

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

**Form 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2016

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 001-34899

**Pulse Biosciences, Inc.**

(Exact name of registrant as specified in its charter)

Nevada  
(State or other jurisdiction of  
incorporation or organization)

46-5696597  
(I.R.S. Employer  
Identification No.)

849 Mitten Road, Suite 104  
Burlingame, CA  
(Address of principal executive offices)

94010  
(Zip Code)

(Registrant's telephone number, including area code): (650) 697-3939

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

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, par value \$0.001 per share	The NASDAQ Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: None

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

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes  No

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input checked="" type="checkbox"/>

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

Aggregate market value of registrant's common stock held by non-affiliates of the registrant on June 30, 2016, based upon the closing price of Common Stock on such date as reported by NASDAQ Capital Markets, was approximately \$54,677,000. Shares of voting stock held by each officer and director have been excluded in that such persons may be deemed to be affiliates. This assumption regarding affiliate status is not necessarily a conclusive determination for other purposes.

Number of shares outstanding of the issuer's common stock as of March 3, 2017: 14,136,220

**DOCUMENTS INCORPORATED BY REFERENCE:**

Portions of the registrant's definitive Proxy Statement relating to its 2017 Annual Meeting of Stockholders to be held on May 16, 2017 are incorporated by reference into Part III of this Form 10-K where indicated. Such Proxy Statement will be filed with the U.S. Securities and Exchange Commission within 120 days after the end of the fiscal year to which this report relates.

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**SPECIAL NOTE ABOUT FORWARD-LOOKING STATEMENTS**

This Annual Report on Form 10-K, or Annual Report, contains “forward-looking statements” that involve substantial risks and uncertainties. In some cases, you can identify forward-looking statements by the following words: “may,” “will,” “could,” “would,” “should,” “expect,” “intend,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “project,” “potential,” “continue,” “ongoing” or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words. These statements relate to future events or our future financial performance or condition and involve known and unknown risks, uncertainties and other factors that could cause our actual results, levels of activity, performance or achievement to differ materially from those expressed or implied by these forward-looking statements.

You should read this Annual Report and the documents that we reference elsewhere in this Annual Report completely and with the understanding that our actual results may differ materially from what we expect as expressed or implied by our forward-looking statements. In light of the significant risks and uncertainties to which our forward-looking statements are subject, you should not place undue reliance on or regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified timeframe, or at all. We discuss many of these risks and uncertainties in greater detail in this Annual Report, particularly in Part I, Item 1A, “Risk Factors.” These forward-looking statements represent our estimates and assumptions only as of the date of this Annual Report regardless of the time of delivery of this Annual Report. Except as required by law, we undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise after the date of this Annual Report.

In this Annual Report on Form 10-K, references to “Pulse,” “Pulse Biosciences,” “we,” “us,” “our” and the “Company” refer to Pulse Biosciences, Inc. and its wholly owned subsidiaries, unless expressly indicated or the context otherwise requires.

**Part I**

**Item 1. Business**

**General**

We are a medical technology company developing a novel tissue treatment platform based upon our proprietary Nano-Pulse Stimulation (NPS) technology. We believe NPS will provide unique benefits to patients in a wide variety of medical applications. We are currently pursuing applications in immuno-oncology, dermatology, general tissue treatment and veterinary medicine, and we may pursue many others in the future.

Nano-Pulse Stimulation is a non-thermal, precise, focal drug-free tissue treatment technology that initiates cell death within treated tissue. NPS utilizes nanosecond pulsed electric fields to induce cell signaling and the activation of cellular pathways by creating transient nanopores in cellular membranes and organelles. Once created, these transient nanopores allow ions to pass through these membranes, which disrupts cellular function and initiates cell death. NPS cell death eliminates treated tissue cells with a minimal inflammatory response, leading to a favorable healing process and the replacement of treated tissue cells with healthy tissue cells.

In pre-clinical models of cancerous lesions, NPS has been shown to induce immunogenic cell death (ICD), a process that leads to the exposure of the unique cancer cell antigens to the immune system, resulting in the generation of cytotoxic T-cells and the mounting of an adaptive immune response targeted against those cells, without any observed toxic side effects. Based on this pre-clinical research, we believe NPS can offer a novel tumor treatment therapy, as a monotherapy and in combination with other therapies.

The PulseTx™ System (PulseTx) is our proprietary NPS delivery system comprised of a tunable nanosecond pulse generation system and interchangeable tissue applicators, designed to enable the application of NPS across a variety of tissue treatment applications. We believe the unique biological response of cells to our novel NPS technology enables Pulse Biosciences the opportunity to pursue therapeutic applications across a wide array of tissues types, including benign and cancerous lesions. The favorable healing characteristics of NPS afford opportunities in applications such as dermatology and aesthetics, while the ability to initiate ICD holds promise in key applications such as immune-oncology.

Pulse Biosciences strategy is to deploy the PulseTx System in pilot clinical studies to help identify those applications where NPS represents a high value opportunity. Based on these results and the market opportunity we will pursue the required regulatory clearances and ultimately commercialize these opportunities.

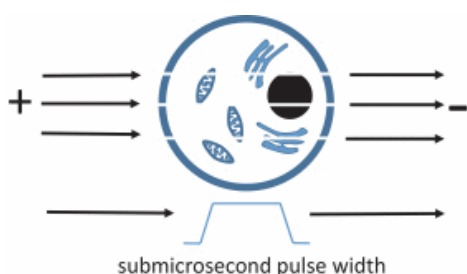
## Our Proprietary Nano-Pulse Stimulation Technology

We are developing a therapeutic tissue treatment platform based upon our proprietary NPS technology. NPS is a local, non-thermal, and drug-free treatment that can physically stimulate cell death, a process in which cells systematically eliminate themselves to make way for new cells. The NPS cell death process triggers a cascade of cellular events that in preclinical models has been shown to induce a sustained adaptive immune response when employed in cancerous tumor cells, producing a durable systemic therapeutic benefit from a local treatment.

Programmed cell death is a normal process exhibited by many cells in the human body when they are no longer functioning properly. It involves a slow “digestion” of cellular proteins and DNA in the cells that are then recognized and removed by the immune system. When this process results in ICD, it stimulates the immune system to generate an immune response that actively seeks out and destroys any similar cells in the body. Pre-clinical studies suggest that NPS can stimulate programmed cell death and ICD in cancer cells.

We believe the unique characteristics of NPS cell death will translate to positive clinical outcomes and may establish NPS as a superior treatment modality across a variety of potential applications, including oncology, dermatology, and other minimally invasive applications where current treatment modalities do not provide benefits comparable to those afforded by NPS.

NPS exerts an electrical force on water molecules, driving them into the lipid bilayer, and producing transient, water-filled nanopores in cell and organelle membranes.



These transient pores allow ions to pass through them, and this can have several immediate effects including the release of calcium ions from the endoplasmic reticulum and the termination of the mitochondrial membrane potential. Downstream effects of NPS include initiating a signaling cascade that we believe can result in ICD in immunogenic lesions. ICD is a process by which cells are induced to die in a manner that activates the immune system to both clear the dying tumor cell and enroll cytotoxic T cells (CD8<sup>+</sup>) and other immune system cells to recognize and eliminate cells of the same tumor type. Alternatively, in non-immunogenic lesions, we believe NPS can initiate a positive healing response with little inflammation.

It is this nanoporation effect on internal cellular membranes that differentiates our technology from other energy -based therapies, such as irreversible electroporation (IRE) and radiofrequency ablation (RFA).

We believe we are a uniquely positioned medical technology company with the intellectual property, technology, and know-how to commercialize our NPS technology. Many other medical device companies produce products for treating and ablating tumors using a number of different modalities, including the use of extreme heat (e.g. RFA, microwave ablation or electrocauterization) or cold (e.g. cryoablation), or weaker electric fields with much longer pulses (e.g. IRE). The use of these modalities generally leads to immediate cellular necrosis. We believe that NPS differs significantly as it offers a non-thermal and non-ionizing technology that can be used to precisely treat a volume of tissue with minimal inflammatory response, potentially reducing collateral damage to surrounding tissue with a favorable healing profile. We believe these attributes, as well as the ability to induce ICD, will enable the use of NPS in a number of high value applications.

The cellular response to NPS is believed to occur in the following steps:

- Nanopores form within cellular membranes immediately and calcium increases in the cytoplasm within one second;
- Phosphatidylserine (PS) is externalized to the cell surface within several seconds and is one marker used by the immune system to target and phagocytose unhealthy cells;
- Calcium-dependent reactive oxygen species (ROS) generation occurs within approximately one minute;
- Pyknosis and DNA fragmentation are stimulated within approximately 10 minutes (pyknosis is the shrinking of a cell nucleus along with condensation of the tissue in a cell that is undergoing necrosis or programmed cell death);

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- Calreticulin protein is externalized to the cell surface to become a second “eat me” signal within approximately two hours;
- Caspase activation occurs within approximately three hours (caspases are a family of cellular proteins that are normally inactive but can be activated during programmed cell death to degrade other cellular proteins); and
- We believe an adaptive immune response to the treated tumor can be triggered over a period of 14-28 days, as demonstrated in pre-clinical models showing the presence of CD8<sup>+</sup> T cells,

### ***Potential Benefits of NPS Technology:***

- Fast, precise, and focal treatment of tissue;
- Induction of ICD, which can induce a targeted adaptive immune response;
- Elimination of unwanted tissue with a favorable healing profile;
- Reduction of potential damage to adjacent tissue because NPS does not rely on heat for ablation; and,
- Utilization as a monotherapy or in combination with other therapeutics such as checkpoint inhibitor therapies ( $\alpha$ PD-1,  $\alpha$ PD-L1,  $\alpha$ CTLA-4).

### ***Side Effects of NPS Technology***

We recently completed a clinical study treating skin with NPS at multiple energy levels, utilizing multiple applicator configurations and applying up to 30 separate NPS treatments to each patient over the course of the 60-day treatment phase of the study. During the study, no adverse events were reported and no side effects were observed. Furthermore, subsequent histological review of the treated tissues did not reveal negative unintended tissue responses resulting from the NPS treatments.

During the course of conducting pre-clinical studies, over 1,000 tumors have been treated with NPS with no consistent side effects observed. Our predecessors and others carried out longer-term experiments in which a single tumor was ablated in each animal followed by observation for a period of 4 months for melanoma and 300 days for pancreatic cancer. No side effects were observed in these animals. The few reported problems observed over the past 10 years of animal studies resulted from improper placement of the applicators.

### **Our Proprietary NPS Delivery System**

To deliver our NPS therapies and treatments we have developed our NPS platform, the PulseTx system. The PulseTx is a first-of-its-kind tunable nanosecond pulse generation and interchangeable applicator system designed to enable NPS treatments and therapies across multiple clinical and research application. The PulseTx is comprised of two primary components:

- *The PulseTx Generator*: a novel and proprietary tunable pulse generator capable of delivering treatments with varying pulse amplitude, duration, frequency and number. These are the key NPS parameters for stimulating cell death and ICD in tissue. The ability to tune these parameters with the PulseTx enables the development treatments of and therapies for a variety of applications and tissue types.
- *PulseTx Applicator Suite*: a suite of interchangeable NPS treatment applicators that deliver NPS directly to the tissue being treated. We are designing a suite of single and multiple use PulseTx Applicators tailored to specific applications, including open or minimally invasive surface, surgery or solid tissue treatments.

We believe that the design of the PulseTx system will allow the system to be deployed in a standard clinic or laboratory setting, without the need for special facilities or installation requirements.

We submitted a United States Food and Drug Administration (FDA) 510(k) for the PulseTx System for soft tissue ablation during the first quarter of 2017. We plan to conduct post-market studies that we believe will demonstrate improved clinical outcomes and drive specific indications. Although additional and broader indications may be cleared through the 510(k) process, we may be required to pursue Premarket Approval from the FDA to make labeling claims for specific indications.

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### *Applications*

#### *Dermatology/Aesthetics*

We believe NPS has high potential to offer improved clinical outcomes for a broad range of dermatology conditions and aesthetic improvement applications for which targeted removal of skin lesions is medically or cosmetically desirable. Current dermatology procedures to remove lesions or undesired skin tissue typically involve either excision (e.g. surgery) or the use of extreme heat (e.g. lasers or radiofrequency energy) or extreme cold (e.g. cryoablation). Patients are advised that these methods of tissue removal can be effective, but carry a risk of collateral damage to nearby healthy tissue and the associated inflammatory response to severe tissue injury, which can result in visible scars and pigment changes that can appear as cosmetically undesirable as the original lesion.

The novel NPS non-thermal mechanism for removing undesired skin lesions has the potential for both reducing collateral damage to surrounding healthy tissue and minimizing the inflammatory response as compared to standard treatment modalities, both of which can help contribute to cosmetically desired appearance of the skin when the lesion is eliminated and the skin is healed.

We recently completed our first NPS clinical study in dermatology, a dose response study in skin. This important skin safety and dose response study was designed to evaluate the tissue effects of a wide range of NPS energy “doses” on healthy skin. Over 170 individual sections of skin were tested during the course of the study. The interim analysis of investigator evaluations, clinical photographs, and microscopic examination of tissue samples consistently demonstrated a pattern of controlled destruction of targeted tissue in the upper layer of the skin (the epidermis) where many skin lesions are located, and a tissue sparing effect in the dermal skin layer. This finding of selective epidermal effects was consistent and apparent for all tested energy settings in the study. In addition, based on key microscopic indicators of long-term skin safety, a dermatopathologist concluded NPS has a low risk of undesired dermal damage and a restoration of a normal population of the melanocytes that produce skin pigment in the epidermis, when compared to untreated controls.

Based on the promising interim analysis from this recent NPS dose-response study, we have identified multiple potentially high value applications in dermatology for which the non-thermal effects of NPS in normal skin epidermis may lead to improved patient experiences and improved outcomes when compared to existing more destructive lesion removal methods. Potential application candidates in dermatology include Seborrheic Keratosis, warts, cherry angiomas, Basal Cell Carcinoma, Squamous Cell Carcinoma (SCC), and Actinic Keratosis, although we believe there are more skin conditions to consider for future studies. Key considerations in prioritizing our initial clinical application include, a substantial market size for skin treatments that are more typically paid directly by patients, a likelihood of favorable clinical outcomes based on the continued analysis of our dose response study data, comparisons to the current standards of care for lesion removal, and an indication for which there is a 510(k) pathway for clearance may be possible. Once we choose the initial application in dermatology, we will pursue a clinical study that we believe can be the basis for a 510(k) clearance for a specific indication.

We intend to pursue one or more clinical studies of NPS in dermatology applications during 2017 with the longer term plan of demonstrating the benefits of NPS in a range of dermatology conditions for which a non-thermal alternative to current methods may be preferred.

#### *Oncology*

We believe that NPS may afford a new paradigm in the treatment of certain cancers, either as a standalone therapy or in combination with other therapies currently available and in development. Immunotherapy continues to transform cancer care as the field advances with scientific discoveries in the laboratory and clinic.

It is well established that cancer cells can be recognized by the immune system. Under normal circumstances, these cancer cells will be detected by the immune surveillance system and eliminated. However, when cancer cells either evade or defeat the immune surveillance system, tumors grow and spread in an unregulated manner resulting in malignancies and, over time, may even cause the lack or loss of response to treatments.

We believe that NPS may offer a novel approach to treating tumors as a monotherapy and in combination with other therapies. Pre-clinical research demonstrates that NPS ablates treated tumors, modulates the tumor microenvironment of treated tumors and induces ICD in a drug-free manner. As a result of ICD, the patient’s immune system is able to detect the tumor cell antigens and mount an immune response specifically against those tumor cells that were treated with NPS.

Specifically, when tumors are treated with NPS, the cellular transient nanopores in individual tumor cells trigger endoplasmic reticulum stress and the release of intracellular calcium along with ROS and the emission of danger-associated

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molecular patterns (DAMPs). As a result, these tumor cells undergo ICD, which is a unique form of cell death that is responsible for recruiting immune cells to the site of the NPS-treated tumors for antigen processing and presentation.

ICD is a desirable form of cell death in cancer therapy as it exhibits a preference for the cross-presentation of tumor cell antigens in the lymph nodes. The hallmark of ICD and cross-presentation is the generation of an adaptive immune response including CD4+ helper-T cells and, more important for killing cancer cells, CD8+ cytotoxic-T cells. In effect, NPS serves as an in situ personalized cancer vaccination against a patient's own tumors. Furthermore, we believe the microenvironment in NPS-treated tumors is modified and that the protective mechanisms surrounding the tumor are reduced and possibly eliminated.

The ability of NPS to initiate an immune response against cancerous tumors and the related cancer microenvironment may lend itself more favorably to immunogenic cancers. Cancer immunogenicity reflects a tumor's ability to stimulate an immune response. It has been hypothesized that cancer immunogenicity increases with mutation rate, meaning the more mutations a tumor has, the higher the chance the tumor antigens can trigger the immune response. Cancers with the highest mutation rates include melanoma, certain lung cancers, and bladder cancer.

Relative to existing immune therapies, we believe that NPS therapy will activate the adaptive immune response specific to an individual's tumors in a non-toxic, targeted manner. Given the many different approaches to modulating an immune response and the ability of an immune response to access tumors, significant potential exists for NPS to be synergistic with existing therapies and therapies in development.

Our previously published pre-clinical work demonstrated the ability of NPS to treat and eliminate targeted melanoma tumors and that NPS-treated tumor cells can be used as a vaccine to protect mice against fibrosarcoma subdermal allografts. Additional pre-clinical studies conducted to date confirm the elimination of NPS treated tumors along with the generation of an adaptive immune response against various other tumor types. We continue to develop NPS, delineate the immune response and explore additional applications in oncology using pre-clinical animal models in preparation for upcoming clinical studies.

We are in the early stages of planning to commence our first clinical oncology study in patients with unresectable in-transit melanoma. We believe the high immunogenicity of melanoma lends itself well to our NPS therapy and we plan to initiate an open label study of in-transit melanoma in 2017.

### ***Minimally Invasive Ablation Applications***

We believe the use of NPS to treat and/or ablate tissue in a minimally invasive manner is an exciting opportunity for the technology. NPS may offer a new approach to eliminate unwanted tissue that we believe will be predictable and uniform and will result in minimal collateral damage to surrounding tissue. We believe that these benefits can be important to several minimally invasive high value applications, including atrial fibrillation and other cardiac applications, lung disease, Barret's esophagus, ear, nose and throat papillomas and thyroid nodules.

### ***Veterinary Applications***

We believe that NPS can provide a novel treatment in veterinary medicine, one that can provide a minimally invasive approach for pets in this largely cash pay-for-service market. Although the FDA does have regulatory oversight over medical devices used in veterinary medicine and can take appropriate regulatory action if a device is misbranded, no regulatory clearance is necessary to introduce a therapy or device to the market.

We believe that addressing the veterinary oncology market is attractive because:

- animal data might yield information on the novel biological effects of NPS on tumors, especially confirmation of an adaptive immune response, which would help validate potential translational applications to humans;
- it may offer a faster path to commercialization because of the less stringent regulatory pathway for veterinary medical devices; and
- it is large and continues to grow.

### **Strategy**

We have consolidated several different entities working on nanosecond pulsed electric fields, and we now own or license 49 issued patents and 61 filed patent applications in the United States and worldwide. This novel platform technology with strong IP protection allows us to follow a broad, platform based approach to introducing our NPS technology and related

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therapies and devices.

Our strategy is to:

- *Develop a general purpose NPS platform for use across a broad array of applications.* We are developing a versatile nanosecond pulse generation system, the PulseTx System, that can produce pulses of variable number, width, amplitude, and frequency and can be used with various applicator types and deployed into a wide range of applications;
- *Demonstrate the unique benefits of our NPS technology and the PulseTx System across a number of compelling treatment applications.* We intend to conduct multiple clinical trials to demonstrate the unique ability of NPS to treat tissues across a number of applications with the highest value to clinicians and patients. We believe that a solid foundation of clinical data will provide the opportunity to pursue regulatory clearances and demonstrate to clinicians and patients the favorable treatment outcomes and patient experience afforded by our technology;
- *Pursue 510(k) clearance from the FDA for general soft tissue ablation followed by post-market studies to show improved clinical outcomes across a number of applications.* We submitted an FDA 510(k) for the PulseTx System in the first quarter of 2017. We believe a 510(k) clearance for soft tissue ablation will provide a foundation for future clearances with specific indications that we will pursue with the addition of clinical data; and
- *Commercialize applications by focusing initially on those clinical uses requiring modest clinical data to demonstrate efficacy and safety and for which cash payment patterns or coded reimbursement arrangements are well-established.* Conditions that require long-term evidence to support third-party reimbursement and/or a longer time horizon to evaluate efficacy and safety, including various skin cancers, are expected later in the commercial launch sequence.

## **Intellectual Property**

We believe that our current and any future patents and other proprietary rights we own or license are and will be essential to our business and create an important competitive advantage for us. We also rely on trade secrets, know-how, continuing technological innovations and licensing opportunities to develop, maintain and strengthen our competitive position. We seek to protect our intellectual property, in part, through confidentiality agreements with our employees, consultants and other parties, patent registration and access control to sensitive information. Our success also will depend on the ability of our licensors to obtain, maintain (including making periodic filings and payments) and enforce confidentiality agreements and patent protection for their intellectual property, in particular, those patents and other intellectual property to which we have secured rights.

We own or license 49 issued patents and 61 filed patent applications in the United States and worldwide to protect the intellectual property on which nanosecond pulsed electric field technology is based on. Our United States issued patents are set to expire between 2020 and 2034.

As we expand our business internationally, we will seek patent, trademark and copyright protections as appropriate and available and conduct our business with the protections of confidentiality and trade secrets. Depending on the jurisdiction, we may not be able to obtain the scope of protections we seek, in which event we will need to balance the available protections against the importance of such market to us.

## **Research and Development**

We are currently conducting research and development activities in pursuit of commercial applications for our NPS technology, but have not yet commercialized or recognized revenue from our technology. Therefore, the majority of our business activities are devoted to research, including clinical trials, related to our core technologies and development of devices and products based on those technologies. Research and development expenses totaled \$6.0 million, \$2.6 million and \$26,000 for the years ended December 31, 2016 and 2015 and for the period of May 19, 2014 (inception) through December 31, 2014, respectively. Research and development expenses are expected to increase substantially during the fiscal year ending 2017, reflecting the increased growth in our operational activities and expansion of our clinical trial programs.

Our R&D development team incorporates data and feedback obtained from our clinical and research programs into the development of the PulseTx NPS System and further inform our clinical strategies. We believe that developing and leveraging relationships among clinicians is a key element in driving the adoption of our technology in clinical studies in the



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short-term and enhances the potential for possible commercial systems in the future.

### **Competition**

The applications we intend to target are subject to intense competition from rapidly evolving companies and new scientific discoveries. We compete against well-established incumbent technologies offering products in oncology, dermatology and aesthetics, minimally invasive treatments, and veterinary applications. Given the broad scope of our technology, we face competition ranging from large manufacturers with multiple business lines to small companies with focused products, as well as providers of other medical therapies and therapeutics for conditions that we intend to treat. Our future success will depend on our ability to establish and maintain a competitive position in current and future technologies.

In immuno-oncology, we compete with multiple new technologies stimulating the immune system to target cancer. An increased understanding of the multiple mechanisms by which cancer or precancerous cells can evade the immune system has helped researchers develop drugs including those that target immune inhibitors or stimulate T-cell production. For example, approved checkpoint inhibitor therapeutics are administered systemically and modulate the immune system in a more global way, which can lead to significant side effects including autoimmune diseases. Companies with approved checkpoint inhibitors include: Bristol-Myers Squibb and Merck. CAR-T cell therapy has gained attention recently; which refers to a therapy where T cells are removed from a patient and modified to express receptors on its surface that are specific to a cancer type. These cells are then cultured and infused back into the body. Companies developing CAR-T cell therapies include Juno Therapeutics and Kite Pharma.

We compete with multiple tissue removal technologies. These technologies cause immediate cell necrosis, killing cells within seconds to hours following exposure and triggering inflammation. Our technology is unique and differentiated in that NPS stimulates primarily intracellular cell death which we believe would be less traumatic to treated tissue and would result in less scarring or collateral damage to surrounding tissues. Tissue removal technologies include RFA, microwave ablation, cryoablation, laser therapies and IRE.

IRE uses pulsed electric fields at a high voltage in hundreds of microsecond pulse widths. These pulses cause irreversible damage to cell membranes, resulting in necrosis (death) of the tumor cells. However, this technology stimulates nerves and muscles in a manner that makes it common for clinicians to use general anesthesia and muscle blockade during treatment. In contrast, NPS utilizes pulses 1,000 times shorter and in pre-clinical and limited clinical studies has not required the use of muscle blockade. Moreover, our technology transiently permeabilizes internal organelles which can lead to a signaling cascade ending in immunogenic cell death.

Tissue ablation companies for therapeutic applications include: Medtronic, Boston Scientific, AngioDynamics and St. Jude Medical. Ablation companies for dermatologic and aesthetic applications include: Alma Lasers, Cutera and Syneron Medical.

### **Government Regulation**

In general, medical device companies must navigate a challenging regulatory environment. The FDA regulates the medical device market to ensure the safety and efficacy of these products. The FDA allows for two primary pathways for a medical device to gain approval for commercialization: a successful pre-market approval, or PMA application or 510(k) clearance. A completely novel product must go through the more rigorous premarket approval, or PMA, process if it cannot receive authorization through a 510(k). The FDA has established three different classes of medical devices that indicate the level of risk associated with using a device and consequent degree of regulatory controls needed to govern its safety and efficacy. Level I and Level II devices are considered lower risk and often can gain approval for commercial distribution by submitting a notification request to the FDA, generally known as the 510(k) process. The devices regarded as the highest risk by the FDA are designated Class III status and generally require the submission of a PMA application for approval to commercialize a product. These generally include life-sustaining, life-supporting, or implantable devices or devices without a known predicate technology already approved by the FDA.

The 510(k) clearance path can be significantly less time-consuming than PMA approval, making this route preferable for a medical device company. Through a 510(k), a company must provide documentation that its device is safe and effective by showing it is substantially equivalent to a device already cleared through a 510(k) or in distribution before May 28, 1976 for which the FDA has not yet required a PMA submission. The FDA has a 90 calendar day review goal from the date of the 510(k) submission to authorize or decline commercial distribution of the device. However, similar to the PMA

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process, approval may take longer than this 90 day goal. If the FDA resolves that the product is not substantially equivalent to a predicate device, a clearance will not be granted.

A PMA application must be accompanied by substantial data that supports the safety and efficacy of the device, which includes the provision of preclinical, clinical, technical, manufacturing and labeling information. If the FDA deems the application acceptable to pass through the first level of scrutiny, it has 180 days to review the submission, but it can typically take longer (up to several years) as this regulatory body can request additional information or clarifications. The FDA may also impose additional regulatory hurdles for a PMA, including the institution of an outside advisory panel of experts to assess the application or provide recommendations as to whether to approve the device. Although the FDA in the end approves or disapproves the device, in nearly all cases the FDA follows the recommendation from the independent panel concerning approvability of the new device. As part of this process, the FDA will also inspect the manufacturing operations of the company requesting approval to verify compliance with quality control regulations. Significant changes in the fabrication of a device, or alterations in the labeling or design of a product require new PMA applications or PMA supplements for a product originally approved under a PMA. This creates substantial regulatory risk for devices undergoing the PMA route.

### ***Pervasive and Continuing Regulation***

After a device is placed on the market, numerous regulatory requirements continue to apply. These include:

- The FDA's QSR which requires manufacturers, including third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the manufacturing process;
- labeling regulations and FDA prohibitions against the promotion of products for uncleared, unapproved or off-label uses;
- clearance or approval of product modifications that could significantly affect safety or efficacy or that would constitute a major change in intended use;
- medical device reporting, or MDR, regulations, which require that manufacturers report to the FDA if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur; and
- post-market surveillance regulations, which apply when necessary to protect the public health or to provide additional safety and effectiveness data for the device.

After a device receives 510(k) clearance or PMA approval, any modification that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, will require a new clearance or approval. The FDA requires each manufacturer to make this determination initially, but the FDA can review any such decision and can disagree with a manufacturer's determination. If the FDA disagrees with the determination not to seek a new 510(k) clearance or PMA, the FDA may retroactively require a new 510(k) clearance or premarket approval. The FDA could also require a manufacturer to cease marketing and distribution and/or recall the modified device until 510(k) clearance or premarket approval is obtained. Also, in these circumstances, it may be subject to significant regulatory fines, penalties, and warning letters.

The MDR regulations require that we report to the FDA any incident in which our product may have caused or contributed to a death or serious injury or in which our product malfunctioned and, if the malfunction were to recur, would likely cause or contribute to death or serious injury.

The FDA has broad post-market and regulatory enforcement powers. We may be subject to unannounced inspections by the FDA and the Food and Drug Branch of CDHS to determine our compliance with the QSR and other regulations, and these inspections may include the manufacturing facilities of our suppliers.

Failure to comply with applicable regulatory requirements can result in enforcement action by FDA, which may include any of the following sanctions:

- warning letters, fines, injunctions, consent decrees and civil penalties;
- repair, replacement, refunds, recall or seizure of our products;

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- operating restrictions, partial suspension or total shutdown of production;
- refusing our requests for 510(k) clearance or premarket approval of new products, new intended uses or modifications to existing products;
- withdrawing 510(k) clearance or premarket approvals that have already been granted; and
- criminal prosecution.

### ***Regulatory System for Medical Devices in Europe***

The European Union consists of 28 member states and has a coordinated system for the authorization of medical devices. The E.U. Medical Devices Directive, or MDD, sets out the basic regulatory framework for medical devices in the European Union. This directive has been separately enacted in more detail in the national legislation of the individual member states of the European Union.

The system of regulating medical devices operates by way of a certification for each medical device. Each certificated device is marked with CE mark which shows that the device has a Certificat de Conformité. There are national bodies known as Competent Authorities in each member state which oversee the implementation of the MDD within their jurisdiction. The means for achieving the requirements for CE mark varies according to the nature of the device. Devices are classified in accordance with their perceived risks, similarly to the U.S. system. The class of a product determines the requirements to be fulfilled before CE mark can be placed on a product, known as a conformity assessment. Conformity assessments for our products are carried out as required by the MDD. Each member state can appoint Notified Bodies within its jurisdiction. If a Notified Body of one member state has issued a Certificat de Conformité, the device can be sold throughout the European Union without further conformance tests being required in other member states.

### ***Health Insurance Portability and Accountability Act***

The Health Insurance Portability and Accountability Act of 1996, or HIPAA, established for the first time comprehensive federal protection for the privacy and security of health information. The HIPAA standards apply to three types of organizations, or Covered Entities: health plans, healthcare clearing houses, and healthcare providers which conduct certain healthcare transactions electronically. Title II of HIPAA, the Administrative Simplification Act, contains provisions that address the privacy of health data, the security of health data, the standardization of identifying numbers used in the healthcare system and the standardization of certain healthcare transactions. The privacy regulations protect medical records and other protected health information by limiting their use and release, giving patients the right to access their medical records and limiting most disclosures of health information to the minimum amount necessary to accomplish an intended purpose. The HIPAA security standards require the adoption of administrative, physical, and technical safeguards and the adoption of written security policies and procedures. HIPAA requires Covered Entities to obtain a written assurance of compliance from individuals or organizations who provide services to Covered Entities involving the use or disclosure of protected health information (“Business Associates”).

On February 17, 2009, Congress enacted Subtitle D of the Health Information Technology for Economic and Clinical Health Act, or HITECH, provisions of the American Recovery and Reinvestment Act of 2009. HITECH amends HIPAA and, among other things, expands and strengthens HIPAA, creates new targets for enforcement, imposes new penalties for noncompliance and establishes new breach notification requirements for Covered Entities and Business Associates. Regulations implementing major provisions of HITECH were finalized on January 25, 2013 through publication of the HIPAA Omnibus Rule, or the Omnibus Rule. The Omnibus Rule contained significant changes for Covered Entities and Business Associates with respect to permitted uses and disclosures of Protected Health Information.

Under HITECH’s new breach notification requirements, Covered Entities must report breaches of protected health information that has not been encrypted or otherwise secured in accordance with guidance from the Secretary of the U.S. Department of Health and Human Services, or the Secretary. Required breach notices must be made as soon as is reasonably practicable, but no later than 60 days following discovery of the breach. Reports must be made to affected individuals and to the Secretary and in some cases, they must be reported through local and national media, depending on the size of the breach. We are currently subject to the HIPAA regulations. We are subject to audit under the U.S. Department of Health and Human Services, or HHS, HITECH-mandated audit program. We may also be audited in connection with a privacy complaint. We are subject to prosecution and/or administrative enforcement and increased civil and criminal penalties for non-compliance, including a new, four-tiered system of monetary penalties adopted under HITECH. We are also subject to enforcement by

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state attorneys general who were given authority to enforce HIPAA under HITECH. To avoid penalties under the HITECH breach notification provisions, we must ensure that breaches of protected health information are promptly detected and reported within the company, so that we can make all required notifications on a timely basis. However, even if we make required reports on a timely basis, we may still be subject to penalties for the underlying breach.

In addition to the federal privacy regulations, there are a number of state laws regarding the privacy and security of health information and personal data that are applicable to clinical laboratories. The compliance requirements of these laws, including additional breach reporting requirements, and the penalties for violation vary widely and new privacy and security laws in this area are evolving. Requirements of these laws and penalties for violations vary widely. We believe that we have taken the steps required of us to comply with health information privacy and security statutes and regulations in all jurisdictions, both state and federal. However, we may not be able to maintain compliance in all jurisdictions where we do business. Failure to maintain compliance, or changes in state or federal laws regarding privacy or security, could result in civil and/or criminal penalties and could have a material adverse effect on our business.

If we or our operations are found to be in violation of HIPAA, HITECH or their implementing regulations, we may be subject to penalties, including civil and criminal penalties, fines, and exclusion from participation in U.S. federal or state health care programs, and the curtailment or restructuring of our operations. HITECH increased the civil and criminal penalties that may be imposed against Covered Entities, their Business Associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney's fees and costs associated with pursuing federal civil actions.

In addition to federal privacy regulations, there are a number of state laws governing confidentiality of health information that are applicable to our operations. New laws governing privacy may be adopted in the future as well. We have taken steps to comply with health information privacy requirements that are applicable to us.

### ***Federal, State and Foreign Fraud and Abuse Laws***

Because of the significant federal funding involved in Medicare and Medicaid, Congress and the states have enacted, and actively enforce, a number of laws to eliminate fraud and abuse in federal healthcare programs. Our business is subject to compliance with these laws. In March 2010, the Recipient Protection and Affordable Care Act, as amended by the Healthcare and Education Affordability Reconciliation Act, which we refer to collectively as the Affordable Care Act, was enacted in the United States. The provisions of the Affordable Care Act are effective on various dates. The Affordable Care Act expands the government's investigative and enforcement authority and increases the penalties for fraud and abuse, including amendments to both the Anti-Kickback Statute and the False Claims Act, to make it easier to bring suit under these statutes. The Affordable Care Act also allocates additional resources and tools for the government to police healthcare fraud, with expanded subpoena power for HHS, additional funding to investigate fraud and abuse across the healthcare system and expanded use of recovery audit contractors for enforcement.

*Anti-Kickback Statutes.* The federal healthcare programs' Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing or arranging for a good or service, for which payment may be made under a federal healthcare program such as Medicare or Medicaid.

The definition of "remuneration" has been broadly interpreted to include anything of value, including, for example, gifts, certain discounts, the furnishing of free supplies, equipment or services, credit arrangements, payment of cash and waivers of payments. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered businesses, the statute has been violated. Penalties for violations include criminal penalties and civil sanctions such as fines, imprisonment and possible exclusion from Medicare, Medicaid and other federal healthcare programs. In addition some kickback allegations have been claimed to violate the Federal False Claims Act, discussed in more detail below.

The Anti-Kickback Statute is broad and prohibits many arrangements and practices that are otherwise lawful in businesses outside of the healthcare industry. Recognizing that the Anti-Kickback Statute is broad and may technically prohibit many innocuous or beneficial arrangements, Congress authorized the Office of Inspector General, or OIG, of HHS to issue a series of regulations known as "safe harbors." These safe harbors set forth provisions that, if all their applicable requirements are met, will assure healthcare providers and other parties that they will not be prosecuted under the Anti-Kickback Statute. The failure of a transaction or arrangement to fit precisely within one or more safe harbors does not necessarily mean that it is illegal or that prosecution will be pursued. However, conduct and business arrangements that do

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not fully satisfy an applicable safe harbor may result in increased scrutiny by government enforcement authorities such as OIG.

Many states have adopted laws similar to the Anti-Kickback Statute. Some of these state prohibitions apply to referral of recipients for healthcare items or services reimbursed by any source, not only the Medicare and Medicaid programs.

Government officials have focused their enforcement efforts on the marketing of healthcare services and products, among other activities, and recently have brought cases against companies, and certain individual sales, marketing and executive personnel, for allegedly offering unlawful inducements to potential or existing customers in an attempt to procure their business.

*Federal False Claims Act.* Another development affecting the healthcare industry is the increased use of the federal False Claims Act, and in particular, action brought pursuant to the False Claims Act's "whistleblower" or "qui tam" provisions. The False Claims Act imposes liability on any person or entity that, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment by a federal healthcare program. The qui tam provisions of the False Claims Act allow a private individual to bring actions on behalf of the federal government alleging that the defendant has violated the False Claims Act and to share in any monetary recovery. In recent years, the number of suits brought against healthcare providers by private individuals has increased dramatically. In addition, various states have enacted false claims laws analogous to the False Claims Act, and many of these state laws apply where a claim is submitted to any third-party payor and not just a federal healthcare program.

When an entity is determined to have violated the False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties of between \$5,500 and \$11,000 for each separate instance of false claim. As part of any settlement, the government may ask the entity to enter into a corporate integrity agreement, which imposes certain compliance, certification and reporting obligations. There are many potential bases for liability under the False Claims Act. Liability arises, primarily, when an entity knowingly submits, or causes another to submit, a false claim for reimbursement to the federal government. The federal government has used the False Claims Act to assert liability on the basis of inadequate care, kickbacks and other improper referrals, and improper use of Medicare numbers when detailing the provider of services, in addition to the more predictable allegations as to misrepresentations with respect to the services rendered. In addition, the federal government has prosecuted companies under the False Claims Act in connection with off-label promotion of products. Our future activities relating to the reporting of wholesale or estimated retail prices of our products, the reporting of discount and rebate information and other information affecting federal, state and third-party reimbursement of our products and the sale and marketing of our products may be subject to scrutiny under these laws.

While we are unaware of any current matters, we are unable to predict whether we will be subject to actions under the False Claims Act or a similar state law, or the impact of such actions. However, the costs of defending such claims, as well as any sanctions imposed, could significantly affect our financial performance.

*The Sunshine Act.* The Physician Payment Sunshine Act, or the Sunshine Act, which was enacted as part of the Affordable Care Act, requires all entities that operate in the United States and manufacturers of a drug, device, biologic or other medical supply that is covered by Medicare, Medicaid or the Children's Health Insurance Program to report annually to the Secretary of HHS: (i) payments or other transfers of value made by that entity, or by a third-party as directed by that entity, to physicians and teaching hospitals or to third parties on behalf of physicians or teaching hospitals; and (ii) physician ownership and investment interests in the entity. The payments required to be reported include the cost of meals provided to a physician, travel reimbursements and other transfers of value, including those provided as part of contracted services such as speaker programs, advisory boards, consultation services and clinical trial services. The final rule implementing the Sunshine Act required data collection on payments to begin on August 1, 2013. The first annual report, comprised of data collected from August 1, 2013 to December 31, 2013, was due March 31, 2014. The statute requires the federal government to make reported information available to the public starting September 2014, which it has. Failure to comply with the reporting requirements can result in significant civil monetary penalties ranging from \$1,000 to \$10,000 for each payment or other transfer of value that is not reported (up to a maximum per annual report of \$150,000) and from \$10,000 to \$100,000 for each knowing failure to report (up to a maximum per annual report of \$1.0 million). Additionally, there are criminal penalties if an entity intentionally makes false statements in such reports. We are subject to the Sunshine Act and the information we disclose may lead to greater scrutiny, which may result in modifications to established practices and additional costs. Additionally, similar reporting requirements have also been enacted on the state level domestically, and an increasing number of countries worldwide either have adopted or are considering similar laws requiring transparency of interactions with healthcare professionals.

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*Foreign Corrupt Practices Act.* The Foreign Corrupt Practices Act, or FCPA, prohibits any United States individual or business from paying, offering, or authorizing payment or offering of anything of value, directly or indirectly, to any foreign official, political party or candidate for the purpose of influencing any act or decision of the foreign entity in order to assist the individual or business in obtaining or retaining business. The FCPA also obligates companies whose securities are listed in the United States to comply with accounting provisions requiring us to maintain books and records that accurately and fairly reflect all transactions of the corporation, including international subsidiaries, if any, and to devise and maintain an adequate system of internal accounting controls for international operations.

*International Laws.* In Europe, various countries have adopted anti-bribery laws providing for severe consequences, in the form of criminal penalties and/or significant fines, for individuals and/or companies committing a bribery offense. Violations of these anti-bribery laws, or allegations of such violations, could have a negative impact on our business, results of operations and reputation. For instance, in the United Kingdom, under the Bribery Act 2010, which went into effect in July 2011, a bribery occurs when a person offers, gives or promises to give a financial or other advantage to induce or reward another individual to improperly perform certain functions or activities, including any function of a public nature. Bribery of foreign public officials also falls within the scope of the Bribery Act 2010. Under the new regime, an individual found in violation of the Bribery Act of 2010, faces imprisonment of up to 10 years. In addition, the individual can be subject to an unlimited fine, as can commercial organizations for failure to prevent bribery.

There are also international privacy laws that impose restrictions on the access, use, and disclosure of health information. All of these laws may impact our business. Our failure to comply with these privacy laws or significant changes in the laws restricting our ability to obtain required patient information could significantly impact our business and our future business plans.

### ***U.S. Healthcare Reform***

Changes in healthcare policy could increase our costs and subject us to additional regulatory requirements that may interrupt commercialization of our current and future solutions. Changes in healthcare policy could increase our costs, decrease our revenues and impact sales of and reimbursement for our current and future solutions. The Affordable Care Act substantially changes the way healthcare is financed by both governmental and private insurers, and significantly impacts our industry. The Act contains a number of provisions that impact our business and operations, some of which in ways we cannot currently predict, including those governing enrollment in federal healthcare programs and reimbursement changes.

There will continue to be proposals by legislators at both the federal and state levels, regulators and third-party payors to reduce costs while expanding individual healthcare benefits. Certain of these changes could impose additional limitations on the prices we will be able to charge for our current and future solutions or the amounts of reimbursement available for our current and future solutions from governmental agencies or third-party payors. While in general it is too early to predict specifically what effect the Affordable Care Act and its implementation or any future healthcare reform legislation or policies will have on our business, current and future healthcare reform legislation and policies could have a material adverse effect on our business and financial condition.

### **Third-Party Reimbursement**

Payment for patient care in the United States is generally made by third-party payors, including private insurers and government insurance programs, such as Medicare and Medicaid. The Medicare program, the largest single payor in the United States, is a federal governmental health insurance program administered by the Centers for Medicare and Medicaid Services, or CMS, and covers certain medical care expenses for eligible elderly and disabled individuals. Because a large percentage of the population with PAD includes Medicare beneficiaries, and private insurers may follow the coverage and payment policies of Medicare, Medicare's coverage and payment policies are significant to our operations

### **Environmental**

We are subject to federal, state and local laws, rules, regulations and policies governing the use, generation, manufacture, storage, air emission, effluent discharge, handling and disposal of certain hazardous and potentially hazardous substances used in connection with our operations. Although we believe that we have complied with these laws and regulations in all material respects and, to date, have not been required to take any action to correct any noncompliance, there can be no assurance that we will not be required to incur significant costs to comply with environmental regulations in the future.

