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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2021

OR

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

FOR THE TRANSITION PERIOD FROM TO

Commission file number: 001-37507

IMMUNITYBIO, INC.

(Exact name of Registrant as specified in its Charter)

Delaware	**43-1979754**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
3530 John Hopkins Court San Diego, California	**92121**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (858) 633-0300

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.0001 per share	**IBRX**	**The Nasdaq Global Select Market**

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

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

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

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

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

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

The number of shares of the Registrant's common stock outstanding as of November 10, 2021 was 397,594,535 (excluding 163,800 shares held by a majority owned subsidiary of ours which are treated as treasury shares for accounting purposes).

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PART I—FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS.

ImmunityBio, Inc. and Subsidiaries
Condensed Consolidated Balance Sheets
(in thousands, except share and per share amounts)

	September 30, 2021 (Unaudited)	December 31, 2020
ASSETS		
Current assets:		
Cash and cash equivalents	$ 64,524	$ 34,915
Marketable securities	15,848	61,146
Due from related parties	1,304	2,003
Prepaid expenses and other current assets (including amounts with related parties)	12,776	13,649
Total current assets	94,452	111,713
Marketable securities, noncurrent	802	950
Property, plant and equipment, net	69,878	72,541
Non-marketable equity investment	—	7,849
Intangible asset, net	1,432	1,463
Convertible note receivable	6,316	6,129
Operating lease right-of-use assets, net (including amounts with related parties)	34,099	18,138
Other assets (including amounts with related parties)	7,442	2,598
Total assets	$ 214,421	$ 221,381
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 15,120	$ 11,510
Accrued expenses and other liabilities	38,519	36,771
Due to related parties	8,697	14,838
Operating lease liabilities (including amounts with related parties)	3,072	5,015
Total current liabilities	65,408	68,134
Related-party notes payable	303,240	254,353
Operating lease liabilities, less current portion (including amounts with related parties)	34,642	16,179
Deferred income tax liability	170	170
Other liabilities	905	1,035
Total liabilities	404,365	339,871
Commitments and contingencies (Note 7)		
Stockholders' deficit:		
Common stock, $0.0001 par value; 500,000,000 shares authorized; 394,509,695 and 382,243,142 shares issued and outstanding as of September 30, 2021 and December 31, 2020, respectively; excluding treasury stock, 163,800 shares outstanding as of September 30, 2021 and December 31, 2020, respectively	39	38
Additional paid-in capital	1,682,072	1,495,163
Accumulated deficit	(1,870,662)	(1,615,131)
Accumulated other comprehensive income	53	122
Total ImmunityBio stockholders' deficit	(188,498)	(119,808)
Noncontrolling interests	(1,446)	1,318
Total stockholders' deficit	(189,944)	(118,490)
Total liabilities and stockholders' deficit	$ 214,421	$ 221,381

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

ImmunityBio, Inc. and Subsidiaries
Condensed Consolidated Statements of Operations
(in thousands, except share and per share amounts)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenue	$ 66	$ 151	$ 544	$ 752
Operating expenses:				
Research and development (including amounts with related parties)	49,277	35,772	144,205	96,151
Selling, general and administrative (including amounts with related parties)	29,625	19,596	107,345	47,436
Impairment of intangible assets	—	10,660	—	10,660
Total operating expenses	78,902	66,028	251,550	154,247
Loss from operations	(78,836)	(65,877)	(251,006)	(153,495)
Other expense, net:				
Interest and investment (loss) income, net	(5,941)	149	2,826	1,213
Interest expense (including amounts with related parties)	(3,614)	(2,226)	(10,359)	(6,238)
Other (expense) income, net (including amounts with related parties)	(38)	84	252	1,269
Total other expense, net	(9,593)	(1,993)	(7,281)	(3,756)
Loss before income taxes and noncontrolling interests	(88,429)	(67,870)	(258,287)	(157,251)
Income tax benefit (expense)	—	1,700	(8)	1,637
Net loss	(88,429)	(66,170)	(258,295)	(155,614)
Net loss attributable to noncontrolling interests, net of tax	(800)	(567)	(2,764)	(1,534)
Net loss attributable to ImmunityBio common stockholders	$ (87,629)	$ (65,603)	$ (255,531)	$ (154,080)
Net loss per ImmunityBio common share – basic and diluted	$ (0.22)	$ (0.17)	$ (0.66)	$ (0.41)
Weighted-average number of common shares used in computing net loss per share – basic and diluted	391,853,623	381,763,170	386,606,200	375,369,638

