or future changes makes it clear that any projected results expressed or implied in such statements will not be realized.

DEXYCU®, YUTIQ®, and Durasert® are our trademarks. Retisert® and Vitrasert® are Bausch & Lomb's trademarks. ILUVIEN® is Alimera Sciences Inc.'s trademark. Verisome® is a trademark owned by Ramscor, Inc. and exclusively licensed to us. The reports we file or furnish with the SEC, including this Annual Report on Form 10-K, also contain trademarks, trade names and service marks of other companies, which are the property of their respective owners.

Risk Factor Summary

The risk factors summarized below could materially harm our business, operating results and/or financial condition, impair our future prospects and/or cause the price of our common stock to decline. For more information, see "Item 1A. Risk Factors" in this Annual Report on Form 10-K for the year ended December 31, 2021.

Material risks that may affect our business, operating results and financial condition include, but are not necessarily limited to, the following:

Risks Related To Our Financial Position and our Capital Resources

- We will likely need additional capital to fund our operations. If we are unable to obtain sufficient capital, we will need to curtail and reduce our operations and costs and modify our business strategy.
- We have incurred significant losses since our inception and anticipate that we will continue to incur losses for the foreseeable future.
- We may never achieve profitability from future operations.
- The ongoing novel coronavirus (COVID-19) pandemic has had and will likely continue to have a material and adverse impact on our business.
- We will need to raise additional capital in the future, which may not be available on favorable terms and may be dilutive to stockholders or impose operational restrictions.
- We must maintain compliance with the terms of our Credit Facilities or receive a waiver for any non-compliance. Our failure to comply with the covenants or other terms of the Credit Facilities, including as a result of events beyond our control, could result in a default under the SVB Loan Agreement that would materially and adversely affect the ongoing viability of our business.
- Our Loan Agreement contains restrictions that limit our flexibility in operating our business.
- Certain potential payments to the Lenders could impede a sale of our company.
- To service our indebtedness, we will require a significant amount of cash and our ability to generate cash depends on many factors beyond our control.

Risks Related To The Regulatory Approval And Clinical Development Of Our Product Candidates

- We are substantially dependent on the success of our lead product candidate, EYP-1901, which is in the early stages of development and must go through additional clinical trials, which are very expensive, time-consuming and difficult to design and implement. The outcomes of clinical trials are uncertain, and delays in the completion of or the termination of any clinical trial of EYP-1901 or our other product candidates could harm our business, financial condition and prospects.
- Clinical trial results may fail to support approval of EYP-1901 or our other product candidates.
- We may expend significant resources to pursue our lead product candidate, EYP-1901 for the potential treatment of wet AMD, and fail to capitalize on the potential of EYP-1901, or our other product candidates, for the potential treatment of other indications that may be more profitable or for which there is a greater likelihood of success.
- Initial results from a clinical trial do not ensure that the trial will be successful and success in early-stage clinical trials does not ensure success in later-stage clinical trials.
- We face risks related to health epidemics and outbreaks, including the Pandemic, which could significantly disrupt our preclinical studies and clinical trials.
- We may find it difficult to enroll patients in our clinical trials, which could delay or prevent clinical trials of our product candidates.
- We are largely dependent on the clinical and future commercial success of our lead product candidate, EYP-1901.

Risks Related To The Commercialization Of Our Products And Product Candidates

- Our current business strategy relies in part on our ability to successfully commercialize YUTIQ and DEXYCU in the U.S.
- We could be adversely affected by our exposure to customer concentration risk.
- Our products may become subject to unfavorable pricing regulations, third-party reimbursement practices or healthcare reform initiatives, including DEXYCU pass-through status, which could harm our business.
- If we fail to comply with reporting and payment obligations under the Medicaid Drug Rebate program or other governmental pricing programs, we could be subject to additional reimbursement requirements, penalties, sanctions, and fines which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.
- Even though regulatory approvals for YUTIQ and DEXYCU have been obtained in the U.S., we will still face extensive FDA regulatory requirements and may face future regulatory difficulties.
- Our relationships with physicians, patients and payors in the U.S. are subject to applicable anti-kickback, fraud and abuse laws and regulations. In addition, we are subject to patient privacy regulation by both the federal government and the states in which we conduct our business. Our failure to comply with these laws could expose us to criminal, civil and administrative sanctions, reputational harm, and could harm our results of operations and financial conditions.
- If any of our products have newly discovered or developed safety problems, our business would be seriously harmed.
- The Affordable Care Act and any changes in healthcare laws may increase the difficulty and cost for us to commercialize DEXYCU and YUTIQ in the U.S. and affect the prices we may obtain.

Risks Related To Our Intellectual Property

- If we are unable to protect our intellectual property rights or if our intellectual property rights are inadequate to protect our product candidates, our competitors could develop and commercialize technology and products similar to ours, and our competitive position could be harmed.
- We may become involved in lawsuits to protect or enforce our patents or the patents of our licensors, which could be expensive, time consuming and unsuccessful.
- We may not be able to protect our intellectual property rights throughout the world.
- Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.
- Third parties may initiate legal proceedings alleging that we are infringing their intellectual property rights, the outcome of which could be uncertain and could harm our business.
- Our competitors may be able to circumvent our patents by developing similar or alternative technologies or products in a non-infringing manner.
- Changes in either U.S. or foreign patent law or interpretation of such laws could diminish the value of patents in general, thereby impairing our ability to protect our products or product candidates.
- We may be subject to claims asserting that our employees, consultants, independent contractors and advisors have wrongfully used or disclosed confidential information and/or alleged trade secrets of their current or former employers or claims asserting ownership of what we regard as our own intellectual property.
- Intellectual property rights do not prevent all potential threats to competitive advantages we may have.
- If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.

- If our trademarks are not adequately protected, then we may not be able to build name recognition in our markets of interest and our business may be adversely affected.

Risks Related To Our Reliance On Third Parties

- The development and commercialization of our lead product candidate, EYP-1901, is dependent on intellectual property we license and API supply of vorolanib from Equinox Science. If we breach our agreement with Equinox or the agreement is terminated, we could lose license rights or API supply of vorolanib that are material to our business.
- If we are unable to maintain our agreement with ImprimisRx to co-promote DEXYCU, we may be unable to generate significant revenue from this product.
- If we encounter issues with our CMOs or suppliers, we may need to qualify alternative manufacturers or suppliers, which could impair our ability to sufficiently and timely manufacture and supply DEXYCU.
- We use our own facility for the manufacturing of YUTIQ, and rely on third party suppliers for key components and any disruptions to our operations or to the operations of our suppliers could adversely affect YUTIQ's commercial viability.

Risks Related To Ownership Of Our Common Stock

- The trading price of the shares of our common stock has been highly volatile, and purchasers of our common stock could incur substantial losses.
- EW Healthcare and Ocumension own a substantial amount of our common stock and can exert significant control over matters subject to stockholder approval, which would prevent new investors from influencing significant corporate decisions.
- Certain covenants related to our share purchase agreement with Ocumension may restrict our ability to obtain future financing and cause additional dilution for our stockholders.

ITEM 1. BUSINESS

Overview

We are a pharmaceutical company committed to developing and commercializing innovative therapeutics to help improve the lives of patients with serious eye disorders.

Our pipeline leverages our proprietary Durasert® technology for sustained intraocular drug delivery including EYP-1901, a potential six-month anti-VEGF treatment initially targeting wet age-related macular degeneration ("wet AMD"), the leading cause of vision loss among people 50 years of age and older in the United States. We also have two commercial products: YUTIQ®, a once every three-year treatment for chronic non-infectious uveitis affecting the posterior segment of the eye, and DEXYCU®, a single dose treatment for postoperative inflammation following ocular surgery. We are also advancing YUTIQ 50, a potential six-month treatment for non-infectious uveitis affecting the posterior segment of the eye, one of the leading causes of blindness under a supplemental New Drug Application ("sNDA") strategy.

Local drug delivery for treating ocular diseases is a significant challenge due to the effectiveness of the blood-eye barrier. This barrier makes it difficult for systemically-administered drugs to reach the eye in sufficient quantities to have a beneficial effect without causing unacceptable adverse side effects to other organs. Our validated Durasert technology, which has already been included in four products approved for marketing by the U.S. Food and Drug Administration ("FDA"), is designed to provide consistent, sustained intravitreal delivery of small molecule drugs over a period of months to years through a single intravitreal injection.

Our lead product candidate, EYP-1901, combines a bioerodible formulation of our proprietary Durasert technology with vorolanib, a tyrosine kinase inhibitor ("TKI") that has demonstrated anti-VEGF activity. Current FDA approved anti-VEGF treatments for wet AMD require monthly or bi-monthly intravitreal injections in a physician's office which can cause inconvenience and often lead to reduced compliance and poor outcomes. We are currently evaluating EYP-1901 in a Phase 1 clinical trial as a potential six-month sustained delivery treatment for wet AMD and we reported positive interim six-month safety and efficacy data in November 2021. In February 2022, we updated the results of the DAVIO clinical trial through 8-months reporting continued positive safety and efficacy results. We expect to initiate a Phase 2 clinical trial in wet AMD in the third quarter of 2022 and a Phase 2 clinical trial in DR in the second half of 2022 with initial top-line data for the wet AMD clinical trial anticipated in second half of 2023.

YUTIQ® (fluocinolone acetonide intravitreal implant) 0.18 mg for intravitreal injection, is a non-erodible intravitreal implant containing fluocinolone acetonide ("FA") lasting for up to 36 months and is indicated for the treatment of chronic non-infectious uveitis affecting the posterior segment of the eye. This disease affects between 60,000 to 100,000 people each year in the U.S., causes approximately 30,000 new cases of blindness every year and is the third leading cause of blindness. YUTIQ utilizes our proprietary Durasert® sustained-release drug delivery technology platform.

DEXYCU® (dexamethasone intraocular suspension) 9%, for intraocular administration, is indicated for the treatment of post-operative ocular inflammation, with our primary focus on its use immediately following cataract surgery as a single dose treatment. DEXYCU utilizes our proprietary Verisome® drug-delivery technology. In December 2021, we announced that our commercial alliance partner, ImprimisRx, assumed responsibility for all sales and marketing activity for DEXYCU beginning on January 1, 2022.

We are also developing YUTIQ 50 as a potential six-month treatment for chronic non-infectious uveitis affecting the posterior segment of the eye. We dosed the first patient in a Phase 3 clinical trial in November 2021.

We also expect to identify and evaluate additional product candidates through clinical and regulatory development. This may be accomplished through internal discovery efforts, potential research collaborations and/or in-licensing arrangements with partner molecules and potential acquisitions of additional ophthalmic products, product candidates or technologies that complement our current product portfolio.

The ongoing coronavirus (COVID-19) pandemic (the "Pandemic") has had a material and adverse impact on our business, including as a result of measures that we, other businesses, and government have taken and will likely continue to take. This includes a significant impact on cash flows from expected revenues due to the closure of ambulatory surgery centers for DEXYCU and a significant reduction in physician office visits impacting YUTIQ. The ongoing Pandemic continued to have an adverse impact on our revenues, financial condition and cash flows through 2021. For the year ended December 31, 2021, we recorded impairment charges of $1.2 million to cost of sales, excluding amortization of acquired intangible assets and $0.1 million to sales and marketing expense, respectively, associated with the write-off of obsolete inventory of DEXYCU units and DEXYCU sample units, respectively, whose inventory levels were higher than our updated forecasts of future demand for those units. Additionally, the emergence of the Omicron variant and the continued Pandemic continue to have an adverse impact on our revenues, financial condition and cash flows into the first quarter of 2022 and may continue to cause intermittent or prolonged periods of reduced patient services at our customers'

facilities, which may negatively affect customer demand. The progression of the Pandemic and its effects on our business and operations are uncertain at this time. Depending on the future developments that are uncertain and difficult to predict, including new information that may emerge concerning the Pandemic, our revenues, financial condition and cash flows may be adversely affected in the future as well. We are continuously monitoring the Pandemic and its potential effect on our financial position, results of operations and cash flows.

Our Pipeline and Commercial Products

The following table describes the stage of each of our programs:

DURASERT® PROGRAMS	STATUS	PARTNER
EYP-1901 Potential 6-month anti-VEGF treatment for; - wet AMD - diabetic retinopathy - retinal vein occlusion	 Phase 2 planned – Q3 2022 Phase 2 planned – 2H 2022 Phase 2 planned - 2023	Not partnered, except China, Hong Kong, Taiwan and Macau are obligated to future licensure with vorolanib partner, Equinox
YUTIQ 50 Potential six-month treatment for chronic noninfectious uveitis affecting the posterior segment	Phase 3	Not partnered
COMMERCIAL PROGRAMS	STATUS	PARTNER
YUTIQ® - Chronic non-infectious uveitis affecting the posterior segment of the eye	Commercial	Ocumension - Asia Alimera -EU, Middle East, Canada, Australia and New Zealand
DEXYCU® - Treatment of inflammation following ocular surgery	Commercial	ImprimisRx – USA Ocumension - Asia

Strategy

Our strategy is to become a leading pharmaceutical company commercializing innovative therapeutics to help improve the lives of patients with serious eye disorders. The key elements of our strategy include:

- **Advance EYP-1901** through clinical development for wet AMD.
- **Advance EYP-1901** through clinical development in additional indications, including DR and RVO.
- **Advance YUTIQ 50** through clinical development under a potential sNDA filing as a six-month sustained delivery treatment for chronic non-infectious uveitis affecting the posterior segment of the eye.
- **Identify and in-license, partner or acquire** additional transformative ophthalmology products to build long-term stockholder value targeting programs that can utilize our Durasert technology.
- **Grow commercial product revenues** for both YUTIQ and DEXYCU in the U.S. and reach franchise break-even financial performance.
- **Leverage our Durasert and Verisome drug delivery technologies** through research collaborations and out-licenses with other pharmaceutical and biopharmaceutical companies, institutions and other organizations. We believe these technologies can provide sustained, targeted delivery of therapeutic agents, resulting in improved therapeutic effectiveness, safer administration and better patient compliance and convenience, with reduced product development risk and cost.

The Unmet Need in the Treatment of Eye Disease

We are primarily focused on diseases affecting the posterior segment of the eye, particularly retinal diseases. Diseases of the retina of the eye include conditions such as wet AMD, DR, and RVO. These diseases share an underlying propensity to cause leakage from either pre-existing damaged blood vessels or new vessels (neovascularization) in the back of the eye, that, if untreated, can lead to severe visual loss. We also have an FDA-approved corticosteroid implant called YUTIQ which is indicated in chronic non-infectious uveitis a posterior segment eye disease.

These conditions can lead to retinal damage, scarring and irreversible loss of vision. Most of these diseases are treated locally with intravitreal injections. However, there are several limitations of frequent intravitreal injections. First, these injections can be uncomfortable and may, in rare cases, cause infection or severe bleeding inside the eye. The most significant issue with intravitreal injections of anti-VEGF medications for diseases like wet AMD and DR, however, is the frequency and duration of the therapy. Many patients with retinal or other posterior segment diseases such as non-infectious uveitis require lifelong treatment. Further, most ocular drugs are delivered via a bolus injection that requires monthly or bi-monthly re-injections. Because of this intense and long lasting therapeutic regimen, interruptions in therapy can result in disease reactivation and permanent visual loss. Thus, monthly or bi-monthly injections are not an effective long term means of delivering a steady state dose to the site of disease for many patients. Finally, the risk of patient non-compliance increases when treatment involves multiple products or complex or painful dosing regimens, as patients age or suffer cognitive impairment or serious illness, or when the treatment is lengthy or expensive.

Drug delivery for treating ophthalmic diseases in posterior segments of the eye is a significant challenge. Due to the effectiveness of the blood-eye barrier, it is difficult for systemically (orally or intravenously) administered drugs to reach the retina in sufficient quantities to have a beneficial effect without causing adverse side effects to other parts of the body.

Due to the drawbacks of frequent intravitreal injections, we believe the development of methods to deliver drugs to patients in a more precise, micro dose zero order release kinetics over longer periods of time with Durasert can satisfy a large patient and physician unmet medical need. In addition, with less frequent injections, we believe patients will be able to comply better with their prescribed treatment regimen as the burden of having to frequently go into the physician's office for eye injections, usually over a lifetime after diagnosis, presents issues for patients.

Durasert Technology Platform

Our Durasert technology platform uses proprietary sustained release technology to deliver drugs over periods of weeks, months or years through a single intravitreal injection. To date, four products utilizing successive generations of the Durasert technology have been approved by the FDA. In addition to our own YUTIQ, these products include ILUVIEN (FA intravitreal implant) 0.19 mg, licensed to Alimera Sciences Inc. ("Alimera"), and Retisert® (FA intravitreal implant) 0.59 mg and Vitrasert® (ganciclovir) 4.5 mg, which are both licensed to Bausch & Lomb. The earlier ophthalmic products that utilize the Durasert technology, Retisert and Vitrasert, are surgically implanted; ILUVIEN and YUTIQ were designed to be injected during a physician office visit.

The Durasert technology platform creates a solid, injectable, sustained release insert of a small molecule compound that can deliver a drug for periods of weeks, months or years. The current FDA-approved Durasert products utilize the non-erodible formulation of Durasert. For these products, the drug core matrix is coated with one or more polymer layers, and the permeability of those layers and other design aspects control the rate and duration of drug release. By changing elements of the design, we can alter both the rate and duration of release to meet different therapeutic needs.

Our Durasert technology platform is designed to provide sustained delivery of drugs for ophthalmic diseases and conditions with the following features:

- *Extended Delivery*. The delivery of drugs for predetermined periods of time ranging from months to years. We believe that uninterrupted, sustained delivery offers the opportunity to develop products that reduce the need for repeated applications, thereby reducing the risks of patient noncompliance and adverse effects from repeated administrations.
- *Controlled Release Rate*. The release of therapeutics at a zero-order kinetics controlled rate. We believe that this feature allows us to develop products that deliver optimal concentrations of therapeutics over time and eliminate excessive variability in dosing during treatment.
- *Local Delivery*. The delivery of therapeutics directly to a target site. We believe this administration can allow the natural barriers of the body to isolate and assist in maintaining appropriate concentrations at the target site to achieve the maximum therapeutic effect while minimizing unwanted systemic effects.

Our Product Candidates

EYP-1901 for wet AMD, DR and RVO

EYP-1901 is a potential six-month sustained delivery anti-VEGF treatment that utilizes a bioerodible formulation of the Durasert technology with vorolanib, a TKI that has demonstrated anti-VEGF activity. The bioerodible formulation eliminates the non-erodible polymer coating allowing the body to absorb the drug core matrix and potentially allow for regular re-injection.

Vorolanib, the active drug candidate in EYP-1901, is a small molecule TKI that blocks all 3 isoforms of VEGFR, the main driver of the proliferation of blood vessels that are the hallmark of wet AMD. Vorolanib has been previously studied in Phase 1 and 2 clinical trials by Tyrogenix, Inc. ("Tyrogenix") as an orally delivered therapy for the treatment of wet AMD and data from these trials demonstrated a positive clinical signal. Although the Phase 2 clinical trial was discontinued due to systemic toxicity, no significant ocular adverse events were observed in either clinical trial.

Market Opportunity in wet AMD

Wet AMD occurs when new, abnormal blood vessels grow under the retina. These vessels may leak blood or other fluids, causing scarring of the macula. This form of AMD is less common but much more serious. AMD is one of the major causes of vision loss of the total vision impairment globally.

As the proportion of people in the U.S. age 65 and older grows larger, more people are developing age-related diseases such as AMD. From 2000-2010, the number of people with AMD grew 18 percent, from 1.75 million to 2.07 million. By 2050, the estimated number of people with AMD is expected to more than double from 2.07 million to 5.44 million. White Americans are expected to continue to account for the majority of cases. However, Hispanics are expected to account for the greatest rate of increase, with a nearly six-fold rise in the number of expected cases from 2010 to 2050.

Age is the greatest risk factor for developing AMD and individuals aged 50+ are more prone to the disease. Among all AMD patients in the United States, wet AMD accounts for only 10% of cases, yet it alone accounts for 90% of legal blindness.

There are several effective and safe treatments for wet AMD available on the market, including anti-VEGF intravitreal injectable drugs marketed under the brands names Lucentis, Eylea, Beovu, and Avastin (off label use). However, these treatments must be injected in a physician's office either monthly, bi-monthly or every three months, which can cause inconvenience and discomfort and often lead to reduced compliance and poor outcomes. The branded drug, SUSVIMO™, a port delivery technology for ranibizumab, was approved by the FDA in 2021 and requires an initial surgical placement of the port. The recommended dose of SUSVIMO (ranibizumab injection) is 2 mg continuously delivered via the SUSVIMO implant with refills approximately every 6 months. In January 2022, the FDA approved faricimab (VABYSMO®), an intravitreal bispecific antibody angiopoietin-2 ("Ang-2") and vascular endothelial growth factor A ("VEGF-A") inhibitor. Results from two Phase 3 studies in wet AMD showed that by week 48, nearly 80% of the patients in the faricimab arm had achieved a 12- or 16-week treatment interval, and in particular 45% achieved a 16-week interval.

Separate published studies using real world data (one study in the U.S. and another that includes Canada, France, Germany, Ireland, Italy, the Netherlands, UK and Venezuela) indicate that despite initial efficacy, approved wet AMD treatments still result in vision loss over time.

We believe that EYP-1901, as a potential six-month sustained delivery maintenance therapy, has the potential to offer wet AMD sufferers a convenient and effective treatment option, if approved.

Market Opportunity in DR

DR is a frequent complication of diabetes mellitus. Slow but progressive changes in the small blood vessels of the retina may cause no symptoms or only mild vision problems in early stages. As the disease progresses, retina bleeding and fluid accumulation can eventually lead to blindness. Diabetes is the leading cause of new cases of blindness in adults. This is a growing problem as the number of people living with diabetes increases, so does the number of people with impaired vision due to DR.

The central retina area that is located between the main branches (superior and inferior arcades) of the central retinal vessels in the eye is known as the "macular area". The retina beyond this is considered "peripheral retina". The central retinal area can develop abnormal findings in DR. These findings can be present in the non-proliferative or the proliferative forms of the disease. These changes in the macula include the presence of abnormally dilated small vessel outpouchings (called microaneurysms), retinal bleeding (retinal hemorrhages) and yellow lipid and protein deposits (hard exudates). The macula can get thicker than normal, referred to as macular edema (DME).

Non-proliferative retinopathy ("NPDR") can be classified into mild, moderate or severe stages based upon the presence or absence of retinal bleeding, abnormal venous beading of the vessel wall (venous beading) or abnormal vascular findings (intraretinal microvascular anomalies or "IRMA"). No treatment is usually done at this stage. Proliferative retinopathy ("PDR") is progressive and requires treatment to prevent bleeding and scar tissue formation. Macular edema is a complication of DR and is a major cause of vision loss in a diabetic eye.

Market Opportunity in RVO

RVO is a common cause of vision loss in older individuals with over 90% of cases occurring in patients over the age of 55 years. It is the second most common retinal vascular disease after DR. In 2015, the global prevalence of BRVO and CRVO in people aged 30-89 years was 0.64% and 0.13%, translating to a total of 23.38 million and 4.67 million affected individuals respectively. As in wet AMD, the hypoxic retinal tissue in RVO releases VEGF and inflammatory mediators, thereby inducing the complication of macular edema, a cause of significant visual acuity loss.

Clinical Development

The IND application for EYP-1901 was filed with the FDA in December 2020 in support of initiation of a Phase 1 clinical trial in wet AMD patients. We enrolled the first patient dosed in the Phase 1 DAVIO clinical trial in January 2021 and announced the completion of enrollment in May 2021.

The Phase 1 DAVIO clinical trial is a dose escalation trial that enrolled 17 wet AMD patients across 4 separate doses. The primary endpoint of the trial is safety, and key secondary endpoints are best corrected visual acuity ("BCVA") and central subfield thickness.

In November 2021, we reported positive interim six-month safety and efficacy data for the DAVIO clinical trial. There were no ocular Serious Adverse Events ("SAEs") reported, no drug-related systemic SAEs reported and all ocular adverse events ("AEs") were ≤ grade 2; the only grade 3 AE was not drug-related. Regarding efficacy, stable visual acuity ("VA") and optical coherence tomography ("OCT") and a clinically significant reduction in treatment burden of 79% was observed with the median time to rescue was 6 months. The six-month interim data also reported that 53% of patients in the trial did not require a supplemental anti-VEGF treatment up-to the six-month visit.

In February 2022, we updated the results of the DAVIO clinical trial through 8-months reporting continued positive safety and efficacy results. This included a continuation of a clinically significant reduction in treatment burden of 75% at 8 months. The eight-month interim data also reported that 41% of patients in the trial did not require a supplemental anti-VEGF treatment up-to the nine-month visit.

A randomized controlled Phase 2 trial for EYP-1901 for wet AMD is anticipated to initiate in the third quarter of 2022. This trial is expected to enroll approximately 144 patients across three arms comprised of two separate doses of EYP-1901 with an aflibercept control. We also anticipate leveraging Phase 1 clinical findings and observations around biomarkers to refine Phase 2 clinical trial design. In addition, a Phase 2 trial in DR is expected to initiate in the second half of 2022 following the initiation of the Phase 2 wet AMD trial.

Intellectual Property

In February 2020, we entered into an Exclusive License Agreement with Equinox Science, LLC ("Equinox"), pursuant to which Equinox granted us an exclusive, sublicensable, royalty-bearing right and license to certain patents and other Equinox intellectual property to research, develop, make, have made, use, sell, offer for sale and import the compound vorolanib and any pharmaceutical products comprising the compound for the prevention or treatment of wet AMD, DR and RVO using our proprietary localized delivery technologies, in each case, throughout the world except China, Hong Kong, Taiwan and Macau (the "Territory").

In consideration for the rights granted by Equinox, we (i) made a one time, non-refundable, non-creditable upfront cash payment of $1.0 million to Equinox in February 2020, and (ii) agreed to pay milestone payments totaling up to $50 million upon the achievement of certain development and regulatory milestones, consisting of (a) completion of a Phase 2 clinical trial for the compound or a licensed product, (b) the filing of a new drug application or foreign equivalent for the compound or a licensed product in the United States, European Union or United Kingdom and (c) regulatory approval of the compound or a licensed product in the United States, European Union or United Kingdom.

We also agreed to pay Equinox tiered royalties based upon annual net sales of licensed products in the Territory. The royalties are payable with respect to a licensed product in a particular country in the Territory on a country-by-country and licensed product-by-licensed product basis until the later of (i) twelve years after the first commercial sale of such licensed product in such country and (ii) the first day of the month following the month in which a generic product corresponding to such licensed product is launched in such country (collectively, the "Royalty Term"). The royalty rates range from the high-single digits to low-double digits depending on the level of annual net sales. The royalty rates are subject to reduction during certain periods when there is no valid patent claim that covers a licensed product in a particular country.

In August 2021, we entered into an Asset Purchase Agreement with Aerpio Pharmaceuticals Inc. ("Aerpio"), pursuant to which we acquired all right title and interest in and to certain US and ex-US patents and applications relating to certain Tie-2 activating molecules for a one-time cash payment of $450,000. The assets we acquired from Aerpio included hundreds of patents and applications.

YUTIQ 50

YUTIQ 50 is a potential six-month sustained delivery treatment for chronic non-infectious uveitis affecting the posterior segment of the eye, using the same non-erodible Durasert formulation and steroid (FA) as in YUTIQ. This program is designed to offer an intravitreal micro insert with a shorter delivery period, providing physicians with flexibility for multiple dosing intervals. Our market research has indicated a strong preference amongst those physicians surveyed for a six to nine-month drug delivery product in addition to the three-year drug delivery option provided by YUTIQ. Although we believe many patients would likely opt for a longer-acting treatment option, some doctors may prefer to initially treat their uveitis patients over shorter time periods.

We dosed the first patient in a Phase 3 clinical trial in November 2021. This trial is a prospective, randomized trial comparing a single injection of YUTIQ 50 compared to sham injection. The trial includes 60 patients (30 active + 30 sham) with chronic uveitis (all non-infections etiologies, including post-operative). Its primary endpoint is rate of uveitis recurrence at 6 months post-injection. We will provide additional information on the expected timing of the data release when available.

Our Commercial Products

YUTIQ®

YUTIQ (fluocinolone acetonide intravitreal implant or "FA" 0.18 mg) for intravitreal injection, was approved by the FDA in October 2018 and we commercially launched YUTIQ in the U.S. in February 2019. YUTIQ is indicated for the treatment of chronic non-infectious uveitis affecting the posterior segment of the eye. YUTIQ is a once every three-year treatment utilizing a nonerodable formulation of our proprietary Durasert technology that is administered during a physician office visit.

In addition to commercialization of YUTIQ in the U.S., we have licensed (i) regulatory, reimbursement and distribution rights to the product to Alimera for Europe, Middle East, and Africa ("EMEA") under its ILUVIEN tradename and (ii) clinical development, regulatory, reimbursement and distribution rights to Durasert FA to Ocumension Therapeutics ("Ocumension") for Mainland China, Hong Kong, Macau, Taiwan, South Korea and other jurisdictions across Southeast Asia.

Market Opportunity

Chronic non-infectious uveitis affecting the posterior segment of the eye is an inflammatory disease that afflicts people of all ages, producing swelling and destroying eye tissues, which can lead to severe vision loss and blindness. This disease affects between 60,000 to 100,000 people each year in the U.S. and causes approximately 30,000 new cases of blindness every year. The standard of care treatment for this disease typically involves the use of short-acting corticosteroids to reduce uveitic flares followed by additional treatments of sustained release, lower dose steroids to minimize the risk of further flares.

Recent Clinical Development Highlights

CALM real world registry study is ongoing and collecting real world data on YUTIQ for the Treatment of Chronic Non-Infectious Uveitis Affecting the Posterior Segment. There were two initial baseline posters presented at the American Society of Retina Specialists ("ASRS") and Retina Society conferences in 2021. Additional data will be analyzed and presented or published as the study continues and the data are analyzed.

A Phase 4 Study, the SYNCRONICITY study, of YUTIQ® (fluocinolone acetonide intravitreal implant) 0.18 mg in the Treatment of Chronic Non-Infectious Posterior Segment Uveitis is expected to start in the first quarter of 2022. This is a 2-year, prospective, open-label, uncontrolled, safety and efficacy study. Its objective is to evaluate the safety and efficacy of YUTIQ® for the management of chronic non-infectious posterior segment uveitis that has responded to previous steroid therapy. We plan to enroll approximately 125 subjects with at least 100 subjects expected to complete 2 years of follow-up. The primary efficacy endpoints will be evaluated at 6 months and will be as follows: 1) Mean change from baseline in BCVA letter score in the study eye measured by Early Treatment Diabetic Retinopathy Study ("ETDRS") visual acuity charts and 2) Mean change from baseline central subfield thickness ("CST", also known as central foveal thickness) measured by spectral domain optical coherence tomography ("SD-OCT") in the study eye.

Intellectual Property

We own the rights for YUTIQ® in the U.S. and all foreign jurisdictions and have licensed these rights in EMEA and Mainland China, Hong Kong, Macau and Taiwan. In August 2020, we expanded the out-license agreement with Ocumension to include South Korea and other jurisdictions across Southeast Asia. We have patent rights for YUTIQ® in the U.S. through at least August 2027 and internationally through dates ranging from October 2024 to May 2027.

Sales and Marketing

YUTIQ was granted a permanent and specific J-code by the Centers for Medicare & Medicaid Services ("CMS"), effective October 1, 2019. Approximately 19 Key Account Managers ("KAMs") are dedicated to calling on uveitis and retinal specialists across the U.S. as of February 28, 2022.

In 2020, the retinal and uveitis markets were impacted by the Pandemic as most teaching hospitals and many independent practices significantly reduced the patient access and flow into the clinics. As a result, many patients were unable to receive the treatments needed to control the inflammatory disease in a timely manner. We started to see customer demand return in the third and fourth quarter of 2020.

In 2021, the pandemic continued to impact the ability of KAMs to promote YUTIQ, especially in the institutional segment. However, there was a significant expansion of utilization in the retinal segment and the fourth quarter of 2021 saw record sales and customer demand.

DEXYCU®

DEXYCU (dexamethasone intraocular suspension) 9%, for intraocular administration, was approved by the FDA in February 2018 for the treatment of post-operative ocular inflammation and commercially launched in the U.S. in March 2019 with a primary focus on its use immediately following cataract surgery. DEXYCU is administered as a single dose directly into the surgical site at the end of ocular surgery and is the first long-acting intraocular product approved by the FDA for the treatment of post-operative inflammation. DEXYCU utilizes our proprietary Verisome® drug-delivery technology, which allows for a single intraocular injection that releases dexamethasone, a corticosteroid, for up to 22 days.

Market Opportunity

DEXYCU is approved for ocular post-surgical inflammation. The initial market we have focused on for DEXYCU is post-operative inflammation associated with cataract surgery as there were approximately 3.8 million cataract surgeries performed in 2018 in the U.S.

Prior to the launch of DEXYCU, the standard of care for post-operative reduction of inflammation and pain in cataract surgery had been a combination of steroid, antibiotic and non-steroidal eye drops administered multiple times each day over a period of several weeks.

Recent Clinical Development Highlights

Retrospective study data were presented at the Association for Research in Vision and Ophthalmology (“ARVO”) and American Society of Cataract and Refractive Surgery (“ASCRS”) 2021. This completed study was a multicenter retrospective study of real world data from use of DEXYCU. ARVO 2021 data from this study highlighted real world data in patients with a history of glaucoma treated with DEXYCU for inflammation control following cataract surgery. Anti-inflammatory efficacy, as measured by anterior chamber cell (“ACC”) count clearing and safety with regard to intraocular pressure (“IOP”) elevation were similar in patients with glaucoma to the full study population.

Intellectual Property

We own the worldwide rights to all indications for DEXYCU® and in January 2020 we out-licensed clinical development, regulatory, reimbursement and distribution rights to Ocumension for the product in Mainland China, Hong Kong, Macau and Taiwan. In August 2020, we expanded the out-license agreement with Ocumension to include South Korea and other jurisdictions across Southeast Asia.

Sales and Marketing

Effective January 1, 2022, our commercial alliance partner, ImprimisRx, assumed responsibility for all sales and marketing activities for DEXYCU in the U.S. and absorbed the majority of our DEXYCU commercial organization. We will continue to recognize net product revenue and maintain manufacturing and distribution responsibilities for DEXYCU along with non-sales related regulatory compliance. We will pay ImprimisRx a commission based on the net sales of DEXYCU and will retain all commercial rights and the NDA for DEXYCU. ImprimisRx is utilizing their internal sales representatives and their numerous indirect representatives to promote DEXYCU to their existing cataract surgery customers.

In October 2018, DEXYCU was granted “pass through status” by the CMS that provides for reimbursement of DEXYCU separate from the cataract procedure payment bundle for a 3-year period. The 3-year period commenced in April 2019, the quarter that the first claim for reimbursement for DEXYCU was made with CMS and will expire in March 2022. In addition, in November 2018, CMS assigned a specific and permanent J-code for DEXYCU, effective January 1, 2019, that enabled reimbursement across all types of payers. In the 2022 CMS Hospital Outpatient Prospective Payment System Final Rule, which was released in November of 2021, CMS decided that DEXYCU would receive adjusted separate payment for nine months equivalent to an extension of pass through status through December 31, 2022 as a result of the Public Health Emergency which limited access to many therapies provided in the ASC or outpatient setting.

The impact of the Pandemic has been significant on the cataract market as elective surgeries were completely eliminated or vastly reduced in many parts of the country for extended periods of time in 2020. We started to see customer demand return in the third and fourth quarter of 2020. In 2021, cataract procedures returned to near normal levels in most areas until the outbreak of the Omicron variant. Several states, localities, and health systems again recommended postponing some elective surgeries which impacted access to cataract procedures in the fourth quarter of 2021. At this time, it is unknown how long the Pandemic will continue to impact patient access to these procedures.

Manufacturing

The FDA regulates the quality of pharmaceuticals very carefully. The main regulatory standard for ensuring pharmaceutical quality is the Current Good Manufacturing Practice ("cGMPs") regulation for human pharmaceuticals. Manufacturing of our clinical trial materials ("CTM") and of our commercial products is subject to these cGMPs which govern record-keeping, manufacturing processes and controls, personnel, quality control and quality assurance, among other activities. Incoming raw materials and components from suppliers are inspected upon arrival according to pre-specified criteria prior to use in the CTM or the commercial product. During product manufacture, in-process tests are conducted on intermediate products according to pre-specified criteria; testing is finally conducted on the finished product prior to its release. Our systems and our contractors are required to comply with cGMP requirements, and we assess compliance regularly through performance monitoring and audits.

EYP-1901

Production, assembly, and packaging of EYP-1901 CTM is done in the Class 10,000 clean room located at our Watertown, MA facility. We source the active pharmaceutical ingredient ("API") vorolanib from Equinox and various raw materials and components for both EYP-1901 and its injector from third-party vendors. Our agreements with Equinox and these third parties include confidentiality and intellectual property provisions to protect our proprietary rights related to EYP-1901.

YUTIQ 50

Production, assembly, and packaging of YUTIQ 50 CTM is done in the Class 10,000 clean room located at our Watertown, MA facility. We utilize the same vendors for YUTIQ 50 materials and components as for YUTIQ, as described below.

YUTIQ

Production, assembly and packaging of YUTIQ is done in the Class 10,000 clean room located at our Watertown, MA facility. We source the API and various raw materials and components for YUTIQ from third-party vendors. Our agreements with these third parties include confidentiality and intellectual property provisions to protect our proprietary rights related to YUTIQ.

DEXYCU

We currently use a contract manufacturer for the commercial supply of DEXYCU. A separate contract manufacturer provides kitting and packaging of the finished product, and other vendors provide sterilization, testing and storage services. Our agreements with these third parties include confidentiality and intellectual property provisions to protect our proprietary rights related to DEXYCU. We require our contract manufacturers to operate in accordance with cGMPs and all other applicable laws and regulations. We employ personnel with extensive technical, manufacturing, analytical and quality experience to oversee contract manufacturing and testing activities, and to compile manufacturing and quality information for our regulatory submissions.

U.S. Sales and Marketing

We launched YUTIQ and DEXYCU in the U.S. during the first quarter of 2019 utilizing a contract sales organization ("CSO") model. This model involved the hiring of sales and marketing leadership professionals providing oversight and leadership to the CSO teams. We were able to utilize CSO installed systems and processes for, *inter alia*, regulatory filings, data tracking, field incentive compensation, training, hiring of KAMS, territory sizing / alignment, sample tracking, and customer relationship management systems. In January 2020, the YUTIQ KAMs were converted to full-time employees from our CSO, and in October of 2020 the DEXYCU KAMs were converted to full-time employees.

Members of our sales and marketing leadership team have extensive commercialization experience with ophthalmic products at previous companies. We have 19 KAMS selling YUTIQ as of February 28, 2022.

Effective January 1, 2022, our commercial alliance partner, ImprimisRx, assumed responsibility for all sales and marketing activities for DEXYCU in the U.S. and absorbed the majority of our DEXYCU commercial organization.

U.S. Market Access and Payer Reimbursement

In 2018 we recruited a team of highly experienced personnel to form our market access team. The team is comprised of our VP of Market Access and Government Affairs, Assoc. Director of Patient Access, Director of National Accounts ("NAD"), and Field Reimbursement Managers ("FRMs") who handle the reimbursement for both YUTIQ and DEXYCU. Their roles include the discussions with payers regarding the costs and benefits of our products for their members; assisting with the addition of our products to the medical policy of payers; and providing the market with assistance regarding reimbursement queries.

We have initiated a patient assistance platform called EyePoint Assist^{SM} to provide co-pay and coinsurance relief for eligible commercial patients.

Reimbursement for YUTIQ is obtained using a permanent J code, established October 1, 2019, which enables reimbursement from both Medicare and commercial payers. DEXYCU has three-year pass through status with Medicare whereby it is routinely reimbursed for Medicare Part B patients. The issuance of a specific and permanent J code for DEXYCU in November 2018 has enabled our market access team to work with non-Medicare payers with regard to adding DEXYCU to their medical policies. We believe that products that are reimbursable using a specific J code (as opposed to a C code or miscellaneous J code) are simpler for payers to process and therefore have a greater likelihood of reimbursement.

U.S. Product Distribution Channel

We have established a distribution channel in the United States for the commercialization of YUTIQ and DEXYCU that provides physicians with several options for ordering our products. This includes agreements with a nationally recognized third-party logistics provider ("3PL"), several distributors and a specialty pharmacy provider for physicians who prefer to use a traditional buy-and-bill model. The 3PL provides fee-based services related to logistics, warehousing, order fulfilment, invoicing, returns and accounts receivable management.

Research Agreements

From time to time we enter into research agreements with third parties to evaluate our technology platforms for the treatment of ophthalmic and other diseases. We intend to continue this activity with partner compounds that could be successfully delivered with our Durasert and, potentially, Verisome technology platforms on a fee-for-service basis with the potential for future clinical and commercial milestones and royalties.

FDA Approved Products Licensed to Others

ILUVIEN for DME

ILUVIEN is an injectable, sustained-release micro-insert based on our Durasert technology platform and delivers 0.19 mg of FA to the back of the eye for treatment of DME. DME is a disease suffered by diabetics where leaking capillaries cause swelling in the macula, the most sensitive part of the retina. DME is a leading cause of blindness in the working-age population in most developed countries. The ILUVIEN micro-insert is substantially the same micro-insert as YUTIQ.

We originally licensed our Durasert proprietary insert technology to Alimera for use in ILUVIEN for the treatment of all ocular diseases (excluding uveitis). On July 10, 2017, we entered into the Amended Alimera Agreement, pursuant to which we (i) expanded the license to Alimera to our proprietary Durasert sustained-release drug delivery technology platform to include uveitis, including chronic non-infectious uveitis affecting the posterior segment of the eye, in the EMEA and (ii) converted the net profit share arrangement for each licensed product (including ILUVIEN) under the original collaboration agreement with Alimera (the "Prior Alimera Agreement") to a sales-based royalty on a calendar quarter basis commencing July 1, 2017, with payments from Alimera due 60 days following the end of each calendar quarter.

Sales-based royalties started at the rate of 2% and increased, commencing December 12, 2018, to 6% on aggregate calendar year net sales up to $75 million and 8% in excess of $75 million. Alimera's share of contingently recoverable accumulated ILUVIEN commercialization losses under the Prior Alimera Agreement, capped at $25 million, are to be reduced as follows: (i) $10.0 million was cancelled in lieu of an upfront license fee on the effective date of the Amended Alimera Agreement; (ii) for calendar years 2019 and 2020, 50% of earned sales-based royalties in excess of 2% will be offset against the quarterly royalty payments otherwise due from Alimera; (iii) in March 2020, another $5 million was cancelled upon Alimera's receipt of regulatory approval for ILUVIEN for the uveitis indication; and (iv) commencing in calendar year 2021, 20% of earned sales-based royalties in excess of 2% will be offset against the quarterly royalty payments due from Alimera until such time as the balance of the original $25 million of recoverable commercialization losses has been fully recouped. On December 17, 2020, we sold our interest in royalties payable to us under our license agreement with Alimera in connection with Alimera's sales of ILUVIEN® to SWK Funding, LLC ("SWK") in exchange for a one-time $16.5 million payment from SWK.

Retisert for chronic non-infectious uveitis affecting the posterior segment of the eye

Retisert is a sustained-release non-erodible implant based on our Durasert technology platform for the treatment of chronic non-infectious uveitis affecting the posterior segment of the eye. Surgically implanted, it delivers 0.59 mg of FA to the back of the eye for approximately 30 months. Retisert is licensed to Bausch & Lomb, with which we co-developed the product. Retisert is approved in the U.S., Bausch & Lomb sells the product and paid sales-based royalties to us. The patent with which Retisert is marketed expired in March 2019. As such, pursuant to our agreement with Bausch & Lomb, payment of sales-based royalties concluded at the end of March 2019 following patent expiration.

Strategic Collaborations

We have entered into a number of collaboration/license agreements to develop and commercialize our product candidates and technologies. In all of these agreements, we have retained the right to use and develop the underlying technologies outside of the scope of the exclusive licenses granted. The license and collaboration arrangements typically include, among other terms and conditions, non-refundable upfront license fees, milestone payments and royalty and/or profit sharing obligations. See Note 3, " Product Revenue Reserves and Allowances-License and Collaboration Agreements" to the Consolidated Financial Statements included under Item 15, "Exhibits and Financial Statement Schedules."

Intellectual Property

We own or license patents in the U.S. and other countries. Our patents generally cover the design, formulation, manufacturing methods and use of our sustained release therapeutics, devices and technologies. For example, we own and/or license US and foreign patents and patent applications for our DURASERT® technology and our VERISOME® technology. In addition, we own US and foreign patents and patent applications covering other technologies, such as devices used to administer some of our products. Patents for individual products extend for varying periods according to the date of patent filing or grant and legal term of patents in the various countries where patent protection is obtained. The actual protection afforded by a patent, which can vary from country to country, depends upon the type of patent, the scope of its coverage and the availability of legal remedies in the country. Patent term extension may be available in various countries to compensate for a patent office delay or a regulatory delay in approval of the product.

The U.S. patents that were previously listed in the USFDA Orange Book for Retisert expired in March 2019. The latest expiring patent listed in the USFDA Orange Book covering ILUVIEN® and YUTIQ® expires in August 2027 in the U.S. and in October 2024 in the EU, although extensions have been obtained or applied for through May 2027 in various EU countries.

The last of the previously issued patents covering DEXYCU® expire in July 2023, but additional patents have issued in the U.S. that will cover DEXYCU® until at least 2034.

The last expiring patent covering the vorolanib compound licensed to us by Equinox Science and used in EYP-1901 expires in September 2037, but EyePoint has filed an additional patent application for EYP-1901 that, if issued, would extend coverage of EYP-1901 until at least 2041.

The acquired Aerpio patent portfolio includes more than 200 US or ex-US patents and pending applications that claim compositions of matter, pharmaceutical formulations and methods of use covering both small molecule and mono and bi-specific antibody inhibitors of the protein tyrosine phosphatase (VE-PTP). Some of the antibodies covered include both VE-PTP and VEGF binding domains. VE-PTP is a negative Tie2 regulator that, when inhibited, can activate the Tie2 pathway leading to downstream signaling that promotes vascular health, stability and decreases vascular permeability and inflammation associated with a number of posterior segment eye diseases. The patent claims to methods of use relate primarily to disease indications where activation of Tie2 and associated vascular stabilization are potentially beneficial. The potential expiration dates of the patents and applications in this portfolio range from 2027 to 2041. This date range is estimated and based on certain assumptions, including that certain applications will be granted, all necessary fees will be paid and no terminal disclaimers or other limitations on expiration are required for certain patents or applications.

Human Capital Resources

To achieve the goals and expectations of our Company, it is critical that we continue to attract and retain top talent. To facilitate talent attraction and retention we strive to make our company a safe and rewarding workplace, with opportunities for our employees to grow and develop in their careers, supported by strong compensation, benefits and health and wellness programs, and by programs that build connections between our employees.

As of February 28, 2022, we had 123 employees, 122 of whom were full-time employees in the United States. None of our employees are represented by a collective bargaining agreement. During fiscal 2021 our voluntary turnover rate was 10%, which is consistent with the average voluntary turnover rates for Boston-area Biotech companies.

The success of our business is fundamentally connected to the well-being of our employees. Accordingly, we are committed to their health, safety, and wellness. We provide our employees and their families with access to a variety of innovative, flexible and convenient health and wellness programs, including benefits that provide protection and security so that they have peace of mind concerning events that may require time away from work, or that impact their financial well-being, that support their physical and mental health and providing tools and resources to help them improve or maintain their health status and encourage engagement in healthy behaviors, and that offer choice where possible so they can customize their benefits to meet their needs and the needs of their families. In response to the Pandemic we implemented significant changes that we determined were in the best interest of our employees, as well as the communities in which we operate, and which comply with government regulations. This includes having many of our non-laboratory employees work from home, while implementing additional safety measures for employees continuing on-site work.

We provide robust compensation and benefits programs to meet the needs of our employees. In addition to competitive base salaries, these programs include annual discretionary bonuses, stock awards, a 401(k) plan and employer match, an employee stock purchase program, health, dental and vision insurance benefits, health savings and flexible spending accounts, paid time off, family leave and flexible work schedules, among others. Our broad-based equity programs include all employees with vesting conditions to facilitate the retention of employees with critical skills and experience and motivate employees to perform to the best of their abilities, while we achieve our objectives.

As a company our success is rooted in the diversity of our teams and our commitment to inclusion. We value diversity at all levels and continue to focus on extending our diversity and inclusion initiatives across our workforce – from working with managers to recruit diverse team members to the advancement of leaders from different backgrounds.

Competition

The market for products treating eye diseases is highly competitive and is characterized by extensive research efforts and rapid technological progress. We face substantial competition for our FDA-approved products and our product candidates. Pharmaceutical, drug delivery and biotechnology companies, as well as research organizations, governmental entities, universities, hospitals, other nonprofit organizations and individual scientists, have developed and are seeking to develop drugs, therapies and novel delivery methods to treat diseases targeted by our products and product candidates. Most of our competitors and potential competitors are larger, better established, more experienced and have substantially more resources than we or our partners have. Competitors may reach the market earlier, may have obtained or could obtain patent protection that dominates or adversely affects our products and potential products, and may offer products with greater efficacy, lesser or fewer side effects and/or other competitive advantages. We believe that competition for treatments of eye diseases is based upon the effectiveness of the treatment, side effects, time to market, reimbursement and price, reliability, ease of administration, dosing or injection frequency, patent position and other factors.

Many companies have or are pursuing products to treat eye diseases that are or would be competitive with EYP-1901, YUTIQ 50, YUTIQ, and DEXYCU. Some of these products and product candidates include the following:

EYP-1901 for Wet Age-Related Macular Degeneration

Wet AMD, a common condition and a leading cause of vision loss for people age 50 and older, is most commonly treated with intravitreal injections of biologics that block VEGF.

FDA-approved LUCENTIS and EYLEA and off-label use of the cancer drug AVASTIN® are the leading treatments for wet AMD. EYLEA was approved for dosing every 12 weeks after one year of effective therapy. In 2021, the FDA approved Susvimo, a first-of-its-kind port delivery system (“PDS”) with ranibizumab for the treatment of patients with wet, or neovascular, AMD who have previously responded to at least 2 anti-VEGF injections. In January 2022 the FDA approved VABYSMO® (faricimab), an intravitreal bispecific antibody Ang-2 and VEGF-A inhibitor. The FDA also approved Beovu® brolucizumab injection on October 8, 2019.

We are aware of several other companies that are actively developing product candidates for wet AMD. Kodiak Sciences is developing KSI-301, an anti-VEGF antibody biopolymer conjugate being developed for treatment-naïve wet AMD, DME, RVO and NPDR. Graybug Vision, Inc.’s, GB-102, is an intravitreal injectable depot formulation of sunitinib malate, an anti-VEGF TKI, that blocks multiple angiogenesis pathways. Ocular Therapeutix, Inc. is developing OTX-TKI, a bioresorbable hydrogel formulated with TKI particles in an injectable fiber that can be delivered through a small-gauge, sterile injection needle to the back of the eye. OTX-TKI is designed to deliver drugs to the target tissues for a period of up to nine months. Aerie Pharmaceuticals is developing AR-13503, an inhibitor of rho kinase and protein kinase C (“PKC”), is a sustained-release implant being investigated for the treatment of wet AMD and DME. Clearside Biomedical is developing CLS-AX (axitinib injectable suspension for investigation in patients with neovascular wet AMD.

REGENXBIO Inc. and Adverum Biotechnologies, Inc. are developing gene therapy treatments for wet AMD. REGENXBIO is developing RGX-314, a gene therapy utilizing its NAV AAV8 vector containing a gene encoding for a monoclonal antibody fragment which inhibits VEGF. Adverum is developing ADVM-022, a gene therapy utilizing an AAV.7m8 vector containing a gene encoding for a protein that expresses aflibercept.

EYP-1901 for DR

In addition to their efficacy at treating wet AMD, anti-VEGF drugs Avastin, Lucentis and Eylea, have all been shown in a number of studies to have promise for halting and reversing DR. Looking towards the future, the treatment intervals and follow-up required to maintain improvements in DR and PDR will need to be determined, but long-acting anti-VEGF agents and small molecules, such as TKIs, formulated in novel sustained delivery methods have the potential to transform the DR treatment landscape. We anticipate that the anti-VEGF programs being developed by competitors for wet AMD, listed above, may have application in DR as well.

EYP-1901 for RVO

The mainstay of therapy is now anti-VEGF therapy for macular edema with either CRVO or BRVO. Both Lucentis and Eylea have been shown to be efficacious in the treatment of macular edema. Avastin (bevacizumab) is also used off-label to treat macular edema. RVO physiopathology is highly dependent on VEGF levels resulting from retina ischemia and requires frequent intravitreal injections of current therapies. Therefore, long-acting anti-VEGF agents and small molecules, such as TKIs, formulated in novel sustained delivery methods and being developed for wet AMD and DR have the potential to transform the treatment landscape in this condition as well. We anticipate that the anti-VEGF programs being developed by competitors for wet AMD, listed above, may have application in RVO as well.

YUTIQ and YUTIQ 50 for Posterior Segment Uveitis

Periocular and intravitreal steroid injections, and systemic delivery of corticosteroids are routinely used to treat posterior segment uveitis, which is a chronic, inflammatory condition of the eye. It is treated both aggressively and frequently by physicians in order to minimize the disease "flares", which are the main cause of vision deterioration and potential blindness.

OZURDEX®, marketed by Allergan, is approved in the U.S. and EU for posterior segment uveitis through an intravitreal bioerodible implant that provides treatment which lasts for several months. This limited duration effectiveness of OZURDEX can result in frequent intravitreal injections of the implant.

AbbVie, Inc. has FDA approval for HUMIRA® (adalimumab) for the treatment of all types of non-infectious uveitis (intermediate, posterior and panuveitis) and it is administered subcutaneously every other week for systemic delivery. HUMIRA is a biologic that blocks tumor necrosis factor alpha, a naturally occurring cytokine that is involved in normal inflammatory and immune responses. Humira's retail price in the U.S. is approximately $50,000 per year.

Other companies have ongoing trials of posterior segment uveitis treatments, including Santen Pharmaceutical Co. Ltd., which received a Complete Response Letter ("CRL"), in December 2017 from the FDA for its filed NDA for sirolimus, which is administered through intravitreal injection every two months. Sirolimus is a mammalian target of rapamycin inhibitor and modulator of the immune system and is being developed for chronic non-infectious uveitis affecting the posterior segment of the eye. Santen initiated a Phase 3 clinical trial of sirolimus in December 2018 in the U.S. The study is entitled: LUMINA: A Phase III, Multicenter, Sham-Controlled, Randomized, Double-Masked Study Assessing the Efficacy and Safety of Intravitreal Injections of 440 ug DE-109 for the Treatment of Active, Non-Infectious Uveitis of the Posterior Segment of the Eye, and its primary readout is expected in June 2022.

Clearside Biomedical Inc.'s ("Clearside") CLS-TA (triamcinolone acetonide, a steroid) for macular edema associated with non-infectious uveitis has been accepted by the FDA for review and it is administered through a suprachoroidal injection administered every 12 weeks. Preliminary clinical data indicated that the suprachoroidal route may reduce the risk of increased IOP that is typically associated with intraocular injection of steroids. The results of the Phase 3 trial, presented in September 2018, indicated that while about 50% of patients experienced significant improvements in visual acuity through 24 weeks, adverse events of IOP increase were reported in about 12% of patients.

On December 19, 2018, Clearside submitted an NDA for XIPERE™ (CLS-TA) to the FDA for the treatment of macular edema associated with uveitis. On October 18, 2019, Clearside received a CRL from the FDA regarding its NDA for XIPERE. The CRL included the FDA's request for additional stability data, reinspection of the drug product manufacturer and additional data on clinical use of the final to-be-marketed SCS Microinjector™ delivery system. Clearside indicated that it expects to resubmit its New Drug Application for XIPERE to FDA for review in the first quarter of 2020. On October 23, 2019, Bausch Health Companies Inc. acquired an exclusive license for the commercialization and development of XIPERE in the United States and Canada. XIPERE was eventually approved in the US in October 2021.

DEXYCU for Inflammation following cataract surgery.

Kala Pharmaceuticals, Inc.'s ("Kala") FDA approved INVELTYS™ (loteprednol etabonate ophthalmic suspension) 1% is a topical treatment for post-operative inflammation and pain following ocular surgery. INVELTYS is the first twice-daily ocular corticosteroid approved for this indication. In addition, there are various formulations of steroids that are produced by compounding pharmacies and that are in drop form or are injected into the eye following ocular surgery.

Ocular Therapeutix™ Inc.'s ("Ocular") FDA approved DEXTENZA® (dexamethasone ophthalmic insert) 0.4 mg is a corticosteroid intracanalicular insert placed through the punctum, a natural opening in the eye lid, into the canaliculus, and is designed to deliver dexamethasone to the ocular surface for up to 30 days.

Bausch & Lomb's FDA approved LOTEMAX®SM (loteprednol etabonate ophthalmic gel) 0.38% is a new gel formulation for the treatment of postoperative inflammation and pain following ocular surgery. LOTEMAX SM delivers a submicron particle size for faster drug dissolution in tears.

Government Regulation

We are subject to extensive regulation by the FDA and other federal, state, and local regulatory agencies. The Federal Food, Drug and Cosmetic Act (the "FD&C Act"), and FDA's implementing regulations set forth, among other things, requirements for the testing, development, manufacture, quality control, safety, effectiveness, approval, labeling, storage, record-keeping, reporting, distribution, import, export, advertising and promotion of our products and product candidates. Although the discussion below focuses on regulation in the U.S., we currently out-license certain of our products and may seek approval for, and market, other products in other countries in the future. Generally, our activities in other countries will be subject to regulation that is similar in nature and scope to that imposed in the U.S., although there can be important differences. Additionally, some significant aspects of regulation in the EU are addressed in a centralized way through the EMA, and the European Commission, but country-specific regulation remains essential in many respects. The process of obtaining regulatory marketing approvals and the subsequent compliance with appropriate federal, state, local and foreign statutes and regulations require the expenditure of substantial time and financial resources and may not be successful.

Development and Approval

Under the FD&C Act, FDA approval of an NDA is required before any new drug can be marketed in the U.S. NDAs require extensive studies and submission of a large amount of data by the applicant.

Pre-clinical Testing. Before testing any compound in human patients in the U.S., a company must generate extensive pre-clinical data. Pre-clinical testing generally includes laboratory evaluation of product chemistry and formulation, as well as toxicological and pharmacological studies in several animal species to assess the toxicity and dosing of the product. Certain animal studies must be performed in compliance with the FDA's GLP, regulations and the U.S. Department of Agriculture's Animal Welfare Act.

IND Application. Human clinical trials in the U.S. cannot commence until an IND, application is submitted and becomes effective. A company must submit pre-clinical testing results to the FDA as part of the IND, and the FDA must evaluate whether there is an adequate basis for testing the drug in initial clinical studies in human volunteers. Unless the FDA raises concerns, the IND becomes effective 30 days following its receipt by the FDA, and the clinical trial proposed in the IND may begin. Once human clinical trials have commenced, the FDA may stop a clinical trial by placing it on "clinical hold" because of concerns about the safety of the product being tested, or for other reasons.

Clinical Trials. Clinical trials involve the administration of a drug to healthy human volunteers or to patients under the supervision of a qualified investigator. The conduct of clinical trials is subject to extensive regulation, including compliance with the FDA's bioresearch monitoring regulations and Good Clinical Practice, or GCP, requirements, which establish standards for conducting, recording data from, and reporting the results of, clinical trials, and are intended to assure that the data and reported results are credible and accurate, and that the rights, safety, and well-being of study participants are protected. Clinical trials must be conducted under protocols that detail the study objectives, parameters for monitoring safety, and the efficacy criteria, if any, to be evaluated. Each protocol is reviewed by the FDA as part of the IND. In addition, each clinical trial must be reviewed and approved by, and conducted under the auspices of, an Institutional Review Board, or IRB, for each clinical site. Companies sponsoring the clinical trials, investigators, and IRBs also must comply with, as applicable, regulations and guidelines for obtaining informed consent from the study patients, following the protocol and investigational plan, adequately monitoring the clinical trial, and timely reporting of adverse events, or AEs. Foreign studies conducted under an IND must meet the same requirements that apply to studies being conducted in the U.S. Data from a foreign study not conducted under an IND may be submitted in support of an NDA if the study was conducted in accordance with GCP and the FDA is able to validate the data.

A study sponsor is required to publicly post specified details about certain clinical trials and clinical trial results on government or independent websites (e.g., http://clinicaltrials.gov). Human clinical trials typically are conducted in three sequential phases, although the phases may overlap or be combined:

- Phase 1 clinical trials involve the initial administration of the investigational drug to humans, typically to a small group of healthy human subjects, but occasionally to a group of patients with the targeted disease or disorder. Phase 1 clinical trials generally are intended to evaluate the safety, metabolism and pharmacologic actions of the drug, the side effects associated with increasing doses, and, if possible, to gain early evidence of effectiveness.
- Phase 2 clinical trials generally are controlled studies that involve a relatively small sample of the intended patient population and are designed to develop initial data regarding the product's effectiveness, to determine dose response and the optimal dose range, and to gather additional information relating to safety and potential AEs.

- Phase 3 clinical trials are conducted after preliminary evidence of effectiveness has been obtained and are intended to gather the additional information about dosage, safety and effectiveness necessary to evaluate the drug's overall risk-benefit profile, and to provide a basis for regulatory approval. Generally, Phase 3 clinical development programs consist of expanded, large-scale studies of patients with the target disease or disorder to obtain statistical evidence of the efficacy and safety of the drug at the proposed dosing regimen.

The sponsoring company, the FDA, or the IRB may suspend or terminate a clinical trial at any time on various grounds, including a finding that the patients are being exposed to an unacceptable health risk. Further, success in early-stage clinical trials does not assure success in later-stage clinical trials. Data obtained from clinical activities are not always conclusive and may be subject to alternative interpretations that could delay, limit or prevent regulatory approval.

NDA Submission and Review. The FD&C Act provides two pathways for the approval of new drugs through an NDA. An NDA under Section 505(b)(1) of the FD&C Act is a comprehensive application to support approval of a product candidate that includes, among other things, data and information to demonstrate that the proposed drug is safe and effective for its proposed uses, that production methods are adequate to ensure its identity, strength, quality, and purity of the drug, and that proposed labeling is appropriate and contains all necessary information. A 505(b)(1) NDA contains results of the full set of pre-clinical studies and clinical trials conducted by or on behalf of the applicant to characterize and evaluate the product candidate.

Section 505(b)(2) of the FD&C Act provides an alternate regulatory pathway to obtain FDA approval that permits the filing of an NDA where at least some of the information required for approval comes from studies not conducted by or for the applicant and for which the applicant has not obtained a right of reference. The applicant may rely to some extent upon the FDA's findings of safety and effectiveness for an approved product that acts as the reference drug, and submit its own product-specific data — which may include data from pre-clinical studies or clinical trials conducted by or on behalf of the applicant — to address differences between the product candidate and the reference drug.

The submission of an NDA under either Section 505(b)(1) or Section 505(b)(2) generally requires payment of a substantial user fee to the FDA, subject to certain limited deferrals, waivers and reductions. The FDA reviews applications to determine, among other things, whether a product is safe and effective for its intended use and whether the manufacturing controls are adequate to assure and preserve the product's identity, strength, quality, and purity. For some NDAs, the FDA may convene an advisory committee to seek insights and recommendations on issues relevant to approval of the application. Although the FDA is not bound by the recommendation of an advisory committee, the agency usually considers such recommendations carefully when making decisions.

Our products and product candidates include products that combine drug and device components in a manner that meet the definition of a "combination product" under FDA regulations. The FDA exercises significant discretion over the regulation of combination products, including the discretion to require separate marketing applications for the drug and device components in a combination product. For YUTIQ, FDA's Center for Drug Evaluation and Research ("CDER") had primary jurisdiction for review of the NDA, and both the drug and device components were reviewed under one marketing application. For a drug-device combination product for which CDER has primary jurisdiction, CDER typically consults with the Center for Devices and Radiological Health in the NDA review process.

The FDA may determine that a Risk Evaluation and Mitigation Strategy ("REMS"), is necessary to ensure that the benefits of a new product outweigh its risks, and the product can therefore be approved. A REMS may include various elements, ranging from a medication guide or patient package insert to limitations on who may prescribe or dispense the drug, depending on what the FDA considers necessary for the safe use of the drug. Under the Pediatric Research Equity Act ("PREA"), certain applications for approval must also include an assessment, generally based on clinical study data, of the safety and effectiveness of the subject drug in relevant pediatric populations.

Before approving an NDA, the FDA will inspect the facility or facilities where the product is manufactured. The FDA will not approve an application unless it determines that the manufacturing processes and facilities are in compliance with cGMP, requirements and adequate to assure consistent production of the product within required specifications.

Once the FDA accepts an NDA submission for filing — which occurs, if at all, within 60 days after submission of the NDA — the FDA's goal for a non-priority review of an NDA is ten months. The review process can be and often is significantly extended, however, by FDA requests for additional information, studies, or clarification.

After review of an NDA and the facilities where the product candidate is manufactured, the FDA either issues an approval letter or a complete response letter ("CRL"), outlining the deficiencies in the submission. The CRL may require additional testing or information, including additional pre-clinical or clinical data, for the FDA to reconsider the application. Even if such additional information and data are submitted, the FDA may decide that the NDA still does not meet the standards for approval. Data from clinical trials are not always conclusive and the FDA may interpret data differently than the sponsor. FDA approval of any application may include many delays or never be granted. If FDA grants approval, an approval letter authorizes commercial marketing of the product candidate with specific prescribing information for specific indications.

Obtaining regulatory approval often takes a number of years, involves the expenditure of substantial resources, and depends on a number of factors, including the severity of the disease in question, the availability of alternative treatments, and the risks and benefits demonstrated in clinical trials. Additionally, as a condition of approval, the FDA may impose restrictions that could affect the commercial success of a drug or require post-approval commitments, including the completion within a specified time period of additional clinical studies, which often are referred to as "Phase 4" or "post-marketing" studies.

Post-approval modifications to the drug, such as changes in indications, labeling, or manufacturing processes or facilities, may require a sponsor to develop additional data or conduct additional pre-clinical studies or clinical trials, to be submitted in a new or supplemental NDA, which would require FDA approval.

Post-Approval Regulation

Once approved, drug products are subject to continuing regulation by the FDA. If ongoing regulatory requirements are not met, or if safety or manufacturing problems occur after the product reaches the market, the FDA may at any time withdraw product approval or take actions that would limit or suspend marketing. Additionally, the FDA may require post-marketing studies or clinical trials, changes to a product's approved labeling, including the addition of new warnings and contraindications, or the implementation of other risk management measures, including distribution-related restrictions, if there are new safety information developments.

Good Manufacturing Practices. Companies engaged in manufacturing drug products or their components must comply with applicable cGMP requirements and product-specific regulations enforced by the FDA and other regulatory agencies. Compliance with cGMP includes adhering to requirements relating to organization and training of personnel, buildings and facilities, equipment, control of components and drug product containers and closures, production and process controls, quality control and quality assurance, packaging and labeling controls, holding and distribution, laboratory controls, and records and reports. The FDA regulates and inspects equipment, facilities, and processes used in manufacturing pharmaceutical products prior to approval. If, after receiving approval, a company makes a material change in manufacturing equipment, location, or process (all of which are, to some degree, incorporated in the NDA), additional regulatory review and approval may be required. The FDA also conducts regular, periodic visits to re-inspect equipment, facilities, and processes following the initial approval of a product. Failure to comply with applicable cGMP requirements and conditions of product approval may lead the FDA to take enforcement actions or seek sanctions, including fines, issuance of warning letters, civil penalties, injunctions, suspension of manufacturing operations, operating restrictions, withdrawal of FDA approval, seizure or recall of products, and criminal prosecution. Although we periodically monitor the FDA compliance of our third-party manufacturers, we cannot be certain that our present or future third-party manufacturers will consistently comply with cGMP and other applicable FDA regulatory requirements.

In addition to cGMP requirements, drug-device combination products are also subject to certain additional manufacturing and safety reporting regulations for devices. Specifically, the FDA requires that drug-device combination products comply with certain provisions of the Quality System Regulation ("QSR"), which sets forth the FDA's manufacturing quality standards for medical devices. In addition to drug safety reporting requirements, the FDA also requires that we comply with some device safety reporting requirements for our drug-device combination product.

Advertising and Promotion. The FDA and other federal regulatory agencies closely regulate the marketing and promotion of drugs through, among other things, standards and regulations for direct-to-consumer advertising, advertising and promotion to healthcare professionals, communications regarding unapproved uses, industry-sponsored scientific and educational activities, and promotional activities involving the Internet. A product cannot be promoted before it is approved. After approval, product promotion can include only those claims relating to safety and effectiveness that are consistent with the labeling approved by the FDA. Healthcare providers are permitted to prescribe drugs for "off-label" uses — that is, uses not approved by the FDA and not described in the product's labeling — because the FDA does not regulate the practice of medicine. However, FDA regulations impose restrictions on manufacturers' communications regarding off-label uses. Broadly speaking, a manufacturer may not promote a drug for off-label use, but under certain conditions may engage in non-promotional, balanced, scientific communication regarding off-label use. Failure to comply with applicable FDA requirements and restrictions in this area may subject a company to adverse publicity and enforcement action by the FDA, the Department of Justice, or the Office of the Inspector General of the Department of Health and Human Services, as well as state authorities. This could subject a company to a range of penalties that could have a significant commercial impact, including civil and criminal fines and agreements that materially restrict the manner in which a company promotes or distributes a drug.

Other Requirements. NDA holders must comply with other regulatory requirements, including submitting annual reports, reporting information about adverse drug experiences, and maintaining certain records.

Hatch-Waxman Act

The Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Act, establishes two abbreviated approval pathways for pharmaceutical products that are in some way follow-on versions of already approved products.

Generic Drugs. A generic version of an approved drug is approved by means of an abbreviated NDA, or ANDA, by which the sponsor demonstrates that the proposed product is the same as the approved, brand-name drug, which is referred to as the reference listed drug, or RLD. Generally, an ANDA must contain data and information showing that the proposed generic product and RLD (i) have the same active ingredient, in the same strength and dosage form, to be delivered via the same route of administration, (ii) are intended for the same uses, and (iii) are bioequivalent. This is instead of independently demonstrating the proposed product's safety and effectiveness, which are inferred from the fact that the product is the same as the RLD, which the FDA previously found to be safe and effective.