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### **Insurance**

We maintain product and clinical trial liability insurance coverage which includes a maximum of per claim and an annual aggregate policy limits, subject to self-insured retentions. The policy covers, subject to policy conditions and exclusions, claims of bodily injury and property damage from any product manufactured by us or from trial-related adverse events.

There is no assurance that our level of coverage is adequate. We may not be able to sustain or maintain our current level of coverage and cannot assure you that adequate insurance coverage will continue to be available on commercially reasonable terms, or at all. A successful product liability claim may exceed our existing coverages and may make future coverages significantly more expensive, if available at all.

### **Employees**

As of December 31, 2016, we had 13 full-time employees. Of these employees, nine were in research and development and four were in general and administration. Substantially all of our employees are located at our headquarters in Burlingame, California. None of our employees are represented by labor unions or are covered by a collective bargaining agreement with respect to their employment. We have not experienced any work stoppages, and we consider our relationship with our employees to be good.

### **Available Information**

We were incorporated in Nevada on May 19, 2014 under the name Electroblate, Inc. Electroblate, Inc. changed its name to Pulse Biosciences, Inc. effective December 8, 2015. Our corporate offices are located at 849 Mitten Road, Suite 104, Burlingame, California. Our telephone number is (650) 697-3939.

Our website is located at [www.pulsebiosciences.com](http://www.pulsebiosciences.com). The information that can be accessed through our website is not incorporated into this Annual Report on Form 10-K, and the inclusion of our website address is an inactive textual reference only. Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended, are available free of charge through the "Investor Relations" section of our website as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission (SEC).

Additionally, we use our website as a channel for distribution for important company information. Important information, including press releases, analyst presentations and financial information regarding us, as well as corporate governance information, is routinely posted and accessible on the "Investor Relations" section of the website, which is accessible by clicking "Investors" on the menu tab labeled "About Us" on our website home page.

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### Item 1A. Risk Factors

*Investing in our common stock involves a high degree of risk. You should consider carefully the risks and uncertainties described below, together with all of the other information in this Annual Report on Form 10-K, including our financial statements and related notes, which could have a material adverse effect on our business, financial condition, results of operations and prospects. The risks described below are not the only risks facing us. Risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially affect our business, financial condition, results of operations and prospects.*

#### **Risks Relating to Our Business, Industry and Financial Condition**

*Since we have a limited operating history and have not commenced any revenue producing operations, it is difficult for potential investors to evaluate the future of our business.*

We are a clinical-stage medical technology company and have not yet commenced revenue-producing operations. To date, our operations on a consolidated basis have consisted of the continued development of our technologies and implementation of the early parts of our business plan. We have incurred significant operating losses in each year since our inception and we expect to continue to incur additional losses for the next several years. In addition, a high percentage of our expenses will continue to be fixed; accordingly, our losses may be greater than expected and our operating results may suffer. We have limited historical financial data upon which we may base our projected revenue and base our planned operating expenses. Our limited operating history makes it difficult for potential investors to evaluate our technology or prospective operations and business prospects.

*We currently have no commercial products or product revenue and may never become profitable.*

To date, we have not generated revenue and have relied on equity-based financing from the sale of securities to fund our operations. We expect that our future financial results will depend primarily on our success in obtaining approval for, launching, selling and supporting our PulseTx™ System or other products based on Nano Pulse Stimulation, or NPS; however, our technology is still in development. We expect to expend significant resources on hiring of personnel, continued scientific and product research and development, potential product testing and preclinical and clinical investigation, intellectual property development and prosecution, marketing and promotion, capital expenditures, working capital, general and administrative expenses, and fees and expenses associated with our capital raising efforts. We expect to incur costs and expenses related to consulting costs, laboratory development costs, hiring of scientists, engineers, and other operational personnel, and the continued development of relationships with potential partners. We are incurring significant operating losses, we expect to continue to incur additional losses for the next several years, and we cannot assure you that we will generate revenue or be profitable in the future. Our future products may never be approved or become commercially viable or accepted for use. Even if we find commercially viable applications for our technology, which may include licensing, we may never recover our research and development expenses.

Investment in medical technology is highly speculative, because it entails substantial upfront capital expenditures and significant risk that any potential planned product will fail to demonstrate adequate efficacy or clinical utility. Investors should evaluate an investment in us in light of the uncertainties encountered by developing medical technology companies in a competitive environment. There can be no assurance that our efforts will be successful or that we will ultimately be able to achieve profitability. Even if we achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable could adversely affect the market price of our common stock and could significantly impair our ability to raise capital, expand our business or continue to implement our business plan.

*We anticipate needing additional financing to execute our business plan and fund operations, which additional financing may not be available on reasonable terms or at all.*

Our ability to continue as a going concern ultimately is dependent upon our generating cash flow from sales that are sufficient to fund operations or finding adequate financing to support our operations. Currently, we have no product revenue, and we do not have arrangements in place for all the anticipated, required financing to be able to fully implement our business plan.

We cannot give any assurance that we will be able to obtain all the necessary funding that we may need. We believe we will require additional capital in the future to fully develop our technologies and planned products to the stage of a commercial launch. We may pursue additional funding through various financing sources, including the private sale of our equity and debt securities, licensing fees for our technology, joint ventures with capital partners and project type financing. If we raise funds by issuing equity or equity-linked securities, dilution to our stockholders will result. Any equity securities



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issued may also provide for rights, preferences or privileges senior to those of holders of our common stock. The terms of debt securities issued or borrowings could impose significant restrictions on our operations. We also may seek government based financing, such as development and research grants. There can be no assurance that funds will be available on commercially reasonable terms, if at all.

The incurrence of additional indebtedness or the issuance of certain equity securities could result in increased fixed payment obligations and could also result in restrictive covenants, such as limitations on our ability to incur additional debt or issue additional equity, limitations on our ability to acquire or license intellectual property rights, and other operating restrictions that could adversely affect our ability to conduct our business. In addition, the issuance of additional equity securities by us, or the possibility of such issuance, may cause the market price of our common stock to decline. In the event that we enter into collaborations or licensing arrangements to raise capital, we may be required to accept unfavorable terms. These agreements may require that we relinquish, or license to a third party on unfavorable terms, our rights to technologies or product candidates that we otherwise would seek to develop or commercialize ourselves, or reserve certain opportunities for future potential arrangements when we might otherwise be able to achieve more favorable terms. In addition, we may be forced to work with a partner on one or more of our products or market development programs, which could lower the economic value of those programs to us.

If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, we may terminate or delay the development of one or more of our products, delay clinical trials necessary to market our products, or delay establishment of sales and marketing capabilities or other activities necessary to commercialize our products. If this were to occur, our ability to grow and support our business and to respond to market challenges could be significantly limited or we may be unable to continue operations, in which case you could lose your entire investment.

***If we lose key management personnel, our ability to identify, develop and commercialize new or next generation product candidates will be impaired, could result in loss of markets or market share and could make us less competitive.***

We are highly dependent upon the principal members of our management team and the members of our scientific team, including our Chief Executive Officer, Darrin Uecker. These persons have significant experience and knowledge with sub-microsecond pulsed electric fields and more broadly in life sciences and medical technologies. The loss of any team member could impair our ability to design, identify, and develop new intellectual property and new scientific or product ideas. The loss of a key employee, the failure of a key employee to perform in his or her current position or our inability to attract and retain skilled employees could result in our inability to continue to grow our business or to implement our business strategy. We compete for qualified management and scientific personnel with other life science companies, academic institutions and research institutions. Our employees could leave our company with little or no prior notice and may be free to work for a competitor. If one or more of our senior executives or other key personnel were unable or unwilling to continue in their present positions, we may not be able to replace them easily or at all, and other senior management may be required to divert attention from other aspects of the business. In addition, we do not have “key person” life insurance policies covering any member of our management team or other key personnel. The loss of any of these individuals or any inability to attract or retain qualified personnel, including scientists, engineers and others, could prevent us from pursuing collaborations and materially and adversely affect our product development and introductions, business growth prospects, results of operations and financial condition.

***There is a limited talent pool of experienced professionals in our industry. If we are not able to retain and recruit personnel with the requisite technical skills, we may be unable to successfully execute our business strategy.***

The specialized nature of our industry results in an inherent scarcity of experienced personnel in the field. Our future success depends upon our ability to attract and retain highly skilled personnel, including scientific, technical, commercial, business, regulatory and administrative personnel, necessary to support our anticipated growth, develop our business and perform certain contractual obligations. Given the scarcity of professionals with the scientific knowledge that we require and the competition for qualified personnel among life science businesses, we may not succeed in attracting or retaining the personnel we require to continue and grow our operations.

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***We expect to operate in a highly competitive market, we may face competition from large, well-established medical device and product manufacturers with significant resources, and we may not be able to compete effectively.***

The medical technology, medical device, biotechnology and pharmaceutical industries are characterized by intense and dynamic competition to develop new technologies and proprietary therapies. We may find ourselves in competition with companies that have competitive advantages over us, such as:

- significantly greater name recognition;
- established relations with healthcare professionals, customers and third-party payers;
- established distribution networks;
- additional lines of products, and the ability to offer rebates, higher discounts or incentives to gain a competitive advantage;
- greater experience in conducting research and development, manufacturing, clinical trials, obtaining regulatory approval for products, and marketing approved products; and
- greater financial and human resources for product development, sales and marketing, and patent litigation.

We may also face increased competition in the future as new companies enter our markets and as scientific developments surrounding electro-signaling therapeutics continue to accelerate. While we will seek to expand our technological capabilities to remain competitive, research and development by others may render our technology or product candidates obsolete or noncompetitive or result in treatments or cures superior to any therapy developed by us. As a result, we may not be able to compete effectively against current and potential future competitors or their devices and products.

***We may rely on third parties for our sales, marketing, manufacturing and distribution, and these third parties may not perform satisfactorily.***

We do not currently conduct many aspects of sales, marketing, manufacturing or distribution. To be able to commercialize our planned products, we may elect to internally develop all of the foregoing or utilize third parties with respect to one or more of these items. Our reliance on these third parties may reduce our control over these activities; however, reliance on third parties does not relieve us of our responsibility to ensure compliance with all required legal, regulatory and scientific standards. Any failure of these third parties to perform satisfactorily and in compliance with relevant laws and regulations could lead to delays in the development of our planned products, including delays in our clinical trials, or failure to obtain regulatory approval for our planned products, or failure to successfully commercialize our planned products or other future products. Some of these events could be the basis for FDA or other regulatory action, including injunction, recall, seizure or total or partial suspension of production.

We do not have any corporate experience in establishing these capabilities, and therefore, we may be unsuccessful in achieving commercialization and earning revenues. We believe that setting up the commercialization aspects of a company will take a substantial amount of capital and commitment of time and effort. We may seek development and marketing partners and license our technology to others in order to avoid our having to provide the marketing, manufacturing and distribution capabilities within our organization. There can be no assurance that we will find any development and marketing partners or companies that are interested in licensing our technology. If we are unable to establish and maintain adequate sales, marketing, manufacturing and distribution capabilities, independently or with others, we will not be able to generate product revenue, and may not become profitable.

***If we are unable to manage the anticipated growth of our business, our future revenue and operating results may be harmed.***

Any growth that we experience in the future could provide challenges to our organization, requiring us to expand our sales personnel and manufacturing operations and general and administrative infrastructure. Future growth will impose significant added responsibilities on management, including the need to identify, recruit, train and integrate additional employees. Rapid expansion in personnel could mean that less experienced people carry out our research and development activities, manufacture our PulseTx System devices and market and sell our NPS therapies and treatments, which could result in inefficiencies and unanticipated costs, reduced quality and disruptions to our operations. In addition, rapid and significant growth may strain our administrative and operational infrastructure, and the failure to continue to upgrade our technical, administrative, operating and financial control systems or the occurrence of unexpected expansion difficulties could have a material adverse effect on our business, financial condition and results of operations and our ability to timely execute our business plan. If we are unable to manage our growth effectively, it may be difficult for us to execute our business strategy and our business could be harmed.

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### ***Rapidly changing technology in life sciences could make the products we are developing obsolete.***

The medical technology industry is characterized by rapid and significant technological changes, frequent new product introductions and enhancements and evolving industry standards. Our future success will depend on our ability to continually develop and then improve the products that we design and to develop and introduce new products that address the evolving needs of our customers on a timely and cost-effective basis. We also will need to pursue new market opportunities that develop as a result of technological and scientific advances. These new market opportunities may be outside the scope of our proven expertise or in areas which have unproven market demand. Any new products developed by us may not be accepted in the intended markets. Our inability to gain market acceptance of new products could harm our future operating results.

### ***Security breaches, loss of data and other disruptions to us or our third-party service providers could compromise sensitive information related to our business or prevent us from accessing critical information and expose us to liability, which could adversely affect our business and our reputation.***

In the ordinary course of our business, we, and our third-party service providers may collect and store sensitive data, including legally protected health information, personally identifiable information about our patients, information related to our trials, intellectual property, and our proprietary business and financial information. We manage and maintain our applications and data utilizing a combination of on-site and vendor-owned systems. We face a number of risks related to our protection of, and our service providers' protection of, this critical information, including loss of access, unauthorized disclosure and unauthorized access, as well as risks associated with our ability to identify and audit such events.

Although we take measures to protect sensitive information from unauthorized access or disclosure, our information technology and infrastructure may be vulnerable to attacks by hackers or viruses or otherwise breached due to employee error, malfeasance or other activities. While we have not experienced any such attack or breach, if such an event were to occur, our networks would be compromised and the information we store on those networks could be accessed by unauthorized parties, publicly disclosed, lost or stolen. Any such access, disclosure or other loss of information could result in legal claims or proceedings, liability under laws that protect the privacy of personal information, such as the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, or HITECH, and regulatory penalties. Unauthorized access, loss or dissemination could also disrupt our operations, including our ability to process tests, provide test results, provide services, conduct research and development activities, collect, process and prepare company financial information, provide information about our product candidates and manage the administrative aspects of our business and could damage our reputation, any of which could adversely affect our business.

In addition, the interpretation and application of federal and state consumer, health-related and data protection laws in the United States are often uncertain, contradictory and in flux. It is possible that these laws may be interpreted and applied in a manner that is inconsistent with our practices. If so, this could result in government-imposed fines or orders requiring that we change our practices, which could adversely affect our business. Complying with these various laws could cause us to incur substantial costs or require us to change our business practices, systems and compliance procedures in a manner adverse to our business.

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

We face an inherent risk of product liability exposure related to the future sale of planned products and the use of planned products in human clinical studies. For example, we may be sued if any of our product candidates, including any that are developed in combination therapies, allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability and a breach of warranties. We may also be subject to liability for a misunderstanding of, or inappropriate reliance upon, the information we provide. If we cannot successfully defend ourselves against claims that our planned products caused injuries, we may incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- decreased demand for any planned products that we may develop;
- injury to our reputation and significant negative media attention;
- withdrawal of patients from clinical studies or cancellation of studies;
- significant costs to defend the related litigation and distraction to our management team;
- substantial monetary awards to patients;

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- loss of revenue; and
- the inability to commercialize any products that we may develop.

For example, if we pursue clinical trials in the field of oncology, patients with the types and stages of cancer targeted by our NPS technology may already be in severe and advanced stages of disease, may have worsened conditions despite traditional therapies, may not be surgical candidates, and/or may have both known and unknown significant pre-existing and potentially life-threatening conditions. During the course of treatment, patients may suffer adverse events, including death, for reasons that may be related to our NPS Technology or our PulseTx System. Such events could subject us to costly litigation, require us to pay substantial amounts of money to injured patients, delay, negatively impact or end our opportunity to receive or maintain regulatory approval to market those products, or require us to suspend or abandon our commercialization efforts. Even in a circumstance in which we do not believe that an adverse event is related to our product, the investigation into the circumstance may be time-consuming or inconclusive. These investigations may interrupt our sales efforts, delay our regulatory approval processes, or impact and limit the type of regulatory approvals our products could receive or maintain. As a result of these factors, a product liability claim, even if successfully defended, could harm our business.

We currently maintain product liability insurance coverage, which may not be adequate to cover all liabilities that we may incur. Insurance coverage is increasingly expensive. 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 ability to utilize our net operating loss carryforwards and certain other tax attributes may be limited.***

We have incurred net losses since our inception and anticipate that we will continue to incur significant losses for the foreseeable future. If not utilized, the federal and state NOL carryforwards will begin to expire in various years beginning after 2032. Under the Internal Revenue Code of 1986, as amended, or the Code, and certain similar state tax provisions, a corporation is generally allowed a deduction for net operating losses, or NOLs, carried over from a prior taxable year. Under those provisions, we can carry forward our NOLs to offset our future taxable income, if any, until such NOLs are used or expire. The same is true of other unused tax attributes, such as tax credits.

In addition, under Section 382 of the Internal Revenue Code, a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its pre-change net operating losses (“NOLs”) to offset future taxable income. We believe that we may have had one or more ownership changes, and, as a result, a portion of our existing NOLs may be subject to limitation. Future changes in our stock ownership could result in additional limitations. We may not be able to utilize a material portion of our NOLs even if we attain profitability.

### ***We have a substantial amount of goodwill and intangible assets which over time may have to be written down as we make the required periodic assessments as to their value as reflected on our financial statements.***

A significant portion of our total assets are comprised of goodwill and intangibles that arose from our 2014 business acquisitions. We review goodwill for impairment at least annually or whenever changes in circumstances indicate that the carrying value of the goodwill may not be recoverable. We also review our intangible assets for impairment at each fiscal year end or when events or changes in circumstances indicate the carrying value of these assets may exceed their current fair values. If we take an impairment charge for either goodwill or intangible assets, the overall assets will be reduced. Such an impairment charge may result in a change in the perceived value of the company and ultimately may be reflected as a reduction in the market price of our securities. Additionally, an impairment charge may also adversely influence our ability to raise capital in the future.

### ***We have identified a material weakness in our internal control over financial reporting. If our remediation of this material weakness is not effective, or if we experience additional material weaknesses in the future or otherwise fail to maintain an effective system of internal control over financial reporting in the future, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect investor confidence in us and, as a result, the value of our common stock.***

As a public company, we are required to maintain internal control over financial reporting and to report any material weaknesses in such internal controls. Section 404 of the Sarbanes-Oxley Act requires that we evaluate and determine the effectiveness of our internal control over financial reporting and, beginning with our second annual report following our initial public offering, which will be the year ending December 31, 2017, provide a management report on internal control over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our financial statements will not be prevented or detected on a timely basis.

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In connection with the audit of our financial statements as of and for the year ended December 31, 2016, we identified a material weakness in our internal control over financial reporting. The material weakness related to a lack of effective controls to adequately restrict access and segregate duties. Specifically, due to the limited number of staff in our accounting function, certain personnel had the ability to prepare and post journal entries without a qualified independent review performed by someone without this ability. Upon identifying this material weakness, we performed additional procedures to evaluate the impact on the financial statements. Based on these procedures, we believe the material weakness did not result in any material misstatements to our financial statements. However, this material weakness could result in a misstatement of our accounts or disclosures that would result in a material misstatement of our financial statements that would not be prevented or detected. We are implementing measures designed to improve our internal control over financial reporting to remediate this material weakness, including the following:

- We are evaluating our accounting system access rights so that there are accounting personnel without journal entry access who can perform review activities.
- We are formalizing our internal control documentation and strengthening supervisory reviews by our management.
- We are in the process of adding additional accounting personnel and will be segregating duties amongst accounting personnel.

We cannot assure you that the measures we have taken to date, and are continuing to implement, will be sufficient to remediate the material weakness we have identified or avoid potential future material weaknesses. If the steps we take do not correct the material weakness in a timely manner, we will be unable to conclude that we maintain effective internal control over financial reporting. Accordingly, there could continue to be a reasonable possibility that a material misstatement of our financial statements would not be prevented or detected on a timely basis.

In addition to the remediation efforts related to the material weakness described above, we are in the process of designing and implementing the internal control over financial reporting required to comply with Section 404 of the Sarbanes Oxley Act. This process will be time consuming, costly and complicated. If during the evaluation and testing process, we identify one or more other material weaknesses in our internal control over financial reporting, our management will be unable to assert that our internal control over financial reporting is effective. Even if our management concludes that our internal control over financial reporting is effective, our independent registered public accounting firm may conclude that there are material weaknesses with respect to our internal controls or the level at which our internal controls are documented, designed, implemented or reviewed. If we are unable to assert that our internal control over financial reporting is effective, or when required in the future, if our independent registered public accounting firm is unable to express an opinion as to the effectiveness of our internal control over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock could be adversely affected, and we could become subject to investigations by the stock exchange on which our securities are listed, the SEC, or other regulatory authorities, which could require additional financial and management resources.

***Our facilities in California are located near known earthquake faults, and the occurrence of an earthquake or other catastrophic disaster could cause damage to our facilities and equipment, which could require us to cease or curtail operations.***

Our facilities in the San Francisco Bay Area are located near known earthquake fault zones and are vulnerable to damage from earthquakes. We are also vulnerable to damage from other types of disasters, including fire, floods, power loss, communications failures and similar events. If any disaster were to occur, our ability to operate our business at our facilities would be seriously, or potentially completely, impaired. In addition, the nature of our activities could cause significant delays in our research programs and commercial activities and make it difficult for us to recover from a disaster. The insurance we maintain may not be adequate to cover our losses resulting from disasters or other business interruptions. Accordingly, an earthquake or other disaster could materially and adversely harm our ability to conduct business.

### **Risks Related to Product Development**

***We currently do not have any products approved by the FDA or other similar foreign regulatory authorities for commercial sale or any commercialized products.***

To date, we have invested a substantial amount of time and capital to research and develop the foundations of our technology and potential applications. For us to develop any products that might ultimately be commercialized, we will have to invest further time and capital in research and product development, medical and other regulatory compliance, and market development. Therefore, we may never develop any products that can be commercialized. All of our development efforts will

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require substantial additional investment, which may never result in any revenue. Our efforts may not lead to approved or commercially successful products for a number of reasons, including:

- we may not be able to complete the science and develop any planned products for NPS;
- we may not be able to obtain regulatory approvals for our planned products, or the approved indications may be narrower than we seek;
- we may experience delays in our development program, clinical trials and the regulatory approval process;
- our NPS technology may not prove to be safe or effective in clinical trials;
- physicians may not receive any reimbursement from third-party payers, or the level of reimbursement may be insufficient to support widespread adoption of any of our products;
- any products that are approved may not be accepted in the marketplace by physicians or patients;
- we may not be able to manufacture our products in commercial quantities or at an acceptable cost; and
- rapid technological change or the appearance of a new competitive technology may make our technology and products obsolete.

***Our efforts may never demonstrate the feasibility of our technology.***

Our research and development efforts remain subject to all of the risks associated with the development of new therapies, devices, treatment modalities, and related products based on our NPS technology. NPS applications are not yet fully developed. Development of the underlying technology, including the development of the PulseTx System, may be affected by unanticipated technical or other problems, among other development and research issues, and the possible insufficiency of funds needed in order to complete development of these products or devices. Safety, regulatory and efficacy issues, clinical hurdles or challenges also may result in delays and cause us to incur additional expenses that may increase our need for capital and result in additional losses. In addition, the potential indications for NPS are numerous, and we may fail to pursue the most optimal indications. If we cannot complete, or if we experience significant delays in developing our technology, applications or products for use in potential commercial applications, particularly after incurring significant expenditures, our business may fail and investors may lose the entirety of their investment.

***The mechanism of action of NPS has not been fully determined or validated.***

The exact mechanism(s) of action(s) of NPS is not fully understood, and data is still being gathered regarding its use. Furthermore, there are only a relatively small number of scientists and researchers who can be considered experts in the use of this emerging technology. A full understanding of a future product's mechanism of action and a large stable of scientific experts are typically believed to make product development less risky. The FDA or similar foreign regulatory authorities may view this as increasing the potential risks, and diminishing the potential benefits, of products based on NPS technology. In addition, potential partners may view this as a limitation of the program, and it may be more challenging for us to obtain a partnership on favorable terms as a result.

***NPS or our planned products may cause serious adverse side effects or have other properties that could delay or prevent their regulatory approval, limit the commercial desirability of an approved label or result in significant negative consequences following any marketing approval.***

The risk of failure of clinical development is high. For example, the vast majority of our *in vivo* data has been a result of animal testing, and we have only recently begun our first pilot study in humans. It is impossible to predict when or if this or any planned products will prove safe enough to receive regulatory approval. Undesirable side effects caused by NPS or any of our planned products could cause us or regulatory authorities to interrupt, delay or halt clinical trials. They could result in a more restrictive label or the delay or denial of regulatory approval by the FDA or other comparable foreign regulatory authority.

Additionally, if NPS or any of our planned products receive marketing approval but, we or others later identify undesirable side effects caused by such product, a number of potentially significant negative consequences could result, including:

- we may be forced to recall such product and suspend the marketing of such product;
- regulatory authorities may withdraw their approvals of such product;
- regulatory authorities may require additional warnings on the label that could diminish the usage or otherwise limit the commercial success of such products;

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- the FDA or other regulatory authorities may issue safety alerts, Dear Healthcare Provider letters, press releases or other communications containing warnings about such product;
- the FDA may require the establishment or modification of Risk Evaluation Mitigation Strategies or a comparable foreign regulatory authority may require the establishment or modification of a similar strategy that may, for instance, restrict distribution of our products and impose burdensome implementation requirements on us;
- we may be required to change the way the product is administered or conduct additional clinical trials;
- we could be sued and held liable for harm caused to subjects or patients;
- we may be subject to litigation or product liability claims; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the particular planned product, if approved.

***Our business is dependent upon physicians adopting our NPS technology, and if we fail to obtain broad adoption, our business would be adversely affected.***

If we obtain regulatory approval for an NPS application or product, our success will depend on our ability to educate physicians regarding the benefits of NPS, such as our PulseTx System, over existing treatment modalities and to persuade them to prescribe PulseTx System treatments for their patients. We do not know if NPS will be successful over the long term, and market acceptance may be hindered if physicians are not presented with compelling data demonstrating the efficacy of our service compared to alternative treatments. Any studies we, or third parties, may conduct comparing our NPS technology with alternative treatments may be expensive, time consuming or may not yield positive results. Additionally, adoption will be directly influenced by a number of financial factors, including the ability of providers to attract cash reimbursement from patients or to obtain sufficient reimbursement from third party commercial payors, and the Centers for Medicare & Medicaid Services, or CMS, for the professional services they provide in administering NPS treatments. The efficacy, safety, performance and cost-effectiveness of our NPS technology, PulseTx System or other potential products based on NPS technology, on a stand-alone basis and relative to competing services, will determine the availability and level of reimbursement received by us and providers. If physicians do not adopt and prescribe our future products, we may never become profitable.

***We may find it difficult to enroll patients in our clinical trials. If we cannot enroll a sufficient number of eligible patients to participate in the clinical trials, we may not be able to initiate or continue clinical trials, which could delay or prevent development of our product candidates.***

Identifying and qualifying patients to participate in clinical trials of our product candidates is critical to our success. The timing of our clinical trials depends on the speed at which we can recruit patients to participate in testing our product candidates as well as completion of required follow-up periods. In general, if patients are unwilling to participate in our trials because of negative publicity from adverse events in the life sciences industry or for other reasons, including competitive clinical trials for similar patient populations, the timeline for recruiting patients, conducting trials and obtaining regulatory approval of planned products may be delayed. If there are delays in accumulating the required patients and patient data, there may be delays in completing the trial. Further, if any of our clinical trial sites fail to comply with FDA-approved good clinical practices, we may be unable to use the data gathered at those sites. If our clinical investigators fail to carry out their contractual duties or regulatory obligations or fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to their failure to adhere to our clinical protocols or for other reasons, our clinical trials 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.

***Laboratory conditions differ from commercial conditions and field conditions, and the safety and effectiveness of our planned products may depend on the technique of the user.***

Observations and developments that may be achievable under laboratory circumstances may not be able to be replicated in broader research and development phases, in commercial settings, or in the use of any of the planned products in the field. Furthermore, if commercialized, NPS will be administered by healthcare professionals and will require a degree of training and practice to administer correctly. Treatment results achieved during the laboratory or in clinical trials conducted by us or other investigators may not be representative of the results actually encountered during commercial use of our products due to variability in administration technique. The training and skills of investigators in our clinical trials may not be representative of the training and skills of future product users, which could negatively affect treatment results. In addition,

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there may be a selection bias in the patients and/or sites of administration chosen for any clinical trials that would positively affect treatment results.

### ***Issues with our firmware and software may negatively affect the function of our devices.***

The safety and effectiveness of NPS-based treatments and therapies may depend, in part, on the function of firmware run by the microprocessors embedded in the device and associated software. This firmware and software is proprietary to us. While we have made efforts to test the firmware and software extensively, it is potentially subject to malfunction which in turn may harm a patient. Further, it may be vulnerable to physical break-ins, hackers, improper employee or contractor access, computer viruses, programming errors, or similar problems. Any of these might result in harm to a patient or the unauthorized release of confidential medical, business or other information of other persons or of ourselves.

***We may encounter manufacturing problems or delays that could result in lost revenue. Additionally, we currently rely on third-party suppliers for critical materials needed to manufacture NPS devices such as the PulseTx System and related applicators and, if we obtain regulatory approval, our planned products. Any problems experienced by these suppliers could result in a delay or interruption of their supply to us, and as a result, we may face delays in the development and commercialization of planned products.***

We perform final assembly of our devices to support our current research and development activities at our facility in Burlingame, California and will be moving to a larger facility in Hayward, California. We believe that we currently have, and at our new facility, will continue to have, adequate manufacturing capacity for these purposes. However, if demand for our planned products increases significantly, we will need to either expand our manufacturing capabilities or outsource to other manufacturers. We have no corporate experience in commercial-scale manufacturing of our planned products, and we currently rely upon third-party suppliers to manufacture and supply components for our NPS devices. The manufacture of these products in compliance with the FDA's regulations requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of medical device products often encounter difficulties in production, including difficulties with production costs and yields, quality control, quality assurance testing, shortages of qualified personnel, as well as compliance with strictly enforced FDA requirements, other federal and state regulatory requirements, and foreign regulations.

We currently purchase components for our NPS devices under purchase orders and do not have long-term contracts with most of the suppliers of these materials. If suppliers were to delay or stop producing our components, or if the prices they charge us were to increase significantly, or if they elected not to sell to us, we would need to identify other suppliers. We could experience delays in manufacturing the devices while finding another acceptable supplier, which could impact our results of operations.

***We may not become commercially viable if our ultimate commercialized products or related treatments fail to obtain an adequate level of reimbursement by Medicare and other third party payers.***

We believe that the commercial viability of our potential devices and products and related treatments, and therefore our commercial success as a company, will be affected by the availability of government reimbursement and medical insurance coverage and reimbursement for newly approved medical therapies, technologies and devices. Insurance coverage and reimbursement is not assured. It typically takes a period of use in the market place before coverage and reimbursement is granted, if it is granted at all. In the United States and other jurisdictions in Europe and other regions, physicians and other healthcare providers generally rely on insurance coverage and reimbursement for their revenues, therefore this is an important factor in the overall commercialization plans of a proposed product and whether it will be accepted for use in the marketplace. Without insurance coverage and reimbursement for our planned products, we would expect to earn only diminished revenues, if any revenues are earned.

Medicare, Medicaid, health maintenance organizations and other third-party payers are increasingly attempting to contain healthcare costs by limiting both the scope of coverage and the level of reimbursement of new medical technologies and products, and as a result, they may not cover or provide adequate payment for the use of our planned products. In order to obtain satisfactory reimbursement arrangements, we may have to agree to a fee or sales price lower than the fee or sales price we might otherwise charge. Even if Medicare and other third-party payers decide to cover procedures involving our proposed devices and products, we cannot be certain that the reimbursement levels will be adequate. Accordingly, even if our planned products are approved for commercial sale, unless government and other third-party payers provide adequate coverage and reimbursement for our devices and products, some physicians may be discouraged from using them, and our sales would suffer.



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Medicare reimburses for medical technologies and products in a variety of ways, depending on where and how the item is used. However, Medicare only provides reimbursement if CMS determines that the item should be covered and that the use of the device or product is consistent with the coverage criteria. A coverage determination can be made at the local level by the Medicare administrative contractor, a private contractor that processes and pays claims on behalf of CMS for the geographic area where the services were rendered, or at the national level by CMS through a national coverage determination. There are statutory provisions intended to facilitate coverage determinations for new technologies, but it is unclear how these new provisions will be implemented and it is not possible to indicate how they might apply to any of our proposed devices and products, as they are still in the development stages. Coverage presupposes that the technology, device, or product has been cleared or approved by the FDA and further, that the coverage will be no broader than the approved intended uses of the device or product as approved or cleared by the FDA, but coverage can be narrower. A coverage determination may be so limited that relatively few patients will qualify for a covered use of a device or product.

Obtaining a coverage determination, whether local or national, is a time-consuming, expensive and highly uncertain proposition, especially for a new technology, and inconsistent local determinations are possible. On average, Medicare coverage determinations for medical devices and products lag behind FDA approval. The Medicare statutory framework is also subject to administrative rulings, interpretations and discretion that affect the amount and timing of reimbursement made under Medicare. Medicaid coverage determinations and reimbursement levels are determined on a state by state basis, because Medicaid, unlike Medicare, is administered by the states under a state plan filed with the Secretary of the United States Department of Health and Human Services (HHS). Medicaid generally reimburses at lower levels than Medicare. Moreover, Medicaid programs and private insurers are frequently influenced by Medicare coverage determinations.

***We work with outside scientists and their institutions in developing product candidates. These scientists may have other commitments or conflicts of interest, which could limit our access to their expertise and harm our ability to leverage our discovery platforms.***

We work with scientific advisors and collaborators at academic research institutions in connection with our product development. These scientists and collaborators are not our employees, but they serve as either independent contractors or researchers under research agreements that we have with their sponsoring clinic, academic institution or research institution. Such scientists and collaborators may have other commitments that would limit their availability to us. Although our scientific advisors generally agree not to do competing work, if an actual or potential conflict of interest between their work for us and their work for another entity arises, we may lose their services. It is also possible that some of our valuable proprietary knowledge may become publicly known through these scientific advisors if they breach their confidentiality agreements with us, which would cause competitive harm to our business.

### **Risks Related to Intellectual Property**

***If we or our licensors are unable to protect our/their intellectual property, then our financial condition, results of operations and the value of our technology and products could be adversely affected.***

Patents and other proprietary rights are essential to our business, and our ability to compete effectively with other companies is dependent upon the proprietary nature of our technologies. We also rely upon trade secrets, know-how, continuing technological innovations and licensing opportunities to develop, maintain and strengthen our competitive position. We seek to protect these, in part, through confidentiality agreements with certain employees, consultants and other parties. Our success will depend in part on the ability of our licensors and us to obtain, to maintain (including making periodic filings and payments) and to enforce patent protection for the licensed intellectual property, in particular, those patents to which we have secured rights. We, and our licensors, may not successfully prosecute or continue to prosecute the patent applications which we have licensed. Even if patents are issued in respect of these patent applications, we or our licensors may fail to maintain these patents, may determine not to pursue litigation against entities that are infringing upon these patents, or may pursue such enforcement less aggressively than we ordinarily would for our own patents. Without adequate protection for the intellectual property that we own or license, other companies might be able to offer substantially identical products for sale, which could unfavorably affect our competitive business position and harm our business prospects. Even if issued, patents may be challenged, invalidated, or circumvented, which could limit our ability to stop competitors from marketing similar products or limit the length of term of patent protection that we may have for our products.

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***Litigation or third-party claims of intellectual property infringement or challenges to the validity of our patents would require us to use resources to protect our technology and may prevent or delay our development, regulatory approval or commercialization of our product candidates.***

If we are the target of claims by third parties asserting that our products or intellectual property infringe upon the rights of others we may be forced to incur substantial expenses or divert substantial employee resources from our business. If successful, those claims could result in our having to pay substantial damages or could prevent us from developing one or more product candidates. Further, if a patent infringement suit were brought against us or our collaborators, we or they could be forced to stop or delay research, development, manufacturing or sales of the product or product candidate that is the subject of the suit.

If we or our collaborators experience patent infringement claims, or if we elect to avoid potential claims others may be able to assert, we or our collaborators may choose to seek, or be required to seek, a license from the third-party and would most likely be required to pay license fees or royalties or both. These licenses may not be available on acceptable terms, or at all. Even if we or our collaborators were able to obtain a license, the rights may be nonexclusive, which would give our competitors access to the same intellectual property. Ultimately, we could be prevented from commercializing a product, or be forced to cease some aspect of our business operations if, as a result of actual or threatened patent infringement claims, we or our collaborators are unable to enter into licenses on acceptable terms. This could harm our business significantly. The cost to us of any litigation or other proceeding, regardless of its merit, even if resolved in our favor, could be substantial. Some of our competitors may be able to bear the costs of such litigation or proceedings more effectively than we can because of their having greater financial resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our ability to compete in the marketplace. Intellectual property litigation and other proceedings may, regardless of their merit, also absorb significant management time and employee resources.

***If we fail to comply with our obligations in the agreements under which we license development or commercialization rights to products or technology from third-parties, we could lose license rights that are important to our business.***

We hold licenses from ODURF and EVMS and from AMI-USC to intellectual property relating to the sub-microsecond electric field technology, as well as applicator design and configuration, and pulse generators in addition to the intellectual property that we own for these things. For the continuance of the license with ODURF and EVMS, Pulse Biosciences needs to commence pursuing one or more applications with the FDA by December 15, 2018 and continue to comply with the various obligations set forth in the license. If we fail to meet these obligations, the licensor will have the right to terminate the applicable license or modify certain terms of the license agreement. Generally, the loss of any one of our current licenses, or any other license we may acquire in the future, could harm our business, prospects, financial condition and results of operation.

***Our intellectual property rights will not necessarily provide us with competitive advantages.***

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

- others may be able to make products that are similar to our product candidates but that are not covered by the claims of the patents that we own or have exclusively licensed;
- others may independently develop similar or alternative technologies without infringing our intellectual property rights;
- issued patents that we own or have exclusively licensed may not provide us with any competitive advantages, or may be held invalid or unenforceable, as a result of legal challenges by our competitors;
- we may obtain patents for certain products many years before we obtain marketing approval for products utilizing such patents, and because patents have a limited life, which may begin to run prior to the commercial sale of the related product, the commercial value of our patents may be limited;
- our competitors might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- we may fail to develop additional proprietary technologies that are patentable;

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- the laws of certain foreign countries may not protect our intellectual property rights to the same extent as the laws of the United States, or we may fail to apply for or obtain adequate intellectual property protection in all the jurisdictions in which we operate; and
- the patents of others may have an adverse effect on our business, for example by preventing us from marketing one or more of our product candidates for one or more indications.

Any of the aforementioned threats to our competitive advantage could harm our business.

***If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.***

In addition to patented technology, we rely upon, among other things, unpatented proprietary technology, processes, trade secrets and know-how. Any involuntary disclosure to or misappropriation by third-parties of our confidential or proprietary information could enable competitors to duplicate or surpass our technological achievements, potentially eroding our competitive position in our market. We seek to protect confidential or proprietary information in part by confidentiality agreements with our employees, consultants and third-parties. While we require all of our employees, consultants, advisors and any third-parties who have access to our proprietary know-how, information and technology to enter into confidentiality agreements, we cannot be certain that this know-how, information and technology will not be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. These agreements may be terminated or breached, and we may not have adequate remedies for any such termination or breach. Furthermore, these agreements may not provide meaningful protection for our trade secrets and know-how in the event of unauthorized use or disclosure. To the extent that any of our staff were previously employed by other pharmaceutical, medical technology or biotechnology companies, those employers may allege violations of trade secrets and other similar claims in relation to their medical device development activities for us.

***If we are unable to protect the intellectual property used in our products, others may be able to copy our innovations which may impair our ability to compete effectively in our markets.***

The strength of our patents involves complex legal and scientific questions and can be uncertain. Our patents or patent applications may be challenged or our patent applications may fail to result in issued patents and our existing or future patents may be too narrow to prevent third-parties from developing or designing around our intellectual property and in that event we may lose competitive advantage and our business may suffer. Further, the patent applications that we license or have filed may fail to result in issued patents. The claims may need to be amended. Even after amendment, a patent may not issue and in that event we may not obtain the use of the intellectual property that we seek and may lose competitive advantage which could result in harm to our business.

***We may become involved in future 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 our licensors. To counter infringement or unauthorized use, we or our licensors may file infringement claims, which can be expensive and time consuming. In addition, in an infringement proceeding, a court may decide that a patent of ours or of our 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. If we or any current licensors or future licensees or licensors with rights to prosecute, assert or defend patents related to our product candidates fail to appropriately prosecute and maintain patent protection for patents covering any of our product candidates, or if patents covering any of our product candidates are asserted against infringers or defended against claims of invalidity or unenforceability in a manner which adversely affects such coverage, our ability to develop and commercialize any such product candidate may be adversely affected and we may not be able to prevent competitors from making, using and selling competing products. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated or interpreted narrowly and could put our patent applications at risk of not issuing.

The United States Patent and Trademark Office may initiate interference proceedings to determine the priority of inventions described in or otherwise affecting 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 our licensors, misappropriation of our proprietary rights, particularly in countries where the laws may not protect those rights as fully as in the United States.

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### ***Confidentiality agreements with employees and third parties may not prevent unauthorized disclosure of trade secrets and other proprietary information, which would harm our competitive position.***

In addition to patents, we rely on trade secrets, technical know-how and proprietary information concerning our business strategy and product candidates in order to protect our competitive position, which are difficult to protect. As we collaborate with various third parties on the research and development of our planned products, we must, at times, share trade secrets with them. In the course of our research and development activities and our business activities, we rely on confidentiality agreements to protect our proprietary information. Such confidentiality agreements are used, for example, when we talk to vendors or potential strategic collaborators. In addition, each of our employees and consultants is required to sign a confidentiality agreement and invention assignment agreement upon joining our company. Our employees, consultants, contractors, business partners or outside scientific collaborators might intentionally or inadvertently disclose our trade secret information in breach of these confidentiality agreements or our trade secrets may otherwise be misappropriated. Our collaborators might also have rights to publish data, and we might fail to apply for patent protection prior to such publication. It is possible that a competitor will make use of such information, and that our competitive position will be compromised. In addition, to the extent that our employees, consultants or contractors use intellectual property owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions. Enforcing a claim that a third party illegally obtained and is using any of our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States sometimes are less willing than U.S. courts to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how, and our trade secrets cannot be enforced against such independently developed knowledge. If we cannot maintain the confidentiality of our proprietary technology and other confidential information, then our ability to obtain patent protection or to protect our trade secret information would be jeopardized, which would adversely affect our competitive position.

### ***We may be subject to claims that our employees, consultants or independent contractors have wrongfully used or disclosed confidential information of third parties or that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.***

Although we seek to protect our ownership of intellectual property rights by ensuring that our agreements with our independent contractors, collaborators and other third parties with whom we do business include provisions requiring such parties to assign rights in inventions to us, we may also be subject to claims that former employees, collaborators or other third parties have an ownership interest in our patents or other intellectual property. We may be subject to ownership disputes in the future arising, for example, from conflicting obligations of consultants or others who are involved in developing our product candidates. Litigation may be necessary to defend against these and other claims challenging inventorship or ownership. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, valuable intellectual property. Such an outcome could harm our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

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

Filing, prosecuting and defending patents on product candidates in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States can be less extensive than those in the United States. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as federal and state laws in the United States. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the United States, or from selling or importing products made using our inventions in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and further, may export otherwise infringing products to territories where we have patent protection, but enforcement is not as strong as that in the United States. These products may compete with our current or future product candidates, if any, and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents, trade secrets and other intellectual property protection, particularly those relating to biotechnology products, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. We believe this is caused by both the technical nature of the subject matter and a general enthusiasm for generic competition in developing countries, and is not a concern that is specific to any particular foreign jurisdiction. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing and could provoke third parties to assert claims against

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us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

***We have not yet registered some of our trademarks in all of our potential markets, and failure to secure those registrations could adversely affect our business.***

If we apply to register our trademarks in all of our potential markets, our applications may not be allowed for registration, and our registered trademarks may not be maintained or enforced. In addition, in the U.S. Patent and Trademark Office and in comparable agencies in many foreign jurisdictions, third parties are given an opportunity to oppose pending trademark applications and to seek to cancel registered trademarks. Opposition or cancellation proceedings may be filed against our trademarks, and our trademarks may not survive such proceedings. If we do not secure registrations for our trademarks, we may encounter more difficulty in enforcing them against third parties than we otherwise would.