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

ImmunityBio, Inc. and Subsidiaries
Condensed Consolidated Statements of Comprehensive Loss
(in thousands)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net loss	$ (88,429)	$ (66,170)	$ (258,295)	$ (155,614)
Other comprehensive income (loss), net of income taxes:				
Net unrealized (losses) gains on available-for-sale securities	(1)	5	16	10
Foreign currency translation adjustments	17	(53)	(85)	(46)
Reclassification of net realized losses on available-for-sale securities included in net loss	—	2	—	2
Total other comprehensive income (loss)	16	(46)	(69)	(34)
Comprehensive loss	(88,413)	(66,216)	(258,364)	(155,648)
Less: Comprehensive loss attributable to noncontrolling interests	(800)	(567)	(2,764)	(1,534)
Comprehensive loss attributable to ImmunityBio common stockholders	$ (87,613)	$ (65,649)	$ (255,600)	$ (154,114)

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

ImmunityBio, Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' Deficit
(in thousands, except share amounts)
(Unaudited)

Three Months Ended September 30, 2021	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Total ImmunityBio Stockholders' Deficit	Noncontrolling Interests	Total Stockholders' Deficit
Balance as of June 30, 2021	390,347,740	$ 39	$1,625,018	$(1,783,033)	$ 37	$ (157,939)	$ (646)	$ (158,585)
Issuance of common stock under "at-the market" offering net of commissions and offering costs of $962	3,796,537	—	42,061	—	—	42,061	—	42,061
Stock-based compensation expense	—	—	13,840	—	—	13,840	—	13,840
Exercise of stock options	176,196	—	678	—	—	678	—	678
Vesting of restricted stock units (RSUs)	285,280	—	—	—	—	—	—	—
Net share settlement for RSUs vesting	(96,058)	—	(960)	—	—	(960)	—	(960)
Sale of assets to an entity under common control (Note 8)	—	—	1,435	—	—	1,435	—	1,435
Other comprehensive income, net of tax	—	—	—	—	16	16	—	16
Net loss	—	—	—	(87,629)	—	(87,629)	(800)	(88,429)
Balance as of September 30, 2021	394,509,695	$ 39	$1,682,072	$(1,870,662)	$ 53	$ (188,498)	$ (1,446)	$ (189,944)

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

ImmunityBio, Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' Deficit
(in thousands, except share amounts)
(Unaudited)

Nine Months Ended September 30, 2021	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Total ImmunityBio Stockholders' Deficit	Noncontrolling Interests	Total Stockholders' Deficit
Balance as of December 31, 2020	382,243,142	$ 38	$1,495,163	$(1,615,131)	$ 122	$ (119,808)	$ 1,318	$ (118,490)
Issuance of common stock under "at-the market" offering net of commissions and offering costs of $4,039	10,216,978	1	136,947	—	—	136,948	—	136,948
Stock-based compensation expense	—	—	47,001	—	—	47,001	—	47,001
Exercise of stock options	1,626,300	—	5,110	—	—	5,110	—	5,110
Vesting of RSUs	621,364	—	—	—	—	—	—	—
Net share settlement for RSUs vesting	(198,089)	—	(3,584)	—	—	(3,584)	—	(3,584)
Sale of assets to an entity under common control (Note 8)	—	—	1,435	—	—	1,435	—	1,435
Other comprehensive loss, net of tax	—	—	—	—	(69)	(69)	—	(69)
Net loss	—	—	—	(255,531)	—	(255,531)	(2,764)	(258,295)
Balance as of September 30, 2021	394,509,695	$ 39	$1,682,072	$(1,870,662)	$ 53	$ (188,498)	$ (1,446)	$ (189,944)

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

ImmunityBio, Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' Equity (Deficit)
(in thousands, except share amounts)
(Unaudited)