505(b)(2) NDAs. As discussed previously, products may also be submitted for approval via an NDA under section 505(b)(2) of the FD&C Act. Unlike an ANDA, this does not excuse the sponsor from demonstrating the proposed product's safety and effectiveness. Rather, the sponsor is permitted to rely to some degree on information from investigations that were not conducted by or for the applicant and for which the applicant has not obtained a right of reference and must submit its own product-specific data of safety and effectiveness to an extent necessary because of the differences between the products. An NDA approved under 505(b)(2) may in turn serve as an RLD for subsequent applications from other sponsors.

RLD Patents. In an NDA, a sponsor must identify patents that claim the drug substance or drug product or a method of using the drug. When the drug is approved, those patents are among the information about the product that is listed in the FDA publication, *Approved Drug Products with Therapeutic Equivalence Evaluations*, which is referred to as the *Orange Book*. The sponsor of an ANDA or 505(b)(2) application seeking to rely on an approved product as the RLD must make one of several certifications regarding each listed patent. A "Paragraph I" certification is the sponsor's statement that patent information has not been filed for the RLD. A "Paragraph II" certification is the sponsor's statement that the RLD's patents have expired. A "Paragraph III" certification is the sponsor's statement that it will wait for the patent to expire before obtaining approval for its product. A "Paragraph IV" certification is an assertion that the patent does not block approval of the later product, either because the patent is invalid or unenforceable or because the patent, even if valid, is not infringed by the new product.

Regulatory Exclusivities. The Hatch-Waxman Act provides periods of regulatory exclusivity for products that would serve as RLDs for an ANDA or 505(b)(2) application. If a product is a "new chemical entity," or NCE — generally meaning that the drug contains no active moiety that has been approved by the FDA in any other NDA submitted under section 505(b) of the FD&C Act — there is a period of five years from the product's approval during which the FDA may not accept for filing any ANDA or 505(b)(2) application for a drug with the same active moiety. An ANDA or 505(b)(2) application may be submitted after four years, however, if the sponsor of the application makes a Paragraph IV certification.

A product that is not an NCE may qualify for a three-year period of exclusivity if the NDA contains new clinical data (other than bioavailability studies), derived from studies conducted by or for the sponsor, that were necessary for approval. In that instance, the exclusivity period does not preclude filing or review of an ANDA or 505(b)(2) application; rather, the FDA is precluded from granting final approval to the ANDA or 505(b)(2) application until three years after approval of the RLD. Additionally, the exclusivity applies only to the conditions of approval that required submission of the clinical data.

Once the FDA accepts for filing an ANDA or 505(b)(2) application containing a Paragraph IV certification, the applicant must within 20 days provide notice to the RLD NDA holder and patent owner that the application has been submitted and provide the factual and legal basis for the applicant's assertion that the patent is invalid or not infringed. If the NDA holder or patent owner files suit against the ANDA or 505(b)(2) applicant for patent infringement within 45 days of receiving the Paragraph IV notice, the FDA is prohibited from approving the ANDA or 505(b)(2) application for a period of 30 months or the resolution of the underlying suit, whichever is earlier. If the RLD has NCE exclusivity and the notice is given and suit filed during the fifth year of exclusivity, the regulatory stay extends to 7.5 years after the RLD approval. The FDA may approve the proposed product before the expiration of the regulatory stay if a court finds the patent invalid or not infringed or if the court shortens the period because the parties have failed to cooperate in expediting the litigation.

Patent Term Restoration. A portion of the patent term lost during product development and FDA review of an NDA is restored if approval of the application is the first permitted commercial marketing of a drug containing the active ingredient. The patent term restoration period is generally one-half the time between the effective date of the IND or the date of patent grant (whichever is later) and the date of submission of the NDA, plus the time between the date of submission of the NDA and the date of FDA approval of the product. The maximum period of restoration is five years, and the patent cannot be extended to more than 14 years from the date of FDA approval of the product. Only one patent claiming each approved product is eligible for restoration and the patent holder must apply for restoration within 60 days of approval. The USPTO, in consultation with the FDA, reviews and approves the application for patent term restoration.

European and Other International Government Regulation

In addition to regulations in the U.S., we are subject to a variety of regulations in other jurisdictions governing, among other things, clinical trials and any commercial sales and distribution of our products. Whether or not we obtain FDA approval for a product, we must obtain the requisite approvals from regulatory authorities in foreign countries prior to the commencement of clinical trials or marketing of the product in those countries. Some countries outside of the U.S. have a similar process that requires the submission of a clinical trial application, or CTA, much like the IND prior to the commencement of human clinical trials. In the EU, for example, similar to the FDA a CTA must be submitted for authorization to the competent national authority of each EU Member State in which the clinical trial is to be conducted. Furthermore, the applicant may only start a clinical trial at a specific study site after the competent ethics committee, much like the IRB, has issued a favorable opinion. Once the CTA is approved in accordance with the EU Clinical Trials Directive 2001/20/EC, or Clinical Trials Directive, and the related national implementing provisions of the relevant individual EU Member States' requirements, clinical trial development may proceed.

In April 2014, the new Clinical Trials Regulation, (EU) No 536/2014, or Clinical Trials Regulation, was adopted. The Regulation entered into force on January 31, 2022. The Clinical Trials Regulation is directly applicable in all the EU Member States, repealing the current Clinical Trials Directive. The new Clinical Trials Regulation allows parties to start and conduct a clinical trial in accordance with the Clinical Trials Directive during a transitional period of one year after the application date, i.e. January 31, 2022. The transition period for the trials ongoing at the moment of applicability will be a maximum of 3 years after the date of application of the Clinical Trials Regulation. Clinical trials authorized under the current Clinical Trials Directive before January 31, 2023 can continue to be conducted under the Clinical Trials Directive until January 31, 2025. An application to transition ongoing trials from the current Clinical Trials Directive to the new Clinical Trials Regulation will need to be submitted and authorized in time before the end of the transitional period.

The new Clinical Trials Regulation is intended to simplify and streamline the approval of clinical trials in the EU. The main characteristics of the regulation include: a streamlined application procedure through a single entry point, the Clinical Trials Information System ("CTIS"); a single set of documents to be prepared and submitted for the application as well as simplified reporting procedures for clinical trial sponsors; and a harmonized procedure for the assessment of applications for clinical trials, which is divided in two parts.

To obtain regulatory approval to commercialize a new drug under EU regulatory systems, we must submit a MAA, to the competent regulatory authority. In the EU, marketing authorization for a medicinal product can be obtained through a centralized, mutual recognition, decentralized procedure, or the national procedure of an individual EU Member State. A marketing authorization, irrespective of its route to authorization, may be granted only to an applicant established in the EU.

The centralized procedure provides for the grant of a single marketing authorization by the European Commission that is valid for all 27 EU Member States and three of the four European Free Trade Association States, Iceland, Liechtenstein and Norway. Under the centralized procedure, the Committee for Medicinal Products for Human Use, or the CHMP, established at the EMA is responsible for conducting the initial assessment of a product. The maximum timeframe for the evaluation of an MAA is 210 days. This period excludes clock stops during which additional information or written or oral explanation is to be provided by the applicant in response to questions posed by the CHMP. Accelerated evaluation might be granted by the CHMP in exceptional cases, when a medicinal product is expected to be of a major public health interest. A major public health interest defined by three cumulative criteria: (i) the seriousness of the disease (for example, heavy disabling or life-threatening diseases) to be treated, (ii) the absence or insufficiency of an appropriate alternative therapeutic approach, and (iii) anticipation of high therapeutic benefit. If the CHMP accepts to review a medicinal product as a major public health interest, the time limit of 210 days will be reduced to 150 days. It is, however, possible that the CHMP can revert to the standard time limit for the centralized procedure if it considers that it is no longer appropriate to conduct an accelerated assessment.

Irrespective of the related procedure, at the completion of the review period the CHMP will provide a scientific opinion concerning whether or not a marketing authorization should be granted in relation to a medicinal product. This opinion is based on a review of the quality, safety, and efficacy of the product. Within 15 days of the adoption, the EMA will forward its opinion to the European Commission for its decision. Following the opinion of the EMA, the European Commission makes a final decision to grant a centralized marketing authorization. The centralized procedure is mandatory for certain types of medicinal products, including orphan medicinal products, medicinal products derived from certain biotechnological processes, advanced therapy medicinal products and medicinal products containing a new active substance for the treatment of certain diseases. This route is optional for certain other products, including medicinal products that are of significant therapeutic, scientific or technical innovation, or whose authorization would be in the interest of public or animal health at EU level.

Unlike the centralized authorization procedure, the decentralized marketing authorization procedure requires a separate application to, and leads to separate approval by, the competent authorities of each EU Member State in which the product is to be marketed. This application process is identical to the application that would be submitted to the EMA for authorization through the centralized procedure and must be completed within 210 days, excluding potential clock-stops, during which the applicant can respond to questions. The reference EU Member State prepares a draft assessment and drafts of the related materials. The concerned EU Member States must decide whether to approve the assessment report and related materials. If a concerned EU Member State cannot approve the assessment report and related materials due to concerns relating to a potential serious risk to public health, disputed elements may be referred to the European Commission, whose decision is binding on all EU Member States.

The mutual recognition procedure is similarly based on the acceptance by the competent authorities of the EU Member States of the marketing authorization of a medicinal product by the competent authorities of other EU Member States. The holder of a national marketing authorization may submit an application to the competent authority of an EU Member State requesting that this authority recognize the marketing authorization delivered by the competent authority of another EU Member State.

Marketing authorization holders are subject to comprehensive regulatory oversight by the EMA and the competent authorities of the individual EU Member States both before and after grant of marketing authorization. This includes control of compliance by the entities with EU cGMP rules, which govern quality control of the manufacturing process and require documentation policies and procedures.

For other countries outside of the EU, such as countries in Eastern Europe, Latin America or Asia, the requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary from country to country. Internationally, clinical trials are generally required to be conducted in accordance with GCP, applicable regulatory requirements of each jurisdiction and the medical ethics principles that have their origin in the Declaration of Helsinki.

Compliance

During all phases of development and in the post-market setting, failure to comply with applicable regulatory requirements may result in administrative or judicial sanctions. These sanctions could include the FDA's imposition of a clinical hold on trials, refusal to approve pending applications, withdrawal of an approval, warning letters or untitled letters, product recalls, product seizures, total or partial suspension of production or distribution, product detention or refusal to permit the import or export of products, injunctions, fines, civil penalties or criminal prosecution. Third country authorities can impose equivalent penalties. Any agency or judicial enforcement action could have a material adverse effect on us.

Other Exclusivities

Pediatric Exclusivity. Section 505A of the FD&C Act provides for six months of additional exclusivity or patent protection if an NDA sponsor submits pediatric data that fairly respond to a Written Request from the FDA for such data. The data do not need to show that the product is effective in the pediatric population studied; rather, if the clinical trial is deemed to fairly respond to the FDA's request, the additional protection is granted. If reports of requested pediatric studies are submitted to and accepted by FDA within the statutory time limits, whatever statutory or regulatory periods of exclusivity or *Orange Book* listed patent protection that cover the drug are extended by six months. This is not a patent term extension, but it effectively extends the regulatory period during which the FDA cannot approve an ANDA or 505(b)(2) application owing to regulatory exclusivity or listed patents. When any product is approved, we will evaluate seeking pediatric exclusivity as appropriate.

In the EU, Regulation No 1901/2006, or the Pediatric Regulation, requires that prior to obtaining a marketing authorization in the EU, applicants demonstrate compliance with all measures included in an EMA, approved Pediatric Investigation Plan, or PIP. This PIP covers all subsets in a pediatric population, unless the EMA has granted either, a product-specific waiver, a class waiver, or a deferral for one or more of the measures included in the PIP. Where all measures provided in the agreed PIP are completed, a six-month extension period of qualifying Supplementary Protection Certificates is granted. Between May 2021 and July 2021, the European Commission organized a public consultation to revise, among others, the Pediatric Regulation, as part of its Pharmaceutical Strategy for Europe. The current intention is for the European Commission to publish a proposal for new legislation in the first quarter of 2022.

Orphan Drug Exclusivity. The Orphan Drug Act provides incentives for the development of drugs intended to treat rare diseases or conditions, which are diseases or conditions affecting less than 200,000 individuals in the U.S., or a disease or condition affecting more than 200,000 individuals in the U.S. but there is no reasonable expectation that the cost of developing and making the drug product would be recovered from sales in the U.S. If a sponsor demonstrates that a drug product qualifies for orphan drug designation, the FDA may grant orphan drug designation to the product for that use. The benefits of orphan drug designation include research and development tax credits and exemption from user fees. A drug that is approved for the orphan drug designated indication generally is granted seven years of orphan drug exclusivity. During that period, the FDA generally may not approve any other application for the same product for the same indication, although there are exceptions, most notably when the later product is shown to be clinically superior to the product with exclusivity. The FDA can revoke a product's orphan drug exclusivity under certain circumstances, including when the product sponsor is unable to assure the availability of sufficient quantities of the product to meet patient needs. Orphan drug exclusivity does not prevent the FDA from approving a different drug for the same disease or condition, or the same biologic for a different disease or condition.

In the EU, medicinal products: (a) that are used to diagnose, treat or prevent life-threatening or chronically debilitating conditions that affect no more than five in 10,000 people in the EU; or (b) that are used to treat or prevent life-threatening or chronically debilitating conditions and that, for economic reasons, would be unlikely to be developed without incentives; and (c) where no satisfactory method of diagnosis, prevention or treatment of the condition concerned exists, or, if such a method exists, the medicinal product would be of significant benefit to those affected by the condition, may be granted an orphan designation in the EU. The application for orphan designation must be submitted to the EMA's Committee for Orphan Medicinal Products and approved by the European Commission before an application is made for marketing authorization for the product. Once authorized, orphan medicinal product designation entitles an applicant to financial incentives such as reduction of fees or fee waivers. In addition, orphan medicinal products are entitled to ten years of market exclusivity following authorization. During this ten-year period, with a limited number of exceptions, neither the competent authorities of the EU Member States, the EMA, or the European Commission are permitted to accept applications or grant marketing authorization for other similar medicinal products with the same therapeutic indication. However, marketing authorization may be granted to a similar medicinal product with the same orphan indication during the ten-year period with the consent of the marketing authorization holder for the original orphan medicinal product or if the manufacturer of the original orphan medicinal product is unable to supply sufficient quantities. Marketing authorization may also be granted to a similar medicinal product with the same orphan indication if this latter product is safer, more effective or otherwise clinically superior to the original orphan medicinal product. The period of market exclusivity may, in addition, be reduced to six years if it can be demonstrated on the basis of available evidence that the original orphan medicinal product is sufficiently profitable not to justify maintenance of market exclusivity.

Data Exclusivity. In the EU, if a marketing authorization is granted for a medicinal product containing a new active substance, that product benefits from eight years of data exclusivity, during which generic marketing authorization applications referring to the data of that product may not be accepted by the regulatory authorities. The product also benefits from 10 years' market exclusivity during which generic products, even if authorized, may not be placed on the market. The overall ten-year period will be extended to a maximum of 11 years if, during the first eight years of those ten years, the marketing authorization holder obtains an authorization for one or more new therapeutic indications which, during the scientific evaluation prior to their authorization, are held to bring a significant clinical benefit in comparison with existing therapies.

U.S. Healthcare Reform

The Patient Protection and Affordable Care Act, as amended, which we refer to as the Affordable Care Act, or ACA, is a sweeping measure intended to expand healthcare coverage within the U.S., primarily through the imposition of health insurance mandates on employers and individuals, the provision of subsidies to eligible individuals enrolled in plans offered on the health insurance exchanges, and expansion of the Medicaid program. This law substantially changed the way healthcare is financed by both governmental and private insurers and has significantly impacted the pharmaceutical industry. Changes that may affect our business include those governing enrollment in federal healthcare programs, reimbursement changes, benefits for patients within a coverage gap in the Medicare Part D prescription drug program (commonly known as the "donut hole"), rules regarding prescription drug benefits under the health insurance exchanges, changes to the Medicaid Drug Rebate program, expansion of the Public Health Service Act's 340B drug pricing discount program, or 340B program, fraud and abuse, and enforcement. These changes have impacted and will continue to impact existing government healthcare programs and have resulted in the development of new programs, including Medicare payment for performance initiatives.

Some states have elected not to expand their Medicaid programs to individuals with an income of up to 133% of the federal poverty level, as is permitted under the Affordable Care Act. For each state that does not choose to expand its Medicaid program, there may be fewer insured patients overall, which could impact our sales of products and product candidates for which we receive regulatory approval, and our business and financial condition. Where new patients receive insurance coverage under any of the new Medicaid options made available through the Affordable Care Act, the possibility exists that manufacturers may be required to pay Medicaid rebates on drugs used under these circumstances, a decision that could impact manufacturer revenues.

Certain provisions of the Affordable Care Act have been subject to judicial challenges as well as efforts to repeal, replace, or otherwise modify them or to alter their interpretation and implementation. For example, Congress eliminated, starting January 1, 2019, the tax penalty for not complying with the Affordable Care Act's individual mandate to carry health insurance. Further, the Bipartisan Budget Act of 2018, among other things, amended the Medicare statute to reduce the coverage gap in most Medicare drugs plans, commonly known as the "donut hole," by raising the required manufacturer point-of-sale discount from 50% to 70% off the negotiated price effective as of January 1, 2019. Additional legislative changes, regulatory changes, and judicial challenges related to the Affordable Care Act remain possible, but the nature and extent of such potential changes or challenges are uncertain at this time. It is unclear how the Affordable Care Act and its implementation, as well as efforts to modify or invalidate the Affordable Care Act, or portions thereof, or its implementation, will affect our business, financial condition and results of operations. It is possible that the Affordable Care Act, as currently enacted or as it may be amended in the future, and other healthcare reform measures that may be adopted in the future could have a material adverse effect on our industry generally and on our ability to maintain or increase sales of our products or product candidates for which we receive regulatory approval or to successfully commercialize our products and product candidates.

Other legislative changes relating to reimbursement have been adopted in the U.S. since the Affordable Care Act was enacted. For example, on August 2, 2011, the Budget Control Act of 2011, among other things, created the Joint Select Committee on Deficit Reduction to recommend to Congress proposals for spending reductions. The Joint Select Committee did not achieve a targeted deficit reduction, which triggered the legislation's automatic reductions. In concert with subsequent legislation, this has resulted in aggregate reductions to Medicare payments to providers of, on average, 2% per fiscal year through 2030 (with the exception of a temporary suspension from May 1, 2020, through March 31, 2022, due to the COVID-19 pandemic). The law provides for 1% Medicare sequestration in the second quarter of 2022 and allows the full 2% sequestration thereafter until 2030. To offset the temporary suspension during the COVID-19 pandemic, in 2030, the sequestration will be 2.25% for the first half of the year, and 3% in the second half of the year. As long as these cuts remain in effect, they could adversely impact payment for any products we may commercialize in the future. We expect that additional federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, and in turn could significantly reduce the projected value of certain development projects and reduce our profitability.

Additional legislative changes, regulatory changes, or guidance could be adopted, which may impact the marketing approvals and reimbursement for our product candidates. For example, there has been increasing legislative, regulatory, and enforcement interest in the United States with respect to drug pricing practices. There have been several Congressional inquiries and proposed and enacted federal and state legislation and regulatory initiatives designed to, among other things, bring more transparency to product pricing, evaluate the relationship between pricing and manufacturer patient programs, and reform government healthcare program reimbursement methodologies for drug products. If healthcare policies intended to curb healthcare costs are adopted or if we experience negative publicity with respect to pricing of our products or the pricing of pharmaceutical drugs generally, the prices that we charge for any approved products may be limited, our commercial opportunity may be limited, and/or our revenues from sales of our products may be negatively impacted.

Coverage and Reimbursement

Sales of any of our products and product candidates, if approved, depend, in part, on the extent to which the costs of the products will be covered by Medicare and Medicaid, and private payors, such as commercial health insurers and managed care organizations. Third-party payors determine which drugs they will cover and the amount of reimbursement they will provide for a covered drug. In the U.S., there is no uniform system among payors for making coverage and reimbursement decisions. In addition, the process for determining whether a payor will provide coverage for a product may be separate from the process for setting the price or reimbursement rate that the payor will pay for the product once coverage is approved. Payors may limit coverage to specific products on an approved list, or formulary, which might not include all of the FDA-approved products for a particular indication.

In order to secure coverage and reimbursement for our products, we may need to conduct expensive pharmacoeconomic studies in order to demonstrate the medical necessity and cost-effectiveness of the product, in addition to the costly studies required to obtain FDA or other comparable regulatory approvals. Even if we conduct pharmacoeconomic studies, our product candidates may not be considered medically necessary or cost-effective by payors. Further, a payor's decision to provide coverage for a product does not imply that an adequate reimbursement rate will be approved because HCPs negotiate their own reimbursement directly with commercial payors.

In the past, payors have implemented reimbursement metrics and periodically revised those metrics as well as the methodologies used as the basis for reimbursement rates, such as ASP, average manufacturer price, or AMP, and actual acquisition cost. The existing data for reimbursement based on these metrics is relatively limited, although certain states have begun to survey acquisition cost data for the purpose of setting Medicaid reimbursement rates. CMS surveys and publishes retail pharmacy acquisition cost information in the form of National Average Drug Acquisition Cost files to provide state Medicaid agencies with a basis of comparison for their own reimbursement and pricing methodologies and rates.

We participate in, and have certain price reporting obligations to, the Medicaid Drug Rebate Program. This program requires us to pay a rebate for each unit of drug reimbursed by Medicaid. The amount of the "basic" portion of the rebate for each product is set by law as the larger of: (i) 23.1% of quarterly AMP, or (ii) the difference between quarterly AMP and the quarterly best price available from us to any commercial or non-governmental customer, or Best Price. AMP must be reported on a monthly and quarterly basis and Best Price is reported on a quarterly basis only. In addition, the rebate also includes the "additional" portion, which adjusts the overall rebate amount upward as an "inflation penalty" when the drug's latest quarter's AMP exceeds the drug's AMP from the first full quarter of sales after launch, adjusted for increases in the Consumer Price Index-Urban. The upward adjustment in the rebate amount per unit is equal to the excess amount of the current AMP over the inflation-adjusted AMP from the first full quarter of sales. Medicaid Drug Rebate Program caps are currently set at 100 percent of AMP, but that cap is set to be removed, effective January 1, 2024, which could increase our rebate liability. The rebate amount is computed each quarter based on our report to CMS of current quarterly AMP and Best Price for our drug. We are required to report revisions to AMP or Best Price within a period not to exceed 12 quarters from the quarter in which the data was originally due. Any such revisions could have the impact of increasing or decreasing our rebate liability for prior quarters, depending on the direction of the revision. The Affordable Care Act made significant changes to the Medicaid Drug Rebate Program, and CMS issued a final regulation, which became effective on April 1, 2016, to implement the changes to the Medicaid Drug Rebate program under the Affordable Care Act. On December 21, 2020, CMS issued a final regulation that modified existing Medicaid Drug Rebate Program regulations to permit reporting multiple Best Price figures with regard to value-based purchasing arrangements (beginning in 2022); provide definitions for "line extension," "new formulation," and related terms with the practical effect of expanding the scope of drugs considered to be line extensions (beginning in 2022); and revise AMP and Best Price exclusions of manufacturer-sponsored patient benefit programs, specifically regarding inapplicability of such exclusions in the context of pharmacy benefit manager "accumulator" programs (beginning in 2023).

Federal law requires that any manufacturer that participates in the Medicaid Drug Rebate Program also participate in the Public Health Service's 340B drug pricing program in order for federal funds to be available for the manufacturer's drugs under Medicaid and Medicare Part B. The 340B program, which is administered by the Health Resources and Services Administration, or HRSA, requires participating manufacturers to agree to charge statutorily defined covered entities no more than the 340B "ceiling price" for the manufacturer's covered outpatient drugs. These 340B covered entities include a variety of community health clinics and other entities that receive health services grants from the Public Health Service, as well as hospitals that serve a disproportionate share of low-income patients. The 340B ceiling price is calculated using a statutory formula, which is based on the AMP and rebate amount for the covered outpatient drug as calculated under the Medicaid Drug Rebate Program. Any changes to the definition of AMP and the Medicaid rebate amount under the Affordable Care Act or other legislation could affect our 340B ceiling price calculations and negatively impact our results of operations.

HRSA issued a final regulation regarding the calculation of the 340B ceiling price and the imposition of civil monetary penalties on manufacturers that knowingly and intentionally overcharge covered entities, which became effective on January 1, 2019. It is currently unclear how HRSA will apply its enforcement authority under this regulation. HRSA has also implemented a ceiling price reporting requirement related to the 340B program under which we are required to report 340B ceiling prices to HRSA on a quarterly basis, and HRSA then publishes that information to covered entities. Moreover, under a final regulation effective January 13, 2021, HRSA newly established an administrative dispute resolution ("ADR"), process for claims by covered entities that a manufacturer has engaged in overcharging, and by manufacturers that a covered entity violated the prohibitions against diversion or duplicate discounts. Such claims are to be resolved through an ADR panel of government officials rendering a decision that could be appealed only in federal court. An ADR proceeding could subject us to onerous procedural requirements and could result in additional liability. In addition, legislation may be introduced that, if passed, would further expand the 340B program to additional covered entities or would require participating manufacturers to agree to provide 340B discounted pricing on drugs used in an inpatient setting.

Federal law also requires that a company that participates in the Medicaid Drug Rebate program report ASP information each quarter to CMS for certain categories of drugs that are paid under the Medicare Part B program. For calendar quarters beginning January 1, 2022, manufacturers are required to report the average sales price for certain drugs under the Medicare program regardless of whether they participate in the Medicaid Drug Rebate Program. Manufacturers calculate the ASP based on a statutorily defined formula as well as regulations and interpretations of the statute by CMS. CMS uses these submissions to determine payment rates for drugs under Medicare Part B. Starting in 2023, manufacturers must pay refunds to Medicare for single source drugs or biologicals, or biosimilar biological products, reimbursed under Medicare Part B and packaged in single-dose containers or single-use packages, for units of discarded drug reimbursed by Medicare Part B in excess of 10 percent of total allowed charges under Medicare Part B for that drug. Manufacturers that fail to pay refunds could be subject to civil monetary penalties of 125 percent of the refund amount.

Statutory or regulatory changes or CMS guidance could affect the pricing of our approved products, and could negatively affect our results of operations. For example, Congress could enact a Medicare Part B inflation rebate, under which manufacturers would owe additional rebates if the average sales price of a drug were to increase faster than the pace of inflation. In addition, Congress could enact a drug price negotiation program under which the prices for certain high Medicare spend single source drugs would be capped by reference to the non-federal average manufacturer price. These or any other public policy changes could impact the market conditions for our products. We further expect continued scrutiny on government price reporting and pricing more generally from Congress, agencies, and other bodies. For more information about Medicare Part B, refer to the risk factor entitled "Our products may

become subject to unfavorable pricing regulations, third-party reimbursement practices or healthcare reform initiatives, which could harm our business" set forth under the section titled "Risk Factors" in this Annual Report on Form 10-K. In the U.S. Medicare program, outpatient prescription drugs may be covered under Medicare Part D. Medicare Part D is a voluntary prescription drug benefit, through which Medicare beneficiaries may enroll in prescription drug plans offered by private entities for coverage of outpatient prescription drugs. Part D plans include both stand-alone prescription drug benefit plans and prescription drug coverage as a supplement to Medicare Advantage plans provided for under Medicare Part C.

Coverage and reimbursement for covered outpatient drugs under Part D are not standardized. Part D prescription drug plan sponsors are not required to pay for all covered Part D drugs, and each drug plan can develop its own drug formulary that identifies which drugs it will cover and at what tier or level. Any formulary used by a Part D prescription drug plan must be developed and reviewed by a pharmacy and therapeutic committee. Although Part D prescription drug formularies must include drugs within each therapeutic category and class of covered Part D drugs, they have some flexibility to establish those categories and classes and are not required to cover all of the drugs in each category or class. Medicare Part D prescription drug plans may use formularies to limit the number of drugs that will be covered in any therapeutic class and/or impose differential cost sharing or other utilization management techniques.

Medicare Part D coverage is available for our products and may be available for any future product candidates for which we receive marketing approval. However, in order for the products that we market to be included on the formularies of Part D prescription drug plans, we likely will have to offer pricing that is lower than the prices we might otherwise obtain. Changes to Medicare Part D that give plans more freedom to limit coverage or manage utilization, and other cost reduction initiatives in the program, could decrease the coverage and price that we receive for any approved products and could seriously harm our business.

In addition, manufacturers are currently required to provide to CMS a 70% discount on brand name prescription drugs utilized by Medicare Part D beneficiaries when those beneficiaries are in the coverage gap phase of the Part D benefit design. Congress could enact legislation that sunsets this discount program and replaces it with a new manufacturer discount program. Congress could further enact a Medicare Part D inflation rebate, under which manufacturers would owe additional rebates if the average manufacturer price of a drug were to increase faster than the pace of inflation.

In order to be eligible to have our products paid for with federal funds under the Medicaid and Medicare Part B programs and purchased by certain federal agencies and grantees, we must participate in the U.S. Department of Veterans Affairs, ("VA"), Federal Supply Schedule, ("FSS"), pricing program. Under this program, we are obligated to make our "innovator" drugs available for procurement on an FSS contract and charge a price to four federal agencies — the VA, U.S. Department of Defense, ("DoD"), Public Health Service and U.S. Coast Guard — that is no higher than the statutory Federal Ceiling Price, ("FCP"). The FCP is based on the non-federal average manufacturer price, ("Non-FAMP"), which we calculate and report to the VA on a quarterly and annual basis. We also may participate in the Tricare Retail Pharmacy program, under which we would pay quarterly rebates on utilization of innovator products that are dispensed through the Tricare Retail Pharmacy network to Tricare beneficiaries. The rebates are calculated as the difference between the annual Non-FAMP and FCP.

Pricing and rebate calculations vary across products and programs, are complex, and are often subject to interpretation by us, governmental or regulatory agencies, and the courts. We could be held liable for errors associated with our submission of pricing data. In addition to retroactive Medicaid rebates and the potential for issuing 340B program refunds, if we are found to have knowingly submitted false AMP, Best Price, or Non-FAMP information to the government, we may be liable for significant civil monetary penalties per item of false information. If we are found to have made a misrepresentation in the reporting of our ASP, the Medicare statute provides for significant civil monetary penalties for each misrepresentation for each day in which the misrepresentation was applied. Our failure to submit monthly/quarterly AMP and Best Price data on a timely basis could result in a significant civil monetary penalty per day for each day the information is late beyond the due date. Such conduct also could be grounds for CMS to terminate our Medicaid drug rebate agreement, in which case federal payments may not be available under Medicaid or Medicare Part B for our covered outpatient drugs. Significant civil monetary penalties also could apply to late submissions of Non-FAMP information. Civil monetary penalties could also be applied if we are found to have charged 340B covered entities more than the statutorily mandated ceiling price or HRSA could terminate our agreement to participate in the 340B program, in which case federal payments may not be available under Medicaid or Medicare Part B for our covered outpatient drugs. In addition, claims submitted to federally-funded healthcare programs, such as Medicare and Medicaid, for drugs priced based on incorrect pricing data provided by a manufacturer can implicate the federal civil False Claims Act. Civil monetary penalties could be due if we fail to offer discounts to beneficiaries under the Medicare Part D coverage gap discount program. And, once the refund program for discarded drug takes effect in 2023, manufacturers that fail to pay refunds could be subject to civil monetary penalties of 125 percent of the refund amount.

The containment of healthcare costs has become a priority of federal, state and foreign governments, and the prices of drugs have been a focus in this effort. The U.S. government, state legislatures, and foreign governments have shown significant interest in implementing cost-containment programs to limit the growth of government-paid healthcare costs, including price controls, restrictions on reimbursement, and requirements for substitution of generic products for branded prescription drugs. For example, there have been several recent U.S. Congressional inquiries and proposed federal and state legislation designed to, among other things, bring more transparency to drug pricing, review the relationship between pricing and manufacturer patient programs, reduce the cost of drugs, and reform government program reimbursement methodologies for drug products.

Beginning April 1, 2013, Medicare payments for all items and services, including drugs, were reduced by 2% under the sequestration (i.e., automatic spending reductions) required by the Budget Control Act of 2011, as amended by the American Taxpayer Relief Act of 2012. Subsequent legislation extended the 2% reduction, generally to 2030, with a pause during the Pandemic through March 31, 2022. The law provides for 1% Medicare sequestration in the second quarter of 2022 and allows the full 2% sequestration thereafter until 2030. In 2030, the sequestration will be 2.25% for the first half of the year, and 3% in the second half of the year. As long as these cuts remain in effect, they could adversely impact payment for any products we now sell or may commercialize in the future. If Congress does not take action in the future to modify these sequestrations, Medicare Part D plans could seek to reduce their negotiated prices for drugs. Other legislative or regulatory cost containment legislation could have a similar effect.

Further, the Affordable Care Act may reduce the profitability of drug products. It expanded manufacturers' rebate liability under the Medicaid program from fee-for-service Medicaid utilization to include the utilization of Medicaid managed care organizations as well, and increased the minimum Medicaid rebate due for most innovator drugs. The Affordable Care Act and subsequent legislation also changed the definition of AMP. On February 1, 2016, CMS issued final regulations to implement the changes to the Medicaid drug rebate program under the Affordable Care Act. These regulations became effective on April 1, 2016.

The Affordable Care Act requires pharmaceutical manufacturers of branded prescription drugs to pay a branded prescription drug fee to the federal government. Each such manufacturer pays a prorated share of the branded prescription drug fee of $2.8 billion in 2019 and thereafter, based on the dollar value of its branded prescription drug sales to certain federal programs identified in the law. The Affordable Care Act also expanded the Public Health Service Act's 340B program to include additional types of covered entities. Substantial new provisions affecting compliance have also been enacted, which may affect our business practices with healthcare practitioners. It appears likely that the Affordable Care Act will continue the pressure on pharmaceutical pricing, especially under the Medicare and Medicaid programs, and may also increase our regulatory burdens and operating costs.

Additional legislative changes, regulatory changes, and judicial challenges related to the Affordable Care Act remain possible, as discussed above under the heading "U.S. Healthcare Reform." In addition, there likely will continue to be proposals by legislators at both the federal and state levels, regulators, and third-party payors to contain healthcare costs. Thus, even if we obtain favorable coverage and reimbursement status for our products and any product candidates for which we receive regulatory approval, less favorable coverage policies and reimbursement rates may be implemented in the future.

Different pricing and reimbursement schemes exist in other countries. In the EU, each EU Member State can restrict the range of medicinal products for which its national health insurance system provides reimbursement and can control the prices of medicinal products for human use marketed on its territory. As a result, following receipt of marketing authorization in an EU Member State, through any application route, the applicant is required to engage in pricing discussions and negotiations with the competent pricing authority in the individual EU Member State. The governments of the EU Member States influence the price of pharmaceutical products through their pricing and reimbursement rules and control of national healthcare systems that fund a large part of the cost of those products to consumers. Some EU Member States operate positive and negative list systems under which products may only be marketed once a reimbursement price has been agreed upon. To obtain reimbursement or pricing approval, some of these countries may require the completion of clinical trials that compare the cost-effectiveness of a particular product candidate to currently available therapies. Other EU Member States allow companies to fix their own prices for medicines, but monitor and control company profits. Others adopt a system of reference pricing, basing the price or reimbursement level in their territories either on the pricing and reimbursement levels in other countries or on the pricing and reimbursement levels of medicinal products intended for the same therapeutic indication. Further, some EU Member States approve a specific price for the medicinal product or may instead adopt a system of direct or indirect controls on the profitability of the company placing the medicinal on the market. The downward pressure on healthcare costs in general, particularly prescription drugs, has become more intense. As a result, increasingly high barriers are being erected to the entry of new products. In addition, we may face competition for our product candidates from lower-priced products in foreign countries that have placed price controls on pharmaceutical products. In addition, in some countries, cross-border imports from low-priced markets exert a commercial pressure on pricing within a country.

Health Technology Assessment, or HTA, of medicinal products, however, is becoming an increasingly common part of the pricing and reimbursement procedures in some EU Member States. These EU Member States include France, Germany, Ireland, Italy and Sweden. HTA is the procedure according to which the assessment of the public health impact, therapeutic impact and the economic and societal impact of use of a given medicinal product in the national healthcare systems of the individual country is conducted. HTA generally focuses on the clinical efficacy and effectiveness, safety, cost, and cost-effectiveness of individual medicinal products as well as their potential implications for the healthcare system. Those elements of medicinal products are compared with other treatment options available on the market.

The outcome of HTA regarding specific medicinal products will often influence the pricing and reimbursement status granted to these medicinal products by the competent authorities of individual EU Member States. The extent to which pricing and reimbursement decisions are influenced by the HTA of the specific medicinal product varies between EU Member States.

In addition, pursuant to Directive 2011/24/EU on the application of patients' rights in cross-border healthcare, a voluntary network of national authorities or bodies responsible for HTA in the individual EU Member States was established. The purpose of the network is to facilitate and support the exchange of scientific information concerning HTAs. This may lead to harmonization of the criteria taken into account in the conduct of HTAs between EU Member States and in pricing and reimbursement decisions and may negatively affect price in at least some EU Member States.

On January 31, 2018, the European Commission adopted a proposal for an HTA Regulation intended to set out an EU-wide framework for HTA and boost cooperation among EU Member States in assessing health technologies, including new medicinal products. The HTA Regulation provides the basis for permanent and sustainable cooperation at the EU level for joint clinical assessments in these areas, and is therefore complementary to Directive 2011/24/EU. The HTA Regulation was finally adopted on December 13, 2021 and entered into force on January 11, 2022. The HTA Regulation will apply to all EU Member States from January 12, 2025.

The HTA Regulation provides that EU Member States will be able to use common HTA tools, methodologies, and procedures across the EU. Individual EU Member States will continue to be responsible for drawing conclusions on the overall value of a new health technology for their healthcare system, and pricing and reimbursement decisions.

Healthcare Fraud and Abuse Laws

In addition to FDA restrictions on marketing of pharmaceutical products, our business is subject to healthcare fraud and abuse regulation and enforcement by both the federal government and the states in which we conduct our business. These laws include, but are not limited to the following:

The federal Anti-Kickback Statute prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration, directly or indirectly, in cash or in kind, to induce or in return for purchasing, leasing, ordering or arranging for or recommending the purchase, lease or order of any healthcare item or service reimbursable, in whole or in part, under Medicare, Medicaid or other federally financed healthcare programs. This statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on one hand and prescribers, purchasers, and formulary managers on the other. A violation of the Anti-Kickback Statute may be established without proving actual knowledge of the statute or specific intent to violate it. The government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act. Although there are a number of statutory exceptions and regulatory safe harbors protecting certain common activities from prosecution, the exceptions and safe harbors are drawn narrowly and practices that involve remuneration to those who prescribe, purchase, or recommend pharmaceuticals, including certain discounts, or engaging such individuals as consultants, speakers or advisors, may be subject to scrutiny if they do not fit squarely within the exception or safe harbor. In November 2020, the U.S. Department of Health and Human Services finalized a previously abandoned proposal to amend the discount safe harbor regulation of the Anti-Kickback Statute in a purported effort to create incentives to manufacturers to lower their list prices, and to lower federal program beneficiary out-of-pocket costs. The rule, which is currently slated to take full effect January 1, 2023, revises the Anti-Kickback Statute discount safe harbor to exclude manufacturer rebates to Medicare Part D plans, either directly or through pharmacy benefit managers ("PBMs"), creates a new safe harbor for point-of-sale price reductions that are set in advance and are available to the beneficiary at the point-of-sale, and creates a new safe harbor for service fees paid by manufacturers to PBMs for services rendered to the manufacturer. It is too early to know whether the Biden Administration will further delay, rewrite, or allow the rule to go into effect, and what effect the rule may have on negotiations for coverage for products with Medicare Part D plans or commercial insurers. Our practices may not in all cases meet all of the criteria for safe harbor protection from anti-kickback liability. Moreover, there are no safe harbors for many common practices, such as educational and research grants, charitable donations, product support and patient assistance programs. Arrangements that implicate the Anti-Kickback Statute and do not fit within an exception or safe harbor are reviewed on a case-by-case basis to determine whether, based on the facts and circumstances, they violate the statute.

The federal civil False Claims Act prohibits any person from, among other things, knowingly presenting, or causing to be presented, a false or fraudulent claim for payment of government funds, or knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay money to the government or knowingly concealing or knowingly and improperly avoiding, decreasing, or concealing an obligation to pay money to the federal government. Actions under the False Claims Act may be brought by private individuals known as qui tam relators in the name of the government and to share in any monetary recovery. In recent years, several pharmaceutical and other healthcare companies have faced enforcement actions under the False Claims Act for, among other things, providing free product to customers with the expectation that the customers would bill federal programs for the product, and other interactions with prescribers and other customers including interactions that may have affected customers' billing or coding practices on claims submitted to the federal government. Other companies have faced enforcement actions for causing false claims to be submitted because of the company's marketing the product for unapproved, and thus non-reimbursable, uses. Federal enforcement agencies also have shown increased interest in pharmaceutical companies' product and patient assistance programs, including reimbursement and co-pay support services, and a number of investigations into these programs have resulted in significant civil and criminal settlements.

The Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively "HIPAA") prohibits, among other things, knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private third-party payors. HIPAA also prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement or representation, or making or using any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry in connection with the delivery of or payment for healthcare benefits, items or services. We may obtain health information from third parties that are subject to privacy and security requirements under HIPAA and we could potentially be subject to criminal penalties if we, our affiliates, or our agents knowingly obtain or disclose individually identifiable health information maintained by a HIPAA-covered entity in a manner that is not authorized or permitted by HIPAA.

The majority of states also have statutes or regulations similar to the federal anti-kickback and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor. Several states now require pharmaceutical companies to report expenses relating to the marketing and promotion of pharmaceutical products in those states and to report gifts and payments to individual health care providers in those states. Some of these states also prohibit certain marketing-related activities including the provision of gifts, meals, or other items to certain health care providers. Other states have laws requiring pharmaceutical sales representatives to be registered or licensed, and still others impose limits on co-pay assistance that pharmaceutical companies can offer to patients. In addition, several states require pharmaceutical companies to implement compliance programs or marketing codes.

The Physician Payments Sunshine Act, implemented as the Open Payments program, and its implementing regulations, requires manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program (with certain exceptions) to report annually to CMS information related to direct or indirect payments and other transfers of value to physicians and teaching hospitals, as well as ownership and investment interests held in the company by physicians and their immediate family members. Beginning in 2022, applicable manufacturers also will be required to report information regarding payments and transfers of value provided to physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists and certified nurse-midwives.

Compliance with such laws and regulations will require substantial resources. Because of the breadth of these various fraud and abuse laws, it is possible that some of our business activities could be subject to challenge under one or more of such laws. Such a challenge could have material adverse effects on our business, financial condition and results of operations. In the event governmental authorities conclude that our business practices do not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations, they may impose sanctions under these laws, which are potentially significant and may include civil monetary penalties, damages, exclusion of an entity or individual from participation in government health care programs, criminal fines and imprisonment, additional reporting requirements if we become subject to a corporate integrity agreement or other settlement to resolve allegations of violations of these laws, as well as the potential curtailment or restructuring of our operations. Even if we are not determined to have violated these laws, government investigations into these issues typically require the expenditure of significant resources and generate negative publicity.

Healthcare Privacy Laws

We may be subject to federal, state and foreign laws and regulations governing data privacy and security of health information, and the collection, use, disclosure, and protection of health-related and other personal information, including state data breach notification laws, state health information and/or genetic privacy laws, and federal and state consumer protection laws, such as Section 5 of the FTC Act, many of which differ from each other in significant ways, thus complicating compliance efforts. Compliance with these laws is difficult, constantly evolving, and time consuming. Many of these state laws enable a state attorney general to bring actions and provide private rights of action to consumers as enforcement mechanisms. There is also heightened sensitivity around certain types of health information, such as sensitive condition information or the health information of minors, which may be subject

to additional protections. Federal regulators, state attorneys general, and plaintiffs' attorneys, including class action attorneys, have been and will likely continue to be active in this space.

The legislative and regulatory landscape for privacy and data protection continues to evolve, and there has been an increasing focus on privacy and data protection issues which may affect our business. Failure to comply with these laws and regulations could result in government enforcement actions and create liability for us (including the imposition of significant civil and/or criminal penalties), private litigation and/or adverse publicity that could negatively affect our business. We may obtain health information from third parties, such as health care providers who prescribe our products, and research institutions we collaborate with, who are subject to privacy and security requirements under HIPAA. Although we are not directly subject to HIPAA, other than potentially with respect to providing certain employee benefits, we could be subject to criminal penalties if we or our affiliates or agents knowingly obtain, use, or disclose individually identifiable health information maintained by a HIPAA-covered entity in a manner that is not authorized or permitted by HIPAA.

In California, the California Consumer Privacy Act ("CCPA") establishes certain requirements for data use and sharing transparency and provides California consumers (as defined in the law) certain rights concerning the use, disclosure, and retention of their personal data. In November 2020, California voters approved the California Privacy Rights Act ("CPRA") ballot initiative which introduced significant amendments to the CCPA and established and funded a dedicated California privacy regulator, the California Privacy Protection Agency ("CPPA"). The amendments introduced by the CPRA go into effect on January 1, 2023, and new implementing regulations are expected to be introduced by the CPPA. Failure to comply with the CCPA may result in, among other things, significant civil penalties and injunctive relief, or statutory or actual damages. In addition, California residents have the right to bring a private right of action in connection with certain types of incidents. These claims may result in significant liability and damages. Similarly, there are a number of legislative proposals in the EU, the United States, at both the federal and state level, as well as other jurisdictions that could impose new obligations or limitations in areas affecting our business. In addition, some countries are considering or have passed legislation implementing data protection requirements or requiring local storage and processing of data or similar requirements that could increase the cost and complexity of delivering our services and research activities. These laws and regulations are evolving and subject to interpretation, and may impose limitations on our activities or otherwise adversely affect our business. The obligations to comply with the CCPA and evolving legislation may require us, among other things, to update our notices and develop new processes internally and with our partners. In addition, we could be subject to regulatory actions and/or claims made by individuals and groups in private litigation involving privacy issues related to data collection and use practices and other data privacy laws and regulations, including claims for misuse or inappropriate disclosure of data, as well as unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act ("FTC Act"). The FTC expects a company's data security measures to be reasonable and appropriate in light of the sensitivity and volume of consumer information it holds, the size and complexity of its business, and the cost of available tools to improve security and reduce vulnerabilities. Individually identifiable health information is considered sensitive data that merits stronger safeguards. Enforcement by the FTC under the FTC Act can result in civil penalties or decades-long enforcement actions. These laws and regulations, as well as any associated claims, inquiries, or investigations or any other government actions may lead to unfavorable outcomes including increased compliance costs, delays or impediments in the development of new products, negative publicity, increased operating costs, diversion of management time and attention, and remedies that harm our business, including fines or demands or orders that we modify or cease existing business practices.

Outside the U.S., the legislative and regulatory landscape for privacy and data security continues to evolve. There has been increased attention to privacy and data security issues that could potentially affect our business, including the EU General Data Protection Regulation ("GDPR"), which imposes penalties up to EUR 20 million or 4% of a noncompliant company's annual global revenue, whichever is greater. The GDPR regulates the processing of personal data and imposes strict obligations and restrictions on the ability to collect, analyze and transfer personal data from the EU to the US, including health data from clinical trials. In particular, these obligations and restrictions concern the consent of the individuals to whom the personal data relates, the processing details disclosed to the individuals, the sharing of personal data with third parties, the transfer of personal data out of the EU, contracting requirements (such as with clinical trial sites and vendors), and security breach notifications. Data protection authorities from the different EU Member States may interpret the GDPR and applicable related national laws differently and impose requirements additional to those provided in the GDPR. In addition, guidance on implementation and compliance practices may be updated or otherwise revised, which adds to the complexity of processing personal data in the EU. Enforcement by EU regulators is active, and failure to comply with the GDPR or applicable Member State law may result in substantial fines.

Foreign Corrupt Practices Act

In addition, the U.S. Foreign Corrupt Practices Act of 1977, as amended, ("FCPA"), prohibits corporations and individuals from engaging in certain activities to obtain or retain business or to influence a person working in an official capacity. It is illegal to pay, offer to pay or authorize the payment of anything of value to any official of another country, government staff member, political party or political candidate in an attempt to obtain or retain business or to otherwise influence a person working in that capacity.

Corporate Information

We were incorporated under the laws of the state of Delaware on March 19, 2008 under the name New pSivida, Inc. Our predecessor, pSivida Limited, was formed in December 2000 as an Australian company incorporated in Western Australia. We subsequently changed our name to pSivida Corp. in May 2008 and again to EyePoint Pharmaceuticals, Inc. in March 2018. Our principal executive office is located at 480 Pleasant Street, Suite B300, Watertown, Massachusetts 02472 and our telephone number is (617) 926-5000.

Additional Information

Our website address is http://www.eyepointpharma.com. Information contained on, or connected to, our website is not incorporated by reference into this Annual Report on Form 10-K. Copies of this Annual Report on Form 10-K, and our annual reports on Form 10-K, proxy statements, quarterly reports on Form 10-Q, current reports on Form 8-K and, if applicable, amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, are available free of charge through our website under "Investors – Financial Information – SEC Filings" as soon as reasonably practicable after we electronically file these materials with, or otherwise furnish them to, the SEC. The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC at www.sec.gov.

ITEM 1A. RISK FACTORS

RISKS RELATED TO OUR FINANCIAL POSITION AND OUR CAPITAL RESOURCES

We will likely need additional capital to fund our operations. If we are unable to obtain sufficient capital, we will need to curtail and reduce our operations and costs and modify our business strategy.

Our operations have consumed substantial amounts of cash. To date, we have financed our operations primarily through the sale of capital stock, proceeds from term loan agreements, the receipt of license fees, milestone payments, research and development funding and royalty payments from our collaboration partners, and product sales. In 2019, we commenced the U.S. launch of our first two commercial products, YUTIQ and DEXYCU, and, in the first quarter of 2021, we commenced the Phase 1 clinical trial for EYP-1901 as a potential six-month sustained delivery treatment for wet AMD, and we reported positive six-month interim safety and efficacy data in November 2021. However, we have no expectation of revenues from our research and development programs, including EYP-1901, prior to the successful completion of clinical trials for such programs. Therefore, we have no sufficient historical evidence to assert that it is probable that we will receive sufficient revenues from our product sales to fund operations. As of December 31, 2021, our cash, cash equivalents, and investments in marketable securities totaled $211.6 million. We believe that our cash, cash equivalents, and investments in marketable securities of $211.6 million at December 31, 2021, together with the anticipated net cash inflows from product sales will fund our operating plan into the second half of 2024, under current expectations regarding the timing and outcomes of our Phase 2 clinical trials for EYP-1901. Due to the difficulty and uncertainty associated with the design and implementation of clinical trials, we will continue to assess our cash and cash equivalents and future funding requirements. Actual cash requirements could differ from our projections due to many factors, including the continued effect of the Pandemic on our business and the medical community, the timing and results of our Phase 2 clinical trials for EYP-1901, additional investments in research and development programs, the success of commercialization for YUTIQ and DEXYCU, the actual costs of these commercialization efforts, competing technological and market developments and the costs of any strategic acquisitions and/or development of complementary business opportunities.

If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we will need to curtail and reduce our operations and costs, and modify our business strategy, which may require us to, among other things:

- significantly delay, scale back or discontinue the commercialization or development of one or more of our products or product candidates or one or more of our other research and development initiatives;
- seek partners or collaborators for one or more of our products or product candidates at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available;
- sell or license on unfavorable terms our rights to one or more of our technologies, products or product candidates that we otherwise would seek to develop or commercialize ourselves; and/or
- seek to sell our company at an earlier stage than would otherwise be desirable or on terms that are less favorable than might otherwise be available.

We have incurred significant losses since our inception and anticipate that we will continue to incur losses for the foreseeable future.

We have incurred significant losses since our inception, have not generated significant revenue from commercial sales of our products and are not profitable. Investment in drug development is highly speculative because it entails substantial upfront operating expenses and significant risk that a product candidate will fail to successfully complete clinical trials, gain regulatory approval or become commercially viable. We continue to incur significant operating expenses due primarily to investments in clinical trials, sales and marketing infrastructure, research and development, and other expenses related to our ongoing operations. For the years ended December 31, 2021 and 2020, we had losses from operations of $55.3 million and $37.3 million, respectively, and net losses of $58.4 million and $45.4 million, respectively, and we had a total accumulated deficit of $569.1 million at December 31, 2021.

We expect to continue to incur significant expenses and operating losses for the foreseeable future. We anticipate that our expenses will continue to be significant if, and as, we:

- continue the research and pre-clinical and clinical development of our product candidates, including EYP-1901 and YUTIQ 50;
- initiate additional pre-clinical studies, clinical trials or other studies or trials for EYP-1901 and our other product candidates, including YUTIQ 50;
- continue to commercialize YUTIQ and DEXYCU;
- add additional operational, financial and management information systems and personnel, including personnel to support our development and commercialization efforts;
- hire additional commercial, clinical, manufacturing and scientific personnel and engage third party commercial, clinical and manufacturing organizations;
- further develop the manufacturing process for our product candidates;
- change or add additional manufacturers or suppliers;
- seek regulatory approvals for our product candidates that successfully complete clinical trials;
- seek to identify and validate additional product candidates;
- acquire or in-license other products, product candidates and technologies;
- maintain, protect and expand our intellectual property portfolio;
- create additional infrastructure to support our product development and planned future commercial sale efforts; and
- experience any delays or encounter issues with any of the above.

We may never achieve profitability from future operations.

Our ability to generate revenue and achieve profitability depends on our ability, alone or with strategic collaboration partners, to successfully commercialize our current products and complete the development of, and obtain the regulatory approvals necessary for, the manufacture and commercialization of our product candidates, including EYP-1901 and YUTIQ 50. To become and remain profitable, we must succeed in developing and commercializing products that generate significant revenue. This will require us to be successful in a range of challenging activities, including completing pre-clinical testing and clinical trials of our product candidates, discovering additional product candidates, obtaining regulatory approval for these product candidates, manufacturing, marketing and selling any products for which we or our licensees may obtain regulatory approval, satisfying any post-marketing requirements and obtaining reimbursement for our products from private insurance or government payors. We do not know the extent to which YUTIQ or DEXYCU, or any of our product candidates, including EYP-1901, if approved, will generate significant revenue for us, if at all. We may never succeed in these activities and, even if we do, we may never generate revenues significant enough to achieve profitability. Because of the numerous risks and uncertainties associated with pharmaceutical product development and commercialization, we are unable to accurately project when or if we will be able to achieve profitability from operations. Even if we do so, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable would depress the value of our company and could impair our ability to raise capital, expand our business, maintain our research and development efforts, diversify our product offerings or even continue our operations. Our ability to generate revenue from our current or future products and product candidates will depend on a number of factors, including:

- our ability to successfully complete development activities, including the necessary clinical trials, with respect to EYP-1901 and our other product candidates;
- our ability to successfully commercialize YUTIQ and DEXYCU;
- our ability to complete and submit applications to, and obtain regulatory approval from, foreign regulatory authorities, if we choose to commercialize YUTIQ and DEXYCU in unpartnered jurisdictions outside the U.S.;
- the size of the markets in the territories for which we gain regulatory approval;
- our ability to further develop our commercial organization capable of sales, marketing and distribution for YUTIQ and DEXYCU, and any of our other product candidates for which we may obtain marketing approval;

- our ability to enter into and maintain commercially reasonable agreements with manufacturers, wholesalers, distributors and other third parties in our supply chain;
- our success in establishing a commercially viable price for our products;
- our ability to manufacture commercial quantities of our products at acceptable cost levels; and
- our ability to obtain coverage and adequate reimbursement from third parties, including government payors

The ongoing novel coronavirus (COVID-19) pandemic has had and will likely continue to have a material and adverse impact on our business.

The ongoing Pandemic has had a material and adverse impact on our business, including as a result of measures that we, other businesses, and government have taken and will likely continue to take. This includes a significant impact on cash flows from expected revenues due to the closure of ambulatory surgery centers for DEXYCU and a significant reduction in physician office visits impacting YUTIQ in 2020. The ongoing Pandemic continued to have an adverse impact on our revenues, financial condition and cash flows through 2021. For the year ended December 31, 2021, we recorded impairment charges of $1.2 million to cost of sales excluding amortization of acquired intangible assets and $0.1 million to sales and marketing expense, respectively, associated with the write-off of obsolete inventory of DEXYCU units and DEXYCU sample units, respectively, whose inventory levels were higher than our updated forecasts of future demand for those units. Additionally, the emergence of the Omicron variant continues to have an adverse impact on our revenues, financial condition and cash flows into the first quarter of 2022 and may continue to cause intermittent or prolonged periods of reduced patient services at our customers' facilities, which may negatively affect customer demand. The progression of the Pandemic and its effects on our business and operations are uncertain at this time.

While we cannot presently predict the future scope and severity of current or any potential business shutdowns or disruptions related to COVID-19, if we or any of the third parties with whom we engage, including the suppliers, manufacturers and other third parties in our global supply chain, clinical trial sites, clinical research organizations, patients who may be candidates for clinical trials, regulators, surgeons, ASCs, potential business development partners and other third parties with whom we conduct business, were to experience prolonged shutdowns or other business disruptions, including the imposition of restrictions on the export or import of our key supplies from countries outside of the United States, our ability to conduct our business in the manner and on the timelines presently planned could be materially and negatively impacted. Further, any sustained disruption in the capital markets from the Pandemic could negatively impact our ability to raise capital.

To the extent the Pandemic continues to adversely affect our business, results of operations, financial condition and cash flows, it may also heighten many of the other risks described herein as well as in any amendment or update to our risk factors reflected in subsequent filings with the SEC.

The ultimate impact of the Pandemic on our business, results of operations, financial condition and cash flows is dependent on future developments, which are still highly uncertain and cannot be predicted with confidence, including the duration of the Pandemic, as well as the timing and phasing of business reopening, including the full resumption of the performance of elective surgical procedures such as cataract surgeries.

We will need to raise additional capital in the future, which may not be available on favorable terms and may be dilutive to stockholders or impose operational restrictions.

We will need to raise additional capital in the future to help fund the development and commercialization of EYP-1901 and our other product candidates, if approved, and the continued commercialization of YUTIQ and DEXYCU. The amount of additional capital we will require will be influenced by many factors, including, but not limited to:

- our clinical development plans for EYP-1901 and our other product candidates including YUTIQ 50;
- the outcome, timing and cost of the regulatory approval process for EYP-1901 and our other product candidates, including the potential for the FDA to require that we perform more studies and clinical trials than those we currently expect;
- product revenues received and cash flow generated from sales of YUTIQ and DEXYCU;
- whether and to what extent we internally fund, whether and when we initiate, and how we conduct other product development programs;
- whether and when we are able to enter into strategic arrangements for our products or product candidates and the nature of those arrangements;
- the costs involved in preparing, filing, and prosecuting patent applications, and maintaining, and enforcing our intellectual property rights;
- changes in our operating plan, resulting in increases or decreases in our need for capital;
- our views on the availability, timing and desirability of raising capital; and
- the costs of operating as a public company.

We do not know if additional capital will be available to us when needed or on terms favorable to us or our stockholders. Collaboration, licensing or other commercial agreements may not be available on favorable terms, or at all. If we seek to sell our equity securities under our at-the-market ("ATM") program or in another offering, we do not know whether and to what extent we will be able to do so, or on what terms. Further, the rules and regulations of the Nasdaq Stock Market LLC, ("Nasdaq"), require us to obtain stockholder approval for sales of our equity securities under certain circumstances, which could delay or prevent us from raising additional capital from such sales. Also, the state of the economy and financial and credit markets at the time or times we seek any additional financing may make it more difficult or more expensive to obtain. If available, additional equity financing may be dilutive to stockholders, debt financing may involve restrictive covenants or other unfavorable terms and dilute our existing stockholders' equity, and funding through collaboration, licensing or other commercial agreements may be on unfavorable terms, including requiring us to relinquish rights to certain of our technologies or products. If adequate financing is not available if and when needed, we may delay, reduce the scope of, or eliminate research or development programs, postpone or cancel the pursuit of product candidates such as EYP-1901, including pre-clinical and clinical trials and new business opportunities, independent U.S. commercialization of YUTIQ and DEXYCU, or other new products, if any, reduce staff and operating costs, or otherwise significantly curtail our operations to reduce our cash requirements and extend our capital.

We must maintain compliance with the terms of our Credit Facilities or receive a waiver for any non-compliance. Our failure to comply with the covenants or other terms of the Credit Facilities, including as a result of events beyond our control, could result in a default under the SVB Loan Agreement that would materially and adversely affect the ongoing viability of our business.

On March 9, 2022 (the "SVB Closing Date"), we entered into a loan agreement (the "SVB Loan Agreement") among us, as borrower, and Silicon Valley Bank, as lender ("SVB"), providing for (i) a senior secured term loan facility of $30 million (the "Term Facility") and (ii) a senior secured revolving credit facility of up to $15.0 million (the "Revolving Facility" and together with the Term Facility, the "Credit Facilities"). The maximum amount available for borrowing at any time under the Revolving Facility is limited to a borrowing base valuation of our eligible accounts receivable. On the SVB Closing Date, $30 million of the Term Facility and approximately $11.5 million of the Revolving Facility, was advanced, to pay off the CRG Loan, including the accrued interests through this date. We utilized the proceeds from the Credit Facilities, together with cash on hand, for the repayment in full of all outstanding obligations under our term loan agreement (the "CRG Credit Agreement") with CRG Servicing LLC ("CRG").

The loans under the Credit Facilities are due and payable on January 1, 2027 (the "Maturity Date"). The Credit Facilities bear interest that is payable monthly in arrears at a per annum rate (subject to increase during an event of default) equal to (i) with respect to the Term Facility, the greater of (x) the Wall Street Journal prime rate plus 2.25% and (y) 5.50% and (ii) with respect to the Revolving Facility, the Wall Street Journal Prime Rate. An unused commitment fee of 0.25% per annum applies to unutilized borrowing capacity under the Revolving Facility. Commencing on February 1, 2024, we are required to repay the principal of the Term Facility in 36 consecutive equal monthly installments. At maturity or if earlier prepaid, we will also be required to pay an exit fee equal to 2.00% of the aggregate principal amount of the Term Facility.

We may make a voluntary prepayment of the Term Facility, in whole but not in part, at any time. All voluntary and mandatory prepayments of the Term Facility are subject to the payment of prepayment premiums as follows: (i) if prepayment occurs on or prior to the first anniversary of the SVB Closing Date, an amount equal to 3.0% of the aggregate outstanding principal amount of the Term Facility being prepaid, (ii) if prepayment occurs after the first anniversary of the SVB Closing Date and on or prior to the second anniversary of the SVB Closing Date, 2.0% of the aggregate outstanding principal amount of the Term Facility being prepaid, (iii) if prepayment occurs after the second anniversary of the SVB Closing Date and on or prior to the third anniversary of the SVB Closing Date, 1.0% of the aggregate outstanding principal amount of the Term Facility being prepaid and (iii) if prepayment occurs after the third anniversary of the SVB Closing Date but prior to the Maturity Date, an amount equal to 0.50% of the aggregate outstanding principal amount of the Term Facility being prepaid. We may voluntarily terminate the Revolving Facility at any time, subject to the payment of a termination fee as follows: (i) if such termination occurs on or prior to the first anniversary of the Closing Date, an amount equal to 3.0% of the Revolving Facility and (ii) if such termination occurs after the first anniversary of the Closing Date, 1.0% of the Revolving Facility.

The SVB Loan Agreement contains affirmative and negative covenants customary for financings of this type, including limitations on our and our subsidiaries' abilities, among other things, to incur additional debt, grant or permit additional liens, make investments and acquisitions, merge or consolidate with others, dispose of assets, pay dividends and distributions, enter into affiliate transactions and change our line of business, in each case, subject to certain exceptions. In addition, the SVB Loan Agreement contains the following financial covenants requiring us to maintain either:

- minimum product revenue from YUTIQ® and DEXYCU® assessed on a quarterly basis commencing from the three-month period ending on March 31, 2022 through the Maturity Date, with such minimum quarterly product revenue ranging from approximately $7.8 million to approximately $11.5 million in fiscal year 2022. Such minimum quarterly product revenue will be subject to incremental increases in fiscal year 2023 and will thereafter be such amounts as agreed upon between the Company and the Lender based on certain agreed-upon factors commencing for the three-month period ending on March 31, 2024 and for each three-month period thereafter through the Maturity Date; or
- if the Company is unable to achieve the minimum quarterly product revenue level required as of the end of any three-month period, cash and cash equivalents in an amount equal to the greater of (i) $50,000,000 and (ii) the Company's six-month Cash Burn (as defined in the SVB Loan Agreement).

Due to the effects on our business of the Pandemic and the potential loss of the pass-through status of DEXYCU, we may not meet the financial covenants associated with our revenue derived from sales of YUTIQ® and DEXYCU® for the twelve-month period ending December 31, 2022 or in subsequent years. If we do not maintain compliance with all of the continuing covenants and other terms and conditions of the Credit Facilities or secure a waiver for any non-compliance, then SVB may choose to declare an event of default and require that we immediately repay all amounts outstanding, plus penalties and interest, including an exit fee, any termination fees and any prepayment fees, and foreclose on the collateral granted to them to secure such indebtedness. Such repayment would have a material adverse effect on our business, operating results and financial condition.

In addition, the repayment of all unpaid principal and accrued interest under the Credit Facilities may be accelerated upon consummation of a specified change of control transaction or the occurrence of certain other events of default (as specified in the SVB Loan Agreement), including, among other things:

- our default in a payment obligation under the SVB Loan Agreement;
- our default under any of our agreements (i) evidencing indebtedness in an aggregate principal amount in excess of $250,000 or (ii) that could reasonably be expected to have a material adverse effect on our and our subsidiaries' business or operations;
- our breach of certain affirmative covenants and the negative covenants or, subject to specified cure periods, other terms of the SVB Loan Agreement;
- a material impairment in the perfection or priority of SVB's security interest in the collateral;
- the occurrence of a material adverse effect (as specified in the SVB Loan Agreement);
- certain specified insolvency and bankruptcy-related events; and
- certain specified events relating to governmental approvals.

Subject to any applicable cure period set forth in the SVB Loan Agreement, upon the occurrence of an event of default, SVB may accelerate all or any amounts outstanding with respect to the Credit Facilities (principal, accrued interest, exit fee, any termination fees and any prepayment fees). Our assets or cash flow may not be sufficient to fully repay our obligations under the SVB Loan Agreement if the obligations thereunder are accelerated upon an event of default. Further, if we are unable to repay, refinance or restructure our obligations under the SVB Loan Agreement, SVB could proceed to protect and enforce their rights under the SVB Loan Agreement by exercising such remedies as are available to SVB thereunder and in respect thereof under applicable law, either by suit in equity or by action at law, or both, whether for specific performance of any covenant or other agreement contained in the SVB Loan Agreement or in aid of the exercise of any power granted in the SVB Loan Agreement. The foregoing would materially and adversely affect the ongoing viability of our business.

Our Loan Agreement contains restrictions that limit our flexibility in operating our business.

The SVB Loan Agreement contains various covenants that limit our ability to engage in specified types of transactions without SVB's prior consent. These covenants limit our ability to, among other things:

- sell, transfer, lease or dispose of our assets;
- create, incur or assume additional indebtedness;
- encumber or permit liens on certain of our assets;
- make restricted payments, including paying dividends on, repurchasing or making distributions with respect to, our common stock;
- make specified investments (including loans and advances) and acquisitions;
- consolidate, merge, sell or otherwise dispose of all or substantially all of our assets;
- enter into certain transactions with our affiliates;
- permit our cash held in deposit accounts with SVB to be less than the lesser of (i) 100.0% of our consolidated cash, including our subsidiaries' and affiliates' cash, and (ii) 110.0% of all outstanding obligations owing under the SVB Loan Agreement; and
- permit our annual product revenue from YUTIQ and DEXYCU to fall below certain agreed projection levels or permit liquidity to fall below certain agreed levels.

The covenants in our Loan Agreement may limit our ability to take certain actions that may be in our long-term best interests. In the event that we breach one or more covenants, SVB may choose to declare an event of default and require that we immediately repay all amounts outstanding, plus penalties and interest, including the exit fee, any termination fees and any prepayment fees, terminate their commitments to extend further credit and foreclose on the collateral granted to them to secure such indebtedness. Such repayment could have a material adverse effect on our business, operating results and financial condition.

Certain potential payments to the Lenders could impede a sale of our company.

Subject to certain exceptions, we are also required to make mandatory prepayments of outstanding loans under the Credit Facilities with the proceeds of assets sales and insurance proceeds, which amounts in the case of the Revolving Facility, subject to the conditions set forth in the Loan Agreement, may re-borrowed.

All voluntary and mandatory prepayments of the Term Facility are subject to the payment of prepayment premiums as follows: (i) if prepayment occurs on or prior to the first anniversary of the SVB Closing Date, an amount equal to 3.0% of the aggregate outstanding principal amount of the Term Facility being prepaid, (ii) if prepayment occurs after the first anniversary of the SVB Closing Date and on or prior to the second anniversary of the SVB Closing Date, 2.0% of the aggregate outstanding principal amount of the Term Facility being prepaid, (iii) if prepayment occurs after the second anniversary of the SVB Closing Date and on or prior to the third anniversary of the SVB Closing Date, 1.0% of the aggregate outstanding principal amount of the Term Facility being prepaid and (iii) if prepayment occurs after the third anniversary of the SVB Closing Date but prior to the Maturity Date, an amount equal to 0.50% of the aggregate outstanding principal amount of the Term Facility being prepaid. The prepayment of the Term Facility in full is also subject to the payment of an exit fee of $600,000. We may voluntarily terminate the Revolving Facility at any time, subject to the payment of a termination fee as follows: (i) if such termination occurs on or prior to the first anniversary of the Closing Date, an amount equal to 3.0% of the Revolving Facility and (ii) if such termination occurs after the first anniversary of the Closing Date, 1.0% of the Revolving Facility.

These provisions may make it more costly for a potential acquirer to engage in a business combination transaction with us. Provisions that have the effect of discouraging, delaying or preventing a change in control could discourage a third party from attempting to acquire us, limit the opportunity for our stockholders to receive a premium for their shares of our common stock and could also affect the price that some investors are willing to pay for our common stock.

To service our indebtedness, we will require a significant amount of cash and our ability to generate cash depends on many factors beyond our control.