***Changes in patent law could diminish the value of patents in general, thereby impairing our ability to protect our existing and future products.***

Recent patent reform legislation could increase the uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of issued patents. In 2011, the Leahy-Smith America Invents Act, or the Leahy-Smith Act, was signed into law. The Leahy-Smith Act includes a number of significant changes to U.S. patent law. These include provisions that affect the way patent applications are prosecuted and also may affect patent litigation. These also include provisions that switched the United States from a “first-to-invent” system to a “first-to-file” system, allow third party submission of prior art to the USPTO during patent prosecution and set forth additional procedures to attack the validity of a patent by the USPTO administered post grant proceedings. Under a first-to-file system, assuming the other requirements for patentability are met, the first inventor to file a patent application generally will be entitled to the patent on an invention regardless of whether another inventor had made the invention earlier. The USPTO recently developed new regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act, and in particular, the first to file provisions, only became effective in 2013. Accordingly, it is not clear what, if any, impact the Leahy-Smith Act will have on the operation of our business. The Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business, financial condition, results of operations and prospects.

In addition, patent reform legislation may pass in the future that could lead to additional uncertainties and increased costs surrounding the prosecution, enforcement and defense of our patents and applications. Furthermore, the U.S. Supreme Court and the U.S. Court of Appeals for the Federal Circuit have made, and will likely continue to make, changes in how the patent laws of the United States are interpreted. Similarly, foreign courts have made, and will likely continue to make, changes in how the patent laws in their respective jurisdictions are interpreted. We cannot predict future changes in the interpretation of patent laws or changes to patent laws that might be enacted into law by U.S. and foreign legislative bodies. Those changes may materially affect our patents or patent applications and our ability to obtain additional patent protection in the future.

### **Risks Related to Government Regulation**

***We may never receive regulatory approval, including that from the FDA, for any of our planned products.***

We may never receive regulatory approvals, including from the FDA, for any potential therapies, devices or products in the United States or in any foreign market. Therefore, it is highly speculative as to any timing for our planned products to be commercialized. Investors need to take a long-term approach to an investment in our securities, as the commercial realization of our technology is speculative and well in the future.

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***We will be subject to stringent domestic and foreign regulation in respect of any potential therapies, devices and products. Any unfavorable regulatory action may materially and adversely affect our future financial condition and business operations and prospects.***

Our potential therapies, devices and products, further development activities and manufacturing and distribution, once developed and determined, will be subject to extensive, rigorous and ongoing regulation by numerous government agencies, including the FDA and similar foreign regulatory authorities. To varying degrees, each of these agencies monitors and enforces our compliance with laws and regulations governing the development, testing, manufacturing, labeling, marketing, distribution, and the safety and effectiveness of our medical technology. The process of obtaining and maintaining marketing approval or clearance from the FDA and similar foreign regulatory authorities for new therapies, devices and products, or for enhancements, expansion of the indications or modifications to existing products, could:

- take a significant, indeterminate amount of time;
- require the expenditure of substantial resources;
- involve rigorous pre-clinical and clinical testing, and possibly post-market surveillance;
- involve modifications, repairs or replacements of our products;
- require design changes of our products;
- result in limitations on the indicated uses of our products; and
- result in our never being granted the regulatory approval we seek.

If we experience any of these occurrences, our operations may suffer, we might experience harm to our competitive standing and result in further losses that adversely affect our financial condition. We will have ongoing responsibilities under FDA and international regulations, both before and after a product is approved and commercially released. Compliance with applicable regulatory requirements is subject to continual review and is monitored rigorously through periodic inspections. If an inspection were to conclude that we are not in compliance with applicable laws or regulations, or that any of our therapies or devices are ineffective or pose an unreasonable health risk, the FDA or similar foreign regulatory authorities could ban such medical therapies, devices or products, detain or seize such devices or products, order a recall, repair, replacement, or refund of such devices or products, or require us to notify health professionals and others that the therapies, devices or products present unreasonable risks of substantial harm to the public health. Additionally, the FDA or similar foreign regulatory authorities may impose other operating restrictions, enjoin and restrain certain violations of applicable law pertaining to therapies, devices and products and assess civil or criminal penalties against our officers, employees, or us. The FDA and similar foreign regulatory authorities have been increasing its scrutiny of the industry and the government is expected to continue to scrutinize the industry closely with inspections and possibly enforcement actions. Any adverse regulatory action, depending on its magnitude, may restrict us from effectively manufacturing, marketing and selling our therapies, devices and products. In addition, negative publicity and product liability claims resulting from any adverse regulatory action could have a material adverse effect on our financial condition and results of operations.

***We will have to comply with complex statutes prohibiting fraud and abuse, and both we and physicians utilizing our planned products could be subject to significant penalties for noncompliance.***

There are many federal and state laws and regulations prohibiting fraud and abuse in the healthcare industry that can result in significant criminal and civil penalties. These federal laws include: the anti-kickback statutes which prohibit certain business practices and relationships, including the payment or receipt of remuneration for the referral of patients whose care will be paid by Medicare or other federal healthcare programs; the physician self-referral prohibition, commonly referred to as the Stark Law; the anti-inducement law, which prohibits providers from offering anything to a Medicare or Medicaid beneficiary to induce that beneficiary to use items or services covered by either program; the Civil False Claims Act, which prohibits any person from knowingly presenting or causing to be presented false or fraudulent claims for payment by the federal government, including the Medicare and Medicaid programs and the Civil Monetary Penalties Law, which authorizes the imposition of civil penalties administratively for fraudulent or abusive acts.

Sanctions for violating these federal laws include criminal and civil penalties that range from punitive sanctions, damage assessments, money penalties, imprisonment, denial of Medicare and Medicaid payments, or exclusion from the Medicare and Medicaid programs, or both. As federal and state budget pressures continue, federal and state administrative agencies may also continue to escalate investigation and enforcement efforts to root out waste and to control fraud and abuse in governmental healthcare programs. Private enforcement of healthcare fraud has also increased, due in large part to amendments to the Civil False Claims Act in 1986 that were designed to encourage private persons to sue on behalf of the government. A violation of any of these federal and state fraud and abuse laws and regulations could have a material adverse effect on our liquidity and financial condition.

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***To obtain the necessary device and marketing and manufacturing clearance or approval, as a pre-condition, we will have to conduct various preclinical and clinical tests, which may be costly and time consuming, and may not provide results that will allow us to seek regulatory approval.***

The number of preclinical and clinical tests that will be required for regulatory clearance or approval varies depending on the disease or condition to be treated, the method of treatment, the nature of the device, the jurisdiction in which we are seeking approval and the applicable regulations. Regulatory agencies, including those in the United States, Canada, Europe and other countries where medical devices and products are regulated, can delay, limit or deny approval of a product for many reasons. For example, regulatory agencies:

- may not deem a therapy, technology or device to be safe or effective;
- may interpret data from preclinical and clinical testing differently than we do;
- may not approve our manufacturing processes;
- may conclude that our device does not meet quality standards for durability, long-term reliability, biocompatibility, electromagnetic compatibility, or electrical safety; and
- may change their approval policies or adopt new regulations.

The FDA may make requests or suggestions regarding conduct of our clinical trials, resulting in an increased risk of difficulties or delays in obtaining regulatory approval in the US. Any of these occurrences could prove materially harmful to our operations and business.

***Even if a potential device or product ultimately is cleared or approved by the different regulatory authorities, it may be cleared or approved only for narrow indications which may render it commercially less viable.***

Even if a potential device or product of ours is cleared or approved, it may not be cleared or approved for the indications that are necessary or desirable for a successful commercialization. Our preference will be to obtain as broad an indication as possible for use in connection with the particular disease or treatment for which it is designed. However, the final classification may be more limited than we originally seek. The limitation on use may make the device or product commercially less viable and more difficult, if not impractical, to market. Therefore we may not obtain the revenues that we seek in respect of the proposed product, and we will not be able to become profitable and provide an investment return to our investors.

***Even if we obtain clearance or approval to sell a potential product, we will be subject to ongoing requirements and inspections that could lead to the restriction, suspension or revocation of our clearance.***

We, as well as any potential collaborative partners such as manufacturers and distributors, will be required to adhere to applicable FDA regulations regarding good manufacturing practice, which include testing, control, and documentation requirements. We will be subject to similar regulations in foreign countries. Even if regulatory approval of a product is granted, the approval may be subject to limitations on the indicated uses for which the product may be marketed or to the conditions of approval, or contain requirements for costly post-marketing testing and surveillance to monitor the safety or efficacy of the product. Ongoing compliance with good manufacturing practice and other applicable regulatory requirements is strictly enforced in the United States through periodic inspections by state and federal agencies, including the FDA, and in international jurisdictions by comparable agencies. Failure to comply with regulatory requirements could result in, among other things, warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, failure to obtain premarket clearance or premarket approval for devices, withdrawal of approvals previously obtained, and criminal prosecution. The restriction, suspension or revocation of regulatory approvals or any other failure to comply with regulatory requirements will limit our ability to operate and could increase our costs.

***Any failure or delay in completing clinical trials or studies for our therapies, devices and products and the expense of those trials may adversely affect our business.***

Preclinical studies, clinical trials and post-clinical monitoring and trials required to demonstrate the safety and efficacy of our potential devices and products will be time consuming and expensive. If we must conduct additional clinical trials or other studies with respect to any of our proposed product candidates to those that are initially contemplated, if we are unable to successfully complete any clinical trials or other studies, or if the results of these trials or studies are not positive or are only modestly positive, we may be delayed in obtaining marketing approval for the planned products, we may not be able to obtain marketing approval, or we may obtain approval for indications that are not as broad as we seek. Our research and product development costs also will increase if we experience delays in testing or approvals. The completion of clinical trials for our proposed therapies, devices and products could be delayed because of our inability to manufacture or obtain from

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third-parties materials sufficient for use in preclinical studies and clinical trials; delays in patient enrollment and variability in the number and types of patients available for clinical trials; difficulty in maintaining contact with patients after treatment, resulting in incomplete data; poor effectiveness of proposed devices and products during clinical trials; unforeseen safety issues or side effects; and governmental or regulatory delays and changes in regulatory requirements and guidelines. If we incur significant delays in our clinical trials, our competitors may be able to bring their products to market before we do, which could result in harming our ability to commercialize our planned products. If we experience any of these occurrences our business will be materially harmed.

***Because we and one of our licensors have used federal funding in the development of certain aspects of our technology, the federal government retains 'march-in' rights in connection with results derived from these grants.***

March-in rights give the federal government the right to grant to other entities, which may include competitors, licenses or to take a license for itself if the government funded the development of a patent. The march-in right applies to patents that have been issued. The march-in right is intended to be used only if there is a threat to public health and safety that the owner of the patent is not equipped to handle. The march-in right may also be used to remove the exclusive rights belonging to a patent holder if the patent for which the government provided funding is not suitable for public use. If march-in rights are used by the government, the entities using the patent are required to pay royalties to the patent holder, which amount would be subject to negotiation. Because federal funding was used for some aspects of the company's technology that will be the subject of some of our patents, the company could be subject to the march-in right and lose its exclusivity of those patents, and may suffer direct competition if any license is granted by the government under the march-in right to a competitor.

***Our employees, collaborators and other personnel may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements and insider trading.***

We are exposed to the risk of fraud or other misconduct by our employees, collaborators, vendors, principal investigators, consultants and commercial partners. Misconduct by these parties could include intentional failures to comply with the regulations of the FDA and similar foreign regulatory authorities, provide accurate information to the FDA and similar foreign regulatory authorities, comply with data privacy and security and healthcare fraud and abuse laws and regulations in the United States and abroad, report financial information or data accurately or disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. Additionally, laws regarding data privacy and security, including HIPAA, as amended by HITECH, as well as comparable laws in non-U.S. jurisdictions, may impose obligations with respect to safeguarding the privacy, use, security and transmission of individually identifiable health information such as genetic material.

Various 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. Any misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and cause harm to our reputation. We adopted a code of conduct applicable to all of our employees, but 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 comply with these laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant fines or other sanctions.

### **Risks Related to Owning Our Common Stock**

***The price of our common stock is expected to be volatile, and you may be unable to sell your shares at or above the price you paid to acquire them.***

The market price of our common stock has been volatile, and we expect it to continue to be volatile for the foreseeable future in response to many risk factors listed in this section, and others beyond our control, including:



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- actual or anticipated fluctuations in our financial condition and operating results;
- announcements by our customers, partners or suppliers relating directly or indirectly to our products, services or technologies;
- announcements of technological innovations by us or our competitors;
- overall conditions in our industry and market;
- changes in laws or regulations applicable to our planned products;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures, capital commitments or achievement of significant milestones;
- additions or departures of key personnel;
- competition from existing products or new products that may emerge;
- fluctuations in the valuation of companies perceived by investors to be comparable to us;
- disputes or other developments related to proprietary rights, including patents, litigation matters or our ability to obtain intellectual property protection for our technologies;
- announcement or expectation of additional financing efforts;
- sales of our common stock by us or our stockholders;
- stock price and volume fluctuations attributable to inconsistent trading volume levels of our shares;
- reports, guidance and ratings issued by securities or industry analysts; and
- general economic and market conditions.

If any of the foregoing occurs, it may cause our stock price or trading volume to decline. Stock markets in general and the market for companies in our industry in particular have experienced price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political and market conditions such as recessions, interest rate changes or international currency fluctuations, may negatively impact the market price of our common stock. Investors may not realize any return on their investment in us and may lose some or all of their investment. In the past, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

***We do not know whether an active, liquid and orderly trading market will develop or be maintained for our common stock or what the market price of our common stock will be and as a result it may be difficult for you to sell your common stock.***

Prior to our initial public offering in May 2016, there was no public market for our common stock. Although our common stock is listed on The NASDAQ Capital Market, the market for our shares has demonstrated varying levels of trading activity. As a result of these and other factors, you may not be able to sell your common stock quickly or at or above the price paid to acquire the stock or at all. Further, an inactive market may also impair our ability to raise capital by selling additional common stock and may impair our ability to enter into strategic collaborations or acquire companies or products by using our common stock as consideration.

***Control by our principal stockholders may limit your ability to influence the outcome of director elections and other transactions requiring stockholder approval.***

A significant percentage of our outstanding stock is held by a limited number of investors. As a result, such persons will have significant influence over corporate actions requiring stockholder approval, including the following actions:

- to elect or defeat the election of our directors;
- to amend or prevent amendment of our articles of incorporation or bylaws;
- to effect or prevent a merger, sale of assets or other corporate transaction; and
- to control the outcome of any other matter submitted to our stockholders for vote.

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Such persons' stock ownership may discourage a potential acquirer from making a tender offer or otherwise attempting to obtain control of our company, which in turn could reduce our stock price or prevent our stockholders from realizing a premium over our stock price.

Management currently beneficially holds a small percentage of our common stock. Other than their positions as directors and officers, and the restriction on the stockholders being able to call a special meeting limited to a majority of the outstanding shares, our management will not be able to greatly influence corporate actions requiring stockholder approval.

***We have incurred and will continue to incur costs as a result of operating as a public company and our management has been and will be required to devote substantial time to public company compliance initiatives.***

As a public company, listed in the United States, we have incurred and will continue to incur significant legal, accounting and other expenses due to our compliance with regulations and disclosure obligations applicable to us, including compliance with the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, as well as rules implemented by the SEC and the NASDAQ. The SEC and other regulators have continued to adopt new rules and regulations and make additional changes to existing regulations that require our compliance.

Stockholder activism, the current political environment, and the current high level of government intervention and regulatory reform may lead to substantial new regulations and disclosure obligations, which may lead to additional compliance costs and impact, in ways we cannot currently anticipate, the manner in which we operate our business. Our management and other personnel have and will continue to devote a substantial amount of time to these compliance programs and monitoring of public company reporting obligations and, as a result of the new corporate governance and executive compensation related rules, regulations, and guidelines prompted by the Dodd-Frank Wall Street Reform and Protection Act, or the Dodd-Frank Act, and further regulations and disclosure obligations expected in the future, we will likely need to devote additional time and costs to comply with such compliance programs and rules. New laws and regulations as well as changes to existing laws and regulations affecting public companies, including the provisions of the Sarbanes-Oxley Act of 2002, the Dodd-Frank Act, and rules adopted by the SEC and NASDAQ, will likely result in increased costs to us as we respond to their requirements. We are currently evaluating and monitoring developments with respect to these rules and regulations, and we cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

Furthermore, these and future rules and regulations could make it more difficult or more costly for us to obtain certain types of insurance, including director and officer liability insurance, and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. The impact of these requirements could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as our executive officers.

***We agreed in the underwriting agreement for our initial public offering to conduct a rights offering as a pre-condition to certain future offers and sales of our common stock, which may hinder our ability to raise capital during the term of the provision and because of the exceptions stockholders may not be offered the right to participate in future offerings.***

We agreed with one of the underwriters of our May 2016 initial public offering that for a period of up to five years after completion of our initial public offering, we will conduct offerings of our common stock so as to give the holders of our common stock the ability to participate through a rights offering. There are several exceptions to this obligation, including (i) stock dividends and splits, (ii) exercises and conversions of outstanding securities, (iii) equity awards under a stockholder approved plan which are authorized by the board of directors, (iv) merger, consolidation and combination transactions and business and asset acquisition transactions, (v) equity financings in any 12-month period that do not exceed both \$2,500,000 in gross proceeds and 5% of the then issued and outstanding shares of our common stock, and (vi) transactions which are approved by MDB Capital Group, LLC, one of the underwriters of the offering. Should any one of these exceptions be applicable to an offering, we would be able to proceed with the offering without first giving our current stockholders the right to participate. Although a rights offering may provide to the current stockholders the opportunity to maintain their ownership percentage, it may delay or disrupt an offering of common stock or securities related to common stock. Rights offerings are typically held open for a period of 16 to 30 days, after the required corporate actions and documentation, including a registration statement, are completed, which may range from a few weeks to several months. Because a rights offering may not raise all the capital sought by a company, the company may have to structure the offering with over-subscription rights, standby purchasers, private placement agents and/or underwriters in order to sell the offered and any additional securities in order to obtain the sought amount of capital.

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***We are an “emerging growth company” under the JOBS Act of 2012 and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our common stock less attractive to investors.***

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, and we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not “emerging growth companies” including, but not limited to, not being required to comply with the auditor attestation requirements of section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

We will remain an “emerging growth company” for up to five years, although we will lose that status sooner if our revenues exceed \$1 billion, if we issue more than \$1 billion in non-convertible debt in a three-year period, or if the market value of our common stock that is held by non-affiliates exceeds \$700 million as of any June 30.

Because of the exemptions from various reporting requirements provided to us as an “emerging growth company,” we may be less attractive to investors as an investment opportunity and it may be difficult for us to raise additional capital as and when we need it. Investors may be unable to compare our business with other companies in our industry if they believe that our reporting is not as transparent as other companies in our industry. If we are unable to raise additional capital as and when we need it, our financial condition and results of operations may be materially and adversely affected.

***If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our share price and trading volume could decline.***

The trading market for our common stock will depend on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. We currently have no analysts covering us and there can be no assurance that analysts will cover us or provide favorable coverage. If one or more of the analysts who cover us downgrade our stock or change their opinion of our stock, our share price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

***Sales of shares of our common stock may adversely affect the market for our common stock.***

If our stockholders, particularly our directors, executive officers and significant stockholders, sell, register for sale, or indicate an intent to sell, shares our common stock in the public market after the contractual lock-up agreements executed as part of our initial public offering and other legal restrictions on resale lapse, it may have a material adverse effect on the market price of our common stock.

***We have not paid dividends in the past and have no plans to pay dividends.***

We plan to reinvest all of our earnings, to the extent we have earnings, into our product research and development. We do not plan to pay any cash dividends with respect to our securities in the foreseeable future. We cannot assure you that we would, at any time, generate sufficient surplus cash that would be available for distribution to the holders of our common stock as a dividend. Therefore, you should not expect to receive cash dividends on our outstanding common stock.

***Our charter documents and Nevada law may inhibit a takeover that stockholders consider favorable.***

Provisions of our articles of incorporation and bylaws and applicable provisions of Nevada law may delay or discourage transactions involving an actual or potential change in control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. Some of the following provisions in our articles and bylaws that implement these are:

- 5,000,000 shares of “blank check” preferred stock, which may be issued at the discretion of the board of directors, without further approval of the stockholders;
- no cumulative voting rights for the holders of common stock in the election of directors; and
- vacancies in the board of directors may be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum.

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The Revised Nevada Statutes also provide for restrictions on voting our equity securities in connection with unapproved business combinations and control shares, which we have not opted out of.

These provisions may have the effect of entrenching our management team and may deprive you of the opportunity to sell your shares to potential acquirers at a premium over prevailing prices.

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

None.

### **Item 2. Properties**

As of December 31, 2016, we leased approximately 4,300 square feet in Burlingame, California, where we house our executive offices and research and development facilities.

On January 25, 2017, we entered into a lease agreement for premises consisting of approximately 15,697 square feet in Hayward, California. The premises will be used for our corporate headquarters and principal operating facility. The term of this lease is sixty-two months, commencing on the date that is the earlier of (1) the date upon which we commence business in the premises or (2) the date upon which the premises is ready for occupancy as defined in the lease. We anticipate commencing business in the premises in the third quarter of 2017. We have the right to extend this lease for five years upon written notice not more than twelve months nor less than nine months prior to the expiration of the original lease term. We have the right to terminate this lease if the landlord is unable to deliver the facility to us by December 1, 2017.

We believe that our existing facilities, together with the new premises under the lease agreement entered into in January 2017, will be sufficient to meet our needs in the foreseeable future.

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

From time to time, we may be involved in a variety of claims, lawsuits, investigations and proceedings relating to securities laws, product liability, patent infringement, contract disputes and other matters relating to various claims that arise in the normal course of our business. In addition, third parties may, from time to time, assert claims against us in the form of letters and other communications. We currently believe that these ordinary course matters will not have a material adverse effect on our business; however, the results of litigation and claims are inherently unpredictable. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

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

Not applicable.

**Part II****Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities****Market Information**

Our common stock is listed on The Nasdaq Capital Market and has been traded under the symbol “PLSE” since May 18, 2016. Prior to that date, there was no established public trading market for our common stock. As a result, we have not set forth quarterly information with respect to the high and low prices for our common stock for the two most recent fiscal years. The following table sets forth the range of high and low closing sales prices per share for our common stock as reported on the NASDAQ from May 18, 2016 through December 31, 2016:

	2016	
	High	Low
2nd Quarter	\$ 4.54	\$ 4.08
3rd Quarter	\$ 6.43	\$ 4.40
4th Quarter	\$ 6.50	\$ 5.21

**Holders of Record**

As of March 3, 2017, there were approximately 63 stockholders of record of our common stock. We believe the actual number of stockholders is greater than this number of record holders and includes stockholders who are beneficial owners, but whose shares are held in “street” name by brokers and other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

**Dividend Policy**

We have never declared or paid any cash dividend on our common stock and have no present plans to do so. We intend to retain earnings for use in the operation and expansion of our business.

**Sales of Unregistered Securities*****Warrants***

During the year ended December 31, 2016, in connection with the closing of our IPO, we issued warrants as compensation to the underwriters of our IPO to purchase a total 574,985 shares of our common stock at a price of \$5.00 per share. The warrants became exercisable 180 days after issuance and are exercisable for a period of five years. This issuance was undertaken in reliance upon the exemption that registration requirements available under Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”).

***Stock Options***

During the year ended December 31, 2016, we issued 405,132 stock options at a weighted average exercise price of \$4.44 under our 2015 Stock Incentive Plan which was adopted in August 2015. These issuances were undertaken in reliance upon the exemptions from registration requirements available under Rule 701 and Section 4(a)(2) of the Securities Act.

***Private Placement***

On February 7, 2017, we entered into a securities purchase agreement (the “Purchase Agreement”) with Robert W. Duggan and Maky Zanganeh (the “Investors”), pursuant to which we, in a private placement, agreed to issue and sell to the Investors an aggregate of 819,673 shares of our common stock, par value \$0.001 per share, at a price per share of \$6.10 (the “Shares”), for gross proceeds of approximately \$5 million (the “Private Placement”).

Pursuant to this Private Placement we sold the Shares to “accredited investors,” as that term is defined in the Securities Act of 1933, in reliance on the exemption from registration afforded by Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated under the Securities Act and corresponding provisions of state

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securities or “blue sky” laws. The Investors represented that they were acquiring the Shares for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof.

**Use of Proceeds from Public Offerings of Common Stock**

Our IPO of common stock was effected through a Registration Statement on Form S-1 (File No. 333-208694), as amended, which was declared effective on May 13, 2016. Our IPO closed on May 23, 2016 and resulted in net proceeds of approximately \$20.3 million, including proceeds from the exercise of the overallotment option granted to the underwriters, net of underwriting discounts and commissions and other offering costs. There has been no material change in the planned use of proceeds from our IPO as described in our final prospectuses filed with the SEC on May 17, 2016 pursuant to Rule 424(b).

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**Performance Graph**

The performance graph included in this Annual Report on Form 10-K shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or incorporated by reference into any filing of Pulse Biosciences, Inc. under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

The following graph shows a comparison from May 18, 2016 (the date our common stock commenced trading on the Nasdaq Capital Market through December 31, 2016 of the cumulative total return for our common stock, the Nasdaq Composite Index and the Nasdaq Biotechnology Index. Such returns are based on historical results and are not intended to suggest future performance. Data for The Nasdaq Composite Index and the Nasdaq Biotechnology Index assume reinvestment of dividends.





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**Item 6. Selected Financial Data**

The following table sets forth selected financial data as of and for the periods indicated. The selected consolidated balance sheets as of December 31, 2016 and 2015, and the related consolidated statements of operations and comprehensive loss, stockholders' equity and cash flows for the year ended December 31, 2016 and 2015, and for the period from May 19, 2014 (inception) through December 31, 2014 are derived from our consolidated audited financial statements appearing in Item 8, "Financial Statements and Supplementary Data," of this Annual Report on Form 10-K. Our historical results are not necessarily indicative of the results to be expected for any future period. The following selected financial data should be read in conjunction with Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K.

(in thousands, except per share amounts)	Years Ended December 31,		May 19, 2014 (inception) through December 31,
	2016	2015	2014
Revenue	\$ —	\$ —	\$ —
Operating expenses:			
General and administrative	2,933	1,224	43
Research and development	5,988	2,578	26
Amortization of intangible assets	665	666	111
Costs of business acquisitions	—	—	120
Total operating expenses	9,586	4,468	300
Other income:			
Interest income	68	—	—
Total other income	68	—	—
Loss from operations, before income taxes	(9,518)	(4,468)	(300)
Income tax benefit	—	(1,657)	(23)
Net loss	\$ (9,518)	\$ (2,811)	\$ (277)
Net loss per share:			
Basic and diluted net loss per share	\$ (0.86)	\$ (0.37)	\$ (0.11)
Weighted average shares used to compute net loss per common share — basic and diluted	11,009	7,565	2,511
	As of December 31,		
	2016	2015	2014
Cash, cash equivalents and marketable investments	\$ 16,395	\$ 3,606	\$ 7,009
Working capital	15,647	3,337	6,866
Total assets	26,314	14,325	17,896
Total liabilities	1,016	660	1,821
Total stockholders' equity	25,298	13,665	16,074

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

*You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and the related notes thereto included in Item 8 under the heading “Financial Statements and Supplementary Data”. Some of the information contained in this discussion and analysis or set forth elsewhere in this Form 10-K contains forward-looking statements that involve risks and uncertainties, including statements regarding our expected financial results in future periods. The words “anticipates,” “believes,” “could,” “estimates,” “expects,” “intends,” “may,” “might,” “plans,” “projects,” “will,” “would,” and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements that we make. You should read the “Risk Factors” section of this Form 10-K for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis. We do not assume any obligation to update any forward-looking statements.*

#### **Overview**

We are a clinical-stage medical technology company developing a non-thermal tissue treatment platform technology based upon our proprietary Nano-Pulse Stimulation (“NPS”) technology and pursuing applications in oncology, dermatology, general tissue treatment and veterinary medicine. NPS is a novel patented technology which leverages nano-second duration energy pulses that have demonstrated effective local tumor control and the initiation of an adaptive immune response in pre-clinical studies. We are pursuing a number of clinical applications for NPS, including oncology, dermatology, aesthetics and other minimally invasive applications where we believe NPS has the potential to compare favorably with current therapies and treatments. We are currently conducting research and development activities in pursuit of commercial applications for our NPS technology, but we have not yet commercialized or recognized revenue from our technology.

#### **Plan of Operation**

We plan to establish ourselves as a medical technology company with a local, non-thermal, and drug-free treatment platform that initiates cell death in targeted tissue by a process of cell signaling and also induces a systemic adaptive immune response to the targeted tissue. In order to accomplish this, we plan to:

- Improve our technology by continuing our research and product development efforts. We expect to develop different devices to target different tissue types that will leverage the novel characteristics of our technology platform.
- Further explore and understand the benefits of NPS with the objectives of broadening the currently planned cosmetic and therapeutic applications and identifying new applications. We anticipate that results of our clinical studies will enable us to recognize certain unmet medical needs that may be addressed by our technology.
- Continue to protect and expand our intellectual property portfolio with respect to NPS technology, which we expect will increase our ability to deter competitors and position our company for favorable licensing and partnering opportunities.
- Partner with medical or biomedical device companies for certain applications which we anticipate may accelerate product development and acceptance into target market areas and allow us to gain the sales and marketing advantages of the distribution infrastructure.

#### **Critical Accounting Policies and Use of Estimates**

The following discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in conformity with accounting principles generally accepted in the United States of America. Certain accounting policies and estimates are particularly important to the understanding of our financial position and results of operations and require the application of significant judgment by management or can be materially affected by changes from period to period in economic factors or conditions that are outside of the company’s control. As a result, these issues are subject to an inherent degree of uncertainty. In applying these policies, management uses its judgment to determine the appropriate assumptions to be used in the determination of certain estimates. Those estimates are based on our historical operations, future business plans and the projected financial results, the terms of existing contracts, trends in the industry and information available from other outside sources.

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### ***Long-Lived Assets***

We review long-lived assets, consisting of equipment and intangible assets, for impairment at each fiscal year end or when events or changes in circumstances indicate the carrying value of these assets may exceed their current fair values. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to the estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized for the amount by which the carrying amount of the asset exceeds the fair value of the assets. Assets to be disposed of are separately presented in the consolidated balance sheet and reported at the lower of the carrying amount or fair value less costs to sell, and are no longer depreciated.

### ***Goodwill***

We record goodwill when the consideration paid in a business acquisition exceeds the fair value of the net tangible assets and the identified intangible assets acquired. We review goodwill for impairment at least annually or whenever changes in circumstances indicate that the carrying value of the goodwill may not be recoverable.

### ***Stock-Based Compensation***

We periodically issue stock options to officers, directors, employees and consultants for services rendered. Such issuances vest and expire according to terms established at the issuance date. Stock-based payments to officers, directors and employees, including grants of employee stock options, are recognized in the financial statements based on their fair values. Stock option grants, which are generally time vested, are measured at the grant date fair value and charged to operations on a straight-line basis over the vesting period. We estimate the grant date fair value of stock options, using the Black-Scholes option-pricing model on a straight-line basis over the requisite service period of the award.

The Black-Scholes option-pricing model requires the use of highly subjective assumptions which determine the fair value of stock-based awards. The assumptions used in our option-pricing model represent management's best estimates. These estimates are complex, involve a number of variables, uncertainties and assumptions and the application of management's judgment, so that they are inherently subjective. If factors change and different assumptions are used, our stock-based compensation expense could be materially different in the future. These assumptions are estimated as follows:

***Risk-Free Interest Rate.*** We base the risk-free interest rate used in the Black-Scholes valuation model on the implied yield based on the U.S. Treasury yield curve in effect at the time of grant.

***Expected Term.*** The expected term represents the period that our stock-based awards are expected to be outstanding. Because of the limitations on the sale or transfer of our common stock as a privately held company before our IPO, we did not believe our historical exercise pattern was indicative of the pattern we would experience as a publicly traded company post IPO. We have consequently used the Staff Accounting Bulletin No. 110 ("SAB 110") simplified method to calculate expected term, which is the average of the contractual term and vesting period. We plan to continue using the SAB 110 simplified method until we have sufficient trading history as a publicly traded company.

***Volatility.*** We determine the price volatility factor based on the historical volatilities of comparable public companies in a similar industry. We intend to continue to consistently apply this process using the same or similar public companies until a sufficient amount of historical information regarding the volatility of our own common stock share price becomes available, or unless circumstances change such that the identified companies are no longer similar to us, in which case, more suitable companies whose share prices are publicly available would be utilized in the calculation.

***Dividend Yield.*** The expected dividend assumption is based on our current expectations about our anticipated dividend policy. We currently do not expect to issue any dividends.

In addition to assumptions used in the Black-Scholes option-pricing model, we must also estimate a forfeiture rate to calculate stock-based compensation for our awards. We will continue to use judgment in evaluating the assumptions related to our stock-based compensation on a prospective basis. As we continue to accumulate additional data, we may have refinements to our estimates, which could materially impact our future stock-based compensation expense.

### ***Income Taxes***

We account for income taxes using the asset and liability method, whereby deferred tax assets and liability account balances are determined based on differences between the financial reporting and tax bases of assets and liabilities, and are measured using the enacted rates and laws that will be in effect when the differences are expected to reverse.

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We provide a valuation allowance to reduce its deferred tax assets to the amount that is more likely than not to be realized. If we determine that we would be able to realize deferred tax assets in the future in excess of the recorded amount, an adjustment to the deferred tax assets would be credited to operations in the period such determination was made. Likewise, should we determine that we would not be able to realize all or part of its deferred tax assets in the future, an adjustment to the deferred tax assets would be charged to operations in the period such determination was made.

We account for uncertainties in income tax law under a comprehensive model for the financial statement recognition, measurement, presentation and disclosure of uncertain tax positions taken or expected to be taken in income tax returns as prescribed by FASB Accounting Standards Codification (“ASC”) 740-10, “Accounting for Uncertainty in Income Taxes.” The tax effects of a position are recognized only if it is “more-likely-than-not” to be sustained by the taxing authority as of the reporting date. If the tax position is not considered “more-likely-than-not” to be sustained, then no benefits of the position are recognized.

We are subject to U.S. federal income taxes and income taxes of various state tax jurisdictions. As our net operating losses have yet to be utilized, previous tax years remain open to examination by federal authorities and other jurisdictions in which we currently operates or have operated in the past. We are not currently under examination by any tax authority.

During 2014, we recorded deferred tax liabilities totaling \$1.7 million reflecting the book and tax basis difference of the recorded intangible assets as the underlying intangible assets will be amortized to expense over their estimated useful lives but will not be expensed for tax purposes. During 2015, operating losses incurred resulted in the realization of deferred tax assets that exceeded deferred tax liabilities. The tax benefit recorded during 2015 reflects the benefit resulting from the deferred tax assets, partially offset by the net difference between the deferred tax liabilities and the valuation allowance recorded. The effect of this treatment in 2015 resulted in the realization of a \$1.7 million tax benefit and the elimination of the deferred tax liabilities.

### ***Segment and Geographical Information***

We operate and manage our business as one reportable and operating segment. Our Chief Executive Officer, who is the chief operating decision maker, reviews financial information on an aggregate basis for purposes of allocating resources and evaluating financial performance. Primarily all of our long-lived assets are based in the United States.

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

#### ***Operating Expenses***

We generally recognize operating expenses as they are incurred in two general categories, general and administrative costs and research and development costs, as well as non-cash amortization of intangible assets. Our operating expenses also include non-cash components related to depreciation of equipment and stock-based compensation costs, which are allocated, as appropriate, to general and administrative costs and research and development costs.

- General and administrative expenses consist of salaries and related expenses for executive, finance, legal, human resources, information technology and administrative personnel, professional fees, insurance costs and other general corporate expenses. We expect general and administrative expenses to increase in the future as we hire personnel and incur additional costs to support the expansion of our research and development activities and our operation as a public company, including higher legal, accounting, insurance, compliance, compensation and other costs.
- Research and development expenses consist of salaries and related expenses and consulting costs related to the design, development and enhancement of our potential future products, prototypes material and devices, patent filing fees and costs and rent, partially offset by grants received in support of specific research projects. We expect research and development costs to increase in the future as we develop next generation PulseTX™ systems and pursue commercial applications of our NPS technology and expand our clinical programs.

[Table of Contents](#)**Results of Operations****Comparison of the Years ended December 31, 2016 and 2015**

Our consolidated statements of operations as discussed herein are presented below:

<b>(in thousands)</b>	<b>Year Ended</b>		<b>\$ Change</b>
	<b>December 31,</b>		
	<b>2016</b>	<b>2015</b>	
Revenue	\$ —	\$ —	\$ —
Operating expenses:			
General and administrative	2,933	1,224	1,709
Research and development	5,988	2,578	3,410
Amortization of intangible assets	665	666	(1)
Total operating expenses	9,586	4,468	5,118
Other income:			
Interest income	68	—	68
Total other income	68	—	68
Loss from operations, before income taxes	(9,518)	(4,468)	5,050
Income tax benefit	—	(1,657)	(1,657)
Net loss	\$ (9,518)	\$ (2,811)	\$ 6,707

**General and Administrative**

General and administrative expenses increased by \$1,709,000 to \$2,933,000 in 2016, from \$1,224,000 in 2015. The increase was due primarily to \$908,000 of increased compensation costs, \$277,000 of increased stock-based compensation expense, \$219,000 of increased insurance costs, \$151,000 of increased professional and consulting services, \$58,000 of increased travel costs and \$62,000 of increased supplies. Compensation, including stock-based compensation costs, increased due to increased headcount. Insurance, professional and consulting services, travel costs and supplies increased primarily as a result of fees incurred in preparation for and operating as a public company. General and administrative expenses are expected to increase substantially during 2017 reflecting the buildout of additional operational infrastructure to support the increased level of clinical and development activities, in addition to increased operational compliance activities.

**Research and Development**

Research and development expenses increased by \$3,410,000 to \$5,988,000 in 2016, from \$2,578,000 in 2015. The increase was due primarily to \$1,194,000 of increased consulting and outside services, \$1,157,000 of increased prototype and development supplies, \$813,000 of increased compensation costs, \$192,000 of increased stock-based compensation expense, \$84,000 of increased intellectual property-related legal costs and \$67,000 of increased facility costs, partially offset by \$123,000 of decreased sponsored research expenses. Consultant and outside services and prototype and development supplies increased due to increased product development activities and the costs associated with manufacturing pre-production prototypes. Compensation, including stock-based compensation costs, increased due to increased headcount. Facility costs increased as we expanded our research facility to support increased research and development activities during 2016 compared to the prior year. Sponsored research expenses decreased primarily due to higher grant funding provided in 2015 compared to 2016 related to the sponsored research agreement entered into with Old Dominion University Research Foundation ("ODURF"). Intellectual property-related legal costs increased as a result of ongoing research and development. Research and development expenses are expected to increase substantially during 2017 compared to 2016, as we expand our clinical study activities, continue development of our PulseTx systems towards commercialization, and pursue regulatory clearance for our technology in one or more indications.

**Income Tax Benefit**

We recognized an income tax benefit of \$1,657,000 in 2015, due primarily to income tax benefit realized from deferred tax assets stemming from the net operating losses generated during 2015, net of the deferred tax liabilities as of December 31, 2015.

[Table of Contents](#)**Comparison of the period from May 19, 2014 through December 31, 2014 and the year ended December 31, 2015**

Our consolidated statements of operations as discussed herein are presented below.

<b>(in thousands)</b>	<b>Year Ended December 31, 2015</b>	<b>May 19, 2014 (inception) through December 31, 2014</b>	<b>\$ Change</b>
Revenue	\$ —	\$ —	\$ —
Operating expenses:			
General and administrative	1,224	43	1,181
Research and development	2,578	26	2,552
Amortization of intangible assets	666	111	555
Costs of business acquisitions	—	120	120
Total operating expenses	4,468	300	4,168
Other income:			
Interest income	—	—	—
Total other income	—	—	—
Loss from operations, before income taxes	(4,468)	(300)	4,168
Income tax benefit	(1,657)	(23)	1,634
Net loss	\$ (2,811)	\$ (277)	\$ 2,534

The period from May 19, 2014 (inception) through November 6, 2014, was a period of limited activity for us, as we were in the formation stage and capital raising stage, until we completed the acquisition of the businesses and the license of the intellectual property rights necessary for our business in November 2014.

**Year ended December 31, 2015**

The operating results for the year ended December 31, 2015, reflect the first full year of operational activities and the increased development activities involving our proprietary technology, including sponsored research costs, in combination with the establishment of general and administrative functions during the year. We expect both research and development and general and administrative expenses to increase during 2016 reflecting continuation and expansion of activities commencing during 2015.

**General and Administrative**

General and administrative expenses totaled \$43,000 and \$1,224,000 for the period from May 19, 2014 (inception) to December 31, 2014 and the year ended December 31, 2015, respectively. Expenses incurred during 2014 consisted primarily of normal corporate formation and start-up legal costs, while in 2015 expenses reflect employee and board compensation expense of \$733,000, professional and consulting services of \$390,000 and other general expenses of \$101,000. 2015 general and administration expenses include \$398,000 of stock-based compensation expense compared to no expense in 2014.

**Research and Development**

Research and development expenses totaled \$26,000 and \$2,578,000 for the period from May 19, 2014 (inception) to December 31, 2014 and the year ended December 31, 2015, respectively. Included in the expenses are National Institutes of Health (“NIH”) research grant revenues of \$178,000 and \$340,000 for 2014 and 2015, respectively. Expenses incurred during 2014 reflect compensation, patent expense and sponsored research expenses, while in 2015 expenses reflect compensation of \$962,000, sponsored research and related expenses of \$697,000, patent related expenses of \$397,000, lab supplies and equipment of \$243,000, and \$279,000 of general research and development expenses. 2015 research and development expense include \$5,000 of stock-based compensation compared to no expense in 2014.

**Amortization of Intangible Assets**

Amortization of intangible assets reflects for the presented periods the respective portion of the twelve-year amortization of the acquired technology and licensed intangible assets.

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### *Costs of Business Acquisitions*

Costs of business acquisitions reflect relevant legal fees of \$120,000 for the period from May 19, 2014 (inception) through December 31, 2014.

### *Income Tax Benefit*

We recognized an income tax benefit of \$23,000 and \$1,657,000 for the period from May 19, 2014 (inception) to December 31, 2014 and the year ended December 31, 2015 respectively. The income tax benefit realized during 2015 primarily reflects the deferred tax assets stemming from the net operating losses generated during 2015, net of the deferred tax liabilities as of December 31, 2015.

### *Liquidity and Capital Resources*

To date, we have not generated any revenues from product sales, and management does not expect to generate revenues from product sales for the next few years. Since inception, we have funded our business plan through the issuance of equity securities and grants from governmental agencies. Over the next few years, we intend to invest in research and development to develop commercially viable products and to assess the feasibility of potential future products. Additionally, we expect that our general and administrative expenses will increase as we incur substantial incremental costs associated with being a public company.

In May and June 2016, we completed our IPO from which we received total net proceeds of \$20.3 million, including proceeds from the exercise of the overallotment option granted to the underwriters, net of underwriting discounts and commissions and other offering costs.

In February 2017, we entered into a securities purchase agreement with Robert W. Duggan and Maky Zanganeh (the "Investors"), pursuant to which we, in this private placement, agreed to issue and sell to the Investors an aggregate of 819,673 shares of our common stock at a price per share of \$6.10 (the "Shares") for gross proceeds of approximately \$5 million (the "Private Placement").