Three Months Ended September 30, 2020	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total ImmunityBio Stockholders' Equity (Deficit)	Noncontrolling Interests	Total Stockholders' Equity (Deficit)
Balance as of June 30, 2020	381,280,749	$ 38	$1,493,486	$(1,481,757)	$ (75)	$ 11,692	$ 2,687	$ 14,379
Issuance of common stock, net of offering costs of $4,373	—	—	19	—	—	19	—	19
Stock-based compensation expense	—	—	714	—	—	714	—	714
Exercise of stock options	883,256	—	353	—	—	353	—	353
Vesting of RSUs	83,260	—	—	—	—	—	—	—
Net share settlement for RSUs vesting	(138,091)	—	(321)	—	—	(321)	—	(321)
Other comprehensive loss, net of tax	—	—	—	—	(46)	(46)	—	(46)
Net loss	—	—	—	(65,603)	—	(65,603)	(567)	(66,170)
Balance as of September 30, 2020	382,109,174	$ 38	$1,494,251	$(1,547,360)	$ (121)	$ (53,192)	$ 2,120	$ (51,072)

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

ImmunityBio, Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' Equity (Deficit)
(in thousands, except share amounts)
(Unaudited)

Nine Months Ended September 30, 2020	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total ImmunityBio Stockholders' Equity (Deficit)	Noncontrolling Interests	Total Stockholders' Equity (Deficit)
Balance as of December 31, 2019	371,976,995	$ 37	$1,406,002	$(1,393,280)	$ (87)	$ 12,672	$ 3,654	$ 16,326
Issuance of common stock, net of offering costs of $4,373	8,521,500	1	86,301	—	—	86,302	—	86,302
Stock-based compensation expense	—	—	1,516	—	—	1,516	—	1,516
Exercise of stock options	1,142,273	—	917	—	—	917	—	917
Vesting of RSUs	642,236	—	—	—	—	—	—	—
Net share settlement for RSUs vesting	(173,830)	—	(485)	—	—	(485)	—	(485)
Other comprehensive income, net of tax	—	—	—	—	(34)	(34)	—	(34)
Net loss	—	—	—	(154,080)	—	(154,080)	(1,534)	(155,614)
Balance as of September 30, 2020	382,109,174	$ 38	$1,494,251	$(1,547,360)	$ (121)	$ (53,192)	$ 2,120	$ (51,072)

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

ImmunityBio, Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows
(in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2021	**2020**
Operating activities:		
Net loss	$ (258,295)	$ (155,614)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense	47,001	1,516
Impairment of intangible assets	—	10,660
Unrealized gains on equity securities	(2,383)	(490)
Depreciation and amortization	10,643	10,513
Non-cash interest expense, net (including amounts with related parties)	9,126	5,743
Non-cash lease expense related to operating lease right-of-use assets	3,500	3,374
Realized gains on sales of equity securities	(173)	2
Amortization of net premiums and discounts on marketable debt securities	261	425
Change in fair value of contingent consideration	(134)	(797)
Deferred tax	—	(2,731)
Changes in operating assets and liabilities:		
Prepaid expenses and other current assets	425	(6,769)
Other assets	(4,844)	(22)
Accounts payable	(170)	7,275
Accrued expenses and other liabilities	624	11,158
Related parties	(4,714)	4,727
Operating lease liabilities	(3,647)	(3,090)
Net cash used in operating activities	(202,780)	(114,120)
Investing activities:		
Purchases of property, plant and equipment	(23,160)	(2,368)
Proceeds from sales of property, plant and equipment (Note 8)	20,498	—
Purchases of marketable debt securities, available-for-sale	(2,749)	(85,651)
Maturities of marketable debt securities, available for sale	44,759	6,582
Proceeds from sales of marketable debt and equity securities	13,568	54,080
Net cash provided by (used in) investing activities	52,916	(27,357)
Financing activities:		
Proceeds from equity offering, net of issuance costs paid	136,948	86,302
Proceeds from issuance of related-party promissory notes	40,000	63,700
Proceeds from exercises of stock options	5,110	917
Sale of assets to an entity under common control (Note 8)	1,435	—
Payment for contingent consideration	(419)	—
Net share settlement for RSUs vesting	(3,584)	(485)
Net cash provided by financing activities	179,490	150,434
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	(17)	(73)
Net change in cash, cash equivalents, and restricted cash	29,609	8,884
Cash, cash equivalents, and restricted cash, beginning of period	35,094	75,980
Cash, cash equivalents, and restricted cash, end of period	$ 64,703	$ 84,864