Our ability to make cash payments on our indebtedness will depend on our ability to generate significant operating cash flow in the future. This ability is, to a significant extent, subject to general economic, financial, competitive, legislative, regulatory and other factors, that will be beyond our control. In addition, our business may not generate sufficient cash flow from operations to enable us to pay our indebtedness or to fund our other liquidity needs. In any such circumstance, we may need to refinance all or a portion of our indebtedness, on or before maturity. We may not be able to refinance any indebtedness on commercially reasonable terms or at all. If we cannot service our indebtedness, we may have to take actions such as selling assets, seeking additional equity or reducing or delaying capital expenditures, strategic acquisitions and investments. Any such action, if necessary, may not be effected on commercially reasonable terms or at all. The instruments governing our indebtedness may restrict our ability to sell assets and our use of the proceeds from such sales.

Our profitability will be impacted by our obligations to make royalty and milestone payments to the former securityholders of Icon Bioscience, Inc. and other third-party collaborators.

In connection with our acquisition of Icon Bioscience, Inc. (“Icon”) in March 2018 (the “Icon Acquisition”), we are obligated to pay certain post-closing contingent cash payments upon the achievement of specified milestones and based upon certain net sales and partnering revenue standards, in each case subject to the terms and conditions set forth in the Merger Agreement, dated March 28, 2018 (the “Merger Agreement”). These future obligations include (i) sales milestone payments totaling up to $95.0 million, beginning no earlier than three years after the October 1, 2018 effective date of the pass-through reimbursement code approved by CMS, upon the achievement of certain sales thresholds and subject to certain CMS reimbursement conditions set forth in the Merger Agreement, (ii) quarterly earn-out payments equal to 12% on net sales of DEXYCU, which earn-out payments will increase to 16% of net sales of DEXYCU in a given year beginning in the calendar quarter for a given year to the extent aggregate annual consideration of DEXYCU exceeds $200.0 million in such year, (iii) quarterly earn-out payments equal to 20% of partnering revenue received by us for DEXYCU outside of the U.S., and (iv) single-digit percentage quarterly earn-out payments with respect to net sales and/or partnering income, if any, resulting from future clinical development, regulatory approval and commercialization of any other product candidates we might develop utilizing the Verisome technology acquired in the Icon Acquisition. As of December 31, 2021, we made DEXYCU product revenue-based royalty payments totaling $2.5 million, of which $0 were related to the partnering income in connection with the Icon Acquisition. Our profitability with respect to DEXYCU is impacted by our obligations to make payments to the former securityholders of Icon. Our obligations to the former securityholders of Icon and other third-party collaborators could have a material adverse effect on our business, financial condition and results of operations if we are unable to manage our operating costs and expenses at profitable levels.

Our ability to use our net operating loss carryforwards and other tax attributes may be limited.

As of December 31, 2021, including pre-acquisition amounts related to Icon , we had U.S. net operating loss (“NOL”) carryforwards of approximately $301.2 million for U.S. federal income tax and approximately $222.6 million for state income tax purposes available to offset future taxable income and U.S. federal and state research and development tax credits of approximately $5.7 million, prior to consideration of annual limitations that may be imposed under Section 382 of the Internal Revenue Code of 1986, as amended (“Section 382”). Our U.S. NOL carryforwards begin to expire in 2023 if not utilized.

Our U.S. NOL and tax credit carryforwards could expire unused and be unavailable to offset future income tax liabilities. Under Section 382, and corresponding provisions of U.S. state law, if a corporation undergoes an "ownership change," generally defined as a greater than 50% change, by value, in its equity ownership over a three-year period, the corporation's ability to use its pre-change U.S. NOLs and other pre-change tax attributes, such as research and development tax credits, to offset its post-change income may be limited. The latest analysis performed under Section 382, performed through September 30, 2018, confirmed that the exercise of certain warrants in late September 2018 resulted in a greater than 50% cumulative ownership change, which will cause annual limitations on the use of our then existing NOL balances and other pre-change tax attributes. As a result, if we earn net taxable income in future periods, our ability to use our pre-change U.S. NOL carryforwards to offset U.S. federal taxable income will be subject to limitations, which could potentially result in increased future tax liabilities to us.

In addition, we may experience additional ownership changes in the future as a result of subsequent shifts in our stock ownership, including through completed or contemplated financings, some of which may be outside of our control. If we determine that a future ownership change has occurred and our ability to use our historical net operating loss and tax credit carryforwards is materially limited, it would harm our future operating results by effectively increasing our future tax obligations.

RISKS RELATED TO THE REGULATORY APPROVAL AND CLINICAL DEVELOPMENT OF OUR PRODUCT CANDIDATES

We are substantially dependent on the success of our lead product candidate, EYP-1901, which is in the early stages of development and must go through clinical trials, which are very expensive, time-consuming and difficult to design and implement. The outcomes of clinical trials are uncertain, and delays in the completion of or the termination of any clinical trial of EYP-1901 or our other product candidates could harm our business, financial condition and prospects.

Our research and development program for our lead product candidate, EYP-1901, and certain of our other product candidates, are at an early stage of development. We must demonstrate EYP-1901's and our other product candidates' safety and efficacy in humans through extensive clinical testing. Such testing is expensive and time-consuming and requires specialized knowledge and expertise.

Clinical trials are expensive and difficult to design and implement, in part because they are subject to rigorous regulatory requirements. The clinical trial process is also time-consuming, and the outcome is not certain. We estimate that clinical trials of our product candidates will take multiple years to complete. Failure can occur at any stage of a clinical trial, and we could encounter problems that cause us to abandon or repeat clinical trials. The commencement and completion of clinical trials may be delayed or precluded by a number of factors, including:

- decisions not to pursue development of product candidates due to pre-clinical or clinical trial results or market factors;
- lack of sufficient funding;
- delays or inability to attract clinical investigators for trials;
- clinical sites dropping out of a clinical trial;
- time required to add new clinical sites;
- any shelter-in-place orders from local, state or federal governments or clinical trial site policies resulting from the COVID-19 pandemic that determine essential and non-essential functions and staff, which may impact the ability of site staff to conduct assessments, or result in delays to the conduct of the assessments, as part of our clinical trial protocols, or the ability to enter assessment results into clinical trial databases in a timely manner;
- delays or inability to recruit patients in sufficient numbers or at the expected rate;
- decisions by licensees not to exercise options for products or not to pursue or promote products licensed to them;
- adverse side effects;
- failure of trials to demonstrate safety and efficacy;
- failure to reach agreement with the FDA or other regulatory agency requirements for clinical trial design or scope of the development program;
- patients' delays or failure to complete participation in a clinical trial or inability to follow patients adequately after treatment;
- changes in the design or manufacture of a product candidate;
- failures by, changes in our (or our licensees') relationship with, or other issues at, CROs, vendors and investigators responsible for pre-clinical testing and clinical trials;
- imposition of a clinical hold following an inspection of our clinical trial operations or trial sites by the FDA or foreign regulatory authorities;
- delays or failures in obtaining required IRB approval;
- inability to obtain supplies and/or to manufacture sufficient quantities of materials for use in clinical trials;
- stability issues with clinical materials;
- failure to comply with GLP, GCP, cGMP or similar foreign regulatory requirements that affect the conduct of pre-clinical and clinical studies and the manufacturing of product candidates;
- requests by regulatory authorities for additional data or clinical trials;

- governmental or regulatory agency assessments of pre-clinical or clinical testing that differ from our (or our licensees') interpretations or conclusions;
- governmental or regulatory delays, or changes in approval policies or regulations; and
- developments, clinical trial results and other factors with respect to competitive products and treatments.

We, the FDA, other regulatory authorities outside the United States, or an IRB may suspend a clinical trial at any time for various reasons, including if it appears that the clinical trial is exposing participants to unacceptable health risks or if the FDA or one or more other regulatory authorities outside the United States find deficiencies in our IND or similar application outside the United States or the conduct of the trial. If we experience delays in the completion of, or the termination of, any clinical trial of any of our product candidates, including EYP-1901, the commercial prospects of such product candidate will be harmed, and our ability to generate product revenues from such product candidate will be delayed. In addition, any delays in completing our clinical trials will increase our costs, slow down our product candidate development and approval process, and jeopardize our ability to commence product sales and generate revenues. Any of these occurrences may harm our business, financial condition, results of operations, cash flows and prospects significantly. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates.

Clinical trial results may fail to support approval of EYP-1901 or our other product candidates.

Even if our clinical trials are successfully completed as planned, the results may not support approval of EYP-1901 or our other product candidates under the laws and regulations of the FDA or other regulatory authorities outside the United States. The clinical trial process may fail to demonstrate that our product candidates are both safe and effective for their intended uses. Pre-clinical and clinical data and analyses are often able to be interpreted in different ways. Even if we view our results favorably, if a regulatory authority has a different view, we may still fail to obtain regulatory approval of our product candidates. This, in turn, would significantly adversely affect our business prospects.

We may expend significant resources to pursue our lead product candidate, EYP-1901 for the potential treatment of wet AMD, and fail to capitalize on the potential of EYP-1901, or our other product candidates, for the potential treatment of other indications that may be more profitable or for which there is a greater likelihood of success.

Because we have limited financial and managerial resources, we focus on research programs and product candidates for specific indications. Specifically, with regard to EYP-1901, we are initially focusing our efforts on the treatment of wet AMD. As a result, we may forego or delay pursuit of opportunities with EYP-1901 or other product candidates for the treatment of other indications that later prove to have greater commercial potential. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities. Our spending on current and future research and development programs and product candidates for specific indications may not yield any commercially viable products. Furthermore, until such time as we are able to build a broader product candidate pipeline, if ever, any adverse developments with respect to our leading product candidate, EYP-1901, would have a more significant adverse effect on our overall business than if we maintained a broader portfolio of product candidates.

We have historically based our research and development efforts primarily on our proprietary technologies for the treatment of chronic eye diseases. As a result of pursuing the development of product candidates using our proprietary technologies, we may fail to develop product candidates or address indications based on other scientific approaches that may offer greater commercial potential or for which there is a greater likelihood of success. Research programs to identify new product candidates require substantial technical, financial and human resources. These research programs may initially show promise in identifying potential product candidates, yet fail to yield product candidates for clinical development.

Initial results from a clinical trial do not ensure that the trial will be successful and success in early stage clinical trials does not ensure success in later-stage clinical trials.

Results from pre-clinical testing, early clinical trials, prior clinical trials, investigator-sponsored studies and other data and information often do not accurately predict final pivotal clinical trial results. EYP-1901 relies on vorolanib as its active pharmaceutical agent. Vorolanib is a small molecule TKI that has been previously studied by Tyrogenix in Phase 1 and 2 clinical trials as an orally delivered therapy for the treatment of wet AMD. The Phase 2 clinical trial was discontinued due to systemic toxicity. There can be no assurance that such systemic toxicities will not occur in our Phase 1 clinical trial for EYP-1901. In addition, data from one pivotal clinical trial may not be predictive of the results of other pivotal clinical trials for the same product candidate, even if the trial designs are the same or similar. Data obtained from pre-clinical studies and clinical trials are susceptible to varying interpretations, which may delay, limit or prevent regulatory approval. Adverse side effects may be observed in clinical trials that delay, limit or prevent regulatory approval, and even after a product candidate has received marketing approval, the emergence of adverse side effects in more widespread clinical practice may cause the product's regulatory approval to be limited or even rescinded. Additional trials necessary for approval may not be undertaken or may ultimately fail to establish the safety and efficacy of our product candidates.

In addition, while the clinical trials of our product candidates, including our lead product candidate, EYP-1901, are designed based on the available relevant information, in view of the uncertainties inherent in drug development, such clinical trials may not be designed with a focus on indications, patient populations, dosing regimens, safety or efficacy parameters or other variables that will provide the necessary safety and efficacy data to support regulatory approval to commercialize the product. In addition, the methods we select to assess particular safety or efficacy parameters may not yield statistically significant results regarding our product candidates' effects on patients. Even if we believe the data collected from clinical trials of our product candidates are promising, these data may not be sufficient to support approval by the FDA or foreign regulatory authorities. Pre-clinical and clinical data can be interpreted in different ways. Accordingly, the FDA or foreign regulatory authorities could interpret these data in different ways from us or our partners, which could delay, limit or prevent regulatory approval.

We face risks related to health epidemics and outbreaks, including the Pandemic, which could significantly disrupt our preclinical studies and clinical trials.

We plan to conduct Phase 2 clinical trials for EYP-1901 in multiple jurisdictions within the U.S. beginning in 2022. Enrollment of patients in these clinical trials and future clinical trials in these regions may be delayed due to the outbreak of the Pandemic. In addition, we rely on independent clinical investigators, contract research organizations and other third-party service providers to assist us in managing, monitoring and otherwise carrying out our preclinical studies and clinical trials, and the outbreak may affect their ability to devote sufficient time and resources to our programs. As a result, the expected timeline for data readouts of our preclinical studies and clinical trials and certain regulatory filings may be negatively impacted, which would adversely affect our business.

We may find it difficult to enroll patients in our clinical trials, which could delay or prevent clinical trials of our product candidates.

Identifying and qualifying patients to participate in clinical trials of our product candidates, including EYP-1901, is critical to our success. The timing of our clinical trials depends in part on the speed at which we can recruit patients to participate in testing our product candidates. If patients are unwilling to participate in our trials because of the COVID-19 pandemic and restrictions on travel or healthcare institution policies, negative publicity from adverse events in the biotechnology industries, public perception of vaccine safety issues or for other reasons, including competitive clinical trials for similar patient populations, the timeline for recruiting patients, conducting studies and obtaining regulatory approval of potential products may be delayed. These delays could result in increased costs, delays in advancing our product development, delays in testing the effectiveness of our technology or termination of the clinical trials altogether.

We may not be able to identify, recruit and enroll a sufficient number of patients, or those with required or desired characteristics to achieve diversity in a clinical trial, or complete our clinical trials in a timely manner. Patient enrollment is affected by a variety factors including, among others:

- severity of the disease under investigation;
- design of the trial protocol and size of the patient population required for analysis of the trial's primary endpoints;
- size of the patient population;
- eligibility criteria for the trial in question;
- perceived risks and benefits of the product candidate being tested;
- willingness or availability of patients to participate in our clinical trials (including due to the COVID-19 pandemic);
- proximity and availability of clinical trial sites for prospective patients;
- our ability to recruit clinical trial investigators with the appropriate competencies and experience;
- availability of competing vaccines and/or therapies and related clinical trials;
- efforts to facilitate timely enrollment in clinical trials;
- our ability to obtain and maintain patient consents;
- the risk that patients enrolled in clinical trials will drop out of the trials before completion;
- patient referral practices of physicians; and
- ability to monitor patients adequately during and after treatment.

We may not be able to initiate or continue clinical trials if we cannot enroll a sufficient number of eligible patients to participate in the clinical trials required by regulatory agencies.

Even if we enroll a sufficient number of eligible patients to initiate our clinical trials, we may be unable to maintain participation of these patients throughout the course of the clinical trial as required by the clinical trial protocol, in which event we may be unable to use the research results from those patients. If we have difficulty enrolling and maintaining the enrollment of a sufficient number of patients to conduct our clinical trials as planned, we may need to delay, limit or terminate ongoing or planned clinical trials, any of which would have an adverse effect on our business.

We are largely dependent on the clinical and future commercial success of our lead product candidate, EYP-1901.

Our ability to generate revenues and become profitable will depend in large part on the future commercial success of our lead product candidate, EYP-1901, if it is approved for marketing. If EYP-1901 or any other product that we commercialize in the future does not gain an adequate level of acceptance among physicians, patients and third parties, we may not generate significant product revenues or become profitable. Market acceptance by physicians, patients and third party payors of EYP-1901 or other products we may commercialize in the future will depend on a number of factors, some of which are beyond our control, including:

- their efficacy, safety and other potential advantages in relation to alternative treatments;
- their relative convenience and ease of administration;
- the availability of adequate coverage or reimbursement by third parties, such as insurance companies and other healthcare payors, and by government healthcare programs, including Medicare and Medicaid;
- the prevalence and severity of adverse events;
- their cost of treatment in relation to alternative treatments, including generic products;
- the extent and strength of our third party manufacturer and supplier support;
- the extent and strength of marketing and distribution support;
- the limitations or warnings contained in a product's approved labeling; and
- distribution and use restrictions imposed by the FDA or other regulatory authorities outside the United States.

For example, even if EYP-1901 gains approval by the FDA, physicians and patients may not immediately be receptive to it and may be slow to adopt it. If EYP-1901 does not achieve an adequate level of acceptance among physicians, patients and third party payors, we may not generate meaningful revenues from EYP-1901 and we may not become profitable.

RISKS RELATED TO THE COMMERCIALIZATION OF OUR PRODUCTS AND PRODUCT CANDIDATES

Our current business strategy relies in part on our ability to successfully commercialize YUTIQ and DEXYCU and in the U.S. Our approved products may not achieve market acceptance or be commercially successful.

Our ability to successfully commercialize YUTIQ and DEXYCU in the U.S. is important to the execution of our business strategy. Neither YUTIQ nor DEXYCU may achieve broad market acceptance among retinal specialists and other doctors, patients, government health administration authorities and other third-party payors, and may not be commercially successful in the U.S. The degree of market acceptance and commercial success of our approved products will depend on a number of factors, including the following:

- the acceptance of our products by patients and the medical community and the availability, perceived advantages and relative cost, safety and efficacy of alternative and competing treatments;
- unless separate payment for DEXYCU is further extended by CMS beyond December 31, 2022, the loss of separate payment would significantly hinder the purchase and utilization of DEXYCU by ASCs;
- the current lack of a separately payable CPT code (i.e. outside of the cataract payment bundle) for the injection of DEXYCU into the posterior chamber of the anterior segment of the eye;
- our ability to obtain reimbursement for our products from third party payors at levels sufficient to support commercial success;
- the cost effectiveness of our products;
- the effectiveness of our commercial alliance partner in its efforts to market and sell DEXYCU;
- the effectiveness of our distribution strategies and operations;
- our ability and the ability of our contract manufacturing organizations, or CMOs, as applicable, to manufacture commercial supplies of our products, to remain in good standing with regulatory agencies, and to develop, validate and maintain commercially viable manufacturing processes that are, to the extent required, compliant with cGMP regulations;
- the degree to which the approved labeling supports promotional initiatives for commercial success;
- a continued acceptable safety profile of our products;
- results from additional clinical trials of our products or further analysis of clinical data from completed clinical trials of our products by us or our competitors;
- our ability to enforce our intellectual property rights;
- our products' potential advantages over other therapies;
- our ability to avoid third-party patent interference or patent infringement claims; and
- maintaining compliance with all applicable regulatory requirements.

As many of these factors are beyond our control, we cannot assure you that we will ever be able to generate meaningful revenues through product sales. In particular, if governments, private insurers, governmental insurers and other third-party payors do not provide adequate and timely coverage and reimbursement levels for our products or limit the frequency of administration, the market acceptance of our products and product candidates will be limited. Governments, governmental insurers, private insurers and other third-party payors attempt to contain healthcare costs by limiting coverage and the level of reimbursement for products and, accordingly, they may challenge the price and cost-effectiveness of our products or refuse to provide coverage for our products. Any inability on our part to successfully commercialize YUTIQ and DEXYCU, and our other product candidates in the U.S. or any foreign territories where they may be approved, or any significant delay in such approvals, could have a material adverse impact on our ability to execute upon our business strategy and our future business prospects.

We could be adversely affected by our exposure to customer concentration risk.

Our commercialization partner for DEXYCU sells a significant amount of DEXYCU to a limited number of customers, resulting in a small number of customers accounting for a significant portion of our DEXYCU revenues. If our commercialization partner were to lose the business of one or more of these customers, or if any of these customers negotiated specialized rebate or extended payment terms, it could have a material adverse effect on our commercial business, results of operations and cash flows.

Our products may become subject to unfavorable pricing regulations, third-party reimbursement practices or healthcare reform initiatives, including DEXYCU pass-through status, which could harm our business.

The regulations that govern marketing approvals, pricing and reimbursement for new drug products vary widely from country to country. Some countries require approval of the sale price of a product before it can be marketed. In many countries, the pricing review period begins after marketing or product licensing approval is granted. In some foreign markets, prescription pharmaceutical pricing remains subject to continuing governmental control even after initial approval is granted. As a result, we might obtain marketing approval for a product in a particular country, but then be subject to price regulations that delay our commercial launch of the product, possibly for lengthy time periods, which could negatively impact the revenues we are able to generate from the sale of the product in that particular country. Adverse pricing limitations may hinder our ability to recoup our investment in one or more of our products.

Our success also depends in part on the extent to which coverage and reimbursement for these products and related treatments will be available from government health administration authorities, private health insurers and other organizations. Government authorities and third-party payors, such as private health insurers and health maintenance organizations, determine which medications they will cover and establish reimbursement levels. A primary trend in the U.S. healthcare industry and elsewhere is cost containment. Government authorities and third-party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications. Increasingly, third-party payors are requiring that drug companies provide them with predetermined discounts from list prices and are challenging the prices charged for medical products. Third-party payors also may seek additional clinical evidence, beyond the data required to obtain marketing approval, demonstrating clinical benefits and value in specific patient populations, before covering our products for those patients. We cannot be sure that coverage and reimbursement will be available for any product that we commercialize and, if reimbursement is available, what the level of reimbursement will be. Coverage and reimbursement may impact the demand for, or the price of, any product candidate for which we obtain marketing approval. If reimbursement is not available or is available only to limited levels, we may not be able to successfully commercialize any product candidate for which we obtain marketing approval. For example, under current Medicare Part B policy, payment to hospital outpatient departments and ambulatory surgical centers for products furnished to patients during a procedure is typically packaged into the payment for the associated procedure and thus not paid separately. Products granted pass-through status are excluded from this payment packaging policy and currently receive separate payment from the associated procedure for a period of three years. While DEXYCU has been granted pass-through status and will receive separate payment in these settings from Medicare for a period of three years (measured on the basis of the date Medicare receives its first claim for reimbursement for DEXYCU), at the end of that three year period or any future extension of the three year period, or if such three-year period is shortened by a change in law, regulation or Administrative interpretation, payment for DEXYCU may be packaged into the payment for the associated procedure and no longer be paid separately, which we expect would materially decrease our revenues from sales of DEXYCU and correspondingly have a material adverse effect on our results of operations and financial condition.

There may be significant delays in obtaining coverage and reimbursement for newly approved drugs, and coverage may be more limited than the purposes for which the drug is approved by the FDA or comparable foreign regulatory authorities. Moreover, eligibility for coverage and reimbursement does not imply that any drug will be paid for in all cases or at a rate that covers our costs, including research, development, manufacturing, selling and distribution costs. Reimbursement rates may vary according to the use of the drug and the clinical setting in which it is used, may be based on reimbursement levels already set for lower cost drugs and may be incorporated into existing payments for other services. Net prices for products may be reduced by mandatory discounts or rebates required by government healthcare programs or private payors and by any future relaxation of laws that presently restrict imports of products from countries where they may be sold at lower prices than in the U.S. Third-party payors often rely upon Medicare coverage policy and payment limitations in setting their own reimbursement policies. Our inability to promptly obtain coverage and profitable reimbursement rates from both government-funded and private payors for any approved products that we develop could have a material adverse effect on our operating results, our ability to raise capital needed to commercialize products, and our overall financial condition.

We participate in, and have certain price reporting obligations to, the Medicaid Drug Rebate Program. This program requires us to pay a rebate for each unit of drug reimbursed by Medicaid. The amount of the "basic" portion of the rebate for each product is set by law as the larger of: (i) 23.1% of quarterly average manufacturer price, or AMP, or (ii) the difference between quarterly AMP and the quarterly best price available from us to any commercial or non-governmental customer, or Best Price. AMP must be reported on a monthly and quarterly basis and Best Price is reported on a quarterly basis only. In addition, the rebate also includes the "additional" portion, which adjusts the overall rebate amount upward as an "inflation penalty" when the drug's latest quarter's AMP exceeds the drug's AMP from the first full quarter of sales after launch, adjusted for increases in the Consumer Price Index-Urban. The upward adjustment in the rebate amount per unit is equal to the excess amount of the current AMP over the inflation-adjusted AMP from the first full quarter of sales. The rebate amount is computed each quarter based on our report to CMS of current quarterly AMP and Best Price for our drug. Medicaid Drug Rebate Program caps are currently set at 100 percent of AMP, but that cap is set to be removed, effective January 1, 2024, which could increase our rebate liability. We are required to report revisions to AMP or Best Price within a period not to exceed 12 quarters from the quarter in which the data was originally due. Any such revisions could have the impact of increasing or decreasing our rebate liability for prior quarters, depending on the direction of the revision. The Affordable Care Act made significant changes to the Medicaid Drug Rebate Program, and CMS issued a final regulation, which became effective on April 1, 2016, to implement the changes to the Medicaid Drug Rebate program under the Affordable Care Act. On December 21, 2020, CMS issued a final regulation that modified existing Medicaid Drug Rebate Program regulations to permit reporting multiple Best Price figures with regard to value-based purchasing arrangements (beginning in 2022); provide definitions for "line extension," "new formulation," and related terms with the practical effect of expanding the scope of drugs considered to be line extensions (beginning in 2022); and revise AMP and Best Price exclusions of manufacturer-sponsored patient benefit programs, specifically regarding inapplicability of such exclusions in the context of pharmacy benefit manager "accumulator" programs (beginning in 2023).

Federal law also requires that any manufacturer that participates in the Medicaid Drug Rebate Program also participate in the Public Health Service's 340B drug pricing program in order for federal funds to be available for the manufacturer's drugs under Medicaid and Medicare Part B. The 340B drug pricing program, which is administered by the Health Resources and Services Administration, or HRSA, requires participating manufacturers to agree to charge statutorily-defined covered entities no more than the 340B "ceiling price" for the manufacturer's covered outpatient drugs. These 340B covered entities include, but are not limited to, a variety of community health clinics and other entities that receive health services grants from the Public Health Service, as well as hospitals that serve a disproportionate share of low-income patients. The 340B ceiling price is calculated using a statutory formula, which is based on the AMP and rebate amount for the covered outpatient drug as calculated under the Medicaid Drug Rebate Program. Any changes to the definition of AMP and the Medicaid rebate amount under the Affordable Care Act or other legislation could affect our 340B ceiling price calculations and negatively impact our results of operations.

HRSA issued a final regulation regarding the calculation of the 340B ceiling price and the imposition of civil monetary penalties on manufacturers that knowingly and intentionally overcharge covered entities, which became effective on January 1, 2019. It is currently unclear how HRSA will apply its enforcement authority under this regulation. HRSA has also implemented a ceiling price reporting requirement related to the 340B program under which we are required to report 340B ceiling prices to HRSA on a quarterly basis, and HRSA then publishes that information to covered entities. Moreover, under a final regulation effective January 13, 2021, HRSA newly established an administrative dispute resolution ("ADR") process for claims by covered entities that a manufacturer has engaged in overcharging, and by manufacturers that a covered entity violated the prohibitions against diversion or duplicate discounts. Such claims are to be resolved through an ADR panel of government officials rendering a decision that could be appealed only in federal court. An ADR proceeding could subject us to onerous procedural requirements and could result in additional liability. In addition, legislation may be introduced that, if passed, would further expand the 340B program to additional covered entities or would require participating manufacturers to agree to provide 340B discounted pricing on drugs used in an inpatient setting.

Federal law also requires that a company that participates in the Medicaid Drug Rebate program report average sales price, or ASP, information each quarter to CMS for certain categories of drugs that are paid under the Medicare Part B program. For calendar quarters beginning January 1, 2022, manufacturers are required to report the average sales price for certain drugs under the Medicare program regardless of whether they participate in the Medicaid Drug Rebate Program. Manufacturers calculate the ASP based on a statutorily defined formula as well as regulations and interpretations of the statute by CMS. CMS uses these submissions to determine payment rates for drugs under Medicare Part B. Starting in 2023, manufacturers must pay refunds to Medicare for single source drugs or biologicals, or biosimilar biological products, reimbursed under Medicare Part B and packaged in single-dose containers or single-use packages, for units of discarded drug reimbursed by Medicare Part B in excess of 10 percent of total allowed charges under Medicare Part B for that drug. Manufacturers that fail to pay refunds could be subject to civil monetary penalties of 125 percent of the refund amount.

Statutory or regulatory changes or CMS guidance could affect the pricing of our approved products, and could negatively affect our results of operations. For example, Congress could enact a Medicare Part B inflation rebate, under which manufacturers would owe additional rebates if the average sales price of a drug were to increase faster than the pace of inflation, or enact other legislation that would otherwise limit reimbursement of Part B products. In addition, manufacturers are currently required to provide a 70% discount on brand name prescription drugs utilized by Medicare Part D beneficiaries when those beneficiaries are in the coverage gap phase of the Part D benefit design. Congress could enact legislation that sunsets this discount program and replaces it with a new manufacturer discount program. In addition, Congress could enact a drug price negotiation program under which the prices for certain high Medicare spend single source drugs would be capped by reference to the non-federal average manufacturer price. These or any other public policy change could impact the market conditions for our products. We further expect continued scrutiny on government price reporting and pricing more generally from Congress, agencies, and other bodies.

In order to be eligible to have our products paid for with federal funds under the Medicaid and Medicare Part B programs and purchased by certain federal agencies and grantees, we must participate in the VA FSS pricing program. Under this program, we would be obligated to make our “innovator” drugs available for procurement on an FSS contract and charge a price to four federal agencies—VA, DoD, Public Health Service and U.S. Coast Guard—that is no higher than the statutory FCP. The FCP is based on the Non-FAMP, which we calculate and report to the VA on a quarterly and annual basis. We do not currently participate in the Tricare Retail Pharmacy program, under which we would need to pay quarterly rebates on utilization of innovator products that are dispensed through the Tricare Retail Pharmacy network to TRICARE beneficiaries. The rebates are calculated as the difference between the annual Non-FAMP and FCP. The requirements under the 340B, FSS, and TRICARE programs will impact gross-to-net revenue for our current products and any product candidates that are commercialized in the future and could adversely affect our business and operating results.

We are shipping YUTIQ directly to physician offices or clinics to be administered to patients. YUTIQ is being shipped to physician offices or clinics primarily through specialty pharmacies and distributors. Most prefer to buy the product directly through our select distributors under a “buy and bill” model. Physicians who may not be willing to purchase our products through a specialty distributor because they do not prefer the buy and bill method may prefer to have another entity called a specialty pharmacy ship them the product at no cost to the physician. The specialty pharmacy bills the health plan for our product directly and then ships the product to the physician such that no costs are incurred by the physician. We have obtained a permanent “J” code for YUTIQ which assists physicians and hospitals in their ability to bill all payer types for the product.

We are shipping DEXYCU to ASCs, or to hospital outpatient surgical centers through specialty pharmacies and distributors. DEXYCU is being reimbursed for Medicare Part B patients in these settings through a transitional pass-through payment utilizing a “J” code. After the initial 3-year period (measured on the basis of the date Medicare receives its first claim for reimbursement for DEXYCU), DEXYCU may not qualify for separate payment and, therefore, may be subject to cataract bundled payment rates, which would significantly limit our ability to gain utilization and subsequent revenues. In addition, ImprimisRx may terminate our Commercial Alliance Agreement in the event of loss a pass-through status in accordance with the terms of the commercial alliance arrangement with ImprimisRX. DEXYCU received an adjusted separate payment for nine months in the Final Rule of the 2022 Hospital Outpatient Prospective Payment System, which preserves separate payment for the product through December 31, 2022. A decision by CMS as to whether separate payment for DEXYCU will continue beyond calendar year 2022 is anticipated during the fourth quarter of 2022. The loss of pass-through status with respect to DEXYCU would materially decrease our revenues from sales of DEXYCU and correspondingly result in an impairment of the DEXYCU asset on our balance sheet, which would negatively impact our financial results.

If we fail to comply with reporting and payment obligations under the Medicaid Drug Rebate program or other governmental pricing programs, we could be subject to additional reimbursement requirements, penalties, sanctions, and fines which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Our price reporting and other obligations under the Medicaid Drug Rebate Program, Medicare Part B, the 340B program, and the VA/FSS program are described in the risk factor entitled “Our products may become subject to unfavorable pricing regulations, third-party reimbursement practices or healthcare reform initiatives, which could harm our business.” Pricing and rebate calculations vary across products and programs, are complex, and are often subject to interpretation by us, governmental or regulatory agencies, and the courts. In the case of Medicaid pricing data, if we become aware that our reporting for a prior period was incorrect or has

changed as a result of a recalculation of the pricing data, we are obligated to resubmit the corrected data for up to three years after those data were originally due. Such restatements and recalculations will increase our costs for complying with the laws and regulations governing the Medicaid Drug Rebate program and could result in an overage or underage in our rebate liability for past quarters. Price recalculations also may affect the ceiling price at which we are required to offer our products under the 340B program and may require us to offer refunds to covered entities.

We are liable for errors associated with our submission of pricing data. That liability could be significant. In addition to retroactive Medicaid rebates and the potential for issuing 340B program refunds, if we are found to have knowingly submitted false AMP, Best Price, or Non-FAMP information to the government, we may be liable for significant civil monetary penalties per item of false information. If we are found to have made a misrepresentation in the reporting of our ASP, the Medicare statute provides for significant civil monetary penalties for each misrepresentation for each day in which the misrepresentation was applied. Our failure to submit monthly/quarterly AMP and Best Brice data on a timely basis could result in a significant civil monetary penalty per day for each day the information is late beyond the due date. Such conduct also could be grounds for CMS to terminate our Medicaid drug rebate agreement, in which case federal payments may not be available under Medicaid or Medicare Part B for our covered outpatient drugs. Significant civil monetary penalties also could apply to late submissions of Non-FAMP information. Civil monetary penalties could also be applied if we are found to have charged 340B covered entities more than the statutorily mandated ceiling price or HRSA could terminate our agreement to participate in the 340B program, in which case federal payments may not be available under Medicaid or Medicare Part B for our covered outpatient drugs. Moreover, under a final regulation effective January 13, 2021, HRSA newly established an ADR process that has jurisdiction over claims by covered entities that a manufacturer has engaged in overcharging. An ADR proceeding could subject us to onerous procedural requirements and could result in additional liability. In addition, claims submitted to federally-funded healthcare programs, such as Medicare and Medicaid, for drugs priced based on incorrect pricing data provided by a manufacturer can implicate the federal civil False Claims Act. Finally, civil monetary penalties could be due if we fail to offer discounts to beneficiaries under the Medicare Part D coverage gap discount program. And, once the refund program for discarded drug takes effect in 2023, manufacturers that fail to pay refunds could be subject to civil monetary penalties of 125 percent of the refund amount.

If we overcharge the government in connection with our FSS contract or our anticipated Tricare Agreement, whether due to a misstated FCP or otherwise, we are required to refund the difference to the government. Failure to make necessary disclosures and/or to identify contract overcharges can result in allegations against us under the False Claims Act and other laws and regulations. Unexpected refunds to the government, and responding to a government investigation or enforcement action, would be expensive and time-consuming, and could have a material adverse effect on our business, financial condition, results of operations and growth prospects. We cannot assure you that our submissions will not be found by CMS or another governmental agency to be incomplete or incorrect.

Even though regulatory approvals for YUTIQ and DEXYCU have been obtained in the U.S., we will still face extensive FDA regulatory requirements and may face future regulatory difficulties.

Even though regulatory approvals for YUTIQ and DEXYCU have been obtained in the U.S., the FDA and state regulatory authorities may still impose significant restrictions on the indicated uses or marketing of YUTIQ and DEXYCU, or impose ongoing requirements for potentially costly post-approval studies or post-marketing surveillance. For example, as part of its approval of DEXYCU for the treatment of postoperative ocular inflammation, the FDA required under the Pediatric Research Equity Act ("PREA"), that a Phase 3/4 prospective, randomized, active treatment-controlled, parallel-design multicenter trial be conducted to evaluate the safety of DEXYCU for the treatment of inflammation following ocular surgery for childhood cataract. This pediatric study will likely require us to undergo a costly and time-consuming development process. If we do not meet our obligations under the PREA for this pediatric study, the FDA may issue a non-compliance letter and may also consider DEXYCU to be misbranded and subject to potential enforcement action. We requested an extension in October 2020 but were denied by the FDA in November 2020.

We were advised by the FDA to show diligence and enroll at least one patient in the protocolled trial before submitting a new Deferral Extension Request.

We submitted a pediatric study protocol to the FDA as required. We have identified clinical sites and are continuing study start-up activities that have resulted in dosing of a first patient in January 2022. In February 2022, we requested a PREA Deferral Extension because of the unavoidable delays in this program due, among other things, to the Pandemic.

We are also subject to ongoing FDA requirements governing the labeling, packaging, storage, distribution, safety surveillance, advertising, promotion, record-keeping and reporting of safety and other post-marketing information. The holder of an approved NDA is obligated to monitor and report adverse events and any failure of a product to meet the specifications in the NDA. The holder of an approved NDA must also submit new or supplemental applications and obtain FDA approval for certain changes to the approved product, product labeling or manufacturing process. Advertising and promotional materials must comply with FDA regulations and may be subject to other potentially applicable federal and state laws. The applicable regulations in countries outside the U.S. grant similar powers to the competent authorities and impose similar obligations on companies.

In addition, manufacturers of drug products and their facilities are subject to payment of substantial user fees and continual review and periodic inspections by the FDA and other regulatory authorities for compliance with cGMP regulations and adherence to commitments made in the NDA. We also need to comply with some of the FDA's manufacturing regulations for devices with respect to YUTIQ. We and our third-party providers are generally required to maintain compliance with cGMP and other stringent requirements and are subject to inspections by the FDA and comparable agencies in other jurisdictions to confirm such compliance. Any delay, interruption or other issues that arise in the manufacture, fill-finish, packaging or storage of our products as a result of a failure of our facilities or the facilities or operations of third parties to pass any regulatory agency inspection could significantly impair our ability to develop and commercialize our products. Significant noncompliance could also result in the imposition of monetary penalties or other civil or criminal sanctions and damage our reputation.

In addition to cGMP, the FDA requires that YUTIQ and DEXYCU manufacturers comply with certain provisions of the Quality System Regulation, or QSR, particularly in light of the D.C. Circuit Court of Appeals decision in Genus Medical Technologies LLC v. FDA. The QSR sets forth the FDA's manufacturing quality standards for medical devices, and other applicable government regulations and corresponding foreign standards. If we, or a regulatory authority, discover previously unknown problems with YUTIQ or DEXYCU, such as adverse events of unanticipated severity or frequency, or problems with a facility where the product is manufactured, a regulatory authority may impose restrictions relative to YUTIQ, DEXYCU or their respective manufacturing facilities, including requiring recall or withdrawal of the product from the market, suspension of manufacturing, or other FDA action or other action by foreign regulatory authorities.

If we fail to comply with applicable regulatory requirements for YUTIQ or DEXYCU, a regulatory authority may:

- issue a warning letter asserting that we are in violation of the law;
- seek an injunction or impose civil or criminal penalties or monetary fines;
- suspend, modify or withdraw regulatory approval;
- suspend any ongoing clinical trials;
- refuse to approve a pending NDA or a pending application for marketing authorization or supplements to an NDA or to an application for marketing authorization submitted by us;
- seize our product; and/or
- refuse to allow us to enter into supply contracts, including government contracts.

Our relationships with physicians, patients and payors in the U.S. are subject to applicable anti-kickback, fraud and abuse laws and regulations. In addition, we are subject to patient privacy regulation by both the federal government and the states in which we conduct our business. Our failure to comply with these laws could expose us to criminal, civil and administrative sanctions, reputational harm, and could harm our results of operations and financial conditions.

Our current and future operations with respect to the commercialization of YUTIQ and DEXYCU are subject to various U.S. federal and state healthcare laws and regulations. These laws impact, among other things, our proposed sales, marketing, support and education programs and constrain our business and financial arrangements and relationships with third-party payors, healthcare professionals and others who may prescribe, recommend, purchase or provide our products, and other parties through which we market, sell and distribute our products. Finally, our current and future operations are subject to additional healthcare-related statutory and regulatory requirements and enforcement by foreign regulatory authorities in jurisdictions in which we conduct our business. The laws include, but are not limited to, the following:

- The U.S. federal Anti-Kickback Statute prohibits persons or entities from, among other things, knowingly and willfully soliciting, offering, receiving or paying any remuneration, directly or indirectly, overtly or covertly, in cash or in kind, to induce or reward either the referral of an individual for, or the purchase, lease, order, or arranging for or recommending the purchase, lease or order of, any good or service, for which payment may be made, in whole or in part, under federal healthcare programs such as Medicare and Medicaid. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation. This statute has been interpreted to apply to arrangements between pharmaceutical companies on one hand and Medicare patients, prescribers, purchasers and formulary managers on the other. In addition, the government may assert that a claim including items or services resulting from a violation of the federal anti-kickback statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act. Although there are a number of statutory exemptions and regulatory safe harbors protecting certain common manufacturer business arrangements and activities from prosecution and administrative sanction, the exemptions and safe harbors are drawn narrowly, and practices or arrangements that involve remuneration may be subject to scrutiny if they do not qualify for an exemption or safe harbor. In November 2020, the U.S. Department of Health and Human Services finalized a previously abandoned proposal to amend the discount safe harbor regulation of the Anti-Kickback Statute in a purported effort to create incentives to manufacturers to lower their list prices, and to lower federal program beneficiary out-of-pocket costs. The rule, which is currently slated to take full effect January 1, 2023, revises the Anti-Kickback Statute discount safe harbor to exclude manufacturer rebates to Medicare Part D plans, either directly or through PBMs,

creates a new safe harbor for point-of-sale price reductions that are set in advance and are available to the beneficiary at the point-of-sale, and creates a new safe harbor for service fees paid by manufacturers to PBMs for services rendered to the manufacturer. It is too early to know whether the Biden Administration will further delay, rewrite, or allow the rule to go into effect, and what effect the rule may have on negotiations for coverage for products with Medicare Part D plans or commercial insurers. Our practices may not in all cases meet all of the criteria for safe harbor protection, and therefore would be subject to a facts and circumstances analysis to determine potential Anti-Kickback Statute liability.

- The federal civil False Claims Act (which can be enforced through "qui tam," or whistleblower actions, by private citizens on behalf of the federal government) prohibits any person from, among other things, knowingly presenting, or causing to be presented false or fraudulent claims for payment of government funds or knowingly making, using or causing to be made or used, a false record or statement material to an obligation to pay money to the government or knowingly and improperly avoiding, decreasing or concealing an obligation to pay money to the U.S. federal government. Many pharmaceutical and other healthcare companies have been investigated or subject to lawsuits by whistleblowers and have reached substantial financial settlements with the federal government under the False Claims Act for a variety of alleged improper marketing activities, including providing free product to customers with the expectation that the customers would bill federal programs for the product; providing consulting fees, grants, free travel, and other benefits to physicians to induce them to prescribe the company's products; and inflating prices reported to private price publication services, which are used to set drug reimbursement rates under government healthcare programs. In addition, the government and private whistleblowers have pursued False Claims Act cases against pharmaceutical companies for causing false claims to be submitted as a result of the marketing of their products for unapproved uses. Pharmaceutical and other healthcare companies also are subject to other federal false claim laws, including federal criminal healthcare fraud and false statement statutes that extend to non-government health benefit programs.
- HIPAA imposes criminal and civil liability for, among other things, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, or knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement, in connection with the delivery of, or payment for healthcare benefits, items or services by a healthcare benefit program, which includes both government and privately funded benefits programs; similar to the U.S. federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.
- HIPAA, and its implementing regulations, impose certain obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information and impose notification obligations in the event of a breach of the privacy or security of individually identifiable health information.
- Numerous federal and state laws and regulations that address privacy and data security, including state data breach notification laws, state health information and/or genetic privacy laws, and federal and state consumer protection laws (e.g., Section 5 of the Federal Trade Commission Act, or FTC Act), govern the collection, use, disclosure and protection of health-related and other personal information, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts. Compliance with these laws is difficult, constantly evolving, and time consuming, and companies that do not comply with these state laws may face civil penalties.
- The majority of states have adopted analogous laws and regulations, including state anti-kickback and false claims laws, that may apply to our business practices, including but not limited to, research, distribution, sales and marketing arrangements and claims involving healthcare items or services reimbursed by any third-party payer, including private insurers. Other states have adopted laws that, among other things, require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the U.S. federal government, or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; and state laws and regulations that require drug manufacturers to file reports relating to pricing and marketing information, which requires tracking gifts and other remuneration and items of value provided to healthcare professionals and entities. In addition, some states have laws requiring pharmaceutical sales representatives to be registered or licensed, and still others impose limits on co-pay assistance that pharmaceutical companies can offer to patients.
- The Physician Payments Sunshine Act, implemented as the Open Payments program, and its implementing regulations, require certain manufacturers of drugs, devices, biologics and medical supplies that are reimbursable under Medicare, Medicaid, or the Children's Health Insurance Program to report annually to the CMS information related to certain payments made in the preceding calendar year and other transfers of value to physicians and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members. Beginning in 2022, applicable manufacturers also will be required to report information regarding payments and transfers of value provided to physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists and certified nurse-midwives.

The shifting commercial compliance environment and the need to build and maintain robust and expandable systems to comply with different compliance or reporting requirements in multiple jurisdictions increase the possibility that a healthcare or pharmaceutical company may fail to comply fully with one or more of these requirements. Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations may involve substantial costs. It is possible that governmental authorities will conclude that our business practices do not comply with applicable fraud and abuse or other healthcare laws and regulations or guidance. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, imprisonment, exclusion from government funded healthcare programs, such as Medicare and Medicaid, additional oversight

and reporting requirements if we become subject to a corporate integrity agreement to resolve allegations of non-compliance with these laws, and the curtailment or restructuring of our operations. If any of the physicians or other providers or entities with whom we expect to do business is found not to be in compliance with applicable laws, they may be subject to the same criminal, civil or administrative sanctions, including exclusions from government funded healthcare programs. Even if we are not determined to have violated these laws, government investigations into these issues typically require the expenditure of significant resources and generate negative publicity, which could harm our financial condition and divert resources and the attention of our management from operating our business.

The occurrence of any event or penalty described above may inhibit our ability to commercialize YUTIQ and DEXYCU in the U.S. and generate revenues, which would have a material adverse effect on our business, financial condition and results of operations.

If the market opportunities for our products and product candidates, including EYP-1901, are smaller than we believe they are, our results of operations may be adversely affected and our business may suffer.

We focus our research and product development primarily on treatments for eye diseases. Our projections of both the number of people who have these diseases, as well as the subset of people with these diseases who have the potential to benefit from treatment with our products and product candidates, such as our projections of the number of patients with wet AMD who may benefit from treatment with EYP-1901 if it is approved for use, are based on estimates. These estimates may prove to be incorrect and new studies or clinical trials may change the estimated incidence or prevalence of these diseases. The number of patients in the U.S. and elsewhere may turn out to be lower than expected, may not be otherwise amenable to treatment with our products, or new patients may become increasingly difficult to identify or gain access to, all of which would adversely affect our results of operations and our business. For example, we are developing our leading product candidate, EYP-1901, for the treatment of wet AMD. Although we believe wet AMD is a common condition and a leading cause of vision loss for people age 50 and older, our estimates of the potential market opportunity for EYP-1901 may be incorrect.

If any of our products have newly discovered or developed safety problems, our business would be seriously harmed.

All of our approved products are and will be subject to continued oversight by the FDA or other foreign regulatory bodies, and we cannot assure you that newly discovered or developed safety issues will not arise. Although we have observed no material safety issues to date, we cannot rule out that issues may arise in the future. For example, with the use of any newly marketed drug by a wider patient population, serious adverse events may occur from time to time that initially do not appear to relate to the drug itself. If such events are subsequently associated with the drug, or if any other safety issue emerges, we or our collaboration partners may voluntarily, or FDA or other regulatory authorities may require that we suspend or cease marketing of our approved products or modify how we or they market our approved products. In addition, newly discovered safety issues may subject us to substantial potential liabilities and adversely affect our financial condition and business.

The Affordable Care Act and any changes in healthcare laws may increase the difficulty and cost for us to commercialize DEXYCU and YUTIQ in the U.S. and affect the prices we may obtain.

The U.S. and state governments have enacted and proposed legislative and regulatory changes affecting the healthcare system that could affect our ability to profitably sell YUTIQ and DEXYCU, prevent or delay marketing of our other product candidates, and restrict or regulate post-approval activities. The U.S. and state governments also have shown significant interest in implementing cost-containment programs to limit the growth of government-paid healthcare costs, including price controls, restrictions on reimbursement and requirements for substitution of generic products for branded prescription products.

For example, the Affordable Care Act was intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add transparency requirements for the healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms.

Among the provisions of the Affordable Care Act that have been implemented since enactment and are of importance to the commercialization of YUTIQ and DEXYCU in the U.S. are the following:

- an annual, nondeductible fee on any entity that manufactures or imports specified branded prescription drugs or biologic agents;
- an increase in the statutory minimum rebates a manufacturer must pay under the Medicaid Drug Rebate Program;
- expansion of healthcare fraud and abuse laws, including the U.S. civil False Claims Act and the Anti-Kickback Statute, new government investigative powers, and enhanced penalties for noncompliance;

- a Medicare Part D coverage gap discount program, in which manufacturers must agree to offer 50% point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for a manufacturer's outpatient drugs to be covered under Medicare Part D (such manufacturer discounts were increased from 50% to 70% effective as of January 1, 2019 as required by the Bipartisan Budget Act of 2018);
- extension of manufacturers' Medicaid rebate liability to covered drugs dispensed to individuals who are enrolled in Medicaid managed care organizations;
- price reporting requirements for drugs that are inhaled, infused, instilled, implanted, or injected;
- expansion of eligibility criteria for Medicaid programs;
- addition of entity types eligible for participation in the Public Health Service Act's 340B drug pricing program;
- a requirement to annually report certain information regarding drug samples that manufacturers and distributors provide to physicians; and
- a Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research.

Certain provisions of the Affordable Care Act have been subject to judicial challenges as well as efforts to repeal, replace, or otherwise modify them or to alter their interpretation or implementation. For example, Congress eliminated, starting January 1, 2019, the tax penalty for not complying with the Affordable Care Act's individual mandate to carry health insurance Further, the Bipartisan Budget Act of 2018, among other things, amended the Medicare statute to reduce the coverage gap in most Medicare drugs plans, commonly known as the "donut hole," by raising the required manufacturer point-of-sale discount from 50% to 70% off the negotiated price effective as of January 1, 2019. Additional legislative changes, regulatory changes, and judicial challenges related to the Affordable Care Act remain possible. It is unclear how the Affordable Care Act and its implementation, as well as efforts to modify or invalidate the Affordable Care Act, or portions thereof or its implementation, will affect our business, financial condition and results of operations. It is possible that the Affordable Care Act, as currently enacted or as it may be amended in the future, and other healthcare reform measures that may be adopted in the future, could have a material adverse effect on our industry generally and on our ability to maintain or increase sales of YUTIQ and DEXYCU in the U.S. or to successfully commercialize either product in the U.S.

We also expect that the Affordable Care Act, as well as other healthcare reform measures that have been adopted and that may be adopted in the future, may result in more rigorous coverage criteria and additional downward pressure on the price that we receive for YUTIQ and DEXYCU in the U.S., and could seriously harm our future revenues. Any reduction in reimbursement from Medicare, Medicaid, or other 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 us from being able to generate revenues, attain profitability or successfully commercialize YUTIQ and DEXYCU in the U.S.

There has been increasing legislative, regulatory, and enforcement interest in the United States with respect to drug pricing practices. For example, in November 2020, the U.S. Department of Health and Human Services finalized a previously abandoned proposal to amend the discount safe harbor regulation of the federal anti-kickback statute in a purported effort to create incentives to manufacturers to lower their list prices, and to lower federal program beneficiary out-of-pocket costs. The rule, which is currently slated to take full effect January 1, 2023, revises the discount safe harbor to exclude manufacturer rebates to Medicare Part D plans, either directly or through PBMs, creates a new safe harbor for point-of-sale price reductions that are set in advance and are available to the beneficiary at the point-of-sale, and creates a new safe harbor for service fees paid by manufacturers to PBMs for services rendered to the manufacturer. The effective date of the rule was already delayed by the Biden Administration and legal challenges. It is unclear whether the rule will be further delayed, rewritten, or allowed to go into effect, and if so, what the effect of the rule will be on negotiations of coverage for our products with Medicare Part D plans, or whether the rule will affect our coverage arrangements with commercial insurers. It is also unclear whether the rule will have the intended effect of reducing net prices and beneficiary out-of-pocket costs without also increasing Medicare Part D premiums, which may impact the willingness of Part D plans to cover our products and the price concessions or other terms the plans or their PBMs may seek from us. In addition, in November 2020, the OIG issued a Special Fraud Alert to highlight certain inherent fraud and abuse risks associated with speaker fees, honorariums and expenses paid by pharmaceutical and medical device companies to healthcare professionals participating in company-sponsored events. The Special Fraud Alert sent a clear signal that speaker programs will be subject to potentially heightened enforcement scrutiny.

Patient assistance programs for pharmaceutical products have come under increasing scrutiny by governments, legislative bodies and enforcement agencies. These activities may result in actions that have the effect of reducing prices or demand for our products, harming our business or reputation, or subjecting us to fines or penalties.

We sponsor patient assistance programs, which are available to qualified patients for our products, including insurance premium and copay assistance programs. We also make donations to third-party charities that provide such assistance. Recently, there has been enhanced scrutiny of such company-sponsored programs and services. If we, our vendors or donation recipients, are deemed to have failed to comply with relevant laws, regulations or government guidance in any of these areas, we could be subject to criminal and civil sanctions, including significant fines, civil monetary penalties and exclusion from participation in government healthcare programs, including Medicare and Medicaid, and burdensome remediation measures. Actions could also be brought against executives overseeing our business or other employees.

It is possible that any actions taken by the Department of Justice ("DOJ") as a result of this industry-wide inquiry could reduce demand for our products and/or reduce coverage of our products, including by federal and state health care programs such as Medicare and Medicaid. If any or all of these events occur, our business, prospects and stock price could be materially and adversely affected.

If competitive products are more effective, have fewer side effects, are more effectively marketed and/or cost less than our products or product candidates, or receive regulatory approval or reach the market earlier, our product candidates may not be approved, and our products or product candidates may not achieve the sales we anticipate and could be rendered noncompetitive or obsolete.

We believe that pharmaceutical, drug delivery and biotechnology companies, research organizations, governmental entities, universities, hospitals, other nonprofit organizations and individual scientists are seeking to develop drugs, therapies, products, approaches or methods to treat our targeted diseases or their underlying causes. For our targeted diseases, competitors have alternate therapies that are already commercialized or are in various stages of development, ranging from discovery to advanced clinical trials. Any of these drugs, therapies, products, approaches or methods may receive government approval or gain market acceptance more rapidly than our products and product candidates, may offer therapeutic or cost advantages, or may more effectively treat our targeted diseases or their underlying causes, which could result in our product candidates not being approved, reduce demand for our products and product candidates or render them noncompetitive or obsolete.

Many of our competitors and potential competitors for our leading product candidate, EYP-1901, and our commercialized products, YUTIQ and DEXYCU, have substantially greater financial, technological, research and development, marketing and personnel resources than we do. Our competitors may succeed in developing alternate technologies and products that, in comparison to the products or product candidates we have and are seeking to develop:

- are more effective and easier to use;
- are more economical;
- have fewer side effects;
- offer other benefits; or
- may otherwise render our products less competitive or obsolete.

Many of these competitors have greater experience in developing products, conducting clinical trials, obtaining regulatory approvals or clearances and manufacturing and marketing products than we do.

DEXYCU is an intraocular suspension that delivers dexamethasone, a corticosteroid that is associated with certain adverse side effects in the eye, which may affect the success of DEXYCU for the treatment of post-operative inflammation.

DEXYCU is an intraocular suspension that delivers dexamethasone, a corticosteroid, which is associated with certain adverse side effects in the eye. The safety analyses from DEXYCU's clinical trials revealed that the most commonly reported adverse reactions were increases in intraocular pressure ("IOP"), corneal edema and iritis, a type of uveitis affecting the front of the eye. These side effects may adversely affect sales of DEXYCU.

If the FDA or other applicable regulatory authorities approve generic products that compete with any of our products or product candidates, it could reduce our sales of those products or product candidates.

In the U.S., after an NDA is approved, the product generally becomes a "listed drug" which can, in turn, be relied upon by potential competitors in support of approval of an ANDA. The Federal Food, Drug, and Cosmetic Act, FDA regulations and other applicable regulations and policies provide incentives to manufacturers to create generic, non-infringing versions of a drug to facilitate the approval of an ANDA. These manufacturers might show that their product has the same active ingredients, dosage form, strength, route of administration, conditions of use, and labeling as our product candidate and might conduct a relatively inexpensive study to demonstrate that the generic product is absorbed in the body at the same rate and to the same extent as, or is bioequivalent to, our product. These generic equivalents would be significantly less costly than ours to bring to market, and companies that produce generic equivalents are generally able to offer their products at lower prices. Thus, after the introduction of a generic competitor, a significant

percentage of the sales of any branded product are typically lost to the generic product. Accordingly, competition from generic equivalents to our products would substantially limit our ability to generate revenues and therefore to obtain a return on the investments we have made in our products.

Product liability lawsuits against us could cause us to incur substantial liabilities and to limit commercialization of YUTIQ and DEXYCU, and any other product candidates that we may develop and commercialize, including EYP-1901.

We face the risk of product liability exposure as we commercialize YUTIQ and DEXYCU, and other product candidates that we may develop and commercialize. We also may face product liability claims from patients who are treated with any of our product candidates in clinical trials. If we cannot successfully defend ourselves against claims that our products or product candidates caused injuries, we could incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- decreased demand for our products;
- injury to our reputation and significant negative media attention;
- termination of clinical trial sites or entire trial programs that we conduct in the future relating to YUTIQ, DEXYCU, EYP-1901 or our other product candidates;
- withdrawal of clinical trial participants from any future clinical trial relating to YUTIQ, DEXYCU, EYP-1901 or our other product candidates;
- significant costs to defend the related litigation;
- substantial money awards to patients;
- loss of revenue;
- diversion of management and scientific resources from our business operations; and
- an increase in product liability insurance premiums or an inability to maintain product liability insurance coverage.

We currently carry product liability insurance with coverage up to $30.0 million in the aggregate, with a per incident limit of $30.0 million, which may not be adequate to cover all liabilities that we may incur. Further, we may not be able to maintain insurance coverage at a reasonable cost or in an amount adequate to satisfy any liability that may arise. Our inability to maintain sufficient product liability insurance at an acceptable cost could prevent or inhibit the commercialization of YUTIQ and DEXYCU, or the development and commercialization of our other product candidates, including EYP-1901.

Additionally, any agreements we may enter into in the future with collaborators in connection with the development or commercialization of YUTIQ, DEXYCU, EYP-1901 or any of our other product candidates may entitle us to indemnification against product liability losses, but such indemnification may not be available or adequate should any claim arise. In addition, several of our agreements require us to indemnify third parties and these indemnification obligations may exceed the coverage under our product liability insurance policy.

RISKS RELATED TO OUR INTELLECTUAL PROPERTY

If we are unable to protect our intellectual property rights or if our intellectual property rights are inadequate to protect our product candidates, our competitors could develop and commercialize technology and products similar to ours, and our competitive position could be harmed.

Our commercial success will depend in large part on our ability to obtain and maintain patent and other intellectual property protection in the U.S. and other countries with respect to our proprietary technology and products. We rely on trade secret, patent, copyright and trademark laws, and confidentiality and other agreements with employees and third parties, all of which offer only limited protection. We seek patent protection for many different aspects of our product candidates, including their compositions, their methods of use, processes for their manufacture, and any other aspects that we deem to be commercially important to the development of our business.

The patent prosecution process is expensive and time-consuming, and we and any licensors and licensees may not be able to apply for or prosecute patents on certain aspects of our product candidates or delivery technologies at a reasonable cost, in a timely fashion, or at all. For technology licensed to third parties, we may not have the right to control the preparation, filing and/or prosecution of the corresponding patent applications, or to maintain patent rights corresponding to such technology. Therefore, these patents and applications may not be prosecuted and enforced in a manner consistent with the best interests of our business. It is also possible that we, or any licensors or licensees, will fail to identify patentable aspects of inventions made in the course of development and commercialization activities before it is too late to obtain patent protection on them. It is possible that defects of form in the preparation or filing of our patents or patent applications may exist, or may arise in the future, such as with respect to proper priority claims, inventorship, claim scope or patent term adjustments. If any licensors or licensees are not fully cooperative or disagree with us as to the prosecution, maintenance, or enforcement of any patent rights, such patent rights could be compromised, and we might not be able to prevent third parties from making, using, and selling competing products. If there are material defects in the form or preparation of our patents or patent applications, such patents or applications may be invalid or unenforceable. Moreover, our competitors may independently develop equivalent knowledge, methods, and know-how. Any of these outcomes could impair our

ability to prevent competition from third parties, which may have an adverse impact on our business, financial condition, and operating results.

The patent positions of pharmaceutical companies generally are highly uncertain, involve complex legal and factual questions and have in recent years been the subject of much litigation. As a result, the issuance, scope, validity, enforceability and commercial value of any patents that issue, are highly uncertain. For example, recent changes to the patent laws of the U.S. provide additional procedures for third parties to challenge the validity of issued patents. Under the Leahy-Smith America Invents Act, or AIA, which was signed into law on September 16, 2011, patents issued from applications with an effective filing date after March 15, 2013, may be challenged by third parties using the post-grant review procedure which allows challenges for a number of reasons, including prior art, sufficiency of disclosure, and subject matter eligibility. Under the AIA, patents may also be challenged under the *inter partes* review procedure. *Inter partes* review provides a mechanism by which any third party may challenge the validity of any issued U.S. Patent in the USPTO on the basis of prior art. Because of a lower evidentiary standard necessary to invalidate a patent claim in USPTO proceedings as compared to the evidentiary standard relied on in U.S. federal court, a third party could potentially provide evidence in a USPTO proceeding sufficient for the USPTO to hold a claim invalid even though the same evidence would be insufficient to invalidate the claim if first presented in a district court action. Accordingly, a third party may attempt to use the USPTO procedures to invalidate our patent claims that would not have been invalidated if first challenged by the third party as a defendant in a district court action.

With respect to foreign jurisdictions, the laws of foreign countries may not protect our rights to the same extent as the laws of the U.S. or vice versa. For example, European patent law restricts the patentability of methods of treatment of the human body more than U.S. law does. Also, patents granted by the European Patent Office may be opposed by any person within nine months from the publication of their grant.

Our patents and patent applications, even if unchallenged by a third party, may not adequately protect our intellectual property or prevent others from designing around our claims. The steps we have taken to protect our proprietary rights may not be adequate to preclude misappropriation of our proprietary information or infringement of our intellectual property rights, both inside and outside the U.S. Further, the examination process may require us to narrow the claims of pending patent applications, which may limit the scope of patent protection that may be obtained if these applications issue. The rights that may be granted under future issued patents may not provide us with the proprietary protection or competitive advantages we are seeking. If we are unable to obtain and maintain patent protection for our technology and products, or if the scope of the patent protection obtained is not sufficient, our competitors could develop and commercialize technology and products similar or superior to ours, and our ability to successfully commercialize our technology and products may be impaired.

As of February 28, 2022, we had several patents and pending applications, including patents and pending applications covering our Durasert®, Verisome® and other technologies. With respect to these patent rights, we do not know whether any of our patent applications will result in issued patents or, if any of our patent applications do issue, whether such patents will protect our technology in whole or in part, or whether such patents will effectively prevent others from commercializing competitive technologies and products. There is no guarantee that any of our issued or granted patents will not later be found invalid or unenforceable. Furthermore, since patent applications in the U.S. and most other countries are confidential for a period of time after filing, we cannot be certain that we were the first to either (i) file any patent application related to our product candidates or (ii) invent any of the inventions claimed in our patents or patent applications. For applications with an effective filing date before March 16, 2013, or patents issuing from such applications, an interference proceeding can be provoked by a third party or instituted by the USPTO to determine who was the first to invent any of the subject matter covered by the patent claims of our applications and patents. As of March 16, 2013, the U.S. transitioned to a “first-to-file” system for deciding which party should be granted a patent when two or more patent applications are filed by different parties claiming the same invention. A third party that files a patent application in the USPTO before us could therefore be awarded a patent covering an invention of ours even if we had made the invention before it was made by the third party. This will require us to be cognizant going forward of the time from invention to filing of a patent application. The change to “first-to-file” from “first-to-invent” is one of the changes to the patent laws of the U.S. resulting from the AIA.

Publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the U.S. and other jurisdictions are typically not published until 18 months after filing or in some cases not at all, until they are issued as a patent. Therefore, we cannot be certain that we were the first to make the inventions claimed in our pending patent applications, that we were the first to file for patent protection of such inventions, or that we have found all of the potentially relevant prior art relating to our patents and patent applications that could invalidate one or more of our patents or prevent one or more of our patent applications from issuing. Even if patents do successfully issue and even if such patents cover our product candidates, third parties may initiate oppositions, interferences, re-examinations, post-grant reviews, *inter partes* reviews, nullification or derivation actions in court or before patent offices or similar proceedings challenging the validity, enforceability, or scope of such patents, which may result in the patent claims being narrowed or invalidated. Furthermore, even if they are unchallenged, our patents and patent applications may not adequately protect our intellectual property, provide exclusivity for our product candidates, or prevent others from designing around our claims. Any of these outcomes could impair our ability to prevent competition from third parties.

Furthermore, the issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability, and our owned and licensed patents may be challenged in the courts or patent offices in the U.S. and abroad. Such challenges may result in loss of exclusivity or freedom to operate or in patent claims being narrowed, invalidated or held unenforceable, in whole or in part, which could limit our ability to stop others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our technology and products. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such product candidates might expire before or shortly after such product candidates are commercialized. As a result, our owned and licensed patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

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

Competitors may infringe our patents or the patents of any party from whom we may license patents from in the future. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming. In a patent litigation in the U.S., defendant counterclaims alleging invalidity or unenforceability are commonplace. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, for example, lack of novelty, obviousness or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant information from the USPTO or made a misleading statement during prosecution. The outcome following legal assertions of invalidity and unenforceability during patent litigation is unpredictable. A court may decide that a patent of ours or of any of our future licensors is not valid, or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. In addition, to the extent that we have to file patent litigation in a federal court against a U.S. patent holder, we would be required to initiate the proceeding in the state of incorporation or residency of such entity. With respect to the validity question, for example, we cannot be certain that no invalidating prior art exists. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated, found unenforceable, or interpreted narrowly, and it could put our patent applications at risk of not issuing. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. If a defendant were to prevail on a legal assertion of invalidity or unenforceability, we would lose at least part, and perhaps all, of the patent protection on one or more of our products. Such a loss of patent protection could compromise our ability to pursue our business strategy.

As noted above, interference proceedings brought by the USPTO for applications with an effective filing date before March 16, 2013, or for patents issuing from such applications may be necessary to determine the priority of inventions with respect to our patents and patent applications or those of our collaborators or licensors. An unfavorable outcome could require us to cease using the technology or to attempt to license rights to it from the prevailing party. Our business could be harmed if a prevailing party does not offer us a license on terms that are acceptable to us. Litigation or interference proceedings may fail and, even if successful, may result in substantial costs and distraction of our management and other employees. We may not be able to prevent, alone or with any of our future licensors, misappropriation of our proprietary rights, particularly in countries where the laws may not protect those rights as fully as in the U.S. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock.

Moreover, we may be subject to a third-party pre-issuance submission of prior art to the USPTO or other foreign patent offices, or become involved in opposition, derivation, reexamination, *inter partes* review, post-grant review or interference proceedings challenging our patent rights or the patent rights of others. An adverse determination in any such submission, proceeding or litigation could invalidate or reduce the scope of, our patent rights, allow third parties to commercialize our technology or drugs and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize drugs without infringing third-party patent rights. In addition, if the breadth or strength of protection provided by our patents and patent applications is threatened, it could dissuade companies from collaborating with us to license, develop, or commercialize current or future product candidates.

We may not be able to protect our intellectual property rights throughout the world.

Filing, prosecuting and defending patents on our product candidates throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the U.S. may be less extensive than those in the U.S. In addition, the laws and practices of some foreign countries do not protect intellectual property rights, especially those relating to life sciences, to the same extent as federal and state laws in the U.S. For example, novel formulations of drugs and manufacturing processes may not be patentable in certain jurisdictions, and the requirements for patentability may differ in certain countries, particularly developing countries. Also, some foreign countries, including EU countries, India, Japan and China, have compulsory licensing laws under which a patent owner may be compelled under certain circumstances to grant licenses to third parties. Consequently, we may have limited remedies if patents are infringed or if we are compelled to grant a license to a third party, and we may not be able to prevent third parties from practicing our inventions in all countries outside the U.S., or from selling or importing products made using our

inventions into or within the U.S. or other jurisdictions. This could limit our potential revenue opportunities. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products, and may export otherwise infringing products to territories where we have patent protection, but where enforcement is not as strong as that in the U.S. These products may compete with our products in jurisdictions where we do not have any issued patents and our patent claims or other intellectual property rights may not be effective or sufficient to prevent them from competing with us in these jurisdictions. Accordingly, our efforts to enforce intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from our intellectual property. We may not prevail in any lawsuits that we initiate in these foreign countries and the damages or other remedies awarded, if any, may not be commercially meaningful.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

Periodic maintenance fees, renewal fees, annuity fees and various other governmental fees on patents and applications are required to be paid to the USPTO and various governmental patent agencies outside of the U.S. in several stages over the lifetime of the patents and applications. The USPTO and various non-U.S. governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process and after a patent has issued. There are situations in which non-compliance 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.

Third parties may initiate legal proceedings alleging that we are infringing their intellectual property rights, the outcome of which could be uncertain and could harm our business.

Our commercial success depends upon our ability, and the ability of our partners and collaborators, to develop, manufacture, market and sell our products and product candidates, if approved, and use our proprietary technologies without infringing the proprietary rights of third parties. While many of our product candidates are in pre-clinical studies and clinical trials, we believe that the use of our product candidates in these pre-clinical studies and clinical trials falls within the scope of the exemptions provided by 35 U.S.C. Section 271(e) in the U.S., which exempts from patent infringement liability activities reasonably related to the development and submission of information to the FDA. As our other product candidates progress toward commercialization, the possibility of a patent infringement claim against us increases. Accordingly, we may invest significant time and expense in the development of our product candidates only to be subject to significant delay and expensive and time-consuming patent litigation before our product candidates may be commercialized. There can be no assurance that our products or product candidates do not infringe other parties' patents or other proprietary rights, and competitors or other parties may assert that we infringe their proprietary rights in any event.