Our condensed consolidated statements of cash flows as discussed herein are presented below:

<b>(in thousands)</b>	<b>Year Ended December 31,</b>		<b>May 19, 2014 (inception) through December 31,</b>
	<b>2016</b>	<b>2015</b>	<b>2014</b>
Net cash used in operating activities	\$ (8,051)	\$ (3,317)	\$ (101)
Net cash used in investing activities	\$ (14,381)	\$ (86)	\$ (45)
Net cash provided by financing activities	\$ 20,915	\$ —	\$ 7,155
Net increase (decrease) in cash	\$ (1,517)	\$ (3,403)	\$ 7,009

At December 31, 2016, we had cash, cash equivalents and investments of \$16.4 million. We believe that the net proceeds from our IPO and the Private Placement in February 2017 will be sufficient to fund our projected operating requirements for at least the next 12 months; however, we plan to raise additional capital in the future. These expectations are based on our current operating and financing plans which are subject to change. Until we are able to generate sustainable product revenues at profitable levels, we expect to finance our future cash needs through public or private equity offerings, debt financings or corporate collaboration and licensing arrangements. Such additional funds may not be available on terms acceptable to us or at all, particularly in light of recent market conditions. If we raise funds by issuing equity or equity-linked securities, the ownership of our stockholders will be diluted and the holders of new equity securities may have priority rights over our existing stockholders. If adequate funds are not available, we may be required to curtail operations significantly or to obtain funds by entering into agreements on unattractive terms. Our inability to raise capital could have a material adverse effect on our business, financial condition and results of operations.

### *Operating Activities*

During 2016, we used cash of \$8.1 million in operating activities. The difference between cash used in operating activities and net loss consisted primarily of stock-based compensation and depreciation and amortization, increased accrued expenses, partially offset by increased prepaid expenses and other current assets and deferred offering costs.

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During 2015, we used cash of \$3.3 million in operating activities. The difference between cash used in operating activities and net loss consisted primarily of depreciation and amortization and stock-based compensation, and changes in deferred income taxes.

### ***Investing Activities***

During 2016, we used cash of \$14.4 million for investing activities for the purchase of investments and office and laboratory equipment.

During 2015, we used cash of \$86,000 for investing activities for the purchase of office and laboratory equipment.

### ***Financing Activities***

During 2016, cash provided from financing activities was \$20.9 million due to the net proceeds received from our IPO, after deducting underwriting discounts and commissions and other offering costs.

During 2015, we did not have any cash flows from financing activities.

During the period from May 19, 2014 (inception) through December 31, 2014, we generated cash from financing activities of \$8,000 from the issuance of our common stock to our founders and net proceeds of \$7.1 million from the November 6, 2014 common stock private placement, and \$1,000 from the issuance of warrants to the placement agent.

## **Contractual Obligations**

### ***Frank Reidy Research Center Agreement***

As provided for in the license agreement with ODURF and EVMS, both of which are stockholders of our company, effective on November 6, 2014, we sponsored certain approved research activities at ODURF's Frank Reidy Research Center under a sponsored research agreement. In April 2016, the Company agreed to sponsor additional research under the SRA from April 2016 to March 2017, for an aggregate amount of \$1.0 million. As of December 31, 2016, there was \$0.25 million of approved budget remaining under this research agreement.

### ***Operating Lease***

We lease corporate offices and research facilities in Burlingame, California, under a lease expiring March 31, 2017, at a monthly cost of approximately \$19,000.

In January 2017, we entered into a new lease agreement (the "Lease") for premises consisting of approximately 15,697 rentable square feet located in Hayward, California (the "Premises"). The Premises will be used for our corporate headquarters and principal operating facility. The term of the Lease is sixty-two (62) months, commencing on the date that is the earlier of (i) the date upon which we commence business in the Premises or (ii) the date upon which the Premises is "Ready for Occupancy" as defined in the lease. Base monthly rent shall be abated for the first two (2) months of the Lease term and thereafter will be \$42,400 per month during the first year of the Lease term, with specified annual increases thereafter until reaching approximately \$50,300 per month during the last two (2) months of the Lease term. We are required to pay a refundable security deposit of approximately \$101,000. The Landlord is obligated to provide us with improvement allowances in the amount of approximately \$135.00 per rentable square foot of the Premises, which may be applied towards the costs of construction of the initial improvements in the Premises. We will be responsible for any such improvement costs in excess of the foregoing allowances. We may also be required to reimburse Landlord for certain expenses during the Lease term. We have the right to extend the Lease term by five (5) years upon written notice not more than twelve (12) months nor less than nine (9) months prior to the expiration of the original Lease term, with monthly payments equal to the "Fair Rental Value" as defined in the Lease. We also reserved the right to terminate the Lease if the Landlord is unable to deliver the Premises to us by December 1, 2017. Assuming the Landlord delivers the Premises to us by December 1, 2017, the lease obligations as of December 31, 2016 for less than one year, one to three years, three to five years and more than five years is approximately \$0.3 million, \$1.1 million, \$1.1 million and \$0.3 million, respectively.

## **Off-Balance Sheet Arrangements**

At December 31, 2016, we did not have any transactions, obligations or relationships that could be considered off-balance sheet arrangements.



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### **JOBS Act Accounting Election**

Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

### **Trends, Events and Uncertainties**

Research and development of new technologies are, by their nature, unpredictable. Although we undertake development efforts with commercially reasonable diligence, there can be no assurance that the net proceeds from our financings will be sufficient to enable us to develop our technology to the extent needed to generate future sales to sustain our operations. If we do not continue to have enough funds to sustain our operations, we will consider other options to continue our path to commercialization of NPS, including, but not limited to, additional financing through follow-on stock offerings, debt financings, or co-development agreements and /or other alternatives.

We cannot assure investors that our technology will be adopted or that we will ever achieve sustainable revenues sufficient to support our operations. Even if we are able to generate revenues, there can be no assurances that we will be able to achieve profitability or positive operating cash flows. There can be no assurances that we will be able to secure additional financing in the future on acceptable terms or at all. If cash resources are insufficient to satisfy our ongoing cash needs, we would be required to scale back or discontinue our technology and product development programs, or obtain funds, if available, although there can be no assurances, through the sale, licensing or strategic alliances that could require us to relinquish rights to our technology and intellectual property, or to curtail, suspend or discontinue our operations entirely.

Other than as discussed above and elsewhere in this Annual Report on Form 10-K, we are not currently aware of any trends, events or uncertainties that are likely to have a material effect on our financial condition in the near term, although it is possible that new trends or events may develop in the future that could have a material effect on our financial condition.

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

We are exposed to market risk in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates.

**Interest Rate and Market Risk**

Our exposure to interest rate and market risk is confined to our cash, cash equivalents and investments, all of which have maturities of less than three years. The goals of our investment policy are preservation of capital, fulfillment of liquidity needs and fiduciary control of our cash and investments. We also seek to maximize income from our investments without assuming significant risk. To achieve our goals, we maintain a portfolio of cash equivalents and investments in a variety of securities of high credit quality. The securities in our investment portfolio are not leveraged, are classified as available-for-sale, and are, due to their relatively short-term nature, subject to minimal interest rate risk. We currently do not hedge interest rate exposure. Because of the short-term maturities of our investments, we do not believe that a hypothetical 10% change in market interest rates would have any material negative impact on the value of our investment portfolio.

**Foreign Exchange Risk**

The majority of our expense and capital purchasing activities are transacted in U.S. dollars. We do not have any international operations. We may incur foreign exchange gains or losses in the future.

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**Item 8. Financial Statements and Supplementary Data**

**PULSE BIOSCIENCES, INC.**

**Index to Consolidated Financial Statements**

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

**To the Board of Directors and Stockholders of  
Pulse Biosciences, Inc.**

We have audited the accompanying consolidated balance sheets of Pulse Biosciences, Inc. (as defined in Note 2 to the consolidated financial statements) (the “Company”) as of December 31, 2016 and 2015, and the related consolidated statements of operations and comprehensive loss, stockholders’ equity, and cash flows for the years ended December 31, 2016 and 2015, and for the period from May 19, 2014 (inception) through December 31, 2014. The Company’s management is responsible for these consolidated financial statements. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of their internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, 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. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2016 and 2015, and the results of their operations and their cash flows for the years ended December 31, 2016 and 2015, and for the period from May 19, 2014 (inception) through December 31, 2014, in conformity with accounting principles generally accepted in the United States of America.

/s/ Gumbiner Savett Inc.  
March 20, 2017  
Santa Monica, California

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**PULSE BIOSCIENCES, INC.**  
**Consolidated Balance Sheets**  
**(in thousands, except per share data)**

	<u>December 31,</u>	
	<u>2016</u>	<u>2015</u>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 2,089	\$ 3,606
Marketable investments	14,306	—
Prepaid expenses and other current assets	268	44
Deferred offering costs	—	347
Total current assets	<u>16,663</u>	<u>3,997</u>
Equipment, net of accumulated depreciation	317	329
Intangible assets, net of accumulated amortization	6,543	7,208
Goodwill	2,791	2,791
Total assets	<u>\$ 26,314</u>	<u>\$ 14,325</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 265	\$ 262
Accrued expenses	751	398
Total current liabilities	<u>1,016</u>	<u>660</u>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.001 par value; authorized – 5,000 shares; issued and outstanding – none	—	—
Common stock, \$0.001 par value; authorized – 45,000 shares; issued and outstanding – 13,315 shares and 7,565 shares at December 31, 2016 and 2015, respectively	13	8
Additional paid-in capital	37,898	16,745
Accumulated other comprehensive loss	(7)	—
Accumulated deficit	(12,606)	(3,088)
Total stockholders' equity	<u>25,298</u>	<u>13,665</u>
Total liabilities and stockholders' equity	<u>\$ 26,314</u>	<u>\$ 14,325</u>

See accompanying notes to the consolidated financial statements.

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**PULSE BIOSCIENCES, INC.**  
**Consolidated Statements of Operations and Comprehensive Loss**  
**(in thousands, except per share data)**

	Years Ended December 31,		May 19, 2014 (inception) through December 31,
	2016	2015	2014
Revenue	\$ —	\$ —	\$ —
Operating expenses:			
General and administrative	2,933	1,224	43
Research and development	5,988	2,578	26
Amortization of intangible assets	665	666	111
Costs of business acquisitions	—	—	120
Total operating expenses	9,586	4,468	300
Other income:			
Interest income	68	—	—
Total other income	68	—	—
Loss from operations, before income taxes	(9,518)	(4,468)	(300)
Income tax benefit	—	(1,657)	(23)
Net loss	(9,518)	(2,811)	(277)
Other comprehensive loss:			
Unrealized loss on available-for-sale securities, net of tax	(7)	—	—
Comprehensive loss	\$ (9,525)	\$ (2,811)	\$ (277)
Net loss per share			
Basic and diluted net loss per share	\$ (0.86)	\$ (0.37)	\$ (0.11)
Weighted average shares used to compute net loss per common share — basic and diluted	11,009	7,565	2,511

See accompanying notes to the consolidated financial statements.

PULSE BIOSCIENCES, INC.

Consolidated Statements of Stockholders' Equity

PERIOD FROM MAY 19, 2014 (INCEPTION) THROUGH DECEMBER 31, 2014,  
AND THE YEARS ENDED DECEMBER 31, 2015 AND 2016  
(in thousands)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Common stock issued to founders	1,125	\$ 1	\$ 7	\$ —	\$ —	\$ 8
Issuance of common stock in private placement, net of issuance costs of \$853	2,996	3	7,144	—	—	7,147
Common stock issued in connection with acquisition of businesses	2,027	2	5,409	—	—	5,411
Common stock issued in connection with license agreement	1,417	2	3,783	—	—	3,785
Net loss for the period from May 19, 2014 (inception) through December 31, 2014	—	—	—	—	(277)	(277)
Balance, December 31, 2014	7,565	\$ 8	\$ 16,343	\$ —	\$ (277)	\$ 16,074
Stock-based compensation expense	—	—	402	—	—	402
Net loss	—	—	—	—	(2,811)	(2,811)
Balance, December 31, 2015	7,565	\$ 8	\$ 16,745	\$ —	\$ (3,088)	\$ 13,665
Issuance of common stock upon initial public offering, net of issuance costs of \$2,711	5,750	5	20,283	—	—	20,288
Stock-based compensation expense	—	—	870	—	—	870
Unrealized loss on marketable investments, net of tax	—	—	—	(7)	—	(7)
Net loss	—	—	—	—	(9,518)	(9,518)
Balance, December 31, 2016	13,315	\$ 13	\$ 37,898	\$ (7)	\$ (12,606)	\$ 25,298

See accompanying notes to the consolidated financial statements.

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**PULSE BIOSCIENCES, INC.**  
**Consolidated Statements of Cash Flows**  
(in thousands)

	Years Ended December 31,		May 19, 2014 (inception) through December 31, 2014
	2016	2015	2014
<b>Cash flows from operating activities:</b>			
Net loss	\$ (9,518)	\$ (2,811)	\$ (277)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation of equipment	94	51	6
Amortization of intangible assets	665	666	111
Stock-based compensation	870	402	—
Net premium amortization on marketable investments	4	—	—
Change in deferred income taxes	—	(1,657)	(23)
Changes in operating assets and liabilities:			
Prepaid expenses and other current assets	(135)	(12)	12
Deferred offering costs	(280)	(347)	—
Accounts payable	3	125	29
Accrued expenses	246	305	58
Deferred grant revenue	—	(39)	(17)
Net cash used in operating activities	<u>(8,051)</u>	<u>(3,317)</u>	<u>(101)</u>
<b>Cash flows from investing activities:</b>			
Purchase of equipment	(64)	(86)	(46)
Cash acquired in connection with acquisition of businesses	—	—	1
Purchase of marketable investments	(19,067)	—	—
Maturities of marketable investments	4,750	—	—
Net cash used in investing activities	<u>(14,381)</u>	<u>(86)</u>	<u>(45)</u>
<b>Cash flows from financing activities:</b>			
Common stock issued to founders	—	—	8
Net proceeds from private placement	—	—	7,147
Proceeds from issuance of common stock from initial public offering, net of issuance costs	20,915	—	—
Net cash provided by financing activities	<u>20,915</u>	<u>—</u>	<u>7,155</u>
Net increase (decrease) in cash	(1,517)	(3,403)	7,009
Cash and cash equivalents at beginning of period	3,606	7,009	—
Cash and cash equivalents at end of period	<u>\$ 2,089</u>	<u>\$ 3,606</u>	<u>\$ 7,009</u>
<b>Supplemental disclosure of noncash investing and financing activities:</b>			
Reclassification of deferred offering costs to additional paid-in capital upon initial public offering	\$ 627	\$ —	\$ —
Fair value of common stock issued in connection with license agreement	\$ —	\$ —	\$ 3,785
Fair value of common stock issued in connection with acquisition of businesses	\$ —	\$ —	\$ 5,411
Equipment purchased in accrued expenses	\$ 18	\$ 104	\$ —

See accompanying notes to the consolidated financial statements.



**PULSE BIOSCIENCES, INC.**  
**Notes to Consolidated Financial Statements**

**1. Organization and Description of Business**

***Business and Basis of Presentation***

Pulse Biosciences, Inc., incorporated in Nevada on May 19, 2014, is a clinical-stage medical technologies company developing commercial clinical applications for its proprietary Nano-Pulse Stimulation (“NPS”) technology. NPS is a novel patented technology which leverages nano-second duration energy pulses that have demonstrated effective local tumor control and the initiation of an adaptive immune response in pre-clinical studies. The Company is pursuing a number of clinical applications for NPS, including human oncology, dermatology, aesthetics and other minimally invasive applications where NPS is believed to provide greater benefits compared to current therapies and treatments. Pulse Biosciences, Inc. is referred to individually as “Pulse” and collectively with its wholly-owned subsidiaries as described below as the “Company” or “Pulse Biosciences, Inc.” The Company’s corporate office and research facility are located in Burlingame, California.

The Company’s activities are subject to significant risks and uncertainties, including the need for additional capital. The Company has not yet commenced any revenue-generating operations, does not have any cash flows from operations, and will need to raise additional capital to finance its operations. However, there can be no assurances that the Company will be able to obtain additional financing on acceptable terms and in the amounts necessary to fully fund its operating requirements.

***Initial Public Offering***

On May 13, 2016, the Company’s registration statement on Form S-1 (File No. 333-208694), as amended (the “Registration Statement”), relating to its initial public offering (“IPO”) was declared effective by the Securities and Exchange Commission (“SEC”) and closed on May 23, 2016, whereby the Company sold 5,000,000 shares of common stock at \$4.00 per share. The shares began trading on the NASDAQ Capital Market under the trading symbol “PLSE” on May 18, 2016. On June 21, 2016, the underwriters exercised their overallotment option to purchase an additional 749,846 shares of the Company’s common stock at \$4.00 per share. The Company received net proceeds of approximately \$20.3 million from the IPO, including proceeds from the exercise of the overallotment option granted to the underwriters, net of underwriting discounts and commissions and other offering costs.

**2. Summary of Significant Accounting Policies**

***Principles of Consolidation***

The accompanying consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States (“U.S. GAAP”) and include the financial statements of Pulse and its wholly-owned subsidiaries, BioElectroMed Corp. (“BEM”) and NanoBlate Corp. (“NB”), since their date of acquisition on November 6, 2014. ThelioPulse, Inc. (“TPI”), which was acquired on November 6, 2014, was merged into Pulse subsequent to its acquisition and ceased to exist as a separate entity. Intercompany balances and transactions have been eliminated in consolidation.

***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual amounts could differ from those estimates.

***Concentration of Credit Risk***

Financial instruments that potentially subject the Company to a concentration of credit risk consist of cash and cash equivalents and investments. The Company places its cash equivalents and investments with high credit quality financial institutions and, by policy, limits the amounts invested with any one financial institution or issuer. Deposits held with banks may exceed the amount of insurance provided on such deposits. The Company has not experienced any losses since inception.

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### ***Fair Value of Financial Instruments***

The Company believes the carrying amounts of its financial instruments, including cash equivalents, prepaid expenses and other current assets, accounts payable and accrued expenses, approximate fair value due to the short-term nature of such instruments.

### ***Cash, Cash Equivalents and Marketable Investments***

The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. The Company has designated all marketable investments as available-for-sale and therefore, such marketable investments are reported at fair value, with unrealized gains and losses recognized in accumulated other comprehensive income (loss) ("OCI") in stockholders' equity. The cost of marketable securities is adjusted for the amortization of premiums and discounts to expected maturity. Premium and discount amortization is included in other income, net. Realized gains and losses, as well as interest income, on available-for-sale securities are also included in other income, net. The Company includes all of its available-for-sale securities in current assets.

All of the Company's marketable investments are subject to a periodic impairment review. The Company recognizes an impairment charge when a decline in the fair value of its marketable investments below the cost basis is judged to be other-than-temporary. Factors considered in determining whether a loss is temporary include the length of time and extent to which the marketable investments fair value has been less than the cost basis, the financial condition and near-term prospects of the investee, extent of the loss related to credit of the issuer, the expected cash flows from the security, the Company's intent to sell the security and whether or not the Company will be required to sell the security before the recovery of its amortized cost. During the year ended December 31 2016, the Company did not recognize any impairment charges on its investments as it is more likely than not that the Company will recover their amortized cost basis upon sale or maturity. The Company did not hold investment securities at any time during the prior year.

### ***Deferred and Capitalized Offering Costs***

Costs incurred in connection with ongoing equity financing activities, consisting primarily of legal, accounting and other professional fees, are deferred until the related financing is either completed or abandoned. Costs related to completed equity financings are charged directly to additional paid-in capital. Costs related to abandoned financings are charged to operations.

### ***Equipment***

Equipment is recorded at cost and depreciated on a straight-line basis over their estimated useful lives, ranging from three to five years.

### ***Intangible Assets***

The Company's intangible assets consist of acquired patents and licenses, which are being amortized over their estimated useful lives of twelve years.

### ***Long-Lived Assets***

The Company reviews long-lived assets, consisting of equipment and intangible assets, for impairment during each fiscal year or when events or changes in circumstances indicate the carrying value of these assets may exceed their current fair values. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to the estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized for the amount by which the carrying amount of the asset exceeds the fair value of the assets. Assets to be disposed of are separately presented in the consolidated balance sheet and reported at the lower of the carrying amount or fair value less costs to sell, and are no longer depreciated. The Company has not historically recorded any impairment to its long-lived assets. In the future, if events or market conditions affect the estimated fair value to the extent that a long-lived asset is impaired, the Company will adjust the carrying value of these long-lived assets in the period in which the impairment occurs. For the years ended December 31, 2016, 2015 and the period from May 19, 2014 (inception) through December 31, 2014, the Company had not deemed any long-lived assets as impaired, and was not aware of the existence of any indicators of impairment at such dates.

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### ***Goodwill***

The Company records goodwill when the consideration paid in a business acquisition exceeds the fair value of the net tangible assets and the identified intangible assets acquired. The Company reviews goodwill for impairment at least annually or whenever changes in circumstances indicate that the carrying value of the goodwill may not be recoverable. For the years ended December 31, 2016, 2015 and the period from May 19, 2014 (inception) through December 31, 2014, the Company had not deemed the value of goodwill as impaired, and was not aware of the existence of any indicators of impairment at such dates.

### ***Stock-Based Compensation***

The Company periodically issues stock options to officers, directors, employees and consultants for services rendered. Such issuances vest and expire according to terms established at the issuance date.

Stock-based payments to officers, directors and employees, including grants of employee stock options, are recognized in the financial statements based on their grant date fair values. Stock option grants, which are generally time vested, are measured at the grant date fair value and charged to operations on a straight-line basis over the vesting period. The fair value of stock options is determined utilizing the Black-Scholes option-pricing model, which is affected by several variables, including the risk-free interest rate, the expected dividend yield, the life of the equity award, the exercise price of the stock option as compared to the fair value of the common stock on the grant date, and the estimated volatility of the common stock over the term of the equity award.

The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant. The Company estimates volatility based on the average historical volatilities of comparable public companies in a similar industry. The expected dividend yield is based on the current yield at the grant date; the Company has never declared or paid dividends and has no plans to do so for the foreseeable future. As permitted by Staff Accounting Bulletin No. 107, due to the Company's lack of history and option activity, management utilizes the simplified method to estimate the expected term of options at the date of grant. Prior to the Company's IPO, the fair value of common stock was determined by reference to either recent or anticipated cash transactions involving the sale of the Company's common stock.

Stock options issued to non-employees as compensation for services provided to the Company are accounted for based upon the estimated fair value of the stock option. Management utilizes the Black-Scholes option-pricing model to determine the fair value of the stock options issued by the Company. The Company recognizes this expense over the period in which the services are provided.

The Company recognizes the fair value of stock-based compensation costs in general and administrative costs and in research and development costs, as appropriate, in the Company's consolidated statements of operations. The Company issues new shares to satisfy stock option exercises.

### ***Research Grants***

Research grants are generally funded and paid through governmental, institutional, educational or research organizations. Grants received from agencies of the federal government are subject to federal regulation as to how the Company conducts its research activities, and the Company is required to comply with the respective research agreement terms relating to those grants. Amounts received under research grants are nonrefundable, regardless of the success of the underlying research project, to the extent that such amounts are expended in accordance with the approved grant project. The Company is permitted to draw down the research grants after incurring the related expenses. Amounts received under research grants are offset against the related research and development costs in the Company's consolidated statement of operations as the costs are incurred.

### ***Research and Development Costs***

Research and development costs consist primarily of compensation costs, fees paid to consultants and outside service providers and organizations (including research institutes at universities), development prototypes, patent fees and costs, and other expenses relating to the acquisition, design, development and testing of the Company's product candidates. Research and development costs incurred by the Company are expensed as incurred, unless the achievement of milestones, the completion of contracted work, or other information indicates that a different expensing schedule is more appropriate.

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### ***Patent Costs***

The Company is the owner of numerous domestic and foreign patents. Due to the significant uncertainty associated with the successful development of one or more commercially viable products based on the Company's research efforts and any related patent applications, patent costs not related to acquired patents, including patent-related legal fees, filing fees and other costs, including internally generated costs, are expensed as incurred. During the years ended December 31, 2016 and 2015 patent costs totaled \$0.5 million and \$0.4 million, respectively. During the period from May 19, 2014 (inception) through December 31, 2014, patent costs were \$26,000. Patent costs are included in research and development costs in the consolidated statements of operations and comprehensive loss.

### ***Income Taxes***

The Company accounts for income taxes under an asset and liability approach for financial accounting and reporting for income taxes. Accordingly, the Company recognizes deferred tax assets and liabilities for the expected impact of differences between the financial statements and the tax basis of assets and liabilities.

The Company records a valuation allowance to reduce its deferred tax assets to the amount that is more likely than not to be realized. In the event the Company determines that it would be able to realize its deferred tax assets in the future in excess of its recorded amount, an adjustment to the deferred tax assets would be credited to operations in the period such determination was made. Likewise, should the Company determine that it would not be able to realize all or part of its deferred tax assets in the future, an adjustment to the deferred tax assets would be charged to operations in the period such determination was made.

The Company is subject to U.S. federal income taxes and income taxes of various state tax jurisdictions. As the Company's net operating losses have yet to be utilized, previous tax years remain open to examination by federal authorities and other jurisdictions in which the Company currently operates or has operated in the past. The Company is not currently under examination by any tax authority.

The Company accounts for uncertainties in income tax law under a comprehensive model for the financial statement recognition, measurement, presentation and disclosure of uncertain tax positions taken or expected to be taken in income tax returns as prescribed by U.S. GAAP. The tax effects of a position are recognized only if it is "more-likely-than-not" to be sustained by the taxing authority as of the reporting date. If the tax position is not considered "more-likely-than-not" to be sustained, then no benefits of the position are recognized. At December 31, 2016 and 2015, the Company had not recorded any liability for uncertain tax positions. The Company includes interest and penalties related to uncertain tax positions as a component of income tax expense.

### ***Comprehensive Loss***

Comprehensive loss consists of net loss and unrealized gains or losses on available-for-sale investments. The Company displays comprehensive loss and its components as part of the consolidated statements of operations and comprehensive loss.

### ***Net Loss per Share***

The Company's basic net loss per share is calculated by dividing the net loss by the weighted average number of shares of common stock outstanding for the period. Diluted net loss per share is computed by giving effect to all potential dilutive common stock equivalents outstanding for the period. For purposes of this calculation, options to purchase common stock and common stock warrants are considered common stock equivalents. Potential common shares that have an anti-dilutive effect (i.e., those that increase income per share or decrease loss per share) are excluded from the calculation of diluted net loss per share.

Basic and diluted net loss per common share is the same for all periods presented because all warrants and stock options outstanding are anti-dilutive.

The following outstanding stock options and warrants to purchase common stock were excluded from the computation of diluted net loss per share for the periods presented because including them would have had an anti-dilutive effect:

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	Years Ended		May 19, 2014
	December 31,		(inception)
	2016	2015	through
			December 31,
			2014
Common stock warrants	874,610	299,625	299,625
Common stock options	1,229,355	875,221	—
Total	2,103,965	1,174,846	299,625

### **Segment and Geographical Information**

The Company operates and manages its business as one reportable and operating segment. The Company's Chief Executive Officer, who is the chief operating decision maker, reviews financial information on an aggregate basis for purposes of allocating resources and evaluating financial performance. All of the Company's long-lived assets are based in the United States.

### **Recently Adopted Standards**

In August 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Updates ("ASU") No. 2014-15, *Presentation of Financial Statements – Going Concern Disclosure of Uncertainties About an Entity's Ability to Continue as a Going Concern*, which requires management to evaluate whether there are conditions or events that raise substantial doubt about an entity's ability to continue as a going concern and to provide disclosures when certain criteria are met. The guidance is effective for annual periods beginning after December 15, 2016 and interim reporting periods starting in the first quarter of 2017. The Company adopted this standard as of December 31, 2016.

### **Recent Accounting Pronouncements**

During May 2014, the Financial Accounting Standards Board ("FASB") issued ("ASU") No. 2014-09, *Revenue from Contracts with Customers*. This updated standard will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective and permits the use of either the retrospective or cumulative effect transition method. In August 2015, the FASB issued an update to defer the effective date of this update by one year. This updated standard becomes effective for the Company in the first quarter of fiscal year 2018, but allows the Company to adopt the standard one year earlier if it so chooses. In March 2016, the FASB issued updates to this guidance to clarify the implementation guidance on principal versus agent considerations. In April 2016, the FASB issued guidance to clarify aspects related to identifying performance obligations and the licensing implementation guidance. In May 2016, the FASB issued guidance to clarify the implementation on narrow scope improvements and practical expedients. The Company is currently evaluating the impact of adopting these standards.

During February 2016, the FASB issued ASU No. 2016-02, *Leases*, which amends the existing accounting standards for leases. The new standard requires lessees to record a right-of-use asset and a corresponding lease liability on the balance sheet (with the exception of short-term leases). For lessees, leases will continue to be classified as either operating or financing in the income statement. This ASU becomes effective for the Company in the first quarter of fiscal year 2019 and early adoption is permitted. This ASU is required to be applied with a modified retrospective approach and requires application of the new standard at the beginning of the earliest comparative period presented. The Company generally does not finance purchases of equipment or other capital, but does lease its facilities. While the Company is continuing to assess all potential impacts of this standard, it expects that most of its lease commitments will be subject to the updated standard and recognized as lease liabilities and right-of-use assets upon adoption.

During March 2016, the FASB issued ASU No. 2016-09, *Improvements to Employee Share-based Payment Accounting*. This ASU simplifies the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. This ASU requires that excess tax benefits and deficiencies be recognized as income tax benefit or expense in the income statement. The Company currently plans to implement this ASU as required in the first quarter of fiscal year 2017. The Company does not expect the adoption of this ASU to have a significant impact on its financial position.

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During June 2016, the FASB issued ASU 2016-13, *Financial Instruments — Measurement of Credit Losses on Financial Instruments*, which requires measurement and recognition of expected credit losses for financial assets held. ASU 2016-13 is effective for the Company beginning January 1, 2020. The Company is currently evaluating the impact of adopting this standard.

During January 2017, the FASB issued ASU 2017-04, *Intangibles — Goodwill and Other (Topic 350): Simplifying the Accounting for Goodwill Impairment*, which simplifies the accounting for goodwill impairment. This ASU removes Step 2 of the goodwill impairment test, which requires hypothetical purchase price allocation. A goodwill impairment will now be the amount by which a reporting unit's carrying value exceeds its fair value, not to exceed the carrying amount of goodwill. The new guidance also requires disclosure of the amount of goodwill at reporting units with zero or negative carrying amounts. ASU 2017-04 is effective for the Company beginning January 1, 2020. Early adoption is permitted for any impairment tests performed after January 1, 2017. The Company is currently evaluating the impact of adopting this standard.

### 3. Fair Value of Financial Instruments

The authoritative guidance with respect to fair value established a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three levels, and requires that assets and liabilities carried at fair value be classified and disclosed in one of three categories, as presented below.

Level 1 - Observable inputs such as quoted prices in active markets for an identical asset or liability that the Company has the ability to access as of the measurement date. Financial assets and liabilities utilizing Level 1 inputs include active-exchange traded securities and exchange-based derivatives.

Level 2 - Inputs, other than quoted prices included within Level 1, which are directly observable for the asset or liability or indirectly observable through corroboration with observable market data. Financial assets and liabilities utilizing Level 2 inputs include fixed income securities, non-exchange based derivatives, mutual funds, and fair-value hedges.

Level 3 - Unobservable inputs in which there is little or no market data for the asset or liability which requires the reporting entity to develop its own assumptions. Financial assets and liabilities utilizing Level 3 inputs include infrequently-traded, non-exchange-based derivatives and commingled investment funds, and are measured using present value pricing models.

The Company determines the level in the fair value hierarchy within which each fair value measurement falls in its entirety, based on the lowest level input that is significant to the fair value measurement in its entirety. In determining the appropriate levels, the Company performs an analysis of the assets and liabilities at each reporting period end.

The Company classifies its investments in money market funds within Level 1 of the fair value hierarchy because they are valued using bank balances or quoted market prices. The Company classifies its Level 2 instruments based on market pricing and other observable inputs. The Company did not classify any of its investments within Level 3 of the fair value hierarchy.

The following table sets forth the fair value of the Company's financial assets measured on a recurring basis as of December 31, 2016 (in thousands):

Assets	Classification	December 31, 2016			Total
		Level 1	Level 2	Level 3	
Money market funds	Cash and cash equivalents	\$ 1,726	\$ —	\$ —	\$ 1,726
Corporate bonds	Investments	—	13,289	—	13,289
Asset-backed security	Investments	—	1,017	—	1,017
Total assets measured at fair value		\$ 1,726	\$ 14,306	\$ —	\$ 16,032

The Company did not have any financial assets measured on a recurring basis as of December 31, 2015. The Company did not have any financial liabilities measured on a recurring basis as of December 31, 2016 and 2015.

During the year ended December 31, 2016, the Company did not record any impairment charges related to its marketable investments. There were no transfers between Level 1, Level 2 or Level 3 assets reported at fair value on a recurring basis and the valuation techniques used did not change compared to the Company's established practice.

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**4. Equipment**

Equipment consisted of the following (in thousands):

	December 31,	
	2016	2015
Laboratory equipment	\$ 425	\$ 356
Software	20	10
Furniture, fixtures and equipment	17	20
	462	386
Less: Accumulated depreciation	(145)	(57)
	<u>\$ 317</u>	<u>\$ 329</u>

Depreciation expense for the years ended December 31, 2016, 2015 and the period from May 19, 2014 (inception) to December 31, 2014 was \$94,000, \$51,000 and \$6,000, respectively.

**5. Intangible Assets**

Intangible assets consisted of the following (in thousands):

	December 31,	
	2016	2015
Acquired patents and licenses	\$ 7,985	\$ 7,985
Less: Accumulated amortization	(1,442)	(777)
	<u>\$ 6,543</u>	<u>\$ 7,208</u>

A schedule of the amortization of intangible assets for the five years ending December 31, 2017 through 2021 and thereafter is as follows (in thousands):

Year Ending December 31:	
2017	\$ 665
2018	666
2019	665
2020	666
2021	665
Thereafter	3,216
	<u>\$ 6,543</u>

**6. Accrued Expenses**

Accrued expenses consisted of the following (in thousands):

	December 31,	
	2016	2015
Professional fees	\$ 285	\$ 84
Compensation expense	261	34
Other	205	40
Offering costs	—	240
	<u>\$ 751</u>	<u>\$ 398</u>

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### **7. Stockholders' Equity and Stock-Based Compensation**

#### ***Preferred Stock***

The Company has authorized a total of 5,000,000 shares of preferred stock, par value \$0.001 per share, none of which were outstanding at December 31, 2016 and 2015. The Company's Board of Directors has the authority to issue preferred stock and to determine the rights, preferences, privileges, and restrictions, including voting rights, without any further vote or action by the Company's stockholders.

#### ***Common Stock***

The Company has authorized a total of 45,000,000 shares of common stock, par value \$0.001 per share.

In conjunction with the incorporation of the Company, 1,125,000 shares of common stock were issued to its founding stockholders, which consisted of MDB Capital Group, LLC and its affiliated persons, for cash consideration of \$8,000.

During November 2014, the Company sold 2,996,253 shares of common stock in a private placement to accredited investors for \$2.67 per share, resulting in gross cash proceeds of \$8.0 million. Direct costs of the private placement consisted of a 10% placement agent fee to MDB Capital Group, LLC and its designees, of \$0.8 million and related legal fees and reimbursable expenses of \$54,000. In conjunction with this private placement, the Company issued warrants to MDB Capital Group, LLC and its designees for a consideration of \$1,000. The placement agent warrants had a fair value of \$0.6 million, calculated pursuant to the Black-Scholes option-pricing model, as described below. Issuance costs of the private placement, net of the consideration received from MDB Capital Group, LLC of \$1,000, aggregated \$0.9 million and were charged directly to additional paid-in capital.

During November 2014, the Company issued an aggregate of 3,444,198 shares of common stock valued at \$9.2 million to acquire businesses and intellectual property license rights.

During May 2016, the Company completed an IPO whereby it sold 5,749,846 shares of the Company's common stock at \$4.00 as described in Note 1.

#### ***Common Stock Warrants***

During the year ended December 31, 2016, in connection with the closing of the Company's initial public offering, the Company issued warrants as compensation to the underwriters of its initial public offering to purchase a total 574,985 shares of its common stock at a price of \$5.00 per share. The warrants became exercisable 180 days after issuance and are exercisable for a period of five years. These warrants were valued pursuant to the Black-Scholes option-pricing model at \$1.4 million, based on the following assumptions: fair value of common stock – \$4.12 to \$4.27 per share; risk free interest rate: 1.22% – 1.38%; expected volatility – 80%; expected dividend yield – 0%; and expected term – 5 years.

In conjunction with the private placement of common stock during November 2014 at \$2.67 per share, the Company issued warrants to the placement agent to purchase 299,625 shares of common stock, exercisable at issuance for a period of seven years at \$2.67 per share. The placement agent warrants have standard anti-dilution protections and cashless exercise rights. The placement agent warrants have piggy-back registration rights commencing on the date that the Company became a reporting company under the Securities Exchange Act of 1934, as amended, and for a period of seven years thereafter, and a one-time demand registration right commencing six months after the date that the Company became a reporting company under the Securities Exchange Act of 1934, as amended, and for a period of 54 months thereafter.



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A summary of warrant activity for the year ended December 31, 2016 is presented below:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in Years)
Warrants outstanding at December 31, 2015	299,625	\$ 2.67	5.85
Issued	574,985	5.00	
Exercised	—	—	
Expired/terminated	—	—	
Warrants outstanding and exercisable at December 31, 2016	874,610	\$ 4.20	4.53

The intrinsic value of exercisable in-the-money stock warrants was approximately \$2.0 million as of December 31, 2016.

### *Stock Options*

During August 2015, the Company adopted the 2015 Stock Incentive Plan (the “2015 Plan”) and reserved 1,134,818 shares of common stock for issuance under the 2015 Plan, including stock options and restricted or performance stock awards. The 2015 Plan is administered by the Compensation Committee of the Company’s Board of Directors. Eligible participants in the 2015 Plan include the Company’s employees, officers and directors, and any person who has a business relationship with the Company. Options issued under the 2015 Plan may have a term of up to ten years and may have variable vesting provisions. New hire grants generally vest 25% upon the first anniversary of the grant and 1/12 quarterly thereafter, over the subsequent twelve quarters. Grants issued to existing employees generally vest quarterly over four years.

During the year ended December 31, 2015, prior to the adoption of the 2015 Plan, all of the stock options granted to directors were at an exercise price of \$2.67 per share, the same price as the common shares sold in the November 2014 private placement. Pursuant to an employment agreement with Darrin Uecker, the Company’s President and Chief Executive Officer (the “Executive”), the Company agreed to issue to the Executive, upon consummation of the proposed IPO, an additional stock option equal to 3% of the Company’s fully diluted shares of common stock outstanding after taking into account the shares to be issued in the IPO exercisable at the IPO per share price. On October 5, 2016, the Executive offered, and the Company accepted, to forgo receipt of such grant until such time the Company’s shareholders approve a new equity incentive plan or an increase in the number of shares available under the existing plan. In exchange for the Executive’s forgoing receipt of the post-IPO option grant, the Company agreed to amend the Executive’s employment agreement (the “Amendment”) so that the Executive will receive (i) an option grant to purchase 187,286 shares of the Company’s common stock, which is a number of shares equal to the number of shares he would have been entitled to receive upon completion of the IPO, and (ii) a restricted stock grant equal in value to (A) the difference between the exercise price previously agreed to for the post-IPO option grant, which was \$4.00 per share, and the exercise price on the date of the deferral grant, multiplied by (B) 187,286. In the event of a change of control that precedes the aforementioned option grant while the Executive is still an employee of the Company, the Executive would be entitled to receive a cash bonus equal to the consideration the Executive would have received as a holder of 187,286 vested options to purchase the Company’s common stock at an exercise price of \$4.00 per share.

A summary of stock option activity for the year ended December 31, 2016 is presented below:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in Years)
Stock options outstanding at December 31, 2015	875,221	\$ 3.51	7.8
Issued	405,132	4.44	
Exercised	—	—	
Expired/terminated	(50,998)	3.57	
Stock options outstanding at December 31, 2016	1,229,355	\$ 3.82	
Vested and expected to vest at December 31, 2016	1,229,355	\$ 3.82	7.6
Stock options exercisable at December 31, 2016	354,855	\$ 3.34	6.0

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The exercise prices of stock options outstanding and exercisable are as follows at December 31, 2016:

Exercise Price	Options Outstanding			Options Exercisable	
	Number outstanding	Weighted average remaining contractual life (in years)	Weighted average exercise price	Number vested	Weighted average exercise price
\$2.67	302,620	3.3	\$ 2.67	176,528	\$ 2.67
\$4.00 - \$4.28	692,335	8.9	4.02	178,327	4.00
\$4.67 - \$4.68	234,400	9.6	4.68	—	-
	<u>1,229,355</u>	7.6	\$ 3.82	<u>354,855</u>	\$ 3.34

The intrinsic value of exercisable in-the-money stock options at December 31, 2016 was approximately \$1.1 million.

The fair value of option awards was estimated using the Black-Scholes option-pricing model utilizing the following assumptions:

	Years Ended December 31,		May 19, 2014 (inception) through December 31,
	2016	2015	2014
Expected term in years	6.08	3.5 - 6.25	—
Expected volatility	80%	89% - 90%	—
Risk-free interest rate	1.16%-1.45%	0.88% - 1.89%	—
Dividend yield	—	—	—

The fair value of the stock options granted during the years ended December 31, 2016 and 2015, calculated pursuant to the Black-Scholes option-pricing model, was \$1.2 million and \$3.1 million, respectively.

Total stock-based compensation expense consisted of the following (in thousands):

	Years Ended December 31,		May 19, 2014 (inception) through December 31,
	2016	2015	2014
General and administrative	\$ 674	\$ 397	\$ —
Research and development	196	5	—
Total stock-based compensation expense	<u>\$ 870</u>	<u>\$ 402</u>	<u>\$ —</u>

At December 31, 2016, there was \$2.4 million of unrecognized compensation cost related to unvested stock-based compensation arrangements, which is expected to be recognized over a weighted average period of 2.84 years.

## 8. Research Grants and Agreements

### *Research Grants*

The Company's subsidiary, BEM, was acquired by Pulse in November 2014. BEM had received grants from the National Cancer Institute of the National Institutes of Health (the "NIH"), including grants from the NIH Small Business Innovation Research ("SBIR") Program, to conduct research and develop devices that will provide health benefits utilizing bioelectric technology. At the time of the acquisition, BEM had an active research grant under the SBIR Program for a project entitled "EndoPulse System for Endoscopic Ultrasound-Guided Therapy of Pancreatic Carcinoma." This research project was completed during the year ended December 31, 2015. During the period from May 19, 2014 (inception) through December 31, 2014 and for the year ended December 31, 2015, the Company received research grant funding of \$0.2 million and \$0.3 million, respectively. The Company has not subsequently pursued additional grants.

### *Sponsored Research Agreement*

The Company sponsors research activities performed by ODURF's Frank Reidy Center. ODURF is compensated by the Company for its conduct of each study in accordance with the budget and payment terms set forth in the applicable task

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order. During the years ended December 31, 2016 and 2015, the Company agreed to sponsor \$1.0 million and \$1.2 million, respectively, during the subsequent 12-month period. The principal investigator may transfer funds with the budget as needed without the Company's approval so long as the obligations of ODURF under the task order and statement of work remain unchanged and unimpaired. During the year ended December 31, 2016 and 2015, the Company incurred \$0.9 million and \$1.0 million, respectively, of costs pursuant to various task orders.