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

ImmunityBio, Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows (Continued)
(in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2021	**2020**
Reconciliation of cash, cash equivalents, and restricted cash, end of period:		
Cash and cash equivalents	$ 64,524	$ 84,685
Restricted cash (Note 3)	179	179
Cash, cash equivalents, and restricted cash, end of period	$ 64,703	$ 84,864
Supplemental disclosure of cash flow information:		
Cash paid during the period for:		
Interest	$ 1,466	$ 19
Income taxes	11	9
Supplemental disclosure of non-cash activities:		
Property and equipment purchases included in accounts payable, accrued expenses and due to related parties	$ 5,582	$ 524
Right-of-use assets obtained in exchange for operating lease liabilities	19,461	1,492
Unrealized gains (losses) on marketable debt securities	16	(12)

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

ImmunityBio, Inc. and Subsidiaries
Notes to Unaudited Condensed Consolidated Financial Statements

1. Description of Business

Organization

The company was established following a series of mergers and name changes, beginning with the original predecessor company, which was incorporated in Illinois on October 7, 2002 under the name ZelleRx Corporation. On January 22, 2010, the name was changed to Conkwest, Inc. In March 2014, the company formed Conkwest, Inc. ("Conkwest Delaware"), a wholly-owned subsidiary in the state of Delaware, for the purposes of changing the state of our incorporation to the state of Delaware. In March 2014, the parent company merged with and into Conkwest Delaware, with Conkwest Delaware surviving the merger. On July 10, 2015, we changed our name to NantKwest, Inc. On March 9, 2021, we completed a merger with NantCell, Inc. (formerly known as ImmunityBio, Inc., a private company) ("NantCell"), and we changed our name to ImmunityBio, Inc. Our principal executive offices are located in San Diego, California. In these notes to the unaudited condensed consolidated financial statements, the terms "ImmunityBio," "the company," "the combined company," "we," "us," and "our" refer to ImmunityBio and subsidiaries.

We established ImmunityBio to advance next-generation immunotherapies and address unmet needs within the clinical fields of oncology and infectious disease. We are developing treatments based on a proprietary immunotherapy platform that is designed to overcome limitations of the current standards of T cell-based immunotherapies, including checkpoint inhibitors and CAR-T cells. Our platform is based on four key modalities: (1) activating natural killer ("NK"), and T cells using antibody cytokine fusion proteins, (2) activating tumoricidal macrophages using low-dose synthetic immuno-modulators, (3) generating memory T cells using vaccine candidates developed with our second-generation adenovirus ("hAd5"), yeast and saRNA technologies, and (4) off-the-shelf NK cells from the NK-92 cell line and memory-like cytokine-enriched NK cells ("M-ceNK") from allogenic and autologous donors.

ImmunityBio's immunotherapy pipeline includes an antibody cytokine fusion protein (an IL-15 superagonist (N-803) known as Anktiva™), an albumin-associated anthracycline synthetic immuno-modulator (aldoxorubicin), hAd5 and yeast vaccine technologies (targeting the novel strain of coronavirus disease ("SARS-CoV-2"), tumor-associated antigens and neoepitopes), off-the-shelf genetically engineered natural killer cell lines inducing cancer and virally infected cell death through a variety of concurrent mechanisms (including innate killing, antibody-mediated killing, and CAR-directed killing), patient specific NK cell product for cancer (M-ceNK), macrophage polarizing peptides, and bi-specific fusion proteins targeting CD20, PD-L1, TGF-b and IL-12. Our immunotherapy clinical pipeline consists of 20 actively recruiting clinical trials in Phase I, II, or III development. There are 13 active clinical trials in Phase II or III development across 12 indications in solid and liquid cancers (including bladder, pancreatic and lung cancers) and infectious diseases (including SARS-CoV-2 and the human immunodeficiency virus ("HIV")). We have an expansive clinical-stage pipeline and intellectual property portfolio with 16 first-in-human assets.