There is considerable intellectual property litigation in the biotechnology and pharmaceutical industries. We may become party to, or threatened with, future adversarial proceedings or litigation regarding intellectual property rights with respect to our product candidates, including interference or derivation proceedings before the USPTO. Numerous U.S. and foreign issued patents and pending patent applications owned by third parties exist in the fields in which we are developing our product candidates. Third parties may assert infringement claims against us based on existing patents or patents that may be granted in the future.

If we are found to infringe a third party's intellectual property rights, we could be required to obtain a license from such third party to continue commercializing our products or product candidates. However, we may not be able to obtain any required license on commercially reasonable terms or at all. Even if a license can be obtained on acceptable terms, the rights may be non-exclusive, which could give our competitors access to the same technology or intellectual property rights licensed to us. If we fail to obtain a required license, we may be unable to effectively market products or product candidates based on our technology, which could limit our ability to generate revenues or achieve profitability and possibly prevent us from generating revenues sufficient to sustain our operations. Alternatively, we may need to redesign our infringing products, which may be impossible or require substantial time and monetary expenditure. Under certain circumstances, we could be forced, including by court order, to cease commercializing our products or product candidates. In addition, in any such proceeding or litigation, we could be found liable for substantial monetary damages, potentially including treble damages and attorneys' fees, if we are found to have willfully infringed. A finding of infringement could prevent us from commercializing our products or product candidates or force us to cease some of our business operations, which could harm our business. Any claims by third parties that we have misappropriated their confidential information or trade secrets could have a similar negative impact on our business.

The cost to us in defending or initiating any litigation or other proceeding relating to patent or other proprietary rights, even if resolved in our favor, could be substantial, and litigation would divert our management's attention. Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could compromise our commercialization efforts, delay our research and development efforts and limit our ability to continue our operations. There could also be public announcements of the results of the hearing, motions, or other interim proceedings or developments. If securities analysts or investors perceive those results to be negative, it could cause the price of shares of our common stock to decline.

Our competitors may be able to circumvent our patents by developing similar or alternative technologies or products in a non-infringing manner.

Our competitors may seek approval to market their own products that are the same as, similar to or otherwise competitive with our products or product candidates. In these circumstances, we may need to defend or assert our patents by various means, including filing lawsuits alleging patent infringement requiring us to engage in complex, lengthy and costly litigation or other proceedings. In any of these types of proceedings, a court or government agency with jurisdiction may find our patents invalid, unenforceable or not infringed. We may also fail to identify patentable aspects of our research and development before it is too late to obtain patent protection. Even if we have valid and enforceable patents, these patents still may not provide protection against competing products or processes sufficient to achieve our business objectives.

Changes in either U.S. or foreign patent law or interpretation of such laws could diminish the value of patents in general, thereby impairing our ability to protect our products or product candidates.

As is the case with other pharmaceutical companies, our success is heavily dependent on intellectual property, particularly patents. Obtaining and enforcing patents in the pharmaceutical industry involve both technological and legal complexity, and it therefore is costly, time-consuming and inherently uncertain. As noted above, the AIA has significantly changed U.S. patent law. In addition to transitioning from a "first-to-invent" to "first-to-file" system, the AIA also limits where a patentee may file a patent infringement suit and provides opportunities for third parties to challenge issued patents in the USPTO via post-grant review or *inter partes* review, for example. All of our U.S. patents, even those issued before March 16, 2013, may be challenged by a third party seeking to institute *inter partes* review.

Depending on decisions by the U.S. Congress, the federal courts, the USPTO, or similar authorities in foreign jurisdictions, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future.

We may be subject to claims asserting that our employees, consultants, independent contractors and advisors have wrongfully used or disclosed confidential information and/or alleged trade secrets of their current or former employers or claims asserting ownership of what we regard as our own intellectual property.

Although we try to ensure that our employees, consultants, independent contractors and advisors do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that these individuals or we have inadvertently or otherwise used or disclosed confidential information and/or intellectual property, including trade secrets or other proprietary information, of the companies that any such individual currently or formerly worked for or provided services to. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to our business.

In addition, while we require our employees and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property that we regard as our own. The assignment of intellectual property rights may not be self-executing or the assignment agreements may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property.

Intellectual property rights do not prevent all potential threats to competitive advantages we may have.

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

The following examples are illustrative:

- others may be able to make drug and device components that are the same as or similar to our product candidates but that are not covered by the claims of the patents that we own or have exclusively licensed;
- we or any of our licensors or collaborators might not have been the first to make the inventions covered by the issued patent or pending patent application that we own or have exclusively licensed;
- we or any of our licensors or collaborators might not have been the first to file patent applications covering certain of our inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;

- the prosecution of our pending patent applications may not result in granted patents;
- granted patents that we own or have licensed may not cover our products or may be held not infringed, invalid or unenforceable, as a result of legal challenges by our competitors;
- with respect to granted patents that we own or have licensed, especially patents that we either acquire or in-license, if certain information was withheld from or misrepresented to the patent examiner, such patents might be held to be unenforceable;
- patent protection on our product candidates may expire before we are able to develop and commercialize the product, or before we are able to recover our investment in the product;
- our competitors might conduct research and development activities in the U.S. and other countries that provide a safe harbor from patent infringement claims for such activities, as well as in countries in which we do not have patent rights, and may then use the information learned from such activities to develop competitive products for sale in markets where we intend to market our product candidates;
- we may not develop additional proprietary technologies that are patentable;
- the patents of others may have an adverse effect on our business; and
- we may choose not to file a patent application for certain technologies, trade secrets or know-how, and a third party may subsequently file a patent covering such intellectual property.

Should any of these events occur, they could significantly harm our business, financial condition, results of operations and prospects.

If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.

In addition to seeking patent protection for certain aspects of our product candidates and technologies, we also consider trade secrets, including confidential and unpatented know-how, important to the maintenance of our competitive position. We protect trade secrets and confidential and unpatented know-how, in part, by customarily entering into non-disclosure and confidentiality agreements with parties who have access to such knowledge, such as our employees, outside scientific and commercial collaborators, CROs, CMOs, consultants, advisors and other third parties. We also enter into confidentiality and invention or patent assignment agreements with our employees and consultants that obligate them to maintain confidentiality and assign their inventions to us. Despite these efforts, any of these parties may breach the agreements and disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. In addition, our trade secrets may otherwise become known, including through a potential cybersecurity breach, or may be independently developed by competitors.

Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts in the U.S. and certain foreign jurisdictions are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

If our trademarks are not adequately protected, then we may not be able to build name recognition in our markets of interest and our business may be adversely affected.

We expect to rely on trademarks as one means to distinguish any of our approved products from the products of our competitors. We have received registrations for YUTIQ®, DEXYCU®, DELIVERING INNOVATION TO THE EYE® and DURASERT®. The Verisome® technology is exclusively licensed to us by Ramscor, Inc and the Verisome® mark is owned by Ramscor, Inc. Our and our licensees' trademarks may be challenged, infringed, circumvented or declared generic or determined to be infringing on other marks. For our trademarks, we have entered into a co-existence agreement with Sun Pharma and a settlement agreement with Merck allowing continued, though somewhat limited, use of two of our marks. If we are unable to establish name recognition based on our trademarks, we may not be able to compete effectively.

ILUVIEN® is Alimera's trademark. Retisert® and Vitrasert® are Bausch & Lomb's trademarks.

RISKS RELATED TO OUR RELIANCE ON THIRD PARTIES

The development and commercialization of our lead product candidate, EYP-1901, is dependent on intellectual property we license and API supply of vorolanib from Equinox Science. If we breach our agreement with Equinox or the agreement is terminated, we could lose license rights that are material to our business.

Pursuant to our license agreement with Equinox, we acquired exclusive rights to patents, patent applications and know-how owned or controlled by Equinox relating to the compound vorolanib, a tyrosine kinase inhibitor, for the treatment of wet AMD, DR, and RVO. Our lead product candidate, EYP-1901, utilizes vorolanib in combination with our proprietary Durasert sustained release

technology. Equinox also provides us with the API supply of vorolanib to support our clinical trials. Our license agreement with Equinox imposes various development, regulatory, commercial, financial and other obligations on us. If we fail to comply with our obligations under the agreement with Equinox, or otherwise materially breach the agreement with Equinox, and fail to remedy such failure or cure such breach within 90 days, Equinox will have the right to terminate the agreement. If our agreement with Equinox is terminated by Equinox for our uncured material breach, we would lose our license and all rights to the use of vorolanib for EYP-1901. The loss of the license from Equinox would prevent us from developing and commercializing EYP-1901 and could subject us to claims of breach of contract and patent infringement from Equinox if any continued research, development, manufacture or commercialization of EYP-1901 is covered by the affected patents. Accordingly, the loss of our license from Equinox would materially harm our business.

If we are unable to maintain our agreement with ImprimisRx to co-promote DEXYCU, we may be unable to generate significant revenue from this product.

When we launched YUTIQ and DEXYCU in 2019, we contracted with an outsourced CSO to commercialize the products. We terminated our relationship with the CSO and converted the CSO's remaining YUTIQ KAMs to full-time employees as of January 2020, and we converted the CSO's remaining DEXYCU KAMs to full-time employees as of October 2020. In August 2020, to complement and augment the efforts of our internal sales team for DEXYCU, we entered into a Commercial Alliance Agreement, effective as of August 1, 2020 and amended as of November 12, 2020 (the "Commercial Alliance Agreement") with ImprimisRx for the sale of DEXYCU to its customers. On December 6, 2021, we entered into a letter agreement (the "Letter Agreement") to expand the commercial alliance previously established by the parties pursuant to the Commercial Alliance Agreement. During the two-year term of the Letter Agreement, ImprimisRx will assume full responsibility for the sales and marketing of DEXYCU and has absorbed the majority of our DEXYCU commercial organization. We will continue to recognize net product revenue and maintain manufacturing and distribution responsibilities for DEXYCU along with non-sales related regulatory compliance responsibilities. We will pay ImprimisRx a commission based on the net sales of DEXYCU in the U.S. and will retain control over all regulatory approvals and commercial rights for DEXYCU. The Letter Agreement was effective as of January 1, 2022 and will continue through December 31, 2023, unless such term is amended by mutual agreement of the parties or terminated in accordance therewith. Upon expiration or termination of the Letter Agreement, the parties will revert to the terms of the Commercial Alliance Agreement in existence prior to the effectiveness of the Letter Agreement for the remainder of the original term of the Commercial Alliance Agreement.

The Letter Agreement provides that either party may terminate the Commercial Alliance Agreement upon 30 days' prior written notice in the event DEXYCU ceases to have Medicare Part B "pass-through" payment status for a period of not less than 6 months. ImprimisRx has an additional right to terminate the Letter Agreement with 30 days' written notice if (i) a proposed or final Hospital Outpatient Prospective Payment System (HOPPS) rule issued by the Centers for Medicare & Medicaid Services (CMS) during calendar year 2022 does not contain an extension of the pass-through payment period for DEXYCU beyond December 31, 2022, and (ii) we have not otherwise waived any minimum sales for a respective quarterly period.

To a significant degree, we are relying on our strategic collaboration with ImprimisRx to sell DEXYCU. As a result of our agreement with ImprimisRx, ImprimisRx now executes all of the sales efforts for DEXYCU and those efforts may be affected by ImprimisRx's organization, operations, activities and events both related and unrelated to DEXYCU. Our co-promotion efforts with ImprimisRx have encountered and continue to encounter a number of difficulties, uncertainties and challenges, including curtailments in the performance of cataract surgeries due to the Pandemic, which have impacted DEXYCU sales growth. Any failure to fully optimize this arrangement with ImprimisRx, including pursuant to a termination by ImprimisRx in accordance with the terms of the arrangement, would cause DEXYCU sales and our financial results with respect to DEXYCU to be materially reduced and hurt the price of our common stock. Further, any disputes with ImprimisRx over these or other issues would materially harm the promotion and sales of DEXYCU and result in substantial costs to us.

If we encounter issues with our CMOs or suppliers, we may need to qualify alternative manufacturers or suppliers, which could impair our ability to sufficiently and timely manufacture and supply DEXYCU.

We currently depend on CMOs and suppliers for DEXYCU. Although we could obtain the drug product and other components for DEXYCU from other CMOs and suppliers, we would need to qualify and obtain FDA approval for such CMOs or suppliers as alternative sources, which could be costly and cause significant delays. In addition, the manufacturer of the drug product in DEXYCU conducts its manufacturing operations for us at a single facility. Unless and until we qualify additional facilities, we may face limitations in our ability to respond to manufacturing issues. For example, if regulatory, manufacturing or other problems require this manufacturer to discontinue production at its facility, or if the equipment used for the production of the drug product in this facility is significantly damaged or destroyed by fire, flood, earthquake, power loss or similar events, the ability of such manufacturer to manufacture DEXYCU may be significantly impaired. In the event that this party suffers a temporary or protracted loss of its materials, facility or equipment, we would still be required to obtain FDA approval to qualify a new manufacturer as an alternate manufacturer for the drug product before any drug product manufactured by such manufacturer could be sold or used. Any production

shortfall that impairs the supply of DEXYCU could adversely affect our ability to satisfy demand for DEXYCU, which could have a material adverse effect on our product sales, results of operations and financial condition.

The Pandemic may also have an adverse impact on our CMOs or suppliers as a result of employees or other key personnel becoming infected, preventive and precautionary measures that governments or such third parties are taking, such as social distancing, quarantines, and other restrictions, and shortages of supplies necessary for the manufacture of DEXYCU. Any of these circumstances could adversely impact the ability of third parties on which we rely to manufacture and distribute adequate volumes of DEXYCU.

We use our own facility for the manufacturing of YUTIQ and rely on third party suppliers for key components, and any disruptions to our suppliers' operations could adversely affect YUTIQ's commercial viability.

We currently manufacture commercial supplies of YUTIQ ourselves at our Watertown, MA facility and rely on third party suppliers for key components of YUTIQ. We have, and will continue, to perform extensive audits of our suppliers, vendors and contract laboratories. The cGMP requirements govern, among other things, recordkeeping, production processes and controls, personnel and quality control. To ensure that we continue to meet these requirements, we have and will continue to expend significant time, money and effort.

The commercial manufacture of medical products is complex and requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of medical products often encounter difficulties in production, particularly in scaling out and validating initial production and ensuring the absence of contamination. These problems include difficulties with production costs and yields, quality control, including stability of the product, quality assurance testing, operator error, shortages of qualified personnel, as well as compliance with strictly enforced federal, state and foreign regulations. We cannot assure you that any issue relating to the manufacture of YUTIQ will not occur in the future.

The FDA also may, at any time following approval of a product for sale, audit our manufacturing facilities. If any such inspection or audit identifies a failure to comply with applicable regulations or if a violation of our product specifications or applicable regulation occurs independent of such an inspection or audit, FDA may issue a Form FDA-483 and/or an untitled or warning letter, or we or the FDA may require remedial measures that may be costly and/or time consuming for us to implement and that may include the temporary or permanent suspension of commercial sales, recalls, market withdrawals, seizures or the temporary or permanent closure of a facility. For example, we received a Form FDA-483 at the conclusion of an FDA inspection in September 2021. Although we believe we have successfully addressed and responded to FDA concerning those observations, FDA has not yet determined whether our facility will remain classified as Official Action Indicated ("OAI"), which could lead to enforcement action or affect the approval of an application. As of the date of this filing, the FDA has not yet posted the September 2021 inspection in the FDA Inspections database. We are monitoring the database closely, as it is expected that the inspection should be posted soon. The FDA has cited issues related to the Pandemic as a reason for the delay in much of their inspection activity. Any such remedial measures imposed upon us could materially harm our business.

In addition, although we could contract with other third parties to manufacture YUTIQ, we would need to qualify and obtain FDA approval for a contract manufacturer or supplier as an alternative source for YUTIQ, which could be costly and cause significant delays.

Our YUTIQ manufacturing operations depend on our Watertown, MA facility. If this facility is destroyed or is out of operation for a substantial period of time, our business may be adversely impacted.

We currently conduct our manufacturing operations related to YUTIQ in our facility located in Watertown, MA. If regulatory, manufacturing or other problems, including Pandemic-related impacts on our employees, require us to suspend or discontinue production at our Watertown, MA facility, we will not be able to have or maintain adequate commercial supply of YUTIQ, which would adversely impact our business. If the facility or the equipment in it is significantly damaged or destroyed by fire, flood, power loss or similar events, we may not be able to quickly or inexpensively replace our facility. In the event of a temporary or protracted loss of either facility or equipment, we might not be able to transfer manufacturing to a third party. Even if we could transfer manufacturing to a third party, the shift would likely be expensive and time-consuming, particularly since the new facility would need to comply with necessary regulatory requirements.

The Pandemic may also have an adverse impact on our manufacturing activities for YUTIQ as a result of employees or other key personnel becoming infected, preventive and precautionary measures that governments or such third parties are taking, such as social distancing, quarantines, and other restrictions, and shortages of supplies necessary for the manufacture of YUTIQ. Any of these circumstances could adversely impact our ability to manufacture and distribute adequate volumes of YUTIQ.

If third-party manufacturers, wholesalers and distributors fail to devote sufficient time and resources to DEXYCU or their performance is substandard, our product supply may be impacted.

Our reliance on a limited number of manufacturers, wholesalers and distributors exposes us to the following risks, any of which could limit commercial supply of our products, result in higher costs, or deprive us of potential product revenues:

- our CMOs, or other third parties we rely on, may encounter difficulties in achieving the volume of production needed to satisfy commercial demand, may experience technical issues that impact quality or compliance with applicable and strictly enforced regulations governing the manufacture of pharmaceutical products, and may experience shortages of qualified personnel to adequately staff production operations;
- our wholesalers and distributors could become unable to sell and deliver DEXYCU for regulatory, compliance and other reasons;
- our CMOs, wholesalers and distributors could default on their agreements with us to meet our requirements for commercial supply of DEXYCU;
- our CMOs, wholesalers and distributors may not perform as agreed or may not remain in business for the time required to successfully produce, store, sell and distribute DEXYCU and we may incur additional cost; and
- if our CMOs, wholesalers and distributors were to terminate our arrangements or fail to meet their contractual obligations, we may be forced to delay the commercialization of DEXYCU.

Our reliance on third parties reduces our control over our development and commercialization activities but does not relieve us of our responsibility to ensure compliance with all required legal, regulatory and scientific standards. For example, the FDA and other regulatory authorities require that our product candidates and any products that we may eventually commercialize be manufactured according to cGMP and similar foreign standards. Any failure by our third-party manufacturers to comply with cGMP or failure to scale up manufacturing processes, including any failure to deliver sufficient quantities of product candidates in a timely manner, could lead to a delay in, or failure to obtain, regulatory approval of any of our product candidates or supply our commercial volume of DEXYCU. In addition, such failure could be the basis for the FDA to issue a warning or untitled letter, withdraw approvals for products previously granted to us, or take other regulatory or legal action, including recall or seizure, total or partial suspension of production, suspension of ongoing clinical trials, refusal to approve pending applications or supplemental applications, detention or product, refusal to permit the import or export of products, injunction, imposing civil penalties or pursuing criminal prosecution.

If our CROs, vendors and investigators do not successfully carry out their responsibilities or if we lose our relationships with them, our development efforts with respect to our product candidates could be delayed.

We are dependent on CROs, vendors and investigators for pre-clinical testing and clinical trials related to our product development programs, including for EYP-1901. These parties are not our employees, and we cannot control the amount or timing of resources that they devote to our programs. If they do not timely fulfill their responsibilities or if their performance is inadequate, the development and commercialization of our product candidates could be delayed. The parties with which we contract for execution of clinical trials play a significant role in the conduct of the trials and the subsequent collection and analysis of data. Their failure to meet their obligations could adversely affect clinical development of our product candidates. In addition, if we or our CROs fail to comply with applicable current Good Clinical Practices ("GCP"), the clinical data generated in our clinical trials may be deemed unreliable and the FDA may require us to perform additional clinical trials before approving any marketing applications. Upon inspection, the FDA may determine that our clinical trials did not comply with GCP.

Switching or adding additional CROs involves additional cost and requires management time and focus. Identifying, qualifying and managing performance of third-party service providers can be difficult, time-consuming and cause delays in our development programs. In addition, there is a natural transition period when a new CRO commences work and the new CRO may not provide the same type or level of services as the original provider. Though we carefully manage our relationships with our CROs, there can be no assurance that we will not encounter challenges or delays in the future or that these delays or challenges will not have a material adverse impact on our business, financial condition and prospects. If any of our relationships with our CROs terminate, we may not be able to enter into arrangements with alternative CROs or to do so on commercially reasonable terms. As a result, delays may occur, which can materially impact our ability to meet our desired clinical development timelines.

Because we have relied on third parties, our internal capacity to perform these functions is limited. Outsourcing these functions involves risks that third parties may not perform to our standards, may not produce results in a timely manner or may fail to perform at all. In addition, the use of third-party service providers requires us to disclose our proprietary information to these parties, which could increase the risk that this information will be misappropriated. We currently have a small number of employees, which limits the internal resources we have available to identify and monitor our third-party providers. To the extent we are unable to identify and successfully manage the performance of third-party service providers in the future, our ability to advance our product candidates through clinical trials will be compromised. Though we carefully manage our relationships with our CROs, there can be no assurance that we will not encounter similar challenges or delays in the future or that these delays or challenges will not have a material adverse impact on our business, financial condition and prospects.

Our employees, collaborators, service providers, independent contractors, principal investigators, consultants, co-promotion partners, vendors and CROs may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements.

We are exposed to the risk that our employees, collaborators, independent contractors, principal investigators, consultants, co-promotion partners, vendors and CROs may engage in fraudulent or other illegal activity with respect to our business. Misconduct by these employees could include intentional, reckless and/or negligent conduct or unauthorized activity that violates:

- FDA regulations, including those laws requiring the reporting of true, complete and accurate information to the FDA;
- manufacturing standards;
- federal and state healthcare fraud and abuse laws and regulations; or
- laws that require the true, complete and accurate reporting of financial information or data.

In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Misconduct by these parties could also involve individually identifiable information, including, without limitation, the improper use of information obtained in the course of clinical trials, or illegal misappropriation of drug product, which could result in regulatory sanctions and serious harm to our reputation. Any incidents or any other conduct that leads to an employee receiving an FDA debarment could result in a loss of business from third parties and severe reputational harm.

Although we have adopted a Code of Business Conduct to govern and deter such behaviors, 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 such 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 civil, criminal and administrative penalties, damages, monetary fines, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws, and curtailment of our operations.

RISKS RELATED TO OWNERSHIP OF OUR COMMON STOCK

The trading price of the shares of our common stock has been highly volatile, and purchasers of our common stock could incur substantial losses.

The price of our common stock is highly volatile and may be affected by developments directly affecting our business, as well as by developments out of our control or not specific to us. The pharmaceutical and biotechnology industries, in particular, and the stock market generally, are vulnerable to abrupt changes in investor sentiment. Prices of securities and trading volumes of companies in the pharmaceutical and biotechnology industries, including ours, can swing dramatically in ways unrelated to, or that bear a disproportionate relationship to, our performance. The price of our common stock and their trading volumes may fluctuate based on a number of factors including, but not limited to:

- clinical trials and their results, and other product and technological developments and innovations;
- the timing, costs and progress of our commercialization efforts;
- FDA and other domestic and international governmental regulatory actions, receipt and timing of approvals of our product candidates, and any denials and withdrawal of approvals;
- competitive factors, including the commercialization of new products in our markets by our competitors;
- advancements with respect to treatment of the diseases targeted by our products or product candidates;
- developments relating to, and actions by, our collaborative partners, including execution, amendment and termination of agreements, achievement of milestones and receipt of payments;
- the success of our collaborative partners in marketing any approved products and the amount and timing of payments to us;
- availability and cost of capital and our financial and operating results;
- actions with respect to pricing, reimbursement and coverage, and changes in reimbursement policies or other practices relating to our products or the pharmaceutical or biotechnology industries generally;
- meeting, exceeding or failing to meet analysts' or investors' expectations, and changes in evaluations and recommendations by securities analysts;
- the use of social media platforms by customers or investors;
- the issuance of additional shares upon the exercise of currently outstanding options or warrants or upon the settlement of stock units;

- future sales of substantial amounts of shares of our common stock in the market;
- economic, industry and market conditions, changes or trends; and
- other factors unrelated to us or the pharmaceutical and biotechnology industries.

In addition, low trading volume in our common stock may increase their price volatility. Holders of our common stock may not be able to liquidate their positions at the desired time or price. Finally, we will need to continue to meet the listing requirements of Nasdaq including the minimum stock price, for our stock to continue to be traded on Nasdaq.

EW Healthcare and Ocumension own a substantial amount of our common stock and can exert significant control over matters subject to stockholder approval, which would prevent new investors from influencing significant corporate decisions.

EW Healthcare and Ocumension, our largest stockholders, beneficially own 4,190,921 and 3,010,722 shares of our common stock, respectively, or 12.3% and 8.8% of our total outstanding common stock, respectively, as of March 4, 2022. EW Healthcare and Ocumension each have the ability to significantly influence the outcome of matters submitted to our stockholders for approval, including the election and removal of directors and any merger, consolidation or sale of all or substantially all of our assets. EW Healthcare and Ocumension have agreed that, for so long as such investor owns a number of shares equal to at least 75% of the shares of common stock it owns as of December 31, 2020, at any meeting of our stockholders, however called, or at any adjournment thereof, or in any other circumstances in which EW Healthcare or Ocumension, as applicable, are entitled to vote, consent or give any other approval, except as otherwise agreed to in writing in advance by us, EW Healthcare and Ocumension shall (a) appear at each such meeting or otherwise cause the shares of our common stock owned by such investor or their respective affiliates to be counted as present thereat for purposes of calculating a quorum; and (b) vote (or cause to be voted), in person or by proxy, all such shares of our common stock that are beneficially owned by such investor or as to which such investor has, directly or indirectly, the right to vote or direct the voting, (i) in favor of any proposals recommended by our board of directors for approval; and (ii) against any proposals that our board of directors recommends our stockholders vote against; provided, however, that the foregoing does not apply to meetings or proposals that are inconsistent with the investor's rights and obligations under certain agreements between the applicable investor and us.

In addition, the concentration of voting power in EW Healthcare and Ocumension may: (i) delay, defer or prevent a change in control; (ii) entrench our management and Board; or (iii) delay or prevent a merger, consolidation, takeover or other business combination involving us on terms that other stockholders may desire.

In addition, each of EW Healthcare and Ocumension currently have the right to nominate one or more individuals to our board of directors. While the directors appointed by EW Healthcare and Ocumension are obligated to act in accordance with their fiduciary duties under Delaware law, they may have equity or other interests in EW Healthcare or Ocumension and, accordingly, their personal interests may be aligned with EW Healthcare's or Ocumension's interests, which may not always coincide with our corporate interests or the interests of our other stockholders. The directors are required to disclose any potential material conflicts of interest. The current EW Healthcare nominated directors are Dr. Göran Ando and Ron Eastman. The current Ocumension nominated director is Ye Liu.

Certain covenants related to our share purchase agreement with Ocumension may restrict our ability to obtain future financing and cause additional dilution for our stockholders.

On December 31, 2020 we entered into a Share Purchase Agreement (the "Share Purchase Agreement") with Ocumension Therapeutics, incorporated in the Cayman Islands with limited liability ("Ocumension"), pursuant to which we offered and sold to the Ocumension 3,010,722 shares of our common stock at a purchase price of $5.2163 per share, which was the five-day volume weighted average price of our common stock as of the close of trading on December 29, 2020 (the "Ocumension Transaction"). Pursuant to the Share Purchase Agreement, for so long as Ocumension owns a number of shares of our common stock equal to at least 75% of the shares of our common stock it acquired at the closing of the Ocumension Transaction, Ocumension is entitled to participate in subsequent issuances of our equity securities in order to maintain its ownership percentage, subject to certain exceptions for, among other things, the issuance of equity awards pursuant to equity incentive plans, inducement awards and/or employee stock purchase plans and the issuance of shares of our common stock pursuant to "at-the-market" equity offering programs. Any participation rights granted to Ocumension in the Share Purchase Agreement would be effected via a separate private placement. These participation rights could severely impact our ability to engage investment bankers to structure a financing transaction and raise additional financing on favorable terms. Furthermore, negotiating and obtaining a waiver to these participation rights may either not be possible or may be costly to us. If Ocumension exercises its participation rights, our existing stockholders would be further diluted to the extent of the number of shares Ocumension acquires to maintain its ownership percentage.

Provisions in our charter documents could prevent or delay stockholders' attempts takeover our company.

Our board of directors is authorized to issue "blank check" preferred stock, with designations, rights and preferences as they may determine. Accordingly, our board of directors may in the future, without stockholder approval, issue shares of preferred stock with dividend, liquidation, conversion, voting or other rights that could adversely affect the voting power or other rights of the holders of our common stock. This type of preferred stock could also be issued to discourage, delay or prevent a change in our control. The ability to issue "blank check" preferred stock is a traditional anti-takeover measure. This provision in our charter documents makes it difficult for a majority stockholder to gain control of our company. Provisions like this may be beneficial to our management and our board of directors in a hostile tender offer and may have an adverse impact on stockholders who may want to participate in such a tender offer.

Provisions in our bylaws provide for indemnification of officers and directors, which could require us to direct funds away from our business and the development of our product candidates.

Our bylaws provide for the indemnification of our officers and directors. We may in the future be required to advance costs incurred by an officer or director and to pay judgments, fines and expenses incurred by an officer or director, including reasonable attorneys' fees, as a result of actions or proceedings in which our officers and directors are involved by reason of being or having been an officer or director of our company. Funds paid in satisfaction of judgments, fines and expenses may be funds we need for the operation of our business and the development of our product candidates, thereby affecting our ability to attain profitability.

GENERAL RISK FACTORS

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

Implementation of our development and commercialization of product strategies will require additional managerial, operational, sales, marketing, financial and other resources. Our current management, personnel and systems may not be adequate to effectively manage the expansion of our operations, which may result in weaknesses in our infrastructure, give rise to operational mistakes, loss of business opportunities, employee turnover and reduced productivity. Future growth could require significant capital expenditures and may divert financial resources from other projects, such as the development of our existing or future product candidates. Future growth would impose significant added responsibilities on members of management, including:

- overseeing our clinical trials for EYP-1901 effectively;
- managing the commercialization of YUTIQ and DEXYCU;
- identifying, recruiting, maintaining, motivating and integrating additional employees, including any research and development personnel engaged in our clinical trials for EYP-1901, as well as sales and marketing personnel engaged in connection with the commercialization of YUTIQ and DEXYCU;
- engaging and managing our relationship with any co-promotion partners or contract sales organizations; and
- managing our internal development efforts effectively while complying with our contractual obligations to licensors, licensees, contractors and other third parties; and improving our managerial, development, operational and financial systems and procedures.

As our operations expand, we will need to manage additional relationships with various strategic collaborators, suppliers and other third parties. Our future financial performance and our ability to commercialize our product candidates and to compete effectively will depend, in part, on our ability to manage any future growth effectively. To that end, we must be able to manage our development efforts and clinical trials effectively and hire, train and integrate additional management, administrative and sales and marketing personnel. Failure to accomplish any of these activities could prevent us from successfully growing our company.

Our business and operations would suffer in the event of computer system failures, cyberattacks or a deficiency in our cybersecurity.

Despite the implementation of security measures, our internal computer systems and those of our contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures, cyberattacks or cyber-intrusions over the Internet, attachments to emails, persons inside our organization, or persons with access to systems inside our organization. The risk of a security breach or disruption, particularly through cyber-attacks or cyber intrusion, including by computer hackers, foreign governments, and cyber terrorists, has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. Such an event could cause interruption of our operations. As part of our business, we and our vendors maintain large amounts of confidential information, including non-public personal information on patients and our employees. Breaches in security could result in the loss or misuse of this information, which could, in turn, result in potential regulatory actions or litigation, including material claims for damages, interruption to our operations, damage to our reputation or otherwise have a material adverse effect on our business, financial condition and operating results. We expect to have appropriate information security policies and systems in place in order to prevent unauthorized use or disclosure of confidential information, including non-public personal information, but there can be no assurance that such use or disclosure will not occur.

If we fail to comply with data protection laws and regulations, we could be subject to government enforcement actions, which could include civil or criminal penalties, as well as private litigation and/or adverse publicity, any of which could negatively affect our operating results and business.

We may be subject to laws and regulations that address privacy and data security in the U.S. and in states in which we conduct our business. The legislative and regulatory landscape for privacy and data protection continues to evolve, and there has been an increasing focus on privacy and data protection issues which may affect our business. In the U.S., numerous federal and state laws and regulations govern the collection, use, disclosure, and protection of health-related and other personal information, including state data breach notification laws, state health information privacy laws, state genetic privacy laws, and federal and state consumer protection and privacy laws (including, for example, Section 5 of the FTC Act and the CCPA). Compliance with these laws is difficult, constantly evolving, and time consuming. In addition, state laws govern the privacy and security of health, research and genetic information in specified circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts. Failure to comply with these laws and regulations could result in government enforcement actions and create liability for us, which could include civil and/or criminal penalties, as well as private litigation and/or adverse publicity that could negatively affect our operating results and business.

For instance, HIPAA imposes certain obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information and imposes notification obligations in the event of a breach of the privacy or security of individually identifiable health information on entities subject to HIPAA and their business associates that perform certain activities that involve the use or disclosure of protected health information on their behalf. We may obtain health information from third parties (e.g., research institutions from which we obtain clinical trial data) that are subject to privacy and security requirements under HIPAA. Although we are not directly subject to HIPAA – other than potentially with respect to providing certain employee benefits – we could potentially be subject to criminal penalties if we, our affiliates, or our agents knowingly obtain, use, or disclose individually identifiable health information maintained by a HIPAA-covered entity in a manner that is not authorized or permitted by HIPAA.

In addition, the CCPA establishes certain requirements for data use and sharing transparency, and provides California consumers (as defined in the law) certain rights concerning the use, disclosure, and retention of their personal data. In November 2020, California voters approved the California Privacy Rights Act (“CPRA”) ballot initiative which introduced significant amendments to the CCPA and established and funded a dedicated California privacy regulator, the California Privacy Protection Agency (“CPPA”). The amendments introduced by the CPRA go into effect on January 1, 2023, and new implementing regulations are expected to be introduced by the CPPA. Failure to comply with the CCPA may result in, among other things, significant civil penalties and injunctive relief, or statutory or actual damages. In addition, California residents have the right to bring a private right of action in connection with certain types of incidents. These claims may result in significant liability and damages. Similarly, there are a number of legislative proposals in the United States, at both the federal and state level, that could impose new obligations or limitations in areas affecting our business. These laws and regulations are evolving and subject to interpretation, and may impose limitations on our activities or otherwise adversely affect our business. The obligations to comply with the CCPA and evolving legislation may require us, among other things, to update our notices and develop new processes internally and with our partners. We may be subject to fines, penalties, or private actions in the event of non-compliance with such laws. In addition, we could be subject to regulatory actions and/or claims made by individuals and groups in private litigation involving privacy issues related to data collection and use practices and other data privacy laws and regulations, including claims for misuse or inappropriate disclosure of data, as well as unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act (“FTC Act”). The FTC expects a company’s data security measures to be reasonable and appropriate in light of the sensitivity and volume of consumer

information it holds, the size and complexity of its business, and the cost of available tools to improve security and reduce vulnerabilities. Individually identifiable health information is considered sensitive data that merits stronger safeguards. Enforcement by the FTC under the FTC Act can result in civil penalties or decades-long enforcement actions.

If we, our agents, or our third party partners fail to comply or are alleged to have failed to comply with these or other applicable data protection and privacy laws and regulations, or if we were to experience a data breach involving personal information, we could be subject to government enforcement actions or private lawsuits. Any associated claims, inquiries, or investigations or other government actions could lead to unfavorable outcomes that have a material impact on our business including through significant penalties or fines, monetary judgments or settlements including criminal and civil liability for us and our officers and directors, increased compliance costs, delays or impediments in the development of new products, negative publicity, increased operating costs, diversion of management time and attention, or other remedies that harm our business, including orders that we modify or cease existing business practices.

Outside the U.S., the legislative and regulatory landscape for privacy and data security continues to evolve. There has been increased attention to privacy and data security issues that could potentially affect our business, including the EU General Data Protection Regulation ("GDPR"), which imposes strict obligations on the processing of personal data, including relating to the transfer of personal data from the European Economic Area to third countries such as the US. In particular, these obligations and restrictions concern the consent of the individuals to whom the personal data relates, the processing details disclosed to the individuals, the sharing of personal data with third parties, the transfer of personal data out of the European Economic Area, contracting requirements (such as with clinical trial sites and vendors), and security breach notifications. Data protection authorities from the different European Economic Area Member States may interpret the GDPR and applicable related national laws differently and impose requirements additional to those provided in the GDPR. In addition, guidance on implementation and compliance practices may be updated or otherwise revised, which adds to the complexity of processing personal data in the European Economic Area. Enforcement by European Economic Area regulators is active, and failure to comply with the GDPR or applicable Member State law may result in substantial fines. For example, if we act in violation of the GDPR we may face significant penalties of up to EUR 20 million or 4% of our annual global revenue, whichever is greater.

European data protection laws, including the GDPR, generally restrict the transfer of personal data from Europe, including the EU, United Kingdom and Switzerland, to the U.S. and most other countries unless the parties to the transfer have implemented specific safeguards to protect the transferred personal data. One of the primary safeguards allowing U.S. companies to import personal data from Europe had been certification to the EU-U.S. Privacy Shield and Swiss-U.S. Privacy Shield frameworks administered by the U.S. Department of Commerce. However, the EU-U.S. Privacy Shield was invalidated in July 2020 by the Court of Justice of the European Union ("CJEU") in a case known colloquially as "Schrems II." Following this decision, the Swiss Federal Data Protection and Information Commissioner ("FDPIC"), announced that the Swiss-U.S. Privacy Shield does not provide adequate safeguards for the purposes of personal data transfers from Switzerland to the U.S. While the FDPIC does not have authority to invalidate the Swiss-U.S. Privacy Shield regime, the FDPIC's announcement casts doubt on the viability of the Swiss-U.S. Privacy Shield as a future compliance mechanism for Swiss-U.S. data transfers. The CJEU's decision in Schrems II also raised questions about whether one of the primary alternatives to the EU-U.S. Privacy Shield, namely, the European Commission's Standard Contractual Clauses, can lawfully be used for personal data transfers from Europe to the U.S. or other third countries that are not the subject of an adequacy decision of the European Commission. While the CJEU upheld the adequacy of the Standard Contractual Clauses in principle in Schrems II, it made clear that reliance on those Clauses alone may not necessarily be sufficient in all circumstances. Use of the Standard Contractual Clauses must now be assessed on a case-by-case basis taking into account the legal regime applicable in the destination country, in particular regarding applicable surveillance laws and relevant rights of individuals with respect to the transferred data. In the context of any given transfer, where the legal regime applicable in the destination country may or does conflict with the intended operation of the Standard Contractual Clauses and/or applicable European law, the decision in Schrems II and subsequent draft guidance from the European Data Protection Board ("EDPB"), would require the parties to that transfer to implement certain supplementary technical, organizational and/or contractual measures to rely on the Standard Contractual Clauses as a compliant "transfer mechanism." However, the draft guidance from the EDPB on such supplementary technical, organizational and/or contractual measures appears to conclude that no combination of such measures could be sufficient to allow effective reliance on the Standard Contractual Clauses in the context of transfers of personal data "in the clear" to recipients in countries where the power granted to public authorities to access the transferred data goes beyond that which is "necessary and proportionate in a democratic society" – which may, following the CJEU's conclusions in Schrems II on relevant powers of U.S. public authorities and commentary in that draft EDPB guidance, include the U.S. in certain circumstances (e.g., where Section 702 of the US Foreign Intelligence Surveillance Act applies). At present, there are few, if any, viable alternatives to the EU-U.S. Privacy Shield and the Standard Contractual Clauses. However, the Court of Justice of the European Union recently invalidated the EU-U.S. Privacy Shield. The decision in Schrems II also affects transfers from the United Kingdom to the U.S..

As such, if we are unable to implement a valid solution for personal data transfers from Europe, including, for example, obtaining individuals' explicit consent to transfer their personal data from Europe to the U.S. or other countries, we will face increased exposure to regulatory actions, substantial fines and injunctions against processing personal data from Europe. Inability to import personal data from Europe may also restrict our clinical trials activities in Europe; limit our ability to collaborate with contract research organizations as well as other service providers, contractors and other companies subject to European data protection laws; and require us to increase our data processing capabilities in Europe at significant expense. Additionally, other countries outside of Europe have enacted or are considering enacting similar cross-border data transfer restrictions and laws requiring local data residency, which could increase the cost and complexity of delivering our services and operating our business. The type of challenges we face in Europe will likely also arise in other jurisdictions that adopt laws similar in construction to the GDPR or regulatory frameworks of equivalent complexity.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

We do not own any real property. On May 17, 2018, we amended our lease, dated November 1, 2013, to extend our Watertown, Massachusetts lease term from April 2019 through approximately May 2025 and to add an additional 6,590 square feet of rentable area for a resulting total of 20,240 square feet. Following build-out of the additional space, for which the landlord provided a construction allowance of $671,000, we took occupancy on September 10, 2018. On April 5, 2021, we further amended the lease to include an additional 1,409 square feet of rentable area of the building through May 2025. On March 8, 2022, we further amended the lease (i) to extend the term to May 31, 2028 for 13,650 square feet of laboratory and manufacturing operations space, with the landlord agreeing to provide the Company a construction allowance of up to $555,960 to be applied toward upgrades and improvements within the space; (ii) to rent an additional 11,999 square feet of office space within the building through May 31, 2028, with an anticipated commencement date in the third quarter of 2022; and (iii) to terminate a portion of the lease comprising 7,999 square feet of office space in the building on May 31, 2025. We have an option to extend the term of the lease for one additional five-year period at market rates.

We lease 3,000 square feet of office space in Liberty Corner, New Jersey under a lease agreement that expires in June 2022. On June 11, 2018, we subleased an additional 1,381 square feet of office space in this building through May 2022. We have given notice that we will not be renewing this lease and we will vacate the facility upon expiration.

We believe our leased facilities are adequate for our present and anticipated needs.

ITEM 3. LEGAL PROCEEDINGS

We are subject to various routine legal proceedings and claims incidental to our business, which management believes will not have a material effect on our financial position, results of operations or cash flows.

U.S. Securities and Exchange Commission Subpoena

We previously disclosed that on May 14, 2020 we had received a subpoena from the Division of Enforcement of the SEC seeking production of certain documents and information on topics including product sales and demand, revenue recognition and accounting in relation to product sales, product sales and cash projections, and related financial reporting, disclosure and compliance matters. On May 4, 2021, we were advised by the SEC Division of Enforcement that it has concluded its investigation of us and that, based on the information it has to date, the Enforcement Division does not intend to recommend an enforcement action against us.

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

Our common stock is traded on the Nasdaq Global Market under the trading symbol "EYPT". As of March 4, 2022, we had approximately 76 holders of record of our common stock. This number does not include beneficial owners whose shares are held by nominees in street name.

Equity Compensation Plan Information

Information required by Item 5 of Form 10-K regarding our equity compensation plans is incorporated herein by reference to Item 12 of Part III of this Annual Report on Form 10-K.

Recent Sales of Unregistered Securities

Other than as previously disclosed on our Current Reports on Form 8-K or Quarterly Reports on Form 10-Q filed with the SEC, we did not issue any unregistered equity securities during the twelve months ended December 31, 2021.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

ITEM 6. [RESERVED]

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

The following discussion and analysis of financial condition and results of operations should be read in conjunction with our audited Consolidated Financial Statements and related Notes beginning on page F-1 of this Annual Report on Form 10-K. This discussion contains forward-looking statements, based on current expectations and related to future events and our future financial performance, that involve risks and uncertainties. Our actual results may differ significantly from those anticipated or implied in these forward-looking statements as a result of many important factors, including, but not limited to, those set forth under Item 1A, "Risk Factors", and elsewhere in this report.

The following Management's Discussion and Analysis ("MD&A") provides a narrative of our results of operations for the year ended December 31, 2021 and the comparable period ended December 31, 2020, respectively, and our financial position as of December 31, 2021 and 2020, respectively. The MD&A should be read together with our consolidated financial statements and related notes included on pages F-1 through F-33 of this Annual Report on Form 10-K.

Overview

We are a pharmaceutical company committed to developing and commercializing innovative therapeutics to help improve the lives of patients with serious eye disorders. Our pipeline leverages our proprietary Durasert® technology for sustained intraocular drug delivery including EYP-1901, a potential six-month anti-VEGF treatment initially targeting wet age-related macular degeneration ("wet AMD"), the leading cause of vision loss among people 50 years of age and older in the United States. We also have two commercial products: YUTIQ®, a once every three-year treatment for chronic non-infectious uveitis affecting the posterior segment of the eye, and DEXYCU®, a single dose treatment for postoperative inflammation following ocular surgery. We are also advancing YUTIQ 50, a potential six-month treatment for non-infectious uveitis affecting the posterior segment of the eye, one of the leading causes of blindness under a supplemental New Drug Application (sNDA) strategy.

Fiscal 2021 Overview and COVID-19 Impact

The fiscal year ended December 31, 2021 was highlighted by the following events:

- Underlying customer demand and distributor purchases by specialty distributors and specialty pharmacies of both YUTIQ and DEXYCU was negatively impacted beginning in the first and especially the second quarter of 2020 due to shutdowns associated with the Pandemic in the U.S. A modest return of customer demand began in June 2020 which contributed to sequential product sales growth in the third and fourth quarters of 2020, and Pandemic-related restrictions on elective surgeries and physician office visits were largely removed during the first and second quarters of 2021. However, the emergence of new variants of the coronavirus has caused and may continue to cause intermittent or prolonged periods of reduced patient services at our customers' facilities, which may negatively affect customer demand. The future progression of the Pandemic and its effects on our business and operations are uncertain at this time. Depending on the future developments that are uncertain and difficult to predict, including new information that may emerge concerning the Pandemic, our customer demand may be adversely affected in the future as well. During the Pandemic, our sales organization has continued to call on physician offices, though at a reduced frequency. There have been no disruptions to the supply chains for YUTIQ and DEXYCU during the Pandemic and we continue to produce finished product for commercial sale.
- In February 2021, we sold 10,465,000 shares of common stock in an underwritten public offering at a price of $11.00 per share, including the exercise in full by the underwriters of their option to purchase up to 1,365,000 additional shares of our common stock. The gross proceeds of the offering are approximately $115.1 million. Underwriter discounts and commissions and other share issue costs totaled approximately $7.2 million.
- In a press release dated April 7, 2021, our Asia partner, Ocumension, announced that the new drug application ("NDA") for OT-401 (YUTIQ) had been accepted by the National Medical Products Administration of the People's Republic of China ("NMPA"). Ocumension reported that YUTIQ is its first ophthalmic drug for which an NDA has been accepted by the NMPA and is also the first sustained-release micro-insert submitted for NDA approval in mainland China that has a controlled release rate for up to 36 months. Ocumension's press release also announced that this is the first time the NMPA has accepted an NDA based on real world study data.
- In June 2021, we received notification from Silicon Valley Bank ("SVB") that the Paycheck Protection Program Loan ("PPP Loan") of $2.0 million has been fully forgiven by the U.S. Small Business Administration ("SBA"), and that payment and all accrued interest thereon were remitted by the SBA to SVB on June 16, 2021.
- In June 2021, we announced that we had joined the Russell 2000® and the Russell 3000® indices.

- In July 2021, we announced that the American Medical Association created a new Category III Current Procedural Terminology (CPT®) Code to describe the injection of medicines like DEXYCU®. The code, OX78T, is for the administration of a drug into the posterior chamber of the anterior segment of the eye and became effective January 1, 2022. The new CPT code, as implemented, adds DEXYCU administration to the reimbursement bundle for cataract surgery, in addition to the pass-through payment for the drug itself.
- In July 2021, we announced that we expect to receive a nine month extension of separate payment for DEXYCU, which would otherwise expire on March 31, 2022, with the end of the drug's pass-through status. The announcement was based on the fiscal year (FY) 2022 Medicare Hospital Outpatient Prospective Payment System (OPPS) proposed rule. The rule includes a proposal to extend the period of separate payment for select pass-through drugs and devices that have their pass-through status scheduled to expire between December 31, 2021 and September 30, 2022, including DEXYCU. CMS proposes to extend the period of separate payment for these therapies beyond the expiration of pass-through status in light of the COVID-19 public health emergency. The proposal is subject to a public comment period and may be either adopted as proposed, modified, or withdrawn in the FY 2022 OPPS final rule, which is anticipated to be released in November 2021.
- In August 2021, we announced the establishment of our Executive Scientific Advisory Board with prestigious members made up of some of the leading retinal surgeons in the world and chaired by Dr. Carl Regillo MD, FACS, Chief of the Retina Service at Wills Eye Hospital.
- On November 1, 2021, we appointed Jay S. Duker, M.D. as our Chief Operating Officer. In his new role, Dr. Duker will be responsible for overseeing all clinical development, research, product development and manufacturing. Dr. Duker joined EyePoint as Chief Strategic Scientific Officer on a part-time basis in 2020, after serving as an independent member of our Board of Directors since 2016. Dr. Duker has spent over 30 years in academic ophthalmology, and for the past 21 years served as Chair of the Department of Ophthalmology at Tufts Medical Center and the Tufts University School of Medicine, a position he relinquished to join EyePoint full time.
- In November 2021, we sold 5,122,273 shares of Common Stock, which included the exercise in full by the underwriters of their option to purchase an additional 1,095,000 shares of common stock, and pre-funded warrants to purchase up to an aggregate of 3,272,727 shares of common stock. The shares of common stock were sold at a public offering price of $13.75 per share, and the pre-funded warrants were sold at a purchase price of $13.74 per pre-funded warrants, for aggregate gross proceeds of approximately $115.4 million. Underwriter discounts and commissions and other share issue costs totaled approximately $7.2 million.
- In December, we announced the expansion of our commercial alliance in which ImprimisRx will assume responsibility for U.S. sales and marketing activities for DEXYCU 9% for the treatment of post-operative inflammation following ocular surgery in the U.S. The amended agreement expands the commercial alliance previously established in August 2020 between EyePoint and ImprimisRx. Under terms of the expanded alliance, ImprimisRx absorbed the majority of EyePoint's DEXYCU commercial organization. EyePoint will continue to recognize net product revenue and maintain manufacturing and distribution responsibilities for DEXYCU along with non-sales related regulatory compliance. EyePoint will pay ImprimisRx a commission based on net sales of DEXYCU and will retain all commercial rights for DEXYCU. The amended agreement became effective on January 1, 2022.

R&D Highlights

- In January 2021, we dosed our first patient in our Phase 1 DAVIO clinical trial for EYP-1901.
- In May 2021, studies of DEXYCU were presented in two separate poster sessions at the Association for Research in Vision and Ophthalmology ("ARVO") Annual meeting.
- In May 2021, we announced the completion of enrollment in our Phase 1 DAVIO clinical trial of EYP-1901 for the potential treatment of Wet AMD.
- In July 2021, we reported positive 30-day safety results for all cohorts from the DAVIO clinical trial. Key safety observations through at least 30-Day post-dosing follow-up for all patients include: (i) No serious adverse events (SAEs), ocular or systemic, (ii) no reported adverse events (AEs) related to significant intraocular inflammation, best-corrected visual acuity (BCVA) reduction, or elevation of intraocular pressure (IOP) and (iii) no events of endophthalmitis, retinal detachment or migration into the anterior chamber.
- In July 2021, DEXYCU was presented in three separate oral presentations, one poster session and a video symposium at the American Society of Cataract and Refractive Surgery (ASCRS) Annual Meeting.
- In September 2021, we announced that a late-breaking abstract highlighting topline data for the Phase 1 DAVIO trial of EYP-1901 in wet AMD was selected for presentation at the American Academy of Ophthalmology (AAO) 2021 Annual Meeting.
- In October 2021, we reported positive 3-month safety data for all dose levels from our ongoing DAVIO trial of EYP-1901 for the potential treatment of wet AMD at the American Society of Retina Specialists (ASRS) Annual Meeting.
- In October 2021, we reported preliminary data from our ongoing YUTIQ® CALM real-world registry study at Retina Society and ASRS.
- In November, 2021 we reported positive safety and efficacy from our ongoing Phase 1 DAVIO trial of EYP-1901 at the American Academy of Ophthalmology (AAO) 2021 Annual Meeting Retina Subspecialty Day.

Recent Developments

- Customer demand for YUTIQ in Q4, represented as units purchased by physicians from our distributors, was up 16% over Q3, driven by underlying growth.
- Customer demand for DEXYCU in Q4, represented as units purchased by ambulatory surgical centers, was up 5% over Q3, driven by increases in cataract surgeries and some re-opening of ASC's.
- On January 10, 2022, we appointed Michael C. Pine Chief Corporate Development and Strategy Officer. Mr. Pine brings over 20 years of business and corporate development expertise, leveraging experience from various roles at small and large pharmaceutical companies.
- On March 7, 2022, we appointed Isabelle Lefebvre as Chief Regulatory Officer. Ms. Lefebvre brings over 30 years of global regulatory affairs experience across all phases of drug development including ophthalmic and ocular conditions. Ms. Lefebvre is succeeding John Weet, Ph.D., who be leaving his role as Senior Vice President, Regulatory, following a transition period.
- On March 9, 2022, we entered into a loan agreement for senior secured credit facilities in the aggregate amount of $45 million with Silicon Valley Bank to replace our existing credit facility with CRG Services LLC. Under the terms of the new agreement, a $30 million term loan facility and an asset-based revolving credit facility of up to $15 million will be utilized to replace the existing approximately $40.5 million of obligations under the existing CRG credit facility.

Summary of Critical Accounting Policies and Estimates

The discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles, ("U.S. GAAP"). The preparation of these financial statements requires that we make certain estimates, judgments and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. We base our estimates on historical experience, anticipated results and trends and various other factors 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 available from other sources. By their nature, these estimates, judgments and assumptions are subject to an inherent degree of uncertainty, and management evaluates them on an ongoing basis for changes in facts and circumstances. Changes in estimates are recorded in the period in which they become known. Actual results may differ from our estimates under different assumptions or conditions.

While our significant accounting policies are more fully described in Note 2 in the accompanying Notes to the Consolidated Financial Statements contained in this Annual Report on Form 10-K, we believe that the following accounting policies are critical to understanding the judgments and estimates used in the preparation of our financial statements. It is important that the discussion of our operating results that follows be read in conjunction with the critical accounting policies discussed below.

Revenue Recognition

Revenue is recognized when a customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of ASC 606, Revenue from Contracts with Customers ("ASC 606"), we perform 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 entity satisfies a performance obligation. We only apply the five-step model to contracts when it is probable that the entity 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, we assess the goods or services promised within each contract, determines those that are performance obligations and assesses whether each promised good or service is distinct. We then recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied. Sales, value add, and other taxes collected on behalf of third parties are excluded from revenue.

Product sales, net — We sell YUTIQ and DEXYCU to a limited number of specialty distributors and specialty pharmacies (collectively the "Distributors") in the U.S., with whom we have entered into formal agreements, for delivery to physician practices for YUTIQ and to hospital outpatient departments and ambulatory surgical centers for DEXYCU. We recognize revenue on sales of our products when Distributors obtain control of the products, which occurs at a point in time, typically upon delivery. In addition to agreements with Distributors, we also enter into arrangements with healthcare providers, ambulatory surgical centers, and payors that provide for government mandated and/or privately negotiated rebates, chargebacks, and discounts with respect to their purchase of our products from Distributors.

Reserves for variable consideration — Product sales are recorded at the wholesale acquisition costs, net of applicable reserves for variable consideration. Components of variable consideration include trade discounts and allowances, provider chargebacks and discounts, payor rebates, product returns, and other allowances that are offered within contracts between us and our Distributors, payors, and other contracted purchasers relating to our product sales. These reserves, as detailed below, are based on the amounts earned, or to be claimed on the related sales, and are classified either as reductions of product revenue and accounts receivable or a current liability, depending on how the amount is to be settled. Overall, these reserves reflect our best estimates of the amount of consideration to which it is entitled based on the terms of the respective underlying contracts. Actual amounts of consideration ultimately received may differ from our estimates. If actual results in the future vary from the estimates, we adjust these estimates, which would affect product revenue and earnings in the period such variances become known.

Distribution fees — We compensate our Distributors for services explicitly stated in our contracts and they are recorded as a reduction of revenue in the period the related product sale is recognized.

Provider chargebacks and discounts — Chargebacks are discounts that represent the estimated obligations resulting from contractual commitments to sell products at prices lower than the list prices charged to our Distributors. These Distributors charge us for the difference between what they pay for the product and our contracted selling price. These reserves are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability. Reserves for chargebacks consist of amounts that we expect to pay for units that remain in the distribution channel inventories at each reporting period-end that we expect will be sold under a contracted selling price, and chargebacks that Distributors have claimed, but for which we have not yet settled.

Government rebates — We are subject to discount obligations under state Medicaid programs and Medicare. These reserves are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability which is included in accrued expenses and other current liabilities on the condensed consolidated balance sheets. Our liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but which remains in the distribution channel inventories at the end of each reporting period.

Payor rebates — We contract with certain private payor organizations, primarily insurance companies, for the payment of rebates with respect to utilization of our products. We estimate these rebates and records such estimates in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability.

Co-Payment assistance — We offer co-payment assistance to commercially insured patients meeting certain eligibility requirements. The calculation of the accrual for co-pay assistance is based on an estimate of claims and the cost per claim that we expect to receive associated with product that has been recognized as revenue.

Product returns — We generally offer a limited right of return based on our returned goods policy, which includes damaged product and remaining shelf life. We estimate the amount of our product sales that may be returned and record this estimate as a reduction of revenue in the period the related product revenue is recognized, as well as reductions to trade receivables, net on the condensed consolidated balance sheets.

License and collaboration agreement revenue — We analyze each element of our license and collaboration arrangements to determine the appropriate revenue recognition. The terms of the license agreement may include payment to us of non-refundable up-front license fees, milestone payments if specified objectives are achieved, and/or royalties on product sales. We recognize revenue from upfront payments at a point in time, typically upon fulfilling the delivery of the associated intellectual property to the customer.

If the contract contains a single performance obligation, the entire transaction price is allocated to the single performance obligation. Contracts that contain multiple performance obligations require an allocation of the transaction price based on the estimated relative standalone selling prices of the promised products or services underlying each performance obligation. We determine standalone selling prices based on the price at which the performance obligation is sold separately. If the standalone selling price is not observable through past transactions, we estimate the standalone selling price taking into account available information such as market conditions and internally approved pricing guidelines related to the performance obligations.

We recognize sales-based milestone payments as revenue upon the achievement of the cumulative sales amount specified in the contract in accordance with ASC 606-10-55-65. For those milestone payments which are contingent on the occurrence of particular future events, we determine that these need to be considered for inclusion in the calculation of total consideration from the contract as a component of variable consideration using the most-likely amount method. As such, we assess each milestone to determine the probability and substance behind achieving each milestone. Given the inherent uncertainty associated with these future events, we will not recognize revenue from such milestones until there is a high probability of occurrence, which typically occurs near or upon achievement of the event.

When determining the transaction price of a contract, an adjustment is made if payment from a customer occurs either significantly before or significantly after performance, resulting in a significant financing component. Applying the practical expedient in paragraph 606-10-32-18, we do not assess whether a significant financing component exists if the period between when we perform our obligations under the contract and when the customer pays is one year or less. None of our contracts contained a significant financing component as of December 31, 2021.

Reimbursement of costs — We may provide research and development services and incur maintenance costs of licensed patents under collaboration arrangements to assist in advancing the development of licensed products. We act primarily as a principal in these transactions and, accordingly, reimbursement amounts received are classified as a component of revenue to be recognized consistent with the revenue recognition policy summarized above. We record the expenses incurred and reimbursed on a gross basis.

Royalties — We recognize revenue from license arrangements with our commercial partners' net sales of products. Such revenues are included as royalty income. In accordance with ASC 606-10-55-65, royalties are recognized when the subsequent sale of the commercial partner's products occurs. Our commercial partners are obligated to report their net product sales and the resulting royalty due to us typically within 60 days from the end of each quarter. Based on historical product sales, royalty receipts and other relevant information, we recognize royalty income each quarter and subsequently determine a true-up when we receive royalty reports and payment from our commercial partners. Historically, these true-up adjustments have been immaterial.

Sale of Future Royalties — We have sold our rights to receive certain royalties on product sales. In the circumstance where we have sold our rights to future royalties under a royalty purchase 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), we defer recognition of the proceeds we receive for the sale of 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 our 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.

Research Collaborations — We recognize revenue over the term of the statements of work under any funded research collaborations. Revenue recognition for consideration, if any, related to a license option right is assessed based on the terms of any such future license agreement or is otherwise recognized at the completion of the research collaborations. Please refer to Note 3 for further details on the license and collaboration agreements into which we have entered and corresponding amounts of revenue recognized during the current and prior year periods.

Deferred Revenue

Amounts received prior to satisfying the above revenue recognition criteria are recorded as deferred revenue in the accompanying consolidated balance sheets. Amounts not expected to be recognized within one year following the balance sheet date are classified as non-current deferred revenue.

Please refer to Note 3 for further details on the license and collaboration agreements into which we have entered and corresponding amounts of revenue recognized for the years ended December 31, 2021 and 2020.

Recognition of Expense in Outsourced Clinical Trial Agreements

We recognize research and development expense with respect to outsourced agreements for clinical trials with contract research organizations ("CROs") as the services are provided, based on our assessment of the services performed. We make our assessments of the services performed based on various factors, including evaluation by the third-party CROs and our own internal review of the work performed during the period, measurements of progress by us or by the third-party CROs, data analysis with respect to work completed and our management's judgment. Our financial obligations under the agreements are determined by the services that we request from time to time under the agreements. The actual amounts owed under the agreements and the timing of those obligations will depend on various factors, including changes to the protocols and/or services requested, the number of patients to be enrolled and the rate of patient enrollment, achievement of pre-defined direct cost milestone events and other factors relating to the clinical trials. We can terminate the agreements at any time without penalty, and if terminated, we would be liable only for services through the termination date plus non-cancellable CRO obligations to third parties.

Results of Operations

Years Ended December 31, 2021 and 2020

	Year Ended December 31,		Change	
	2021	2020	Amounts	%
	(In thousands except percentages)			
Revenues:				
Product sales, net	$ 35,312	$ 20,831	$ 14,481	70%
License and collaboration agreements (including licensing fees from a related party of $543 and $11,500 for the years ended December 31, 2021 and 2020, respectively)	756	11,942	(11,186)	(94)%
Royalty income	871	1,664	(793)	(48)%
Total revenues	36,939	34,437	2,502	7%
Operating expenses:				
Cost of sales, excluding amortization of acquired intangible assets	8,177	5,824	2,353	40%
Research and development	28,500	17,424	11,076	64%
Sales and marketing	27,503	25,293	2,210	9%
General and administrative	25,575	20,726	4,849	23%
Amortization of acquired intangible assets	2,460	2,460	—	N/A
Total operating expenses	92,215	71,727	20,488	29%
Loss from operations	(55,276)	(37,290)	(17,986)	48%
Other income (expense)				
Interest income and other, net	292	58	234	403%
Interest expense	(5,498)	(7,257)	1,759	24%
Gain (loss) on extinguishment of debt	2,065	(905)	2,970	328%
Other expense, net	(3,141)	(8,104)	4,963	61%
Net loss	$ (58,417)	$ (45,394)	$ (13,023)	(29)%

Product Sales, net

Product sales, net represents the gross sales of YUTIQ and DEXYCU less provisions for product sales allowances. Product sales, net increased by $14.5 million to $35.3 million for 2021 compared to $20.8 million in the prior year. The increase was driven by a return of customer demand for both products as patient procedures at physician offices and ambulatory service centers resumed due to facility closures driven by the Pandemic. Customer demand has a direct impact on product orders from our specialty distributors that we record as net product sales. Net product revenue represents product purchased by our distributors whereas customer demand represents purchases of product by physician practices and ASCs from our distributors. The progression of the Pandemic and its effects on our business and operations remain uncertain at this time. Depending on the future developments that are uncertain and difficult to predict, including new information that may emerge concerning the Pandemic, our customer demand may be adversely affected in the future as well.

License and collaboration agreement

License and collaboration agreement revenues decreased by $11.2 million to $0.8 million in 2021 compared to $11.9 million in 2020. This decrease was attributable primarily to (i) the recognition in the prior year period of $9.5 million under our Ocumension 2020 MOU entered into in August 2020 (see Note 3) and (ii) the recognition of approximately $2.0 million from Ocumension upon signing a license agreement for DEXYCU in China also during the prior year period, partially offset by other collaboration revenue in the current year period.

Royalty Income

Royalty income decreased by $793,000 to $0.9 million for fiscal 2021 from $1.7 million in the prior year. The decrease was attributable to the impact of the royalty monetization agreement with SWK Holdings that grants to SWK all future royalty payments under the Amended Alimera Agreement beginning with Q4 2020 for a one-time payment of $16.5 million. Due to the accounting treatment for this agreement (see Revenue Recognition section), we recognize a non-cash portion of deferred revenue as Alimera pays royalties to SWK beginning in the first quarter of 2021 (see Note 3).

Cost of Sales, Excluding Amortization of Acquired Intangible Assets

Cost of sales, excluding amortization of acquired intangible assets, increased by $2.4 million to $8.2 million for fiscal 2021 from $5.8 million in the prior year. This increase was primarily attributable to costs associated with higher product sales, primarily costs of goods and royalties, and due to higher DEXYCU product mix, as well as a $1.3 million provision for anticipated DEXYCU inventory expiration.

Research and Development

Research and development expenses increased by $11.1 million to $28.5 million for 2021 from $17.4 million in the prior year. This increase was attributable primarily to (i) $5.2 million in personnel expense, including stock based compensation, due to expansion of our clinical and research organizations, (ii) $3.5 million in clinical costs, primarily related to our EYP-1901 Phase 1 clinical trial and YUTIQ 50 Phase 3 clinical trial, (iii) $1.8 million in research in additional formulations and injector technologies, and (iv) $581,000 in medical affairs and pharmacovigilance costs. The first quarter of 2020 also included a one-time $1.0 million payment for the licensing of vorolanib for EYP-1901 and the current year periods include a one-time payment of $0.5 million under the Asset Purchase Agreement with Aerpio (see Note 12).

We anticipate that our research and development expenses will increase for the year ending December 31, 2022 as compared to the year ended December 31, 2021 as a result of the expansion of our research and development organization to support additional clinical and development work, initiation of our EYP-1901 phase 2 clinical trial for wAMD, new formulation and injector development, and studies for additional indications for EYP-1901.

Sales and Marketing

Sales and marketing expenses increased by approximately $2.2 million to $27.5 million for fiscal 2021 from $25.3 million in the prior year. This increase was primarily attributable to (i) $1.7 million in sales and promotional expense, including commissions due to our commercial partner for DEXYCU, and (ii) $582,000 in other communications and marketing programs.

General and Administrative

General and administrative expenses increased by $4.9 million to $25.6 million for 2021 from $20.7 million in the prior year. This increase was attributable primarily to (i) $2.2 million in personnel expense, including stock based compensation, for executive, Finance, HR, and IT functions, (ii) $2.1 million in consulting, investor relations, and other spending initiatives, and (iii) $414,000 in D&O insurance expense.

We anticipate that our general and administrative expenses will increase for the year ending December 31, 2022 as compared to the year ended December 31, 2021 as a result of additional Human Resources, Information Technology, and Finance personnel to support organizational growth.

Amortization of Acquired Intangible Assets

Amortization of acquired intangible assets totaled $2.5 million for both 2021 as well as the same period in the prior year. This amount was attributable to the DEXYCU product intangible asset that resulted from the Icon Acquisition (see Note 5).

Interest (Expense) Income

Interest expense totaled $5.5 million for 2021. We incurred lower interest expense in 2021 due to the $13.7 million partial principal paydown in Q4 2020 on the CRG term loan. Interest expense in 2020 was $7.3 million, which included $745,000 of amortization of debt discount and $977,000 of non-cash payment-in-kind interest expense all related to the CRG Debt.

Interest income from amounts invested in an institutional money market fund increased to $292,000 for fiscal 2021 compared to $58,000, due primarily to increased interest-bearing assets versus 2020 driven by the 2021 equity financings.

Gain on Extinguishment of Debt

Forgiveness by the SBA of our PPP Loan resulted in a gain on extinguishment of debt, which consisted of approximately (i) $2.0 million of principal and (ii) $24,000 of interest in 2021.

Recently Adopted and Recently Issued Accounting Pronouncements

For a full discussion of recently adopted and recently issued accounting pronouncements, see Note 2, "Significant Accounting Policies" to the Consolidated Financial Statements included under Item 15, "Exhibits and Financial Statement Schedules."

Liquidity and Capital Resources

We have had a history of operating losses and an absence of significant recurring cash inflows from revenue, and at December 31, 2021 we had a total accumulated deficit of $569.1 million. Our operations have been financed primarily from sales of our equity securities, issuance of debt and a combination of license fees, milestone payments, royalty income and other fees received from collaboration partners. In the first quarter of 2019, we commenced the U.S. launch of our first two commercial products, YUTIQ and DEXYCU. However, we have not received sufficient revenues from our product sales to fund operations and we do not expect revenues from our product sales to generate sufficient funding to sustain our operations in the near-term.

Financing Activities

Our operations for fiscal 2021 were financed primarily from $44.9 million of cash and cash equivalents at December 31, 2020, approximately $108.2 million of net proceeds from the November 2021 underwritten stock offering and approximately $107.9 million of net proceeds from the February 2021 underwritten stock offering. We also sold shares of our common stock under our at-the-market facility in Q1 2021 and recorded net proceeds of approximately $499,000.

The Credit Facilities are due and payable on January 1, 2027 (the “Maturity Date”). The Term Facility bears interest at a per annum rate (subject to increase during an event of default) equal to the higher of 5.5% and the Prime Rate plus 2.25%. The Revolving Facility bears interest at a per annum rate equal to the Prime Rate. We are required to make interest only payments on a monthly basis until the Maturity Date. In addition, we may make a voluntary prepayment of the SVB Loan, in whole or in part, at any time. All mandatory and voluntary prepayments of the SVB Loan are subject to the payment of prepayment premiums as follows: (i) if prepayment occurs on or prior to March 9, 2023, 3% of the aggregate outstanding principal amount of the SVB Loan being prepaid, (ii) if prepayment occurs after March 9, 2023 but on or prior to March 9, 2024, an amount equal to 2% of the aggregate outstanding principal amount of the SVB Loan being prepaid, (iii) if prepayment occurs after March 9, 2024 but on or prior to March 9, 2025, an amount equal to 1% of the aggregate outstanding principal amount of the SVB Loan being prepaid, and (iv) if prepayment occurs after March 9, 2025 but prior to the Term Loan Maturity Date, an amount equal to 0.5% of the aggregate outstanding principal amount of the SVB Loan being prepaid. No prepayment premium is due on any principal prepaid after December 31, 2021.