**9. Income Taxes**

The income tax provision for the year ended December 31, 2016 was \$0. The income tax provision for the year ended December 31, 2015 and the period from May 19, 2014 (inception) through December 31, 2014 was a benefit of \$1.7 million and \$23,000, respectively. The prior years' tax benefits resulted from the realization of deferred tax assets related principally to the Company's net operating loss for the year ended December 31, 2015, offset by deferred tax liability created based upon the difference in the value for book and tax purposes of certain acquired technology assets, which are considered temporary income tax differences under purchase accounting. A full valuation allowance is provided against the Company's remaining deferred tax assets.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets at December 31, 2016 and 2015 are summarized below (in thousands):

	December 31,	
	2016	2015
Technology	\$ (1,449)	\$ (1,630)
Temporary differences	312	103
Credits	639	198
Net operating loss carryforwards	5,121	1,590
Total deferred tax assets	4,623	261
Valuation allowance	(4,623)	(261)
Net deferred tax assets	\$ —	\$ —

In assessing the potential realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the Company attaining future taxable income during the periods in which those temporary differences become deductible. At December 31, 2016 and 2015, management was unable to determine that it was more likely than not that the Company's deferred tax assets will be realized, and has therefore recorded an appropriate valuation allowance against deferred tax assets at such dates.

The Company's effective tax rate is different from the federal statutory tax rate of 35% due primarily to net losses that receive no tax benefit as a result of a valuation allowance recorded for such losses.

Presented below is the reconciliation of the difference between the tax rate computed by applying the U.S. federal statutory tax rate and the effective tax rate for the years ended December 31, 2016, 2015 and for the period from May 19, 2014 through December 31, 2014:

	Years Ended December 31,		May 19, 2014 (inception) through December 31,
	2016	2015	2014
U.S. federal statutory tax rate	(35.0)%	(35.0)%	(35.0)%
Valuation allowance	42.0 %	4.0 %	16.0 %
Permanent differences	2.0 %	1.0 %	15.0 %
State tax benefit and other	(9.0)%	(7.0)%	(4.0)%
Effective tax rate	— %	(37.0)%	(8.0)%

At December 31, 2016, the Company had federal and California state net operating loss carryforwards of approximately \$11.7 million and \$11.5 million, respectively. The federal and state net operating loss carryforwards will begin to expire after 2032. At December 31, 2016, the Company had approximately \$0.4 million and \$0.4 million of federal and

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California R&D credits, respectively. The federal R&D credits begin to expire after 2035 and the California R&D credits have an indefinite carryforward period.

These net operating loss carryforward and research and development credit amounts have full valuation allowances against them due to the remoteness of their expected utilization. While the Company has not performed a formal analysis of the availability of these operating loss carryforwards at December 31, 2016 under Internal Revenue Code Sections 382 and 383, management expects that the Company's ability to use its net operating loss carryforwards may be limited in future periods.

The Company's activity related to unrecognized tax benefits are summarized below (in thousands):

	December 31,	
	2016	2015
Balance, January 1, 2016	\$ 66	\$ —
Gross increases - tax positions in prior periods	—	—
Gross decreases - tax positions in prior periods	—	—
Gross increases - tax position in current period	147	66
Settlements	—	—
Lapses in statutes of limitations	—	—
Balance, December 31, 2016	\$ 213	\$ 66

Although it is reasonably possible that certain unrecognized tax benefits may increase or decrease within the next twelve months due to tax examination changes, settlement activities, expirations of statute of limitations, or the impact on recognition and measurement considerations related to the results of published tax cases or other similar activities, the Company does not anticipate any significant changes to unrecognized tax benefits over the next twelve months. During the years ended December 31, 2016, 2015 and the period from May 19, 2014 to December 31, 2014, no interest or penalties were required to be recognized related to unrecognized tax benefits. Although the Company is not under examination, the tax years for 2014 and forward are subject to examination by United States tax authorities.

### **10. Related Party Transactions**

MDB Capital Group, LLC ("MDB") provided investment banking, executive recruiting and intellectual property management services to the Company. Furthermore, provisions of the Company's investment banking agreement with MDB survive the June 2016 termination of the agreement for a period of two years and MDB retains significant rights under the 2016 IPO underwriting agreement with respect to the Company's future financing alternatives for up to five years. The Company's Chairman, Robert Levande, is a Senior Managing Director of MDB.

In connection with the Company's 2016 IPO (Note 1), the underwriting syndicate led by MDB received \$1.8 million in underwriting discounts, \$0.2 million in unaccountable expense reimbursements and warrants valued in the aggregate of \$1.4 million.

In addition, during the period from May 19, 2014 (inception) to December 31, 2014 (Note 7), MDB received cash placement agent fees of \$0.8 million and the Company issued warrants to purchase 299,625 shares of common stock for a consideration of \$1,000, exercisable for seven years at \$2.67 per share, to MDB Capital Group, LLC and its designees.

During the year ended December 31, 2016, the Company incurred non-financing related expenses charged by MDB of \$100,000 for services rendered with respect to intellectual property related services. Similarly, during the year ended December 31, 2015, the Company incurred expenses charged by MDB comprised of: \$49,000 for services rendered with respect to executive search activities related to the hiring of the Company's Chief Executive Officer and the appointment of one director, \$42,000 for offering related expenses and \$26,000 for intellectual property related services.

Gary Schuman, the Chief Financial Officer of MDB, was also the acting Chief Financial Officer of the Company and was compensated at a monthly rate of \$4,000 from November 1, 2014 to December 31, 2015, reflecting an aggregate charge to general and administrative expenses of \$48,000 and \$8,000 for the year ended December 31, 2015 and the period from May 19, 2014 (inception) through December 31, 2014, respectively.

At December 31, 2016, accounts payable and accrued expenses did not include any amounts payable to MDB. At December 31, 2015, included in accounts payable and accrued expenses is an amount of \$58,000 payable to MDB for their

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expenses incurred relating to the Company's planned IPO, which were recorded as deferred offering costs, and patent related services.

**11. Commitments and Contingencies**

*Operating Leases*

The Company leases its corporate offices and research facilities in Burlingame, California, under an operating lease expiring March 31, 2017 at a monthly cost of approximately \$19,000.

In January 2017, the Company entered into a new lease agreement for premises consisting of approximately fifteen thousand six hundred ninety-seven (15,697) rentable square feet located in Hayward, California. See Note 14.

During the years ended December 31, 2016, 2015 and the period from May 19, 2014 (inception) through December 31, 2014, rent expense, including common area maintenance charges, was \$0.2 million, \$0.2 million and \$19,000, respectively.

**12. Employee Benefit Plans**

The Company sponsors a defined contribution plan under which it may make discretionary contributions. The Company did not make any employer matching contributions to this plan during the years ended December 31, 2016, 2015 or the period from May 19, 2014 (inception) through December 31, 2014.

**13. Selected Quarterly Financial Data (Unaudited)**

The following table provides the selected quarterly financial data for the years ended December 31, 2016 and 2015 (in thousands, except per share data):

	Quarter Ended							
	2016				2015			
	December 31,	September 30,	June 30,	March 31,	December 31,	September 30,	June 30,	March 31,
Revenue	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
Operating expenses:								
General and administrative	870	893	642	528	417	408	243	156
Research and development	1,806	1,739	1,453	990	951	659	547	421
Amortization of intangible assets	167	166	166	166	167	167	166	166
Total operating expenses	2,843	2,798	2,261	1,684	1,535	1,234	956	743
Other income:								
Interest income	34	31	3	—	—	—	—	—
Total other income	34	31	3	—	—	—	—	—
Loss from operations, before income taxes	(2,809)	(2,767)	(2,258)	(1,684)	(1,535)	(1,234)	(956)	(743)
Income tax benefit	—	—	—	—	(518)	(483)	(357)	(299)
Net loss	(2,809)	(2,767)	(2,258)	(1,684)	(1,017)	(751)	(599)	(444)
Other comprehensive loss:								
Unrealized gain (loss) on available-for-sale securities, net of tax:	1	(8)	—	—	—	—	—	—
Comprehensive loss	\$ (2,808)	\$ (2,775)	\$ (2,258)	\$ (1,684)	\$ (1,017)	\$ (751)	\$ (599)	\$ (444)
Net loss per share								
Basic and diluted net loss per share	\$ (0.21)	\$ (0.21)	\$ (0.23)	\$ (0.22)	\$ (0.13)	\$ (0.10)	\$ (0.08)	\$ (0.06)
Weighted average shares used to compute net loss per common share — basic and diluted	13,315	13,315	9,791	7,565	7,565	7,565	7,565	7,565

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### **14. Subsequent Events**

#### ***Lease Agreement***

In January 2017, the Company entered into a new lease agreement (the “Lease”) for premises consisting of approximately fifteen thousand six hundred ninety-seven (15,697) rentable square feet located in Hayward, California (the “Premises”).

The Premises will be used for the Company’s corporate headquarters and principal operating facility. The term of the Lease is sixty-two (62) months, commencing on the date that is the earlier of (i) the date upon which the Company commences business in the Premises or (ii) the date upon which the Premises is “Ready for Occupancy” as defined in the Lease. Base monthly rent shall be abated for the first two (2) months of the Lease term and thereafter will be \$42,400 per month during the first year of the Lease term, with specified annual increases thereafter until reaching approximately \$50,300 per month during the last two (2) months of the Lease term. The Company is required to pay a refundable security deposit of approximately \$101,000. The Landlord is obligated to provide the Company with improvement allowances in the amount of approximately \$135.00 per rentable square foot of the Premises, which may be applied towards the costs of construction of the initial improvements in the Premises. The Company will be responsible for any such improvement costs in excess of the foregoing allowances. The Company is required to reimburse Landlord for certain expenses during the Lease term.

The Company has the right to extend the Lease term by five (5) years upon written notice not more than twelve (12) months nor less than nine (9) months prior to the expiration of the original Lease term, with monthly payments equal to the “Fair Rental Value” as defined in the Lease. The Company has also reserved the right to terminate the Lease if the Landlord is unable to deliver the facility to the Company by December 1, 2017. Assuming the Landlord delivers the facility to us by December 1, 2017, as of December 31, 2016, the lease obligations for less than one year, one to three years, three to five years and more than five years is approximately \$0.3 million, \$1.1 million, \$1.1 million and \$0.3 million, respectively.

#### ***Private Placement***

On February 7, 2017, the Company entered into a securities purchase agreement (the “Purchase Agreement”) with Robert W. Duggan and Maky Zanganeh (the “Investors”), pursuant to which the Company, in a private placement, agreed to issue and sell to the Investors an aggregate of 819,673 shares of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), at a price per share of \$6.10 (the “Shares”), for gross proceeds of approximately \$5 million (the “Private Placement”).

In connection with the Private Placement, the Company has granted certain registration rights to the Investors, pursuant to which, among other things, the Company will prepare and file with the Securities and Exchange Commission a registration statement to register for resale the Shares on or prior to July 31, 2017.

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### **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, including our Chief Executive Officer and our Chief Financial Officer, conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act of 1934, as amended, as of the end of the period covered by this Annual Report on Form 10-K. Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that our disclosure controls and procedures were not effective at the reasonable level of assurance due to a material weakness in internal control over financial reporting.

In connection with the audit of our financial statements as of and for the year ended December 31, 2016, we identified a material weakness in our internal control over financial reporting. The material weakness related to a lack of effective controls to adequately restrict access and segregate duties. Specifically, due to the limited number of staff in our accounting function, certain personnel had the ability to prepare and post journal entries without a qualified independent review performed by someone without this ability. Upon identifying this material weakness, we performed additional procedures to evaluate the impact on the financial statements. Based on these procedures, we believe the material weakness did not result in any material misstatements to our financial statements. However, this material weakness could result in a misstatement of our accounts or disclosures that would result in a material misstatement of our financial statements that would not be prevented or detected. We are implementing measures designed to improve our internal control over financial reporting to remediate this material weakness, including the following:

- We are evaluating our accounting system access rights so that there are accounting personnel without journal entry access who can perform review activities.
- We are formalizing our internal control documentation and strengthening supervisory reviews by our management.
- We are in the process of adding additional accounting personnel and will be segregating duties amongst accounting personnel.

We cannot assure you that the measures we have taken to date, and are continuing to implement, will be sufficient to remediate the material weakness we have identified or avoid potential future material weaknesses. If the steps we take do not correct the material weakness in a timely manner, we will be unable to conclude that we maintain effective internal control over financial reporting. Accordingly, there could continue to be a reasonable possibility that a material misstatement of our financial statements would not be prevented or detected on a timely basis.

#### **Management's Annual Report on Internal Control Over Financial Reporting**

This Annual Report on Form 10-K does not include a report of management's assessment regarding internal control over financial reporting or an attestation report from our independent registered public accounting firm due to a transition period established by rules of the SEC for newly public companies.

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

There were no changes in our internal controls over financial reporting identified in management's evaluation pursuant to Rules 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended December 31, 2016 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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**Inherent Limitations on Effectiveness of Controls**

Our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

**Item 9B. Other Information**

None.



**Part III**

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

Information responsive to this item is incorporated herein by reference to our definitive proxy statement with respect to our 2017 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K.

**Item 11. Executive Compensation**

Information responsive to this item is incorporated herein by reference to our definitive proxy statement with respect to our 2017 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K.

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

Information responsive to this item is incorporated herein by reference to our definitive proxy statement with respect to our 2017 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K.

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

Information responsive to this item is incorporated herein by reference to our definitive proxy statement with respect to our 2017 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K.

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

Information responsive to this item is incorporated herein by reference to our definitive proxy statement with respect to our 2017 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K.

**Part IV**

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

(a) The following documents are filed as part of, or incorporated by reference into, this Annual Report on Form 10-K:

1. *Financial Statements*: See Item 8 of this Annual Report on Form 10-K.

2. *Financial Statement Schedules*: All schedules are omitted because they are not required, are not applicable or the information is included in the consolidated financial statements or notes thereto.

3. *Exhibits*: We have filed, or incorporated by reference into this Annual Report on Form 10-K, the exhibits listed on the accompanying Exhibit Index immediately following the signature page of this Annual Report on Form 10-K.

(b) Exhibits: See Item 15(a)(3) above.

(c) Financial Statement Schedules: See Item 15(a)(2) above.



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**Exhibit Index**

Exhibit Number	Exhibit Description	Incorporation by Reference			
		Form	File No.	Exhibit(s)	Filing Date
1.1	Form of Underwriting Agreement	S-1	333-208694	1.1	May 3, 2016
3.1	Articles of Incorporation of the Registrant, as amended on December 8, 2015	S-1	333-208694	3.1	December 22, 2015
3.2	Amended and Restated Bylaws of Pulse Biosciences, Inc.	8-K	001-37744	3.1	February 10, 2017
4.1	Specimen Certificate representing shares of common stock of Registrant	S-1	333-208694	4.1	March 7, 2016
4.2	Form of Warrant dated November 9, 2014 issued to MDB Capital Group, LLC	S-1	333-208694	4.2	December 22, 2015
4.3	Form of Underwriters' Warrant	S-1	333-208694	4.3	March 28, 2016
10.1*	Lease for facilities at 3955 Point Eden Way, Hayward, California, dated January 26, 2017				
10.2	Eighth Amendment to Lease Agreement - ARE-819/863 Mitten Road, LLC and the Registrant	10-Q	001-37744	10.1	August 10, 2016
10.3#	License Agreement among Old Dominion University Research Foundation, Eastern Virginia Medical School and the Registrant	S-1	333-208694	10.12	May 3, 2016
10.4	Amendments No. 1 to License Agreement among Old Dominion University Research Foundation, Eastern Virginia Medical School and the Registrant	S-1	333-208694	10.13	March 7, 2016
10.5#	License Agreement among University of Southern California, The Alfred Mann Institute and the Registrant	S-1	333-208694	10.14	May 3, 2016
10.6#	Amendment No. 1 to the License Agreement among University of Southern California, The Alfred Mann Institute and the Registrant	S-1	333-208694	10.15	May 3, 2016
10.7	Securities Purchase Agreement, dated February 7, 2017, by and between Pulse Biosciences, Inc. and certain purchasers	8-K	001-37744	10.1	February 10, 2017
10.8	2015 Stock Incentive Plan	S-1	333-208694	10.2	December 22, 2015
10.9	Form of Director Option Agreement, not issued under the 2015 Stock Incentive Plan	S-1	333-208694	10.3	December 22, 2015
10.10+	Employment Agreement between Dr. Richard Nuccitelli and the Registrant	S-1	333-208694	10.8	December 22, 2015
10.11+	Executive Employment Agreement between Darrin R. Uecker and the Registrant	S-1	333-208694	10.9	December 22, 2015
10.12+	Amendment to Employment Agreement between Darrin R. Uecker and Pulse Biosciences, Inc. dated October 5, 2016	8-K	001-37744	10.10	October 11, 2016
10.13+	Executive Employment Agreement between Brian B. Dow and the Registrant	S-1	333-208694	10.14	December 22, 2015
10.14+	Form of At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement for Employees	S-1	333-208694	10.10	December 22, 2015
10.15	Engagement Agreement dated September 15, 2014 between MDB Capital Group LLC and the Registrant	S-1	333-208694	10.4	December 22, 2015
10.16	Form of Securities Purchase Agreement dated November 6, 2014, among the purchasers of common stock and the Registrant	S-1	333-208694	10.5	December 22, 2015
10.17	Form of Registration Rights Agreement dated November 6, 2014, among the purchasers of common stock and the Registrant	S-1	333-208694	10.6	December 22, 2015
10.18	Form of Registration Rights Agreement dated November 6, 2014, among the holders of placement warrants and the Registrant	S-1	333-208694	10.7	December 22, 2015
21.1*	List of Subsidiaries				

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31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of the Chief Executive and Chief Financial Officers pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350).
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

\* Filed herewith

+ Indicates a management contract or compensatory plan or arrangement.

# Portions of this exhibit (indicated by asterisks) have been omitted pursuant to a grant of confidential treatment.

**BRITANNIA POINT EDEN**

**LEASE**

This Lease (the "**Lease**"), dated as of the date set forth in Section 1 of the Summary of Basic Lease Information (the "**Summary**"), below, is made by and between **HAYWARD POINT EDEN I LIMITED PARTNERSHIP**, a Delaware limited partnership ("**Landlord**"), and **PULSE BIOSCIENCES, INC.**, a Nevada corporation ("**Tenant**").

**SUMMARY OF BASIC LEASE INFORMATION**

TERMS OF LEASE	DESCRIPTION
1. Date:	January <u>26</u> , 2017
2. Premises <u>(Article 1)</u> .	
2.1 Building:	3955 Point Eden Way Hayward, California 94545 Containing 60,158 rentable square feet of space
2.2 Premises:	Approximately 15,697 rentable square feet of space in the Building, as further set forth in <u>Exhibit A</u> to the Lease.
3. Lease Term <u>(Article 2)</u> .	
3.1 Length of Term:	Approximately five (5) years and two (2) months.
3.2 Lease Commencement Date:	The earlier to occur of (i) the date upon which Tenant first commences to conduct business in the Premises, and (ii) the date upon which the Premises is "Ready for Occupancy," as that term is set forth in the Work Letter attached as <u>Exhibit B</u> to this Lease, which Lease Commencement Date is anticipated to be May 1, 2017.
Lease Expiration Date:	The last day of the sixty-second (62 <sup>nd</sup> ) full calendar month of the Lease Term.

4. Base Rent (Article 3):

<u>Lease Year</u>	<u>Annualized Base Rent</u>	<u>Monthly Installment of Base Rent</u>	<u>Approximate Monthly Base Rent per Rentable Square Foot</u>
1	\$508,582.80	\$42,381.90	\$2.70
2	\$526,383.20	\$43,865.27	\$2.79
3	\$544,806.61	\$45,400.55	\$2.89
4	\$563,874.84	\$46,989.57	\$2.99
5	\$583,610.46	\$48,634.21	\$3.10
6 (through Lease Expiration Date)	\$604,036.83	\$50,336.40	\$3.21

**\*Note:** Tenant shall have no obligation to pay any Base Rent for the Premises attributable to the first two (2) full calendar months of the Lease Term (the "**Base Rent Abatement Period**"); provided, however, Tenant shall be required to pay Tenant's Share of Direct Expenses attributable to such period, as well as for all utilities and other services.

- 5. Tenant Improvement Allowance (**Exhibit B**): An amount equal to \$2,119,095.00 per rentable square foot of the Premises (*i.e.*, \$135.00 based upon 15,697 rentable square feet in the Premises).
- 6. Tenant's Share (Article 4): 26.1%.
- 7. Permitted Use (Article 5): The Premises shall be used only for general office, research and development, engineering, lab scale manufacturing, assembly, vivarium, laboratory, storage and/or warehouse uses, including, but not limited to, administrative offices and other lawful uses reasonably related to or incidental to such specified uses, all (i) consistent with first class life sciences projects in Hayward, California ("**First Class Life Sciences Projects**"), and (ii) in compliance with, and subject to, applicable laws and the terms of this Lease.
- 8. Security Deposit (Article 21): \$100,672.80.
- 9. Parking (Article 28): 3.5 unreserved parking spaces for every 1,000 rentable square feet of the Premises, subject to the terms of Article 28 of the Lease.

10. Address of Tenant  
(Section 29.18):
- 849 Mitten Road, Suite 104  
Burlingame, CA 94010  
Attention: Chief Financial Officer  
(Prior to Lease Commencement Date)
- and
- The Premises  
Attention: Chief Financial Officer  
(After Lease Commencement Date)
11. Address of Landlord  
(Section 29.18):
- See Section 29.18 of the Lease.
12. Brokers  
(Section 29.24):
- Savills Studley San Jose  
and  
CBRE, Inc.



## 1. PREMISES, BUILDING, PROJECT, AND COMMON AREAS

### 1.1 Premises, Building, Project and Common Areas.

1.1.1 **The Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises set forth in Section 2.2 of the Summary (the "**Premises**"). The outline of the Premises is set forth in **Exhibit A** attached hereto. The outline of the "Building" and the "Project," as those terms are defined in Section 1.1.2 below, are further depicted on the Site Plan attached hereto as **Exhibit A-1**. The parties hereto agree that the lease of the Premises is upon and subject to the terms, covenants and conditions herein set forth, and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of such terms, covenants and conditions by it to be kept and performed and that this Lease is made upon the condition of such performance. The parties hereto hereby acknowledge that the purpose of **Exhibit A** is to show the approximate location of the Premises only, and such Exhibit is not meant to constitute an agreement, representation or warranty as to the construction of the Premises, the precise area thereof or the specific location of the "Common Areas," as that term is defined in Section 1.1.3, below, or the elements thereof or of the accessways to the Premises or the "Project," as that term is defined in Section 1.1.2, below. Except as specifically set forth in this Lease and in the Tenant Work Letter attached hereto as **Exhibit B** (the "**Tenant Work Letter**"), Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Premises. Tenant also acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Premises, the Building or the Project or with respect to the suitability of any of the foregoing for the conduct of Tenant's business, except as specifically set forth in this Lease and the Tenant Work Letter. Landlord shall deliver the Premises to Tenant in good, vacant, broom clean condition, and otherwise in the same condition as of the date of this Lease, in compliance with all Applicable Laws, with the roof water-tight and shall cause the plumbing, electrical systems, fire sprinkler system, lighting, and all other building systems serving the Premises in good operating condition and repair on or before the Lease Commencement Date, or such earlier date as Landlord and Tenant mutually agree. Landlord will be responsible at its sole cost for causing the exterior of the Building, the existing Building entrances, and all exterior Common Areas (including required striping and handicapped spaces in the parking areas) to be in compliance with Applicable Laws, to the extent required to allow the legal occupancy of the Premises or completion of the Tenant Improvements.

1.1.2 **The Building and The Project.** The Premises constitutes a portion of the building set forth in Section 2.1 of the Summary (the "**Building**"). The Building is part of an office/laboratory project currently known as "Britannia Point Eden." The term "**Project**," as used in this Lease, shall mean (i) the Building and the Common Areas, (ii) the land (which is improved with landscaping, parking facilities and other improvements) upon which the Building and the Common Areas are located, (iii) the other office/laboratory buildings located at Britannia Point Eden, and the land upon which such adjacent office/laboratory buildings are located, and (iv) at Landlord's discretion, any additional real property, areas, land, buildings or other improvements added thereto outside of the Project (provided that any such additions do not increase Tenant's obligations under this Lease).

1.1.3 **Common Areas.** Tenant shall have the non-exclusive right to use in common with other tenants in the Project, and subject to the rules and regulations referred to in Article 5 of this Lease, those portions of the Project which are provided, from time to time, for use in common by Landlord, Tenant and any other tenants of the Project (such areas, together with such other portions of the Project designated by Landlord, in its discretion, are collectively referred to herein as the "**Common Areas**"). Landlord shall maintain and operate the Common Areas, including all sprinkler and other systems serving the Common Areas, in a first class manner, and the use thereof shall be subject to such rules, regulations and restrictions as Landlord may reasonably make from time to time. Landlord reserves the right to close temporarily, make alterations or additions to, or change the location of elements of the Project and the Common Areas, provided that in connection therewith Landlord will use commercially reasonable efforts to minimize any interference with Tenant's use of and access to the Premises and parking areas.

1.2 **Rentable Square Feet of Premises.** The rentable square footage of the Premises is hereby deemed to be as set forth in Section 2.2 of the Summary, and shall not be subject to measurement or adjustment during the Lease Term.

## 2. LEASE TERM; OPTION TERM

2.1 **Lease Term.** The terms and provisions of this Lease shall be effective as of the date of this Lease. The term of this Lease (the "**Lease Term**") shall be as set forth in Section 3.1 of the Summary, shall commence on the date set forth in Section 3.2 of the Summary (the "**Lease Commencement Date**"), and shall terminate on the date set forth in Section 3.3 of the Summary (the "**Lease Expiration Date**") unless this Lease is sooner terminated as hereinafter provided. For purposes of this Lease, the term "**Lease Year**" shall mean each consecutive twelve (12) month period during the Lease Term. At any time during the Lease Term, Landlord may deliver to Tenant a notice in the form as set forth in Exhibit C, attached hereto, as a confirmation only of the information set forth therein, which Tenant shall execute and return to Landlord within five (5) business days of receipt thereof. Notwithstanding the foregoing, if Landlord has not delivered possession of the Premises in the condition required by Section 1.1.1, above, (1) on or before September 1, 2017, then, as Tenant's sole remedy for such delay, the date Tenant is otherwise obligated to commence payment of rent shall be delayed by one day for each day that the delivery date is delayed beyond such date, or (2) December 1, 2017, then, Tenant shall also have the right to terminate this Lease by written notice thereof to Landlord, whereupon any monies previously paid by Tenant to Landlord shall be reimbursed to Tenant. The foregoing dates shall be extended to the extent of any delays in delivery of possession caused by (i) Tenant Delay, as provided in Section 1(j) of the Tenant Work Letter, or (ii) war, terrorism, acts of God, natural disaster, civil unrest, governmental strike or area-wide or industry-wide labor disputes, inability to obtain services, labor, or materials or reasonable substitutes therefor, or delays due to utility companies that are not the result of any action or inaction of Landlord (provided that any such delay in this item (ii) shall not extend any such date by more than ninety (90) days).

### 2.2 **Option Term.**

2.2.1 **Option Right.** Landlord hereby grants the Tenant originally named in this Lease (the "**Original Tenant**"), and any assignee of Original Tenant's entire interest in the Lease that has been approved in accordance with the terms of Article 14, below (a "**Permitted Assignee**"), one (1) option to extend the Lease Term for a period of five (5) years (the "**Option Term**"). Such option to extend shall be exercisable only by written notice delivered by Tenant to Landlord not more than twelve (12) months nor less than nine (9) months prior to the expiration of the initial Lease Term, stating that Tenant is thereby irrevocably exercising its option to lease the Premises during the Option Term, provided that the following conditions (the "**Option Conditions**") are satisfied: (i) as of the date of delivery of such notice, Tenant is not in default under this Lease, after the expiration of any applicable notice and cure period; (ii) Tenant has not previously been in default under this Lease, after the expiration of any applicable notice and cure period, more than twice in the twelve (12) month period prior to the date of Tenant's attempted exercise; and (iii) the Lease then remains in full force and effect. Landlord may, at Landlord's option, exercised in Landlord's sole and absolute discretion, waive any of the Option Conditions in which case the option, if otherwise properly exercised by Tenant, shall remain in full force and effect. Upon the proper exercise of such option to extend, and provided that Tenant satisfies all of the Option Conditions (except those, if any, which are waived by Landlord), the Lease Term, shall be extended for a period of five (5) years. The rights contained in this Section 2.2 shall be personal to Original Tenant and any Permitted Assignee (and not any other assignee, sublessee or "Transferee," as that term is defined in Section 14.1, below, of Tenant's interest in this Lease). In the event that Tenant fails to timely and appropriately exercise its option to extend the Lease Term in accordance with the terms of this Section 2.2, then such option shall automatically terminate and shall be of no further force or effect.

2.2.2 **Option Rent.** The Base Rent payable by Tenant during the Option Term (the "**Option Rent**") shall be equal to the "Fair Rental Value," as that term is defined below, for the Premises as of the commencement date of the Option Term. The "Fair Rental Value," as used in this Lease, shall be equal to the annual rent per rentable square foot (including additional rent and considering any "base year" or "expense stop" applicable thereto), including all escalations, at which tenants (pursuant to leases consummated within the twelve (12) month period preceding the first day of the Option Term), are leasing non-sublease, non-encumbered, non-equity space which is not significantly greater or smaller in size than the subject space, with a comparable level of improvements (excluding any property that Tenant would be allowed to remove from the Premises at the termination of the Lease), for a comparable lease term, in an arm's length transaction, which comparable space is located in the "Comparable Buildings," as that term is defined in this Section 2.2.2, below (transactions satisfying the foregoing criteria shall be known as the "**Comparable Transactions**"), taking into consideration the following

concessions (the "**Concessions**"): (a) rental abatement concessions, if any, being granted such tenants in connection with such comparable space; (b) tenant improvements or allowances provided or to be provided for such comparable space, and taking into account the value, if any, of the existing improvements in the subject space (other than improvements installed by Tenant at Tenant's sole cost and expense), such value to be based upon the age, condition, design, quality of finishes and layout of the improvements and the extent to which the same can be utilized for the Permitted Use by user other than Tenant; and (c) other reasonable monetary concessions being granted such tenants in connection with such comparable space. The Concessions shall be reflected in the effective rental rate (which effective rental rate shall take into consideration the total dollar value of such Concessions as amortized on a straight-line basis over the applicable term of the Comparable Transaction (in which case such Concessions evidenced in the effective rental rate shall not be granted to Tenant)) payable by Tenant. The term "**Comparable Buildings**" shall mean the Building and those other buildings which are comparable to the Building in terms of age (based upon the date of completion of construction or major renovation of the building), quality of construction, level of services and amenities, size and appearance, and located in First Class Life Sciences Project in Hayward, California and the surrounding commercial area.

2.2.3 **Determination of Option Rent.** In the event Tenant timely and appropriately exercises its option to extend the Lease Term, Landlord shall notify Tenant of Landlord's determination of the Option Rent on or before the date that is thirty (30) days following Landlord's receipt of the Option Exercise Notice. If Tenant, on or before the date which is ten (10) business days following the date upon which Tenant receives Landlord's determination of the Option Rent, in good faith objects to Landlord's determination of the Option Rent, then Landlord and Tenant shall attempt to agree upon the Option Rent using their best good-faith efforts. If Landlord and Tenant fail to reach agreement within ten (10) business days following Tenant's objection to the Option Rent (the "**Outside Agreement Date**"), then Tenant shall have the right to withdraw its exercise of the option by delivering written notice thereof to Landlord within five (5) days thereafter, in which event Tenant's right to extend the Lease pursuant to this Section 2.2 shall be of no further force or effect. If Tenant does not withdraw its exercise of the extension option, each party shall thereafter make a separate determination of the Option Rent, within ten (10) days of the Outside Agreement Date, and such determinations shall be submitted to arbitration in accordance with Sections 2.2.3.1 through 2.2.3.8, below. If Tenant fails to object to Landlord's determination of the Option Rent within the time period set forth herein, then Tenant shall be deemed to have accepted Landlord's determination of Option Rent.

2.2.3.1 Landlord and Tenant shall each appoint one arbitrator who shall be a real estate appraiser who shall have been active over the five (5) year period ending on the date of such appointment in the appraisal, of other class A life sciences buildings located in Hayward, California. Each such arbitrator shall be appointed within twenty (20) days after the Outside Agreement Date. Landlord and Tenant may consult with their selected arbitrators prior to appointment and may select an arbitrator who is favorable to their respective positions. The arbitrators so selected by Landlord and Tenant shall be deemed "**Advocate Arbitrators**."

2.2.3.2 The two (2) Advocate Arbitrators so appointed shall be specifically required pursuant to an engagement letter within ten (10) days of the date of the appointment of the last appointed Advocate Arbitrator to agree upon and appoint a third arbitrator ("**Neutral Arbitrator**") who shall be qualified under the same criteria set forth hereinabove for qualification of the two Advocate Arbitrators, except that neither the Landlord or Tenant or either parties' Advocate Arbitrator may, directly or indirectly, consult with the Neutral Arbitrator prior or subsequent to his or her appointment. The Neutral Arbitrator shall be retained via an engagement letter jointly prepared by Landlord's counsel and Tenant's counsel.

2.2.3.3 The three arbitrators shall, within thirty (30) days of the appointment of the Neutral Arbitrator, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Option Rent, and shall notify Landlord and Tenant thereof. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's submitted Option Rent is the closest to the actual Option Rent, taking into account the requirements of Section 2.2.2 of this Lease, as determined by the arbitrators.

2.2.3.4 The decision of the majority of the three arbitrators shall be binding upon Landlord and Tenant.

2.2.3.5 If either Landlord or Tenant fails to appoint an Advocate Arbitrator within twenty (20) days after the Outside Agreement Date, then either party may petition the presiding judge of the Superior Court of Alameda County to appoint such Advocate Arbitrator subject to the criteria in Section 2.2.3.1 of this Lease, or if he or she refuses to act, either party may petition any judge having jurisdiction over the parties to appoint such Advocate Arbitrator.

2.2.3.6 If the two (2) Advocate Arbitrators fail to agree upon and appoint the Neutral Arbitrator within ten (10) business days after the appointment of the last appointed Advocate Arbitrator, then either party may petition the presiding judge of the Superior Court of Alameda County to appoint the Neutral Arbitrator, subject to criteria in Section 2.2.3.2 of this Lease, or if he or she refuses to act, either party may petition any judge having jurisdiction over the parties to appoint such arbitrator.

2.2.3.7 The cost of the arbitration shall be paid by Landlord and Tenant equally.

2.2.3.8 In the event that the Option Rent shall not have been determined pursuant to the terms hereof prior to the commencement of the Option Term, Tenant shall be required to pay the Option Rent initially provided by Landlord to Tenant, and upon the final determination of the Option Rent, the payments made by Tenant shall be reconciled with the actual amounts of Option Rent due, and the appropriate party shall make any corresponding payment to the other party.

3. **BASE RENT** Tenant shall pay, without prior notice or demand, to Landlord or Landlord's agent at the management office of the Project, or, at Landlord's option, at such other place as Landlord may from time to time designate in writing, by a check for currency which, at the time of payment, is legal tender for private or public debts in the United States of America, base rent ("**Base Rent**") as set forth in Section 4 of the Summary, payable in equal monthly installments as set forth in Section 4 of the Summary in advance on or before the first day of each and every calendar month during the Lease Term, without any setoff or deduction whatsoever. The Base Rent for the third (3<sup>rd</sup>) full month of the Lease Term shall be paid at the time of Tenant's execution of this Lease. If any Rent payment date (including the Lease Commencement Date) falls on a day of the month other than the first day of such month or if any payment of Rent is for a period which is shorter than one month, the Rent for any fractional month shall accrue on a daily basis for the period from the date such payment is due to the end of such calendar month or to the end of the Lease Term at a rate per day which is equal to 1/365 of the applicable annual Rent. All other payments or adjustments required to be made under the terms of this Lease that require proration on a time basis shall be prorated on the same basis.

#### 4. **ADDITIONAL RENT**

##### 4.1 **General Terms.**

4.1.1 **Direct Expenses: Additional Rent.** In addition to paying the Base Rent specified in Article 3 of this Lease, Tenant shall pay during the Lease Term "**Tenant's Share**" of the annual "**Direct Expenses**," as those terms are defined in Sections 4.2.6 and 4.2.2 of this Lease, respectively, allocable to the Building as described in Section 4.3. Such payments by Tenant, together with any and all other amounts payable by Tenant to Landlord pursuant to the terms of this Lease, are hereinafter collectively referred to as the "**Additional Rent**", and the Base Rent and the Additional Rent are herein collectively referred to as "**Rent**." All amounts due under this Article 4 as Additional Rent shall be payable for the same periods and in the same manner as the Base Rent. Without limitation on other obligations of Tenant which survive the expiration of the Lease Term, the obligations of Tenant to pay the Additional Rent provided for in this Article 4 shall survive the expiration of the Lease Term.

4.1.2 **Triple Net Lease.** Landlord and Tenant acknowledge that, to the extent provided in this Lease, it is their intent and agreement that this Lease be a "**TRIPLE NET**" lease and that as such, the provisions contained in this Lease are intended to pass on to Tenant or reimburse Landlord for the costs and expenses reasonably associated with this Lease, the Building and the Project, and Tenant's operation therefrom to the extent provided in this Lease. To the extent such costs and expenses payable by Tenant cannot be charged directly to, and paid by, Tenant, such costs and expenses shall be paid by Landlord but reimbursed by Tenant as Additional Rent.

4.2 **Definitions of Key Terms Relating to Additional Rent.** As used in this Article 4, the following terms shall have the meanings hereinafter set forth:

4.2.1 Intentionally Deleted.

4.2.2 "**Direct Expenses**" shall mean "**Operating Expenses**" and "**Tax Expenses**."

4.2.3 "**Expense Year**" shall mean each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires, provided that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive month period, and, in the event of any such change, Tenant's Share of Direct Expenses shall be equitably adjusted for any Expense Year involved in any such change.

4.2.4 "**Operating Expenses**" shall mean all expenses, costs and amounts of every kind and nature which Landlord pays or accrues during any Expense Year because of or in connection with the ownership, management, maintenance, security, repair, replacement, restoration or operation of the Project, or any portion thereof. Without limiting the generality of the foregoing, Operating Expenses shall specifically include any and all of the following: (i) the cost of supplying all utilities, the cost of operating, repairing and maintaining the utility, telephone, mechanical, sanitary, storm drainage, and elevator systems, and the cost of maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections and the cost of contesting any governmental enactments which are reasonably likely to increase Operating Expenses during the Lease Term, and the costs incurred in connection with a governmentally mandated transportation system management program or similar program; (iii) the cost of all insurance carried by Landlord in connection with the Project and Premises as reasonably determined by Landlord; (iv) the cost of landscaping, relamping, and all supplies, tools, equipment and materials used in the operation, repair and maintenance of the Project, or any portion thereof; (v) the cost of parking area operation, repair, restoration, and maintenance; (vi) management and/or incentive fees, consulting fees, legal fees and accounting fees, of all contractors and consultants in connection with the management, operation, maintenance and repair of the Project; (vii) payments under any equipment rental agreements; (viii) subject to item (f), below, wages, salaries and other compensation and benefits, including taxes levied thereon, of all persons engaged in the operation, maintenance and security of the Project; (ix) costs under any easement pertaining to the sharing of costs by the Project; (x) operation, repair, maintenance and replacement of all systems and equipment and components thereof of the Project; (xi) the cost of janitorial, alarm, security and other services, replacement of wall and floor coverings, ceiling tiles and fixtures in Common Areas, maintenance and replacement of curbs and walkways, repair to roofs and re-roofing; (xii) amortization (including commercially reasonable interest on the unamortized cost) over such period of time as Landlord shall reasonably determine, of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Project, or any portion thereof; (xiii) the cost of capital improvements or other costs incurred in connection with the Project (A) which are intended to effect economies in the operation or maintenance of the Project, or any portion thereof, or to reduce current or future Operating Expenses or to enhance the safety or security of the Project or its occupants, (B) which are required to comply with present or anticipated conservation programs, (C) which are replacements or modifications of nonstructural items located in the Common Areas required to keep the Common Areas in good order or condition, or (D) which are required under any governmental law or regulation; provided, however, notwithstanding anything to the contrary herein, that any capital expenditure shall be amortized (including reasonable interest on the amortized cost) over the reasonable useful life of such capital item before being included in Operating Expenses; (xiv) costs, fees, charges or assessments imposed by, or resulting from any mandate imposed on Landlord by, any federal, state or local government for fire and police protection, trash removal, community services, or other services which do not constitute "Tax Expenses" as that term is defined in Section 4.2.5, below; and (xv) payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs by the Building, including, without limitation, any covenants, conditions and restrictions affecting the property, and reciprocal easement agreements affecting the property, any parking licenses, and any agreements with transit agencies affecting the Property (collectively, "**Underlying Documents**"). Notwithstanding the foregoing, for purposes of this Lease, Operating Expenses shall not, however, include:

(a) costs, including legal fees, space planners' fees, advertising and promotional expenses (except as otherwise set forth above), and brokerage fees incurred in connection with the original

construction or development, or original or future leasing of the Project, and costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for new tenants initially occupying space in the Project after the Lease Commencement Date or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Project (excluding, however, such costs relating to any common areas of the Project or parking facilities);

(b) except as set forth in items (xii), (xiii), and (xiv) above, depreciation, interest and principal payments on mortgages and other debt costs, if any, penalties and interest;

(c) costs for which the Landlord is reimbursed by any tenant or occupant of the Project or by insurance by its carrier or any tenant's carrier or by anyone else, electric power costs for which any tenant directly contracts with the local public service company and costs of utilities and services provided to other tenants that are not provided to Tenant;

(d) any bad debt loss, rent loss, or reserves for bad debts or rent loss or other reserves to the extent not used in the same year;

(e) costs associated with the operation of the business of the partnership or entity which constitutes the Landlord, as the same are distinguished from the costs of operation of the Project (which shall specifically include, but not be limited to, accounting costs associated with the operation of the Project). Costs associated with the operation of the business of the partnership or entity which constitutes the Landlord include costs of partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of the Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of the Landlord's interest in the Project, and costs incurred in connection with any disputes between Landlord and its employees, between Landlord and Project management, or between Landlord and other tenants or occupants;

(f) the wages and benefits of any employee who does not devote substantially all of his or her employed time to the Project unless such wages and benefits are prorated to reflect time spent on operating and managing the Project vis-a-vis time spent on matters unrelated to operating and managing the Project; provided, that in no event shall Operating Expenses for purposes of this Lease include wages and/or benefits attributable to personnel above the level of Project manager;

(g) amount paid as ground rental for the Project by the Landlord;

(h) except for a property management fee not to exceed three percent (3%) of gross revenues, overhead and profit increment paid to the Landlord, and any amounts paid to the Landlord or to subsidiaries or affiliates of the Landlord for services in the Project to the extent the same exceeds the costs of such services rendered by qualified, first-class unaffiliated third parties on a competitive basis;

(i) any compensation paid to clerks, attendants or other persons in commercial concessions operated by the Landlord (other than as direct reimbursement for costs which, if incurred directly by Landlord, would properly be included in Operating Expenses);

(j) rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment which if purchased the cost of which would be excluded from Operating Expenses as a capital cost, except equipment not affixed to the Project which is used in providing engineering, janitorial or similar services and, further excepting from this exclusion such equipment rented or leased to remedy or ameliorate an emergency condition in the Project;

(k) all items and services for which Tenant or any other tenant in the Project reimburses Landlord or which Landlord provides selectively to one or more tenants (other than Tenant) without reimbursement;

(l) any costs expressly excluded from Operating Expenses elsewhere in this Lease;

- (m) rent for any office space occupied by Project management personnel;
- (n) costs arising from the gross negligence or willful misconduct of Landlord or its agents, employees or contractors in connection with this Lease;
- (o) costs incurred to comply with laws relating to the removal or remediation of hazardous material (as defined under applicable law), and any costs of fines or penalties relating to the presence of hazardous material, in each case to the extent not brought into the Building or Premises by Tenant or any Tenant Parties;
- (p) costs to correct any construction defect in the Project or to remedy any violation of a covenant, condition, restriction, underwriter's requirement or law that exists as of the Lease Commencement Date;
- (q) capital costs occasioned by casualties or condemnation;
- (r) legal fees, accountants' fees (other than normal bookkeeping expenses) and other expenses incurred in connection with disputes of tenant or other occupants of the Project or associated with the enforcement of the terms of any leases with tenants or the defense of Landlord's title to or interest in the Project or any part thereof;
- (s) costs incurred due to a violation by Landlord or any other tenant of the Project of the terms and conditions of a lease; and
- (t) self-insurance retentions.