In December 2019, the United States ("U.S.") Food and Drug Administration ("FDA") granted Breakthrough Therapy designation to Anktiva™ for bacillus Calmette-Guérin ("BCG") unresponsive non-muscle invasive bladder cancer carcinoma in situ ("CIS"). Based on patient readout data that was submitted with our application to obtain our Breakthrough Therapy designation, Anktiva™ achieved its primary endpoint of complete response rate at any time in the ongoing registrational Phase II/III trial. Other indications currently with registration-potential studies include BCG unresponsive papillary bladder cancer, lung cancer, and metastatic pancreatic cancer.

The Merger

On December 21, 2020, we and NantCell entered into an Agreement and Plan of Merger (the "Merger Agreement"), pursuant to which we and NantCell agreed to combine our businesses. The Merger Agreement provided that a wholly-owned subsidiary of the company would merge with and into NantCell (the "Merger"), with NantCell surviving the Merger as a wholly-owned subsidiary of the company.

On March 9, 2021, we completed the Merger pursuant to the terms of the Merger Agreement. Under the terms of the Merger Agreement, at the effective time of the Merger (the "Effective Time"), each share of NantCell common stock, par value $0.001 per share, issued and outstanding immediately prior to the Effective Time, subject to certain exceptions as set forth in the Merger Agreement, was converted automatically into a right to receive 0.8190 (the "Exchange Ratio") newly issued shares of common stock, par value $0.0001 per share, of the company ("Company Common Stock"), with cash paid in lieu of any fractional shares. At the Effective Time, each share of the company's common stock issued and outstanding immediately prior to the Effective Time, remained an issued and outstanding share of the combined company. At the Effective Time, each outstanding option, warrant or restricted stock unit to purchase NantCell common stock was converted using the Exchange Ratio into an option, warrant or restricted stock unit, respectively, on the same terms and conditions immediately prior to the Effective Time, to purchase shares of Company Common Stock.

Immediately following the Effective Time, the former stockholders of NantCell held approximately 71.5% of the outstanding shares of Company Common Stock and the stockholders of the company as of immediately prior to the Merger held approximately 28.5% of the outstanding shares of Company Common Stock. As a result of the Merger and immediately following the Effective Time, Dr. Patrick Soon-Shiong, our Executive Chairman and Global Chief Scientific and Medical Officer, and his affiliates beneficially owned, in the aggregate, approximately 81.8% of the outstanding shares of Company Common Stock. Following the consummation of the Merger, shares of the company's common stock were listed on the Nasdaq Global Select Market under the symbol "IBRX."

We incurred costs totaling $23.3 million in connection with the Merger, consisting of financial advisory, legal and other professional fees, of which $13.0 million was recorded during the nine months ended September 30, 2021. Merger-related costs are reported in *selling, general and administrative expense*, on the condensed consolidated statements of operations.

Accounting Treatment of the Merger

The Merger represents a business combination pursuant to Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 805-50, *Mergers*, which is accounted for as a transaction between entities under common control as Dr. Soon-Shiong and his affiliates were the controlling stockholders of both the company and NantCell for all of the periods presented in this report. As a result, all of the assets and liabilities of NantCell were combined with ours at their historical carrying amounts on the closing date of the Merger. We have recast our prior period financial statements to reflect the conveyance of NantCell's common shares as if the Merger had occurred as of the earliest date of the financial statements presented. All material intercompany accounts and transactions have been eliminated in consolidation.

The following tables provide the impact of the change in reporting entity on our unaudited condensed consolidated statements of operations for the three months ended March 31, 2021 and the three and nine months ended September 30, 2020, respectively (in thousands):

	Three Months Ended March 31, 2021 (Unaudited)			
	NantCell	NantKwest	Intercompany Eliminations	ImmunityBio, Inc.
Revenue	$ 183	$ —	$ (44)	$ 139
Operating expenses:				
Research and development (including amounts with related parties)	21,509	19,725	(106)	41,128
Selling, general and administrative (including amounts with related parties)	24,382	20,903	(10)	45,275
Loss from operations	(45,708)	(40,628)	72	(86,264)
Other (expense) income, net (including amounts with related parties)	(848)	6,637	—	5,789
Income tax expense	—	(6)	—	(6)
Net loss	$ (46,556)	$ (33,997)	$ 72	$ (80,481)