Certain of our future subsidiaries will be required to guarantee the obligations of ours under the Loan Agreement. Our obligations under the Loan Agreement and the guarantee of such obligations are secured by a pledge of substantially all of our and such subsidiaries’ assets.

The SVB Loan Agreement contains affirmative and negative covenants customary for financings of this type, including limitations on our and our subsidiaries’ abilities, among other things, to incur additional debt, grant or permit additional liens, make investments and acquisitions, merge or consolidate with others, dispose of assets, pay dividends and distributions and enter into affiliate transactions, in each case, subject to certain exceptions. In addition, the Loan Agreement contains the following quarterly financial covenants requiring the Borrowers to maintain either:

- minimum product revenue from YUTIQ® and DEXYCU® assessed on a quarterly basis commencing from the three-month period ending on March 31, 2022 through the Maturity Date, with such minimum quarterly product revenue ranging from approximately $7.8 million to approximately $11.5 million in fiscal year 2022. Such minimum quarterly product revenue will be subject to incremental increases in fiscal year 2023 and will thereafter be such amounts as agreed upon between the Company and the Lender based on certain agreed-upon factors commencing for the three-month period ending on March 31, 2024 and for each three-month period thereafter through the Maturity Date; or
- if the Company is unable to achieve the minimum quarterly product revenue level required as of the end of any three-month period, cash and cash equivalents in an amount equal to the greater of (i) $50,000,000 and (ii) the Company’s six-month Cash Burn (as defined in the SVB Loan Agreement).

Future Funding Requirements

At December 31, 2021, we had cash, cash equivalents, and investments in marketable securities of $211.6 million. We expect that our cash and cash equivalents and anticipated net cash inflows from product sales will fund our operating plan into the second half of 2024, under current expectations regarding the timing and outcomes of our Phase 2 clinical trials for EYP-1901. Due to the difficulty and uncertainty associated with the design and implementation of clinical trials, we will continue to assess our cash and cash equivalents and future funding requirements. However, there is no assurance that additional funding will be achieved and that we will succeed in our future operations.

Actual cash requirements could differ from management's projections due to many factors, including cash generation from sales of YUTIQ and DEXYCU, additional investments in research and development programs, clinical trial expenses for EYP-1901, competing technological and market developments and the costs of any strategic acquisitions and/or development of complementary business opportunities. In addition, the Pandemic has had, and will likely continue to have, a material and adverse impact on our business, including as a result of preventive and precautionary measures that we, other businesses, and governments are taking. Due to these impacts and measures, we have experienced and will likely continue to experience significant and unpredictable reductions in the demand for our commercial products as customers have shut down their facilities and non-essential surgical procedures have been postponed in an effort to promote social distancing and to redirect medical resources and priorities towards the treatment of COVID-19.

The amount of additional capital we will require will be influenced by many factors, including, but not limited to:

- the potential for EYP-1901, as a twice-yearly sustained delivery intravitreal anti-VEGF treatment targeting wet age-related macular degeneration ("wet AMD"), with potential in diabetic retinopathy ("DR") and retinal vein occlusion ("RVO");
- our expectations regarding the timing and clinical development of our product candidates, including EYP-1901 and YUTIQ 50;
- the success of our U.S. direct commercialization of YUTIQ for the treatment of chronic non-infectious uveitis affecting the posterior segment of the eye including, among other things, patient and physician acceptance of YUTIQ and our ability to obtain adequate coverage and reimbursement for YUTIQ;
- the success of our U.S. direct commercialization of DEXYCU for the treatment of postoperative ocular inflammation including, among other things, patient and physician acceptance of DEXYCU and our ability to obtain adequate coverage and reimbursement for DEXYCU;
- the cost of commercialization activities for YUTIQ and DEXYCU, including product manufacturing, marketing, sales and distribution;
- whether and to what extent we internally fund, whether and when we initiate, and how we conduct other product development programs;
- payments we receive under any new collaboration agreements;
- whether and when we are able to enter into strategic arrangements for our products or product candidates and the nature of those arrangements;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing any patent claims;
- changes in our operating plan, resulting in increases or decreases in our need for capital;
- our views on the availability, timing and desirability of raising capital; and
- the extent to which our business could be adversely impacted by the effects of the Pandemic or by other pandemics, epidemics or outbreaks.

We do not know if additional capital will be available when needed or on terms favorable to us or our stockholders. Collaboration, licensing or other agreements may not be available on favorable terms, or at all. We do not know the extent to which we will receive funds from the commercialization of YUTIQ or DEXYCU. If we seek to sell our equity securities, we do not know whether and to what extent we will be able to do so, or on what terms. If available, additional equity financing may be dilutive to stockholders, debt financing may involve restrictive covenants or other unfavorable terms and dilute our existing stockholders' equity, and funding through collaboration, licensing or other commercial agreements may be on unfavorable terms, including requiring us to relinquish rights to certain of our technologies or products. If adequate financing is not available if and when needed, we may delay, reduce the scope of, or eliminate research or development programs, independent commercialization of YUTIQ and DEXYCU, or other new products, if any, postpone or cancel the pursuit of product candidates, or otherwise significantly curtail our operations to reduce our cash requirements and extend our capital.

Our consolidated statements of historical cash flows are summarized as follows (in thousands):

	Year ended December 31,	
	2021	**2020**
Net loss:	$ (58,417)	$ (45,394)
Changes in operating assets and liabilities	(1,739)	20,136
Other adjustments to reconcile net loss to cash flows from operating activities	10,059	10,823
Cash flows used in operating activities	$ (50,097)	$ (14,435)
Cash flows (used in) provided by investing activities	$ (33,121)	$ (362)
Cash flows provided by financing activities	$ 216,902	$ 37,492

Operating cash outflows for the year ended December 31, 2021 totaled $50.1 million, primarily due to our net loss of $58.4 million, reduced by $10.1 million of non-cash expenses, which included $7.5 million of stock-based compensation and $2.5 million of amortization of the DEXYCU finite-lived intangible asset, $628,000 of amortization of debt discount and a $2.1 million gain on extinguishment of debt from the forgiveness of our PPP Loan..

Operating cash outflows for the year ended December 31, 2020 totaled $14.4 million, primarily due to our net loss of $45.4 million, reduced by $10.8 million of non-cash expenses, which included $5.5 million of stock-based compensation and $2.5 million of amortization of the DEXYCU finite-lived intangible asset. Further adjustments of cash in operating activities resulted from an increase of $16.5 million in deferred revenue primarily related to the SWK Royalty Payment Agreement and a $1.9 million decrease in accounts receivable from product sales.

Net cash used in investing activities for the year ended December 31, 2021 consisted of the purchase of $33.0 million of marketable securities, and purchases of property and equipment of $155,000. Net cash used in the year ended December 31, 2020 consisted of purchases of property and equipment totaling $362,000.

Net cash provided by financing activities for fiscal 2021 totaled $216.9 million and consisted of the following:

(i) $108.2 million of net proceeds from the issuance of 5,122,273 shares of our common stock and 3,272,727 pre-funded warrants;
(ii) $107.9 million of net proceeds from the issuance of 10,465,000 shares of our common stock;
(iii) $499,000 of net proceeds from the issuance of 48,538 shares of our common stock sold utilizing our ATM; and
(iv) $273,000 of proceeds from stock issued under our employee stock purchase plan.

Net cash provided by financing activities for fiscal 2020 totaled $37.50 million and consisted of the following:

(i) $20.0 million of net proceeds from the issuance of 1,500,000 shares of our Common Stock; and
(ii) $2.0 million of net proceeds from the PPP Loan; and
(iii) $294,000 of proceeds from stock issued our employee stock purchase plan;
(iv) $14.2 million of net proceeds from the issuance of 2,590,093 shares of our Common Stock sold utilizing our ATM; and
(v) $15.7 million of net proceeds from the issuance of 3,010,722 shares of our Common Stock to Ocumension Therapeutics; partially offset by
(vi) $14.6 million partial repayment of the CRG Term Loan, which included $13.7 million of principal and $828,000 in Exit Fee.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have, or are reasonably likely to have, a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that would be material to investors.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

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

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The information required by this item may be found on pages F-1 through F-33 of this Annual Report on Form 10-K.

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

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2021. The term "disclosure controls and procedures", as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their desired objectives, and our management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of December 31, 2021, our principal executive officer and principal financial officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

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

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rule 13a-15(f) or 15d-15(f) of the Exchange Act, as a process designed by, or under the supervision of, our principal executive and principal financial officers and effected by our board of directors, management and other personnel 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 in the U.S., and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with authorizations of management and our directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

All internal control systems, no matter how well designed, have inherent limitations and may not prevent or detect misstatements. Projections of any evaluations of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2021. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control—Integrated Framework (2013)*. Based on this assessment, our management concluded that, as of such date, our internal control over financial reporting was effective based on those criteria.

(b) Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the last quarter of the period covered by this Annual Report on Form 10-K that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting**.**

ITEM 9B. OTHER INFORMATION

Silicon Valley Bank Credit Facilities

On March 9, 2022 (the "Closing Date"), we entered into a Loan and Security Agreement (the "Loan Agreement"), among us and Icon Bioscience, Inc., as borrowers (the "Borrowers"), and Silicon Valley Bank, as lender (the "SVB Lender"), providing for (i) a senior secured term loan facility of $30 million (the "Term Facility") and (ii) a senior secured revolving credit facility of up to $15.0 million (the "Revolving Facility" and together with the Term Facility, the "Credit Facilities"). The maximum amount available for

borrowing at any time under the Revolving Facility is limited to a borrowing base valuation of the Borrowers' eligible accounts receivable. The proceeds of the Credit Facilities were and will be used to repay certain existing indebtedness and obligations of the Company, to pay fees and expenses related to the Loan Agreement, and for general working capital and corporate purposes.

The loans under the Credit Facilities (i) are due and payable on January 1, 2027 (the "Maturity Date") and (ii) bear interest that is payable monthly in arrears at a per annum rate (subject to increase during an event of default) equal to (i) with respect to the Term Facility, the greater of (x) the Wall Street Journal prime rate plus 2.25% and (y) 5.50% and (ii) with respect to the Revolving Facility, the Wall Street Journal Prime Rate. An unused commitment fee of 0.25% per annum applies to unutilized borrowing capacity under the Revolving Facility.

Commencing on February 1, 2024, we are required to repay the principal amount of the Term Facility in 36 consecutive equal monthly installments. At maturity or if earlier prepaid, we will also be required to pay an exit fee equal to 2.00% of the aggregate principal amount of the Term Facility.

We may make a voluntary prepayment of the Term Facility, in whole but not in part, at any time. All voluntary and mandatory prepayments of the Term Facility are subject to the payment of prepayment premiums as follows: (i) if prepayment occurs on or prior to the 1st anniversary of the Closing Date, an amount equal to 3.0% of the aggregate outstanding principal amount of the Term Facility being prepaid, (ii) if prepayment occurs after the 1st anniversary of the Closing Date and on or prior to the 2nd anniversary of the Closing Date, 2.0% of the aggregate outstanding principal amount of the Term Facility being prepaid, (iii) if prepayment occurs after the 2nd anniversary of the Closing Date and on or prior to the 3rd anniversary of the Closing Date, 1.0% of the aggregate outstanding principal amount of the Term Facility being prepaid and (iii) if prepayment occurs after the 3rd anniversary of the Closing Date but prior to the Maturity Date, an amount equal to 0.50% of the aggregate outstanding principal amount of the Term Facility being prepaid.

Subject to certain exceptions, we are required to make mandatory prepayments of outstanding loans under the Revolving Facility with the proceeds of assets sales, which amounts, subject to the conditions set forth in the Loan Agreement, may re-borrowed. We may voluntarily terminate the Revolving Facility at any time. A termination of the Revolving Facility is subject to the payment of a termination fee as follows: (i) if such termination occurs on or prior to the 1st anniversary of the Closing Date, an amount equal to 3.0% of the Revolving Facility and (ii) if such termination occurs after the 1st anniversary of the Closing Date, 1.0% of the Revolving Facility.

The obligations of the Borrowers under the Loan Agreement are secured by a pledge of substantially all of the Borrowers' assets, excluding intellectual property. Certain of our future subsidiaries will be required to become co-borrowers under the Loan Agreement or guarantee the obligations of the Borrowers under the Loan Agreement. In addition, such subsidiaries will be required to pledge substantially all of their assets, excluding intellectual property, to secure the obligations of the Borrowers under the Loan Agreement.

The Loan Agreement contains affirmative and negative covenants customary for financings of this type, including limitations on our and our subsidiaries' abilities, among other things, to incur additional debt, grant or permit additional liens, make investments and acquisitions, merge or consolidate with others, dispose of assets, pay dividends and distributions, enter into affiliate transactions and change our line of business, in each case, subject to certain exceptions. In addition, the Loan Agreement contains the following quarterly financial covenants requiring the Borrowers to maintain either:

- minimum product revenue from YUTIQ® and DEXYCU® assessed on a quarterly basis commencing from the three-month period ending on March 31, 2022 through the Maturity Date, with such minimum quarterly product revenue ranging from approximately $7.8 million to approximately $11.5 million in fiscal year 2022. Such minimum quarterly product revenue will be subject to incremental increases in fiscal year 2023 and will thereafter be such amounts as agreed upon between the Company and the Lender based on certain agreed-upon factors commencing for the three-month period ending on March 31, 2024 and for each three-month period thereafter through the Maturity Date; or
- if the Company is unable to achieve the minimum quarterly product revenue level required as of the end of any three-month period, cash and cash equivalents in an amount equal to the greater of (i) $50,000,000 and (ii) the Company's six-month Cash Burn (as defined in the SVB Loan Agreement).

The Loan Agreement also contains representations and warranties of the Borrowers customary for financings of this type. In addition, such representations and warranties (i) are intended not as statements of fact, but rather as a way of allocating the risk between the parties to the Loan Agreement, (ii) have been qualified by reference to confidential disclosures made by the parties in connection with the Loan Agreement and (iii) may apply standards of materiality in a way that is different from what may be viewed as material by our stockholders or other investors. Accordingly, the Loan Agreement is included with this filing only to provide investors with information regarding the terms of the transaction, and not to provide stockholders or other investors with any other factual information. Stockholders should not rely on the representations, warranties and covenants or any descriptions thereof as

characterizations our or any of our subsidiaries or affiliates actual state of facts or condition. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Loan Agreement, which subsequent information may or may not be fully reflected in public disclosures.

The Loan Agreement also includes events of default customary for financings of this type, in certain cases subject to customary periods to cure, following which the Lender may accelerate all amounts outstanding under the Credit Facilities.

The foregoing description of the Loan Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Loan Agreement, a copy of which is filed as an exhibit to this Annual Report and is incorporated herein by reference.

Termination of CRG Credit Agreement

On the Closing Date, our existing Term Loan Agreement (as amended, the "CRG Credit Agreement"), dated as of February 13, 2019, by and among us, as borrower, CRG Servicing LLC, as administrative agent and collateral agent ("CRG") and the lenders party thereto, which provided for a senior secured term loan of up to $60 million, terminated and all outstanding amounts under such loan were repaid in full, and all security interests and other liens granted to or held by CRG were terminated and released. The aggregate principal amount of the loan outstanding under the CRG Credit Agreement was approximately $38.2 million at the time of termination and the loan bore interest at a per annum rate of 12.50%. At the time of termination, we also paid CRG approximately $903,000, which consisted of interest accrued or deemed payable under the CRG Credit Agreement. Absent termination, the loan made pursuant to the CRG Credit Agreement would have matured on December 31, 2023. We also paid a 6% exit fee of the aggregate principal amount advanced under the CRG Credit Agreement.

The foregoing description of the CRG Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the CRG Credit Agreement, a copy of which is filed as Exhibit 10.1 to the Company's Current Report on Form 8-K, filed on February 19, 2019, and incorporated herein by reference, the Fee Letter, a copy of which is filed as Exhibit 10.2 to the Company's Current Report on Form 8-K, filed on February 19, 2019, and incorporated herein by reference, the Waiver to the CRG Credit Agreement, a copy of which is filed as Exhibit 10.1 to the Company's Current Report on Form 8-K, filed on November 22, 2019, and incorporated herein by reference and Amendment No. 2 to the Waiver to the CRG Credit Agreement, a copy of which is filed as Exhibit 10.1 to the Company's Current Report on Form 8-K, filed on October 8, 2020, and incorporated herein by reference.

Amendment to Watertown Lease

On March 8, 2022, we amended our Watertown, Massachusetts lease (i) to extend the term to May 31, 2028 for 13,650 square feet of laboratory and manufacturing operations space, with the landlord agreeing to provide the Company a construction allowance of up to $555,960 to be applied toward upgrades and improvements within the space; (ii) to rent an additional 11,999 square feet of office space within the building through May 31, 2028, with an anticipated commencement date in the third quarter of 2022; and (iii) to terminate a portion of the lease comprising 7,999 square feet of office space in the building on May 31, 2025 (the "Lease Amendment"). We have an option to extend the term of the lease for one additional five-year period at market rates.

The foregoing description of the Lease Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Lease Amendment, a copy of which is filed as an exhibit to this Annual Report and is incorporated herein by reference.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

None.

PART III

Certain information required by Part III is omitted from this Annual Report on Form 10-K and is incorporated herein by reference from our definitive proxy statement relating to our 2022 annual meeting of stockholders, pursuant to Regulation 14A of the Exchange Act of 1934, also referred to in this Annual Report on Form 10-K as our 2022 Proxy Statement, which we expect to file with the SEC no later than May 2, 2022.

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE

Corporate Governance

We have adopted a written Code of Business Conduct that applies to all of our employees, officers and directors. This Code of Business Conduct is designed to ensure that our business is conducted with integrity and in compliance with SEC regulations and Nasdaq listing standards. The Code of Business Conduct covers adherence to laws and regulations as well as professional conduct, including employment policies, conflicts of interest and the protection of confidential information. The Code of Business Conduct is available under “Governance Overview” within the “Investors – Corporate Governance” section of our website at www.eyepointpharma.com.

We intend to disclose any future amendments to, or waivers from, the Code of Business Conduct that affect our directors or senior financial and executive officers within four business days of the amendment or waiver by posting such information on the website address and location specified above.

Other Information

The other information required to be disclosed in Item 10 is hereby incorporated by reference to our 2022 Proxy Statement.

ITEM 11. EXECUTIVE COMPENSATION

The information required to be disclosed in Item 11 is hereby incorporated by reference to our 2022 Proxy Statement.

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

The information required to be disclosed in Item 12 is hereby incorporated by reference to our 2022 Proxy Statement.

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

The information required to be disclosed in Item 13 is hereby incorporated by reference to our 2022 Proxy Statement.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required to be disclosed in Item 14 is hereby incorporated by reference to our 2022 Proxy Statement.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENTS

(a)(1) Financial Statements

The financial statements filed as part of this report are listed on the Index to Consolidated Financial Statements on page F-1.

(a)(2) Financial Statement Schedules

Schedules have been omitted because of the absence of conditions under which they are required or because the required information is included in our Consolidated Financial Statements or Notes thereto.

ITEM 16. FORM 10-K SUMMARY

Not applicable.

(a)(3) Exhibits.

		Incorporated by Reference to SEC Filing		
Exhibit No.	Exhibit Description	Form	SEC Filing Date	Exhibit No.
	Articles of Incorporation and By-Laws			
3.1	Certificate of Incorporation of pSivida Corp.	8-K12G3	06/19/08	3.1
3.2	Certificate of Amendment of the Certificate of Incorporation of pSivida Corp.	10-K	09/13/17	3.2
3.3	Certificate of Correction to Certificate of Amendment of the Certificate of Incorporation of pSivida Corp.	8-K	04/02/18	3.1
3.4	Certificate of Amendment of Certificate of Incorporation, as amended of EyePoint Pharmaceuticals, Inc.	8-K	06/27/18	3.1
3.5	By-Laws of EyePoint Pharmaceuticals, Inc.	10-K	09/18/18	3.5
3.6	Amendment No. 1 to the By-Laws of EyePoint Pharmaceuticals, Inc.	8-K	11/06/18	3.1
3.7	Certificate of Amendment of the Certificate of Incorporation, as amended, of EyePoint Pharmaceuticals, Inc.	8-K	06/23/20	3.1
3.8	Certificate of Amendment of the Certificate of Incorporation, as amended, of EyePoint Pharmaceuticals, Inc.	8-K	12/08/20	3.1
	Instruments Defining the Rights of Security Holders			
4.1	Form of Specimen Stock Certificate for Common Stock	8-K12G3	06/19/08	4.1
4.2	Warrant to Purchase Common Stock of pSivida Corp., issued March 28, 2018, to SWK Funding, LLC	8-K	03/29/18	4.1
4.3	Registration Rights Agreement, dated as of March 28, 2018, by and among pSivida Corp. and EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P.	8-K	03/29/18	10.3
4.4	Second Registration Rights Agreement, dated as of June 25, 2018, by and among EyePoint Pharmaceuticals, Inc. and EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P. and each other person identified on the signature pages thereto	8-K	06/27/18	10.1
4.5	Description of Securities of EyePoint Pharmaceuticals, Inc.	10-K	03/12/21	4.5
4.6	Form of Pre-Funded Warrant to Purchase Common Stock	8-K	11/19/21	4.1
	Material Contracts - Management Contracts and Compensatory Plans			
10.1	Employment Agreement between pSivida Corp. and Nancy Lurker, dated September 15, 2016	10-Q	11/08/16	10.1

Exhibit No.	Exhibit Description	Incorporated by Reference to SEC Filing		
		Form	SEC Filing Date	Exhibit No.
10.2	Nonstatutory Stock Option Inducement Award granted to Nancy Lurker, subject to shareholder approval, with effect from September 15, 2016	10-Q	11/08/16	10.3
10.3	Employment Agreement, between EyePoint Pharmaceuticals, Inc. and Dario Paggiarino, dated March 27, 2018	10-Q	05/10/18	10.7
10.4	Employment Agreement between EyePoint Pharmaceuticals, Inc. Scott Jones, dated May 30, 2019	10-Q	08/07/19	10.4
10.5	Employment Agreement, dated November 14, 2019, by and between EyePoint Pharmaceuticals, Inc. and George Elston	8-K	11/19/19	10.1
10.6+	Form of Stock Option Certificate for grants to executive officers under the pSivida Corp. 2008 Incentive Plan	8-K	09/10/08	10.1
10.7+	Form of Stock Option Certificate for grants to executive officers under the EyePoint Pharmaceuticals, Inc. 2016 Long Term Incentive Plan, as amended	10-Q	02/08/18	10.1
10.8+	Form of Deferred Stock Unit Award for grants to non-executive directors under the EyePoint Pharmaceuticals, Inc. 2016 Long Term Incentive Plan, as amended	10-Q	02/08/18	10.2
10.9+	Form of Stock Option Award Agreement for Inducement grants to executive officers	10-K	09/18/18	10.15
10.10	2008 Equity Incentive Plan, as amended on November 19, 2009	10-K	09/10/15	10.6
10.11	pSivida Corp. 2016 Long Term Incentive Plan, as amended	10-Q	02/09/17	4.1
10.12+	Form of Restricted Stock Unit Award for grants to executive officers under the pSivida Corp. 2016 Long Term Incentive Plan, as amended	10-K	09/13/17	10.18
10.13+	Form of Performance-Based Stock Unit Award for grants under the pSivida Corp. 2016 Long Term Incentive Plan, as amended	10-K	09/13/17	10.19
10.14	Stock Option Award Agreement, dated August 14, 2018, by and between EyePoint Pharmaceuticals, Inc. and John Weet	10-Q	11/09/18	10.5
10.15	Stock Option Award Agreement, dated November 26, 2018, by and between EyePoint Pharmaceuticals, Inc. and Ron Honig	10-K	03/18/19	10.25
10.16	EyePoint Pharmaceuticals, Inc. 2016 Long Term Incentive Plan	8-K	06/28/19	10.1
10.17	Amendment No. 1 to EyePoint Pharmaceuticals, Inc. 2016 Long Term Incentive Plan	8-K	06/28/19	10.2
10.18	EyePoint Pharmaceuticals, Inc. 2019 Employee Stock Purchase Plan	8-K	06/28/19	10.3
10.19(a)+	Form of Indemnification Agreement between EyePoint Pharmaceuticals, Inc. and its officers and directors			
10.20	EyePoint Pharmaceuticals, Inc. 2016 Long-Term Incentive Plan, as amended	8-K	06/24/21	10.1
10.21	EyePoint Pharmaceuticals, Inc. 2019 Employee Stock Purchase Plan, as amended	8-K	06/24/21	10.2
10.22	Employment Agreement, effective November 1, 2021, between EyePoint Pharmaceuticals, Inc. and Jay Duker, M.D.	8-K	11/01/21	10.1
10.23	Employment Agreement, dated January 10, 2022, by and between EyePoint Pharmaceuticals, Inc. and Michael C. Pine	8-K	01/10/22	10.1

Exhibit No.	Exhibit Description	Incorporated by Reference to SEC Filing		
		Form	SEC Filing Date	Exhibit No.
	Material Contracts – Leases			
10.24	Lease Agreement between pSivida Corp. and Farley White Aetna Mills, LLC dated November 1, 2013	10-Q	11/13/13	10.1
10.25	First Amendment of Lease, dated February 6, 2014, between Farley White Aetna Mills and pSivida Corp.	10-K	09/18/18	10.24
10.26	Second Amendment of Lease, dated May 14, 2018, between Whetstone Riverworks Holdings, LLC and EyePoint Pharmaceuticals, Inc.	10-K	09/18/18	10.25
10.27	Third Amendment to Lease, dated April 5, 2021, between GRE Riverworks, LLC and EyePoint Pharmaceuticals, Inc.	10-Q	5/5/2021	10.1
10.28(a)	Fourth Amendment to Lease, dated March 8, 2022, between GRE Riverworks, LLC and EyePoint Pharmaceuticals, Inc.			
	Material Contracts - License and Collaboration Agreements			
10.29#	Exclusive License Agreement between EyePoint Pharmaceuticals, Inc. and Equinox Science, LLC.	10-K	03/16/20	10.32
	Material Contracts - Other Agreements			
10.30	Securities Purchase Agreement, dated as of March 28, 2018, by and among pSivida Corp. and EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P.	8-K	03/29/18	10.1
10.31	Second Securities Purchase Agreement, dated as of March 28, 2018, by and among pSivida Corp. and EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P. and each other person identified on the signature pages thereto	8-K	03/29/18	10.2
10.32	Agreement and Plan of Merger, dated March 28, 2018, by and among pSivida Corp., Oculus Merger Sub, Inc., Icon Bioscience, Inc. and Shareholder Representative Services LLC	8-K	03/29/18	10.5
10.33	Term Loan Agreement, dated February 13, 2019, among EyePoint Pharmaceuticals, Inc., as Borrower, EyePoint Pharmaceuticals US, Inc. and Icon Bioscience, Inc., as Subsidiary Guarantors, and CRG Servicing LLC, as Administrative Agent and Collateral Agent	8-K	02/19/19	10.1
10.34	Fee Letter, dated February 13, 2019, by and between EyePoint Pharmaceuticals, Inc. and CRG Servicing LLC	8-K	02/19/19	10.2
10.35	Waiver To Term Loan Agreement, dated November 19, 2019, among EyePoint Pharmaceuticals, as Borrower, EyePoint Pharmaceuticals US, Inc. and Icon Bioscience, Inc., as subsidiary guarantors and CRG Servicing LLC, as Administrative Agent and Collateral Agent	8-K	11/22/19	10.1
10.36	Note dated April 21, 2020 between EyePoint Pharmaceuticals, Inc. and Silicon Valley Bank	8-K	04/28/20	99.1
10.37	Controlled Equity Offering℠ Sales Agreement, dated August 5, 2020, by and between EyePoint Pharmaceuticals, Inc. and Cantor Fitzgerald & Co.	8-K	08/05/20	1.1
10.38	Amendment No. 2 and Waiver To Term Loan Agreement, dated October 8, 2020, among EyePoint Pharmaceuticals, Inc. as Borrower, EyePoint Pharmaceuticals US, Inc. and Icon Bioscience, Inc., as subsidiary guarantors and CRG Servicing LLC, as Administrative Agent and Collateral Agent.	8-K	10/08/20	10.1
10.39#	Commercial Alliance agreement, dated as of August 1, 2020 between EyePoint Pharmaceuticals, Inc. and ImprimisRx, LLC.	10-Q	11/06/20	10.1
10.40	Share Purchase Agreement, dated December 31, 2020, by and between EyePoint Pharmaceuticals, Inc. and Ocumension Therapeutics.	8-K	01/04/21	10.1

Exhibit No.	Exhibit Description	Incorporated by Reference to SEC Filing		
		Form	SEC Filing Date	Exhibit No.
10.41	Voting and Investor Rights Agreement, dated December 31, 2020, by and among EyePoint Pharmaceuticals, Inc., Ocumension Therapeutics, and EW Healthcare Partners, L.P. and EW Healthcare Partners-A,L.P.	8-K	01/04/21	10.2
10.42	First Amendment to Share Purchase Agreement, dated February 1, 2021, by and between EyePoint Pharmaceuticals, Inc. and Ocumension Therapeutics	8-K	02/03/21	10.1
10.43	Amendment One to the Commercial Alliance Agreement dated November 12, 2020 between EyePoint Pharmaceuticals, Inc. and ImprimisRx, LLC	10-K	03/12/21	10.35
10.44	Royalty Purchase Agreement, dated December 17, 2020, by and between EyePoint Pharmaceuticals, Inc. and SWK Funding, LLC	10-K	03/12/21	10.36
10.45#(a)	Commercial Alliance Expansion Term Letter Agreement dated December 6, 2021 between EyePoint Pharmaceuticals, Inc. and ImprimisRx, LLC			
10.46#(a)	Loan and Security Agreement, dated March 9, 2022, among EyePoint Pharmaceuticals, Inc., EyePoint Pharmaceuticals US, Inc., Icon Bioscience, Inc. and Silicon Valley Bank			
21.1(a)	Subsidiaries of EyePoint Pharmaceuticals, Inc.			
23.1(a)	Consent of Independent Registered Public Accounting Firm, Deloitte & Touche LLP			
31.1(a)	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended			
31.2(a)	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended			
32.1(b)	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002			
32.2(b)	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002			
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.			
101.SCH	Inline XBRL Taxonomy Extension Schema Document			
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document			
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document			
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document			
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document			
104	Cover Page Interactive Data File (Embedded within the Inline XBRL document and included in Exhibit 101).			

Portions of this exhibit have been omitted in compliance with Item 601 of Regulation S-K.

+ The final versions of documents denoted as “form of” have been omitted pursuant to Rule 12b-31. Such final versions are substantially identical in all material respects to the filed versions of such documents, provided that the name of the investor, and the investor’s and/or the Company’s signatures are included in the final versions.

(a) Filed herewith

(b) Furnished herewith

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.

EYEPOINT PHARMACEUTICALS, INC.

By: /s/ Nancy Lurker
Nancy Lurker
President and Chief Executive Officer

Date: March 11, 2022

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 in the capacities and on the dates indicated.

Name	Title	Date
/s/ GÖRAN ANDO **Göran Ando**	Chairman of the Board of Directors	March 11, 2022
/s/ NANCY LURKER **Nancy Lurker**	President, Chief Executive Officer and Director (Principal Executive Officer)	March 11, 2022
/s/ GEORGE O. ELSTON **George O. Elston**	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 11, 2022
/s/ WENDY DICICCO **Wendy DiCicco**	Director	March 11, 2022
/s/ YE LIU **Ye Liu**	Director	March 11, 2022
/s/ RONALD W. EASTMAN **Ronald W. Eastman**	Director	March 11, 2022
/s/ JOHN LANDIS **John Landis**	Director	March 11, 2022
/s/ DAVID R. GUYER **David R. Guyer**	Director	March 11, 2022

EYEPOINT PHARMACEUTICALS, INC. AND SUBSIDIARIES
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Consolidated Financial Statements:

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of EyePoint Pharmaceuticals, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of EyePoint Pharmaceuticals, Inc. and subsidiaries (the "Company") as of December 31, 2021 and 2020, the related consolidated statements of comprehensive loss, stockholders' equity, and cash flows, for each of the two years in the period ended December 31, 2021, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows each of the two years in the period ended December 31, 2021, 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.

Prepaid and Accrued Clinical Trial Expenses— Refer to Note 2 and 7 to the financial statements.

Critical Audit Matter Description

As disclosed in Note 2 to the financial statements, the Company expenses research and development costs as incurred, which include costs relating to clinical trial activities. Expenses related to clinical trial studies are based on estimates of the services received and efforts expended pursuant to contracts with each of the Contract Research Organizations (“CROs”) and investigative sites. Tracking the progress of the clinical trials, including payments made by the Company and by the CROs, allows the Company to record the appropriate expense, prepayments, and accruals under the terms of the agreements.

We identified the accruals for research and development expenses and clinical trials as a critical audit matter due to the (i) the significant judgment by management in determining the prepaid or accrued costs and (ii) high degree of auditor judgment and subjectivity and effort in performing procedures and evaluating audit evidence for these accrued or prepaid costs and the factors related to progress towards or the estimated current stage of completion of the research and development activities or studies, invoicing to date under the contracts, and communications from the research institution, or other companies, of any actual costs incurred during the period that have not yet been invoiced.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to prepaid and accrued clinical trials included the following, among others:

- *We evaluated the appropriateness of the method used by management to develop the estimates*

- *Tested the completeness and accuracy of inputs through inspection of the terms of contracts and statements of work between the Company and third-party vendors and testing of actual billed expenses under the contracts*
- *Evaluated the reasonableness of the assumptions used in developing the estimates (including the progress towards completion of specific tasks and the associated cost incurred for services the Company has not yet been invoiced or otherwise notified of the actual cost at period end) through inquiries of Company personnel responsible for overseeing the research and development activities to understand progress of the activities, and inspection of correspondence between the Company and these organizations*

/s/ Deloitte & Touche LLP

Boston, Massachusetts
March 11, 2022

We have served as the Company's auditor since 2008.

EYEPOINT PHARMACEUTICALS, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(In thousands except share amounts)

	December 31, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 178,593	$ 44,909
Marketable securities	32,965	—
Accounts and other receivables, net (including due from a related party of $414 and $104 at December 31, 2021 and 2020, respectively)	18,354	9,453
Prepaid expenses and other current assets	4,217	3,419
Inventory	3,616	5,337
Total current assets	237,745	63,118
Property and equipment, net	476	630
Operating lease right-of-use assets	2,252	2,610
Intangible assets, net	22,749	25,209
Restricted cash	150	150
Total assets	$ 263,372	$ 91,717
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 7,385	$ 4,811
Accrued expenses	14,422	8,445
Deferred revenue	1,069	945
Other current liabilities	782	687
Total current liabilities	23,658	14,888
Long-term debt	36,562	37,977
Deferred revenue - noncurrent	14,560	15,616
Operating lease liabilities - noncurrent	1,860	2,330
Other long-term liabilities	2,352	2,365
Total liabilities	78,992	73,176
Contingencies (Note 16)		
Stockholders' equity:		
Preferred stock, $.001 par value, 5,000,000 shares authorized, no shares issued and outstanding	—	—
Common stock, $.001 par value, 300,000,000 shares authorized at December 31, 2021 and 2020, respectively; 33,905,826 and 18,139,981 shares issued and outstanding at December 31, 2021 and 2020, respectively	34	18
Additional paid-in capital	752,602	528,362
Accumulated deficit	(569,097)	(510,680)
Accumulated other comprehensive income	841	841
Total stockholders' equity	184,380	18,541
Total liabilities and stockholders' equity	$ 263,372	$ 91,717

See notes to consolidated financial statements

EYEPOINT PHARMACEUTICALS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(In thousands except per share data)

	Year Ended December 31, 2021	Year Ended December 31, 2020
Revenues:		
Product sales, net	$ 35,312	$ 20,831
License and collaboration agreements (including licensing fees from a related party of $543 and $11,500 for the years ended December 31, 2021 and 2020, respectively)	756	11,942
Royalty income	871	1,664
Total revenues	36,939	34,437
Operating expenses:		
Cost of sales, excluding amortization of acquired intangible assets	8,177	5,824
Research and development	28,500	17,424
Sales and marketing	27,503	25,293
General and administrative	25,575	20,726
Amortization of acquired intangible assets	2,460	2,460
Total operating expenses	92,215	71,727
Loss from operations	(55,276)	(37,290)
Other income (expense):		
Interest and other income, net	292	58
Interest expense	(5,498)	(7,257)
Gain (loss) on extinguishment of debt	2,065	(905)
Total other expense, net	(3,141)	(8,104)
Net loss	$ (58,417)	$ (45,394)
Net loss per share:		
Basic and diluted	$ (2.03)	$ (3.54)
Weighted average common shares outstanding:		
Basic and diluted	28,758	12,836
Net loss	$ (58,417)	$ (45,394)
Other comprehensive income (loss):		
Foreign currency translation adjustments	—	1
Other comprehensive income (loss)	—	1
Comprehensive loss	$ (58,417)	$ (45,393)

See notes to consolidated financial statements

EYEPOINT PHARMACEUTICALS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands except share data)

	Common Stock		Additional		Accumulated Other	Total
	Number of Shares	Par Value Amount	Paid-In Capital	Accumulated Deficit	Comprehensive Income	Stockholders' Equity
Balance at December 31, 2019	10,941,659	$ 11	$ 472,765	$ (465,286)	$ 840	$ 8,330
Net loss	—	—	—	(45,394)	—	(45,394)
Other comprehensive income	—	—	—	—	1	1
Issuance of stock, net of issue costs	7,100,815	7	49,846	—	—	49,853
Employee stock purchase plan	33,697	—	294	—	—	294
Vesting of stock units	63,810	—	(90)	—	—	(90)
Stock-based compensation	—	—	5,547	—	—	5,547
Balance at December 31, 2020	18,139,981	$ 18	$ 528,362	$ (510,680)	$ 841	$ 18,541
Net loss	—	—	—	(58,417)	—	(58,417)
Issuance of stock and pre-funded warrants, net of issue costs	15,635,811	16	216,570	—	—	216,586
Employee stock purchase plan	43,365	—	273	—	—	273
Exercise of stock options	8,112	—	100	—	—	100
Vesting of stock units	78,557	—	(150)	—	—	(150)
Stock-based compensation	—	—	7,447	—	—	7,447
Balance at December 31, 2021	33,905,826	$ 34	$ 752,602	$ (569,097)	$ 841	$ 184,380

See notes to consolidated financial statements

EYEPOINT PHARMACEUTICALS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31, 2021	Year Ended December 31, 2020
Cash flows from operating activities:		
Net loss	$ (58,417)	$ (45,394)
Adjustments to reconcile net loss to cash flows used in operating activities:		
Amortization of intangible assets	2,460	2,460
Depreciation of property and equipment	311	189
Amortization of debt discount	628	745
Non-cash interest expense	—	977
(Gain) loss on extinguishment of debt	(2,065)	905
Provision for excess and obsolescence inventory	1,278	—
Stock-based compensation	7,447	5,547
Changes in operating assets and liabilities:		
Accounts receivable and other current assets	(10,603)	4,846
Inventory	1,347	(3,200)
Accounts payable and accrued expenses	8,476	1,872
Right-of-use assets and operating lease liabilities	(28)	72
Deferred revenue	(931)	16,546
Net cash used in operating activities	(50,097)	(14,435)
Cash flows from investing activities:		
Purchases of marketable securities	(32,965)	—
Purchases of property and equipment	(156)	(362)
Net cash used in investing activities	(33,121)	(362)
Cash flows from financing activities:		
Proceeds from issuance of stock and pre-funded warrants, net of issuance costs	216,825	49,918
Proceeds under paycheck protection program loan	—	2,041
Payment of long-term debt principal	—	(13,794)
Payment of extinguishment of debt costs	—	(828)
Net settlement of stock units to satisfy statutory tax withholding	(150)	(90)
Proceeds from exercise of stock options	373	294
Principal payments on finance lease obligations	(146)	(49)
Net cash provided by financing activities	216,902	37,492
Effect of foreign exchange rate changes on cash and cash equivalents	—	—
Net increase (decrease) in cash, cash equivalents and restricted cash	133,684	22,695
Cash, cash equivalents and restricted cash at beginning of year	45,059	22,364
Cash, cash equivalents and restricted cash at end of year	$ 178,743	$ 45,059
Supplemental cash flow information:		
Cash interest paid	$ 4,846	$ 5,510
Supplemental disclosure of non-cash investing and financing activities:		
Stock issuance costs	$ 294	$ —
Accrued term loan exit fee	—	122
Payments forgiven under paycheck protection program loan	$ 2,041	$ —

See notes to consolidated financial statements

1. Operations

EyePoint Pharmaceuticals, Inc. (together with its subsidiaries, the "Company"), incorporated in Delaware, is a pharmaceutical company committed to developing and commercializing innovative therapeutics to help improve the lives of patients with serious eye disorders. The Company's pipeline leverages its proprietary Durasert® technology for sustained intraocular drug delivery including EYP-1901, a potential six-month anti-VEGF treatment initially targeting wet age-related macular degeneration ("wet AMD"), the leading cause of vision loss among people 50 years of age and older in the United States. The Company's product candidate pipeline also includes YUTIQ 50, a potential six-month treatment for non-infectious uveitis affecting the posterior segment of the eye, one of the leading causes of blindness under a supplemental New Drug Application ("sNDA") strategy. The Company also has two commercial products: YUTIQ®, a once every three-year treatment for chronic non-infectious uveitis affecting the posterior segment of the eye, and DEXYCU®, a single dose treatment for postoperative inflammation following ocular surgery.

Local drug delivery for treating ocular diseases is a significant challenge due to the effectiveness of the blood-eye barrier. This barrier makes it difficult for systemically-administered drugs to reach the eye in sufficient quantities to have a beneficial effect without causing unacceptable adverse side effects to other organs. The Company's validated Durasert technology, which has already been included in four products approved for marketing by the U.S. Food and Drug Administration ("FDA"), is designed to provide consistent, sustained delivery of small molecule drugs over a period of months to years through a single intravitreal injection.

The Company's lead product candidate, EYP-1901, combines a bioerodible formulation of its proprietary Durasert sustained-release technology with vorolanib, a tyrosine kinase inhibitor ("TKI") that has demonstrated anti-VEGF activity. Current FDA approved anti-VEGF treatments for wet AMD require monthly or bi-monthly intravitreal injections in a physician's office. The Company is currently evaluating EYP-1901 in a Phase 1 clinical trial as a potential six-month sustained delivery treatment for wet AMD and reported positive six-month interim safety and efficacy data in November 2021. In February 2022, the Company updated the results of the DAVIO clinical trial through 8-months reporting continued positive safety and efficacy results. The Company expects to initiate a Phase 2 clinical trial in wet AMD in the third quarter of 2022 and a Phase 2 clinical trial in diabetic retinopathy later in the second half of 2022.

YUTIQ® (fluocinolone acetonide intravitreal implant) 0.18 mg for intravitreal injection, is a non-erodible intravitreal implant containing fluocinolone acetonide ("FA") lasting for up to 36 months and is indicated for the treatment of chronic non-infectious uveitis affecting the posterior segment of the eye. This disease affects between 60,000 to 100,000 people each year in the U.S. causes approximately 30,000 new cases of blindness every year and is the third leading cause of blindness. YUTIQ utilizes the Company's proprietary Durasert® sustained-release drug delivery technology platform.

DEXYCU® (dexamethasone intraocular suspension) 9%, for intraocular administration, is indicated for the treatment of post-operative ocular inflammation, with the Company's primary focus on its use immediately following cataract surgery as a single dose treatment. DEXYCU utilizes the Company's proprietary Verisome® drug-delivery technology. In December 2021, the Company announced that its commercial alliance partner, ImprimisRx, assumed responsibility for all sales and marketing activity for DEXYCU effective January 1, 2022.

The Company is also developing YUTIQ 50 as a potential six-month intravitreal treatment for chronic non-infectious uveitis affecting the posterior segment of the eye. The Company dosed the first patient in a Phase 3 clinical trial in November 2021.

The Company is also seeking to potentially identify and advance additional product candidates through clinical and regulatory development. This may be accomplished through internal discovery efforts, potential research collaborations and/or in-licensing arrangements with partner molecules and potential acquisition of additional ophthalmic products, product candidates or technologies that complement the Company's current product portfolio.

Effects of the COVID-19 Coronavirus Pandemic

The ongoing COVID-19 coronavirus pandemic (the "Pandemic") has had a material and adverse impact on the Company's business, including as a result of measures that the Company, other businesses, and government have taken and will likely continue to take. This includes a significant impact on cash flows from expected revenues due to the closure of ambulatory surgery centers for DEXYCU and a significant reduction in physician office visits impacting YUTIQ in 2020. The ongoing Pandemic continued to have an adverse impact on the Company's revenues, financial condition and cash flows through 2021. For the year ended December 31, 2021, the Company recorded impairment charges of $1.2 million to cost of sales, excluding amortization of acquired intangible assets and $0.1 million to sales and marketing expense, respectively, associated with the write-off of obsolete inventory of DEXYCU units and DEXYCU sample units, respectively, whose inventory levels were higher than the Company's updated forecasts of future demand

for those units. Additionally, the emergence of the Omicron variant has continued to have an adverse impact on the Company's revenues, financial condition and cash flows into the first quarter of 2022 and may continue to cause intermittent or prolonged periods of reduced patient services at the Company's customers' facilities, which may negatively affect customer demand. The progression of the Pandemic and its effects on the Company's business and operations are uncertain at this time. Depending on the future developments that are uncertain and difficult to predict, including new information that may emerge concerning the Pandemic, the Company's revenues, financial condition and cash flows may be adversely affected in the future as well. The Company is continuously monitoring the Pandemic and its potential effect on the Company's financial position, results of operations and cash flows. This uncertainty could have an impact in future periods on certain estimates used in the preparation of the Company's periodic financial results, including reserves for variable consideration related to product sales, realizability of certain receivables, assessment for excess or obsolete inventory, and impairment of long-lived assets. Uncertainty around the extent and duration of the Pandemic, and any future related financial impact cannot be reasonably estimated at this time.

Liquidity

The Company had cash, cash equivalents, and investments in marketable securities of $211.6 million at December 31, 2021. The Company has a history of operating losses and has not had significant recurring cash inflows from revenue. The Company's operations have been financed primarily from sales of its equity securities, issuance of debt and a combination of license fees, milestone payments, royalty income and other fees received from its collaboration partners. The Company anticipates that it will continue to incur losses as it continues the research and development of its product candidates and the Company does not expect revenues from its product sales to generate sufficient funding to sustain its operations in the near-term. The Company expects to continue fulfilling its funding needs through cash inflows from revenues of its product sales, licensing and research collaboration transactions, additional equity capital raises and other arrangements. The Company believes that its cash, cash equivalents, and investments in marketable securities of $211.6 million at December 31, 2021, coupled with expected cash inflows from its product sales will enable the Company to fund its current and planned operations for at least the next twelve months from the date these consolidated financial statements were issued. Actual cash requirements could differ from management's projections due to many factors, including the continued effect of the Pandemic on the Company's business and the medical community, the timing and results of the Company's clinical trials for EYP-1901, additional investments in research and development programs, the success of ongoing commercialization efforts for YUTIQ and DEXYCU, the actual costs of these ongoing commercialization efforts, competing technological and market developments and the costs of any strategic acquisitions and/or development of complementary business opportunities.

2. Significant Accounting Policies

Basis of Presentation

The consolidated financial statements are presented in U.S. dollars in accordance with generally accepted accounting principles in the U.S. ("U.S. GAAP") and include the accounts of EyePoint Pharmaceuticals, Inc. and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make certain estimates and assumptions that affect the reported amounts and disclosure of assets and liabilities at the date of the consolidated financial statements and the reported amounts and disclosure of revenues and expenses during the reporting periods. Significant management estimates and assumptions include, among others, those related to reserves for variable consideration related to product sales, revenue recognition for multiple-deliverable arrangements, recognition of expense in outsourced clinical trial agreements, recording of excess or obsolete inventory write-offs and reserves, and realization of deferred tax assets. Actual results could differ from these and other estimates and there may be changes to the Company's estimates in future periods.

Foreign Currency

The functional currency of the Company and each of its subsidiaries is the currency of the primary economic environment in which each such entity operates—the U.S. dollar or the Pound Sterling.

Assets and liabilities of the Company's foreign subsidiary are translated at period-end exchange rates. Amounts included in the consolidated statements of comprehensive loss and cash flows are translated at the weighted average exchange rates for the period. Gains and losses from currency translation are included in accumulated other comprehensive income as a separate component of stockholders' equity in the consolidated balance sheets. The balance of accumulated other comprehensive income attributable to foreign currency translation was $841,000 and $841,000 at December 31, 2021 and 2020, respectively. Foreign currency gains or

losses arising from transactions denominated in foreign currencies, whether realized or unrealized, are recorded in interest and other income, net in the consolidated statements of comprehensive loss and were not material for all periods presented.

Cash Equivalents

Cash equivalents represent highly liquid investments with maturities of three months or less at the date of purchase, principally consisting of institutional money market funds and investment-grade commercial paper.

Marketable Securities

Marketable securities consist of investments with an original or remaining maturity of greater than three months but less than six months at the date of purchase. The Company has historically classified its marketable securities as available-for-sale. Accordingly, the Company records these investments at fair value, with unrealized gains and losses excluded from earnings and reported, net of tax, in accumulated other comprehensive income, which is a component of stockholders' equity. If the Company determines that a decline of any investment is other-than-temporary, the investment is written down to fair value. Marketable securities at December 31, 2021 consisted of investment-grade commercial paper. The Company had no marketable security investments at December 31, 2020. The Company's investment policy, approved by the Board of Directors, includes guidelines relative to diversification and maturities designed to preserve principal and liquidity. During fiscal 2021, $33.0 million of marketable securities were purchased and $0 matured.

The fair value of marketable securities is determined based on quoted market prices at the balance sheet date of the same or similar instruments. The amortized cost of debt securities is adjusted for amortization of premiums and accretion of discounts through to the earlier of sale or maturity. Such amortization and accretion amounts are included in interest and other income, net in the consolidated statements of comprehensive loss. The cost of marketable securities sold is determined by the specific identification method.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash, cash equivalents, and investments in marketable securities. At December 31, 2021, a total of $155.6 million, or 90.4% of the Company's interest-bearing cash equivalent balances, were concentrated in one U.S. Government institutional money market fund that had investments consisting primarily of U.S. Government Agency debt, U.S. Treasury debt, U.S. Treasury Repurchase Agreements and U.S. Government Agency Repurchase Agreements. $16.5 million, or 9.6% of the Company's interest-bearing cash equivalent balances consisted of investment-grade commercial paper. Generally, these investments may be sold upon demand and, therefore, the Company believes they have minimal risk. The Company had investments of $33.0 million and $0 in marketable securities at December 31, 2021 and 2020, respectively. The Company's investment policy, approved by the Company's Board of Directors, includes guidelines relative to diversification and maturities designed to preserve principal and liquidity.

As of December 31, 2021, accounts receivable from McKesson Specialty Care Distribution LLC and ASD Specialty Healthcare LLC accounted for 54.7% and 38.3% of total accounts receivable, respectively. For the year ended December 31, 2021, revenues from McKesson Specialty Care Distribution LLC and ASD Specialty Healthcare LLC accounted for 46.6% and 43.1% of total revenues, respectively.

As of December 31, 2020, accounts receivable from ASD Specialty Healthcare LLC and McKesson Specialty Care Distribution LLC accounted for 56.0% and 37.0% of total accounts receivable, respectively. For the year ended December 31, 2020, revenues from ASD Specialty Healthcare LLC, Ocumension Therapeutics, and McKesson Specialty Care Distribution LLC accounted for 39.0%, 33.0%, and 18.0% of total revenues, respectively.

Fair Value Measurements

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

- Level 1 – Inputs are quoted prices (unadjusted) in active markets that are accessible at the measurement date for identical assets and liabilities.

- Level 2 – Inputs are directly or indirectly observable in the marketplace, such as quoted prices for similar assets or liabilities in active markets or quoted prices for identical assets or liabilities with insufficient volume or infrequent transaction (less active markets).

- Level 3 – Inputs are unobservable estimates that are supported by little or no market activity and require the Company to develop its own assumptions about how market participants would price the assets or liabilities.

The Company's cash equivalents and marketable securities are classified within Level 1 or Level 2 on the basis of valuations using quoted market prices or alternative pricing sources and models utilizing market observable inputs, respectively. The marketable securities have been valued on the basis of valuations provided by third-party pricing services, as derived from such services' pricing models. Inputs to the models may include, but are not limited to, reported trades, executable bid and ask prices, broker/dealer quotations, prices or yields of securities with similar characteristics, benchmark curves or information pertaining to the issuer, as well as industry and economic events. The pricing services may use a matrix approach, which considers information regarding securities with similar characteristics to determine the valuation for a security, and have been classified as Level 2.

The carrying amounts of accounts receivable, accounts payable and accrued expenses approximate fair value because of their short-term maturity.

Accounts and Other Receivables, Net

Receivables arise primarily from the Company's products sold in the U.S. The balance in accounts and other receivables, net consists primarily of amounts due from customers, net of applicable revenue reserves. The majority of the Company's accounts receivable have standard payment terms that require payment within 120-127 days. The Company performs ongoing credit evaluations of its customers' financial condition and continuously monitor collections and payments from its customers and analyzes accounts that are past due for collectability. The allowance for credit losses is estimated based on the Company's analysis of trends in overall receivables aging, specific identification of certain receivables that are at risk of not being paid, past collection experience and current economic trends. Given the nature and limited history of collectability of the Company's accounts receivable, the Company recorded no allowance for credit losses as of December 31, 2021 and 2020.

Inventory

Inventory is stated at the lower of cost or net realizable value, net on a first-in, first-out ("FIFO") basis. The inventory costs for YUTIQ include purchases of various components and the active pharmaceutical ingredient ("API") and internal labor and overhead for the product manufactured in the Company's Watertown, MA facility. The inventory costs for DEXYCU include purchased components, the API and third-party manufacturing and assembly.

Capitalization of inventory costs begins after FDA approval of the product. Prior thereto, inventory costs of products and product candidates are recorded as research and development expense, even if this inventory may later be sold as commercial product.

The Company assesses the recoverability of inventory and writes down any excess and obsolete inventories to their estimated realizable value in the period in which the impairment is first identified. Write-downs are based on the age of the inventory, lower of cost or market, along with significant management judgments concerning future demands for the inventory. Such impairment charges, should they occur, are recorded within cost of sales, excluding amortization of acquired intangible assets. The determination of whether inventory costs will be realizable requires estimates by management. If actual market conditions are less favorable than projected by management, additional write-downs of inventory might be recorded in future periods.

Cost of sales, excluding amortization of acquired intangible assets, consist of costs associated with the manufacture of YUTIQ and DEXYCU, certain period costs for DEXYCU product revenue, product shipping and, as applicable, royalty expense. The inventory costs for YUTIQ include purchases of various components, the active pharmaceutical ingredient ("API") and direct labor and overhead for the product manufactured in the Company's Watertown, MA facility. The inventory costs for DEXYCU include purchased components, the API and third-party manufacturing and assembly. Capitalization of inventory costs begins after FDA approval of a product. Prior thereto, inventory costs of products and product candidates are recorded as research and development expense, even if this inventory may later be sold as commercial product.

The Company accrued DEXYCU product revenue-based royalty expense of $2.5 million and $2.3 million for the years ended December 31, 2021 and 2020, respectively, as a component of cost of sales, of which $0 and $1.3 million of accrued revenue-based royalty expense were related to the partnering income equal to 20% of DEXYCU share of the Accelerated Milestone Payment received in August 2020 and upfront payment received in February 2020 from Ocumension, in connection with the acquisition of Icon Bioscience, Inc. in March 2018 for the years ended December 31, 2021 and 2020, respectively.

Debt and Equity Instruments

Debt and equity instruments are classified as either liabilities or equity in accordance with the substance of the contractual arrangement.

Derivative Instruments

Derivative financial liabilities are recorded at fair value, with gains and losses arising from changes in fair value recognized in change in fair value of derivative liability within the consolidated statements of comprehensive loss at each period end while such instruments are outstanding. The Company's derivative liabilities from certain financing transactions were primarily valued using Monte Carlo simulation models.

Property and Equipment

Property and equipment are recorded at cost and depreciated over their estimated useful lives (generally three to five years) using the straight-line method. Leasehold improvements are amortized on a straight-line basis over the shorter of the remaining non-cancellable lease term or their estimated useful lives. Repair and maintenance costs are expensed as incurred. When assets are retired or sold, the assets and accumulated depreciation are derecognized from the respective accounts and any gain or loss is recognized.

Capitalized Software Development Cost

The Company capitalizes certain implementation costs for internal-use software incurred in a cloud computing agreement that is a service contract. Eligible costs associated with cloud computing arrangements, such as software business applications used in the normal course of business, are capitalized in accordance with ASC 350 *Intangibles – Goodwill and Other*, and classified as a prepaid asset in the balance sheets. These costs are recognized on a straight-line basis in the same line item in the statement of operations and comprehensive loss as the expense for fees for the associated cloud completing arrangement, over the term of the arrangement, plus reasonably certain renewals.

Leases

The Company leases real estate and office equipment under operating leases. Its primary real estate lease contains rent holiday and rent escalation clauses.

The Company determines whether the arrangement is or contains a lease at inception. Operating leases are recognized on the consolidated balance sheets as ROU assets, current portion of lease liabilities and long-term lease liabilities. ROU assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. Operating lease liabilities and their corresponding ROU assets are recorded based on the present value of lease payments over the expected remaining lease term. For this purpose, the Company considers only payments that are fixed and determinable at the time of commencement. The operating lease ROU assets also include any lease payments made and adjustments for prepayments and lease incentives. The interest rate implicit in lease contracts is typically not readily determinable. As a result, the Company utilized its incremental borrowing rate, which is the rate incurred to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment. Lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. Lease expense for lease payments is recognized on a straight-line basis over the lease term.

Impairment of Intangible Assets

The Company's finite life intangible assets include the DEXYCU product (utilizing the Verisome technology) following the March 2018 acquisition of Icon. The DEXYCU intangible asset is being amortized on a straight-line basis over its estimated useful life of thirteen years. The intangible asset lives were determined based upon the anticipated period that the Company would derive future cash flows from the intangible assets, considering the effects of legal, regulatory, contractual, competitive and other economic factors. The Company continually monitors whether events or circumstances have occurred that indicate that the remaining estimated useful life of its intangible assets may warrant revision. The Company assesses potential impairments to its intangible assets when there is evidence that events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. An impairment loss is recognized when the future undiscounted net cash flows expected to result from the use of an asset are less than its carrying value. If the Company considers an asset to be impaired, the impairment charge to be recognized is measured as the amount by which the carrying value of the asset exceeds its estimated fair value.

Revenue Recognition

Revenue is recognized when a customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of ASC 606, Revenue from Contracts with Customers ("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 entity satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable that the entity 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, determines those that are performance obligations and assesses whether each promised good or service is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied. Sales, value add, and other taxes collected on behalf of third parties are excluded from revenue.

Product sales, net — The Company sells YUTIQ and DEXYCU to a limited number of specialty distributors and specialty pharmacies (collectively the "Distributors") in the U.S., with whom the Company has entered into formal agreements, for delivery to physician practices for YUTIQ and to hospital outpatient departments and ambulatory surgical centers for DEXYCU. The Company recognizes revenue on sales of its products when Distributors obtain control of the products, which occurs at a point in time, typically upon delivery. In addition to agreements with Distributors, the Company also enters into arrangements with healthcare providers, ambulatory surgical centers, and payors that provide for government mandated and/or privately negotiated rebates, chargebacks, and discounts with respect to the purchase of the Company's products from Distributors.

Reserves for variable consideration — Product sales are recorded at the wholesale acquisition costs, net of applicable reserves for variable consideration. Components of variable consideration include trade discounts and allowances, provider chargebacks and discounts, payor rebates, product returns, and other allowances that are offered within contracts between the Company and its Distributors, payors, and other contracted purchasers relating to the Company's product sales. These reserves, as detailed below, are based on the amounts earned, or to be claimed on the related sales, and are classified either as reductions of product revenue and accounts receivable or a current liability, depending on how the amount is to be settled. Overall, these reserves reflect the Company's best estimates of the amount of consideration to which it is entitled based on the terms of the respective underlying contracts. Actual amounts of consideration ultimately received may differ from the Company's estimates. If actual results in the future vary from the estimates, the Company adjusts these estimates, which would affect product revenue and earnings in the period such variances become known.

Distribution fees — The Company compensates its Distributors for services explicitly stated in the Company's contracts and are recorded as a reduction of revenue in the period the related product sale is recognized.

Provider chargebacks and discounts — Chargebacks are discounts that represent the estimated obligations resulting from contractual commitments to sell products at prices lower than the list prices charged to the Company's Distributors. These Distributors charge the Company for the difference between what they pay for the product and the Company's contracted selling price. These reserves are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability. Reserves for chargebacks consist of amounts that the Company expects to pay for units that remain in the distribution channel inventories at each reporting period-end that the Company expects will be sold under a contracted selling price, and chargebacks that Distributors have claimed, but for which the Company has not yet settled.

Government rebates — The Company is subject to discount obligations under state Medicaid programs and Medicare. These reserves are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability which is included in accrued expenses and other current liabilities on the condensed consolidated balance sheets. The Company's liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but which remains in the distribution channel inventories at the end of each reporting period.

Payor rebates — The Company contracts with certain private payor organizations, primarily insurance companies, for the payment of rebates with respect to utilization of its products. The Company estimates these rebates and records such estimates in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability.

Co-Payment assistance — The Company offers co-payment assistance to commercially insured patients meeting certain eligibility requirements. The calculation of the accrual for co-pay assistance is based on an estimate of claims and the cost per claim that the Company expects to receive associated with product that has been recognized as revenue.

Product returns — The Company generally offers a limited right of return based on its returned goods policy, which includes damaged product and remaining shelf life. The Company estimates the amount of its product sales that may be returned and records this estimate as a reduction of revenue in the period the related product revenue is recognized, as well as reductions to trade receivables, net on the condensed consolidated balance sheets.

License and collaboration agreement revenue — The Company analyzes each element of its license and collaboration arrangements to determine the appropriate revenue recognition. The terms of the license agreement may include payment to the Company of non-refundable up-front license fees, milestone payments if specified objectives are achieved, and/or royalties on product sales. The Company recognizes revenue from upfront payments at a point in time, typically upon fulfilling the delivery of the associated intellectual property to the customer.

If the contract contains a single performance obligation, the entire transaction price is allocated to the single performance obligation. Contracts that contain multiple performance obligations require an allocation of the transaction price based on the estimated relative standalone selling prices of the promised products or services underlying each performance obligation. The Company determines standalone selling prices based on the price at which the performance obligation is sold separately. If the standalone selling price is not observable through past transactions, the Company estimates the standalone selling price taking into account available information such as market conditions and internally approved pricing guidelines related to the performance obligations.

The Company recognizes sales-based milestone payments as revenue upon the achievement of the cumulative sales amount specified in the contract in accordance with ASC 606-10-55-65. For those milestone payments which are contingent on the occurrence of particular future events, the Company determines that these need to be considered for inclusion in the calculation of total consideration from the contract as a component of variable consideration using the most-likely amount method. As such, the Company assesses each milestone to determine the probability and substance behind achieving each milestone. Given the inherent uncertainty associated with these future events, the Company will not recognize revenue from such milestones until there is a high probability of occurrence, which typically occurs near or upon achievement of the event.

When determining the transaction price of a contract, an adjustment is made if payment from a customer occurs either significantly before or significantly after performance, resulting in a significant financing component. Applying the practical expedient in paragraph 606-10-32-18, the Company does not assess whether a significant financing component exists if the period between when the Company performs its obligations under the contract and when the customer pays is one year or less. None of the Company's contracts contained a significant financing component as of December 31, 2021.

Royalties — The Company recognizes revenue from license arrangements with its commercial partners' net sales of products. Such revenues are included as royalty income. In accordance with ASC 606-10-55-65, royalties are recognized when the subsequent sale of the commercial partner's products occurs. The Company's commercial partners are obligated to report their net product sales and the resulting royalty due to the Company typically within 60 days from the end of each quarter. Based on historical product sales, royalty receipts and other relevant information, the Company recognizes royalty income each quarter and subsequently determines a true-up when it receives royalty reports and payment from its commercial partners. Historically, these true-up adjustments have been immaterial.

Sale of Future Royalties — The Company has sold its rights to receive certain royalties on product sales. In the circumstance where the Company has sold its rights to future royalties under a royalty purchase 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 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.

Research Collaborations — The Company recognizes revenue over the term of the statements of work under any funded research collaborations (including feasibility study agreements). Revenue recognition for consideration, if any, related to a license option right is assessed based on the terms of any such future license agreement or is otherwise recognized at the completion of the research collaborations (including feasibility study agreements).

Please refer to Note 3 for further details on the license and collaboration agreements into which the Company has entered and corresponding amounts of revenue recognized during the current and prior year periods.

Deferred Revenue

Amounts received prior to satisfying the above revenue recognition criteria are recorded as deferred revenue in the accompanying consolidated balance sheets. Amounts not expected to be recognized within one year following the balance sheet date are classified as non-current deferred revenue.

Research and Development

Research and development costs are charged to operations as incurred. These costs include all direct costs, including cash and stock-based compensation and benefits for research, clinical development, quality assurance, quality control, operations and medical affairs personnel, amortization of intangible assets, third-party costs and services for clinical trials, clinical materials, pre-clinical programs, regulatory and medical affairs, external consultants, and other operational costs related to the Company's research and development of its product candidates.

Stock-Based Compensation

Compensation cost related to share-based payment awards is based on the fair value of the instrument on the grant date and is recognized on a graded vesting basis over the requisite service period for each separately vesting tranche of the awards.

The Company may also grant share-based payment awards that are subject to objectively measurable performance and service criteria. Compensation expense for performance-based awards begins at such time as it becomes probable that the respective performance conditions will be achieved. The Company continues to recognize the grant date fair value of performance-based awards through the vesting date of the respective awards so long as it remains probable that the related performance conditions will be satisfied.

The Company estimates the fair value of stock option awards using the Black-Scholes option valuation model and the fair value of performance stock units, restricted stock units and deferred stock units based on the observed grant date fair value of the underlying Common Stock.

Net Loss per Share

Basic net loss per share is computed by dividing net loss by the weighted-average number of common shares outstanding during the period. For periods in which the Company reports net income, diluted net income per share is determined by adding to the weighted-average number of common shares outstanding the average number of dilutive common equivalent shares using the treasury stock method, unless the effect is anti-dilutive.

As of December 31, 2021, 3,272,727 shares of Pre-Funded Warrants to purchase common stock, issued in connection with the November 2021 underwritten public offering (see Note 10), were included in the basic and diluted net loss per share calculation.

Outstanding potential Common Stock equivalents excluded from the calculation of diluted earnings per share because the effect would have been anti-dilutive were as follows:

	Year Ended December 31, 2021	Year Ended December 31, 2020
Stock options	2,517,680	1,338,880
ESPP	23,965	27,713
Warrants	48,683	48,683
Restricted stock units	291,575	149,004
	2,881,903	1,564,280

Comprehensive Loss

Comprehensive loss is comprised of net loss, foreign currency translation adjustments and unrealized gains and losses on available-for-sale marketable securities.

Income Tax

The Company accounts for income taxes under the asset and liability method. Deferred income tax assets and liabilities are computed for the expected future impact of differences between the financial reporting and income tax bases of assets and liabilities and for the expected future benefit to be derived from tax credits and loss carry forwards. Such deferred income tax computations are measured based on enacted tax laws and rates applicable to the years in which these temporary differences are expected to be recovered or settled. A valuation allowance is provided against net deferred tax assets if, based on the available evidence, it is more likely than not that some or all of the net deferred tax assets will not be realized.

The Company determines whether it is more likely than not that a tax position will be sustained upon examination. If it is not more likely than not that a position will be sustained, none of the benefit attributable to the position is recognized. The tax benefit to be recognized for any tax position that meets the more likely than not recognition threshold is calculated as the largest amount that is more than 50% likely of being realized upon resolution of the uncertainty. The Company accounts for interest and penalties related to uncertain tax positions as part of its income tax benefit.

Recently Adopted and Recently Issued Accounting Pronouncements

New accounting pronouncements are issued periodically by the Financial Accounting Standards Board ("FASB") and are adopted by the Company as of the specified effective dates. Unless otherwise disclosed below, the Company believes that recently issued and adopted pronouncements will not have a material impact on the Company's financial position, results of operations and cash flows or do not apply to the Company's operations.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740)* ("ASU 2019-12")*: Simplifying the Accounting for Income Taxes.* The amendments simplify the accounting for income taxes by removing certain exceptions for recognizing deferred taxes for investments, performing intraperiod allocation and calculating income taxes in interim periods. The ASU also adds guidance to reduce complexity in certain areas, including recognizing deferred taxes for tax goodwill and allocating taxes to members of a consolidated group. ASU 2019-12 is effective for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years. Early adoption is permitted, including adoption in interim or annual periods for which financial statements have not yet been issued. The Company adopted ASU 2019-12 on January 1, 2021. The adoption of this standard did not have a material impact on its consolidated financial statements.

In May 2021, the FASB issued ASU No. 2021-04, *Earnings Per Share (Topic 260), Debt – Modifications and Extinguishments (Subtopic 470-50), Compensation—Stock Compensation (Topic 718), and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815-40)* ("ASU 2021-04")*: Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options.* The amendments are designed to clarify an issuer's accounting for certain modifications or exchanges of freestanding equity-classified written call options that remain equity-classified after modification or exchange. The ASU provides guidance on how an issuer would measure and recognize the effects of these transactions. The standard provides a principles-based framework to determine whether an issuer should recognize the modification or exchange as an adjustment to equity or an expense. ASU 2021-04 is effective for fiscal years beginning after December 15, 2021, and interim periods within those fiscal years. Early adoption is permitted, including adoption in interim or annual periods for which financial statements have not yet been issued. ASU 2021-04 will be effective for the Company in the first quarter of its fiscal year ending December 31, 2022. The Company is currently evaluating the impact the adoption of this update will have on its consolidated financial statements.

3. Product Revenue Reserves and Allowances

The Company's product revenues have been primarily from sales of YUTIQ and DEXYCU in the U.S.