#### 4.2.5 **Taxes.**

4.2.5.1 "Tax Expenses" shall mean all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary (including, without limitation, real estate taxes, general and special assessments, transit taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid by Tenant, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the Project, or any portion thereof), which shall be paid or accrued during any Expense Year (without regard to any different fiscal year used by such governmental or municipal authority) because of or in connection with the ownership, leasing and operation of the Project, or any portion thereof.

4.2.5.2 Tax Expenses shall include, without limitation: (i) Any tax on the rent, right to rent or other income from the Project, or any portion thereof, or as against the business of leasing the Project, or any portion thereof; (ii) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax; (iii) Any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Premises or the Rent payable hereunder, including, without limitation, any business or gross income tax or excise tax with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof; and (iv) Any assessment, tax, fee, levy or charge, upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises or the improvements thereon.

4.2.5.3 Any costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees) incurred in attempting to protest, reduce or minimize Tax Expenses shall be included in Tax Expenses in the Expense Year such expenses are incurred. Tax refunds shall be credited against Tax Expenses and refunded to Tenant regardless of when received, based on the Expense Year to which the refund is applicable, provided that in no event shall the amount to be refunded to Tenant for any such Expense Year exceed the total amount paid by Tenant as Additional Rent under this Article 4 for such Expense Year. If Tax Expenses for any

period during the Lease Term or any extension thereof are increased after payment thereof for any reason, including, without limitation, error or reassessment by applicable governmental or municipal authorities, Tenant shall pay Landlord upon demand Tenant's Share of any such increased Tax Expenses. Notwithstanding anything to the contrary contained in this Section 4.2.5, there shall be excluded from Tax Expenses (i) all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, transfer taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's net income (as opposed to rents, receipts or income attributable to operations at the Project), (ii) any items included as Operating Expenses, (iii) any items paid by Tenant under Section 4.5 of this Lease, (iv) assessments in excess of the amount which would be payable if such assessment expense were paid in installments over the longest permitted term, (v) taxes imposed on land and improvements other than the Project and (vi) tax increases resulting from the improvement of any of the Project for the sole use of other occupants.

4.2.6 "**Tenant's Share**" shall mean the percentage set forth in Section 6 of the Summary.

4.3 **Allocation of Direct Expenses.** The parties acknowledge that the Building is a part of a multi-building project and that the costs and expenses incurred in connection with the Project (i.e., the Direct Expenses) should be shared between the Building and the other buildings in the Project. Accordingly, as set forth in Section 4.2 above, Direct Expenses (which consist of Operating Expenses and Tax Expenses) are determined annually for the Project as a whole, and a portion of the Direct Expenses, which portion shall be determined by Landlord on an equitable basis, shall be allocated to the Building (as opposed to other buildings in the Project). Such portion of Direct Expenses allocated to the Building shall include all Direct Expenses attributable solely to the Building and a pro rata portion of the Direct Expenses attributable to the Project as a whole, and shall not include Direct Expenses attributable solely to other buildings in the Project.

4.4 **Calculation and Payment of Additional Rent.** Commencing on the Lease Commencement Date, Tenant shall pay to Landlord, in the manner set forth in Section 4.4.1, below, and as Additional Rent, Tenant's Share of Direct Expenses for each Expense Year during the Lease Term.

4.4.1 **Statement of Actual Direct Expenses and Payment by Tenant.** Landlord shall give to Tenant within five (5) months following the end of each Expense Year (provided that Landlord agrees to utilize commercially reasonable efforts to deliver such Statement to Tenant as soon as practicable following the end of each Expense Year), a statement (the "**Statement**") which shall state the Direct Expenses incurred or accrued for such preceding Expense Year, and which shall indicate the amount of Tenant's Share of Direct Expenses. Upon receipt of the Statement for each Expense Year commencing or ending during the Lease Term, Tenant shall pay, with its next installment of Base Rent due that is at least thirty (30) days thereafter, the full amount of Tenant's Share of Direct Expenses for such Expense Year, less the amounts, if any, paid during such Expense Year as "**Estimated Direct Expenses**," as that term is defined in Section 4.4.2, below, and if Tenant paid more as Estimated Direct Expenses than the actual Tenant's Share of Direct Expenses, Tenant shall receive a credit in the amount of Tenant's overpayment against Rent next due under this Lease. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord or Tenant from enforcing its rights under this Article 4. Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of Direct Expenses for the Expense Year in which this Lease terminates, Tenant shall immediately pay to Landlord such amount, and if Tenant paid more as Estimated Direct Expenses than the actual Tenant's Share of Direct Expenses, Landlord shall, within thirty (30) days, deliver a check payable to Tenant in the amount of the overpayment. The provisions of this Section 4.4.1 shall survive the expiration or earlier termination of the Lease Term. Notwithstanding the immediately preceding sentence, Tenant shall not be responsible for Tenant's Share of any Direct Expenses attributable to any Expense Year which are first billed to Tenant more than two (2) calendar years after the earlier of the expiration of the applicable Expense Year or the Lease Expiration Date, provided that in any event Tenant shall be responsible for Tenant's Share of Direct Expenses levied by any governmental authority or by any public utility companies at any time following the Lease Expiration Date which are attributable to any Expense Year (provided that Landlord delivers Tenant a bill for such amounts within two (2) years following Landlord's receipt of the bill therefor).

4.4.2 **Statement of Estimated Direct Expenses.** In addition, Landlord shall give Tenant a yearly expense estimate statement (the "**Estimate Statement**") which shall set forth Landlord's reasonable estimate



(the "**Estimate**") of what the total amount of Direct Expenses for the then-current Expense Year shall be and the estimated Tenant's Share of Direct Expenses (the "**Estimated Direct Expenses**"). Landlord shall utilize commercially reasonable efforts to deliver such Estimate Statement within five (5) months following the end of each Expense Year. The failure of Landlord to timely furnish the Estimate Statement for any Expense Year shall not preclude Landlord from enforcing its rights to collect any Estimated Direct Expenses under this Article 4, nor shall Landlord be prohibited from revising any Estimate Statement or Estimated Direct Expenses theretofore delivered to the extent necessary. Thereafter, Tenant shall pay, with its next installment of Base Rent due that is at least thirty (30) days thereafter, a fraction of the Estimated Direct Expenses for the then-current Expense Year (reduced by any amounts paid pursuant to the last sentence of this Section 4.4.2). Such fraction shall have as its numerator the number of months which have elapsed in such current Expense Year, including the month of such payment, and twelve (12) as its denominator. Until a new Estimate Statement is furnished (which Landlord shall have the right to deliver to Tenant at any time), Tenant shall pay monthly, with the monthly Base Rent installments, an amount equal to one-twelfth (1/12) of the total Estimated Direct Expenses set forth in the previous Estimate Statement delivered by Landlord to Tenant.

4.5 **Taxes and Other Charges for Which Tenant Is Directly Responsible.** Tenant shall be liable for and shall pay ten (10) days before delinquency, taxes levied against Tenant's equipment, furniture, fixtures and any other personal property located in or about the Premises. If any such taxes on Tenant's equipment, furniture, fixtures and any other personal property are levied against Landlord or Landlord's property or if the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon such equipment, furniture, fixtures or any other personal property and if Landlord pays the taxes based upon such increased assessment, which Landlord shall have the right to do regardless of the validity thereof but only under proper protest if requested by Tenant, Tenant shall upon demand repay to Landlord the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment, as the case may be.

4.6 **Landlord's Books and Records.** Within one hundred twenty (120) days after receipt by Tenant of a Statement, if Tenant disputes the amount of Additional Rent set forth in the Statement, a member of Tenant's finance department, or an independent certified public accountant (which accountant is a member of a nationally recognized accounting firm and is not working on a contingency fee basis) ("**Tenant's Accountant**"), designated and paid for by Tenant, may, after reasonable notice to Landlord and at reasonable times, inspect Landlord's records with respect to the Statement at Landlord's offices, provided that there is no existing Event of Default and Tenant has paid all amounts required to be paid under the applicable Estimate Statement and Statement, as the case may be. In connection with such inspection, Tenant and Tenant's agents must agree in advance to follow Landlord's reasonable rules and procedures regarding inspections of Landlord's records, and shall execute a commercially reasonable confidentiality agreement regarding such inspection. Tenant's failure to dispute the amount of Additional Rent set forth in any Statement within one hundred twenty (120) days of Tenant's receipt of such Statement shall be deemed to be Tenant's approval of such Statement and Tenant, thereafter, waives the right or ability to dispute the amounts set forth in such Statement. If after such inspection, Tenant still disputes such Additional Rent, a determination as to the proper amount shall be made, at Tenant's expense, by an independent certified public accountant (the "**Accountant**") selected by Landlord and subject to Tenant's reasonable approval; provided that if such Accountant determines that Direct Expenses were overstated by more than five percent (5%), then the cost of the Accountant and the cost of such determination shall be paid for by Landlord, and Landlord shall reimburse Tenant for the cost of the Tenant's Accountant (provided that such cost shall be a reasonable market cost for such services). Tenant hereby acknowledges that Tenant's sole right to inspect Landlord's books and records and to contest the amount of Direct Expenses payable by Tenant shall be as set forth in this Section 4.6, and Tenant hereby waives any and all other rights pursuant to applicable law to inspect such books and records and/or to contest the amount of Direct Expenses payable by Tenant.

## 5. USE OF PREMISES

5.1 **Permitted Use.** Tenant shall use the Premises solely for the Permitted Use set forth in Section 7 of the Summary and Tenant shall not use or permit the Premises or the Project to be used for any other purpose or purposes whatsoever without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion.

5.2 **Prohibited Uses.** Tenant further covenants and agrees that Tenant shall not use or permit any person or persons to use, the Premises or any part thereof for any use or purpose in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Project) including, without limitation, any such laws, ordinances, regulations or requirements relating to hazardous materials or substances, as those terms are defined by applicable laws now or hereafter in effect. Landlord shall have the right to impose reasonable, nondiscriminatory and customary rules and regulations regarding the use of the Project that do not unreasonably interfere with Tenant's use of the Premises, as reasonably deemed necessary by Landlord with respect to the orderly operation of the Project, and Tenant shall comply with such reasonable rules and regulations. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building, or injure or annoy them or use or allow the Premises to be used for any improper, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall comply with, and Tenant's rights and obligations under the Lease and Tenant's use of the Premises shall be subject and subordinate to, all recorded easements, covenants, conditions, and restrictions now or hereafter affecting the Project, so long as the same do not unreasonably interfere with Tenant's use of the Premises or parking rights or materially increase Tenant's obligations or decrease Tenant's rights under this Lease.

5.3 **Hazardous Materials.**

5.3.1 **Tenant's Obligations.**

5.3.1.1 **Prohibitions.** As a material inducement to Landlord to enter into this Lease with Tenant, Tenant has fully and accurately completed Landlord's Pre-Leasing Environmental Exposure Questionnaire (the "**Environmental Questionnaire**"), which is attached as **Exhibit E**. Tenant agrees that except for those chemicals or materials, and their respective quantities, specifically listed on the Environmental Questionnaire (as the same may be updated from time to time as provided below), neither Tenant nor Tenant's employees, contractors and subcontractors of any tier, entities with a contractual relationship with Tenant (other than Landlord), or any entity acting as an agent or sub-agent of Tenant (collectively, "**Tenant's Agents**") will produce, use, store or generate any "Hazardous Materials," as that term is defined below, on, under or about the Premises, nor cause any Hazardous Material to be brought upon, placed, stored, manufactured, generated, blended, handled, recycled, used or "Released," as that term is defined below, on, in, under or about the Premises. If any information provided to Landlord by Tenant on the Environmental Questionnaire, or otherwise relating to information concerning Hazardous Materials is intentionally false, incomplete, or misleading in any material respect, the same shall be deemed a default by Tenant under this Lease. Upon Landlord's request, or in the event of any material change in Tenant's use of Hazardous Materials in the Premises, Tenant shall deliver to Landlord an updated Environmental Questionnaire at least once a year. Tenant shall notify Landlord prior to using any Hazardous Materials in the Premises not described on the initial Environmental Questionnaire, and, to the extent such use would, in Landlord's reasonable judgment, cause a material increase in the risk of liability compared to the uses previously allowed in the Premises, such additional use shall be subject to Landlord's prior consent, which may be withheld in Landlord's reasonable discretion. Tenant shall not install or permit Tenant's Agents to install any underground storage tank on the Premises. For purposes of this Lease, "**Hazardous Materials**" means all flammable explosives, petroleum and petroleum products, waste oil, radon, radioactive materials, toxic pollutants, asbestos, polychlorinated biphenyls ("**PCBs**"), medical waste, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including without limitation any chemical, element, compound, mixture, solution, substance, object, waste or any combination thereof, which is or may be hazardous to human health, safety or to the environment due to its radioactivity, ignitability, corrosiveness, reactivity, explosiveness, toxicity, carcinogenicity, infectiousness or other harmful or potentially harmful properties or effects, or defined as, regulated as or included in, the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any Environmental Laws. For purposes of this Lease, "**Release**" or "**Released**" or "**Releases**" shall mean any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing, or other movement of Hazardous Materials into the environment. Landlord acknowledges that Tenant may be using fume hoods in the Premises and that emissions of Hazardous Materials into the air in compliance with all Environmental Laws shall not be considered Releases.

5.3.1.2 **Notices to Landlord.** Tenant shall notify Landlord in writing as soon as possible but in no event later than five (5) days after (i) the occurrence of any actual, alleged or threatened Release of any Hazardous Material in, on, under, from, about or in the vicinity of the Premises (whether past or present), regardless of the source or quantity of any such Release, or (ii) Tenant becomes aware of any regulatory actions, inquiries, inspections, investigations, directives, or any cleanup, compliance, enforcement or abatement proceedings (including any threatened or contemplated investigations or proceedings) relating to or potentially affecting the Premises, or (iii) Tenant becomes aware of any claims by any person or entity relating to any Hazardous Materials in, on, under, from, about or in the vicinity of the Premises, whether relating to damage, contribution, cost recovery, compensation, loss or injury. Collectively, the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "**Hazardous Materials Claims**". Tenant shall promptly forward to Landlord copies of all orders, notices, permits, applications and other communications and reports in connection with any Hazardous Materials Claims. Additionally, Tenant shall promptly advise Landlord in writing of Tenant's discovery of any occurrence or condition on, in, under or about the Premises that could subject Tenant or Landlord to any liability, or restrictions on ownership, occupancy, transferability or use of the Premises under any "Environmental Laws," as that term is defined below. Tenant shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials Claims without first notifying Landlord of Tenant's intention to do so and affording Landlord the opportunity to join and participate, as a party if Landlord so elects, in such proceedings and in no event shall Tenant enter into any agreements which are binding on Landlord or the Premises without Landlord's prior written consent. Landlord shall have the right to appear at and participate in, any and all legal or other administrative proceedings concerning any Hazardous Materials Claim. For purposes of this Lease, "**Environmental Laws**" means all applicable present and future laws relating to the protection of human health, safety, wildlife or the environment, including, without limitation, (i) all requirements pertaining to reporting, licensing, permitting, investigation and/or remediation of emissions, discharges, Releases, or threatened Releases of Hazardous Materials, whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials; and (ii) all requirements pertaining to the health and safety of employees or the public. Environmental Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC § 9601, et seq., the Hazardous Materials Transportation Authorization Act of 1994, 49 USC § 5101, et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and Hazardous and Solid Waste Amendments of 1984, 42 USC § 6901, et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC § 1251, et seq., the Clean Air Act of 1966, 42 USC § 7401, et seq., the Toxic Substances Control Act of 1976, 15 USC § 2601, et seq., the Safe Drinking Water Act of 1974, 42 USC §§ 300f through 300j, the Occupational Safety and Health Act of 1970, as amended, 29 USC § 651 et seq., the Oil Pollution Act of 1990, 33 USC § 2701 et seq., the Emergency Planning and Community Right-To-Know Act of 1986, 42 USC § 11001 et seq., the National Environmental Policy Act of 1969, 42 USC § 4321 et seq., the Federal Insecticide, Fungicide and Rodenticide Act of 1947, 7 USC § 136 et seq., California Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code §§ 25300 et seq., Hazardous Materials Release Response Plans and Inventory Act, California Health & Safety Code, §§ 25500 et seq., Underground Storage of Hazardous Substances provisions, California Health & Safety Code, §§ 25280 et seq., California Hazardous Waste Control Law, California Health & Safety Code, §§ 25100 et seq., and any other state or local law counterparts, as amended, as such applicable laws, are in effect as of the Lease Commencement Date, or thereafter adopted, published, or promulgated.

5.3.1.3 **Releases of Hazardous Materials.** If any Release of any Hazardous Material in, on, under, from or about the Premises shall occur at any time during the Lease by Tenant or Tenant's Agents, in addition to notifying Landlord as specified above, Tenant, at its own sole cost and expense, shall (i) immediately comply with any and all reporting requirements imposed pursuant to any and all Environmental Laws, (ii) provide a written certification to Landlord indicating that Tenant has complied with all applicable reporting requirements, (iii) take any and all necessary investigation, corrective and remedial action in accordance with any and all applicable Environmental Laws, utilizing an environmental consultant approved by Landlord, all in accordance with the provisions and requirements of this **Section 5.3**, including, without limitation, **Section 5.3.4**, and (iv) take any such additional investigative, remedial and corrective actions as Landlord shall in its reasonable discretion deem necessary such that the Premises are remediated to the condition existing prior to such Release.

5.3.1.4 **Indemnification.**

5.3.1.4.1 **In General.** Without limiting in any way Tenant's obligations under any other provision of this Lease, Tenant shall be solely responsible for and shall protect, defend, indemnify and hold the Landlord Parties harmless from and against any and all claims, judgments, losses, damages, costs, expenses, penalties, enforcement actions, taxes, fines, remedial actions, liabilities (including, without limitation, actual attorneys' fees, litigation, arbitration and administrative proceeding costs, expert and consultant fees and laboratory costs) including, without limitation, consequential damages and sums paid in settlement of claims, which arise during or after the Lease Term, whether foreseeable or unforeseeable, that arise during or after the Lease Term in whole or in part, foreseeable or unforeseeable, directly or indirectly arising out of or attributable to the Release of Hazardous Materials in, on, under or about the Premises by Tenant or Tenant's Agents.

5.3.1.4.2 **Limitations.** Notwithstanding anything in **Section 5.3.1.4**, above, to the contrary, Tenant's indemnity of Landlord as set forth in **Section 5.3.1.4**, above, shall not be applicable to claims based upon Hazardous Materials not Released by Tenant or Tenant's Agents.

5.3.1.4.3 **Landlord Indemnity.** Under no circumstance shall Tenant be liable for, and Landlord shall indemnify, defend, protect and hold harmless Tenant and Tenant's Agents from and against, all losses, costs, claims, liabilities and damages (including attorneys' and consultants' fees) arising out of any Hazardous Materials that exist in, on or about the Project as of the date hereof, or Hazardous Material Released by Landlord or any Landlord Parties. Landlord shall provide Tenant with any environmental reports relating to the Project in Landlord's immediate possession. The provision of such reports shall be for informational purposes only, and Landlord does not make any representation or warranty as to the correctness or completeness of any such reports.

5.3.1.5 **Compliance with Environmental Laws.** Without limiting the generality of Tenant's obligation to comply with applicable laws as otherwise provided in this Lease, Tenant shall, at its sole cost and expense, comply with all Environmental Laws related to the use of Hazardous Materials by Tenant and Tenant's Agents. Tenant shall obtain and maintain any and all necessary permits, licenses, certifications and approvals appropriate or required for the use, handling, storage, and disposal of any Hazardous Materials used, stored, generated, transported, handled, blended, or recycled by Tenant on the Premises. Landlord shall have a continuing right, without obligation, to require Tenant to obtain, and to review and inspect any and all such permits, licenses, certifications and approvals, together with copies of any and all Hazardous Materials management plans and programs, any and all Hazardous Materials risk management and pollution prevention programs, and any and all Hazardous Materials emergency response and employee training programs respecting Tenant's use of Hazardous Materials. Upon request of Landlord, Tenant shall deliver to Landlord a narrative description explaining the nature and scope of Tenant's activities involving Hazardous Materials and showing to Landlord's satisfaction compliance with all Environmental Laws and the terms of this Lease.

5.3.2 **Assurance of Performance.**

5.3.2.1 **Environmental Assessments In General.** Landlord may, but shall not be required to, engage from time to time such contractors as Landlord determines to be appropriate (and which are reasonably acceptable to Tenant) to perform environmental assessments of a scope reasonably determined by Landlord (an "**Environmental Assessment**") to ensure Tenant's compliance with the requirements of this Lease with respect to Hazardous Materials.

5.3.2.2 **Costs of Environmental Assessments.** All costs and expenses incurred by Landlord in connection with any such Environmental Assessment initially shall be paid by Landlord; provided that if any such Environmental Assessment shows that Tenant has failed to comply with the provisions of this **Section 5.3**, then all of the costs and expenses of such Environmental Assessment shall be reimbursed by Tenant as Additional Rent within thirty (30) days after receipt of written demand therefor.

5.3.3 **Tenant's Obligations upon Surrender.** At the expiration or earlier termination of the Lease Term, Tenant, at Tenant's sole cost and expense, shall: (i) cause an Environmental Assessment of the

Premises to be conducted in accordance with **Section 15.3**; (ii) cause all Hazardous Materials brought onto the Premises by Tenant or Tenant's Agents to be removed from the Premises and disposed of in accordance with all Environmental Laws and as necessary to allow the Premises to be used for the purposes allowed as of the date of this Lease; and (iii) cause to be removed all containers installed or used by Tenant or Tenant's Agents to store any Hazardous Materials on the Premises, and cause to be repaired any damage to the Premises caused by such removal.

5.3.4 **Clean-up.**

5.3.4.1 **Environmental Reports; Clean-Up.** If any written report, including any report containing results of any Environmental Assessment (an "**Environmental Report**") shall indicate (i) the presence of any Hazardous Materials as to which Tenant has a removal or remediation obligation under this **Section 5.3**, and (ii) that as a result of same, the investigation, characterization, monitoring, assessment, repair, closure, remediation, removal, or other clean-up (the "**Clean-up**") of any Hazardous Materials is required, Tenant shall immediately prepare and submit to Landlord within thirty (30) days after receipt of the Environmental Report a comprehensive plan, subject to Landlord's written approval, specifying the actions to be taken by Tenant to perform the Clean-up so that the Premises are restored to the conditions required by this Lease. Upon Landlord's approval of the Clean-up plan, Tenant shall, at Tenant's sole cost and expense, without limitation on any rights and remedies of Landlord under this Lease, immediately implement such plan with a consultant reasonably acceptable to Landlord and proceed to Clean-Up Hazardous Materials in accordance with all applicable laws. If, within thirty (30) days after receiving a copy of such Environmental Report, Tenant fails either (a) to complete such Clean-up, or (b) with respect to any Clean-up that cannot be completed within such thirty-day period, fails to proceed with diligence to prepare the Clean-up plan and complete the Clean-up as promptly as practicable, then Landlord shall have the right, but not the obligation, and without waiving any other rights under this Lease, to carry out any Clean-up recommended by the Environmental Report or required by any governmental authority having jurisdiction over the Premises, and recover all of the costs and expenses thereof from Tenant as Additional Rent, payable within ten (10) days after receipt of written demand therefor.

5.3.4.2 **No Rent Abatement.** Tenant shall continue to pay all Rent due or accruing under this Lease during any Clean-up, and shall not be entitled to any reduction, offset or deferral of any Base Rent or Additional Rent due or accruing under this Lease during any such Clean-up.

5.3.4.3 **Surrender of Premises.** Tenant shall complete any Clean-up prior to surrender of the Premises upon the expiration or earlier termination of this Lease. Tenant shall obtain and deliver to Landlord a letter or other written determination from the overseeing governmental authority confirming that the Clean-up has been completed in accordance with all requirements of such governmental authority and that no further response action of any kind is required for the unrestricted use of the Premises ("**Closure Letter**"). Upon the expiration or earlier termination of this Lease, Tenant shall also be obligated to close all permits obtained in connection with Hazardous Materials used by Tenant or Tenant's Agents in accordance with applicable laws.

5.3.4.4 **Failure to Timely Clean-Up.** Should any Clean-up for which Tenant is responsible not be completed, or should Tenant not receive the Closure Letter and any governmental approvals required under Environmental Laws in conjunction with such Clean-up prior to the expiration or earlier termination of this Lease, then, commencing on the later of the termination of this Lease and three (3) business days after Landlord's delivery of notice of such failure and that it elects to treat such failure as a holdover, Tenant shall be liable to Landlord as a holdover tenant (as more particularly provided in **Article 16**) until Tenant has fully complied with its obligations under this **Section 5.3**.

5.3.5 **Confidentiality.** Unless compelled to do so by applicable law, Tenant agrees that Tenant shall not disclose, discuss, disseminate or copy any information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises to any Person (other than Tenant's consultants, attorneys, property managers, employees, shareholders and potential and actual investors, lenders, business and merger partners, subtenants and assignees that have a need to know such information), including any governmental authority, without the prior written consent of Landlord. In the event Tenant reasonably believes that disclosure is compelled by applicable law, it shall provide Landlord ten (10) days' advance notice of disclosure of confidential information so that Landlord may attempt to obtain a protective order. Tenant may additionally release such

information to bona fide prospective purchasers or lenders, subject to any such parties' written agreement to be bound by the terms of this Section 5.3.

5.3.6 **Copies of Environmental Reports.** Within thirty (30) days of receipt thereof, Tenant shall provide Landlord with a copy of any and all environmental assessments, audits, studies and reports regarding Tenant's activities with respect to the Premises, or ground water beneath the Land, or the environmental condition or Clean-up thereof. Tenant shall be obligated to provide Landlord with a copy of such materials without regard to whether such materials are generated by Tenant or prepared for Tenant, or how Tenant comes into possession of such materials.

5.3.7 **Intentionally Omitted.**

5.3.8 **Signs, Response Plans, Etc.** Tenant shall be responsible for posting on the Premises any signs required under applicable Environmental Laws with respect to the use of Hazardous Materials by Tenant or Tenant's Agents. Tenant shall also complete and file any business response plans or inventories required by any applicable laws. Tenant shall concurrently file a copy of any such business response plan or inventory with Landlord.

5.3.9 **Survival.** Each covenant, agreement, representation, warranty and indemnification made by Tenant set forth in this Section 5.3 shall survive the expiration or earlier termination of this Lease and shall remain effective until all of Tenant's obligations under this Section 5.3 have been completely performed and satisfied.

## 6. SERVICES AND UTILITIES

6.1 **In General.** Tenant will be responsible, at its sole cost and expense, for the furnishing of all services and utilities to the Premises, including, but not limited to heating, ventilation and air-conditioning, electricity, water, telephone, janitorial and interior Building security services. To the extent that any utilities (including without limitation, electricity, gas, sewer and water) to the Building are not separately metered to the Premises, then Tenant shall pay to Landlord, within thirty (30) days after billing, an equitable portion of the Building utility costs, based on Tenant's proportionate use thereof.

6.1.1 All utilities (including without limitation, electricity, gas, sewer and water) to the Building which are separately metered at the Premises shall be paid directly by Tenant to the applicable utility provider.

6.1.2 Landlord shall not provide janitorial services for the Premises. Tenant shall be solely responsible for performing all janitorial services and other cleaning of the Premises, all in compliance with applicable laws. The janitorial and cleaning of the Premises shall be adequate to maintain the Premises in a manner consistent with First Class Life Sciences Projects.

Tenant shall cooperate fully with Landlord at all times and abide by all reasonable regulations and requirements that Landlord may reasonably prescribe for the proper functioning and protection of the HVAC, electrical, mechanical and plumbing systems. Provided that Landlord agrees to provide and maintain and keep in continuous service utility connections to the Project, including electricity, water and sewage connections, Landlord shall have no obligation to provide any services or utilities to the Building, including, but not limited to heating, ventilation and air-conditioning, electricity, water, telephone, janitorial and interior Building security services.

6.2 **Interruption of Use.** Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Project after reasonable effort to do so, by any riot or other dangerous condition, emergency, accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause; and such failures or delays or

diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Notwithstanding the foregoing, Landlord may be liable for damages to the extent caused by the negligence or willful misconduct of Landlord or the Landlord Parties, provided that Landlord shall not be liable under any circumstances for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this Article 6.

6.3 **Energy Performance Disclosure Information.** Tenant hereby acknowledges that Landlord may be required to disclose certain information concerning the energy performance of the Building pursuant to California Public Resources Code Section 25402.10 and the regulations adopted pursuant thereto (collectively the "**Energy Disclosure Requirements**"). Tenant hereby acknowledges prior receipt of the Data Verification Checklist, as defined in the Energy Disclosure Requirements (the "**Energy Disclosure Information**"), and agrees that Landlord has timely complied in full with Landlord's obligations under the Energy Disclosure Requirements. Tenant acknowledges and agrees that (i) Landlord makes no representation or warranty regarding the energy performance of the Building or the accuracy or completeness of the Energy Disclosure Information, (ii) the Energy Disclosure Information is for the current occupancy and use of the Building and that the energy performance of the Building may vary depending on future occupancy and/or use of the Building, and (iii) Landlord shall have no liability to Tenant for any errors or omissions in the Energy Disclosure Information. If and to the extent not prohibited by applicable laws, Tenant hereby waives any right Tenant may have to receive the Energy Disclosure Information, including, without limitation, any right Tenant may have to terminate this Lease as a result of Landlord's failure to disclose such information. Further, Tenant hereby releases Landlord from any and all losses, costs, damages, expenses and/or liabilities relating to, arising out of and/or resulting from the Energy Disclosure Requirements, including, without limitation, any liabilities arising as a result of Landlord's failure to disclose the Energy Disclosure Information to Tenant prior to the execution of this Lease. Tenant's acknowledgment of the AS-IS condition of the Premises pursuant to the terms of this Lease shall be deemed to include the energy performance of the Building. Tenant further acknowledges that pursuant to the Energy Disclosure Requirements, Landlord may be required in the future to disclose information concerning Tenant's energy usage to certain third parties, including, without limitation, prospective purchasers, lenders and tenants of the Building (the "**Tenant Energy Use Disclosure**"). Tenant hereby (A) consents to all such Tenant Energy Use Disclosures, and (B) acknowledges that Landlord shall not be required to notify Tenant of any Tenant Energy Use Disclosure. Further, Tenant hereby releases Landlord from any and all losses, costs, damages, expenses and liabilities relating to, arising out of and/or resulting from any Tenant Energy Use Disclosure. The terms of this Section 6.3 shall survive the expiration or earlier termination of this Lease.

## 7. REPAIRS

7.1 **Tenant Repair Obligations.** Tenant shall, throughout the Term, at its sole cost and expense, maintain, repair or replace as required, the Premises in a good standard of maintenance, repair and replacement as required, and in good and sanitary condition, all in accordance with the standards of First Class Life Sciences Projects, except for the Landlord Repair Obligations, whether or not such maintenance, repair, replacement or improvement is required in order to comply with applicable Laws ("**Tenant's Repair Obligations**"), including without limitation, all electrical facilities and equipment, including lighting fixtures, lamps, fans and any exhaust equipment and systems, electrical motors and all other appliances and equipment of every kind and nature located in the Premises; all communications systems serving the Premises; all of Tenant's security systems in or about or serving the Premises; Tenant's signage; interior demising walls and partitions (including painting and wall coverings), equipment and floors. Tenant shall additionally be responsible, at Tenant's sole cost and expense, to furnish all expendables, including light bulbs, paper goods and soaps, used in the Premises.

7.2 **Landlord Repair Obligations.** Landlord shall be responsible, as a part of Operating Expenses, for repairs to and routine maintenance of the Building including without limitation: (1) exterior windows, window frames, window casements (including the repairing, resealing, cleaning and replacing of exterior windows); (2) exterior doors, door frames and door closers; (3) the Building (as opposed to the Premises) and Project plumbing, sewer, drainage, electrical, fire protection, life safety and security systems and equipment, existing heating, ventilation and air-conditioning ("**HVAC**") systems, and all other mechanical and HVAC systems and equipment (collectively, the "**Building Systems**"), (4) the exterior glass, exterior walls, foundation and roof of the Building, the

structural portions of the floors of the Building, including, without limitation, any painting, sealing, patching and waterproofing of exterior walls, and (5) repairs to the elevator in the Building and underground utilities, except to the extent that any such repairs are required due to the negligence or willful misconduct of Tenant (the "**Landlord Repair Obligations**"); provided, however, that if such repairs are due to the negligence or willful misconduct of Tenant, Landlord shall nevertheless make such repairs at Tenant's expense, or, if covered by Landlord's insurance, Tenant shall only be obligated to pay any deductible in connection therewith. Costs expended by Landlord in connection with the Landlord Repair Obligations shall be included in Operating Expenses to the extent allowed pursuant to the terms of Article 4, above. Landlord shall cooperate with Tenant to enforce any warranties that Landlord holds that could reduce Tenant's maintenance obligations under this Lease. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.

7.3 **Tenant's Right to Make Repairs.** Notwithstanding any provision to the contrary contained in this Lease, if Tenant provides written notice to Landlord of an event or circumstance which requires the action of Landlord under this Lease with respect to repair and/or maintenance required in the Premises, including repairs to the portions of the Building located within the Premises that are Landlord's responsibility under Section 7.4 (the "**Base Building**"), which event or circumstance with respect to the Base Building materially and adversely affects the conduct of Tenant's business from the Premises, and Landlord fails to commence corrective action within a reasonable period of time, given the circumstances, after the receipt of such notice, but in any event not later than thirty (30) days after receipt of said notice (unless Landlord's obligation cannot reasonably be performed within thirty (30) days, in which event Landlord shall be allowed additional time as is reasonably necessary to perform the obligation so long as Landlord begins performance within the initial thirty (30) days and diligently pursues performance to completion), or, in the event of an Emergency (as defined below), not later than five (5) business days after receipt of such notice, then Tenant shall have the right to undertake such actions as may be reasonably necessary to make such repairs if Landlord thereafter fails to commence corrective action within five (5) business days following Landlord's receipt of a second written notice from Tenant specifying that Tenant will undertake such actions if Landlord fails to timely do so (provided that such notice shall include the following language in bold, capitalized text: "**IF LANDLORD FAILS TO COMMENCE THE REPAIRS DESCRIBED IN THIS LETTER WITHIN FIVE (5) BUSINESS DAYS FROM LANDLORD'S RECEIPT OF THIS LETTER, TENANT WILL PERFORM SUCH REPAIRS AT LANDLORD'S EXPENSE**"; provided, however, that in no event shall Tenant undertake any actions that could materially or adversely affect the Base Building. Notwithstanding the foregoing, in the event of an Emergency, no second written notice shall be required as long as Tenant advises Landlord in the first written notice of Tenant's intent to perform such Emergency repairs if Landlord does not commence the same within such five (5) business day period, utilizing the language required in second notices. If such action was required under the terms of this Lease to be taken by Landlord and was not commenced by Landlord within such five (5) business day period and thereafter diligently pursued to completion, then Tenant shall be entitled to prompt reimbursement by Landlord of the reasonable out-of-pocket third-party costs and expenses actually incurred by Tenant in taking such action. If Tenant undertakes such corrective actions pursuant to this Section 7.3, then (a) the insurance and indemnity provisions set forth in this Lease shall apply to Tenant's performance of such corrective actions, (b) Tenant shall proceed in accordance with all applicable laws, (c) Tenant shall retain to perform such corrective actions only such reputable contractors and suppliers as are duly licensed and qualified, (d) Tenant shall effect such repairs in a good and workmanlike and commercially reasonable manner, (e) Tenant shall use new or like new materials, and (f) Tenant shall take reasonable efforts to minimize any material interference or impact on the other tenants and occupants of the Building. Promptly following completion of any work taken by Tenant pursuant to the terms of this Section 7.5, Tenant shall deliver a detailed invoice of the work completed, the materials used and the costs relating thereto, and Landlord shall reimburse Tenant the amounts expended by Tenant in connection with such work, provided that Landlord shall have the right to reasonably object if Landlord claims that such action did not have to be taken by Landlord pursuant to the terms of this Lease or that the charges are excessive (in which case Landlord shall pay the amount it contends would not have been excessive). For purposes of this Section 7.5, an "**Emergency**" shall mean an event threatening immediate and material danger to people located in the Building or immediate, material damage to the Building, Base Building, or creating a realistic possibility of an immediate and material interference with, or immediate and material interruption of a material aspect of Tenant's business operations.



## 8. ADDITIONS AND ALTERATIONS

8.1 **Landlord's Consent to Alterations.** Tenant may not make any improvements, alterations, additions or changes to the Premises or any mechanical, plumbing or HVAC facilities or systems pertaining to the Premises (collectively, the "Alterations") without first procuring the prior written consent of Landlord to such Alterations, which consent shall be requested by Tenant not less than ten (10) business days prior to the commencement thereof, and which consent shall not be unreasonably withheld by Landlord, provided it shall be deemed reasonable for Landlord to withhold its consent to any Alteration which adversely affects the structural portions or the systems or equipment of the Building or is visible from the exterior of the Building. Notwithstanding the foregoing, Tenant shall be permitted to make Alterations following ten (10) business days' notice to Landlord (as to Alterations costing more than \$10,000 only), but without Landlord's prior consent, to the extent that such Alterations (i) do not affect the building systems or equipment (other than minor changes such as adding or relocating electrical outlets and thermostats), (ii) are not visible from the exterior of the Building, and (iii) cost less than \$50,000.00 for a particular job of work. The construction of the Tenant Improvements to the Premises shall be governed by the terms of the Tenant Work Letter and not the terms of this Article 8.

8.2 **Manner of Construction.** Landlord may impose, as a condition of its consent to any and all Alterations or repairs of the Premises or about the Premises, such requirements as Landlord in its reasonable discretion may deem desirable, including, but not limited to, the requirement that upon Landlord's request, Tenant shall, at Tenant's expense, remove such Alterations upon the expiration or any early termination of the Lease Term. Tenant shall construct such Alterations and perform such repairs in a good and workmanlike manner, in conformance with any and all applicable federal, state, county or municipal laws, rules and regulations and pursuant to a valid building permit, issued by the city in which the Building is located (or other applicable governmental authority). Tenant shall not use (and upon notice from Landlord shall cease using) contractors, services, workmen, labor, materials or equipment that, in Landlord's reasonable judgment, would disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Building or the Common Areas. Upon completion of any Alterations, Tenant shall deliver to Landlord final lien waivers from all contractors, subcontractors and materialmen who performed such work. In addition to Tenant's obligations under Article 9 of this Lease, upon completion of any Alterations, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County in which the Project is located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and Tenant shall deliver to the Project construction manager a reproducible copy of the "as built" drawings of the Alterations as well as all permits, approvals and other documents issued by any governmental agency in connection with the Alterations.

8.3 **Payment for Improvements.** In connection with any Alterations that affect the Building systems (other than minor changes such as adding or relocating electrical outlets and thermostats), or which have a cost in excess of \$100,000, Tenant shall reimburse Landlord for Landlord's reasonable, actual, out-of-pocket costs and expenses actually incurred in connection with Landlord's review of such work.

8.4 **Construction Insurance.** In addition to the requirements of Article 10 of this Lease, in the event that Tenant makes any Alterations, prior to the commencement of such Alterations, Tenant shall provide Landlord with evidence that Tenant or Tenant's contractor carries "Builder's All Risk" insurance (to the extent that the cost of such work shall exceed \$50,000) in an amount approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may reasonably require, it being understood and agreed that all of such Alterations shall be insured by Landlord pursuant to Article 10 of this Lease immediately upon completion thereof. In addition, Tenant's contractors and subcontractors shall be required to carry (i) Commercial General Liability Insurance in an amount approved by Landlord, with Landlord, and, at Landlord's option, Landlord's property manager and project manager, as additional insureds in an amount approved by Landlord, and otherwise in accordance with the requirements of Article 10 of this Lease, and (ii) workers compensation insurance. In connection with Alterations with a cost in excess of \$250,000, Landlord may, in its discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of such Alterations and naming Landlord as a co-obligee.

8.5 **Landlord's Property.** All Alterations, improvements, fixtures, equipment and/or appurtenances which may be installed or placed in or about the Premises, from time to time, shall be at the sole cost of Tenant and

all Alterations and improvements, shall be and become the property of Landlord and remain in place at the Premises following the expiration or earlier termination of this Lease. Notwithstanding the foregoing, Landlord may, by written notice to Tenant given at the time it consents to an Alteration, require Tenant, at Tenant's expense, to remove any Alterations within the Premises and to repair any damage to the Premises and Building caused by such removal. If Tenant fails to complete such removal and/or to repair any damage caused by the removal of any Alterations, Landlord may do so and may charge the cost thereof to Tenant. Tenant hereby protects, defends, indemnifies and holds Landlord harmless from any liability, cost, obligation, expense or claim of lien in any manner relating to the installation, placement, removal or financing of any such Alterations, improvements, fixtures and/or equipment in, on or about the Premises, which obligations of Tenant shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, except to the extent the same are paid for by the Tenant Improvement Allowance, the items set forth in **Exhibit F** attached hereto (the "**Tenant's Property**") shall at all times be and remain Tenant's property. **Exhibit F** may be updated from time to time by agreement of the parties. Tenant may remove the Tenant's Property from the Premises at any time, provided that Tenant repairs all damage caused by such removal. Landlord shall have no lien or other interest in the Tenant's Property.

**9. COVENANT AGAINST LIENS** Tenant shall keep the Project and Premises free from any liens or encumbrances arising out of the work performed, materials furnished or obligations incurred by or on behalf of Tenant, and shall protect, defend, indemnify and hold Landlord harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. Except as to Alterations as to which no notice is required under the second sentence of Section 8.1, Tenant shall give Landlord notice at least ten (10) business days prior to the commencement of any such work on the Premises (or such additional time as may be necessary under applicable laws) to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility (to the extent applicable pursuant to then applicable laws). Tenant shall remove any such lien or encumbrance by bond or otherwise within ten (10) business days after notice by Landlord, and if Tenant shall fail to do so, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof.