	Three Months Ended September 30, 2020 (Unaudited)			
	NantCell	NantKwest	Intercompany Eliminations	ImmunityBio, Inc.
Revenue	$ 126	$ 68	$ (43)	$ 151
Operating expenses:				
Research and development (including amounts with related parties)	18,911	17,284	(423)	35,772
Selling, general and administrative (including amounts with related parties)	14,885	4,711	—	19,596
Impairment of intangible assets	10,660	—	—	10,660
Loss from operations	(44,330)	(21,927)	380	(65,877)
Other (expense) income, net (including amounts with related parties)	(2,146)	153	—	(1,993)
Income tax benefit (expense)	1,702	(2)	—	1,700
Net loss	$ (44,774)	$ (21,776)	$ 380	$ (66,170)

	Nine Months Ended September 30, 2020 (Unaudited)			
	NantCell	NantKwest	Intercompany Eliminations	ImmunityBio, Inc.
Revenue	$ 1,819	$ 90	$ (1,157)	$ 752
Operating expenses:				
Research and development (including amounts with related parties)	52,547	44,227	(623)	96,151
Selling, general and administrative (including amounts with related parties)	30,833	16,603	—	47,436
Impairment of intangible assets	10,660	—	—	10,660
Loss from operations	(92,221)	(60,740)	(534)	(153,495)
Other (expense) income, net (including amounts with related parties)	(4,251)	495	—	(3,756)
Income tax benefit (expense)	1,643	(6)	—	1,637
Net loss	$ (94,829)	$ (60,251)	$ (534)	$ (155,614)

2. Summary of Significant Accounting Policies

There have been no material changes to our significant accounting policies from those described in the Notes to Combined Consolidated Financial Statements included in the Combined Consolidated Financial Statements of ImmunityBio, Inc. as of December 31, 2020 and December 31, 2019 (including NantCell, Inc.) filed as Exhibit 99.2 to our Current Report on Form 8-K/A filed with the Securities and Exchange Commission ("SEC") on April 22, 2021.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") and pursuant to the rules and regulations of the SEC. The unaudited condensed consolidated financial statements reflect all adjustments which are, in the opinion of management, necessary for a fair presentation of our financial position and results of operations. The unaudited condensed consolidated financial statements do not include all information and notes required by U.S. GAAP for annual reports.

As of September 30, 2021, the company had an accumulated deficit of $1.9 billion. We also had negative cash flows from operations of $202.8 million for the nine months ended September 30, 2021. The company will likely need additional capital to further fund the development of, and seek regulatory approvals for, our product candidates, and to begin to commercialize any approved products.

The condensed consolidated financial statements are derived from NantKwest's and NantCell's respective historical consolidated financial statements for each period presented. Since the entities have been under common control for all periods presented, the condensed consolidated financial statements assume that the Merger took place at the beginning of the earliest period for which the condensed consolidated financial statements are presented. Accordingly, these financial statements should be read in conjunction with the audited Combined Consolidated Financial Statements and Notes thereto included in the Combined Consolidated Financial Statements of ImmunityBio, Inc. as of December 31, 2020 and December 31, 2019 (including NantCell, Inc.) filed as Exhibit 99.2 to our Current Report on Form 8-K/A filed with the SEC on April 22, 2021. Interim operating results are not necessarily indicative of operating results for the full year.

The condensed consolidated financial statements have been prepared assuming the company will continue as a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business, and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or amounts and classification of liabilities that may result from the outcome of the uncertainty of our ability to continue as a going concern. As a result of continuing anticipated operating cash outflows, we believe that substantial doubt exists regarding our ability to continue as a going concern without additional funding or financial support. However, we believe our existing cash, cash equivalents, and investments in marketable securities, together with capital to be raised through equity offerings (including but not limited to the offering, issuance and sale by us of up to a maximum aggregate offering of $500.0 million of our common stock that may be issued and sold under an "at-the-market" sales agreement with Jefferies LLC (the "ATM")), and our potential ability to borrow from affiliated entities, will be sufficient to fund our operations through at least the next 12 months following the issuance date of the financial statements based primarily upon our Executive Chairman and Global Chief Scientific and Medical Officer's intent and ability to support our operations with additional funds, including loans from affiliated entities, as required, which we believe alleviates such doubt. We may also seek to sell additional equity, through one or more follow-on public offerings, or in separate financings, or obtain a credit facility. However, we may not be able to secure such financing in a timely manner or on favorable terms. Without additional funds, we may choose to delay or reduce our operating or investment expenditures. Further, because of the risk and uncertainties associated with the commercialization of our product candidates in development, we may need additional funds to meet our needs sooner than planned.