Net product revenues by product for the years ended December 31, 2021 and 2020 were as follows (in thousands):

	Year Ended December 31,	
	2021	**2020**
YUTIQ (A)	$ 16,959	$ 13,878
DEXYCU (B)	18,353	6,953
Total product sales, net	$ 35,312	$ 20,831

(A) Included approximately $25 and $205 of revenue recognized from YUTIQ product sales to Ocumension under a supply agreement for the years ended December 31, 2021 and 2020, respectively.
(B) Included approximately $283 and $8 of revenue recognized from DEXYCU product sales to Ocumension under a supply agreement for the years ended December 31, 2021 and 2020, respectively.

The following table summarizes activity in each of the product revenue allowance and reserve categories for the years ended December 31, 2021 and 2020 (in thousands):

	Chargebacks, Discounts and Fees	Government and Other Rebates	Returns	Total
Beginning balance at January 1, 2021	$ 574	$ 535	$ 603	$ 1,712
Provision related to sales in the current year	7,274	5,337	785	13,396
Adjustments related to prior period sales	(50)	(22)	(200)	(272)
Deductions applied and payments made	(6,645)	(4,029)	(809)	(11,483)
Ending balance at December 31, 2021	$ 1,153	$ 1,821	$ 379	$ 3,353

	Chargebacks, Discounts and Fees	Government and Other Rebates	Returns	Total
Beginning balance at January 1, 2020	$ 1,618	$ 271	$ 352	$ 2,241
Provision related to sales in the current year	2,141	1,056	978	4,175
Adjustments related to prior period sales	(387)	—	50	(337)
Deductions applied and payments made	(2,798)	(792)	(777)	(4,367)
Ending balance at December 31, 2020	$ 574	$ 535	$ 603	$ 1,712

Returns are recorded as a reduction of accounts receivable on the condensed consolidated balance sheets. Chargebacks, discounts and fees and rebates are recorded as a component of accrued expenses on the condensed consolidated balance sheets (see Note 7).

License and Collaboration Agreements and Royalty Income

Alimera

Pursuant to a licensing and development agreement, as amended, Alimera Sciences, Inc. has a worldwide exclusive license to develop, make, market and sell ILUVIEN in return for royalties based on sales and patent fee reimbursements. Total revenue was $54,000 and $1.7 million for the years ended December 31, 2021 and 2020, respectively. In addition to patent fee reimbursements in those periods, the Company recorded royalty income totaled $0 and $1.7 million for the years ended December 31, 2021 and 2020, respectively.

SWK Royalty Purchase Agreement

On December 17, 2020, the Company entered into a royalty purchase agreement (the “RPA”) with SWK Funding LLC (“SWK”). Under the RPA, the Company sold its right to receive royalty payments on future sales of products subject to the Amended Alimera Agreement for an upfront cash payment of $16.5 million. Except for the rights to the royalties, the Company retains all rights and obligations under the Amended Alimera Agreement, pursuant to which, Alimera owns worldwide rights to the Company’s Durasert technology in ILUVIEN for DME and rights for ILUVIEN (currently marketed by the Company as YUTIQ in the U.S.) for non-infectious posterior uveitis in the EMEA. Alimera has the sole rights to utilize the intellectual property developed under the Amended Alimera Agreement. There has been no intellectual property developed jointly by Alimera and the Company as part of the Amended Alimera Agreement. The Company cannot utilize the intellectual property for the indication licensed to Alimera in order to manufacture and sell ILUVIEN.

The Company’s ongoing efforts under the Amended Alimera Agreement will consist of continuing to maintain and enforce its patents as well as providing safety data and regulatory support as necessary. None of these obligations require significant efforts on the part of the Company with respect to the generation of sales in the market. The Company will only be required to expend more extensive efforts if litigation were to arise that requires the Company to protect its patents rights pursuant to the terms of the Amended Alimera Agreement. Historically, such a defense has not been required. Similarly, regulatory support and safety data is only provided

on an ad-hoc basis depending on the regulatory requests, which has been minimal historically. It remains Alimera's sole responsibility to manufacture, actively market and promote the products under the Amended Alimera Agreement to generate the sales, which ultimately generate the royalties to be paid to SWK.

The Company classified the proceeds received from SWK as deferred revenue, to be recognized as revenue under the units-of-revenue method over the life of the RPA because of the Company's limited continuing involvement in the Amended Alimera Agreement. SWK has no recourse and the Company assumes no credit risk in event that Alimera fails to make a royalty payment. The Company must only forward all material correspondence from Alimera to SWK, including royalty reports, notices and any other correspondence with respect to royalties to SWK. SWK has the right to audit and inspect the books and records pertaining to net sales and royalties under the Amended Alimera Agreement. Neither the Company nor SWK has the unilateral ability to cancel the transaction. There is no cap or limitation on the royalties to be received by SWK in the future and its return will reflect all royalties paid by Alimera. 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 SWK and there is no limitation on the rates of return to SWK, the Company recorded the total proceeds of $16.5 million as deferred revenue under royalty sale agreement. The deferred revenue is being recognized as revenue over the life of the RPA under the "units-of-revenue" method. Under this method, amortization for a reporting period is calculated by computing a ratio of the proceeds received from SWK to the payments expected to be made by Alimera to SWK over the term of the Amended Alimera Agreement, and then applying that ratio to the period's cash payment.

The Company recognized $872,000 of royalty revenue related to the RPA for the year ended December 31, 2021, in connection with the royalty payment of $2.8 million for the year ended December 31, 2021, from Alimera to SWK, pursuant to the Amended Alimera Agreement. No revenue was recognized related to the RPA for the year ended December 31, 2020. As of December 31, 2021, the Company has $1.1 million and $14.6 million as current and non-current deferred revenue recognized under royalty sale agreement, respectively. As of December 31, 2020, the Company classified $885,000 and $15.6 million as current and non-current deferred revenue recognized under royalty sale agreement, respectively.

OncoSil Medical

The Company entered into an exclusive, worldwide royalty-bearing license agreement in December 2012, amended and restated in March 2013, with OncoSil Medical UK Limited (f/k/a Enigma Therapeutics Limited), a wholly-owned subsidiary of OncoSil Medical Ltd ("OncoSil") for the development of BrachySil, the Company's previous product candidate for the treatment of pancreatic and other types of cancer. The Company received an upfront fee of $100,000 and is entitled to 8% sales-based royalties, 20% of sublicense consideration and milestone payments based on aggregate product sales. OncoSil is obligated to pay an annual license maintenance fee of $100,000 by the end of each calendar year, the most recent of which was received in December 2021. For each calendar year commencing with 2014, the Company is entitled to receive reimbursement of any patent maintenance costs, sales-based royalties and sub-licensee sales-based royalties earned, but only to the extent such amounts, in the aggregate, exceed the $100,000 annual license maintenance fee. In March 2020, the U.S. Food and Drug Administration granted Breakthrough Device Designation for the OncoSil™ device for treatment of unresectable locally advanced pancreatic cancer (LAPC) in combination with chemotherapy. In April 2020, the British Standards Institute (BSI) grants European CE marking for the OncoSil™ System and designates OncoSil™ a breakthrough device for the treatment of locally advanced pancreatic cancer (LAPC) in combination with chemotherapy. As of December 31, 2021, OncoSil has received regulatory approval in the EU, United Kingdom, Switzerland, Singapore, Malaysia, Hong Kong, New Zealand, Turkey, and Israel. The Company has no consequential performance obligations under the OncoSil license agreement. For the years ended December 31, 2021 and 2020, revenue of $100,000 and $100,000 was recorded for this agreement, respectively.

Ocumension Therapeutics

In November 2018, the Company entered into an exclusive license agreement with Ocumension Therapeutics ("Ocumension") for the development and commercialization of its three-year micro insert using the Durasert technology for the treatment of chronic non-infectious uveitis affecting the posterior segment of the eye (YUTIQ in the U.S.) in Mainland China, Hong Kong, Macau and Taiwan. The Company received a one-time upfront payment of $1.75 million from Ocumension and is eligible to receive up to (i) $7.25 million upon the achievement by Ocumension of certain prescribed development and regulatory milestones, and (ii) $3.0 million commercial sales-based milestones. In addition, the Company is entitled to receive mid-single digit sales-based royalties. Ocumension has also received a special approval by the Hainan Province People's Government to market this product for chronic, non-infectious posterior segment uveitis in the Hainan Bo Ao Lecheng International Medical Tourism Pilot Zone ("Hainan Pilot Zone"). In March 2019, the Company entered into a Memorandum of Understanding ("2019 MOU"), pursuant to which, the Company will supply product for the clinical trials and Hainan Pilot Zone use. Paralleling to Ocumension's normal registration process of the product with the Chinese Regulatory Authorities, the 2019 MOU modified the Company's entitlement to the development and regulatory milestones of up to $7.25 million under the license agreement to product supply milestones or development milestones, whichever comes first, totaling up to $7.25 million. In August 2019, the Company began shipping this product to Ocumension.

The Company was required to provide a fixed number of hours of technical assistance support to Ocumension at no cost, which support has been completed and no future performance obligation exists. Ocumension is responsible for all development, regulatory and commercial costs, including any additional technical assistance requested. Ocumension has a first right of negotiation for an additional exclusive license to the Company's shorter-duration line extension candidate for this indication.

In August 2019, the Company received a $1.0 million development milestone payment from Ocumension triggered by the approval of its Investigational New Drug ("IND") in China for this program. The IND allows the importation of finished product into China for use in a clinical trial to support regulatory filing.

In January 2020, the Company entered into an exclusive license agreement with Ocumension for the development and commercialization in Mainland China, Hong Kong, Macau and Taiwan of DEXYCU for the treatment of post-operative inflammation following ocular surgery. Pursuant to the terms of the license agreement, the Company received upfront payments of $2.0 million from Ocumension in February 2020 and will be eligible to receive up to (i) $6.0 million upon the achievement by Ocumension of certain prescribed development and regulatory milestones, and (ii) $6.0 million commercial sales-based milestones. In addition, the Company is entitled to receive mid-single digit sales-based royalties. In exchange, Ocumension will receive exclusive rights to develop and commercialize DEXYCU in Mainland China, Hong Kong, Macau and Taiwan, at its own cost and expense with the Company supplying product for clinical trials and commercial sale. In addition, Ocumension will receive a fixed number of hours of technical assistance support from the Company at no cost.

In August 2020, the Company entered into a Memorandum of Understanding ("2020 MOU"), pursuant to which, the Company received a one-time non-refundable payment of $9.5 million (the "Accelerated Milestone Payment") from Ocumension as a full and final payment of the combined remaining development, regulatory and sales milestone payments under the Company's license agreements with Ocumension for the treatment of chronic non-infectious uveitis affecting the posterior segment of the eye and for the treatment of post-operative inflammation following ocular surgery, respectively. Upon payment of the Accelerated Milestone Payment, the remaining $11.75 million in combined remaining development and sales milestone payments under the Company's original license agreement with Ocumension upon the achievement by Ocumension of (i) remaining development and regulatory milestones of $6.25 million and commercial sales-based milestones of $3.0 million for the development and commercialization of its three-year micro insert using the Durasert technology for the treatment of chronic non-infectious uveitis affecting the posterior segment of the eye; and (ii) $6.0 million upon the achievement by Ocumension of certain prescribed development and regulatory milestones, and $6.0 million commercial sales-based milestones for the development and commercialization in Mainland China, Hong Kong, Macau and Taiwan of DEXYCU for the treatment of post-operative inflammation following ocular surgery, totaling up to $21.25 million, were permanently extinguished and will no longer be due and owed to the Company. In exchange, Ocumension also received exclusive rights to develop and commercialize YUTIQ and DEXYCU products under its own brand names in South Korea and other jurisdictions across Southeast Asia in Brunei, Burma (Myanmar), Cambodia, Timor-Leste, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam, at its own cost and expense with the Company supplying product for clinical trials and commercial sale. The Company continues to be entitled to royalties on future product sales by Ocumension. In April 2021, Ocumension announced its filing of a New Drug Application ("NDA") for YUTIQ under Ocumension's distinct name to Chinese regulatory authorities and it is under review. Ocumension has been granted approval to have its NDA submission reviewed based on the U.S. NDA data and the real world data Ocumension has collected from marketing the product in Hainan Pilot Zone. In September 2021, Ocumension announced its receipt of approval from Chinese regulatory authorities for DEXYCU under Ocumension's distinct name to conduct a Phase 3 clinical trial in China.

Other than a fixed number of hours of technical assistance support to be provided at no cost by the Company, Ocumension is responsible for all development, regulatory and commercial costs, including any additional technical assistance requested. All technical assistance was provided during 2020. The Chief Executive Officer of Ocumension became a director of the Company starting December 31, 2020, pursuant to a Share Purchase Agreement pursuant to which the Company sold to Ocumension 3,010,722 shares of common stock, at which time, Ocumension became a related party of the Company.

During the years ended December 31, 2021 and 2020, in addition to $308,000 and $213,000 of revenue from product sales, respectively, the Company recognized approximately $543,000 and $11.5 million of license and collaboration revenue, respectively, including $499,000 and $0 of revenue related to additional technical assistance, respectively. As of December 31, 2021 and 2020, no deferred revenue was recorded for this agreement, respectively.

The Company recognized sales-based royalty expense of $0 and $1.3 million during the year ended December 31, 2021 and 2020, related to the earn-out payment equal to 20% of DEXYCU share of the Accelerated Milestone Payment received in August 2020 and upfront payment received in February 2020 from Ocumension, as the payment of the partnering income in connection with the Icon acquisition in March 2018.

Research Collaborations

The Company from time to time enters into funded agreements to evaluate the potential use of its technology systems for sustained release of third-party drug candidates. Consideration received is generally recognized as revenue over the term of the research collaborations. Revenue recognition for consideration, if any, related to a license option right is assessed based on the terms of any such future license agreement or is otherwise recognized at the completion of the research collaborations. Revenues under research collaborations totaled $60,000 and $255,000 for the years ended December 31, 2021 and 2020, respectively. At December 31, 2021 and 2020, $0 and $60,000 deferred revenue was recorded for the research collaborations, respectively.

4. Inventory

Inventory consisted of the following (in thousands):

	December 31, 2021	December 31, 2020
Raw materials	$ 2,727	$ 2,664
Work in process	405	747
Finished goods	484	1,926
Total inventory	$ 3,616	$ 5,337

5. Intangible Assets

The reconciliation of intangible assets for the years ended December 31, 2021 and 2020 (in thousands):

	Year Ended December 31, 2021	Year Ended December 31, 2020
Patented technologies		
Gross carrying amount at beginning of period	$ 68,322	$ 68,322
Gross carrying amount at end of period	68,322	68,322
Accumulated amortization at beginning of period	(43,113)	(40,653)
Amortization expense	(2,460)	(2,460)
Accumulated amortization at end of period	(45,573)	(43,113)
Net book value at end of period	$ 22,749	$ 25,209

The net book value of the Company's intangible assets at December 31, 2021 and 2020 is summarized as follows (in thousands):

	December 31, 2021	December 31, 2020	Estimated Remaining Useful Life at December 31, 2021 (Years)
Patented technologies			
DEXYCU / Verisome	$ 22,749	$ 25,209	9.25
	$ 22,749	$ 25,209	

The Company amortizes its intangible assets with finite lives on a straight-line basis over their respective estimated useful lives. Amortization expense totaled $2.5 million in each of the two years ended December 31, 2021 and 2020, respectively.

In connection with the Icon Acquisition, the initial purchase price of $32.0 million was attributed to the DEXYCU product intangible asset. This finite-lived intangible asset is being amortized on a straight-line basis over its expected remaining useful life of 9.25 years at the rate of approximately $2.5 million per year. Amortization expense was reported as a component of cost of sales for the years ended December 31, 2021 and 2020, respectively.

6. Property and Equipment, Net

Property and equipment, net consisted of the following (in thousands):

	December 31, 2021	December 31, 2020
Property and equipment	$ 1,477	$ 1,403
Leasehold improvements	255	255
Gross property and equipment	1,732	1,658
Accumulated depreciation and amortization	(1,256)	(1,028)
	$ 476	$ 630

Depreciation expense totaled $311,000 and $189,000 in the years ended December 31, 2021 and 2020, respectively.

7. Accrued Expenses

Accrued expenses consisted of the following (in thousands):

	December 31, 2021	December 31, 2020
Personnel costs	$ 7,321	$ 5,686
Clinical trial costs	753	—
Professional fees	712	647
Sales chargebacks, rebates and other revenue reserves	2,974	1,109
Commissions due to commercialization partner for DEXYCU	1,518	254
Other	1,144	749
	$ 14,422	$ 8,445

8. Leases

On May 17, 2018, the Company amended the lease for its headquarters in Watertown, Massachusetts. The original five-year lease for approximately 13,650 square feet of combined office and laboratory space was set to expire in April 2019. Under the amendment, the Company leased an additional 6,590 square feet of rentable area of the building, with a commencement date of September 10, 2018. The amendment extended the term of the lease for the combined space through May 31, 2025, and the landlord provided the Company a construction allowance of up to $670,750 to be applied toward renovations and improvements within the total space. On April 5, 2021, the Company further amended the lease to include an additional 1,409 square feet of rentable area of the building through May 31, 2025, with a commencement date of July 1, 2021. On March 8, 2022, the Company further amended the lease (i) to extend the term to May 31, 2028 for 13,650 square feet of laboratory and manufacturing operations space, with the landlord agreeing to provide the Company a construction allowance of up to $555,960 to be applied toward upgrades and improvements within the space; (ii) to rent an additional 11,999 square feet of office space within the building through May 31, 2028, with an anticipated commencement date in the third quarter of 2022; and (iii) to terminate a portion of the lease comprising 7,999 square feet of office space in the building on May 31, 2025. The Company previously provided a cash-collateralized $150,000 irrevocable standby letter of credit as security for the Company's obligations under the lease, which will remain in effect through the period that is four months beyond the expiration date of the amended lease. The Company will also be required to pay its proportionate share of certain operating costs and property taxes applicable to the leased premises in excess of new base year amounts.

In July 2017, the Company leased approximately 3,000 square feet of office space in Basking Ridge, New Jersey under a lease term extending through June 2022, with two five-year renewal options at 95% of the then-prevailing market rates. In addition to base rent, the Company is obligated to pay its proportionate share of building operating expenses and real estate taxes in excess of base year amounts. In June 2018, the Company subleased an additional 1,381 square feet of adjoining space from Caladrius Biosciences, Inc. ("Caladrius") through May 2022. The Chief Executive Officer of Caladrius was a director of the Company through June 2020. Per the terms of the lease and sublease agreements, the Company does not have any residual value guarantees. The Company has given notice that the Company will not be renewing this lease and the Company will vacate the facility upon expiration.

The Company identified and assessed the following significant assumptions in recognizing its right-of-use ("ROU") assets and corresponding lease liabilities:

- As the Company's leases do not provide an implicit rate, the Company estimated the incremental borrowing rate in calculating the present value of the lease payments. The Company utilized the borrowing rate under its existing 5-year term loan facility (see Note 9) as the discount rate.
- Since the Company elected to account for each lease component and its associated non-lease components as a single combined component, all contract consideration was allocated to the combined lease component.
- The expected lease terms include noncancelable lease periods. Renewal option periods have not been included in the determination of the lease terms as they are not deemed reasonably certain of exercise.
- Variable lease payments, such as common area maintenance, real estate taxes and property insurance are not included in the determination of the lease's ROU asset or lease liability.

As of December 31, 2021, the weighted average remaining term of the Company's operating leases was 3.4 years and the lease liabilities arising from obtaining ROU assets reflect a weighted average discount rate of 12.5%.

Supplemental balance sheet information related to operating leases as of December 31, 2021 and 2020, respectively are as follows (in thousands):

	December 31, 2021	December 31, 2020
Other current liabilities - operating lease current portion	$ 645	$ 568
Operating lease liabilities – noncurrent portion	1,860	2,330
Total operating lease liabilities	$ 2,505	$ 2,898

Operating lease expense recognized related to ROU assets was $885,000 and $852,000, excluding $30,000 and $36,000 of variable lease costs, during each of the years ended December 31, 2021 and 2020, respectively, and were included in general and administrative expense in the Company's statement of comprehensive loss. Cash paid for amounts included in the measurement of operating lease liabilities was $920,000 and $867,000 for the years ended December 31, 2021 and 2020, respectively.

The Company is a party to three finance leases for laboratory equipment. The equipment leases expire in December 2021, December 2022 and June 2023, respectively.

Supplemental balance sheet information related to the finance lease as of December 31, 2021 and 2020, respectively are as follows (in thousands):

	December 31, 2021	December 31, 2020
Property and equipment, at cost	$ 371	$ 239
Accumulated amortization	(205)	(52)
Property and equipment, net	$ 166	$ 187
Other current liabilities – finance lease current portion	$ 137	$ 119
Other long-term liabilities	36	71
Total finance lease liabilities	$ 173	$ 190

The components of finance lease expense recognized during the years ended December 31, 2021 and 2020 related to ROU assets were $151,000 and $52,000, respectively. Interest on lease liabilities were $23,000 and $9,000 during the years ended December 31, 2021 and 2020, respectively. Cash paid for amounts included in the measurement of finance lease liabilities was operating cash flows of $23,000 and financing cash flows of $146,000 during the year ended December 31, 2021, respectively. Cash paid for amounts included in the measurement of finance lease liabilities was operating cash flows of $9,000 and financing cash flows of $49,000 during the year ended December 31, 2020, respectively.

As of December 31, 2021, the weighted average remaining term of the Company's finance lease was 1.3 years and the lease liabilities arising from obtaining ROU assets reflect a weighted average discount rate of 12.5%.

The Company's total future minimum lease payments under non-cancellable leases at December 31, 2021 were as follows (in thousands):

	Operating Leases	Finance Leases
2022	911	149
2023	877	37
2024	894	—
2025	373	—
Total lease payments	$ 3,055	$ 186
Less imputed interest	(550)	(13)
Total	$ 2,505	$ 173

9. Loan Agreements

Paycheck Protection Program Loan

On April 8, 2020, the Company applied to Silicon Valley Bank (the "SVB") for a Paycheck Protection Program Loan (the "PPP Loan") of $2.0 million that is administered by the U.S. Small Business Administration (the "SBA"), under the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"). On April 22, 2020, the PPP Loan was approved and the Company received the PPP Loan proceeds.

The PPP Loan bears interest at a fixed rate of 1.0% per annum and has a two-year term that matures on April 21, 2022. Monthly principal and interest payments commenced on November 21, 2020, subject to possible partial or full forgiveness and principal and interest payments can be deferred as described below, if the PPP Loan proceeds are used for covered payroll costs, rent and utility costs and the maintenance of employee and compensation levels.

The Paycheck Protection Program Flexibility Act of 2020 (the "PPP Flexibility Act"), enacted on June 5, 2020, amended the Paycheck Protection Program, among others, as follows: (i) extended the covered period from 8 weeks to the earlier of 24 weeks from the date the PPP Loan is originated and December 31, 2020, during which PPP funds needed to be expended in order to be forgiven. A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan – including before the end of the covered period – if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness; (ii) at least 60% of PPP funds must be spent on payroll costs, with the remaining 40% available to spend on other eligible expenses; (iii) payments are deferred until the date on which the amount of forgiveness determined is remitted to the lender. If a borrower fails to seek forgiveness within 10 months after the last day of its covered period, then payments will begin on the date that is 10 months after the last day of the covered period. In addition, the PPP Flexibility Act modified the CARES Act by increasing the maturity date for loans made after the effective date from two years to a minimum maturity of five years from the date on which the borrower applies for loan forgiveness. Existing PPP loans made before the new legislation retain their original two-year term, but may be renegotiated between a lender and a borrower to match the 5-year term permitted under the PPP Flexibility Act.

The Company used all of the loan proceeds from the PPP Loan to pay expenses during the covered period that the Company believes were for eligible purposes. On September 25, 2020, the Company submitted an application to SVB for full loan forgiveness. On June 19, 2021, the Company received notification from SVB that the PPP Loan of $2.0 million has been fully forgiven by the SBA, and that payment and all accrued interest of $24,000 thereon were remitted by the SBA to SVB on June 16, 2021. In connection with the full loan forgiveness, the Company recorded a gain on extinguishment of debt of approximately $2.1 million in the year ended December 30, 2021.

CRG Term Loan Agreement

On February 13, 2019 (the "CRG Closing Date"), the Company entered into the CRG Loan Agreement among the Company, as borrower, CRG Servicing LLC, as administrative agent and collateral agent (the "Agent"), and the lenders party thereto from time to time (the "Lenders"), providing for a senior secured term loan of up to $60 million (the "CRG Loan"). On the CRG Closing Date, $35 million of the CRG Loan was advanced (the "CRG Initial Advance"). The Company utilized the proceeds from the CRG Initial Advance for the repayment in full of all outstanding obligations under its prior credit agreement (the "SWK Credit Agreement") with SWK. In April 2019, the Company exercised its option to borrow an additional $15 million of the CRG Loan (the "CRG Second Advance"). The Company did not draw any additional funds under the CRG Loan by the final draw deadline of March 31, 2020.

The CRG Loan is due and payable on December 31, 2023 (the "Maturity Date"). The CRG Loan bears interest at a fixed rate of 12.5% per annum payable in arrears on the last business day of each calendar quarter. The Company is required to make quarterly, interest only payments until the Maturity Date. So long as no default has occurred and is continuing, the Company may elect on each applicable interest payment date to pay 2.5% of the 12.5% per annum interest as Paid In-Kind ("PIK"), whereby such PIK amount would be added to the aggregate principal amount and accrue interest at 12.5% per annum. Through December 31, 2021, PIK amounts of $0 have been added to the principal balance of the CRG Loan. In addition, the Company is required to pay an upfront fee of 1.5% of amounts borrowed under the CRG Loan (excluding any paid-in-kind amounts), which is payable as amounts are advanced under the CRG Loan. The Company will also be required to pay an exit fee equal to 6% of (i) the aggregate principal amounts advanced and (ii) PIK amounts issued, under the CRG Loan Agreement. In connection with the CRG Initial Advance, a 1.5% financing fee of $525,000 and an expense reimbursement of $350,000 were deducted from the net borrowing proceeds. In connection with the CRG Second Advance, a 1.5% financing fee of $225,000 was deducted from the net borrowing proceeds.

Upon the occurrence of a bankruptcy-related event of default, all amounts outstanding with respect to the CRG Loan become due and payable immediately, and upon the occurrence of any other Event of Default (as defined in the CRG Loan Agreement), all or any amounts outstanding with respect to the CRG Loan may become due and payable upon request of the Agent or majority Lenders. Subject to certain exceptions, the Company is required to make mandatory prepayments of the CRG Loan with the proceeds of assets sales and in the event of a change of control of the Company. In addition, the Company may make a voluntary prepayment of the CRG Loan, in whole or in part, at any time. All mandatory and voluntary prepayments of the CRG Loan are subject to the payment of prepayment premiums as follows: (i) if prepayment occurs on or prior to December 31, 2019, an amount equal to 10% of the aggregate outstanding principal amount of the CRG Loan being prepaid, (ii) if prepayment occurs after December 31, 2019 and on or prior to December 31, 2020, 5% of the aggregate outstanding principal amount of the CRG Loan being prepaid, which was waived on December 17, 2020 when the Company paid $15.0 million against the CRG Loan obligations in connection with the consummation of the RPA agreement (see Note 3), and (iii) if prepayment occurs after December 31, 2020 and on or prior to December 31, 2021, an amount equal to 3% of the aggregate outstanding principal amount of the Loan being prepaid. No prepayment premium is due on any principal prepaid after December 31, 2021. Certain of the Company's existing and future subsidiaries are guaranteeing the obligations of the Company under the CRG Loan Agreement. The obligations of the Company under the CRG Loan Agreement and the guarantee of such obligations are secured by a pledge of substantially all of the Company's and the guarantors' assets.

The CRG Loan Agreement contains affirmative and negative covenants customary for financings of this type, including limitations on our and our subsidiaries' abilities, among other things, to incur additional debt, grant or permit additional liens, make investments and acquisitions, merge or consolidate with others, dispose of assets, pay dividends and distributions and enter into affiliate transactions, in each case, subject to certain exceptions. In addition, the CRG Loan Agreement contains the following financial covenants requiring the Company and the Guarantors to maintain:

- liquidity in an amount which shall exceed the greater of (i) $5 million and (ii) to the extent the Company has incurred certain permitted debt, the minimum cash balance, if any, required of the Company by the creditors of such permitted debt; and
- annual minimum product revenue from YUTIQ and DEXYCU: (i) for the twelve-month period beginning on January 1, 2019 and ending on December 31, 2019, of at least $15 million, (ii) for the twelve-month period beginning on January 1, 2020 and ending on December 31, 2020, of at least $45 million, (iii) for the twelve-month period beginning on January 1, 2021 and ending on December 31, 2021, of at least $80 million and (iv) for the twelve-month period beginning on January 1, 2022 and ending on December 31, 2022, of at least $90 million.

In November 2019, CRG waived the financial covenant associated with the Company's revenue derived from sales of its products, DEXYCU and YUTIQ, for the twelve-month period ending December 31, 2019. In October 2020, CRG (i) waived the financial covenant associated with the Company's revenue derived from sales of its products, DEXYCU and YUTIQ, for the twelve-month period ending December 31, 2020 and (ii) amended the financial covenant associated with the Company's minimum product revenue to $45 million from $80 million, for the twelve-month period ending December 31, 2021. In May 2021, CRG further amended the financial covenant associated with the Company's minimum product revenue to $25 million from $45 million, for the

twelve-month period ending December 31, 2021. There were no other material changes to the Loan Agreement and the Company incurred no incremental charges for the issuance of the waivers.

The total debt discount related to the CRG Initial Advance was approximately $3.2 million and consisted of (i) the accrual of a $2.1 million exit fee; (ii) the $525,000 upfront fee; and (iii) $591,000 of legal and other transaction costs. This amount is being amortized as additional interest expense over the term of the Loan using the effective interest rate method.

The total debt discount related to the CRG Second Advance was approximately $1.1 million and consisted of (i) the accrual of a $900,000 exit fee; and (ii) the $225,000 upfront fee. This amount is being amortized as additional interest expense over the term of the Loan using the effective interest rate method.

On December 17, 2020, the Company paid $15.0 million against the CRG Loan obligations in connection with the consummation of the RPA agreement (see Note 3). This payment included (i) a $13.8 million principal portion of the CRG Loan (ii) the $828,000 Exit Fee, and (iii) accrued and unpaid interest of $378,000 through that date. In connection with the partial prepayment of the CRG Loan, the Company recorded a loss on partial extinguishment of debt of $905,000 in the year ended December 31, 2020, associated with the write-off of the remaining balance of unamortized debt discount related to the partial prepayment of the CRG Loan.

Amortization of debt discount under the CRG Loan totaled $628,000 and $745,000 for the years ended December 31, 2021 and 2020, respectively.

10. Stockholders' Equity

Equity Financings

Common Stock Offerings

In November 2021, the Company sold 5,122,273 shares of its common stock in an underwritten public offering at a price of $13.75 per share, including the exercise in full by the underwriters of their option to purchase an additional 1,095,000 shares of the Company's common stock, and pre-funded warrants to purchase up to an aggregate of 3,272,727 shares of its common stock at a price of $13.74 per pre-funded warrant. The gross proceeds of the offering to the Company were approximately $115.4 million. Underwriter discounts and commissions and other share issue costs totaled approximately $7.2 million.

The pre-funded warrants were classified as a component of permanent equity because they met the permanent equity criteria classification. The pre-funded warrants are freestanding financial instruments that are legally detachable and separately exercisable from the shares of common stock with which they were issued, are immediately exercisable and permit the holders to receive a fixed number of shares of common stock upon exercise. The pre-funded warrants do not embody an obligation for the Company to repurchase its shares and do not provide any guarantee of value or return.

In February 2021, the Company sold 10,465,000 shares of its common stock in an underwritten public offering at a price of $11.00 per share, including the exercise in full by the underwriters of their option to purchase up to 1,365,000 additional shares of the Company's common stock. The gross proceeds of the offering to the Company were approximately $115.1 million. Underwriter discounts and commissions and other share issue costs totaled approximately $7.2 million.

On December 31, 2020, the Company entered into a Share Purchase Agreement (the "Share Purchase Agreement") with Ocumension, pursuant to which the Company sold to Ocumension 3,010,722 shares of Common Stock, at a purchase price of approximately $5.22 per share, which was the five-day volume weighted average price of the Common Stock as of the close of trading on December 29, 2020. The aggregate gross proceeds from the Transaction were approximately $15.7 million. Share issue costs totaled approximately $0.1 million.

In February 2020, the Company sold 1,500,000 shares of the Company's common stock in an underwritten public offering at a price of $14.50 per share for gross proceeds of $21.75 million. Underwriter discounts and commissions and other share issue costs totaled approximately $1.8 million.

At the Annual Meeting of Stockholders held on June 23, 2020, the Company's stockholders approved the adoption of an amendment to the Company's Certificate of Incorporation, to increase the number of authorized shares of its common stock from 150,000,000 shares to 300,000,000 shares. The Company filed the Certificate of Amendment on June 23, 2020.

ATM Facility

In August 2020, the Company entered into an at-the-market facility (the "ATM Facility") with Cantor Fitzgerald & Co ("Cantor"). Pursuant to the ATM Facility, the Company may, at its option, offer and sell shares of its Common Stock from time to time, through or to Cantor Fitzgerald, acting as sales agent. The Company will pay Cantor a commission of 3.0% of the gross proceeds from any future sales of such shares.

During the year ended December 31, 2020, the Company sold 2,590,093 shares of its Common Stock at a weighted average price of $5.74 per share for gross proceeds of approximately $14.9 million. Share issue costs, including sales agent commissions, totaled $646,000 during the reporting period.

During the year ended December 31, 2021, the Company sold 48,538 shares of its Common Stock at a weighted average price of $11.37 per share for gross proceeds of approximately $552,000. Share issue costs, including sales agent commissions, totaled approximately $53,000 during the reporting period.

Warrants to Purchase Common Shares

The following table provides a reconciliation of fixed price warrants to purchase shares of the Company's Common Stock for the years ended December 31, 2021 and 2020:

	Year Ended December 31, 2021		Year Ended December 31, 2020	
	Number of Warrants	Weighted Average Exercise Price	Number of Warrants	Weighted Average Exercise Price
Balance at beginning of period	48,683	$ 12.33	48,683	$ 12.33
Balance and exercisable at end of period	48,683	$ 12.33	48,683	$ 12.33

Pursuant to a credit agreement, the Company issued a warrant to SWK Funding LLC to purchase (i) 40,910 Initial Advance Warrant Shares on March 28, 2018 at an exercise price of $11.00 per share with a seven-year term and (ii) 7,773 Additional Advance Warrant Shares on June 26, 2018 at an exercise price of $19.30 per share with a seven-year term. At December 31, 2021, the weighted average remaining life of the warrants was approximately 3.3 years.

11. Share-Based Payment Awards

Equity Incentive Plans

The 2016 Long-Term Incentive Plan (the "2016 Plan"), approved by the Company's stockholders on December 12, 2016 (the "Adoption Date"), provides for the issuance of up to 300,000 shares of the Company's Common Stock reserved for issuance under the 2016 Plan plus any additional shares of the Company's Common Stock that were available for grant under the 2008 Incentive Plan (the "2008 Plan") at the Adoption Date or would otherwise become available for grant under the 2008 Plan as a result of subsequent termination or forfeiture of awards under the 2008 Plan. At the Company's Annual Meeting of Stockholders held on June 25, 2019, the Company's stockholders approved an amendment to the 2016 Plan to increase the number of shares authorized for issuance by 1,100,000 shares. At the Company's Annual Meeting of Stockholders held on June 22, 2021, the Company's stockholders approved an amendment to the 2016 Plan to increase the number of shares authorized for issuance by 2,500,000 shares. At December 31, 2021, a total of 1,683,368 shares were available for new awards.

Certain inducement awards, although not awarded under the 2016 Plan or the 2008 Plan, are subject to and governed by the terms and conditions of the 2016 Plan or 2008 Plan, as applicable.

Stock Options

The following table provides a reconciliation of stock option activity under the Company's equity incentive plans and for inducement awards for the year ended December 31, 2021:

	Number of options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life	Aggregate Intrinsic Value
			(in years)	(in thousands)
Outstanding at January 1, 2021	1,338,880	$ 20.86		
Granted	1,313,727	12.59		
Exercised	(8,112)	12.26		
Forfeited	(75,448)	16.46		
Expired	(51,367)	31.04		
Outstanding at December 31, 2021	2,517,680	$ 16.49	8.06	$ 775
Exercisable at December 31, 2021	916,461	$ 22.41	6.25	$ 103

In January 2019, the Company expanded the terms of its annual stock option grants to include vesting ratable monthly over four years, or with 25% vesting after one year followed by ratable monthly vesting over three years. Previously, the Company's option grants generally had ratable annual vesting over three years, or 1-year cliff vesting. Nonemployee awards are granted similar to the Company's employee awards. All option grants have a 10-year term. Options to purchase a total of 297,361 shares of the Company's Common Stock vested during the year ended December 31, 2021.

In determining the grant date fair value of option awards during the years ended December 31, 2021 and 2020, the Company applied the Black-Scholes option pricing model based on the following key assumptions:

	Year Ended December 31, 2021	Year Ended December 31, 2020
Option life (in years)	4.75 - 6.08	5.50 - 6.10
Stock volatility	72% - 83%	64% - 70%
Risk-free interest rate	0.42% - 1.44%	0.32% - 1.76%
Expected dividends	0.0%	0.0%

The following table summarizes information about employee, consultant and director stock options under the Company's equity incentive plans for the years ended December 31, 2021 and 2020 (in thousands except per share amounts):

	Year Ended December 31, 2021	Year Ended December 31, 2020
Weighted-average grant date fair value per share	$ 8.20	$ 7.07
Total cash received from exercise of stock options	100	—
Total intrinsic value of stock options exercised	10	—

Time-Vested Restricted Stock Units

Time-vested restricted stock units ("RSUs") issued to date under the 2016 Plan generally vest on a ratable annual basis over 3 years. The related stock-based compensation expense is recorded over the requisite service period, which is the vesting period. The fair value of all time-vested RSUs is based on the closing share price of the Common Stock on the date of grant.

The following table provides a reconciliation of RSU activity under the 2016 Plan for the year ended December 31, 2021:

	Number of Restricted Stock Units	Weighted Average Grant Date Fair Value
Nonvested at January 1, 2021	149,004	$ 13.85
Granted	242,399	12.96
Vested	(89,795)	13.76
Forfeited	(10,033)	12.15
Nonvested at December 31, 2021	291,575	$ 13.19

The weighted-average remaining vesting term of the RSUs at December 31, 2021 was 1.37 years.

Deferred Stock Units

There were no non-vested deferred stock units ("DSUs") issued and outstanding to the Company's non-executive directors at each of December 31, 2021 and 2020, respectively. Each DSU vests one year from the date of grant. Subsequent to vesting, the DSUs will be settled in shares of the Company's Common Stock upon the earliest to occur of (i) each director's termination of service on the Company's Board of Directors and (ii) the occurrence of a change of control as defined in the award agreement. At December 31, 2021, there was no vested DSUs that have not been settled in shares of the Company's Common Stock.

Employee Stock Purchase Plan

On June 25, 2019, the Company's stockholders approved the adoption of the EyePoint Pharmaceuticals, Inc. 2019 Employee Stock Purchase Plan (the "ESPP") and authorized up to 110,000 shares of Common Stock reserved for issuance to participating employees. At the Company's Annual Meeting of Stockholders held on June 22, 2021, the Company's stockholders approved an amendment to the ESPP to increase the number of shares authorized for issuance by 250,000 shares. The ESPP allows qualified participants to purchase the Company's Common Stock twice a year at 85% of the lesser of the average of the high and low sales price of the Company's Common Stock on (i) the first trading day of the relevant offering period and (ii) the last trading day of the relevant offering period. The number of shares of the Company's Common Stock each employee may purchase under this plan, when combined with all other employee stock purchase plans, is limited to the lower of an aggregate fair market value of $25,000 during each calendar year, or 5,000 shares of the Company's Common Stock in any one offering period. The Company has maintained consecutive six-month offering periods since August 1, 2019. As of December 31, 2021, 43,365 shares of the Company's Common Stock were issued pursuant to the ESPP.

The Company estimated the fair value of the option component of the ESPP shares at the date of grant using a Black-Scholes valuation model. During the year ended December 31, 2021, the compensation expense from ESPP shares was $113,000. During the year ended December 31, 2020, the compensation expense from ESPP shares was immaterial.

Stock-Based Compensation Expense

The Company's statements of comprehensive loss included total compensation expense from stock-based payment awards as follows (in thousands):

	Year Ended December 31, 2021	Year Ended December 31, 2020
Compensation expense included in:		
Research and development	$ 2,294	$ 1,411
Sales and marketing	1,187	907
General and administrative	3,966	3,229
	$ 7,447	$ 5,547

At December 31, 2021, there was approximately $9.3 million of unrecognized compensation expense related to outstanding equity awards under the 2016 Plan, the 2008 Plan, The inducement awards and the ESPP that is expected to be recognized as expense over a weighted-average period of approximately 1.7 years.

12. License and Asset Purchase Agreements

Aerpio Pharmaceuticals, Inc.

In August 2021, the Company entered into an Asset Purchase Agreement with Aerpio Pharmaceuticals, Inc. ("Aerpio"), pursuant to which Aerpio sold to the Company all of its right, title and interest in and to certain of its patents and patent applications and other intellectual property, including but not limited to patents covering certain human protein tyrosine phosphate inhibitors and methods of use.

In consideration for the rights purchased from Aerpio, the Company made a one time, non-refundable, non-creditable upfront cash payment of $450,000 to Aerpio in August 2021. The Company recorded $450,000 of R&D expense for the year ended December 31, 2021, due to the early stage of its preclinical drug development activities.

Equinox Science, LLC

In February 2020, the Company entered into an Exclusive License Agreement with Equinox Science, LLC ("Equinox"), pursuant to which Equinox granted us an exclusive, sublicensable, royalty-bearing right and license to certain patents and other Equinox intellectual property to research, develop, make, have made, use, sell, offer for sale and import the compound vorolanib and any pharmaceutical products comprising the compound for the prevention or treatment of age-related macular degeneration, diabetic retinopathy and retinal vein occlusion using our proprietary localized delivery technologies, in each case, throughout the world except China, Hong Kong, Taiwan and Macau (the "Territory").

In consideration for the rights granted by Equinox, the Company (i) made a one time, non-refundable, non-creditable upfront cash payment of $1.0 million to Equinox in February 2020, and (ii) agreed to pay milestone payments totaling up to $50 million upon the achievement of certain development and regulatory milestones, consisting of (a) completion of a Phase II clinical trial for the compound or a licensed product, (b) the filing of a new drug application or foreign equivalent for the compound or a licensed product in the United States, European Union or United Kingdom and (c) regulatory approval of the compound or a licensed product in the United States, European Union or United Kingdom.

The Company also agreed to pay Equinox tiered royalties based upon annual net sales of licensed products in the Territory. The royalties are payable with respect to a licensed product in a particular country in the Territory on a country-by-country and licensed product-by-licensed product basis until the later of (i) twelve years after the first commercial sale of such licensed product in such country and (ii) the first day of the month following the month in which a generic product corresponding to such licensed product is launched in such country (collectively, the "Royalty Term"). The royalty rates range from the high-single digits to low-double digits depending on the level of annual net sales. The royalty rates are subject to reduction during certain periods when there is no valid patent claim that covers a licensed product in a particular country.

The Company recorded $0 and $1.0 million of R&D expense during the years ended December 31, 2021 and 2020 for this license.

13. Fair Value Measurements

The following tables summarize the Company's assets carried at fair value measured on a recurring basis at December 31, 2021 and 2020, respectively, by valuation hierarchy (in thousands):

	December 31, 2021					
	Carrying Value	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Cash Equivalents	Marketable Securities
Level 1:						
Money market funds	$ 155,551	$ —	$ —	$ 155,551	$ 155,551	$ —
Subtotal	$ 155,551	$ —	$ —	$ 155,551	$ 155,551	$ —
Level 2:						
Commercial paper	$ 49,514	$ —	$ —	$ 49,514	$ 16,549	$ 32,965
Subtotal	$ 49,514	$ —	$ —	$ 49,514	$ 16,549	$ 32,965
Total	$ 205,065	$ —	$ —	$ 205,065	$ 172,100	$ 32,965

	December 31, 2020					
	Carrying Value	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Cash Equivalents	Marketable Securities
Level 1:						
Money market funds	$ 23,538	$ —	$ —	$ 23,538	$ 23,538	$ —
Total	$ 23,538	$ —	$ —	$ 23,538	$ 23,538	$ —

At December 31, 2021, a total of $155.6 million, or 90.4% of the Company's interest-bearing cash equivalent balances, were concentrated in one U.S. Government institutional money market fund that had investments consisting primarily of U.S. Government Agency debt, U.S. Treasury debt, U.S. Treasury Repurchase Agreements and U.S. Government Agency Repurchase Agreements. $16.5 million, or 9.6% of the Company's interest-bearing cash equivalent balances consisted of investment-grade commercial paper. Generally, these investments may be sold upon demand and, therefore, the Company believes they have minimal risk. The Company had investments of $33.0 million in marketable securities at December 31, 2021.

The Company's cash equivalents and marketable securities are classified within Level 1 or Level 2 on the basis of valuations using quoted market prices or alternative pricing sources and models utilizing market observable inputs, respectively. The marketable securities have been valued on the basis of valuations provided by third-party pricing services, as derived from such services' pricing models. Inputs to the models may include, but are not limited to, reported trades, executable bid and ask prices, broker/dealer quotations, prices or yields of securities with similar characteristics, benchmark curves or information pertaining to the issuer, as well as industry and economic events. The pricing services may use a matrix approach, which considers information regarding securities with similar characteristics to determine the valuation for a security, and have been classified as Level 2.

At December 31, 2020, substantially all of the Company's interest-bearing cash equivalent balances were concentrated in one U.S. Government money market fund that has investments consisting primarily of U.S. Government Agency debt, U.S. Treasury debt, U.S. Treasury Repurchase Agreements and U.S. Government Agency Repurchase Agreements. The Company had no investments in marketable securities at December 31, 2020.

The carrying amounts of accounts receivable, accounts payable and accrued expenses approximate fair value because of their short-term maturity.

The fair value of the Company's CRG Loan is determined using a discounted cash flow analysis based on market rates for observable similar instruments as of the condensed consolidated balance sheet dates. Accordingly, the fair value of the CRG Loan is categorized as Level 2 within the fair value hierarchy. At December 31, 2021, the fair value of the CRG Loan was approximately $38.7 million, and the carrying value of the CRG Loan was approximately $38.9 million, and consisted of $36.6 million of its carrying amount as reported in long-term debt, and $2.3 million of debt exit fee as reported in other long-term liabilities of the consolidated balance sheet, respectively. At December 31, 2020, the fair value of the CRG Loan was approximately $38.0 million, and the carrying value of the CRG Loan was approximately $38.3 million, and consisted of $36.0 million of its carrying amount as reported in long-term debt, and $2.3 million of debt exit fee as reported in other long-term liabilities of the condensed consolidated balance sheet, respectively.

14. Retirement Plans

The Company operates a defined contribution plan intended to qualify under Section 401(k) of the U.S. Internal Revenue Code. Participating U.S. employees may contribute a portion of their pre-tax compensation, as defined, subject to statutory maximums. The Company matches employee contributions up to 5% of eligible compensation, subject to a stated calendar year Internal Revenue Service maximum.

The Company operated a defined contribution pension plan for U.K. employees pursuant to which the Company made contributions on behalf of employees plus a matching percentage of elective employee contributions. This pension plan was terminated in the quarter ending September 30, 2016 following termination of employment of all U.K. employees.

The Company contributed a total of $1.0 million and $690,000 for the years ended December 31, 2021 and 2020, respectively, in connection with these retirement plans.

15. Income Taxes

The components of loss before income taxes are as follows (in thousands):

	Year Ended December 31, 2021	Year Ended December 31, 2020
U.S. operations	$ (58,517)	$ (45,492)
Non-U.S. operations	100	98
Loss before income taxes	$ (58,417)	$ (45,394)

On December 22, 2017, the *Tax Cuts and Jobs Act* (the "Tax Act") was signed into law, making significant changes to the federal tax law. Amongst other things, the Tax Act reduces the federal corporate tax rate from 34% to 21% effective for tax years beginning after December 31, 2017 and has resulted in a remeasurement of the Company's deferred tax assets included in the Company's fiscal 2018 rate reconciliation. The difference between the Company's expected income tax benefit, as computed by applying the blended statutory U.S. federal tax rate of 21% for the year ended December 31, 2021 and 21% for the year ended December 31, 2020, to loss before income taxes, and actual income tax benefit is reconciled in the following table (in thousands):

	Year Ended December 31, 2021	Year Ended December 31, 2020
Income tax benefit at statutory rate	$ (12,268)	$ (9,533)
State income taxes, net of federal benefit	(2,890)	(2,760)
Non-U.S. income tax rate differential	—	(8)
Change in fair value of derivative	—	—
Change in federal tax rate	—	—
Research and development tax credits	(693)	(403)
Permanent items	729	288
Changes in valuation allowance	15,748	13,068
Other, net	(626)	(652)
Income tax benefit	$ —	$ —

The significant components of deferred income taxes are as follows (in thousands):

	December 31, 2021	December 31, 2020
Deferred tax assets:		
Net operating loss carryforwards	$ 84,026	$ 74,876
Deferred revenue	4,270	150
Lease liability	722	806
Stock-based compensation	7,822	6,847
Tax credits	5,446	4,503
Other	3,005	2,514
Total deferred tax assets	105,291	89,696
Deferred tax liabilities:		
Intangible assets	5,963	6,087
Right-of-use assets	615	713
Total deferred tax liabilities	6,578	6,800
Deferred tax assets, net	98,713	82,896
Valuation allowance	98,713	82,896
Total deferred tax liability	$ —	$ —

The valuation allowance generally reflects limitations on the Company's ability to use the tax attributes and reduces the value of such attributes to the more-likely-than-not realizable amount. Management assessed the available positive and negative evidence to estimate if sufficient taxable income will be generated to use the existing net deferred tax assets. Based on a weighting of the objectively verifiable negative evidence in the form of cumulative operating losses over the three-year period ended June 30, 2018, management believes that it is not more likely than not that the deferred tax assets will be realized and, accordingly, a full valuation allowance has been established. The valuation allowance increased $15.7 million and $13.1 million for the years ended December 31, 2021 and 2020, respectively, with such increases attributed to the re-measurement of the net deferred tax assets at the year-end dates.

The Company has tax net operating loss and tax credit carry forwards in its individual tax jurisdictions. Including approximately $49.3 million related to the Icon acquisition, at December 31, 2021, the Company had U.S. federal net operating loss carry forwards of approximately $301.2 million. The net operating losses consist of $151.8 million, which expire at various dates between calendar years 2023 and 2038. The utilization of certain of these loss and tax credit carry forwards may be limited by Sections 382 and 383 of the Internal Revenue Code as a result of historical or future changes in the Company's ownership. At December 31, 2021, the Company had state net operating loss carry forwards of approximately $222.6 million, which expire between 2033 and 2038, as well as U.S. federal and state research and development tax credit carry forwards of approximately $5.7 million, which expire at various dates between calendar years 2021 and 2038. In addition, at December 31, 2021 the Company had net operating loss carry forwards in the U.K. of £20.9 million (approximately $27.6 million), which are not subject to any expiration dates.

The Company's U.S. federal income tax returns for calendar years 2003 through 2020 remain subject to examination by the Internal Revenue Service. The Company's U.K. tax returns for fiscal years 2006 through 2020 remain subject to examination.

Through December 31, 2021, the Company had no unrecognized tax benefits in its consolidated statements of comprehensive loss and no unrecognized tax benefits in its consolidated balance sheets as of December 31, 2021 and 2020, respectively.

As of December 31, 2021 and 2020, the Company had no accrued penalties or interest related to uncertain tax positions.

16. Contingencies

Legal Proceedings

The Company is subject to various other routine legal proceedings and claims incidental to its business, which management believes will not have a material effect on the Company's financial position, results of operations or cash flows.

U.S. Securities and Exchange Commission Subpoena

The Company previously disclosed that on May 14, 2020 it had received a subpoena from the Division of Enforcement of the SEC seeking production of certain documents and information on topics including product sales and demand, revenue recognition and accounting in relation to product sales, product sales and cash projections, and related financial reporting, disclosure and compliance matters. On May 4, 2021, the Company was advised by the SEC Division of Enforcement that it has concluded its investigation of the Company and that, based on the information it has to date, the Enforcement Division does not intend to recommend an enforcement action against the Company.

17. Segment and Geographic Area Information

Business Segment

The Company operates in one business segment, which is the business of developing and commercializing innovative ophthalmic products for the treatment of eye diseases. Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision maker in making decisions regarding resource allocation and assessing performance. The chief operating decision maker made such decisions and assessed performance at the company level, as one segment.

Geographic Area Information

The following table summarizes the Company's revenues and long-lived assets, net by geographic area (in thousands):

	Revenues		Long-lived assets, net	
	Twelve Months Ended December 31, 2021	Twelve Months Ended December 31, 2020	At December 31, 2021	At December 31, 2020
U.S.	$ 35,988	$ 22,624	$ 476	$ 630
China	851	11,713	—	—
U.K.	100	100	—	—
Consolidated	$ 36,939	$ 34,437	$ 476	$ 630

18. Subsequent Events

On March 9, 2022, the Company entered into a Loan and Security Agreement with Silicon Valley Bank (the "SVB Loan Agreement"). The SVB Loan Agreement provides (i) a senior secured term loan facility of $30 million (the "Term Loan") and (ii) a senior secured revolving credit facility of up to $15.0 million in available credit (the "Revolving Facility" and together with the Term Loan, "the SVB Loan"). The maximum amount available for borrowing at any time under the Revolving Facility is limited to a borrowing base valuation, or 80% of the Company's eligible accounts receivable. An unused commitment fee of 0.25% per annum applies to unutilized borrowing capacity under the Revolving Facility. The SVB Loan Agreement replaced its existing CRG Loan (see Note 9). Pursuant to the SVB Loan Agreement, the Company (i) made an initial draw of $30 million with respect to the Term Loan and of approximately $11.5 million with respect to the Revolving Facility, to pay off the CRG Loan, including the accrued interests through this date. Certain prepayment premiums apply to any repayments made (i) with respect to the Term Loan prior to the maturity date on January 1, 2027, and (ii) with respect to the Revolving Facility prior to the maturity date on January 1, 2027.

The SVB Loan Agreement bears interest at (i) the greater of (x) Wall Street Journal Prime Rate plus 2.25% and (y) 5.50%, with respect to the Term Loan; (ii) the Wall Street Journal Prime Rate, with respect to the Revolving Facility; per annum payable in arrears on the last business day of each calendar month. Commencing on February 1, 2024, the Company is required to repay the principal amount of the Term Loan in 36 consecutive equal monthly installments plus monthly payments of accrued interest. Amounts borrowed under the Revolving Facility may be prepaid or repaid and, prior to the Revolving Facility Maturity Date, reborrowed, subject to the applicable terms and conditions set forth in the SVB Loan Agreement. The SVB Loan is due at maturity on January 1, 2027 (the "Maturity Date").

On the same date, the Company paid $41.4 million. This payment included (i) a $38.2 million principal portion of the CRG Loan (ii) an $2.3 million exit fee of 6% of the aggregate principal amount advanced under the CRG Loan (iii) accrued and unpaid interest of $0.9 million through that date. As a result of the early repayment of the CRG Loan, the Company expects to record a loss on extinguishment of debt of approximately $1.5 million for the quarter ending March 31, 2022 in association with the write-off of the remaining balance of unamortized debt discount.

Exhibit 10.19

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made as of _____, 2022 by and between EyePoint Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and _____ ("Indemnitee"). This Agreement supersedes and replaces any and all previous agreements between the Company and Indemnitee covering the subject matter of this Agreement.

RECITALS

WHEREAS, the Board of Directors of the Company (the "Board") believes that highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Certificate of Incorporation of the Company (as amended, the "Certificate of Incorporation") requires indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the "DGCL"). The Certificate of Incorporation and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification;

WHEREAS, the uncertainties relating to such insurance and to indemnification may increase the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Certificate of Incorporation and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the Certificate of Incorporation and insurance as adequate in the present circumstances, and may not be willing to serve or continue to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve or continue to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnitee agrees to serve as a director or officer, as applicable, of the Company. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries or any Enterprise), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries or any Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a director or officer of the Company, by the Certificate of Incorporation, the Company's By-laws (the "By-laws"), and the DGCL. The foregoing notwithstanding, this Agreement shall continue in force after Indemnitee has ceased to serve as an officer or director of the Company, as provided in Section 16 hereof.

Section 2. Definitions. As used in this Agreement:

(a) References to "agent" shall mean any person who is or was a director, officer, or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

(b) A "Change in Control" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

i. Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company's then outstanding securities unless the change in relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors;

ii. Change in Board of Directors. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(b)(i), 2(b)(iii) or 2(b)(iv)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

iii. Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the Surviving Entity) more than 50% of the combined voting power of the voting securities of the Surviving Entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such Surviving Entity;

iv. Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets, including by license; and

v. Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 2(b), the following terms shall have the following meanings:

(A) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

(B) "Person" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(C) "Beneficial Owner" shall have the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner shall exclude any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(d) "Surviving Entity" shall mean the surviving entity in a merger or consolidation or any entity that controls, directly or indirectly, such surviving entity.

(c) "Corporate Status" describes the status of a person who is or was a director, officer, employee or agent of the Company or of any other corporation, limited liability company, partnership or joint venture, trust or other enterprise which such person is or was serving at the request of the Company.

(d) "Disinterested Director" shall mean a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "Enterprise" shall mean the Company and any other corporation, limited liability company, partnership, joint venture, trust or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, employee, agent or fiduciary.

(f) "Expenses" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 14(d) only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, by litigation or otherwise. The parties agree that for the purposes of any advancement of Expenses for which Indemnitee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnitee's counsel as being reasonable in the good faith judgment of such counsel shall be presumed conclusively to be reasonable. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) "Independent Counsel" shall mean a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(h) The term "Proceeding" shall include any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, legislative, or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of Indemnitee's Corporate Status, by reason of any action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or failure to act) on Indemnitee's part while acting pursuant to Indemnitee's Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses can be provided under this Agreement. If the Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a Proceeding, this shall be considered a Proceeding under this paragraph.

(i) Reference to "other enterprise" shall include employee benefit plans; references to "fines" shall include any excise tax assessed with respect to any employee benefit plan; references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

Section 3. Indemnity in Third-Party Proceedings. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding had no reasonable cause to believe that Indemnitee's conduct was unlawful. The parties hereto intend that this Agreement shall provide to the fullest extent permitted by law for indemnification in excess of that expressly permitted by statute, including, without limitation, any indemnification provided by the Certificate of Incorporation, the By-laws, vote of its stockholders or disinterested directors or applicable law.

Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No

indemnification for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that the Delaware Court (as hereinafter defined) or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 6. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness or otherwise asked to participate in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

Section 7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 8. Additional Indemnification.

(a) Notwithstanding any limitation in Sections 3, 4, or 5, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) by reason of Indemnitee's Corporate Status.

(b) For purposes of Section 8(a), the meaning of the phrase "to the fullest extent permitted by applicable law" shall include, but not be limited to:

i. to the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL, and

ii. to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 9. Exclusions. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnification payment in connection with any claim involving Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (as defined in Section 2(b) hereof) or similar provisions of state statutory law or common law, (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act) or (iii) any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or the compensation committee of the Board, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act; or

(c) except as provided in Section 14(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 10. Advances of Expenses. Notwithstanding any provision of this Agreement to the contrary (other than Section 14(d)), the Company shall advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding (or any part of any Proceeding) not initiated by Indemnitee or any Proceeding initiated by Indemnitee with the prior approval of the Board as provided in Section 9(c), and such advancement shall be made within thirty (30) days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. In accordance with Section 14(d), advances shall include any and all Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. The Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement, which shall constitute an undertaking providing

that the Indemnitee undertakes to repay the amounts advanced (without interest) to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement. This Section 10 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 9.

Section 11. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. The written notification to the Company shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. The omission by Indemnitee to notify the Company hereunder will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

Section 12. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 11(a), a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case: (i) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Board, by the stockholders of the Company; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to

hold Indemnitee harmless therefrom. The Company promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Delaware Court has determined that such objection is without merit. If, within twenty (20) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 11(a) hereof and the final disposition of the Proceeding, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by such court or by such other person as such court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 13. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(a) of this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such

applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 14(e), if the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 13(b) shall not apply (i) if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 12(a) of this Agreement and if **(**A) within fifteen (15) days after receipt by the Company of the request for such determination the Board has resolved to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat, or (ii) if the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) of this Agreement.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Enterprise (as defined below) in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser, financial advisor or other expert selected with reasonable care by or on behalf of the Enterprise. The provisions of this Section 13(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Enterprise shall not be

imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 14. Remedies of Indemnitee.

(a) Subject to Section 14(e), in the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5, 6 or 7 or the second to last sentence of Section 12(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) payment of indemnification pursuant to Section 3, 4 or 8 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 14(a). The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14 the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company shall, to the fullest extent not prohibited by law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. It is the intent of the Company that, to the fullest extent permitted by law, the Indemnitee not be required to incur legal fees or other Expenses associated with the

interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. The Company shall, to the fullest extent permitted by law, indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefor) advance, to the extent not prohibited by law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company if, in the case of indemnification, Indemnitee is wholly successful on the underlying claims; if Indemnitee is not wholly successful on the underlying claims, then such indemnification shall be only to the extent Indemnitee is successful on such underlying claims or otherwise as permitted by law, whichever is greater.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

Section 15. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the By-laws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Certificate of Incorporation and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such claim or of the commencement of a Proceeding, as the case may be, to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) In the event of any payment made by the Company under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, fiduciary, employee or agent of any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such other corporation, limited liability company, partnership, joint venture, trust or other enterprise.

Section 16. Duration of Agreement. This Agreement shall continue until and terminate upon the later of: (a) ten (10) years after the date that Indemnitee shall have ceased to serve as a director or officer of the Company and (b) one (1) year after the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement relating thereto. The indemnification and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or of any other Enterprise, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

Section 17. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 18. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the By-laws and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 19. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise.

Section 21. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission or email, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide to the Company.

(b) If to the Company to

EyePoint Pharmaceuticals, Inc.
480 Pleasant Street
Watertown, MA 02472
Attention: Chief Legal Officer
Facsimile: (617) 926-5050
Email: rhonig@eyepointpharma.com

or to any other address as may have been furnished to Indemnitee by the Company.

Section 22. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 23. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Court of Chancery of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, irrevocably RL&F Service Corp., 920 North King Street, 2nd Floor, Wilmington, New Castle County, Delaware 19801 as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 24. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 25. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

EYEPOINT PHARMACEUTICALS, INC.		INDEMNITEE	
By:	_____	By:	_____
Name:	Ron Honig	Name:	_____
Office	Chief Legal Officer & Company Secretary	Address:	_____

Schedule of Material Differences

The following directors and executive officers are parties to an Indemnification Agreement with the Company, each of which are substantially identical in all material respects to the representative Indemnification Agreement filed herewith as Exhibit 10.19 except as to the name of the signatory and the date of each signatory's Indemnification Agreement, which are listed below. The actual Indemnification Agreements are omitted pursuant to Instruction 2 to Item 601 of Regulation S-K.

Indemnitee	**Effective Date**
Nancy S. Lurker	September 15, 2016
Dario Paggiarino, M.D.	September 26, 2016
Ronald W. Eastman	March 28, 2018
Jay S. Duker, M.D.	September 27, 2016
Göran Ando, M.D.	June 14, 2018
John Landis	October 30, 2018
David R. Guyer M.D.	January 25, 2019
Scott Jones	June 10, 2019
Wendy DiCicco	July 15, 2019
George Elston	November 14, 2019
Ye Liu	December 31, 2020
Michael C. Pine	January 10, 2022

Exhibit 10.28

FOURTH AMENDMENT TO LEASE

THIS FOURTH AMENDMENT TO LEASE (this "**Amendment**") is made and entered into as of the ___8th__day of ____March_____, 2022 (the "**Effective Date**"), by and between **GRE RIVERWORKS, LLC**, a Delaware limited liability company ("**Landlord**"), and **EYEPOINT PHARMACEUTICALS, INC.**, a Delaware corporation ("**Tenant**").

RECITALS

A. Landlord's predecessors-in-interest and Tenant entered into that certain Lease dated November 1, 2013 (the "**Original Lease**"), as amended by that certain First Amendment to Lease dated February 6, 2014 (the "**First Amendment**"), that certain Second Amendment to Lease dated May 14, 2018 (the "**Second Amendment**"), that certain Confirmation of Suite A-210 Effective Date dated November 29, 2018 (the "**Confirmation**") and that certain Third Amendment to Lease dated April 5, 2021 (the "**Third Amendment**"; collectively with the Original Lease, the First Amendment, the Second Amendment and the Confirmation, the "**Lease**"), pursuant to which Tenant currently leases certain premises known as Suite A210 on the second floor containing approximately 7,999 rentable square feet ("**Suite A210**" and now includes and incorporates the suite formerly known as Suite B210 on the second floor containing approximately 1,409 rentable square feet) and Suite B300 on the third floor containing approximately 13,650 rentable square feet ("**Suite B300**"), all as shown on **Amended Exhibit A** which shall replace **Exhibit A** attached to the Lease in its entirety (together, the "**Existing Premises**") in the building commonly known as the Riverworks Innovation Center located at 480 Pleasant Street, Watertown, Massachusetts (the "**Building**").

B. The Term is currently scheduled to expire on May 31, 2025 ("**Prior Expiration Date**").

C. Landlord and Tenant desire to further expand the Existing Premises, extend the Term, and otherwise modify the Lease as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated into and made a material part of this Amendment. Capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to them in the Lease.

2. Second Expansion. Effective as of the Second Expansion Premises Commencement Date (as hereinafter defined), the Existing Premises are hereby expanded to include Suite C400 on the fourth floor containing approximately 11,999 rentable square feet on the fourth floor of the Building as shown on Exhibit A-2 attached hereto and made a part hereof ("**Second Expansion Premises**"), which Exhibit A-2 shall be deemed part of and attached to the Original Lease. The "**Second Expansion Premises Commencement Date**" or "**SEPCD**" shall mean the earliest to occur of (a) the date Tenant occupies the Second Expansion Premises or any portion thereof for the conduct of Tenant's business; or (b) the date Landlord Substantially Completes the Expansion Work (as these terms are defined in Exhibit B-1 attached hereto) in the Second Expansion Premises and tenders possession of the Second Expansion Premises to Tenant or (c) the date Landlord would have Substantially Completed the Expansion Work in the Second Expansion Premises and tendered possession to Tenant but for a Tenant Delay Day (as defined in Exhibit B-1). As of the Second Expansion Premises Commencement Date, the "Premises" shall include both the Existing Premises and the Second Expansion Premises. After the Second Expansion Premises Commencement Date occurs, Landlord

shall deliver to Tenant an instrument confirming the Second Expansion Premises Commencement Date. The rentable square feet stated herein shall be conclusive on both parties.

3. Extension of Term.

(a) The Term is hereby extended for Suite B300 of the Existing Premises only (the "**Second Extended Term**") such that the Expiration Date (herein called the "**Extended Expiration Date**") for Suite B300 and the Second Expansion Premises shall be May 31, 2028 unless sooner terminated or renewed in accordance with the terms of the Lease, as amended hereby. All of the terms and conditions of the Lease shall be applicable to Suite B300 and the Second Expansion Premises during the Second Extended Term, except as is otherwise provided in this Amendment. The Term of the Lease for Suite A210 shall expire on the Prior Expiration Date and Tenant shall surrender and vacate same on the Prior Expiration Date in accordance with the terms of the Lease and any failure to do so shall be deemed a holdover with respect thereto.

(b) The Term for the Second Expansion Premises (the "**Second Expansion Premises Term**") shall commence on the SEPCD and shall end on the Extended Expiration Date.

4. Base Rent for Suite B300 During the Second Extended Term. Prior to June 1, 2025, Tenant shall continue to pay Base Rent for the Existing Premises in accordance with Sections 4 and 5 of the Third Amendment. Commencing on June 1, 2025, Tenant shall pay Base Rent for Suite B300 in the same manner as is required under the Lease, as amended hereby, pursuant to the schedule set forth below:

Period	**Annual Base Rent Per Rentable Square Foot**	**Monthly Installments of Base Rent for Suite B300**
June 1, 2025 – May 31, 2026	$75.00	$86,868.75
June 1, 2026 – May 31, 2027	$77.25	$89,474.81
June 1, 2027 – May 31, 2028	$79.57	$92,161.95

5. Base Rent for the Second Expansion Premises. In addition to Base Rent for the Current Premises, commencing on the SEPCD (subject to the Second Expansion Premises Abatement Period below), Tenant shall pay Base Rent for the Second Expansion Premises in the same manner as is required under the Lease, as amended hereby, in the amount of $40.00 per rentable square foot of the Second Expansion Premises (or $39,996.67 per month) and on each anniversary of the SEPCD (except as expressly hereinafter provided) during the Second Expansion Premises Term, Base Rent for the Second Expansion Premises shall increase by three percent (3%) (i.e., to $41.20 per rentable square foot or $41,196.57 per month on the first anniversary of the SEPCD, to $42.44 per rentable square foot or $42,436.46 per month on the second anniversary of the SEPCD and to $43.71 per rentable square foot or $43,706.36 per month on the third anniversary of the SEPCD and so on through May 31, 2028). If, however, the SEPCD does not occur on the first day of a calendar month, (a) Tenant shall pay prorated Rent for the Second Expansion Premises on a per diem basis for such partial month on the SEPCD, and (b) solely for purposes of determining the rate applicable for such partial month and for the balance of the Second Expansion Premises Term, the period from the SEPCD through and including the day immediately preceding the first day of the next full calendar month (such first day being hereinafter referred to as the "SEP Base Rent Anniversary Date") shall be deemed included within the first full calendar month of the Second Expansion Premises Term and the annual Base Rent increase contemplated hereinabove shall occur on each anniversary of the Base Rent Anniversary Date not on the SEPCD. By way of example only, if the SEPCD is July 2, 2022, the SEP Base Rent

Anniversary Date shall be August 1, 2022 and therefore the Base Rent shall increase annually as set forth hereinabove on each August 1st falling within the Second Expansion Premises Term.