## **10. INSURANCE**

10.1 **Indemnification and Waiver.** Except as provided in Section 10.5 or to the extent due to the negligence, willful misconduct or violation of this Lease by Landlord or the Landlord Parties, Tenant hereby assumes all risk of damage to property in, upon or about the Premises from any cause whatsoever (including, but not limited to, any personal injuries resulting from a slip and fall in, upon or about the Premises) and agrees that Landlord, its partners, subpartners and their respective officers, agents, servants, employees, lenders, any property manager and independent contractors (collectively, "**Landlord Parties**") shall not be liable for, and are hereby released from any responsibility for, any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant or by other persons claiming through Tenant. Tenant shall indemnify, defend, protect, and hold harmless the Landlord Parties from any and all claims, loss, cost, damage, injury, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in or on the Premises (including, but not limited to, a slip and fall), any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, invitees, guests or licensees of Tenant or any such person, in, on or about the Project or any breach of the terms of this Lease, either prior to, during, or after the expiration of the Lease Term, provided that the terms of the foregoing indemnity and release shall not apply to the negligence or willful misconduct of Landlord or its agents, employees, contractors, licensees or invitees, or Landlord's violation of this Lease. Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy of the Premises, Tenant shall pay to Landlord its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as reasonable appraisers', accountants' and attorneys' fees. Notwithstanding anything to the contrary in this Lease, Landlord shall not be released or indemnified from, and shall indemnify, defend, protect and hold harmless Tenant from, all losses, damages, liabilities, claims, attorneys' fees, costs and expenses arising from the gross negligence or willful misconduct of Landlord or its agents, contractors, licensees or invitees, or a violation of Landlord's obligations or representations under this Lease. The provisions of this Section 10.1 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

10.2 **Tenant's Compliance With Landlord's Property Insurance.** Landlord shall insure the Building, Tenant Improvements and any Alterations during the Lease Term against loss or damage under an "all risk" property insurance policy. Such coverage shall be in such amounts, from such companies, and on such other terms and conditions, as Landlord may from time to time reasonably determine. Additionally, at the option of Landlord, such insurance coverage may include the risks of earthquakes and/or flood damage and additional hazards, a rental loss endorsement and one or more loss payee endorsements in favor of the holders of any mortgages or deeds of trust encumbering the interest of Landlord in the Building or the ground or underlying lessors of the Building, or any portion thereof. The costs of such insurance shall be included in Operating Expenses, subject to the terms of Section 4.2.4. Tenant shall, at Tenant's expense, comply with all insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body. Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to comply with or cause the Premises to comply with any laws, rules, regulations or insurance requirements requiring the construction of alterations unless such compliance is necessitated solely due to Tenant's particular use of the Premises.

10.3 **Tenant's Insurance.** Tenant shall maintain the following coverages in the following amounts during the Lease Term (except Tenant shall carry the insurance described in Section 10.3.1 during any period in which it enters the Premises).

10.3.1 Commercial General Liability Insurance on an occurrence form covering the insured against claims of bodily injury and property damage (including loss of use thereof) arising out of Tenant's operations, and contractual liabilities including a contractual coverage for limits of liability (which limits may be met together with umbrella liability insurance) of not less than:

Bodily Injury and Property Damage Liability	\$4,000,000 each occurrence \$4,000,000 annual aggregate
Personal Injury Liability	\$4,000,000 annual aggregate

10.3.2 Property Insurance covering all office furniture, business and trade fixtures, office and lab equipment, free-standing cabinet work, movable partitions, merchandise and all other items of Tenant's property on the Premises installed by, for, or at the expense of Tenant. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, vandalism and malicious mischief, theft, water damage (excluding flood), including sprinkler leakage, bursting or stoppage of pipes, and explosion, and providing business interruption coverage for a period of ninety (90) days.

10.3.3 Business Income Interruption for ninety (90) days plus Extra Expense insurance in such amounts as will reimburse Tenant for actual direct or indirect loss of earnings attributable to the risks outlined in Section 10.3.2 above.

10.3.4 Worker's Compensation and Employer's Liability or other similar insurance pursuant to all applicable state and local statutes and regulations. The policy shall include a waiver of subrogation in favor of Landlord, its employees, Lenders and any property manager or partners.

10.4 **Form of Policies.** The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (i) name Landlord, its subsidiaries and affiliates, its property manager (if any) and any other party the Landlord so specifies, as an additional insured on the liability insurance, including Landlord's managing agent, if any; (ii) be issued by an insurance company having a rating of not less than A-:VII in Best's Insurance Guide or which is otherwise

acceptable to Landlord and authorized to do business in the State of California; and (iv) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and is non-contributing with any insurance required of Tenant. Tenant shall not cause said insurance to be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord (unless such cancellation is the result of non-payment of premiums, in which case not less than five (5) days' notice shall be provided). Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Lease Commencement Date and at least ten (10) days before the expiration dates thereof. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, Landlord may, at its option, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord within five (5) days after delivery to Tenant of bills therefor.

10.5 **Subrogation.** Landlord and Tenant hereby agree to look solely to, and seek recovery only from, their respective insurance carriers in the event of a property or business interruption loss to the extent that such coverage is agreed to be provided hereunder, notwithstanding the negligence of either party. Notwithstanding anything to the contrary in this Lease, the parties each hereby waive all rights and claims against each other for such losses, and waive all rights of subrogation of their respective insurers. The parties agree that their respective insurance policies do now, or shall, contain the waiver of subrogation.

10.6 **Additional Insurance Obligations.** Tenant shall carry and maintain during the entire Lease Term, at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this Article 10 and such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably requested by Landlord or Landlord's lender, but in no event in excess of the amounts and types of insurance then being required by landlords of buildings comparable to and in the vicinity of the Building.

## 11. DAMAGE AND DESTRUCTION

11.1 **Repair of Damage to Premises by Landlord.** Tenant shall promptly notify Landlord of any damage to the Premises resulting from fire or any other casualty. If the Premises or any Common Areas serving or providing access to the Premises shall be damaged by fire or other casualty, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 11, restore the Premises and such Common Areas. Such restoration shall be to substantially the same condition of the Premises and the Common Areas prior to the casualty, except for modifications required by zoning and building codes and other laws or any other modifications to the Common Areas deemed desirable by Landlord, which are consistent with the character of the Project, provided that access to the Premises shall not be materially impaired. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof; provided however, that if such fire or other casualty shall have damaged the Premises or Common Areas necessary to Tenant's occupancy, and the damaged portions of the Premises are not occupied by Tenant as a result thereof, then during the time and to the extent the Premises are unfit for occupancy, the Rent shall be abated in proportion to the ratio that the amount of rentable square feet of the Premises which is unfit for occupancy for the purposes permitted under this Lease bears to the total rentable square feet of the Premises.

11.2 **Landlord's Option to Repair.** Notwithstanding the terms of Section 11.1 of this Lease, Landlord may elect not to rebuild and/or restore the Premises, Building and/or Project, and instead terminate this Lease, by notifying Tenant in writing of such termination within sixty (60) days after the date of discovery of the damage, such notice to include a termination date giving Tenant sixty (60) days to vacate the Premises, but Landlord may so elect only if the Building shall be damaged by fire or other casualty or cause, and one or more of the following conditions is present: (i) in Landlord's reasonable judgment, repairs cannot reasonably be completed within one (1) year after the date of discovery of the damage (when such repairs are made without the payment of overtime or other premiums); (ii) the damage is due to a risk that Landlord is not required to insure under this Lease, and the cost of restoration exceed five percent (5%) of the replacement cost of the Building (unless Tenant agrees to pay any uninsured amount in excess of such five percent (5%)); or (iii) the damage occurs during the last twelve (12) months of the Lease Term and will take more than sixty (60) days to restore; provided, however, that if Landlord does not elect to terminate this Lease pursuant to Landlord's termination right as provided above, and the repairs cannot, in

the reasonable opinion of Landlord, be completed within seven (7) months after the date of discovery of the damage (or are not in fact completed within eight (8) months after the date of discovery of the damage), Tenant may elect, no earlier than sixty (60) days after the date of the damage and not later than ninety (90) days after the date of such damage, or within thirty (30) days after such repairs are not timely completed, to terminate this Lease by written notice to Landlord effective as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the date such notice is given by Tenant.

11.3 **Waiver of Statutory Provisions.** The provisions of this Lease, including this Article 11, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Building or the Project, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises, the Building or the Project.

12. **NONWAIVER** No provision of this Lease shall be deemed waived by either party hereto unless expressly waived in a writing signed thereby. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No acceptance of a lesser amount than the Rent herein stipulated shall be deemed a waiver of Landlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the full amount due. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Lease Term or of Tenant's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Lease Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

13. **CONDEMNATION** If the whole or any part of the Premises shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner as to require the use or reconstruction of any part of the Premises, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority. Tenant shall not because of such taking assert any claim against Landlord or the authority for any compensation because of such taking and Landlord shall be entitled to the entire award or payment in connection therewith, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Lease Term pursuant to the terms of this Lease, for moving expenses, for the unamortized value of any improvements paid for by Tenant and for the Lease "bonus value", so long as such claims are payable separately to Tenant. All Rent shall be apportioned as of the date of such termination. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of The California Code of Civil Procedure. Notwithstanding anything to the contrary contained in this Article 13, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred and eighty (180) days or less, then this Lease shall not terminate but the Base Rent and the Additional Rent shall be abated for the period of such taking in proportion to the ratio that the amount of rentable square feet of the Premises taken bears to the total rentable square feet of the Premises. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking.

## 14. ASSIGNMENT AND SUBLETTING

14.1 **Transfers.** Tenant shall not, without the prior written consent of Landlord, assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment, or other transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or enter into any license or concession agreements or otherwise permit the occupancy or use of the Premises or any part thereof by any persons other than Tenant and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). If Tenant desires Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Premises to be transferred (the "**Subject Space**"), (iii) all of the terms of the proposed Transfer and the consideration therefor, including calculation of the "**Transfer Premium**", as that term is defined in Section 14.3 below, in connection with such Transfer, the name and address of the proposed Transferee, and a copy of all existing executed and/or proposed documentation pertaining to the proposed Transfer, and (iv) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, and any other information reasonably required by Landlord which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under this Lease. Whether or not Landlord consents to any proposed Transfer, Tenant shall pay Landlord's reasonable review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) incurred by Landlord (not to exceed \$3,500 in the aggregate for any particular Transfer), within thirty (30) days after written request by Landlord.

14.2 **Landlord's Consent.** Landlord shall not unreasonably withhold or delay its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in the Transfer Notice and shall respond to Tenant's consent request within forty-five (45) days following receipt of such request and the documentation required by this Lease in connection therewith. Without limitation as to other reasonable grounds for withholding consent, the parties hereby agree that it shall be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply:

14.2.1 The Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Building or the Project;

14.2.2 The Transferee is either a governmental agency or instrumentality thereof;

14.2.3 The Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities to be undertaken in connection with the Transfer on the date consent is requested; or

14.2.4 The proposed Transfer would cause a violation of another lease for space in the Project, or would give an occupant of the Project a right to cancel its lease.

If Landlord consents to any Transfer pursuant to the terms of this Section 14.2 (and does not exercise any recapture rights Landlord may have under Section 14.4 of this Lease), Tenant may within six (6) months after Landlord's consent, but not later than the expiration of said six-month period, enter into such Transfer of the Premises or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section 14.1 of this Lease, provided that if there are any changes in the terms and conditions from those specified in the Transfer Notice such that Landlord would initially have been entitled to refuse its consent to such Transfer under this Section 14.2, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 14 (including Landlord's right of recapture, if any, under Section 14.4 of this Lease). Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under Section 14.2 or otherwise has breached or acted unreasonably under this Article 14, their sole remedies shall be a suit for contract damages

(other than damages for injury to, or interference with, Tenant's business including, without limitation, loss of profits, however occurring) or declaratory judgment and an injunction for the relief sought, and Tenant hereby waives all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee.

14.3 **Transfer Premium.** If Landlord consents to a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay to Landlord fifty percent (50%) of any "**Transfer Premium**," as that term is defined in this Section 14.3, received by Tenant from such Transferee. "**Transfer Premium**" shall mean all rent, additional rent or other consideration payable by such Transferee in connection with the Transfer in excess of the Rent and Additional Rent payable by Tenant under this Lease during the term of the Transfer on a per rentable square foot basis if less than all of the Premises is transferred, and after deduction of (i) any costs of improvements made to the Subject Space in connection with such Transfer, (ii) brokerage commissions paid in connection with such Transfer, and (iii) reasonable legal fees incurred in connection with such Transfer. "**Transfer Premium**" shall also include, but not be limited to, key money, bonus money or other cash consideration paid by Transferee to Tenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Tenant to Transferee or for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to Transferee in connection with such Transfer. The determination of the amount of Landlord's applicable share of the Transfer Premium shall be made on a monthly basis as rent or other consideration is received by Tenant under the Transfer.

14.4 **Landlord's Option as to Subject Space.** Notwithstanding anything to the contrary contained in this Article 14, in the event Tenant contemplates a Transfer other than to a Permitted Transferee which, together with all prior Transfers then remaining in effect, would cause fifty percent (50%) or more of the Premises to be Transferred for more than fifty percent (50%) of the then remaining Lease Term (taking into account any extension of the Lease Term which has irrevocably exercised by Tenant), Tenant shall give Landlord notice (the "**Intention to Transfer Notice**") of such contemplated Transfer (whether or not the contemplated Transferee or the terms of such contemplated Transfer have been determined). The Intention to Transfer Notice shall specify the portion of and amount of rentable square feet of the Premises which Tenant intends to Transfer in the subject Transfer (the "**Contemplated Transfer Space**"), the contemplated date of commencement of the Contemplated Transfer (the "**Contemplated Effective Date**"), and the contemplated length of the term of such contemplated Transfer. Thereafter, Landlord shall have the option, by giving written notice to Tenant within thirty (30) days after receipt of any Intention to Transfer Notice, to recapture the Contemplated Transfer Space. Such recapture shall cancel and terminate this Lease with respect to such Contemplated Transfer Space as of the Contemplated Effective Date. In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Premises, the Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Premises, and this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of the same. If Landlord declines, or fails to elect in a timely manner, to recapture such Contemplated Transfer Space under this Section 14.4, then, subject to the other terms of this Article 14, for a period of nine (9) months (the "**Nine Month Period**") commencing on the last day of such thirty (30) day period, Landlord shall not have any right to recapture the Contemplated Transfer Space with respect to any Transfer made during the Nine Month Period, provided that any such Transfer is substantially on the terms set forth in the Intention to Transfer Notice, and provided further that any such Transfer shall be subject to the remaining terms of this Article 14. If such a Transfer is not so consummated within the Nine Month Period (or if a Transfer is so consummated, then upon the expiration of the term of any Transfer of such Contemplated Transfer Space consummated within such Nine Month Period), Tenant shall again be required to submit a new Intention to Transfer Notice to Landlord with respect any contemplated Transfer, as provided above in this Section 14.4. Tenant shall not be required to provide a separate Intention to Transfer Notice and Tenant's request for Landlord's consent to a Transfer shall satisfy Tenant's obligations in this Section 14.4.

14.5 **Effect of Transfer.** If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, (iv) Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium

Tenant has derived and shall derive from such Transfer, and (v) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from any liability under this Lease, including, without limitation, in connection with the Subject Space. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, Tenant shall, within thirty (30) days after demand, pay the deficiency, and if understated by more than two percent (2%), Tenant shall pay Landlord's costs of such audit.

14.6 **Additional Transfers.** For purposes of this Lease, the term "**Transfer**" shall also include if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of fifty percent (50%) or more of the partners, or transfer of fifty percent (50%) or more of partnership interests, within a twelve (12)-month period, or the dissolution of the partnership without immediate reconstitution thereof.

14.7 **Occurrence of Default.** Any Transfer hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any Transfer, Landlord shall have the right to: (i) treat such Transfer as cancelled and repossess the Subject Space by any lawful means, or (ii) require that such Transferee attorn to and recognize Landlord as its landlord under any such Transfer. If Tenant shall be in default under this Lease, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such default is cured. Such Transferee shall rely on any representation by Landlord that Tenant is in default hereunder, without any need for confirmation thereof by Tenant. Upon any assignment, the assignee shall assume in writing all obligations and covenants of Tenant thereafter to be performed or observed under this Lease. No collection or acceptance of rent by Landlord from any Transferee shall be deemed a waiver of any provision of this Article 14 or the approval of any Transferee or a release of Tenant from any obligation under this Lease, whether theretofore or thereafter accruing. In no event shall Landlord's enforcement of any provision of this Lease against any Transferee be deemed a waiver of Landlord's right to enforce any term of this Lease against Tenant or any other person. If Tenant's obligations hereunder have been guaranteed, Landlord's consent to any Transfer shall not be effective unless the guarantor also consents to such Transfer.

14.8 **Non-Transfers.** Notwithstanding anything to the contrary contained in this Article 14, (i) an assignment or subletting of all or a portion of the Premises to an affiliate of Tenant (an entity which is controlled by, controls, or is under common control with, Tenant), (ii) an assignment of the Premises to an entity which acquires all or substantially all of the assets or interests (partnership, stock or other) of Tenant, (iii) an assignment of the Premises to an entity which is the resulting entity of a merger or consolidation of Tenant with another entity, or (iv) a change of Control or the sale of corporate shares of capital stock in Tenant in connection with a private financing or public offering of Tenant's stock on a nationally-recognized stock exchange (collectively, a "**Permitted Transferee**"), shall not be deemed a Transfer under this Article 14, provided that (A) Tenant notifies Landlord of any such assignment or sublease and promptly supplies Landlord with any documents or information requested by Landlord regarding such assignment or sublease or such affiliate, (B) such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease, (C) such Permitted Transferee shall be of a character and reputation consistent with the quality of the Building, and (D) such Permitted Transferee described in subpart (ii) or (iii) above shall have a tangible net worth (not including goodwill as an asset) computed in accordance with generally accepted accounting principles ("**Net Worth**") at least equal to the Net Worth of Tenant on the day immediately preceding the effective date of such assignment or sublease. An assignee of Tenant's entire interest that is also a Permitted Transferee may also be considered a "**Permitted Assignee**". "**Control**," as used in this Section 14.8, shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity. No such permitted assignment or subletting shall serve to release Tenant from any of its obligations under this Lease.

## 15. SURRENDER OF PREMISES; OWNERSHIP AND REMOVAL OF TRADE FIXTURES

15.1 **Surrender of Premises.** No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises



unless such intent is specifically acknowledged in writing by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises or terminate any or all such sublessees or subtenancies.

15.2 **Removal of Tenant Property by Tenant.** Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 15, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear, damage caused by casualty, repairs required as a result of condemnation, and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, free-standing cabinet work, movable partitions (but not demountable walls) and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

15.3 **Environmental Assessment.** In connection with its surrender of the Premises, Tenant shall submit to Landlord, at least fifteen (15) days prior to the expiration date of this Lease (or in the event of an earlier termination of this Lease, as soon as reasonably possible following such termination), an environmental Assessment of the Premises by a competent and experienced environmental engineer or engineering firm reasonably satisfactory to Landlord (pursuant to a contract approved by Landlord and providing that Landlord can rely on the Environmental Assessment). If such Environmental Assessment reveals that remediation or Clean-up is required under any Environmental Laws that Tenant is responsible for under this Lease, Tenant shall submit a remediation plan prepared by a recognized environmental consultant and shall be responsible for all costs of remediation and Clean-up, as more particularly provided in **Section 5.3**, above.

15.4 **Condition of the Building and Premises Upon Surrender.** In addition to the above requirements of this Article 15, upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, surrender the Premises and Building with Tenant having complied with all of Tenant's obligations under this Lease, including those relating to improvement, repair, maintenance, compliance with law, testing and other related obligations of Tenant set forth in Article 7 of this Lease. In the event that the Building and Premises shall be surrendered in a condition which does not comply with the terms of this Section 15.4, because Tenant failed to comply with its obligations set forth in Lease, then following thirty (30) days' notice to Tenant, during which thirty (30) day period Tenant shall have the right to cure such noncompliance, Landlord shall be entitled to expend all reasonable costs in order to cause the same to comply with the required condition upon surrender and Tenant shall immediately reimburse Landlord for all such costs upon notice and, commencing on the later of the termination of this Lease and three (3) business days after Landlord's delivery of notice of such failure and that it elects to treat such failure as a holdover, Tenant shall be deemed during the period that Tenant or Landlord, as the case may be, perform obligations relating to the Surrender Improvements to be in holdover under Article 16 of this Lease.

16. **HOLDING OVER** If Tenant holds over after the expiration of the Lease Term or earlier termination thereof, with the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term. If Tenant holds over after the expiration of the Lease Term or earlier termination thereof, without the express or implied consent of Landlord, such tenancy shall be deemed to be a tenancy by sufferance only, and shall not constitute a renewal hereof or an extension for any further term. In either case, Base Rent shall be payable at a monthly rate equal to one hundred fifty percent (150%) of the Base Rent applicable during the last rental period of the Lease Term under this Lease. Such month-to-month tenancy or tenancy by sufferance, as the case may be, shall be subject to every other applicable term, covenant and agreement contained herein. Nothing contained in this Article 16 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the

Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender and any lost profits to Landlord resulting therefrom.

**17. ESTOPPEL CERTIFICATES** Within ten (10) business days following a request in writing by Landlord, Tenant shall execute, acknowledge and deliver to Landlord an estoppel certificate, which, as submitted by Landlord, shall be substantially in the form of **Exhibit D**, attached hereto (or such other form as may be reasonably required by any prospective mortgagee or purchaser of the Project, or any portion thereof), indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee. Any such certificate may be relied upon by any prospective mortgagee or purchaser of all or any portion of the Project. Tenant shall execute and deliver whatever other instruments may be reasonably required for such purposes. At any time during the Lease Term, in connection with a sale or financing of the Building by Landlord, Landlord may require Tenant to provide Landlord with its most recent annual financial statement and annual financial statements of the preceding two (2) years. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant. Landlord shall hold such statements confidential. Failure of Tenant to timely execute, acknowledge and deliver such estoppel certificate or other instruments shall constitute an acceptance of the Premises and an acknowledgment by Tenant that statements included in the estoppel certificate are true and correct, without exception.

**18. SUBORDINATION** Landlord hereby represents and warrants to Tenant that the Project is not currently subject to any ground lease, or to the lien of any mortgage or deed of trust. This Lease shall be subject and subordinate to all future ground or underlying leases of the Building or Project and to the lien of any mortgage, trust deed or other encumbrances now or hereafter in force against the Building or Project or any part thereof, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages, trust deeds or other encumbrances, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto. The subordination of this Lease to any such future ground or underlying leases of the Building or Project or to the lien of any mortgage, trust deed or other encumbrances, shall be subject to Tenant's receipt of a commercially reasonable subordination, non-disturbance, and attornment agreement in favor of Tenant. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof (or if any ground lease is terminated), to attorn, without any deductions or set-offs whatsoever, to the lienholder or purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof (or to the ground lessor), if so requested to do so by such purchaser or lienholder or ground lessor, and to recognize such purchaser or lienholder or ground lessor as the lessor under this Lease, provided such lienholder or purchaser or ground lessor shall agree to accept this Lease and not disturb Tenant's occupancy, so long as Tenant timely pays the rent and observes and performs the terms, covenants and conditions of this Lease to be observed and performed by Tenant. Landlord's interest herein may be assigned as security at any time to any lienholder. Tenant shall, within ten (10) days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale.

**19. DEFAULTS; REMEDIES**

**19.1 Events of Default.** The occurrence of any of the following shall constitute a default of this Lease by Tenant:

**19.1.1** Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, when due unless such failure is cured within five (5) business days after notice; or

19.1.2 Except where a specific time period is otherwise set forth for Tenant's performance in this Lease, in which event the failure to perform by Tenant within such time period shall be a default by Tenant under this Section 19.1.2, any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such default; or

19.1.3 Abandonment or vacation of all or a substantial portion of the Premises by Tenant while Tenant is in default under the Lease; or

19.1.4 The failure by Tenant to observe or perform according to the provisions of Articles 5, 14, 17 or 18 of this Lease where such failure continues for more than five (5) business days after notice from Landlord.

19.2 **Remedies Upon Default.** Upon the occurrence of any event of default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity (all of which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

19.2.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

- (i) The worth at the time of award of the unpaid rent which has been earned at the time of such termination; plus
- (ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
- (iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
- (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, in each case to the extent allocable to the remaining Lease Term, brokerage commissions and advertising expenses incurred to obtain a new tenant, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and
- (v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "**rent**" as used in this Section 19.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 19.2.1(i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the rate set forth in Article 25 of this Lease, but in no case greater than the maximum amount of such interest permitted by law. As used in Section 19.2.1(iii) above, the "**worth at the time of award**" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

19.2.2 Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

19.2.3 Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 19.2.1 and 19.2.2, above, or any law or other provision of this Lease), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

19.3 **Subleases of Tenant.** If Landlord elects to terminate this Lease on account of any default by Tenant, as set forth in this Article 19, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

19.4 **Efforts to Relet.** No re-entry, repairs, maintenance, changes, alterations and additions, appointment of a receiver to protect Landlord's interests hereunder, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, nor shall same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord to Tenant.

**20. COVENANT OF QUIET ENJOYMENT** Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord. The foregoing covenant is in lieu of any other covenant express or implied.

**21. SECURITY DEPOSIT** Within five (5) business days following Tenant's execution of this Lease, Tenant shall deposit with Landlord a security deposit (the "**Security Deposit**") in the amount set forth in Section 8 of the Summary, as security for the faithful performance by Tenant of all of its obligations under this Lease. If Tenant defaults with respect to any provisions of this Lease, including, but not limited to, the provisions relating to the payment of Rent, the removal of property and the repair of resultant damage, Landlord may, without notice to Tenant, but shall not be required to apply all or any part of the Security Deposit for the payment of any Rent or any other sum in default and Tenant shall, upon demand therefor, restore the Security Deposit to its original amount. Any unapplied portion of the Security Deposit shall be returned to Tenant, or, at Landlord's option, to the last assignee of Tenant's interest hereunder, within sixty (60) days following the expiration of the Lease Term. Tenant shall not be entitled to any interest on the Security Deposit. Tenant hereby irrevocably waives and relinquishes any and all rights, benefits, or protections, if any, Tenant now has, or in the future may have, under Section 1950.7 of the California Civil Code, any successor statute, and all other provisions of law, now or hereafter in effect, which (i) establishes the time frame by which a landlord must refund a security deposit under a lease, and/or (ii) provides that a landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by a tenant or to clean the subject premises. Tenant acknowledges and agrees that (a) any statutory time frames for the return of a security deposit are superseded by the express period identified in this Article 21, above, and (b) rather than be so limited, Landlord may claim from the Security Deposit (1) any and all sums expressly identified in this Article 21, above, and (2) any additional sums reasonably necessary to compensate Landlord for any and all losses or damages caused by Tenant's default of this Lease, including, but not limited to, all damages or rent due upon termination of Lease pursuant to Section 1951.2 of the California Civil Code.

**22. COMMUNICATIONS AND COMPUTER LINE** Tenant may install, maintain, replace, remove or use any communications or computer wires and cables serving the Premises (collectively, the "**Lines**"), provided that Tenant shall obtain Landlord's prior written consent, use an experienced and qualified contractor approved in writing by Landlord, and comply with all of the other provisions of Articles 7 and 8 of this Lease. Tenant shall pay all costs in connection therewith. Landlord reserves the right, upon notice to Tenant prior to the expiration or earlier termination of this Lease, to require that Tenant, at Tenant's sole cost and expense, remove any Lines located in or serving the Premises prior to the expiration or earlier termination of this Lease.

**23. SIGNS**

23.1 **Exterior Signage.** Subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed, and provided all signs are in keeping with the quality, design and style of the Building and Project, Tenant, at its sole cost and expense, may install (i) identification signage on the existing monument sign located at the exterior of the Project, and (ii) on the Building at the door/window level of the Building (i.e., Tenant does not have rights to rooftop, eyebrow or other similar signage rights), including at the entrance to the Building, as well as any internal directional and lobby identification signage and directory (collectively, "**Tenant Signage**"); provided, however, in no event shall Tenant's Signage include an "Objectionable Name," as that term is defined in Section 23.3, of this Lease. All such signage shall be subject to Tenant's obtaining all required governmental approvals. All permitted signs shall be maintained by Tenant at its expense in a first-class and safe condition and appearance. Upon the expiration or earlier termination of this Lease, Tenant shall remove all of its signs at Tenant's sole cost and expense. The graphics, materials, color, design, lettering, lighting, size, illumination, specifications and exact location of Tenant's Signage (collectively, the "**Sign Specifications**") shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be consistent and compatible with the quality and nature of the Project. Tenant hereby acknowledges that, notwithstanding Landlord's approval of Tenant's Signage, Landlord has made no representation or warranty to Tenant with respect to the probability of obtaining all necessary governmental approvals and permits for Tenant's Signage. In the event Tenant does not receive the necessary governmental approvals and permits for Tenant's Signage, Tenant's and Landlord's rights and obligations under the remaining terms of this Lease shall be unaffected.

23.2 **Objectionable Name.** Tenant's Signage shall not include a name or logo which relates to an entity which is of a character or reputation, or is associated with a political faction or orientation, which is inconsistent with the quality of the Project, or which would otherwise reasonably offend a landlord of the Comparable Buildings (an "**Objectionable Name**"). The parties hereby agree that the following name, or any reasonable derivation thereof, shall be deemed not to constitute an Objectionable Name: "Pulse Biosciences, Inc.."

23.3 **Prohibited Signage and Other Items.** Any signs, notices, logos, pictures, names or advertisements which are installed and that have not been separately approved by Landlord may be removed without notice by Landlord at the sole expense of Tenant. Any signs, window coverings, or blinds (even if the same are located behind the Landlord-approved window coverings for the Building), or other items visible from the exterior of the Premises or Building, shall be subject to the prior approval of Landlord, in its sole discretion.

**24. COMPLIANCE WITH LAW** Tenant shall not do anything or suffer anything to be done in or about the Premises or the Project which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated ("**Applicable Laws**"). At its sole cost and expense, Tenant shall promptly comply with all such governmental measures. Should any standard or regulation now or hereafter be imposed on Landlord or Tenant by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, landlords or tenants, then Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations. Tenant shall be responsible, at its sole cost and expense, to make all alterations to the Building and Premises as are required to comply with the governmental rules, regulations, requirements or standards described in this Article 24. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant. For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby

acknowledges, that the Project, Building and Premises have not undergone inspection by a Certified Access Specialist (CASp). As required by Section 1938(e) of the California Civil Code, Landlord hereby states as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of the foregoing, Landlord and Tenant hereby agree as follows: (a) any CASp inspection requested by Tenant shall be conducted, at Tenant's sole cost and expense, by a CASp approved in advance by Landlord; and (b) pursuant to Article 24 below, but subject to Section 10.2 above, Tenant, at its cost, is responsible for making any repairs within the Premises to correct violations of construction-related accessibility standards; and, if anything done by or for Tenant in its use or occupancy of the Premises shall require repairs to the Building (outside the Premises) to correct violations of construction-related accessibility standards, then Tenant shall, at Landlord's option, either perform such repairs at Tenant's sole cost and expense or reimburse Landlord upon demand, as Additional Rent, for the cost to Landlord of performing such repairs. Tenant's obligations under this Article 24 are subject to the limitation in Section 10.2 above.

**25. LATE CHARGES** If any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) business days after Tenant's receipt of written notice from Landlord that said amount is delinquent then Tenant shall pay to Landlord a late charge equal to five percent (5%) of the overdue amount plus any reasonable attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within ten (10) days after Tenant's receipt of written notice that said amount is delinquent shall bear interest from the date when due until paid at a rate per annum equal to the lesser of (i) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication G.13(415), published on the first Tuesday of each calendar month (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published) plus four (4) percentage points, and (ii) the highest rate permitted by applicable law.

**26. LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT**

**26.1 Landlord's Cure.** All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent, except to the extent, if any, otherwise expressly provided herein. If Tenant shall fail to perform any obligation under this Lease, and such failure shall continue in excess of the time allowed under Section 19.1.2, above, unless a specific time period is otherwise stated in this Lease, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligations hereunder.

**26.2 Tenant's Reimbursement.** Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord, upon delivery by Landlord to Tenant of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of Section 26.1; (ii) sums equal to all losses, costs, liabilities, damages and expenses referred to in Article 10 of this Lease; and (iii) subject to Section 29.21, sums equal to all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law, including, without limitation, all reasonable legal fees and other amounts so expended. Tenant's obligations under this Section 26.2 shall survive the expiration or sooner termination of the Lease Term.

**27. ENTRY BY LANDLORD** Landlord reserves the right at all reasonable times and upon reasonable notice to Tenant (except in the case of an Emergency) to enter the Premises to (i) inspect them; (ii) show the

Premises to prospective purchasers, or to current or prospective mortgagees, ground or underlying lessors or insurers or, during the last nine (9) months of the Lease Term, to prospective tenants; (iii) post notices of nonresponsibility (to the extent applicable pursuant to then applicable law); or (iv) repair the Premises or the Building, or for structural repairs to the Building or the Building's systems and equipment as provided under the Lease. Landlord may make any such entries without the abatement of Rent, except as otherwise provided in this Lease, and may take such reasonable steps as required to accomplish the stated purposes. In an Emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises by Landlord in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises. Landlord shall use commercially reasonable efforts to minimize any interference with Tenant's use of or access to the Premises in connection with any such entry, and shall comply with Tenant's reasonable security measures, including that Tenant may require that Landlord be accompanied by an employee of Tenant during any such entry into the Premises by Landlord (except in the event of an emergency in which case no escort shall be required); provided, however, that in no event shall the unavailability of such escort at the time that Landlord is permitted to enter the Premises delay Landlord's entry into the Premises as permitted hereunder. Landlord shall hold confidential any information regarding Tenant's business that it may learn as a result of such entry.

**28. TENANT PARKING** Tenant shall have the right, without the payment of any parking charge or fee (other than as a reimbursement of operating expenses to the extent allowed pursuant to the terms or Article 4 of this Lease, above), commencing on the Lease Commencement Date, **to use the amount of parking set forth in Section 9 of the Summary, in the on-site parking lot and garage which serves the Building.** Tenant shall abide by all reasonable rules and regulations which are prescribed from time to time for the orderly operation and use of the parking facility where the parking passes are located (including any sticker or other identification system established by Landlord and the prohibition of vehicle repair and maintenance activities in the parking facilities), and shall cooperate in seeing that Tenant's employees and visitors also comply with such rules and regulations. Tenant's use of the Project parking facility shall be at Tenant's sole risk and Tenant acknowledges and agrees that Landlord shall have no liability whatsoever for damage to the vehicles of Tenant, its employees and/or visitors, or for other personal injury or property damage or theft relating to or connected with the parking rights granted herein or any of Tenant's, its employees' and/or visitors' use of the parking facilities. Landlord shall not over subscribe parking. Landlord shall use commercially reasonable efforts to prevent the occupants of neighboring buildings from parking in the lot serving the Building and to prevent other tenants in the Building from using more than their share of the parking spaces.

## **29. MISCELLANEOUS PROVISIONS**

29.1 **Terms; Captions.** The words "**Landlord**" and "**Tenant**" as used herein shall include the plural as well as the singular. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

29.2 **Binding Effect.** Subject to all other provisions of this Lease, each of the covenants, conditions and provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, personal representatives, successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 14 of this Lease.

29.3 **No Air Rights.** No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease. If at any time any windows of the Premises are temporarily darkened or the light or view therefrom is obstructed by reason of any repairs, improvements, maintenance or cleaning in or about the Project, the same shall be without liability to Landlord and without any reduction or diminution of Tenant's obligations under this Lease.

29.4 **Modification of Lease.** Should any current or prospective mortgagee or ground lessor for the Building or Project require a modification of this Lease, which modification will not cause an increased cost or expense to Tenant or in any other way materially and adversely change the rights and obligations of Tenant

hereunder or interfere with Tenant's use of the Premises, then and in such event, Tenant agrees that this Lease may be so modified and agrees to execute whatever documents are reasonably required therefor and to deliver the same to Landlord within ten (10) business days following a request therefor. At the request of Landlord or any mortgagee or ground lessor, Tenant agrees to execute a short form of Lease and deliver the same to Landlord within ten (10) business days following the request therefor.

29.5 **Transfer of Landlord's Interest.** Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Project or Building and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder accruing after the date of transfer provided such transferee shall have fully assumed and agreed in writing to be liable for all obligations of this Lease to be performed by Landlord, including the return of any Security Deposit, and Tenant shall attorn to such transferee.

29.6 **Prohibition Against Recording.** Except as provided in Section 29.4 of this Lease, neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant.

29.7 **Landlord's Title.** Landlord's title is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord.

29.8 **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant.

29.9 **Payment under Protest.** If Tenant in good faith disputes any amounts billed by Landlord, other than (i) Base Rent, (ii) Tenant's Share of Direct Expenses (as to which Tenant may exercise its rights under Section 4.6, above), Tenant may make payment of such amounts under protest, and reserve all of its rights with respect to such amounts (the "**Disputed Amounts**"). Landlord and Tenant shall meet and confer to discuss the Disputed Amounts and attempt, in good faith, to resolve the particular dispute. If, despite such good faith efforts, Landlord and Tenant are unable to reach agreement regarding the Disputed Amounts, either party may submit the matter to binding arbitration under the JAMS Streamlined Arbitration Rules & Procedures. The non-prevailing party, as determined by JAMS, will be responsible to pay all fees and costs incurred in connection with the JAMS procedure, as well as all other costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party. This Section 29.9 shall not apply to claims relating to Landlord's exercise of any unlawful detainer rights pursuant to California law or rights or remedies used by Landlord to gain possession of the Premises or terminate Lessee's right of possession to the Premises.

29.10 **Time of Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

29.11 **Partial Invalidity.** If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

29.12 **No Warranty.** In executing and delivering this Lease, Tenant has not relied on any representations, including, but not limited to, any representation as to the amount of any item comprising Additional Rent or the amount of the Additional Rent in the aggregate or that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis, or any warranty or any statement of Landlord which is not set forth herein or in one or more of the exhibits attached hereto.



29.13 **Landlord Exculpation.** The liability of Landlord or the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration or any other matter relating to the Project or the Premises shall be limited solely and exclusively to an amount which is equal to the lesser of (a) the interest of Landlord in the Project or (b) the equity interest Landlord would have in the Project if the Project were encumbered by third-party debt in an amount equal to eighty percent (80%) of the value of the Project (as such value is determined by Landlord), including any rental, condemnation, sales and insurance proceeds received by Landlord or the Landlord Parties in connection with the Project, Building or Premises. No Landlord Parties (other than Landlord) shall have any personal liability therefor, and Tenant hereby expressly waives and releases such liability on behalf of itself and all persons claiming by, through or under Tenant. The limitations of liability contained in this Section 29.13 shall inure to the benefit of Landlord's and the Landlord Parties' present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability for the performance of Landlord's obligations under this Lease. Notwithstanding any contrary provision herein, neither Landlord nor the Landlord Parties shall be liable under any circumstances for injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring, or loss to inventory, scientific research, scientific experiments, laboratory animals, products, specimens, samples, and/or scientific, business, accounting and other records of every kind and description kept at the premises and any and all income derived or derivable therefrom.

29.14 **Entire Agreement.** It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease constitutes the parties' entire agreement with respect to the leasing of the Premises and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto.

29.15 **Right to Lease.** Landlord reserves the absolute right to effect such other tenancies in the Project as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Building or Project. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Building or Project.

29.16 **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease (collectively, a "**Force Majeure**"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure, provided, however, the foregoing delays shall not apply to Tenant's termination rights hereunder.

29.17 **Intentionally Omitted.**

29.18 **Notices.** All notices, demands, statements, designations, approvals or other communications (collectively, "**Notices**") given or required to be given by either party to the other hereunder or by law shall be in writing, shall be (A) sent by United States certified or registered mail, postage prepaid, return receipt requested ("**Mail**"), (B) delivered by a nationally recognized overnight courier, or (C) delivered personally. Any Notice shall be sent, transmitted, or delivered, as the case may be, to Tenant at the appropriate address set forth in Section 10 of the Summary, or to such other place as Tenant may from time to time designate in a Notice to Landlord, or to Landlord at the addresses set forth below, or to such other places as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given (i) three (3) business days after the date it is posted if sent by Mail, (ii) the date the overnight courier delivery is made, or (iii) the date personal delivery is made. As of the date

of this Lease, any Notices to Landlord must be sent, transmitted, or delivered, as the case may be, to the following addresses:

Hayward Point Eden I Limited Partnership c/o HCP, Inc.  
3760 Kilroy Airport Way, Suite 300 Long Beach,  
CA 90806-2473  
Attn: Legal Department with a copy  
to:  
HCP Life Science Estates 950 Tower  
Lane, Suite 1650

Foster City, CA 94404  
Attention: Jonathan M. Bergschneider and  
Allen Matkins Leck Gamble Mallory & Natsis LLP 1901 Avenue of  
the Stars, Suite 1800  
Los Angeles, California 90067 Attention: Anton N.  
Natsis, Esq.

29.19 **Joint and Several.** If there is more than one tenant, the obligations imposed upon Tenant under this Lease shall be joint and several.

29.20 **Authority.** If Tenant is a corporation, trust or partnership, Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in the State of California and that Tenant has full right and authority to execute and deliver this Lease and that each person signing on behalf of Tenant is authorized to do so.

29.21 **Attorneys' Fees.** In the event that either Landlord or Tenant should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provision of this Lease or for any other relief against the other, then all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

29.22 **Governing Law: WAIVER OF TRIAL BY JURY.** This Lease shall be construed and enforced in accordance with the laws of the State of California. IN ANY ACTION OR PROCEEDING ARISING HEREFROM, LANDLORD AND TENANT HEREBY CONSENT TO (I) THE JURISDICTION OF ANY COMPETENT COURT WITHIN THE STATE OF CALIFORNIA, (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY CALIFORNIA LAW, AND (III) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. IN THE EVENT LANDLORD COMMENCES ANY SUMMARY PROCEEDINGS OR ACTION FOR NONPAYMENT OF BASE RENT OR ADDITIONAL RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION (UNLESS SUCH COUNTERCLAIM SHALL BE MANDATORY) IN ANY SUCH PROCEEDING OR ACTION, BUT SHALL BE RELEGATED TO AN INDEPENDENT ACTION AT LAW.

29.23 **Submission of Lease.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of, option for or option to lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

29.24 **Brokers.** Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the real estate brokers or agents specified in Section 12 of the Summary (the "**Brokers**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than the Brokers, occurring by, through, or under the indemnifying party. The terms of this Section 29.24 shall survive the expiration or earlier termination of the Lease Term.

29.25 **Independent Covenants.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord.

29.26 **Project or Building Name, Address and Signage.** Landlord shall have the right at any time to change the name and/or address of the Project or Building (and Landlord shall reimburse Tenant its actual, reasonable costs incurred as a result of such change, if any) and, subject to Section 23.1, to install, affix and maintain any and all signs on the exterior and on the interior of the Project or Building as Landlord may, in Landlord's sole discretion, desire. Tenant shall not use the name of the Project or Building or use pictures or illustrations of the Project or Building in advertising or other publicity or for any purpose other than as the address of the business to be conducted by Tenant in the Premises, without the prior written consent of Landlord.

29.27 **Counterparts.** This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single lease.

29.28 **Good Faith.** Except (i) for matters for which there is a standard of consent or discretion specifically set forth in this Lease; (ii) matters which could have an adverse effect on the Building Structure or the Building Systems, or which could affect the exterior appearance of the Building, or (iii) matters covered by Article 4 (Additional Rent), or Article 19 (Defaults; Remedies) of this Lease (collectively, the "**Excepted Matters**"), any time the consent of Landlord or Tenant is required, such consent shall not be unreasonably withheld or delayed, and, except with regard to the Excepted Matters, whenever this Lease grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations or make an allocation or other determination, Landlord and Tenant shall act reasonably and in good faith.

29.29 **Development of the Project.**

29.29.1 **Subdivision.** Landlord reserves the right to subdivide all or a portion of the buildings and Common Areas, so long as the same does not interfere with Tenant's use of or access to the Premises or Tenant's parking rights. Tenant agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents needed to conform this Lease to the circumstances resulting from a subdivision and any all maps in connection therewith, so long as the same does not increase Tenant's obligations or decrease Tenant's rights under this Lease. Notwithstanding anything to the contrary set forth in this Lease, the separate ownership of any buildings and/or Common Areas by an entity other than Landlord shall not affect the calculation of Direct Expenses or Tenant's payment of Tenant's Share of Direct Expenses.

29.29.2 **Construction of Property and Other Improvements.** Tenant acknowledges that portions of the Project may be under construction following Tenant's occupancy of the Premises, and that such construction may result in levels of noise, dust, obstruction of access, etc. which are in excess of that present in a

fully constructed project. Tenant hereby waives any and all rent offsets or claims of constructive eviction which may arise in connection with such construction, so long as the same does not interfere with Tenant's use of or access to the Premises or Tenant's parking rights.