Principles of Consolidation

The accompanying unaudited condensed consolidated financial statements include the accounts of the company and its subsidiaries. All intercompany amounts have been eliminated. For consolidated entities where we have less than 100% of ownership, we record net loss attributable to noncontrolling interest on the condensed consolidated statements of operations equal to the percentage of the ownership interest retained in such entities by the respective noncontrolling parties.

We apply the variable interest model under ASC Topic 810, *Consolidation*, to any entity in which we hold an equity investment or to which we have the power to direct the entity's most significant economic activities and the ability to participate in the entity's economics. If the entity is within the scope of the variable interest model and meets the definition of a variable interest entity ("VIE"), we consider whether we must consolidate the VIE or provide additional disclosures regarding our involvement with the VIE. If we determine that we are the primary beneficiary of the VIE, we will consolidate the VIE. This analysis is performed at the initial investment in the entity or upon any reconsideration event.

For entities we hold as an equity investment that are not consolidated under the VIE model, we consider whether our investment constitutes ownership of a majority of the voting interests in the entity and therefore should be considered for consolidation under the voting interest model.

Unconsolidated equity investments in the common stock or in-substance common stock of an entity under which we are able to exercise significant influence, but not control, are accounted for using the equity method. Our ability to exercise significant influence is generally indicated by ownership of 20% to 50% interest in the voting securities of the entity.

All other unconsolidated equity investments on which we are not able to exercise significant influence will be subsequently measured at fair value with unrealized holding gains and losses included in *interest and investment income, net*, on the condensed consolidated statements of operations. In the instance the equity investment does not have a readily determinable fair value and does not qualify for the practical expedient to estimate fair value in accordance with ASC Topic 820, *Fair Value Measurement* ("ASC 820"), we will apply the measurement alternative under ASC Topic 321, *Investments—Equity Securities* ("ASC 321"), pursuant to which we will measure the investment at its cost, less impairment, adjusted for observable price changes in an orderly market for an identical or similar investment of the same issuer.

Prior to March 31, 2021, we owned non-marketable equity securities that were accounted for using the measurement alternative under ASC 321 because the preferred stock held by us was not considered in-substance common stock and such preferred stock did not have a readily determinable fair value. All investments are reviewed for possible impairment on a regular basis. If an investment's fair value is determined to be less than its net carrying value, the investment is written down to its fair value. Such an evaluation is judgmental and dependent on specific facts and circumstances. Factors considered in determining whether an impairment indicator is present include: the investees' earnings performance and clinical trial performance, change in the investees' industry and geographic area in which it operates, offers to purchase or sell the security for a price less than the cost of the investment, issues that raise concerns about the investee's ability to continue as a going concern, and any other information that we may be aware of related to the investment. Factors considered in determining whether an observable price change has occurred include: the price at which the investee issues equity instruments similar to those of our investment and the rights and preferences of those equity instruments compared to ours.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, we evaluate our estimates, including those related to the valuation of equity-based awards, deferred income taxes and related valuation allowances, preclinical and clinical trial accruals, impairment assessments, contingent value right measurement and assessments, the measurement of right-of-use assets and lease liabilities, useful lives of long-lived assets, loss contingencies, fair value measurements, and the assessment of our ability to fund our operations for at least the next 12 months from the date of issuance of these financial statements. We base our estimates on historical experience and on various other market-specific and relevant assumptions that we believe to be reasonable under the circumstances. Estimates are assessed each period and updated to reflect current information, such as the economic considerations related to the impact that the ongoing coronavirus pandemic could have on our significant accounting estimates. Actual results could differ from those estimates.