6. Second Expansion Premises Abatement Period. Notwithstanding the foregoing, provided Tenant is not in an Event of Default under the Lease, as amended hereby, Tenant's obligation to pay Base Rent for the Second Expansion Premises only shall be abated for the first two (2) calendar months after the SEPCD (the "**Second Expansion Premises Abatement Period**"). To illustrate, if the SEPCD occurs on July 2, 2022, then the Second Expansion Premises Abatement Period will commence on the SEPCD and end on September 1, 2022. If the Second Expansion Premises Abatement Period does not end on the last day of a calendar month, then on the day following the Second Expansion Premises Abatement Period, Tenant shall make a prorated payment of Base Rent for the remainder of such month. If Tenant commits an Event of Default and fails to cure same before Landlord files suit to terminate the Lease, as amended hereby, or regain possession of the Second Expansion Premises, then all sums so abated shall be immediately due and payable to Landlord. Notwithstanding such abatement of Base Rent, all other sums due under the Lease, as amended hereby, shall be payable as provided in the Lease, as amended hereby.

7. Additional Rent. In addition to the Base Rent for the entire Premises, Tenant shall continue to pay as additional rent in the manner and at the times required under Article III of the Original Lease, as amended by Section 5 of the Second Amendment and Section 6 of the Third Amendment, for the balance of the Term, except that:

(a) effective as of June 1, 2025, the Lease is amended to reflect that the "RSF of the Building" with respect to the entire Premises is 202,000 rentable square feet based on a remeasurement of the Building.

(b) effective as of June 1, 2025, the Lease is amended to reflect that Suite B300 contains approximately 13,899 rentable square feet based upon a remeasurement thereof.

(c) effective as of the SEPCD, (i) Tenant's Percentage with respect to the Second Expansion Premises shall be 5.94%, being the 11,999 rentable square feet in the Second Expansion Premises divided by the current rentable square footage of the Building (i.e., 202,000 rentable square feet), and (ii) Tenant shall pay Tenant's Share of Operating Expenses and Taxes for the Second Expansion Premises without regard to any base year (i.e., for each calendar year, Tenant's Share of Operating Expenses shall include the total Operating Expenses for the Property multiplied by the Tenant's Percentage and for each fiscal year, Tenant's Share of Taxes shall mean the total Taxes for the Property for that fiscal year multiplied by the Tenant's Percentage), including, without limitation, the Operating Expense Base and Real Estate Tax Base and any all references thereto in the Lease thereto shall have no applicability with respect to the Second Expansion Premises.

(d) effective as of June 1, 2025, Tenant's Percentage with respect to Suite B300 shall be 6.89% (13,899/202,000) based upon the remeasurement.

(e) effective as of June 1, 2025, the terms "Operating Expense Base" and "Real Estate Tax Base" and any and all references thereto in the Lease are hereby deleted in their entirety and deemed null, void and of no further force or effect with respect to Suite B300 and Tenant shall pay Tenant's Share of Operating Expenses and Taxes for Suite B300 without regard to any base year, including, without limitation, the Operating Expense Base and Real Estate Tax Base.

(f) effective as of June 1, 2025, Section 3.2(a) of the Original Lease is hereby deleted in its entirety and the following provision is substituted in lieu thereof:

"(a) Tenant shall pay, as additional rent, Tenant's Share of Operating Expenses and Taxes for the Property. For each calendar year, Tenant's Share of Operating Expenses shall consist of the sum of (x) the total Operating Expenses for the Property for that calendar year multiplied by the Tenant's Percentage and (y) a commercially reasonable charge for the provision of services to operate the Building during periods other than 8:00 am. to 5:00 pm. on weekdays and 9:00 a.m. to 1:00 p.m. on Saturdays and to operate the Building on holidays (which are all days on which commercial banks in Boston, Massachusetts are authorized or required by law to close) (such periods being referred to herein as "Non-Business Hours") that are fairly allocable to the Premises, if such services are requested by Tenant or are necessary, in Landlord's reasonable judgment, for Tenant's operations during Non-Business Hours. For each fiscal year, Tenant's Share of Taxes shall consist of the total Taxes for the Property for that fiscal year multiplied by the Tenant's Percentage. For any partial calendar year or fiscal year at the beginning or end of the Term, Tenant's Share of Operating Expenses and Taxes shall be adjusted proportionately for the part of the calendar year or fiscal year falling within the Term. Tenant's Percentage may be reduced if the Property is changed or reconfigured, but shall in all cases not exceed the percentage that the Rentable Square Feet in the Premises bears to the total rentable square footage in the Property, calculated on a consistent basis. In addition, Tenant shall pay, as additional rent, one hundred percent (100%) of any increase in Taxes not otherwise billed to Tenant which may result from any alteration, addition or improvement to the Premises that is made by or on behalf of Tenant other than the Leasehold Improvements, but only as and to the extent it is reasonably determinable from the records of the assessing authority that such increase in Taxes is based solely upon such alteration, addition or improvement."

8. Tenant's Electricity. Tenant shall continue to pay the cost of all submetered electricity for the Existing Premises directly to Landlord, as additional rent, as shown on the submeter as and when bills are rendered by Landlord as provided in Section 3.3 of the Original Lease. To the extent not already existing, as part of the Expansion Work in the Second Expansion Premises, Landlord shall ensure that all electricity used in the Second Expansion Premises is separately submetered or otherwise included in Tenant's existing submeter for the Existing Premises. Tenant's obligation to commence paying electricity for the Second Expansion Premises shall commence on the SEPCD.

9. Security Deposit. Landlord currently holds a Security Deposit in the form of a Letter of Credit in the amount of $150,000.00.

10. Parking.

(a) From and after the Effective Date through May 31, 2025, the first paragraph of **Exhibit E** attached to the Second Amendment, as amended by Section 10 of the Third Amendment, is hereby deleted in its entirety and replaced with the following:

"Tenant shall be provided a total of sixty-eight (68) parking access cards for unreserved parking spaces (i.e., 2 parking spaces per 1,000 square feet of Rentable Area) of which twenty-seven (27) such parking spaces (i.e., .8 parking spaces per 1,000 square feet of Rentable Area) shall be allocated to the lower lot located on the south side of Pleasant Street (the "**Lower Lot**") and forty-one (41) of such parking spaces (i.e., 1.2 parking spaces per 1,000 square feet of Rentable Area) shall be allocated to the upper lot located on the north side of Pleasant Street (the "**Upper Lot**" and with the Lower Lot, the "Parking Area") subject to such terms, conditions and regulations as are from time to time applicable to patrons of the Parking Area."

(b) From and after June 1, 2025, the first paragraph of **Exhibit E** attached to the Second Amendment, as amended by Section 10 of the Third Amendment and as amended by Section 10(a) of this Fourth Amendment, is hereby deleted in its entirety and replaced with the following:

> "Tenant shall be provided a total of fifty-one (51) parking access cards for unreserved parking spaces (i.e., 2 parking spaces per 1,000 square feet of Rentable Area) of which twenty (20) such parking spaces (i.e., .8 parking spaces per 1,000 square feet of Rentable Area) shall be allocated to the lower lot located on the south side of Pleasant Street (the "**Lower Lot**") and thirty-one (31) of such parking spaces (i.e., 1.2 parking spaces per 1,000 square feet of Rentable Area) shall be allocated to the upper lot located on the north side of Pleasant Street (the "**Upper Lot**" and with the Lower Lot, the "Parking Area") subject to such terms, conditions and regulations as are from time to time applicable to patrons of the Parking Area."

11. Condition of Premises. Tenant hereby re-accepts the Existing Premises in its current "AS-IS" "WHERE IS" condition. Landlord shall deliver the Second Expansion Premises to Tenant on the SEPCD in its current "AS-IS" "WHERE-IS" condition, subject to the Expansion Work being Substantially Completed. Landlord will also promptly repair the HVAC problems in the Suite A210 at Landlord's sole cost and expense.

12. Suite B300 Allowance.

(a) From and after the Effective Date, Landlord shall provide to Tenant a construction allowance not to exceed $40.00 per rentable square foot in Suite B300 or $555,960.00 (the "**Suite B300 Allowance**"). The Suite B300 Allowance shall only be applied toward the total hard and soft construction costs of Alterations to be performed by Tenant in the Suite B300 in accordance with Section 4.2 of the Original Lease and all other applicable sections of the Lease. Tenant shall pay to Landlord a construction supervision fee equal to three percent (3%) of the total construction costs of the Alterations, which shall be deducted from the Suite B300 Allowance. No advance of the Suite B300 Allowance shall be made by Landlord until Tenant has first paid to the contractor from its own funds (and provided reasonable evidence thereof to Landlord) the anticipated amount by which the projected total construction costs exceed the amount of the Suite B300 Allowance. Thereafter, Landlord shall pay to Tenant the Suite B300 Allowance in multiple disbursements (but not more than once in any calendar month) following the receipt by Landlord of the following items: (a) a request for payment, (b) final or partial lien waivers, as the case may be, from all persons performing work or supplying or fabricating materials for the Alterations, fully executed, acknowledged and in recordable form, (c) the Architect's certification that the Alterations for which reimbursement has been requested has been finally completed, including (with respect to the last application for payment only) any punch-list items, on the appropriate AIA form or another form approved by Landlord, and, with respect to the disbursement of the last 10% of the Suite B300 Allowance, (w) "as built" drawings in both paper and AutoCad format; (x) the permanent certificate of occupancy issued for Suite B300, (y) Tenant's continued occupancy of Suite B300, and (z) an estoppel certificate confirming such factual matters as Landlord or Landlord's mortgagee may reasonably request (collectively, a "**Completed Application for Payment**"). Landlord shall pay the amount requested in the applicable Completed Application for Payment to Tenant within thirty (30) days following Tenant's submission of the Completed Application for Payment. If, however, the Completed Application for Payment is incomplete or incorrect, Landlord's payment of such request shall be deferred until thirty (30) days following Landlord's receipt of the Completed Application for Payment. Notwithstanding anything to the contrary contained in this Section, Landlord shall not be obligated to make any disbursement of the Suite B300 Allowance during the pendency of any of the following: (1) Landlord has received written notice of any unpaid claims relating to any portion of the Alterations or materials in connection therewith, other than claims which will be paid in full from such disbursement, (2) there is an unbonded lien outstanding against the Building or Suite B300 or Tenant's interest therein by reason of work done, or claimed to have been done, or materials supplied or specifically

fabricated, claimed to have been supplied or specifically fabricated, to or for Tenant or Suite B300, (3) the conditions to the advance of the Suite B300 Allowance are not satisfied, or (4) Tenant is in an Event of Default under the Lease. No portion of the Suite B300 Allowance may be used as a credit against Rent.

(b) Any portion of the Suite B300 Allowance that remains unexpended by Landlord for Alterations performed in accordance with Section 4.2 of the Original Lease and all other applicable sections of the Lease within eighteen (18) months following the Effective Date shall be deemed forfeited with no further obligation by Landlord with respect thereto and shall be the sole and exclusive property of Landlord.

13. Option to Extend. Section 10.23 of the Original Lease is hereby reinstated in its entirety and shall be deemed in full force and effect and exercisable by Tenant upon Landlord's receipt of written notice from Tenant thereof no later than twelve (12) months prior to the Extended Expiration Date.

14. Brokers. Tenant represents that Tenant has not dealt with any broker, agent or finder in connection with this Amendment other than Paradigm Properties ("the **"Broker**"), whose right to a commission shall be paid by Landlord pursuant to separate written agreement, and Tenant agrees to indemnify and hold Landlord harmless from all damages, judgments, liabilities and expenses (including reasonable attorneys' fees) arising from any claims or demands of any broker, agent or finder other than the Broker with whom Tenant has dealt for any commission or fee alleged to be due in connection with its participation in the procurement of Tenant or the negotiation with Tenant of this Amendment.

15. Binding Effect. This Amendment shall not be binding until executed and delivered by both Landlord and Tenant.

16. Electronic Counterparts. This Amendment may be executed in any number of electronic (facsimile or PDF) counterparts, any one of which shall be an original, but all of which together shall be one and the same instrument.

17. Estoppel. Tenant hereby represents, warrants and agrees that: to the best of Tenant's knowledge, (i) there exists no breach, default or event of default by Landlord under the Lease, or any event or condition which, with the giving of notice or passage of time or both, would constitute a breach, default or event of default by Landlord under the Lease; (ii) the Lease continues to be a legal, valid and binding agreement and obligation of Tenant; and (iii) 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 against Landlord or Landlord's 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.

18. Exhibits. Each Exhibit attached hereto is made a part hereof for all purposes.

19. No Representations. Landlord and Landlord's agents have made no representations or promises, express or implied, in connection with this Amendment, except as expressly set forth herein, and Tenant has not relied on any representations except as expressly set forth herein.

20. OFAC. Tenant represents and warrants to Landlord that (1) Tenant is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National," "Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (2) Tenant is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Tenant agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses

(including reasonable attorney's fees and costs) arising or related to any breach of the foregoing representation and warranty.

21. Miscellaneous. This Amendment sets forth the entire agreement with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. As modified by this Amendment, the Lease is hereby ratified and confirmed, and shall remain in full force and effect. In the event of any inconsistency between the provisions of the Lease and this Amendment, the provisions of this Amendment shall control. Headings used in this Amendment are for convenience only and shall not serve to limit, expand or otherwise alter the terms of this Amendment.

[***remainder of page intentionally left blank; signature page follows***]

Landlord and Tenant have executed this Fourth Amendment to Lease as of the date first above written.

LANDLORD:

GRE RIVERWORKS, LLC, a Delaware limited liability company

By: /s/ Marija Tatic
Name: Marija Tatic
Its: Vice President

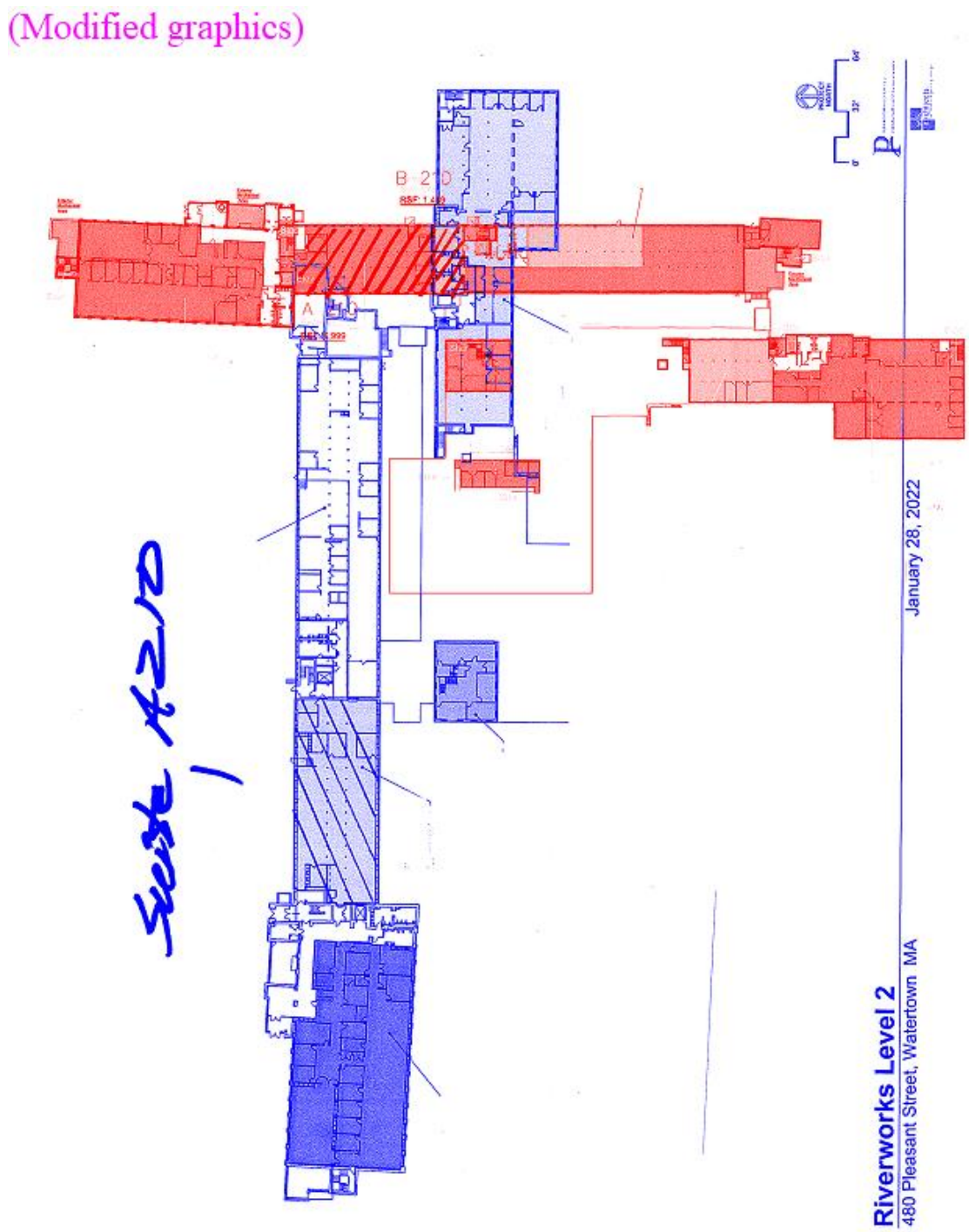
TENANT:

EYEPOINT PHARMACEUTICALS, INC., a Delaware corporation

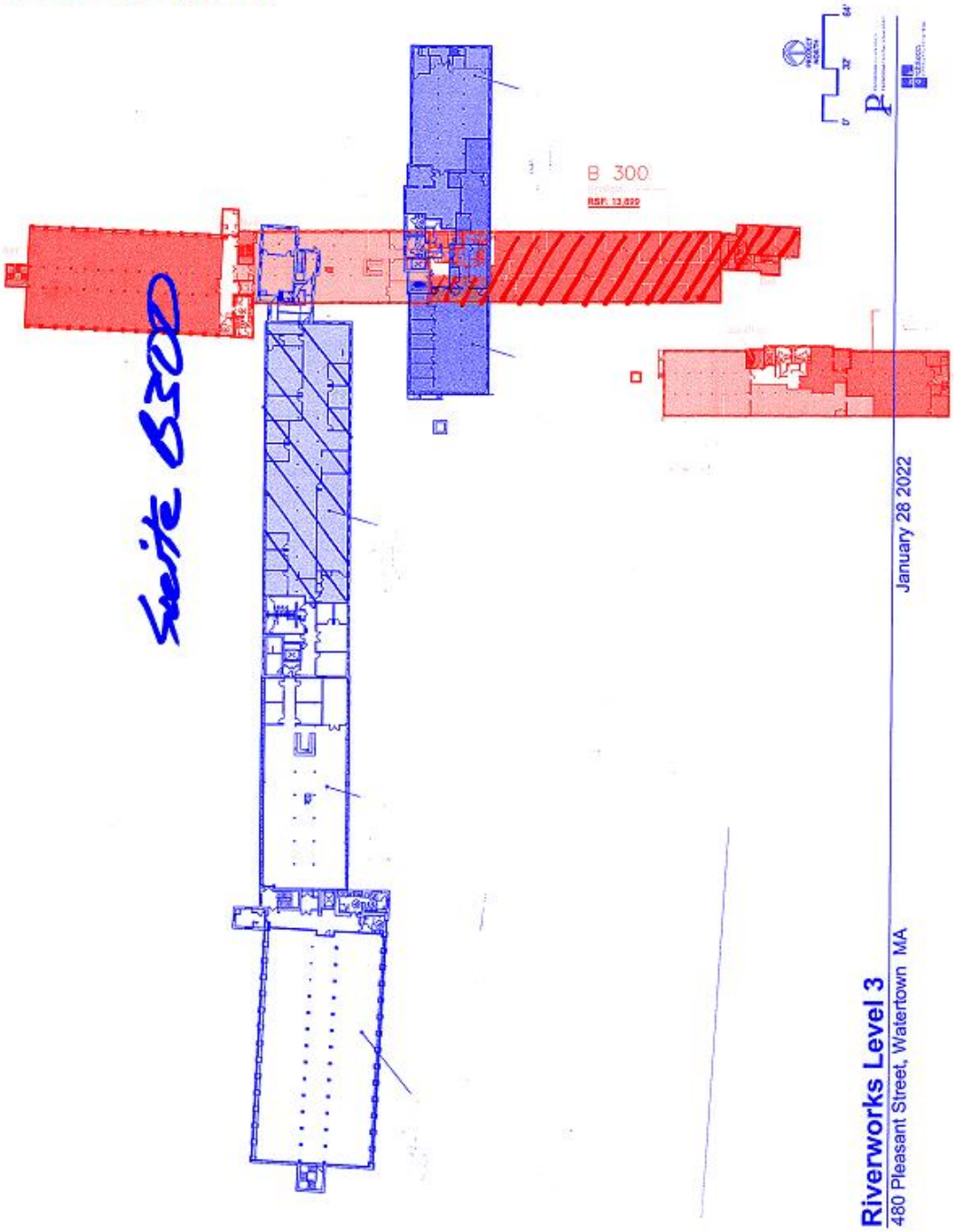
By: /s/ George Elston
Name: George Elston
Its: Chief Financial Officer

AMENDED EXHIBIT A

EXISTING PREMISES



(Modified graphics)



AMENDED A-2

EXHIBIT A-2

SECOND EXPANSION PREMISES

(Modified)

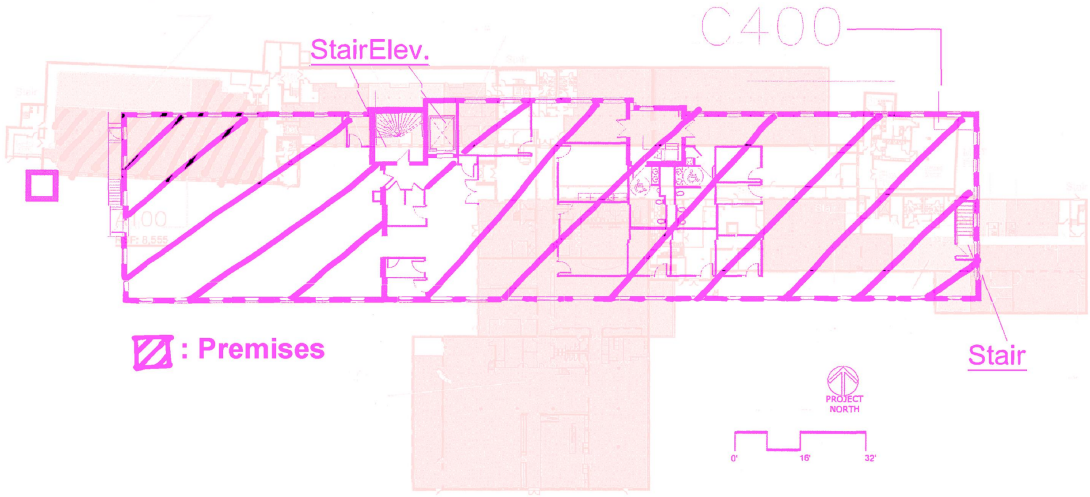


EXHIBIT B-1

WORKLETTER

1. **Acceptance of Premises**. Except as set forth in this Exhibit, Tenant accepts the Existing Premises and Second Expansion Premises in their "AS-IS" "WHERE IS" condition on the Effective Date.

2. **Space Plans**. Landlord and Tenant have approved the space plan and scope notes depicting improvements to be installed in the Second Expansion Premises, which plans are attached hereto as Schedule I (the "**Space Plans**").

3. **Working Drawings**.

(a) Preparation and Delivery. If additional drawings are necessary, as reasonably determined by Landlord, on or before the date which is twenty (20) days after the Effective Date, Landlord shall cause to be prepared final working drawings of all improvements to be installed in the Second Expansion Premises and deliver the same to Tenant for its review and approval (which approval shall not be unreasonably withheld, delayed or conditioned).

(b) Approval Process. Tenant shall notify Landlord whether it approves of the submitted working drawings within three (3) business days after Landlord's submission thereof. If Tenant disapproves of such working drawings, then Tenant shall notify Landlord thereof specifying in reasonable detail the reasons for such disapproval, in which case Landlord shall, within three (3) business days after such notice, revise such working drawings in accordance with Tenant's objections and submit the revised working drawings to Tenant for its review and approval. Tenant shall notify Landlord in writing whether it approves of the resubmitted working drawings within one (1) business day after its receipt thereof. This process shall be repeated until the working drawings have been finally approved by Landlord and Tenant. If Tenant fails to notify Landlord that it disapproves of the initial working drawings within three (3) business days (or, in the case of resubmitted working drawings, within one (1) business day) after the submission thereof, then Tenant shall be deemed to have approved the working drawings in question. Any delay caused by Tenant's unreasonable withholding of its consent or delay in giving its written approval as to such working drawings shall constitute a Tenant Delay Day (defined below). If the working drawings are not fully approved (or deemed approved) by both Landlord and Tenant by the 20th business day after the delivery of the initial draft thereof, then each day after such time period that such working drawings are not fully approved (or deemed approved) by both Landlord and Tenant shall constitute a Tenant Delay Day.

4. **Landlord's Approval; Performance of Expansion Work**. If any of Tenant's proposed construction work will affect the Building's structure or the Building's systems and equipment, then the working drawings pertaining thereto must be approved by the Building's engineer of record. Landlord's approval of such working drawings shall not be unreasonably withheld, provided that (a) they comply with all laws, (b) the improvements depicted thereon do not adversely affect (in the reasonable discretion of Landlord) the Building's structure or the Building's systems and equipment, the exterior appearance of the Building, or the appearance of the Common Areas, (c) such working drawings are sufficiently detailed to allow construction of the improvements in a good and workmanlike manner, and (d) the improvements depicted thereon conform to the rules and regulations promulgated from time to time by Landlord for the construction of tenant improvements. As used herein, "**Working Drawings**" shall mean the final working drawings approved by Landlord, as amended from time to time by any approved changes thereto, and "**Expansion Work**"

shall mean all improvements to be constructed in the Second Expansion Premises in accordance with and as indicated on the Working Drawings, together with any work required by governmental authorities to be made to other areas of the Building as a result of the improvements indicated by the Working Drawings. Landlord's approval of the Working Drawings shall not be a representation or warranty of Landlord that such drawings are adequate for any use or comply with any law, but shall merely be the consent of Landlord thereto. Tenant shall, at Landlord's request, sign the Working Drawings to evidence its review and approval thereof. After the Working Drawings have been approved, Landlord shall cause the Expansion Work to be performed in accordance with the Working Drawings.

5. **Change Orders**. Tenant may initiate changes in the Expansion Work. Each such change must receive the prior written approval of Landlord, such approval not to be unreasonably withheld or delayed; however, (a) if such requested change would adversely affect (in the reasonable discretion of Landlord) (i) the Building's structure or the Building's systems and equipment (including the Building's restrooms or mechanical rooms), (ii) the exterior appearance of the Building, or (iii) the appearance of the Common Areas or (b) if any such requested change might delay the Second Expansion Premises Commencement Date, Landlord may withhold its consent in its sole and absolute discretion.

6. **Definitions**. As used herein, a "**Tenant Delay Day**" shall mean each day of delay in the performance of the Expansion Work that occurs: (a) because of Tenant's failure to timely deliver or approve any required documentation such as the Working Drawings, (b) because Tenant fails to timely furnish any material information or deliver or approve any required documents such as the Working Drawings (whether preliminary, interim revisions or final), pricing estimates, construction bids, and the like, (c) because of any change to the Working Drawings, (d) because Tenant fails to attend any meeting with Landlord, the Architect, any design professional, or any contractor, or their respective employees or representatives, as may be required or scheduled hereunder or otherwise necessary in connection with the preparation or completion of any construction documents, such as the Working Drawings, or in connection with the performance of the Expansion Work, (e) because of any specification by Tenant of materials or installations in addition to or other than Landlord's standard finish-out materials, or (f) because Tenant, its agents, employees, or contractors otherwise delay completion of the Expansion Work. As used herein "**Substantial Completion**," "**Substantially Completed**," and any derivations thereof mean the Expansion Work in the Second Expansion Premises is substantially completed (as reasonably determined by Landlord) in substantial accordance with the Working Drawings. Substantial Completion shall have occurred even though minor details of construction, decoration, landscaping and mechanical adjustments remain to be completed by Landlord.

7. **Walk-Through; Punch-list**. When Landlord considers the Expansion Work in the Second Expansion Premises to be Substantially Completed, Landlord will notify Tenant and within three (3) business days thereafter, Landlord's representative and Tenant's representative shall conduct a walk-through of the Second Expansion Premises and identify any necessary touch-up work, repairs and minor completion items that are necessary for final completion of the Expansion Work. Neither Landlord's representative nor Tenant's representative shall unreasonably withhold his or her agreement on punch-list items. Landlord shall use reasonable efforts to cause the contractor performing the Expansion Work to complete all punch-list items within thirty (30) days after agreement thereon; however, Landlord shall not be obligated to engage overtime labor in order to complete such items.

8. **Costs**. Landlord shall bear the entire cost of performing the Expansion Work depicted on the Space Plans attached hereto that were initially submitted to and approved by Landlord. Tenant shall pay

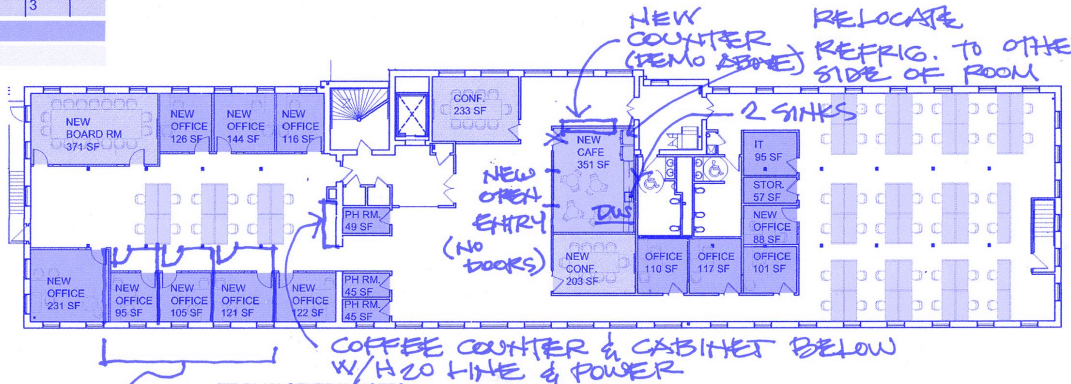
Landlord an amount equal to 100% of the estimated additional costs of any change to the Space Plans or the Working Drawings at the time of receipt of applicable contractor invoice for such change and any remaining costs upon Substantial Completion of the Expansion Work.

9. **Construction Representatives**. Landlord's and Tenant's representatives for coordination of construction and approval of change orders will be as follows, provided that either party may change its representative upon written notice to the other:

Landlord's Representative:	Paradigm Properties
Tenant's Representative:	Michael Maciocio VP, Operations EyePoint Pharmaceuticals, Inc. 480 Pleasant Street, Suite B-300 Watertown, MA 02472 Telephone: 857-341-0924 Email: mmaciocio@eyepointpharma.com

(Added graphics)

PROGRAM LEGEND	PLAN
OFFICE	12
WORKSTATION 6'x2'6"	56
COFFEE / KITCHEN	1
CONFERENCE	3
SUPPORT AREAS	
NIC	



NEW DOOR

EXISTING DOOR TO REMAIN

SIDELITE

NEW WALL

FIT PLAN GENERAL NOTES

1. NEW LED PENDANT LIGHTING
2. NEW CARPET TILE & LVT FLOORING
3. NEW PAINT & WALL BASE
4. UPDATE RESTROOMS — FINISHES SIM. TO LOBBY RESTROOMS
5. REMOVE ACOUSTICAL CEILING TILE IN NEW CAFE

PROJECT NORTH

0' 8' 16' 32'

PARADIGM PROPERTIES
PARADIGM CAPITAL ADVISORS

wk architects

EyePoint Suite C400 Fit Plan V4

Riverworks Watertown MA

11,999 RSF

January 14, 2021

REVISED 2/17/22

Exhibit 10.45

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY "[***]", HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

December 6, 2021

VIA EMAIL

Imprimis Rx, LLC
12264 El Camino Real
Suite 350
San Diego, California 92130
Attn: John Saharek
Email: jsaharek@imprimisrx.com

Re: Commercial Alliance Agreement: Expansion of Imprimis Responsibilities

Dear John:

EyePoint Pharmaceuticals, Inc. ("**EyePoint**") and ImprimisRx, LLC ("**Imprimis**") entered into a Commercial Alliance Agreement effective as of August 1, 2020, as modified by the Letter Agreement dated November 12, 2020 (collectively, the "**Agreement**"). Capitalized terms used but not defined in this letter have their respective meanings set forth in the Agreement. All changes to the Agreement described below shall be effective as of January 1, 2022 (the "**Expansion Effective Date"**). For good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Changes to the Agreement:

Notwithstanding anything to the contrary in the Agreement, the terms of this letter describe certain provisional changes and other amendments in and to the responsibilities and obligations of the parties that will be effective from the Expansion Effective Date through December 31, 2023 (the **"Expansion Term"**), unless the Expansion Term is shortened or extended by mutual agreement, or as described below.

- To provide for commercial continuity in the event the pass-through period lapses and is granted during a subsequent CMS cycle, Section 13.3 will be replaced with the following text:

- End of Pass-Through Payment Status. If Pass-Through Payment Status ceases for a period of not less than six (6) months, then either Party may terminate this Agreement by providing thirty (30) days' prior written notice of termination to the other Party.

- During the Expansion Term:

- Imprimis assumes the following responsibilities and obligations, and will indemnify and hold EyePoint harmless, pursuant to Section 12.2 of the Agreement, from and against all Liabilities resulting from any Third-Party Claim resulting from any of the following:

    - Full responsibility for all current Dexycu Sales, Marketing and Medical Science Liaison (MSL) functions, including compliance with all applicable laws or regulations related to such responsibilities

        - Exception: EyePoint marketing and MSL personnel currently dedicated to Dexycu will remain with EyePoint in new roles, but will provide 90 days of transition services from the commencement of the Expansion Term. Imprimis shall pay EyePoint for such transition services at EyePoint's cost.

    - Imprimis will offer full-time employment to these current EyePoint personnel, as of the Expansion Effective Date, on equivalent or better salary, bonus, equity opportunities:

        - [***]

    - Imprimis will also assume full responsibility and all associated costs for the following functions pertaining to Dexycu:

        - Promotional Review Committee (PRC): Imprimis to work with its existing firm, rather than EyePoint's consultant

        - Compliance (Sunshine Act, SOPs, training, etc.): Imprimis to engage EyePoint's current consultant at G&M Healthcare

        - Speaker Programs

        - Trade Shows

        - Customer Training

- EyePoint will provide transition services to Imprimis pertaining to the above responsibilities for a mutually agreed upon period and rate of compensation to EyePoint.
- In addition, EyePoint shall provide the following services to Imprimis, at cost (payable by Imprimis to EyePoint):

- Field Reimbursement and Government Pricing Management
- HUB Management (as required)
- Safety and Pharmacovigilance
- Information Technology support (as required)
- Distribution Management

- EyePoint shall retain the following responsibilities and obligations, and will indemnify and hold Imprimis harmless, pursuant to Section 12.1 of the Agreement, from and against all Liabilities resulting from any Third-Party Claim resulting from any of the following:

  - Manufacturing, sterilization, packaging
  - Product design
  - Product labeling
  - Engagement of pass-through extension consultants and counsel

    - EyePoint will continue to pursue pass-through extension for Dexycu in a manner consistent with its good faith efforts to secure pass-through extension to date

  - Engagement of physician consultants
  - Research & Development
  - Reimbursement management
  - Required Clinical Trials

    - Including, but not limited to, the FDA-required pediatric study

  - Quality
  - Regulatory
  - Intellectual Property protection
  - Fulfillment of obligations to licensees outside of the Territory, including but not limited to, Ocumension
  - A summary of material items related to these activities will be reported through the Commercialization Committee on a monthly basis with a particular focus related to pass-through extension and label expansion activity (e.g., sNDA)

- Sales-related specifics during the Expansion Term:

  - The term "Customers" shall mean, collectively, all customers for the Product in the Territory.

  - The [***] Remittance Percentage shall apply to Net Sales of the Product in the Territory

  - Imprimis shall be permitted to negotiate GPO, private equity, and related contracts, subject to the following requirements:

    - All such contracts shall only be effective during the Expansion Term; and

        - All contract terms that could affect ASP, such as rebates, volume discounts, assurance of commercial and Med Advantage carrier reimbursement, bundling with other products or services, etc., must be approved by EyePoint in writing in advance if such terms fall outside the parameters set forth in Exhibit A attached to this letter.

    - The Commercialization Committee shall continue to meet monthly, primarily to review and, if applicable, approve contract terms with key accounts and other matters as needed.

    - Audit Rights: In addition to the rights specified in Section 8.6 of the Agreement, EyePoint or its designee shall have the right, but not the obligation, during the Expansion Term and for the remainder of the Term:

        - To observe directly through field rides the performance of Imprimis personnel and 1099 reps in the field, to ensure compliance with the Agreement and with the terms of this Letter.

- Mandatory Milestones and Downside Protection for EyePoint; Early Termination of Expansion Term

    - Imprimis shall achieve quarterly Customer demand milestones for the Product of at least [***] Dexycu units ("Minimum Quarterly Units" or "MQUs").

    - Imprimis shall pay to EyePoint an annually-determined per-unit penalty for Customer demand units that fall below the MQUs, as measured on January 31, 2023 and January 31, 2024, respectively, and in the amounts set forth on Exhibit B attached hereto; provided however, in any event, such penalty amount shall not exceed total commissions payable by EyePoint to Imprimis for Customer demand achieved during 2022 and 2023, respectively.

    - EyePoint shall have the right, but not the obligation, to terminate the Expansion Term upon 90-days written notice to Imprimis, if Imprimis fails to achieve the MQUs or to pay any applicable penalties set forth in Exhibit B.

    - Imprimis shall have the right, but not the obligation to terminate the Expansion Term upon 30 days written notice if (i) a proposed or final Hospital Outpatient Prospective Payment System (HOPPS) rule issued from CMS during calendar year 2022 does not contain an extension of the Pass-Through Payment Period for Dexycu beyond December 31, 2022, and (ii) EyePoint has not otherwise waived the MQU for a quarterly period inclusive of or following the date of the proposed or final HOPPS rule described in (i) above.

Additional Terms:

This letter will be governed by and construed under and in accordance with the laws of the State of Delaware, without regard to the conflicts of laws principles thereof.

Unless expressly modified by this Letter, all terms and conditions set forth in the Agreement shall remain in full force and effect for the duration of the Section 13.1 Term.

If the foregoing is acceptable to you, please sign and return one fully-executed copy of this letter to us at your earliest convenience, which shall evidence your acknowledgement and acceptance thereto. This letter may be executed in counterparts, each of which shall be deemed to be an original and together shall be deemed to be one and the same document.

[*Signature Page Follows*.]

Very truly yours,

EyePoint Pharmaceuticals, Inc.

By: */s/ Nancy Lurker*
Name: Nancy Lurker
Title: President & CEO

Agreed to and accepted:

ImprimisRx, LLC

By: */s/ John Saharek*
Name: John Saharek
Title: President
Date: December 6, 2021

EXHIBIT A

Rebate/Volume Discount Limits for 2022

[***]

EXHIBIT B

Downside Protection Penalties

(EXAMPLE)

[***]

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY "[***]", HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

Exhibit 10.46

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "Agreement") is dated as of the Effective Date between **SILICON VALLEY BANK**, a California corporation ("**Bank**"), and the borrowers listed on Schedule I hereto ("**Borrowers**" or collectively, "**Borrower**"). The parties agree as follows:

1 LOAN AND TERMS OF PAYMENT

1.1 Revolving Line.

(a) Availability. Subject to the terms and conditions of this Agreement and to deduction of Reserves, Bank shall make Advances not exceeding the Availability Amount. Amounts borrowed under the Revolving Line may be prepaid or repaid as set forth on Schedule I hereto.

(b) Termination; Repayment. The Revolving Line terminates on the Revolving Line Maturity Date, when the outstanding principal amount of all Advances, the accrued and unpaid interest thereon, and all other outstanding Obligations relating to the Revolving Line shall be immediately due and payable.

1.2 Term Loan.

(a) Availability. Subject to the terms and conditions of this Agreement, upon Borrower's request, on or about the Effective Date, Bank shall make one (1) term loan advance in an original principal amount equal to the Term Loan Availability Amount (the "**Term Loan Advance**"), provided that all or a portion of the proceeds of the Term Loan Advance shall be used to repay in full all of Borrower's outstanding obligations and liabilities to CRG (including, without limitation, obligations and liabilities set forth in the CRG Credit Agreement). Borrower may request the Term Loan Advance as set forth on Schedule I hereto.

(b) Repayment. Borrower shall repay the Term Loan Advance as set forth in Schedule I hereto. All outstanding principal and accrued and unpaid interest under the Term Loan Advance, and all other outstanding Obligations with respect to the Term Loan Advance, are due and payable in full on the Term Loan Maturity Date.

(c) Permitted Prepayment. Borrower shall have the option to prepay all, but not less than all, of the Term Loan Advance, provided Borrower (i) delivers written notice to Bank of its election to prepay the Term Loan Advance at least five (5) Business Days prior to such prepayment, and (ii) pays, on the date of such prepayment (A) the outstanding principal plus accrued and unpaid interest with respect to the Term Loan Advance, (B) the Final Payment, (C) the Prepayment Fee, and (D) all other sums, if any, that shall have become due and payable with respect to the Term Loan Advance, including interest at the Default Rate with respect to any past due amounts.

(d) Mandatory Prepayment Upon an Acceleration. If the Term Loan Advance is accelerated by Bank following the occurrence and during the continuance of an Event of Default, Borrower shall immediately pay to Bank an amount equal to the sum of (i) all outstanding principal plus accrued and unpaid interest with respect to the Term Loan Advance, (ii) the Final Payment, (iii) the Prepayment Fee, and (iv) all other sums, if any, that shall have become due and payable with respect to the Term Loan Advance, including interest at the Default Rate with respect to any past due amounts.

1.3 Overadvances. If, at any time, the aggregate outstanding principal amount of any Advances, exceeds the lesser of (i) the Revolving Line or (ii) the Borrowing Base, Borrower shall immediately pay to Bank in cash the amount of such excess (such excess, the "**Overadvance**"). Without limiting Borrower's obligation to repay Bank any Overadvance, Borrower shall pay Bank interest on the outstanding amount of any Overadvance, on demand, at a rate per annum equal to the rate that is otherwise applicable to Advances plus three percent (3.0%).

1.4 Payment of Interest on the Credit Extensions.

(a) Interest Payments.

(i) Advances. Interest on the principal amount of each Advance is payable as set forth on Schedule I hereto.

(ii) Term Loan Advance. Interest on the principal amount of the Term Loan Advance is payable as set forth on Schedule I hereto.

(b) Interest Rate.

(i) Advances. Subject to Section 1.4(c), the outstanding principal amount of any Advance shall accrue interest as set forth on Schedule I hereto.

(ii) Term Loan Advance. Subject to Section 1.4(c), the outstanding principal amount of any Term Loan Advance shall accrue interest as set forth on Schedule I hereto.

(iii) All-In Rate. Notwithstanding any terms in this Agreement to the contrary, if at any time the interest rate applicable to any Obligations is less than zero percent (0.0%), such interest rate shall be deemed to be zero percent (0.0%) for all purposes of this Agreement.

(c) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, the outstanding Obligations shall bear interest at a rate per annum which is three percent (3.0%) above the rate that is otherwise applicable thereto (the "**Default Rate**") unless Bank otherwise elects, in its sole and absolute discretion, to impose a lesser or no increase. Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 1.4(c) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(d) Adjustment to Interest Rate. Each change in the interest rate applicable to any amounts payable under the Loan Documents based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of such change.

(e) Interest Computation. Interest shall be computed as set forth on Schedule I hereto. In computing interest, the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.

1.5 Fees. Borrower shall pay to Bank:

(a) Final Payment. The Final Payment, when due hereunder, which shall be fully earned and non-refundable as of such date;

(b) Prepayment Fee. The Prepayment Fee, when due hereunder, which shall be fully earned and non-refundable as of such date;

(c) Termination Fee. Upon termination of this Agreement or the termination of the Revolving Line for any reason prior to the Revolving Line Maturity Date, in addition to the payment of any other amounts then-owing, a termination fee (the "**Termination Fee**") in an amount equal to (i) three percent (3.0%) of the Revolving Line if such termination occurs prior to the first anniversary of the Effective Date, or (ii) one percent (1.0%) of the

Revolving Line if such termination occurs on or at any time after the first anniversary of the Effective Date, which shall be fully earned and non-refundable as of such date;

(d) Unused Revolving Line Facility Fee. Payable quarterly in arrears on the last calendar day of each calendar quarter occurring prior to the Revolving Line Maturity Date, and on the Revolving Line Maturity Date, a fee (the "**Unused Revolving Line Facility Fee**") in an amount equal to one-quarter of one percent (0.25%) per annum of the average unused portion of the Revolving Line, as determined by Bank, computed on the basis of a year with the applicable number of days as set forth in Section 1.2(e), which shall be fully earned and non-refundable as of such date. The unused portion of the Revolving Line, for purposes of this calculation, shall be calculated on a calendar year basis and shall equal the difference between (i) the Revolving Line, and (ii) the average for the period of the daily closing balance of the Revolving Line outstanding; and

(e) Bank Expenses. All Bank Expenses incurred through and after the Effective Date, when due (or, if no stated due date, upon demand by Bank).

Unless otherwise provided in this Agreement or in a separate writing by Bank, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Bank pursuant to this Agreement, notwithstanding any termination of this Agreement or the suspension or termination of Bank's obligation to make loans and advances hereunder. Bank may deduct amounts owing by Borrower under the clauses of this Section 1.5 pursuant to the terms of Section 1.6(c). Bank shall provide Borrower written notice of deductions made pursuant to the terms of the clauses of this Section 1.5.

1.6 Payments; Application of Payments; Debit of Accounts.

(a) All payments (including prepayments) to be made by Borrower under any Loan Document shall be made in immediately available funds in Dollars, without setoff, counterclaim, or deduction, before 12:00 p.m. Eastern time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) Bank has the exclusive right to determine the order and manner in which all payments with respect to the Obligations may be applied. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(c) Bank may debit any of Borrower's deposit accounts maintained with Bank, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes Bank when due under the Loan Documents. These debits shall not constitute a set-off.

1.7 Change in Circumstances.

(a) Increased Costs. If any Change in Law shall: (i) impose, modify, or deem applicable any reserve, special deposit, compulsory loan, insurance charge, or similar requirement against assets of, deposits with or for the account of, or advances, loans, or other credit extended or participated in by, Bank, (ii) subject Bank to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitment, or other obligations, or its deposits, reserves, other liabilities, or capital attributable thereto, or (iii) impose on Bank any other condition, cost, or expense (other than Taxes) affecting this Agreement or Credit Extensions made by Bank, and the result of any of the foregoing shall be to increase the cost to Bank of making, converting to, continuing, or maintaining any Credit Extension (or of maintaining its obligation to make any such Credit Extension), or to reduce the amount of any sum received or receivable by Bank hereunder (whether of principal, interest, or any other amount) then, upon written request of Bank, Borrower shall promptly pay to Bank such additional amount or amounts as will compensate Bank for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If Bank determines that any Change in Law affecting Bank regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on Bank's capital as a consequence of this Agreement, the Revolving Line, any term loan facility, or the Credit Extensions made by Bank to a level below that which Bank could have achieved but for such Change in Law (taking into consideration Bank's policies with respect to capital adequacy and liquidity), then from time to time upon written request of Bank, Borrower shall promptly pay to Bank such additional amount or amounts as will compensate Bank for any such reduction suffered.

(c) Delay in Requests. Failure or delay on the part of Bank to demand compensation pursuant to this Section 1.7 shall not constitute a waiver of Bank's right to demand such compensation; provided that Borrower shall not be required to compensate Bank pursuant to subsection (a) for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that Bank notifies Borrower of the Change in Law giving rise to such increased costs or reductions (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9)-month period shall be extended to include the period of retroactive effect).

1.8 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good-faith discretion of Borrower) requires the deduction or withholding of any Tax from any such payment by Borrower, then (i) Borrower shall be entitled to make such deduction or withholding, (ii) Borrower shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law, and (iii) if such Tax is an Indemnified Tax, the sum payable by Borrower shall be increased as necessary so that, after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 1.8), Bank receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by Borrower. Without limiting the provisions of subsection (a) above, Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) Tax Indemnification. Without limiting the provisions of subsections (a) and (b) above, Borrower shall, and does hereby, indemnify Bank, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 1.8) payable or paid by Bank or required to be withheld or deducted from a payment to Bank and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by Bank shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 1.8, Borrower shall deliver to Bank a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment, or other evidence of such payment reasonably satisfactory to Bank.

(e) Status of Bank. If Bank (including any assignee or successor) is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Loan Document, Bank 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, Bank, 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 Bank is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing, Bank shall deliver whichever of IRS Form W-9, IRS Form W-8BEN-E, IRS Form W-8ECI or W-8IMY is applicable, as well as any applicable supporting documentation or certifications. If a payment made to Bank under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if Bank were to fail to comply with the applicable reporting requirements of FATCA (including those

contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), Bank shall deliver to Borrower at the time or times prescribed by 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 Internal Revenue Code) and such additional documentation reasonably requested by Borrower as may be necessary for Borrower to comply with its obligations under FATCA and to determine that Bank has complied with Bank's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of the preceding sentence, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Treatment of Certain Refunds. If Bank 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 Section (including by the payment of additional amounts pursuant to this Section), it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of Bank and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Borrower, upon the request of Bank, shall repay to Bank the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will Bank be required to pay any amount to Borrower pursuant to this paragraph (f) the payment of which would place Bank in a less favorable net after-Tax position than Bank 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 paragraph shall not be construed to require Bank to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to Borrower or any other Person.

1.9 Procedures for Borrowing.

(a) Advances. Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement (which must be satisfied no later than 12:00 p.m. Eastern time on the applicable Funding Date), to obtain an Advance Borrower (via an individual duly authorized by an Administrator) shall notify Bank (which notice shall be irrevocable) by 12:00 p.m. Eastern time on the Funding Date of the Advance. Such notice shall be made through Bank's online banking program, provided, however, if Borrower is not utilizing Bank's online banking program, then such notice shall be in a written format acceptable to Bank that is executed by an Authorized Signer. In connection with any such notification, Borrower shall deliver to Bank by electronic mail or through Bank's online banking program such reports and information, including without limitation, sales journals, cash receipts journals, accounts receivable aging reports, as Bank may reasonably request. Bank shall have received satisfactory evidence that the Board has approved that such Authorized Signer may provide such notices and request Advances (which requirement may be deemed satisfied by the prior delivery of Borrowing Resolutions or a secretary's certificate that certifies as to such Board approval).

(b) Term Loan Advance. Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan Advance set forth in this Agreement (which must be satisfied no later than 12:00 p.m. Eastern time on the applicable Funding Date), to obtain a Term Loan Advance, Borrower shall notify Bank (which notice shall be irrevocable) by 12:00 p.m. Eastern time at least 2 Business Days prior to the proposed Funding Date of the Term Loan Advance. Such notice shall be made by electronic mail or by telephone and, together with any such notification, Borrower shall deliver to Bank by electronic mail a completed Payment/Advance Form executed by an Authorized Signer and such other reports and information as Bank may reasonably request. Bank may rely on any telephone notice given by a person whom Bank believes is an Authorized Signer. Borrower will indemnify Bank for any loss Bank suffers due to such belief or reliance. Bank shall have received satisfactory evidence that the Board has approved that such Authorized Signer may provide such notices and request the Term Loan Advance (which requirement may be deemed satisfied by the prior delivery of Borrowing Resolutions or a secretary's certificate that certifies as to such Board approval).

(c) Bank shall credit proceeds of a Credit Extension to the Designated Deposit Account. Bank may make Advances or the Term Loan Advance under this Agreement based on instructions from an Authorized Signer or without instructions if such the Credit Extension is necessary to meet Obligations which have become due.

2 CONDITIONS OF CREDIT EXTENSIONS

2.1 Conditions Precedent to Initial Credit Extension. Bank's obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may have reasonably requested, including, without limitation:

(a) duly executed Loan Documents;

(b) duly executed Control Agreements as required by Bank;

(c) (i) the Operating Documents of each Borrower, and (ii) (A) good standing certificates of each Borrower certified by the Secretary of State of the State of Delaware, (B) a good standing/foreign qualification certificate of Parent certified by the Secretary of State of the Commonwealth of Massachusetts, and (C) good standing/foreign qualification certificates of Icon and EyePoint US certified by the Secretary of State (or equivalent agency) of each other jurisdiction in which Icon and EyePoint US are qualified to conduct business; in each case, as of a date no earlier than 30 days prior to the Effective Date;

(d) certificate duly executed by a Responsible Officer or secretary of each Borrower with respect to Borrower's (i) Operating Documents and (ii) Borrowing Resolutions;

(e) duly executed payoff letter from CRG Servicing LLC ("**CRG**");

(f) evidence that (i) the Liens securing Indebtedness owed by Borrower to CRG; will be terminated and (ii) the documents and/or filings evidencing the perfection of such Liens, including without limitation any financing statements and/or control agreements, have or will, concurrently with the initial Credit Extension, be terminated;

(g) certified copies, dated as of a recent date, of searches for financing statement filed in the central filing office of the State of Delaware, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(h) duly executed Perfection Certificate of each Borrower;

(i) duly executed signature to the Stock Pledge Agreement;

(j) a legal opinion of Borrower's counsel dated as of the Effective Date;

(k) evidence satisfactory to Bank that the insurance policies required by Section 5.8 hereof are in full force and effect; and

(l) payment of the fees and Bank Expenses then due as specified in Section 1.5 hereof.

2.2 Conditions Precedent to all Credit Extensions. Bank's obligation to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) receipt of Borrower's Credit Extension request and the related materials and documents as required by and in accordance with Section 1.9;

(b) the representations and warranties in this Agreement shall be true and correct in all material respects as of the date of any Credit Extension request and as of the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true and correct in all material respects as of such date, and no Default or Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true and correct in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties

expressly referring to a specific date shall be true and correct in all material respects as of such date; and

(c) a Material Adverse Change shall not have occurred and be continuing.

2.3 Covenant to Deliver. Borrower shall deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. A Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

3 CREATION OF SECURITY INTEREST

3.1 Grant of Security Interest.

(a) Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

(b) Borrower acknowledges that it previously has entered, or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject to Permitted Liens).

3.2 Authorization to File Financing Statements. Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all jurisdictions deemed necessary or appropriate by Bank to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by Borrower or any other Person, shall be deemed to violate the rights of Bank under the Code. Such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect.

3.3 Termination. If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations or other obligations which by their terms, survive termination of this Agreement) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations or other obligations which by their terms, survive termination of this Agreement) and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at Borrower's sole cost and expense, terminate its security interest in the Collateral and all rights therein shall revert to Borrower, and Bank shall take such actions as may be reasonably requested by Borrower to evidence such repayment and release (including delivery of a payoff letter, filing of UCC-3 termination statements (or authorizing Borrower to file such UCC-3 termination statements) and delivering possessory Collateral in Bank's possession to Borrower) and all of Borrower's obligations pursuant to Sections 5 and 6 herein shall terminate. Furthermore, in connection with a Transfer permitted under this Agreement Bank shall take such actions as may be reasonably requested by Borrower to evidence such release (including filing of UCC-3 termination statements (or authorizing Borrower to file such UCC-3 termination statements)). In the event (a) all Obligations (other than inchoate indemnity obligations or other obligations which by their terms, survive termination of this Agreement), except for Bank Services, are satisfied in full, and (b) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its sole discretion for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to at least (x) 105.0% of the face amount of all such Letters of Credit denominated in Dollars and (y) 115.0% of the Dollar Equivalent of the face amount of all such Letters of Credit denominated in a Foreign Currency, plus, in each case, all

interest, fees, and costs due or estimated by Bank to become due in connection therewith, to secure all of the Obligations relating to such Letters of Credit.

4 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

4.1 Due Organization, Authorization; Power and Authority.

(a) Borrower and each of its Subsidiaries are each duly existing and in good standing as a Registered Organization in their respective jurisdiction of formation and are qualified and licensed to do business and are in good standing in any jurisdiction in which the conduct of their respective business or their ownership of property requires that they be qualified, except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business or operations.

(b) All information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is true and correct in all material respects (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement and the Perfection Certificate shall be deemed to be updated to the extent such notice is provided to Bank of such permitted update).

(c) The execution, delivery, and performance by Borrower and each of its Subsidiaries of the Loan Documents to which they are parties have been duly authorized, and do not (i) conflict with any of Borrower's or any such Subsidiary's organizational documents, (ii) contravene, conflict with, constitute a default under, or violate any material Applicable Law, (iii) contravene, conflict with, or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower or any of its Subsidiaries is bound. Neither Borrower nor any of its Subsidiaries are in default under any agreement to which they are parties or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's or any of its Subsidiary's business or operations.

4.2 Collateral.

(a) The security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject to Permitted Liens). Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens.

(b) Borrower has no Collateral Accounts at or with any bank or financial institution other than Bank or Bank's Affiliates except for the Collateral Accounts described in the Perfection Certificate delivered to Bank in connection herewith and which Borrower has taken such actions as are necessary to give Bank a perfected security interest therein, pursuant to the terms of Section 5.9(c). The Accounts are bona fide, existing obligations of the Account Debtors.

(c) The Collateral is not in the possession of any third-party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate or as permitted pursuant to Section 6.2. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 6.2.

(d) All Inventory is in all material respects of good and marketable quality, free from material defects (other than resulting from any casualty or any taking under power of eminent domain or by condemnation).

(e) Borrower owns, or possesses the right to use to the extent necessary in its business, all Intellectual Property, licenses, and other intangible assets that are used in the conduct of its business as now operated, except to the extent that such failure to own or possess the right to use such asset would not reasonably be expected to have a material adverse effect on Borrower's business or operations, and no such asset, to the best knowledge of Borrower, conflicts with the valid Intellectual Property, license, or intangible asset of any other Person to the extent that such conflict could reasonably be expected to have a material adverse effect on Borrower's business or operations.

(f) Except as noted on the Perfection Certificate or for which notice has been given to Bank pursuant to and in accordance with Section 5.11(b), Borrower is not a party to, nor is it bound by, any Restricted License.

4.3 Accounts Receivable.

(a) For each Account included in the most recent Borrowing Base Statement, on the date each Advance is requested and made, such Account shall be an Eligible Account.

(b) All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Eligible Accounts are and shall be true and correct in all material respsects and all such invoices, instruments and other documents, and all of Borrower's Books are genuine and in all respects what they purport to be. All sales and other transactions underlying or giving rise to each Eligible Account shall comply in all material respects with all Applicable Law. Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor whose accounts are Eligible Accounts in the then applicable Borrowing Base Statement. To the best of Borrower's knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Eligible Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.

4.4 Litigation. Other than as set forth in the Perfection Certificate or as disclosed to Bank pursuant to Section 5.3(j), there are no actions, investigations or proceedings pending or, to the knowledge of any Responsible Officer, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, $250,000.00 not covered by independent third party insurance as to which liability has been accepted by the carrier providing such insurance.

4.5 Financial Statements; Financial Condition. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank by submission to the Financial Statement Repository or otherwise submitted to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations for the periods covered thereby, subject, in the case of unaudited financial statements, to normal year-end adjustments and the absence of footnote disclosures. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to the Financial Statement Repository or otherwise submitted to Bank.

4.6 Solvency. The fair salable value of Borrower's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower and each of its Subsidiaries are able to pay their debts (including trade debts) as they mature.

4.7 Regulatory Compliance. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries (a) have complied in all material respects with all Applicable Law, and (b) have not violated any Applicable Law the violation of which could reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower and each of its Subsidiaries have duly complied with, and their respective facilities, business, assets, property, leaseholds, real property and Equipment are in compliance with, Environmental Laws, except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business or operations; there have been no outstanding citations, notices or orders of non-compliance issued to Borrower or any of its Subsidiaries or relating to their respective facilities,

businesses, assets, property, leaseholds, real property or Equipment under such Environmental Laws except where the same would not reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted, except where the failure to obtain or make or file the same would not reasonably be expected to have a material adverse effect on Borrower's business or operations.

4.8 Subsidiaries; Investments. Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.

4.9 Tax Returns and Payments; Pension Contributions.

(a) Borrower and each of its Subsidiaries have timely filed (subject to validly filed extensions), or submitted extensions for, all required tax returns and reports, and Borrower and each of its Subsidiaries have timely paid all foreign, federal, state and local taxes, assessments, deposits, and contributions owed by Borrower and each of its Subsidiaries except (a) to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor, or (b) if such taxes, assessments, deposits, and contributions do not, individually or in the aggregate, exceed $50,000.00. Borrower is unaware of any claims or adjustments proposed for any of Borrower's or any of its Subsidiary's prior tax years which could result in additional taxes becoming due and payable by Borrower or any of its Subsidiaries in excess of $50,000.00 in the aggregate.

(b) Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing, and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries has withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

4.10 Full Disclosure. No written representation, warranty, or other statement of Borrower or any of its Subsidiaries in any report, certificate, or written statement submitted to the Financial Statement Repository or otherwise submitted to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such reports, certificates, and written statements submitted to the Financial Statement Repository or otherwise submitted to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the reports, certificates, or written statements not misleading in light of the circumstances under which they were made (it being recognized by Bank that the projections and forecasts provided by Borrower or any of its Subsidiaries in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

4.11 Sanctions. Neither Borrower nor any of its Subsidiaries is: (a) in violation of any Sanctions; or (b) a Sanctioned Person. Neither Borrower nor any of its Subsidiaries, directors, or officers, or, to the knowledge of Borrower, any of its employees, agents, or Affiliates: (i) conducts any business or engages in any transaction or dealing with any Sanctioned Person, including making or receiving any contribution of funds, goods, or services to or for the benefit of any Sanctioned Person; (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to any Sanctions; (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Sanctions; or (iv) otherwise engages in any transaction that could cause Bank to violate any Sanctions.

5 AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

5.1 Use of Proceeds. Cause the proceeds of the Credit Extensions to be used solely (a) as working capital or (b) to fund its general business purposes, and not for personal, family, household or agricultural purposes.

5.2 Government Compliance.

(a) Maintain its and all of its Subsidiaries' legal existence (except as permitted under Section 6.3 with respect to Subsidiaries only) and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject, the failure to comply with which could reasonably be expected to have a material adverse effect on Borrower's business or operations.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower and each of its Subsidiaries of their obligations under the Loan Documents to which they are parties, including any grant of a security interest to Bank in the Collateral. Borrower shall, upon Bank's reasonable request, promptly provide copies of any such obtained Governmental Approvals to Bank.

5.3 Financial Statements, Reports. Deliver to Bank by submitting to the Financial Statement Repository:

(a) Borrowing Base Statement. A Borrowing Base Statement (and any schedules related thereto and including any other information requested by Bank with respect to Borrower's Accounts) within 30 days after the end of each month;

(b) Accounts Receivable Information. Within 30 days after the end of each month, (A) monthly accounts receivable agings, aged by invoice date, (B) monthly accounts payable agings, aged by invoice date, if any, (C) monthly reconciliations of accounts receivable agings (aged by invoice date), and an accounts receivable general ledger and (D) a deferred revenue report, in form an substance satisfactory to Bank;

(c) Monthly Compliance Statement. Within 30 days after the last day of each month, a duly completed Compliance Statement, confirming that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Bank may reasonably request;

(d) 10-Q reports. Within 45 days after the end of the first three fiscal quarters of Borrower, a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations for such quarter, consistent with such quarterly financial statements submitted to the SEC, in a form of presentation acceptable to Bank;

(e) Annual Operating Budget and Financial Projections. As soon as available, and in any event within 90 days after the last day of each fiscal year of Borrower, and contemporaneously with any updates or amendments thereto, (A) annual operating budgets (including income statements, balance sheets and cash flow statements, by month) for the current fiscal year of Borrower, and (B) annual financial projections for the current fiscal year (on a quarterly basis), in each case as approved by the Board, together with any related business forecasts used in the preparation of such annual financial projections;

(f) 10-K Reports and Annual Audited Financial Statements. As soon as available, and in any event within 90 days following the end of Borrower's fiscal year, Borrower's 10-K report, together with audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion (provided that such unqualified opinion may contain a going concern qualification typical for venture backed companies similar to Borrower) on the financial statements from Deloitte LLP, any "Big 4" accounting firm, or any other independent certified public accounting firm reasonably acceptable to Bank;

(g) SEC Filings. Within five (5) days of filing, notification of the filing and copies of all periodic and other reports, proxy statements and other materials filed by Borrower and/or any of its Subsidiaries or any Guarantor with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed

with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower or any of its Subsidiaries posts such documents, or provides a link thereto, on Borrower's or any of its Subsidiaries' website on the internet at Borrower's or any of its Subsidiaries' website address; provided, however, Borrower shall promptly notify Bank in writing (which may be by electronic mail) of the posting of any such documents;

(h) Security Holder and Subordinated Debt Holder Reports. Within five (5) days of delivery, copies of all material statements, reports, and notices made available to Borrower's security holders or to any holders of Subordinated Debt (solely in their capacities as security holders or holders of Subordinated Debt and not in any other role);

(i) Beneficial Ownership Information. Concurrently with delivery of the Compliance Statement pursuant to Section 5.3(c), written notice of any changes to the beneficial ownership information set out in Section 14 of the Perfection Certificate. Borrower understands and acknowledges that Bank relies on such true, accurate, and up-to-date beneficial ownership information to meet Bank's regulatory obligations to obtain, verify, and record information about the beneficial owners of its legal entity customers;

(j) Legal Action Notice. Concurrently with delivery of the Compliance Statement pursuant to Section 5.3(c), written notice of any legal actions, investigations or proceedings pending or threatened in writing against Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, $250,000.00 or more;

(k) Tort Claim Notice. If Borrower shall acquire a commercial tort claim with a value of $250,000.00 or more, Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof, and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank;

(l) Government Filings. Within ten (10) Business Days after the same are sent or received, copies of all material correspondence, reports, documents, and other filings by Borrower or any of its Subsidiaries with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Applicable Law or that could reasonably be expected to have a material effect on any of the Governmental Approvals or otherwise on the business of Borrower or any of its Subsidiaries;

(m) Registered Organization. If Borrower is not a Registered Organization as of the Effective Date but later becomes one, promptly notify Bank of such occurrence and provide Bank with Borrower's organizational identification number;

(n) Default. Prompt written notice of the occurrence of a Default or Event of Default; and

(o) Other Information. Promptly, from time to time, such other information regarding Borrower or any of its Subsidiaries or compliance with the terms of any Loan Documents as reasonably requested by Bank.

Any submission by Borrower of a Compliance Statement, Borrowing Base Statement, or any other financial statement submitted to the Financial Statement Repository pursuant to this Section 5.3 or otherwise submitted to Bank shall be deemed to be a representation by Borrower that (i) as of the date of such Compliance Statement, Borrowing Base Statement, or other financial statement, the information and calculations set forth therein are true and correct, (ii) as of the end of the compliance period set forth in such submission, Borrower is in compliance with all required covenants except as noted in such Compliance Statement, Borrowing Base Statement, or other financial statement, as applicable, (iii) as of the date of such submission, no Events of Default have occurred or are continuing, (iv) all representations and warranties other than any representations or warranties that are made as of a specific date in Section 4 remain true and correct in all material respects as of the date of such submission except as noted in such Compliance Statement, Borrowing Base Statement, or other financial statement, as applicable, (v) as of the date of such submission, Borrower and each of its Subsidiaries has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise

permitted pursuant to the terms of Sections 4.9 and 5.6(a), and (vi) as of the date of such submission, no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank.

5.4 Accounts Receivable.

(a) Schedules and Documents Relating to Accounts. Borrower shall deliver to Bank transaction reports and schedules of collections, as provided in Section 5.3, on Bank's standard forms; provided, however, that Borrower's failure to execute and deliver the same shall not affect or limit Bank's Lien and other rights in all of Borrower's Accounts, nor shall Bank's failure to advance or lend against a specific Account affect or limit Bank's Lien and other rights therein. If requested by Bank, Borrower shall furnish Bank with copies (or, at Bank's request, originals) of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to such Accounts. In addition, Borrower shall deliver to Bank, on its request, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary indorsements, and copies of all credit memos.

(b) Disputes. Borrower shall promptly, but no later than with the then next-due Compliance Statement pursuant to Section 5.3(c), notify Bank of all disputes or claims relating to Accounts in excess of $100,000.00 individually, or $200,000.00 in the aggregate. Borrower may forgive (completely or partially), compromise, or settle any Account for less than payment in full, or agree to do any of the foregoing so long as (i) Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of business, in arm's-length transactions, and reports the same to Bank in the regular reports provided to Bank; (ii) no Event of Default has occurred and is continuing; and (iii) there shall not be an Overadvance after taking into account all such discounts, settlements and forgiveness.

(c) Collection of Accounts. Borrower shall direct Account Debtors to deliver or transmit all proceeds of Accounts into a lockbox account, or such other "blocked account" as specified by Bank (either such account, the "**Cash Collateral Account**"). Whether or not an Event of Default has occurred and is continuing, Borrower shall promptly deliver all payments on and proceeds of Accounts to the Cash Collateral Account. Subject to Bank's right to maintain a reserve pursuant to Section 5.4(d), all amounts received in the Cash Collateral Account shall be applied to immediately reduce the Obligations under the Revolving Line (unless Bank, in its sole discretion, at times when an Event of Default exists, elects not to so apply such amounts). Borrower hereby authorizes Bank to transfer to the Cash Collateral Account any amounts that Bank reasonably determines are proceeds of the Accounts (provided that Bank is under no obligation to do so and this allowance shall in no event relieve Borrower of its obligations hereunder).

(d) Reserves. Notwithstanding any terms in this Agreement to the contrary, at times when a Default or an Event of Default exists, Bank may hold any proceeds of the Accounts and any amounts in the Cash Collateral Account that are not applied to the Obligations pursuant to Section 5.4(c) above (including amounts otherwise required to be transferred to Borrower's operating account with Bank) as a reserve to be applied to any Obligations regardless of whether such Obligations are then due and payable.

(e) Returns. Provided no Event of Default has occurred and is continuing, if any Account Debtor returns any Inventory to Borrower, Borrower shall promptly (i) determine the reason for such return, (ii) issue a credit memorandum to the Account Debtor in the appropriate amount in accordance with Borrower's customary business practices, and (iii) provide a copy of such credit memorandum to Bank, upon request from Bank. In the event any attempted return occurs after the occurrence and during the continuance of any Event of Default, Borrower shall hold the returned Inventory in trust for Bank, and promptly notify Bank of the return of the Inventory.