29.30 **No Violation.** Tenant hereby warrants and represents that neither its execution of nor performance under this Lease shall cause Tenant to be in violation of any agreement, instrument, contract, law, rule or regulation by which Tenant is bound, and Tenant shall protect, defend, indemnify and hold Landlord harmless against any claims, demands, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, arising from Tenant's breach of this warranty and representation.

29.31 **Transportation Management.** Tenant shall fully comply with all present or future programs required by applicable laws intended to manage parking, transportation or traffic in and around the Project and/or the Building and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities. Such programs may include, without limitation: (i) restrictions on the number of peak-hour vehicle trips generated by Tenant; (ii) increased vehicle occupancy; (iii) implementation of an in-house ridesharing program and an employee transportation coordinator; (iv) working with employees and any Project, Building or area-wide ridesharing program manager; (v) instituting employer-sponsored incentives (financial or in-kind) to encourage employees to rideshare; and (vi) utilizing flexible work shifts for employees.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the day and date first above written.

LANDLORD:

**HAYWARD POINT EDEN I LIMITED PARTNERSHIP,**  
a Delaware limited partnership

By: HCP Estates USA Inc.,  
a Delaware corporation,  
its General Partner

By: /s/ Jonathan M. Bergsneider  
Jonathan M. Bergsneider  
Senior Managing Director

TENANT:

**PULSE BIOSCIENCES, INC.,**  
a Nevada corporation

By: /s/ Brian B. Dow  
Brian B. Dow  
Print Name

Its: Senior Vice President and Chief  
Financial Officer

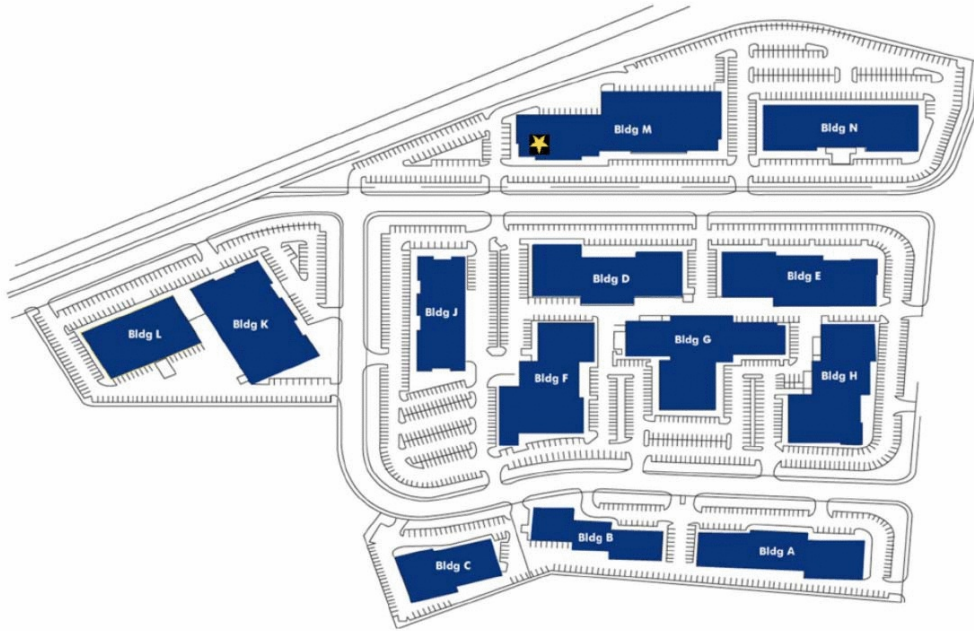
By: \_\_\_\_\_  
Print name

Its: \_\_\_\_\_

**EXHIBIT A**  
**BRITANNIA POINT EDEN**  
**OUTLINE OF PREMISES**



**EXHIBIT A-1**  
**BRITANNIA POINT EDEN**  
**PROJECT SITE PLAN**



**EXHIBIT B**  
**BRITANNIA POINT EDEN**  
**TENANT WORK LETTER**

1. **Defined Terms.** As used in this Tenant Work Letter, the following capitalized terms have the following meanings:

(a) **Approved TI Plans:** Plans and specifications prepared by the applicable Architect for the Tenant Improvements and approved by Landlord and Tenant in accordance with Paragraph 2 of this Tenant Work Letter, subject to further modification from time to time to the extent provided in and in accordance with such Paragraph 2.

(b) **Architect:** The architect reasonably and mutually selected by Landlord and Tenant, with respect to any Tenant Improvements which Landlord is to cause to be constructed pursuant to this Tenant Work Letter.

(c) **Tenant Change Request:** See definition in Paragraph 2(c)(ii) hereof.

(d) **Final TI Working Drawings:** See definition in Paragraph 2(a) hereof.

(e) **General Contractor:** The general contractor reasonably selected by Landlord with respect to Landlord's TI Work as provided in Section 2(c) below. Tenant shall have no right to direct or control such General Contractor.

(f) **Landlord's TI Work:** Any Tenant Improvements which Landlord is to construct or install pursuant to this Tenant Work Letter or by mutual agreement of Landlord and Tenant from time to time.

(g) **Project Manager.** Project Management Advisors, Inc., or any other project manager designated by Landlord in its reasonable discretion from time to time to act in a supervisory, oversight, project management or other similar capacity on behalf of Landlord in connection with the design and/or construction of the Tenant Improvements.

(h) **Punch List Work:** Minor corrections of construction or decoration details, and minor mechanical adjustments, that are required in order to cause any applicable portion of the Tenant Improvements or Landlord's Work as constructed to conform to the Approved TI Plans or this Tenant Work Letter in all material respects and that do not materially interfere with Tenant's use or occupancy of the Building and the Premises.

(i) **Substantial Completion Certificate:** See definition in Paragraph 3(a) hereof.

(j) **Tenant Delay:** Any of the following types of delay in the completion of construction of Landlord's TI Work (but in each instance, only to the extent that any of the following has actually and proximately caused substantial completion of Landlord's TI Work to be delayed):

(i) Any delay resulting from Tenant's failure to furnish, in a timely manner, information reasonably requested by Landlord or by Landlord's Project Manager in connection with the design or construction of Landlord's TI Work, or from Tenant's failure to approve in a timely manner any matters requiring approval by Tenant;

(ii) Any delay resulting from Tenant Change Requests initiated by Tenant, including any delay resulting from the need to revise any drawings or obtain further governmental approvals as a result of any such Tenant Change Request; or



(iii) Any delay caused by Tenant (or Tenant's contractors, agents or employees) materially interfering with the performance of Landlord's TI Work, provided that Landlord shall have given Tenant prompt notice of such material interference and, before the first time a Tenant Delay is deemed to have occurred as a result of such delay, such interference has continued for more than twenty-four (24) hours after Tenant's receipt of such notice.

(k) **Tenant Improvements:** The improvements to or within the Building shown on the Approved TI Plans from time to time and to be constructed by Landlord pursuant to the Lease and this Tenant Work Letter. The term "Tenant Improvements" does not include the improvements existing in the Building and Premises at the date of execution of the Lease.

(l) **Unavoidable Delays:** Delays due to acts of God, acts of public agencies, labor disputes, strikes, fires, freight embargoes, inability (despite the exercise of due diligence) to obtain supplies, materials, fuels or permits, or other causes or contingencies (excluding financial inability) beyond the reasonable control of Landlord or Tenant, as applicable. Landlord shall use commercially reasonable efforts to provide Tenant with prompt notice of any Unavoidable Delays.

(m) Capitalized terms not otherwise defined in this Tenant Work Letter shall have the definitions set forth in the Lease.

2. **Plans and Construction.** Landlord and Tenant shall comply with the procedures set forth in this Paragraph 2 in preparing, delivering and approving matters relating to the Tenant Improvements.

(a) **Approved Plans and Working Drawings for Tenant Improvements.** Tenant shall promptly and diligently work with the Architect to cause to be prepared and delivered to Landlord for approval (which approval shall not be unreasonably withheld, conditioned or delayed by Landlord) proposed schematic plans and outline specifications for the Tenant Improvements. Following mutual approval of such proposed schematic plans and outline specifications by Landlord and by Tenant (as so approved, the "**Approved Schematic Plans**"), Tenant shall then work with the Architect to cause to be prepared, promptly and diligently (assuming timely delivery by Landlord of any information and decisions required to be furnished or made by Landlord in order to permit preparation of final working drawings, all of which information and decisions Landlord will deliver promptly and with reasonable diligence), and delivered to Landlord for approval (which approval shall not be unreasonably withheld, conditioned or delayed by Landlord) final detailed working drawings and specifications for the Tenant Improvements, including (without limitation) any applicable life safety, mechanical, electrical and plumbing working drawings and final architectural drawings (collectively, "**Final TI Working Drawings**"), which Final TI Working Drawings shall substantially conform to the Approved Schematic Plans. Upon receipt from Tenant of proposed schematic plans and outline specifications, proposed Final TI Working Drawings, any other plans and specifications, or any revisions or resubmittals of any of the foregoing, as applicable, Landlord shall promptly and diligently (and in all events within 10 business days after receipt in the case of an initial submittal of schematic plans and outline specifications or proposed Final TI Working Drawings, and within 7 business days after receipt in the case of any other plans and specifications or any revisions or resubmittals of any of the foregoing) either approve such proposed schematic plans and outline specifications or proposed Final TI Working Drawings, as applicable, or set forth in writing with particularity any changes necessary to bring the aspects of such proposed schematic plans and outline specifications or proposed Final TI Working Drawings into a form which will be reasonably acceptable to Landlord. Upon approval of the Final TI Working Drawings by Landlord and Tenant, the Final TI Working Drawings shall constitute the "**Approved TI Plans**," superseding (to the extent of any inconsistencies) any inconsistent features of the previously existing Approved Schematic Plans. Tenant shall respond to any request for information or approval of plans or drawings from Landlord or Architect within five (5) business days.

(b) **Cost of Improvements.** "**Cost of Improvement**" shall mean, with respect to any item or component for which a cost must be determined in order to allocate such cost, or an increase in such cost, to Tenant pursuant to this Tenant Work Letter, the sum of the following (unless otherwise agreed in writing by Landlord and Tenant with respect to any specific item or component or any category of items or components): (i) all sums paid to contractors or subcontractors for labor and materials furnished in connection with construction of such item or component; (ii) all costs, expenses, payments, fees and charges (other than penalties) paid to or at the direction of any city, county or other governmental or quasi-governmental authority or agency which are required to be paid in

order to obtain all necessary governmental permits, licenses, inspections and approvals relating to construction of such item or component; (iii) engineering and architectural fees for services rendered in connection with the design and construction of such item or component (including, but not limited to, the Architect for such item or component and an electrical engineer, mechanical engineer, structural engineer and civil engineer, if applicable); (iv) sales and use taxes; (v) testing and inspection costs; (vi) the cost of power, water and other utility facilities and the cost of collection and removal of debris required in connection with construction of such item or component; (vii) costs for builder's risk insurance; and (viii) all other "hard" and "soft" costs incurred in the construction of such item or component in accordance with the Approved TI Plans (if applicable) and this Tenant Work Letter; provided that the Cost of Improvements shall not include any internal or third-party costs incurred by Landlord except as provided in Section 2(e).

(c) **Construction of Landlord's TI Work.** Following completion of the Approved TI Plans, Landlord shall apply for and use reasonable efforts to obtain the necessary permits and approvals to allow construction of all Tenant Improvements. Upon receipt of such permits and approvals, Landlord shall, at Tenant's expense (subject to Landlord's payment of the Tenant Improvement Allowance), construct and complete the Tenant Improvements substantially in accordance with the Approved TI Plans, subject to Unavoidable Delays and Tenant Delays (if any). Such construction of the Tenant Improvements shall be performed in a neat, good and workmanlike manner, free of defects, using new materials and equipment of good quality, and shall materially conform to all applicable laws, rules, regulations, codes, ordinances, requirements, covenants, conditions and restrictions applicable thereto in force at the time such work is completed. Landlord shall cause Cody Brock, Landmark Builders and up to one (1) other additional potential general contractor reasonably and mutually agreed upon to bid on general conditions and fee for construction of the Tenant Improvements and provide an estimate for the direct cost of the Tenant Improvements. All bids will be opened together with Landlord selecting the general contractor to construct the Tenant Improvements, subject to the reasonable approval of Tenant. Tenant shall also have the right to approve all subcontractors engaged by the General Contractor, which subcontractors shall be competitively bid and which approval shall not be unreasonably withheld, conditioned or delayed. Landlord shall enter into a stipulated sum or guaranteed maximum price construction contract with the General Contractor in the amount of the construction costs approved by Landlord and Tenant.

(d) **Changes.**

(i) If Landlord determines at any time that changes in the Final TI Working Drawings or in any other aspect of the Approved TI Plans relating to any item of Landlord's TI Work are required as a result of applicable law or governmental requirements, or are required at the insistence of any other third party whose approval may be required with respect to the Tenant Improvements, or are required as a result of unanticipated conditions encountered in the course of construction, then Landlord shall promptly (A) advise Tenant of such circumstances and (B) at Tenant's sole cost and expense, subject to Landlord's payment of the Tenant Improvement Allowance, cause revised Final TI Working Drawings to be prepared by the Architect and submitted to Tenant, for Tenant's approval, which shall not be unreasonably withheld. Failure of Tenant to deliver to Landlord written notice of disapproval and specification of such required changes on or before any deadline reasonably specified by Landlord (which shall not be less than three (3) business days after delivery thereof to Tenant) shall constitute and be deemed to be a Tenant Delay to the extent Landlord is delayed in completing Landlord's TI Work.

(ii) If Tenant at any time desires any changes, alterations or additions to the Final TI Working Drawings, Tenant shall submit a detailed written request to Landlord specifying such changes, alterations or additions (a "**Tenant Change Request**"). Upon receipt of any such request, Landlord shall promptly notify Tenant of (A) whether the matters proposed in the Tenant Change Request are approved by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed by Landlord), (B) Landlord's estimate of the number of days of delay, if any, which shall be caused in the construction of the Tenant Improvements by such Tenant Change Request if implemented (including, without limitation, delays due to the need to obtain any revised plans or drawings and any governmental approvals), and (C) Landlord's estimate of the increase, if any, which shall occur in the cost of design, permitting, project management and construction of the Tenant Improvements affected by such Tenant Change Request if such Tenant Change Request is implemented (including, but not limited to, any costs of compliance with laws or governmental regulations that become applicable because of the implementation of the Tenant Change Request). If Landlord approves the Tenant Change Request and Tenant notifies Landlord in writing, within three (3) business days after receipt of such notice from Landlord, of Tenant's approval of the Tenant

Change Request (including the estimated delays and cost increases, if any, described in Landlord's notice), then Landlord shall cause such Tenant Change Request to be implemented and Tenant shall be responsible for all actual costs or cost increases resulting from or attributable to the implementation of the Tenant Change Request, and any delays resulting therefrom shall be deemed to be a Tenant Delay (subject to Landlord's payment of the Tenant Improvement Allowance). If Tenant fails to notify Landlord in writing of Tenant's approval of such Tenant Change Request within said three (3) business day period, then such Tenant Change Request shall be deemed to be withdrawn and shall be of no further effect.

(e) **Project Management.** Unless and until revoked by Landlord by written notice delivered to Tenant, Landlord hereby (i) delegates to Project Manager the authority to exercise all approval rights, supervisory rights and other rights or powers of Landlord under this Tenant Work Letter with respect to the design and construction of the Tenant Improvements, and (ii) requests that Tenant work with Project Manager with respect to any logistical or other coordination matters arising in the course of construction of the Tenant Improvements, including monitoring Tenant's compliance with its obligations under this Tenant Work Letter and under the Lease with respect to the design and construction of the Tenant Improvements. Tenant acknowledges the foregoing delegation and request, and agrees to cooperate reasonably with Project Manager as Landlord's representative pursuant to such delegation and request. Fees and charges of Project Manager for such services shall be at Tenant's sole expense, subject to Landlord's payment of the Tenant Improvement Allowance. Such fees shall not exceed an amount equal the product of (A) 2.9% and (B) the amount of the Tenant Improvement Allowance which Tenant elects to utilize; provided that in the event Tenant elects to utilize any Tenant Funds pursuant to the terms of Section 4(b) below, such fees to the Project Manager shall increase by an amount equal to the product of (A) 2.0% and (B) the amount of the Tenant Funds which Tenant elects to utilize.

### 3. **Completion.**

(a) When Landlord receives written certification from Architect that construction of the Tenant Improvements has been completed in accordance with the Approved TI Plans (except for Punch List Work), Landlord shall prepare and deliver to Tenant a certificate signed by both Landlord and Architect (the "**Substantial Completion Certificate**") (i) certifying that the construction of the Tenant Improvements has been substantially completed in a good and workmanlike manner in accordance with the Approved TI Plans in all material respects, subject only to completion of Punch List Work, and specifying the date of that completion, and (ii) certifying that the Tenant Improvements comply in all material respects with all laws, rules, regulations, codes, ordinances, requirements, covenants, conditions and restrictions applicable thereto at the time of such delivery. Upon receipt by Tenant of the Substantial Completion Certificate and tender of possession of the Premises by Landlord to Tenant, and receipt of any certificate of occupancy or its legal equivalent, or other required sign-offs from any applicable governmental authority, allowing the legal occupancy of the Premises, the Tenant Improvements will be deemed delivered to Tenant and "Ready for Occupancy" for all purposes of the Lease (subject to Landlord's continuing obligations with respect to any Punch List Work, and to any other express obligations of Landlord under the Lease or this Tenant Work Letter with respect to such Tenant Improvements).

(b) Immediately prior to delivery of the Substantial Completion Certificate for the Tenant Improvements in the Building, Project Manager or other representatives of Landlord shall conduct one or more "walkthroughs" of the Building with Tenant and Tenant's representatives, to identify any items of Punch List Work that may require correction and to prepare a joint punch list reflecting any such items, following which Landlord shall diligently complete the Punch List Work reflected in such joint punch list. The Punch List Work shall be attached to the Substantial Completion Certificate, and shall not include damage caused by Tenant or any of Tenant's agents in connection with any work performed by Tenant in the Premises, or required as a result of Tenant's move-in to the Premises. At any time within thirty (30) days after delivery of such Substantial Completion Certificate, Tenant shall be entitled to submit one or more lists to Landlord supplementing such joint punch list by specifying any additional items of Punch List Work to be performed on the applicable Tenant Improvements constituting, and upon receipt of such list(s), Landlord shall diligently complete such additional Punch List Work. Promptly after Landlord provides Tenant with the Substantial Completion Certificate and completes all applicable Punch List Work for the Building, Landlord shall cause the recordation of a Notice of Completion (as defined in the California Civil Code) with respect to the Tenant Improvements.

(c) All construction, product and equipment warranties and guaranties obtained by Landlord with respect to the Tenant Improvements shall, to the extent reasonably obtainable, include a provision that such warranties and guaranties shall also run to the benefit of Tenant, and Landlord shall cooperate with Tenant in a commercially reasonable manner to assist in enforcing all such warranties and guaranties for the benefit of Tenant.

(d) Notwithstanding any other provisions of this Tenant Work Letter or of the Lease, if Landlord is delayed in substantially completing any of the Tenant Improvements as a result of any Tenant Delay, and if the Lease Commencement Date is being determined under clause (ii) of Section 3.2 of the Lease Summary, then notwithstanding any other provision of the Lease to the contrary, then the Premises shall be deemed to have been Ready for Occupancy on the date the Premises would have been Ready for Occupancy absent such Tenant Delay.

4. **Payment of Costs.**

(a) **Tenant Improvement Allowance.** Subject to any restrictions, conditions or limitations expressly set forth in this Tenant Work Letter or in the Lease or as otherwise expressly provided by mutual written agreement of Landlord and Tenant, the cost of construction of the Tenant Improvements shall be paid or reimbursed by Landlord up to a maximum amount equal to \$2,119,095.00 (the "**Tenant Improvement Allowance**"), which amount is being made available by Landlord to be applied towards the Cost of Improvements for the construction of the Tenant Improvements in the Premises. Tenant shall be responsible, at its sole cost and expense, for payment of the entire Cost of Improvements of the Tenant Improvements in excess of the Tenant Improvement Allowance, including (but not limited to) any costs or cost increases incurred as a result of delays (unless caused by Landlord), governmental requirements or unanticipated conditions (unless caused by Landlord), and for payment of any and all costs and expenses relating to any alterations, additions, improvements, furniture, furnishings, equipment, fixtures and personal property items which are not eligible for application of Tenant Improvement Allowance funds under the restrictions expressly set forth below in this paragraph, but Tenant shall be entitled to use or apply the entire Tenant Improvement Allowance toward the Cost of Improvements of the Tenant Improvements (subject to any applicable restrictions, conditions, limitations, reductions or charges set forth in the Lease or in this Tenant Work Letter) prior to being required to expend any of Tenant's own funds for the Tenant Improvements. The funding of the Tenant Improvement Allowance shall be made on a monthly basis or at other convenient intervals mutually approved by Landlord and Tenant and in all other respects shall be based on such commercially reasonable disbursement conditions and procedures as Landlord, Project Manager and Landlord's lender (if any) may reasonably prescribe. Notwithstanding the foregoing provisions, under no circumstances shall the Tenant Improvement Allowance or any portion thereof be used or useable by Tenant for any moving or relocation expenses of Tenant, or for any Cost of Improvement (or any other cost or expense) associated with any moveable furniture or trade fixtures, personal property or any other item or element which, under the applicable provisions of the Lease, will not become Landlord's property and remain with the Building upon expiration or termination of the Lease. Notwithstanding anything to the contrary herein, the Tenant Improvements shall not include (and Landlord shall be solely responsible for and the Tenant Improvement Allowance shall not be used for) the following: (a) costs incurred due to the presence of any Hazardous Materials, if any, but with respect to removal and remediation of any such Hazardous Materials, only to the extent such removal or remediation is required by Applicable Laws enforced as of the date of this Lease for improvements in the Premises generally (as opposed to the specific Tenant Improvements) and to the extent the same required in order to allow Tenant to obtain a certificate of occupancy or its legal equivalent, for the Premises for the Permitted Use assuming a normal and customary occupancy density; (b) costs to bring the Project into compliance with Applicable Laws to the extent required in order to allow Tenant to obtain a certificate of occupancy or its legal equivalent, for the Premises for the Permitted Use assuming a normal and customary office occupancy density; (c) construction costs in excess of the contract amount stated in the contract with the General Contractor, as approved by Tenant (not to be unreasonably withheld), except for increases set forth in change orders approved by Tenant; (d) wages, labor and overhead for overtime and premium time unless approved by Tenant (which approval shall not be unreasonably withheld, conditioned or delayed); (e) attorneys' fees incurred in connection with negotiation of construction contracts, and attorneys' fees, experts' fees and other costs in connection with disputes with third parties; (f) interest and other costs of financing construction costs; (g) costs incurred as a consequence construction defects or default by a contractor; (h) costs as a consequence of casualties; (i) penalties and late charges attributable to Landlord's failure to pay construction costs, and (j) costs due to compliance with any soil management plan for the Project or its appendices

(b) **Tenant Funds.** For additional funds required to complete the cost of the work, that are in excess of or elected by the Tenant to be used in place of the Tenant Improvement Allowance, the Additional TI Allowance, these shall be considered "**Tenant Funds.**" The total cost to construct the Tenant Improvements as managed by Landlord and the Project Manager under this Work Letter shall be the "**Project Budget.**" The Landlord understands that at the time of the agreed upon Guaranteed Maximum Price (GMP), the Tenant Funds amount is an estimate and exact costs will not be known until project closeout. The Tenant is required, at the time of agreement of the GMP, to provide a purchase order to the Landlord for the full estimated amount of the Tenant Funds, provided that Tenant shall not be required to make payment, if any, until the close out of the project and a true up of costs are provided to Tenant. In the event the Tenant Funds at project closeout are less than the amount agreed upon within the Project Budget, the Landlord will only bill the Tenant for the Tenant Funds that have been utilized. In the event the Tenant Funds exceed the amount agreed upon within the Project Budget, through added scope changes, the Tenant shall provide additional purchases orders to the Landlord, which will be included in the Tenant Change Request process that the Landlord's representative administers.

5. **No Agency.** Nothing contained in this Tenant Work Letter shall make or constitute Tenant as the agent of Landlord.

6. **Tenant Access.** Provided that Tenant and its agents do not interfere with Contactor's work in the Building and the Premises (including by the use of non-union vendors without prior coordination with Landlord), Contactor and Landlord shall allow Tenant access to the Premises at least thirty (30) days prior to the Substantial Completion of the Landlord's TI Work without payment of Rent for the purpose of Tenant installing equipment or fixtures (including Tenant's data and telephone equipment) in the Premises and preparing the Premises for occupancy and access any time after Lease execution for site visits needed for planning (as reasonably scheduled with Landlord). Prior to Tenant's entry into the Premises as permitted by the terms of this Section 6, Tenant shall submit a schedule to Landlord and Contactor, for their approval, which schedule shall detail the timing and purpose of Tenant's entry. Tenant shall hold Landlord harmless from and indemnify, protect and defend Landlord against any loss or damage to the Building or Premises and against injury to any persons caused by Tenant's actions pursuant to this Section 6.

7. **Miscellaneous.** All references in this Tenant Work Letter to a number of days shall be construed to refer to calendar days, unless otherwise specified herein. In all instances where Landlord's or Tenant's approval is required, if no written notice of disapproval is given within the applicable time period, at the end of that period Landlord or Tenant shall be deemed to have given approval (unless the provision requiring Landlord's or Tenant's approval expressly states that non-response is deemed to be a disapproval or withdrawal of the pending action or request, in which event such express statement shall be controlling over the general statement set forth in this sentence) and the next succeeding time period shall commence. If any item requiring approval is disapproved by Landlord or Tenant (as applicable) in a timely manner, the procedure for preparation of that item and approval shall be repeated. Landlord hereby acknowledges that Tenant shall not be required to restore the initial Tenant Improvements constructed in the Premises pursuant to the terms of this Tenant Work Letter upon the termination of the Lease.

8. **Time Deadlines.** Tenant shall use commercially reasonable, good faith, efforts and all due diligence to cooperate with the Architect, General Contractor and Landlord to complete all phases of the construction drawings set forth in this Tenant Work Letter and the permitting process and to receive the permits as soon as possible after the execution of this Lease. The applicable dates for approval of items, plans and drawings as described in this Tenant Work Letter are set forth and further elaborated upon in Schedule I to this **Exhibit B** attached hereto (the "**Time Deadlines**"), attached hereto. Tenant agrees to utilize commercially reasonable efforts to comply with the Time Deadlines.

**SCHEDULE 1 TO EXHIBIT B**

**TIME DEADLINES**

**[ATTACHED]**

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SCHEDULE 1 TO  
EXHIBIT B  
-1-

Hayward Point Eden I Limited Partnership  
[Britannia Point Eden]  
[Pulse Biosciences, Inc.]

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**EXHIBIT C**

**BRITANNIA POINT EDEN**

**NOTICE OF LEASE TERM DATES**

Re: Lease dated \_\_\_\_\_, 20\_\_ between \_\_\_\_\_, a \_\_\_\_\_  
("Landlord"), and \_\_\_\_\_, a \_\_\_\_\_ ("Tenant")  
concerning Suite \_\_\_\_ on floor(s) of the building located at \_\_\_\_\_, California.

Gentlemen:

In accordance with the Lease (the "**Lease**"), we wish to advise you and/or confirm as follows:

1. The Lease Term shall commence on or has commenced on \_\_\_\_\_ for a term of \_\_\_\_\_ ending on \_\_\_\_\_.
2. Rent commenced to accrue on \_\_\_\_\_, in the amount of \_\_\_\_\_.
3. If the Lease Commencement Date is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in the Lease.
4. Your rent checks should be made payable to \_\_\_\_\_ at \_\_\_\_\_.
5. The exact number of rentable/usable square feet within the Premises is \_\_\_\_\_ square feet.
6. Tenant's Share as adjusted based upon the exact number of usable square feet within the Premises is \_\_\_\_\_ %.

**"Landlord":**

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Agreed to and Accepted as  
of \_\_\_\_\_, 20\_\_ .

**"Tenant":**

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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EXHIBIT C  
-2-

Hayward Point Eden I Limited Partnership  
[Britannia Point Eden]  
[Pulse Biosciences, Inc.]

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**EXHIBIT D**

**BRITANNIA POINT EDEN**

**FORM OF TENANT'S ESTOPPEL CERTIFICATE**

The undersigned as Tenant under that certain Lease (the "**Lease**") made and entered into as of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ as Landlord, and the undersigned as Tenant, for Premises consisting of a portion of the building located at \_\_\_\_\_, California, certifies as follows:

1. Attached hereto as **Exhibit A** is a true and correct copy of the Lease and all amendments and modifications thereto. The documents contained in **Exhibit A** represent the entire agreement between the parties as to the Premises.
2. The undersigned currently occupies the Premises described in the Lease, the Lease Term commenced on \_\_\_\_\_, and the Lease Term expires on \_\_\_\_\_, and the undersigned has no option to terminate or cancel the Lease or to purchase all or any part of the Premises, the Building and/or the Project, except as expressly set forth in the Lease.
3. Base Rent became payable on \_\_\_\_\_.
4. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in **Exhibit A**.
5. Tenant has not transferred, assigned, or sublet any portion of the Premises nor entered into any license or concession agreements with respect thereto except as follows:
  6. Tenant shall not modify the documents contained in **Exhibit A** without the prior written consent of Landlord's mortgagee.
  7. All monthly installments of Base Rent, all Additional Rent and all monthly installments of estimated Additional Rent have been paid when due through \_\_\_\_\_. The current monthly installment of Base Rent is \$\_\_\_\_\_.
  8. To Tenant's actual knowledge, without inquiry, all conditions of the Lease to be performed by Landlord necessary to the enforceability of the Lease have been satisfied and Landlord is not in default thereunder. In addition, the undersigned has not delivered any notice to Landlord regarding a default by Landlord thereunder. The Lease does not require Landlord to provide any rental concessions or to pay any leasing brokerage commissions except as expressly set forth therein.
  9. No rental has been paid more than thirty (30) days in advance and no security has been deposited with Landlord except as provided in the Lease. Neither Landlord, nor its successors or assigns, shall in any event be liable or responsible for, or with respect to, the retention, application and/or return to Tenant of any security deposit paid to any prior landlord of the Premises, whether or not still held by any such prior landlord, unless and until the party from whom the security deposit is being sought, whether it be a lender, or any of its successors or assigns, has actually received for its own account, as landlord, the full amount of such security deposit.

10. To Tenant's actual knowledge, without inquiry, as of the date hereof, there are no existing defenses or offsets, or, to the undersigned's knowledge, claims or any basis for a claim, that the undersigned has against Landlord.

11. If Tenant is a corporation or partnership, Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Estoppel Certificate and that each person signing on behalf of Tenant is authorized to do so.

12. There are no actions pending against the undersigned under the bankruptcy or similar laws of the United States or any state.

13. Tenant is in full compliance with all federal, state and local laws, ordinances, rules and regulations affecting its use of the Premises, including, but not limited to, those laws, ordinances, rules or regulations relating to hazardous or toxic materials. Tenant has never permitted its agents, employees or contractors to engage in the generation, manufacture, treatment, use, storage, disposal or discharge of any hazardous, toxic or dangerous waste, substance or material in, on, under or about the Project or the Premises or any adjacent premises or property in violation of any federal, state or local law, ordinance, rule or regulation.

14. To the undersigned's knowledge, all tenant improvement work to be performed by Landlord under the Lease has been completed in accordance with the Lease and has been accepted by the undersigned and all reimbursements and allowances due to the undersigned under the Lease in connection with any tenant improvement work have been paid in full. All work (if any) in the common areas required by the Lease to be completed by Landlord has been completed and all parking spaces required by the Lease have been furnished and/or all parking ratios required by the Lease have been met.

The undersigned acknowledges that this Estoppel Certificate may be delivered to Landlord or to a prospective mortgagee or prospective purchaser, and acknowledges that said prospective mortgagee or prospective purchaser will be relying upon the statements contained herein in making the loan or acquiring the property of which the Premises are a part and that receipt by it of this certificate is a condition of making such loan or acquiring such property.

Executed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20 .

**“Tenant”**

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_





two are checked (BSL-3 and/or radioisotope/radiation), be advised that not all lease locations/cities or lease agreements allow these hazards; and if either of these hazards are planned, additional information will be required with copies of oversight agency authorizations/licenses as they become available.

Risk Group 2/Biosafety Level-2 Biohazards	Risk Group 3/Biosafety Level-3 Biohazards	Radioisotopes/Radiation
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**3.0 HAZARDOUS WASTE (i.e., REGULATED CHEMICAL WASTE)**

Are (or will) hazardous wastes (be) generated?  Yes  No

If YES, continue with the next question. If not, skip this section and go to section 4.0.

3.1 Are or will any of the following hazardous (CHEMICAL) wastes generated, handled, or disposed of (where applicable and allowed) on the property?

Liquids	Process sludges	PCBs
Solids	Metals	wastewater

3-2. List and estimate the quantities of hazardous waste identified in Question 3-1 above.

HAZARDOUS (CHEMICAL) WASTE GENERATED	SOURCE	WASTE TYPE		APPROX. MONTHLY QUANTITY with units	DISPOSITION [e.g., off-site landfill, incineration, fuel blending scrap metal; wastewater neutralization (onsite or off-site)]
		RCRA listed (federal)	Non-RCRA (California ONLY or recycle)		
		<input type="checkbox"/>	<input type="checkbox"/>		
		<input type="checkbox"/>	<input type="checkbox"/>		
		<input type="checkbox"/>	<input type="checkbox"/>		
		<input type="checkbox"/>	<input type="checkbox"/>		
		<input type="checkbox"/>	<input type="checkbox"/>		

3-3. Waste characterization by: Process knowledge  EPA lab analysis  Both

3-4. Please include name, location, and permit number (e.g. EPA ID No.) for transporter and disposal facility if applicable. Attach separate pages as necessary. *If not yet known, write "TBD."*

Hazardous Waste Transporter/Disposal Facility Name	Facility Location	Transporter (T) or Disposal (D) Facility	Permit Number

3-5. Are pollution controls or monitoring employed in the process to prevent or minimize the release of wastes into the environment? *NOTE: This does NOT mean fume hoods; examples include air scrubbers, cyclones, carbon or HEPA filters at building exhaust fans, sedimentation tanks, pH neutralization systems for wastewater, etc.*

Yes  No

If YES, please list/describe:

**4.0 OTHER REGULATED WASTE (i.e., REGULATED BIOLOGICAL WASTE, referred to as “Medical Waste” in California)**

4-1. Will (or do) you generate medical waste?  Yes  No If NO, skip to Section 5.0.

4-2. Check the types of waste that will be generated, all of which fall under the California Medical Waste Act:

Contaminated sharps (i.e., if contaminated with ≥ Risk Group 2 materials)	Animal carcasses	Pathology waste known or suspected to be contaminated with ≥ Risk Group 2 pathogens)
Red bag biohazardous waste (i.e., with ≥ Risk Group 2 materials) for autoclaving	Human or non-human primate blood, tissues, etc. (e.g., clinical specimens)	Trace Chemotherapeutic Waste and/or Pharmaceutical waste NOT otherwise regulated as RCRA chemical waste

4-3. What vendor will be used for off-site autoclaving and/or incineration?

4-5. Do you have a Medical Waste Permit for this site? Yes No, not required.  
 No, but an application will be submitted.

**5.0 UNDERGROUND STORAGE TANKS (USTS) & ABOVEGROUND STORAGE TANKS (ASTS)**

5-1. Are underground storage tanks (USTs), aboveground storage tanks (ASTs), or associated pipelines used for the storage of petroleum products, chemicals, or liquid wastes present on site (lease renewals) or required for planned operations (new tenants)?  Yes  No

*NOTE: If you will have your own diesel emergency power generator, then you will have at least one AST!  
 [NOTE: If a backup generator services multiple tenants, then the landlord usually handles the permits.]*

If NO, skip to section 6.0. If YES, please describe capacity, contents, age, type of the USTs or ASTs, as well any associated leak detection/spill prevention measures. Please attach additional pages if necessary.

UST or AST	Capacity (gallons)	Contents	Year Installed	Type (Steel, Fiberglass, etc.)	Associated Leak Detection / Spill Prevention Measures*

\*NOTE: The following are examples of leak detection / spill prevention measures: integrity testing, inventory reconciliation, leak detection system, overflow spill protection, secondary containment, cathodic protection.

5-2. Please provide copies of written tank integrity test results and/or monitoring documentation, if available.

5-3. Is the UST/AST registered and permitted with the appropriate regulatory agencies?  Yes  No, not yet

*If YES, please attach a copy of the required permit(s). See Section 7-1 for the oversight agencies that issue permits, with the exception of those for diesel emergency power generators which are permitted by the local Air Quality District (Bay Area Air Quality Management District = BAAQMD; or San Diego Air Pollution Control District = San Diego APCD).*

5-4. If this Questionnaire is being completed for a lease renewal, and if any of the USTs/ASTs have leaked,

please state the substance released, the media(s) impacted (e.g., soil, water, asphalt, etc.), the actions taken, and all remedial responses to the incident.

- 5-5. If this Questionnaire is being completed for a lease renewal, have USTs/ASTs been removed from the Property?  
 Yes  No

If YES, please provide any official closure letters or reports and supporting documentation (e.g., analytical test results, remediation report results, etc.).

- 5-6. For Lease renewals, are there any above or below ground pipelines on site used to transfer chemicals or wastes?  
 Yes  No

For new tenants, are installations of this type required for the planned operations?  Yes  No

If YES to either question in this section 5-6, please describe.

**6.0 ASBESTOS CONTAINING BUILDING MATERIALS**

Please be advised that an asbestos survey may have been performed at the Property. If provided, please review the information that identifies the locations of known asbestos containing material or presumed asbestos containing material. All personnel and appropriate subcontractors should be notified of the presence of these materials, and informed not to disturb these materials. Any activity that involves the disturbance or removal of these materials must be done by an appropriately trained individual/contractor.

**7.0 OTHER REGULATORY PERMITS/REQUIREMENTS**

- 7-1. Does the operation have or require an industrial wastewater permit to discharge into the local National Pollutant Discharge Elimination System (NPDES)? *[Example: This applies when wastewater from equipment cleaning is routed through a pH neutralization system prior to discharge into the sanitary or lab sewer for certain pharmaceutical manufacturing wastewater; etc.]* Permits are obtained from the regional sanitation district that is treating wastewater.

Yes  No , but one will be prepared and submitted to the Landlord property management company.

If so, please attach a copy of this permit or provide it later when it has been prepared.

- 7-2. Has a Hazardous Materials Business Plan (HMBP) been developed for the site and submitted via the State of California Electronic Reporting System (CERS)? *[NOTE: The trigger limits for having to do this are  $\geq 200$  cubic feet if any one type of compressed gas(except for carbon dioxide and inert simple asphyxiant gases, which have a higher trigger limit of  $\geq 1,000$  cubic feet);  $\geq 55$  gallons if any one type of hazardous chemical liquid; and  $\geq 500$  pounds of any one type of hazardous chemical solid. So a full-size gas cylinder and a 260-liter of liquid nitrogen are triggers! Don't forget the diesel fuel in a backup emergency generator if the diesel tank size is  $\geq 55$  gallons and it is permitted under the tenant (rather than under the landlord).]* NOTE: Each local Certified Unified Program Agency (CUPA) in California governs the HMBP process so start there. Examples: the CUPA for cities in San Mateo County is the County Environmental Health Department; the CUPA for the City of Hayward, CA is the Hayward Fire Department; the CUPA for Mountain View is the Mountain View Fire Department; and, the CUPA for San Diego is the County of San Diego Hazardous Materials Division (HMD),

Yes  No, not required.  No, but one will be prepared and submitted, and a copy will be provided

to the landlord property management company.

If one has been completed, please attach a copy. Continue to provide updated versions as they are completed. This is a legal requirement in that State law requires that the owner/operator of a business located on leased or rented real property shall notify, in writing, the owner of the property that the business is subject to and is in compliance with the Hazardous Materials Business Plan requirements (Health and Safety Code Chapter 6.95 Section 25505.1).

- 7-3. NOTE: Please be advised that if you are involved in any tenant improvements that require a construction permit, you will be asked to provide the local city with a Hazardous Materials Inventory Statement (HMIS) to ensure that your hazardous chemicals fall within the applicable Fire Code fire control area limits for the applicable construction occupancy of the particular building. The HMIS will include much of the information listed in Section 2-2. Neither the landlord nor the landlord's property management company expressly warrants that the inventory provided in Section 2-2 will necessarily meet the applicable California Fire Code fire control area limits for building occupancy, especially in shared tenant occupancy situations. It is the responsibility of the tenant to ensure that a facility and site can legally handle the intended operations and hazardous materials desired/ needed for its operations, but the landlord is happy to assist in this determination when possible.

**CERTIFICATION**

I am familiar with the real property described in this questionnaire. By signing below, I represent and warrant that the answers to the above questions are complete and accurate to the best of my knowledge. I also understand that Lessor will rely on the completeness and accuracy of my answers in assessing any environmental liability risks associated with the property.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Telephone: \_\_\_\_\_



**EXHIBIT F**

**TENANT'S PROPERTY**

The following items, to the extent (i) not purchased with the Tenant Improvement Allowance, and (ii) not tied into the Base Building systems, shall be deemed "Tenant's Property":

1. All moveable furniture and equipment that is not "built-in".
2. Moveable lab casework (other than "built-in" lab casework), including moveable lab benches.
3. Servers, server racks and back-up batteries.
4. Furniture.
5. Portable fume hoods.
6. Biosafety cabinets.
7. Stand-alone freezers, ice makers, autoclave, portable glass wash and incubators.

**LEASE**

**BRITANNIA POINT EDEN**

**HAYWARD POINT EDEN I LIMITED PARTNERSHIP,**

a Delaware limited partnership, as  
Landlord,  
and

**PULSE BIOSCIENCES, INC.,**

a Nevada corporation, as Tenant.

8377633.2 (8383465.1)

Hayward Point Eden I Limited Partnership  
[Britannia Point Eden]  
[Pulse Biosciences, Inc.]

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## List of Subsidiaries

<u>Subsidiary</u>	<u>Jurisdiction of Incorporation</u>	<u>Ownership Position</u>
Nanoblate Corp., a Delaware Corporation	Delaware	100%
BioElectroMed Corp., a California Corporation	California	100%

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**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO  
SECURITIES EXCHANGE ACT RULES 13a-14(a) and 15d-14(a), AS ADOPTED PURSUANT  
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Darrin R. Uecker, President and Chief Executive Officer, certify that:

1. I have reviewed this Annual Report on Form 10-K of Pulse Biosciences, 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)) 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) 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
  - c) 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 20, 2017

By: /s/ Darrin R. Uecker  
Darrin R. Uecker  
President and Chief Executive Officer  
(Principal Executive Officer)

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**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO  
SECURITIES EXCHANGE ACT RULES 13a-14(a) and 15d-14(a), AS ADOPTED PURSUANT  
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Brian B. Dow, Chief Financial Officer, certify that:

1. I have reviewed this Annual Report on Form 10-K of Pulse Biosciences, 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)) 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) 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
  - c) 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 20, 2017

By: /s/ Brian B. Dow  
Brian B. Dow  
Chief Financial Officer and Senior Vice President of  
Finance and Administration, Secretary and Treasurer  
(Principal Financial and Principal Accounting Officer)

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**CERTIFICATIONS 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 Pulse Biosciences, Inc. (the "Company") on Form 10-K for the fiscal year ended December 31, 2016 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his 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 20, 2017

/s/ Darrin R. Uecker

Darrin R. Uecker  
President and Chief Executive Officer  
(Principal Executive Officer)

/s/ Brian B. Dow

Brian B. Dow  
Chief Financial Officer, Senior Vice President of Finance  
and Administration, Secretary and Treasurer  
(Principal Financial and Principal Accounting Officer)

This certification is deemed furnished and not filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Pulse Biosciences, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this report, irrespective of any general incorporation language contained in such filing.

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