(f) Verifications; Confirmations; Credit Quality; Notifications. Bank may, from time to time, (i) verify and confirm directly with the respective Account Debtors the validity, amount and other matters relating to the Accounts, either in the name of Borrower or Bank or such other name as Bank may choose, and notify any Account Debtor of Bank's security interest in such Account and/or (ii) conduct a credit check of any Account Debtor to approve any such Account Debtor's credit. In addition, Bank may notify Account Debtors to make payments in respect of

Accounts directly to Bank. Notwithstanding the foregoing, provided no Event of Default has occurred or is continuing, Bank shall consult with and provide notice to Borrower before contacting Account Debtors directly.

(g) No Liability. Bank shall not be responsible or liable for any shortage or discrepancy in, damage to, or loss or destruction of, any goods, the sale or other disposition of which gives rise to an Account, or for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Account, or for settling any Account in good faith for less than the full amount thereof, nor shall Bank be deemed to be responsible for any of Borrower's obligations under any contract or agreement giving rise to an Account. Nothing herein shall, however, relieve Bank from liability for its own gross negligence or willful misconduct.

5.5 Remittance of Proceeds. Except (a) as otherwise provided in Section 5.4(c), and (b) proceeds from licensing fees, in connection with transactions permitted pursuant to Sections 6.1(f), (g), and (l) , with respect to the Company's license and collaboration agreements in an aggregate amount not to exceed $100,000.00 in any 12 month period, deliver, in kind, all proceeds arising from the disposition of any Collateral to Bank in the original form in which received by Borrower not later than the following Business Day after receipt by Borrower, to be applied to the Obligations (x) prior to an Event of Default, pursuant to the terms of Section 5.4(c) hereof, and (y) after the occurrence and during the continuance of an Event of Default, pursuant to the terms of Section 8.4 hereof; provided that, if no Event of Default has occurred and is continuing, Borrower shall not be obligated to remit to Bank the proceeds of the sale of worn out or obsolete Equipment disposed of by Borrower in good faith in an arm's length transaction for an aggregate purchase price of $500,000.00 or less (for all such transactions in any fiscal year). Borrower agrees that it will not commingle proceeds of Collateral with any of Borrower's other funds or property, but will hold such proceeds separate and apart from such other funds and property and in an express trust for Bank. Nothing in this Section 5.5 limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement.

5.6 Taxes; Pensions.

(a) Timely file, and require each of its Subsidiaries to timely file (in each case, unless subject to a valid extension), all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state, and local taxes, assessments, deposits, and contributions owed by Borrower and each of its Subsidiaries, except for (i) taxes with respect to amounts that do not in the aggregate exceed the amount set forth in Section 4.9(a) hereof, and (ii) deferred payment of any taxes contested pursuant to the terms of Section 4.9(a) hereof, and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay, and require each of its Subsidiaries to pay, all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

(b) To the extent Borrower or any of its Subsidiaries defers payment of any contested taxes, (i) notify Bank in writing of the commencement of, and any material development in, the proceedings, and (ii) post bonds or take any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien."

5.7 Access to Collateral; Books and Records. At reasonable times, on five (5) Business Days notice (provided no notice is required if an Event of Default has occurred and is continuing), Bank, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Borrower's Books. Such inspections and audits shall be conducted no more often than twice every 12 months, unless an Event of Default has occurred and is continuing, in which case such inspections and audits shall occur as often as Bank shall determine is necessary. Notwithstanding the foregoing, the Initial Audit shall be completed within 90 days of the Effective Date. The foregoing inspections and audits shall be conducted at Borrower's expense and the charge therefor shall be $1,000.00 per person per day (or such higher amount as shall represent Bank's then-current standard charge for the same), plus out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than eight (8) days in advance, and Borrower cancels or seeks to or reschedules the audit with less than eight (8) days written notice to Bank, then (without limiting any of Bank's rights or remedies) Borrower shall pay Bank a fee of $2,000.00 plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling.

5.8 Insurance.

(a) Keep its business and the Collateral insured for risks and in amounts standard for companies of Borrower's size in Borrower's industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of Borrower, and in amounts that are reasonably satisfactory to Bank.

(b) All property policies shall have a lender's loss payable endorsement showing Bank as lender loss payee. All liability policies shall show, or have endorsements showing, Bank as an additional insured. Bank shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral.

(c) Ensure that proceeds payable under any property policy are, at Bank's option, payable to Bank on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to $250,000.00 with respect to any loss, but not exceeding $500,000.00 in the aggregate for all losses under all casualty policies in any 12 month period, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Bank has been granted a first priority security interest (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien), and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Bank, be payable to Bank on account of the Obligations then due.

(d) At Bank's request, Borrower shall deliver certified copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 5.8 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Bank, that it will give Bank 30 days' prior written notice before any such policy or policies shall be canceled. If Borrower fails to obtain insurance as required under this Section 5.8 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 5.8, and take any action under the policies Bank deems prudent.

5.9 Accounts.

(a) Maintain all of Borrower's, any of its Subsidiaries' (excluding Securities Corp.), and any Guarantor's operating accounts, depository accounts and excess cash with Bank or Bank's Affiliates. In addition to the foregoing, Borrower shall at all times have on deposit in operating and depository accounts maintained in the name of Borrower with Bank, unrestricted cash in an amount equal to the lesser of (i) one hundred percent (100.0%) of the Dollar value of Borrower's consolidated cash, including any Subsidiaries', or Affiliates' (other than senior executives or directors of the Borrower) cash, in the aggregate, at all financial institutions, and (ii) one hundred ten percent (110.0%) of the then-outstanding Obligations of Borrower to Bank. Bank may restrict withdrawals or transfers by or on behalf of Borrower that would violate this Section 5.9(a) regardless of whether an Event of Default exists at such time.

(b) In addition to the foregoing, Borrower, any Subsidiary of Borrower, and any Guarantor shall obtain any business credit card (other than the Permitted Credit Card) and letter of credit exclusively from Bank.

(c) In addition to and without limiting the restrictions in (a), Borrower shall provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank's Affiliates. For each Collateral Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes, and other employee wage and benefit

payments to or for the benefit of Borrower's employees and identified to Bank by Borrower as such (the "**Excluded Accounts**").

5.10 Financial Covenant. Borrower shall either:

(a) Achieve, to be tested as of the last day of each quarter, minimum Product Revenue for the trailing three (3) month period ending on such date, of at least:

Period	Minimum Product Revenue
March 31, 2022	$[***]
June 30, 2022	$[***]
September 30, 2022	$[***]
December 31, 2022	$[***]
March 31, 2023	$[***]
June 30, 2023	$[***]
September 30, 2023	$[***]
December 31, 2023	$[***]

or;

(b) Maintain, at all times, unrestricted and unencumbered cash in accounts in the name of Borrower with Bank in an amount equal to least the greater of (i) $50,000,000.00, or (ii) the amount of Borrower's Cash Burn, multiplied by six (6).

With respect to the period ending March 31, 2023 and each period thereafter through December 31, 2023, Bank may, in its sole and absolute discretion, agree in writing to update the applicable covenant levels of Minimum Product Revenue based upon, among other factors, an updated Board-approved operating plan and financial projections provided by Borrower to Bank and the Bank's then current credit underwriting.

With respect to the period ending March 31, 2024 and each period thereafter through the Maturity Date, the levels of minimum Product Revenue shall be mutually agreed upon between Borrower and Bank, based upon, among other factors, [***]% of the projected Product Revenue in Borrower's Board-approved operating plan and financial projections (which projections shall demonstrate year-over-year growth), which shall be acceptable to Bank, and subject to Bank's then current credit underwriting. With respect thereto, Borrower's failure to agree in writing (which agreement shall be set forth in a written amendment to this Agreement) on or before January 15, 2024, to any minimum Product Revenue covenant levels mutually agreed upon between Borrower and Bank with respect to the periods ending on and after March 31, 2024, shall result in an immediate Event of Default for which there shall be no grace or cure period.

5.11 Protection of Intellectual Property Rights.

(a) (i) Protect, defend, and maintain the validity and enforceability of Borrower's and each Subsidiary's Intellectual Property, except to the extent that such failure to do so would not reasonably be expected to have a material adverse effect on Borrower's business or operations; (ii) promptly, but no later than with the then next-due Compliance Statement pursuant to Section 5.3(c), advise Bank in writing of infringements or any other event

that could reasonably be expected to materially and adversely affect the value Borrower's and each Subsidiary's Intellectual Property material to Borrower's business; and (iii) not allow any Intellectual Property material to Borrower's or any Subsidiary's business to be abandoned, forfeited, or dedicated to the public without Bank's written consent.

(b) Provide written notice to Bank promptly, but no later than with the then next-due Compliance Statement pursuant to Section 5.3(c), after entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such commercially reasonable steps as Bank reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any such Restricted License to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

5.12 Litigation Cooperation. From the date hereof and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees, and agents and Borrower's books and records, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

5.13 Online Banking.

(a) Utilize Bank's online banking platform for all matters requested by Bank which shall include, without limitation (and without request by Bank for the following matters), uploading information pertaining to Accounts and Account Debtors, requesting approval for exceptions, requesting Credit Extensions, and uploading financial statements and other reports required to be delivered by this Agreement (including, without limitation, those described in Section 5.3 of this Agreement).

(b) Comply with the terms of Bank's Online Banking Agreement as in effect from time to time and ensure that all persons utilizing Bank's online banking platform are duly authorized to do so by an Administrator. Bank shall be entitled to assume the authenticity, accuracy and completeness of any information, instruction or request for a Credit Extension submitted via Bank's online banking platform and to further assume that any submissions or requests made via Bank's online banking platform have been duly authorized by an Administrator.

5.14 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects (other than resulting from any casualty or any taking under power of eminent domain or by condemnation). Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary practices as they exist at the Effective Date. Borrower shall promptly notify Bank of all returns, recoveries, disputes and claims that involve more than $500,000.00.

5.15 Further Assurances. Execute any further instruments and take such further action as Bank reasonably requests to perfect, protect, ensure the priority of or continue Bank's Lien on the Collateral or to effect the purposes of this Agreement.

5.16 Sanctions. (a) Not, and not permit any of its Subsidiaries to, engage in any of the activities described in Section 4.11 in the future; (b) not, and not permit any of its Subsidiaries to, become a Sanctioned Person; (c) ensure that the proceeds of the Obligations are not used to violate any Sanctions; and (d) deliver to Bank any certification or other evidence requested from time to time by Bank in its sole discretion, confirming each such Person's compliance with this Section 5.16. In addition, have implemented, and will consistently apply while this Agreement is in effect, procedures to ensure that the representations and warranties in Section 4.11 remain true and correct while this Agreement is in effect.

5.17 Post-Closing Deliverables.

(a) Within 30 days of the Effective Date, Borrower shall (i) use commercially best efforts to deliver to Bank a duly executed bailee's waiver in favor of Bank for each location where Borrower maintains property with a third party, by each such third party, in form and substance satisfactory to Bank; (ii) deliver to Bank evidence satisfactory to Bank that the insurance policies and endorsements required by Section 5.8 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and additional insured clauses or endorsements in favor of Bank, in form and substance satisfactory to Bank; and (iii) deliver to Bank a stock power form (1 original) executed by EyePoint US with respect to capital stock of Securities Corp. and delivery of stock certificates evidencing ownership interest in Securities Corp., in form and substance satisfactory to Bank.

(b) Within 10 days of the Effective Date, deliver to Bank the duly executed Control Agreement with respect to Parent's SVB Asset Management account, in form and substance satisfactory to Bank.

6 NEGATIVE COVENANTS

Borrower shall not do any of the following without Bank's prior written consent:

6.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (including, without limitation, pursuant to a Division) (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out, surplus or obsolete Equipment that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the ordinary course of business of Borrower; (c) consisting of Permitted Liens and Permitted Investments; (d) consisting of the sale or issuance of any stock, partnership, membership, or other ownership interest or other equity securities of Borrower permitted under Section 6.2 of this Agreement; (e) consisting of Borrower's or its Subsidiaries' use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents; (f) consisting of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business, and licenses of Intellectual Property that could not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States, (g) consisting of development, co-promotion, distribution and other collaborative arrangements where such arrangements provide for the licenses or disclosure of Intellectual Property in the ordinary course of business and consistent with general market practices where such license requires periodic payments based on per unit sales of a product over a period of time; provided that each such license does not effect a legal transfer of title to such Intellectual Property and that each such license must be a true license as opposed to a license that is a sales transaction in substance; (h) of property from any Borrower or Subsidiary to any Borrower; (i) leases or subleases of real property entered into in the ordinary course of Borrower's business; (j) resulting from any casualty or any taking under power of eminent domain or by condemnation; (k) of other immaterial assets not otherwise permitted under this Section 6.1 with a value not to exceed $500,000.00 in the aggregate in any 12 month period, and (l) in accordance with the Alimera License Agreement.

6.2 Changes in Business, Management, Control, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve or permit any of its Subsidiaries to liquidate or dissolve (provided that any Subsidiary may liquidate or dissolve, so long as it transfers all of its assets to Borrower); (c) fail to provide notice to Bank of any Key Person departing from or ceasing to be employed by Borrower within five (5) days after such Key Person's departure from Borrower; (d) permit, allow or suffer to occur any Change in Control; or (e) without at least 10 days' prior written notice to Bank, (i) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than $250,000.00 in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of $250,000.00 to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, (ii) change its jurisdiction of organization, (iii) change its organizational structure or type, (iv) change its legal name, or (v) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to add any new offices or business locations, including warehouses, containing in excess of $250,000.00 of Borrower's assets or property, then Borrower will use commercially reasonable efforts to cause the landlord of any such new offices or business locations, including warehouses, to execute and deliver a landlord consent in form and

substance satisfactory to Bank. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of $250,000.00 to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will use commercially reasonable efforts to cause such bailee to execute and deliver a bailee agreement in form and substance satisfactory to Bank.

6.3 Mergers or Acquisitions. (a) Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, provided that (i) a Subsidiary may merge or consolidate into another Subsidiary or into Borrower, (ii) a Subsidiary may merge or consolidate with another Person pursuant to a Permitted Acquisition, so long as the surviving Person is a Subsidiary; or (b) acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the stock, partnership, membership, or other ownership interest or other equity securities or property of another Person (including, without limitation, by the formation of any Subsidiary or pursuant to a Division), other than a Permitted Acquisition.

6.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

6.5 Encumbrance. Create, incur, allow, or suffer to exist any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein, except for Permitted Liens, or enter into any agreement, document, instrument, or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except (i) as is otherwise permitted in Section 6.1 hereof and the definition of "Permitted Liens" herein, (ii) for customary restrictions on assignment, transfer and encumbrances in license agreements under which Borrower or any Subsidiary is the licensee, or (iii) for covenants with such restrictions in merger or acquisition agreements; provided that such covenants do not prohibit Borrower or any Subsidiary from granting a security interest in Borrower's or any such Subsidiary's Intellectual Property in favor of Bank; and provided further that the counter-parties to such covenants are not permitted to receive a security interest in Borrower's or any Subsidiary's Intellectual Property.

6.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 5.9(c).

6.7 Distributions; Investments. (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any stock, partnership, membership, or other ownership interest or other equity securities, provided that (i) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) Borrower may make cash payments in lieu of fractional shares in connection with any such conversions in an aggregate amount not to exceed $10,000.00 in any twelve (12) month period, (iii) Borrower may pay dividends solely in common stock, (iv) Borrower may repurchase the stock, partnership, membership, or other ownership interest or other equity securities of current or former employees, directors, or consultants pursuant to stock repurchase agreements, or similar agreements, so long as an Event of Default does not exist at the time of any such repurchase and would not exist after giving effect to any such repurchase, provided that the aggregate amount of all such repurchases does not exceed $50,000.00 in any 12 month period, (v) any Subsidiary may pay dividends or make distributions to Borrower, or (vi) Borrower or any Subsidiary may acquire (or withhold) its equity interests pursuant to any employee stock option or similar plan to pay withholding taxes for which Borrower is liable in respect of a current or former officer, director, employee, member of management or consultant upon such grant or award (or upon vesting or exercise thereof); or (b) directly or indirectly make any Investment (including, without limitation, by the formation of any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so.

6.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (a) transactions between or among Borrowers, (b) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's-length transaction with a non-affiliated Person, (c) sales of equity

securities in bona fide venture financing transactions that are not prohibited by Section 6.2, (d) the incurrence of Subordinated Debt, (e) reasonable and customary compensation and other benefits arrangements (including retirement, health, stock option, and other benefit plans and indemnification arrangements approved by the relevant board of directors, board of managers or equivalent corporate body to the extent such approval is required by the organizational documents of such Borrower or Subsidiary) with Borrower's and its Subsidiaries employees, officers, directors and managers approved by the Board or such Subsidiary's board of directors (to the extent such approval is required by the organizational documents of such Borrower or Subsidiary), and (f) transactions permitted pursuant to Section 6.1, 6.4 or 6.7.

6.9 Subordinated Debt. Except as expressly permitted under the terms of the subordination, intercreditor, or other similar agreement to which any Subordinated Debt is subject: (a) make or permit any payment on such Subordinated Debt; or (b) amend any provision in any document relating to such Subordinated Debt which would increase the amount thereof, provide for earlier or greater principal, interest, or other payments thereon, or adversely affect the subordination thereof to Obligations owed to Bank.

6.10 Compliance. (a) Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; (b)(i) fail to meet the minimum funding requirements of ERISA, (ii) permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, (iii) fail to comply with the Federal Fair Labor Standards Act, or (iv) violate any other law or regulation, if the foregoing subclauses (i) through (iv), individually or in the aggregate, could reasonably be expected to have a material adverse effect on Borrower's business or operations, or permit any of its Subsidiaries to do so; or (c) withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing, and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

7 EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

7.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

7.2 Covenant Default.

(a) Borrower fails or neglects to perform any obligation in Section 5 (other than Sections 5.2 (Government Compliance), 5.12 (Litigation Cooperation), 5.14 (Inventory; Returns) and 5.15 (Further Assurances)) or violates any covenant in Section 6; or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant, or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 7) under such other term, provision, condition, covenant, or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants that are required to be satisfied, completed, or tested by a date certain or any covenants set forth in clause (a) above;

7.3 Material Adverse Change. A Material Adverse Change occurs;

7.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any Subsidiary in an amount equal to or greater than $100,000.00 individually or in the aggregate, or (ii) a notice of lien or levy is filed against any of Borrower's or any of its Subsidiaries' assets valued at or greater than $100,000.00 individually or in the aggregate by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting all or any material part of its business;

7.5 Insolvency. (a) Borrower or any of its Subsidiaries are unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and is not dismissed or stayed within 45 days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist or until any Insolvency Proceeding is dismissed);

7.6 Other Agreements. There is, under any agreement to which Borrower, any of Borrower's Subsidiaries, or any Guarantor is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of $250,000.00; or (b) any breach or default by Borrower, any of Borrower's Subsidiaries, or any Guarantor, the result of which could reasonably be expected to have a material adverse effect on Borrower's, any of Borrower's Subsidiaries', or any Guarantor's business or operations;

7.7 Judgments; Penalties. One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least $250,000.00 (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or any of its Subsidiaries by any Governmental Authority, and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, or after execution thereof, or stayed pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the discharge, or stay of such fine, penalty, judgment, order or decree);

7.8 Misrepresentations. Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made (it being agreed and acknowledged by Bank that the projections and forecasts provided by Borrower or any of its Subsidiaries in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results);

7.9 Subordinated Debt. If: (a) any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, or any Person (other than Bank) shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder; (b) a default or event of default (however defined) has occurred under any document, instrument, or agreement evidencing any Subordinated Debt, which default shall not have been cured or waived within any applicable grace period; or (c) the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement or any applicable subordination or intercreditor agreement;

7.10 Lien Priority. There is a material impairment in the perfection or priority of Bank's security interest in the Collateral;

7.11 Guaranty. (a) Any guaranty of any Obligations terminates or ceases for any reason to be in full force and effect; (b) any Guarantor does not perform any obligation or covenant under any guaranty of the Obligations; (c) any circumstance described in Sections 7.3, 7.4, 7.5, 7.6, 7.7, or 7.8 of this Agreement occurs with respect to any Guarantor, (d) the death, liquidation, winding up, or termination of existence of any Guarantor (other as a result of consummating a transaction permitted under Section 6.3 hereof); or (e) (i) a material impairment in the perfection or priority of Bank's Lien in the collateral provided by Guarantor or in the value of such collateral, or (ii) a material adverse change in the general affairs, management, results of operation, condition (financial or otherwise), or the prospect of repayment of the Obligations occurs with respect to any Guarantor; or

7.12 Governmental Approvals. Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) causes or could reasonably be expected to cause a Material Adverse Change, or (ii) materially and adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any Governmental Approval in any other jurisdiction.

8 BANK'S RIGHTS AND REMEDIES

8.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Bank may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 7.5 occurs, all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) demand that Borrower (i) deposit cash with Bank in an amount equal to at least (A) 105.0% of the aggregate face amount of any Letters of Credit denominated in Dollars remaining undrawn, and (B) 115.0% of the Dollar Equivalent of the aggregate face amount of any Letters of Credit denominated in a Foreign Currency remaining undrawn (plus, in each case, all interest, fees, and costs due or estimated by Bank to become due in connection therewith), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

(d) terminate any FX Contracts (it being understood and agreed that (i) Bank is not obligated to deliver the currency which Borrower has contracted to receive under any FX Contract, and Bank may cover its exposure for any FX Contracts by purchasing or selling currency in the interbank market as Bank deems appropriate; (ii) Borrower shall be liable for all losses, damages, costs, margin obligations, and expenses incurred by Bank arising from Borrower's failure to satisfy its obligations under any FX Contract or the execution of any FX Contract; and (iii) Bank shall not be liable to Borrower for any gain in value of a FX Contract that Bank may obtain in covering Borrower's breach);

(e) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, and notify any Person owing Borrower money of Bank's security interest in such funds. Borrower shall collect all payments in trust for Bank and, if requested by Bank, immediately deliver the payments to Bank in the form received from the Account Debtor, with proper endorsements for deposit;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) amount held by Bank owing to or for the credit or the account of Borrower;

(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. For use solely upon the occurrence and during the continuation of an Event of Default, Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 8.1, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

(i) place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books; and

(k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code or any Applicable Law (including disposal of the Collateral pursuant to the terms thereof).

8.2 Power of Attorney. Borrower hereby irrevocably appoints Bank as its true and lawful attorney-in-fact, (a) exercisable upon the occurrence and during the continuance of an Event of Default, to: (i) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (ii) demand, collect, sue, and give releases to any Account Debtor for monies due, settle and adjust disputes and claims about the Accounts directly with Account Debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Bank's or Borrower's name, as Bank chooses); (iii) make, settle, and adjust all claims under Borrower's insurance policies; (iv) pay, contest, or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (v) transfer the Collateral into the name of Bank or a third party as the Code permits, and (vi) receive, open and dispose of mail addressed to Borrower; and (b) regardless of whether an Event of Default has occurred: (i) endorse Borrower's name on any checks, payment instruments, or other forms of payment or security; (ii) notify all Account Debtors to pay Bank directly; and (iii) to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until such time as all Obligations (other than inchoate indemnity obligations) have been satisfied in full, Bank is under no further obligation to make Credit Extensions and the Loan Documents have been terminated. Bank shall not incur any liability in connection with or arising from the exercise of such power of attorney and shall have no obligation to exercise any of the foregoing rights and remedies.

8.3 Protective Payments. If Borrower fails to obtain the insurance called for by Section 5.8 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

8.4 Application of Payments and Proceeds. If an Event of Default has occurred and is continuing (or at any time on the terms set forth in Section 5.4(c), regardless of whether an Event of Default exists), Bank may apply any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Bank shall determine in its sole discretion. Any surplus shall be paid to Borrower or other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, in its commercially reasonable discretion, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

8.5 Bank's Liability for Collateral. Bank's sole duty with respect to the custody, safekeeping, and physical preservation of the Collateral in its possession or under its control, under Section 9-207 of the Code or otherwise, shall be to deal with it in the same manner as Bank deals with its own property consisting of similar instruments or interests. Borrower bears all risk of loss, damage, or destruction of the Collateral.

8.6 No Waiver; Remedies Cumulative. Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.

8.7 Demand Waiver. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

8.8 Borrower Liability. Any Borrower may, acting singly, request Credit Extensions hereunder. Each Borrower hereby appoints each other as agent for the other for all purposes hereunder, including with respect to requesting Credit Extensions hereunder. Each Borrower hereunder shall be liable for the Credit Extensions and Obligations as set forth on Schedule I hereto. Each Borrower waives (a) any suretyship defenses available to it under the Code or any other Applicable Law, and (b) any right to require Bank to: (i) proceed against any Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Bank may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting any Borrower's liability. Notwithstanding any other provision of this Agreement or other related document, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Bank under this Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section 8.8 shall be null and void. If any payment is made to a Borrower in contravention of this Section 8.8, such Borrower shall hold such payment in trust for Bank and such payment shall be promptly delivered to Bank for application to the Obligations, whether matured or unmatured.

9 NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when

delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or email address indicated below; provided that, for clause (b), if such notice, consent, request, approval, demand, or other communication is not sent during the normal business hours of the recipient, it shall be deemed to have been sent at the opening of business on the next Business Day of the recipient. Bank or Borrower may change its mailing or electronic mail address by giving the other party written notice thereof in accordance with the terms of this Section 9.

If to Borrower:	EYEPOINT PHARMACEUTICALS, INC. EYEPOINT PHARMACEUTICALS US, INC. ICON BIOSCIENCE, INC. 480 Pleasant Street Suite A210 Watertown, Massachusetts 02472 Attn: Ron Honig, Chief Legal Officer and Company Secretary Email: rhonig@eyepointpharma.com Website URL: https://eyepointpharma.com/
With a copy to:	Hogan Lovells US LLP 1735 Market St. Floor 23 Philadelphia, PA 19103 Attn: Steve Abrams Email: steve.abrams@hoganlovells.com Hogan Lovells US LLP Columbia Square 555 Thirteenth Street, NW Washington, D.C. 20004 Attn: Edward (Ned) Sinclaire Purdon Email: edward.purdon@hoganlovells.com
If to Bank:	Silicon Valley Bank 275 Grove Street, Suite 2-200 Newton, MA 02466 Attn: Lauren Cole Email: LCole@svb.com
with a copy to (which shall not constitute notice):	Morrison & Foerster LLP 200 Clarendon Street, Floor 20 Boston, Massachusetts 02116 Attn: David A. Ephraim, Esquire Email: DEphraim@mofo.com

10 CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

Except as otherwise expressly provided in any of the Loan Documents, New York law governs the Loan Documents without regard to principles of conflicts of law that would require the application of the laws of another jurisdiction. Borrower and Bank each irrevocably and unconditionally submit to the exclusive jurisdiction of the State and Federal courts in New York, New York; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction with respect to the Loan Documents or to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly, irrevocably and unconditionally submits and consents in

advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby irrevocably and unconditionally consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 9 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT. EACH PARTY HERETO HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

This Section 10 shall survive the termination of this Agreement and the repayment of all Obligations.

11 GENERAL PROVISIONS

11.1 Termination Prior to Maturity Date; Survival. All covenants, representations and warranties made in this Agreement shall continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations) have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement and the repayment of all Obligations, and any Obligations under Bank Services Agreements that are cash collateralized in accordance with Section 3.3 of this Agreement), this Agreement may be terminated prior to the Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Those obligations that are expressly specified in this Agreement as surviving this Agreement's termination and the repayment of all Obligations shall continue to survive notwithstanding this Agreement's termination and the repayment of all Obligations.

11.2 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign or transfer this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's sole discretion) and any other attempted assignment or transfer by Borrower shall be null and void. Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and is continuing, Bank shall not assign its interest in the Loan Documents to any Person who in the reasonable estimation of Bank is (a) a direct competitor of Borrower, whether as an operating company or direct or indirect parent with voting control over such operating company or (b) a vulture fund or distressed debt fund.

11.3 Indemnification.

(a) General Indemnification. Borrower shall indemnify, defend, and hold Bank and its Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, and representatives of Bank and its Affiliates (each, an "**Indemnified Person**") harmless against: all losses, claims, damages, liabilities, and related expenses (including Bank Expenses and the reasonable fees, charges, and disbursements of any counsel for any Indemnified Person) (collectively, "**Claims**") arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, or the consummation of the transactions contemplated hereby or thereby, (ii) any Credit Extension or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of hazardous materials on or from any property owned or operated by Borrower or any of its Subsidiaries, or any

environmental liability related in any way to Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort, or any other theory, whether brought by a third party or by Borrower, and regardless of whether any Indemnified Person is a party thereto; provided that such indemnity shall not, as to any Indemnified Person, be available to the extent that such losses, claims, damages, liabilities, or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Person. All amounts due under this Section 11.3 shall be payable promptly after demand therefor.

(b) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, Borrower shall not assert, and hereby waives, any claim against any Indemnified Person, on any theory of liability, for special, indirect, consequential, or punitive damages (as opposed to direct or actual damages) or any loss of profits arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Credit Extension, or the use of the proceeds thereof. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic, or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

This Section 11.3 shall survive the termination of this Agreement and the repayment of all Obligations until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

11.4 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

11.5 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

11.6 Amendments in Writing; Waiver; Integration. No purported amendment or modification of any Loan Document, or waiver, discharge, or termination of any obligation under any Loan Document, shall be effective unless, and only to the extent, expressly set forth in a writing signed by each party hereto. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance, or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

11.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement. Delivery of an executed signature page of this Agreement by electronic mail transmission shall be effective as delivery of a manually executed counterpart hereof.

11.8 Confidentiality. Bank agrees to maintain the confidentiality of Information (as defined below), except that Information may be disclosed (a) to Bank's Subsidiaries and Affiliates and their respective employees, directors, agents, attorneys, accountants, and other professional advisors (collectively, "**Representatives**" and, together with Bank, collectively, "**Bank Entities**"); (b) to prospective transferees, assignees, credit providers or purchasers of Bank's interests under or in connection with this Agreement and their Representatives (provided, however, any such prospective transferee, assignee, credit provider, purchaser, or their Representative shall have entered into an agreement containing provisions substantially the same as those in this Section); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required or requested in connection with Bank's examination or audit; (e) in connection with the exercise of remedies under the Loan Documents or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. "**Information**" means

all information received from Borrower regarding Borrower or its business, in each case other than information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank; or (ii) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

11.9 Electronic Execution of Documents. The words "execution," "signed," "signature," and words of like import in any Loan Document shall be deemed to include electronic signatures, including any Electronic Signature as defined in the Electronic Transactions Law (2003 Revision) of the Cayman Islands (the "**Cayman Islands Electronic Signature Law**"), if applicable, or the keeping of records in electronic form, including any Electronic Record, as defined in Cayman Islands Electronic Signature Law, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any Applicable Law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Cayman Islands Electronic Signature Law; provided, however that sections 8 and 19(3) of the Cayman Islands Electronic Signature Law shall not apply to this Agreement or the execution or delivery thereof.

11.10 Right of Setoff. Borrower hereby grants to Bank a Lien and a right of setoff as security for all Obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of Bank (including a subsidiary of Bank) or in transit to any of them, and other obligations owing to Bank or any such entity. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may setoff the same or any part thereof and apply the same to any liability or Obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVED.

11.11 Captions and Section References. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement. Unless indicated otherwise, section references herein are to sections of this Agreement.

11.12 Construction of Agreement. The parties hereto mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

11.13 Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary, or other relationship with duties or incidents different from those of parties to an arm's-length contract.

11.14 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights, or remedies under or by reason of this Agreement on any Persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any Person not an express party to this Agreement; or (c) give any Person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

11.15 Anti-Terrorism Law. Bank hereby notifies Borrower that, pursuant to the requirements of Anti-Terrorism Law, Bank may be required to obtain, verify, and record information that identifies Borrower, which information may include the name and address of Borrower and other information that will allow Bank to identify Borrower in accordance with Anti-Terrorism Law. Borrower hereby agrees to take any action necessary to enable Bank to comply with the requirements of Anti-Terrorism Law.

12 ACCOUNTING TERMS AND OTHER DEFINITIONS

12.1 Accounting and Other Terms.

(a) Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP (except for with respect to unaudited financial statements for the absence of footnotes and subject to year-end audit adjustments), provided that if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either Borrower or Bank shall so request, Borrower and Bank shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided, further, that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) Borrower shall provide Bank financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding the foregoing, any obligations of a Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the "ASU") shall continue to be accounted for as operating leases for purposes of all financial definitions, calculations and covenants for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as capitalized lease obligations in accordance with GAAP (for the avoidance of doubt, other than for purposes of the delivery of financial statements prepared in accordance with GAAP).

(b) As used in the Loan Documents: (i) the words "shall" or "will" are mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative; (ii) the term "continuing" in the context of an Event of Default means that the Event of Default has not been remedied (if capable of being remedied) or waived; and (iii) whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer.

12.2 Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in this Section 12.2. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. As used in this Agreement, the following capitalized terms have the following meanings:

"**Account**" is, as to any Person, any "account" of such Person as "account" is defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to such Person.

"**Account Debtor**" is any "account debtor" as defined in the Code, with such additions to such term as may hereafter be made.

"**Administrator**" is an individual that is named:

(a) as an "Administrator" in the "SVB Online Services" form completed by Borrower with the authority to determine who will be authorized to use SVB Online Services (as defined in Bank's Online Banking Agreement as in effect from time to time) on behalf of Borrower; and

(b) as an Authorized Signer of Borrower in an approval by the Board.

"**Advance**" or "**Advances**" means a revolving credit loan (or revolving credit loans) under the Revolving Line.

"**Affiliate**" is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that

Person's senior executive officers, directors, partners, and, for any Person that is a limited liability company, that Person's managers and members. For purposes of the definition of Eligible Accounts, Affiliate shall include a Specified Affiliate.

"**Agreement**" is defined in the preamble hereof.

"**Alimera License Agreement**" means that certain Second Amended and Restated Collaboration Agreement dated as of July 10, 2017, by and between Eyepont Pharmaceuticals US, Inc. (f/k/a pSivida US, Inc.) and Alimera Sciences, Inc. (as amended from time to time).

"**Anti-Terrorism Law**" means any law relating to terrorism or money-laundering, including Executive Order No. 13224 and the USA Patriot Act.

"**Applicable Law**" means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities and all orders and decrees of all courts and arbitrators.

"**Authorized Signer**" means any individual listed in Borrower's Borrowing Resolution who is authorized to execute the Loan Documents, including making (and executing if applicable) any Credit Extension request, on behalf of Borrower.

"**Availability Amount**" is the lesser of (a) the Revolving Line or (b) the Borrowing Base, minus the sum of all outstanding principal amounts of any Advances.

"**Bank**" is defined in the preamble hereof.

"**Bank Entities**" is defined in Section 11.8.

"**Bank Expenses**" are all audit fees, costs, and reasonable expenses (including reasonable, out-of-pocket and documented attorneys' fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower or any Guarantor.

"**Bank Services**" are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank's various agreements related thereto (each, a "**Bank Services Agreement**").

"**Bank Services Agreement**" is defined in the definition of Bank Services.

"**Board**" is Borrower's board of directors or equivalent governing body.

"**Borrower**" or "**Borrowers**" are each set forth on Schedule I hereto.

"**Borrower's Books**" are all Borrower's books and records including ledgers, federal and state tax returns, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"Borrowing Base" is 80.0% of Eligible Accounts, as determined by Bank from Borrower's most recent Borrowing Base Statement; provided, however, that Bank has the right to decrease the foregoing percentage in its sole discretion to mitigate the impact of events, conditions, contingencies, or risks which may adversely affect the Collateral or its value.

"**Borrowing Base Statement**" is that certain statement of the value of certain Collateral in the form specified by Bank to Borrower from time to time.

"**Borrowing Resolutions**" are, with respect to any Person, those resolutions adopted by such Person's board of directors (and, if required under the terms of such Person's Operating Documents, stockholders) and delivered by such Person to Bank approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its secretary on behalf of such Person certifying (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that set forth as a part of or attached as an exhibit to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents, including making (and executing if applicable) any Credit Extension request, on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Bank may conclusively rely on such certificate unless and until such Person shall have delivered to Bank a further certificate canceling or amending such prior certificate.

"**Business Day**" is a day other than a Saturday, Sunday or other day on which commercial banks in the State of California are authorized or required by law to close, except if any determination of a "Business Day" shall relate to an FX Contract, the term "Business Day" shall also mean a day on which dealings are carried on in the country of settlement of the Foreign Currency.

"**Cash Burn**" is, as of any date of determination, (a) Borrower's total cash, divided by (b) Borrower's average quarterly, as determined as of the most recent fiscal quarter then ended, (i) Net Income, plus to the extent deducted in the calculation of Net Income (ii) depreciation expense and amortization expense, (iii) non-cash stock compensation, and (iv) other one-time expenses, as approved by Bank in writing in its sole and absolute discretion, each as determined in accordance with GAAP, divided by three (3).

"**Cash Collateral Account**" is defined in Section 5.4(c).

"**Cash Equivalents**" are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; (c) Bank's certificates of deposit issued maturing no more than one (1) year after issue; and (d) money market funds at least 95.0% of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) of this definition.

"**Cayman Islands Electronic Signature Law**" is defined in Section 11.9.

"**Change in Control**" means (a) at any time, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), shall become, or obtain rights (whether by means of warrants, options, or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of 49.0% or more of the ordinary voting power for the election of directors, partners, managers, and members, as applicable, of Parent (determined on a fully diluted basis) other than by the sale of Parent's equity securities in a public offering or to venture capital or private equity investors so long as Parent identifies to Bank the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction; (b) during any period of 12 consecutive months, a majority of the members of the Board of Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body, or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (c) at any time, Borrower shall cease to own and control, of record and beneficially, directly or indirectly, 100.0% of each class of outstanding stock, partnership, membership, or other ownership interest or other equity securities of each Subsidiary of Borrower free and clear of all Liens (except Permitted Liens).

"**Change in Law**" means the occurrence, after the Effective Date, of: (a) the adoption or taking effect of any law, rule, regulation, or treaty; (b) any change in Applicable Law or in the administration, interpretation, implementation, or application thereof by any Governmental Authority; or (c) the making or issuance of any request, rule, guideline, or directive (whether or not having the force of law) by any Governmental Authority; provided that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines, or directives promulgated by Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority), or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, or issued.

"**Claims**" is defined in Section 11.3.

"**Code**" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"**Collateral**" consists of all of Borrower's right, title and interest in and to the following personal property:

(a) (i) all goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, securities accounts, securities entitlements and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and (ii) all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

(b) Notwithstanding the foregoing, the Collateral does not include (i) SWK Purchased Receivables, (ii) any property to the extent that such grant of security interest is prohibited by any requirement of law of a Governmental Authority or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property, except to the extent that such requirement of law or the term in such contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under Section 9-406, 9-407, 9-408 or 9-409 of the Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity; provided, however, that such security interest shall attach immediately at such time as such requirement of law is not effective or applicable, or such prohibition, breach, default or termination is no longer applicable or is waived, and to the extent severable, shall attach immediately to any portion of the Collateral that does not result in such consequences, (iii) any interest of Borrower as a lessee under an Equipment lease if Borrower is prohibited by the terms of such lease from granting a security interest in such lease or under which such an assignment or Lien would cause a default to occur under such lease; provided, however, that upon termination of such prohibition, such interest shall immediately become Collateral without any action by Borrower or Bank, (iv) the Excluded Accounts, (v) any leasehold interest in real property; (vi) any United States intent-to-use trademark or service mark applications filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, at all times prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto with the United States Patent and Trademark Office or otherwise, or (vii) any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority

(including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Bank's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

(c) Pursuant to the terms of Section 6.5, Borrower has agreed not to encumber any of its Intellectual Property without Bank's prior written consent.

"**Collateral Account**" is any Deposit Account, Securities Account, or Commodity Account.

"**Commodity Account**" is any "commodity account" as defined in the Code, with such additions to such term as may hereafter be made.

"**Compliance Statement**" is that certain statement in the form attached hereto as Exhibit A.

"**Connection Income Taxes**" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"**Contingent Obligation**" is, for any Person, any direct or indirect liability of that Person for (a) any direct or indirect guaranty by such Person of any indebtedness, lease, dividend, letter of credit, credit card, or other obligation of another, (b) any other obligation endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (c) any obligations for undrawn letters of credit for the account of that Person; and (d) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates, or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"**Control Agreement**" is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

"**Copyrights**" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"**Credit Extension**" is any Advance, any FX Contract, the Term Loan Advance, or any other extension of credit by Bank for Borrower's benefit.

"**CRG**" is defined in Section 2.1(e).

"**CRG Credit Agreement**" means that certain Term Loan Agreement dated as of February 13, 2019 among the Borrowers, as borrower or guarantor, the lenders party thereto and CRG, as administrative agent and collateral agent.

"**Default**" means any event which with notice or passage of time or both, would constitute an Event of Default.

"**Default Rate**" is defined in Section 1.4(c).

"**Deferred Revenue**" is all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue.

"**Deposit Account**" is any "**deposit account**" as defined in the Code with such additions to such term as may hereafter be made.

"**Designated Deposit Account**" is the deposit account established by Borrower with Bank for purposes of receiving Credit Extensions.

"**Division**" means, in reference to any Person which is an entity, the division of such Person into 2 or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including, without limitation, as contemplated under Section 18-217 of the Delaware Limited Liability Company Act for limited liability companies formed under Delaware law, Section 17-220 of the Delaware Revised Uniform Limited Partnership Act for limited partnerships formed under Delaware law, or any analogous action taken pursuant to any other Applicable Law with respect to any corporation, limited liability company, partnership or other entity.

"**Dollars**," "**dollars**" or use of the sign "$" means only lawful money of the United States and not any other currency, regardless of whether that currency uses the "$" sign to denote its currency or may be readily converted into lawful money of the United States.

"**Dollar Equivalent**" is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

"**Effective Date**" is set forth on Schedule I hereto.

"**Eligible Accounts**" means Accounts owing to Borrower which arise in the ordinary course of Borrower's business that meet all Borrower's representations and warranties in Section 4.3, that have been, at the option of Bank, confirmed in accordance with Section 5.4(f) of this Agreement, and are due and owing from Account Debtors deemed creditworthy by Bank in its sole discretion. Bank reserves the right, at any time after the Effective Date, in its sole discretion in each instance, to either (i) adjust any of the criteria set forth below and to establish new criteria or (ii) deem any Accounts owing from a particular Account Debtor or Account Debtors to not meet the criteria to be Eligible Accounts. Unless Bank otherwise agrees in writing, Eligible Accounts shall not include:

(a) Accounts (i) for which the Account Debtor is Borrower's Affiliate, officer, employee, investor, or agent, or (ii) that are intercompany Accounts;

(b) Accounts that the Account Debtor has not paid within 120 days, except for McKesson and ASD Specialty Healthcare for which such period is 130 days, of invoice date regardless of invoice payment period terms;

(c) Accounts with credit balances over 120 days from invoice date, except for McKesson and ASD Specialty Healthcare for which such period is 130 days, to the extent of such credit balances;

(d) Accounts owing from an Account Debtor if 50.0% or more of the Accounts owing from such Account Debtor have not been paid within 120 days of invoice date, except for McKesson and ASD Specialty Healthcare for which such period is 130 days;

(e) Accounts owing from an Account Debtor (i) which does not have its principal place of business in the United States or (ii) whose billing address (as set forth in the applicable invoice for such Account) is not in the United States, unless in the case of both (i) and (ii) such Accounts are otherwise approved by Bank in writing;

(f) Accounts billed from and/or payable to Borrower outside of the United States (sometimes called foreign invoiced accounts);

(g) Accounts in which Bank does not have a first priority, perfected security interest under all Applicable Law;

(h) Accounts billed and/or payable in a Currency other than Dollars;

(i) Accounts owing from an Account Debtor to the extent that Borrower is indebted or obligated in any manner to the Account Debtor (as creditor, lessor, supplier or otherwise - sometimes called "contra" accounts, accounts payable, customer deposits or credit accounts), but only to the extent of such Indebtedness or obligations;

(j) Accounts with or in respect of accruals for marketing allowances, incentive rebates, price protection, cooperative advertising and other similar marketing credits, unless otherwise approved by Bank in writing, but only to the extent of such credits;

(k) Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower has assigned its payment rights to Bank and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended;

(l) Accounts with customer deposits and/or with respect to which Borrower has received an upfront payment, to the extent of such customer deposit and/or upfront payment;

(m) Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a "sale guaranteed", "sale or return", "sale on approval", or other terms if Account Debtor's payment may be conditional;

(n) Accounts owing from an Account Debtor where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre-billings);

(o) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);

(p) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor's satisfaction of Borrower's complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);

(q) Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;

(r) Accounts owing from an Account Debtor that has been invoiced for goods that have not been shipped to the Account Debtor unless Bank, Borrower, and the Account Debtor have entered into an agreement acceptable to Bank wherein the Account Debtor acknowledges that (i) it has title to and has ownership of the goods wherever located, (ii) a bona fide sale of the goods has occurred, and (iii) it owes payment for such goods in accordance with invoices from Borrower (sometimes called "bill and hold" accounts);

(s) Accounts for which the Account Debtor has not been invoiced;

(t) Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower's business;

(u) Accounts for which Borrower has permitted Account Debtor's payment to extend beyond 120 days (including Accounts with a due date that is more than 120 days from invoice date) except for McKesson and ASD Specialty Healthcare for which such period is 130 days;

(v) Accounts arising from chargebacks, debit memos or other payment deductions taken by an Account Debtor;

(w) Accounts arising from product returns and/or exchanges (sometimes called "warranty" or "RMA" accounts);

(x) Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding (whether voluntary or involuntary), or becomes insolvent, or goes out of business;

(y) Accounts owing from an Account Debtor with respect to which Borrower has received Deferred Revenue (but only to the extent of such Deferred Revenue);

(z) Accounts owing from an Account Debtor, whose total obligations to Borrower exceed 25.0% of all Accounts, except for McKesson and ASD Specialty Healthcare for which such percentage is 50.0%, for the amounts that exceed that percentage, unless Bank approves in writing; and

(aa) Accounts for which Bank in its sole discretion determines collection to be doubtful, including, without limitation, accounts represented by "refreshed" or "recycled" invoices.

"**Environmental Laws**" means any Applicable Law (including any permits, concessions, grants, franchises, licenses, agreements, or governmental restrictions) relating to pollution or the protection of health, safety, or the environment or the release of any materials into the environment (including those related to hazardous materials, air emissions, discharges to waste or public systems, and health and safety matters).

"**Equinox License Agreement**" means that certain Exclusive License Agreement, dated as of January 31, 2020, by and between the Borrower and Equinox Science, LLC (as amended from time to time).

"**Equipment**" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**ERISA**" is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

"**Event of Default**" is defined in Section 7.

"**Exchange Act**" is the Securities Exchange Act of 1934, as amended.

"**Excluded Accounts**" is defined in Section 5.9(c).

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Bank or required to be withheld or deducted from a payment to Bank, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of Bank 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 (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of Bank with respect to an applicable interest in a Credit Extension or the Revolving Line pursuant to a law in effect on the date on which (i) Bank acquires such interest in the Credit Extensions or the Revolving Line or (ii) Bank changes its lending office, except in each case to the extent that, pursuant to Section 1.8, amounts with respect to such Taxes were payable either to Bank's assignor immediately

before Bank became a party hereto or to Bank immediately before it changed its lending office, (c) Taxes attributable to Bank's failure to comply with Section 1.8(e), and (d) any withholding Taxes imposed under FATCA.

"**EyePoint US**" is set forth on Schedule I hereto.

"**FATCA**" means Sections 1471 through 1474 of the Internal Revenue 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 Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Internal Revenue Code.

"**Final Payment**" is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Term Loan Maturity Date, (b) the repayment of the Term Loan Advance in full, (c) as required pursuant to Sections 1.2(c) or 1.2(d), or (d) the termination of this Agreement, in an amount equal to $600,000.00.

"**Financial Statement Repository**" is NECreditSolutions@svb.com or such other means of collecting information approved and designated by Bank after providing notice thereof to Borrower from time to time.

"**Foreign Currency**" is the lawful money of a country other than the United States.

"**Funding Date**" is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

"**FX Contract**" is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency at a set price or on a specified date.

"**GAAP**" is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

"**General Intangibles**" is all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"**Governmental Approval**" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"**Governmental Authority**" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"**Guarantor**" is any Person providing a Guaranty in favor of Bank.

"**Guaranty**" is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

"**Icon**" is set forth on Schedule I hereto.

"**Indebtedness**" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, (d) Contingent Obligations and (e) other short- and long-term obligations under debt agreements, lines of credit and extensions of credit.

"**Indemnified Person**" is defined in Section 11.3.

"**Indemnified Taxes**" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"**Information**" is defined in Section 11.8.

"**Initial Audit**" is Bank's inspection of Borrower's Accounts, the Collateral, and Borrower's Books, with results satisfactory to Bank in its sole discretion.

"**Insolvency Proceeding**" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, receivership or other relief.

"**Intellectual Property**" means, with respect to any Person, all of such Person's right, title, and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how and operating manuals;

(c) any and all source code;

(d) any and all design rights which may be available to such Person;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"**Internal Revenue Code**" means the U.S. Internal Revenue Code of 1986, and the rules and regulations promulgated thereunder, each as amended or modified from time to time.

"**Inventory**" is all "**inventory**" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"**Investment**" is any beneficial ownership interest in any Person (including stock, partnership, membership, or other ownership interest or other equity securities), and any loan, advance or capital contribution to any Person.

"**Key Person**" is each of Borrower's chief executive officer, chief financial officer, chief development officer, chief commercial officer, chief medical officer and chief operating officer.

"**Letter of Credit**" is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

"**Lien**" is a claim, mortgage, deed of trust, levy, attachment charge, pledge, hypothecation, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"**Loan Documents**" are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Perfection Certificate, the Stock Pledge Agreement, any Control Agreements, any Bank Services Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower or any Guarantor, landlord waivers and consents, bailee waivers and consents, and any other present or future agreement by Borrower and/or any Guarantor with or for the benefit of Bank in connection with this Agreement or Bank Services, all as amended, restated, or otherwise modified in accordance with the terms thereof.

"**Material Adverse Change**" is (a) a material impairment in the perfection or priority of Bank's Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; (c) a material impairment of the prospect of repayment of any portion of the Obligations; or (d) Bank determines, based upon information available to it and in its reasonable judgment, that there is a likelihood that Borrower shall fail to comply with one or more of the financial covenants in Section 5 during the next succeeding financial reporting period

"**Maturity Date**" means the Term Loan Maturity Date and/or Revolving Line Maturity Date, as applicable.

"**Net Income**" means, as calculated on a consolidated basis for Borrower for any period as at any date of determination, the net profit (or loss), after provision for taxes, of Borrower for such period taken as a single accounting period.

"**Obligations**" are Borrower's obligations to pay when due any debts, principal, interest, fees, Bank Expenses, the Final Payment, the Prepayment Fee, the Unused Revolving Line Facility Fee, the Termination Fee, and other amounts Borrower owes Bank now or later, whether under this Agreement, the other Loan Documents, or otherwise, including, without limitation, all obligations relating to Bank Services and interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower's duties under the Loan Documents.

"**OFAC**" is the Office of Foreign Assets Control of the United States Department of the Treasury and any successor thereto.

"**Operating Documents**" are, for any Person, such Person's formation documents, as certified by the Secretary of State (or equivalent agency) of such Person's jurisdiction of organization on a date that is no earlier than 30 days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership or limited partnership, its partnership agreement or limited partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"**Other Connection Taxes**" means, with respect to Bank, Taxes imposed as a result of a present or former connection between Bank and the jurisdiction imposing such Tax (other than connections arising from Bank 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 any Credit Extension or Loan Document).

"**Other Taxes**" means all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration

of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"**Overadvance**" is defined in Section 1.3.

"**Patents**" means all patents, patent applications, and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same.

"**Parent**" is set forth on Schedule I hereto.

"**Payment/Advance Form**" is that certain form in the form attached hereto as Exhibit B.

"**Payment Date**" is set forth on Schedule I hereto.

"**Perfection Certificate**" is the Perfection Certificate delivered by Borrower in connection with this Agreement.

"**Permitted Acquisition**" means a transaction whereby Borrower acquires all or substantially all of the capital stock or property of another Person (a "**Target**"), which satisfies each of the following conditions:

(a) Borrower shall be in compliance with the financial covenant set forth in Section 5.10 of the Loan Agreement on the date of such proposed transaction and provide Bank with evidence that Borrower shall be in pro forma compliance (for the immediately following twelve (12) month period) with the financial covenants set forth in Section 5.10 of the Loan Agreement after giving effect to each such proposed transaction;

(b) such proposed transaction shall only involve an entity formed, and assets located, in the United States, and the party or parties being acquired is in the same or a substantially similar line of business as Borrower;

(c) no Event of Default has occurred and is continuing or would exist after giving effect to the transaction and Bank has received satisfactory evidence that Borrower is in compliance with all terms and conditions of this Agreement (and that it will be in compliance after giving effect to the transaction);

(d) the transaction is approved by the board of directors (or equivalent control group) of all parties to the transaction;

(e) all consideration to be paid by Borrower and its Subsidiaries in connection with any transaction shall be in the form of stock and no Indebtedness will be incurred, assumed, or would exist with respect to Borrower or its Subsidiaries as a result of the contemplated transaction, other than Permitted Indebtedness, and no Liens will be incurred, assumed, or would exist with respect to the assets of Borrower or its Subsidiaries as a result of the contemplated transaction, other than Permitted Liens;

(f) Borrower provides Bank (i) written notice of the transaction at least 10 days before the closing of the transaction, and (ii) copies of the transaction agreement and other material documents relative to the contemplated transaction and such other financial information, financial analysis, documentation or other information relating to such transaction as Bank shall reasonably request at least 10 days before the closing of the transaction;

(g) Borrower is a surviving legal entity after completion of the contemplated transaction;

(h) the contemplated transaction is consensual and non-hostile;

(i) any Target acquired in the transaction shall, within 30 days of the consummation of the transaction, provide Bank either joinder documentation to cause such Target to become a co-borrower hereunder or a guaranty to cause such Target to become a Guarantor hereunder (as determined by Bank in its sole discretion), together

with documentation, all in form and substance satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such Target);

(j) the transaction and Target are accretive in all respects; and

(k) Borrower shall have delivered to Bank, at least 1 Business Days prior to the date on which any such transaction is to be consummated (or such later date as is agreed by Bank in its sole discretion), a certificate of a Responsible Officer of Borrower, in form and substance reasonably satisfactory to Bank, certifying that all of the requirements set forth in this definition have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition.

"**Permitted Indebtedness**" is:

(a) Borrower's Indebtedness to Bank under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date which is shown on the Perfection Certificate (excluding, for clarity, the Indebtedness owed to CRG);

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) unsecured guarantees by Borrower or a secured Guarantor of Indebtedness of Borrower or a secured Guarantor in an aggregate amount outstanding not to exceed $100,000.00 at any time;

(g) Indebtedness secured by Liens permitted under clause (c) of the definition of "Permitted Liens" hereunder;

(h) unsecured Indebtedness incurred in connection with Borrower's corporate credit card with American Express in an aggregate amount outstanding not to exceed $700,000.00 at any time (the "**Permitted Credit Card**");

(i) Indebtedness incurred to finance insurance premiums in the ordinary course of Borrower's business;

(j) other unsecured Indebtedness not otherwise permitted hereunder in an aggregate amount not to exceed $250,000.00 outstanding at any time;

(k) intercompany Indebtedness permitted as a Permitted Investment under clause (g) of the definition thereof; and

(l) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (k) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

"**Permitted Investments**" are:

(a) (i) Investments (including, without limitation, Subsidiaries) existing on the Effective Date which are shown on the Perfection Certificate (excluding, for clarity, the Indebtedness owed to CRG), and (ii) the Equinox License Agreement and transactions contemplated thereby;

(b) cash Investments by Borrower in Securities Corp.; provided that (i) an Event of Default does not exist at the time of any such Investment, and would not exist after giving effect to any such Investment, and (ii) Borrower and its Subsidiaries are at all times in compliance with Section 5.9(a);

(c) (i) Investments consisting of Cash Equivalents, and (ii) any Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Bank;

(d) Investments consisting of accounts (but only to the extent that Borrower is permitted to maintain such accounts pursuant to Section 5.9 of this Agreement) in which Bank has a first priority perfected security interest (to the extent required pursuant to Section 5.9 of this Agreement);

(e) Investments accepted in connection with Transfers permitted by Section 6.1;

(f) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(g) Investments (i) by one Borrower in another Borrower, and (ii) by Borrower or a secured Guarantor in a Subsidiary that is not a Borrower or a secured Guarantor for the ordinary and necessary current operating expenses of such Subsidiary in an amount not to exceed $100,000.00 in the aggregate in any twelve (12) month period;

(h) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers, directors, partners, managers and members relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee equity purchase plans or similar agreements approved by the Board;

(i) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(j) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (j) shall not apply to Investments of Borrower in any Subsidiary;

(k) joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support, provided that any cash investments by Borrower do not exceed $250,000.00 in the aggregate in any twelve (12) month period;

(l) Permitted Acquisitions;

(m) to the extent constituting an Investment, security deposits with utilities, landlords and other like Persons made in the ordinary course of Borrower's business in an aggregate amount not to exceed $250,000.00 during the term of this Agreement; and

(n) other Investments not otherwise permitted by Section 6.6 not exceeding $100,000.00 in the aggregate in any fiscal year.

"**Permitted Liens**" are:

(a) Liens existing on the Effective Date which are shown on the Perfection Certificate (excluding, for clarity, any Liens in favor of CRG) or arising under this Agreement or the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on Borrower's Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code;

(c) purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than $500,000.00 in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed $250,000.00 and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the Indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) easements, rights-of-way, zoning restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest therein;

(i) Liens in favor of customs or revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) Liens securing Indebtedness permitted under clause (i) of the definition of "Permitted Indebtedness" herein;

(k) (i) non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business, and licenses of Intellectual Property that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States; (ii) development, co-promotion, distribution and other collaborative arrangements where such arrangements provide for the licenses or disclosure of Intellectual Property in the ordinary course of business and consistent with general market practices where such license requires periodic payments based on per unit sales of a product over a period of time; provided that each such license does not effect a legal transfer of title to such Intellectual Property and that each such license must be a true license as opposed to a license that is a sales transaction in substance; and (iii) the Alimera License Agreement;

(l) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 7.4 and 7.7; and

(m) customary Liens of any bank in connection with statutory, common law and contractual rights of setoff and recoupment with respect to any deposit account or securities account of Borrower, provided that

(i) Bank has a first priority perfected security interest in such account (to the extent required pursuant to Section 5.9 of this Agreement), and (ii) such account is permitted to be maintained pursuant to Section 5.9 of this Agreement.

"**Person**" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Prepayment Fee**" shall be an additional fee, payable to Bank, with respect to the Term Loan Advance, in an amount equal to:

(a) for a prepayment of the Term Loan Advance made on or prior to the first (1st) anniversary of the Effective Date, three percent (3.0%) of the outstanding principal amount of the Term Loan Advance immediately prior to the date of such prepayment;

(b) for a prepayment of the Term Loan Advance made after the first (1st) anniversary of the Effective Date, but on or prior to the second (2nd) anniversary of the Effective Date, two percent (2.0%) of the outstanding principal amount of the Term Loan Advance immediately prior to the date of such prepayment;

(c) for a prepayment of the Term Loan Advance made after the second (2nd) anniversary of the Effective Date, but on or prior to the third (3rd) anniversary of the Effective Date, one percent (1.0%) of the outstanding principal amount of the Term Loan Advance immediately prior to the date of such prepayment; and

(d) for a prepayment of the Term Loan Advance made after the third (3rd) anniversary of the Effective Date, but prior to the Term Loan Maturity Date, one-half of one percent (0.50%) of the outstanding principal amount of the Term Loan Advance immediately prior to the date of such prepayment.

Notwithstanding the foregoing, provided no Event of Default has occurred and is continuing, the Prepayment Fee shall be waived by Bank, if Bank closes on the refinance and redocumentation of the Term Loan Advance (in its sole and absolute discretion) prior to the Term Loan Maturity Date.

"**Prime Rate**" is set forth on Schedule I hereto.

"**Prime Rate Margin**" is set forth on Schedule I hereto.

"**Product Revenue**" is Borrower's net revenue, determined in accordance with GAAP, attributable to Borrower's sales of Dexycu and Yutiq.

"**Registered Organization**" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

"**Representatives**" is defined in Section 11.8.

"Reserves" means, as of any date of determination, such amounts as Bank may from time to time establish and revise in its sole discretion, reducing the amount of Advances and other financial accommodations which would otherwise be available to Borrower (a) to reflect events, conditions, contingencies or risks which, as determined by Bank in its sole discretion, do or may adversely affect (i) the Collateral or any other property which is security for the Obligations or its value (including without limitation any increase in delinquencies of Accounts), (ii) the assets, business or prospects of Borrower or any Guarantor, or (iii) the security interests and other rights of Bank in the Collateral (including the enforceability, perfection and priority thereof); or (b) to reflect Bank's reasonable belief that any collateral report or financial information furnished by or on behalf of Borrower or any Guarantor to Bank is or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which Bank determines in its sole discretion constitutes a Default or an Event of Default.

"**Responsible Officer**" is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

"**Restricted License**" is any material license or other material agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with Bank's right to sell any Collateral.

"**Revolving Line**" is set forth on Schedule I hereto.

"**Revolving Line Maturity Date**" is set forth on Schedule I hereto.

"**Sanctioned Person**" means a Person that: (a) is listed on any Sanctions list maintained by OFAC or any similar Sanctions list maintained by any other Governmental Authority having jurisdiction over Borrower; (b) is located, organized, or resident in any country, territory, or region that is the subject or target of Sanctions; or (c) is 50.0% or more owned or controlled by one (1) or more Persons described in clauses (a) and (b) hereof.

"**Sanctions**" means the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by the United States government and any of its agencies, including, without limitation, OFAC and the U.S. State Department, or any other Governmental Authority having jurisdiction over Borrower.

"**SEC**" is the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

"**Securities Account**" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

"**Securities Corp.**" is EYE POINT PHARMACEUTICALS SECURITIES CORPORATION, a corporation organized under the laws of the Commonwealth of Massachusetts and a Subsidiary of EyePoint US.

"**Specified Affiliate**" is any Person (a) more than ten percent (10.0%) of whose aggregate issued and outstanding equity or ownership securities or interests, voting, non-voting or both, are owned or held directly or indirectly, beneficially or of record, by Borrower, and/or (b) whose equity or ownership securities or interests representing more than ten percent (10.0%) of such Person's total outstanding combined voting power are owned or held directly or indirectly, beneficially or of record, by Borrower.

"**Stock Pledge Agreement**" means that certain Stock Pledge Agreement executed by EyePoint US in favor of Bank dated as of Effective Date, as may be amended, modified, supplemented or restated from time to time.

"**Subordinated Debt**" is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all of Borrower's or any of its Subsidiaries' now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank.

"**Subsidiary**" is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock, partnership, membership, or other ownership interest or other equity securities having ordinary voting power (other than stock, partnership, membership, or other ownership interest or other equity securities having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower or Guarantor.

"**SWK Purchase Receivables**" means Borrower's right, title and interest in and to all Purchase Receivables (as defined in the SWK Royalty Purchase Agreement).

"**SWK Royalty Purchase Agreement**" is that certain Royalty Purchase Agreement dated as of December 17, 2020 between Parent, EyePoint US and SWK Funding LLC, a Delaware limited liability company.

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term Loan Advance**" is defined in Section 1.2(a).

"**Term Loan Availability Amount**" is set forth on Schedule I hereto.

"**Term Loan Maturity Date**" is set forth on Schedule I hereto.

"**Termination Fee**" is defined in Section 1.5(c).

"**Trademarks**" means, with respect to any Person, any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of such Person connected with and symbolized by such trademarks.

"**Transfer**" is defined in Section 6.1.

"**Unused Revolving Line Facility Fee**" is defined in Section 1.5(d).

"**USA Patriot Act**" means the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56, signed into law on October 26, 2001), as amended from time to time.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

EYEPOINT PHARMACEUTICALS, INC.

By: /s/ George Elston
Name: George Elston
Title: Chief Financial Officer and Head of Corporate Development

EYEPOINT PHARMACEUTICALS US, INC.

By: /s/ George Elston
Name: George Elston
Title: Chief Financial Officer

ICON BIOSCIENCE, INC.

By: /s/ Philip Hoffstein
Name: Philip Hoffstein
Title: President

BANK:

SILICON VALLEY BANK

By: /s/ Lauren Cole
Name: Lauren Cole
Title: Director

SCHEDULE I
LSA PROVISIONS

LSA Section	**LSA Provision**
1.1(a) – Revolving Line – Availability	Amounts borrowed under the Revolving Line may be prepaid or repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein.
1.2(a) – Term Loan – Availability	After repayment, the Term Loan Advance (or any portion thereof) may not be reborrowed.
1.2(b) – Term Loan – Repayment	Commencing on February 1, 2024 and continuing on each Payment Date thereafter, Borrower shall repay the Term Loan Advance in (i) 36 consecutive equal monthly installments of principal, plus (ii) monthly payments of accrued interest at the rate set forth in Section 1.4(b)(ii).
1.4(a)(i) – Interest Payments – Advances	Interest on the principal amount of each Advance is payable in arrears monthly (A) on each Payment Date, (B) on the date of any prepayment of such Advance, and (C) on the Revolving Line Maturity Date.
1.4(a)(ii) – Interest Payments – Term Loan Advance	Interest on the principal amount of the Term Loan Advance is payable in arrears monthly (A) on each Payment Date commencing on the first Payment Date following the Funding Date of the Term Loan Advance, (B) on the date of any prepayment of the Term Loan Advance, and (C) on the Term Loan Maturity Date.
1.4(b)(i) – Interest Rate – Advances	The outstanding principal amount of any Advance shall accrue interest at a floating rate per annum equal to the Prime Rate, which interest shall be payable in accordance with Section 1.4(a).
1.4(b)(ii) – Interest Rate – Term Loan Advance	The outstanding principal amount of the Term Loan Advance shall accrue interest at a floating rate per annum equal to the greater of (1) five and one half of one percent (5.50%), and (2) the Prime Rate plus the Prime Rate Margin, which interest shall be payable in accordance with Section 1.4(a).
1.4(e) – Interest Computation	Interest shall be computed on the basis of the actual number of days elapsed and a 360-day year for any Credit Extension outstanding.
8.8 – Borrower Liability	Each Borrower hereunder shall be jointly and severally obligated to repay all Credit Extensions made hereunder and any other Obligations related thereto, regardless of which Borrower actually receives said Credit Extension, as if each Borrower hereunder directly received all Credit Extensions.
12.2 – "Borrower" or "Borrowers"	"**Borrower**" or "**Borrowers**" means each of (a) **EYEPOINT PHARMACEUTICALS, INC**., a Delaware corporation ("**Parent**"), (b) **EYEPOINT PHARMACEUTICALS US, INC.**, a Delaware corporation ("**EyePoint US**"), and (c) and **ICON BIOSCIENCE, INC.**, a Delaware corporation ("**Icon**").
12.2 – "Effective Date"	"**Effective Date**" is March 9, 2022.
12.2 – "Payment Date"	"**Payment Date**" is (a) with respect to Term Loan Advance, the first (1st) calendar day of each month and (b) with respect to Advances, the last calendar day of each month.
12.2 – "Prime Rate"	"**Prime Rate**" is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the "prime rate" then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the "Prime Rate" shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors); provided that, in the event such rate of interest is less than zero percent (0.0%) per annum, such rate shall be deemed to be zero percent (0.0%) per annum for purposes of this Agreement.

12.2 – "Prime Rate Margin"	"**Prime Rate Margin**" is two and one quarter of one percent (2.25%).
12.2 – "Revolving Line"	"**Revolving Line**" is an aggregate principal amount equal to $15,000,000.00.
12.2 – "Revolving Line Maturity Date"	"**Revolving Line Maturity Date**" is January 1, 2027.
12.2 – "Term Loan Availability Amount"	"**Term Loan Availability Amount**" is an original principal amount equal to $30,000,000.00.
12.2 – "Term Loan Maturity Date"	"**Term Loan Maturity Date**" is January 1, 2027.

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY "[***]", HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

EXHIBIT A
COMPLIANCE STATEMENT

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY "[***]", HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

EXHIBIT B
LOAN PAYMENT/ADVANCE REQUEST FORM

Exhibit 21.1

List of Subsidiaries of EyePoint Pharmaceuticals, Inc.

Subsidiary Name	Jurisdiction of Incorporation
EyePoint Pharmaceuticals US, Inc.	Delaware
pSiMedica Limited	United Kingdom
EyePoint Pharmaceuticals Securities Corporation	Massachusetts
Icon Bioscience, Inc.	Delaware

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-152146, 333-163208, 333-216166, 333-227525, 333-233137, 333-249902, and 333-258595 on Form S-8 and Registration Nos. 333-226341, 333-253053, 333-252170, and 333-258598 on Form S-3 of our report dated March 11, 2022, relating to the financial statements of EyePoint Pharmaceuticals, Inc. and subsidiaries appearing in this Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ Deloitte & Touche LLP

Boston, Massachusetts
March 11, 2022

Exhibit 31.1

Certification of Principal Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.

CERTIFICATIONS

I, **Nancy Lurker**, certify that:

1. I have reviewed this Annual Report on Form 10-K of **EYEPOINT PHARMACEUTICALS, INC.**;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2022

/s/ Nancy Lurker
Name: Nancy Lurker
Title: President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.

CERTIFICATIONS

I, **George O. Elston**, certify that:

1. I have reviewed this Annual Report on Form 10-K of **EYEPOINT PHARMACEUTICALS, INC.**;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2022

/s/ George O. Elston
Name: George O. Elston
Title: Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Exhibit 32.1

Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

In connection with the Annual Report of EyePoint Pharmaceuticals, Inc. (the "Company") on Form 10-K for the twelve months ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Nancy Lurker, President and Chief Executive Officer of the Company, certify that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 11, 2022

/s/ Nancy Lurker

Name: Nancy Lurker
Title: President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

In connection with the Annual Report of EyePoint Pharmaceuticals, Inc. (the "Company") on Form 10-K for the twelve months ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, George O. Elston, Chief Financial Officer of the Company, certify that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 11, 2022

/s/ George O. Elston

Name: George O. Elston
Title: Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)