Risks and Uncertainties

In March 2020, the World Health Organization declared SARS-CoV-2 a pandemic. To date, our operations have not been significantly disadvantaged by the pandemic. However, we cannot at this time predict the specific extent, duration, or full impact that this pandemic may have on our financial condition and results of operations, including ongoing and planned clinical trials. More specifically, the pandemic may result in prolonged impacts that we cannot predict at this time and we expect that such uncertainties will continue to exist for the foreseeable future. The impact of the pandemic on our financial performance will depend on future developments, including the duration and spread of the outbreak, impact of potential variants and the related governmental advisories and restrictions. These developments and the impact of the ongoing pandemic on the financial markets and the overall economy are highly uncertain. If the financial markets and/or the overall economy are impacted for an extended period, our results may be adversely affected.

Contingencies

We record accruals for loss contingencies to the extent that we conclude it is probable that a liability has been incurred and the amount of the related loss can be reasonably estimated. We evaluate, on a quarterly basis, developments in legal proceedings and other matters that could cause a change in the potential amount of the liability recorded or of the range of potential losses disclosed. Moreover, we record gain contingencies only when they are realizable and the amount is known. Additionally, we record our rights to insurance recoveries, limited to the extent of incurred or probable losses, as a receivable when such recoveries have been agreed to with our third-party insurers and when receipt is deemed probable. This includes instances when our third-party insurers have agreed to pay, on our behalf, certain legal defense costs and settlement amounts directly to applicable law firms and a settlement fund.

Concentration of Credit Risk and Other Risks and Uncertainties

Financial instruments that potentially subject us to concentrations of risk consist principally of cash and cash equivalents, marketable securities, and a convertible note receivable.

Product candidates developed by us will require approvals or clearances from the FDA or international regulatory agencies prior to commercial sales. There can be no assurance that any of our product candidates will receive any of the required approvals or clearances. If we were to be denied approval or clearance or any such approval or clearance was to be delayed, it would have a material adverse impact on us.

Common Control Transactions

Transactions between us and entities where Dr. Soon-Shiong and his affiliates are the controlling stockholders are accounted for as common control transactions whereby the net assets acquired or transferred are accounted at their carrying value. Any difference between the carrying value and consideration recognized is treated as a capital transaction. Cash consideration up to the carrying value of the net assets acquired or transferred is presented as an investing activity in our condensed consolidated statement of cash flows. Cash consideration in excess of the carrying value of the net assets acquired or transferred is presented as a financing activity in our condensed consolidated statement of cash flows.

Sale-leaseback Transaction

A sale-leaseback transaction occurs when an entity sells an asset it owns and immediately leases the asset back from the buyer. The seller then becomes the lessee and the buyer becomes the lessor. When entering into a sale-leaseback transaction as a seller-lessee, the requirements in ASC Topic 606, *Revenue from Contracts with Customers*, and all related accounting standards updates to such Topic are applied in determining whether the transfer of an asset shall be accounted for as a sale of the asset by assessing whether it satisfies a performance obligation under the contract by transferring control of an asset. If the company transfers control of an asset to the buyer-lessor, the transfer is accounted for as a sale and the company derecognizes the transferred asset. The subsequent leaseback of the asset is accounted for in accordance with ASC Topic 842, *Leases*, in the same manner as any third-party lease. If the company does not transfer control of an asset to the buyer-lessor, the sale-leaseback transaction is accounted for as a financing arrangement.

In September 2021, we entered into a sale transaction with Nant Capital, LLC ("Nant Capital"), a related party, for a building located at 557 South Douglas Street, El Segundo, California. We subsequently leased back the building for an initial seven-year lease term with an option to extend the lease for two additional seven-year periods. There is no purchase option at the end of the lease term. Since we transferred the legal title and all benefits and risks incidental to the ownership of the property to Nant Capital, we accounted for the transfer as a sale. We have classified the leaseback of the building as an operating lease and accordingly, a right-of-use asset and an operating lease liability were established on the lease commencement date that will be amortized through the end of the lease term. See Note 8, *Related-Party Agreements*, for further information.

Stock-Based Compensation

We account for stock-based compensation under the provisions of ASC Topic 718, *Compensation—Stock Compensation* ("ASC 718"). We measure the fair value of an equity-classified award at the grant date and recognize the stock-based compensation expense over the period of vesting on the straight-line basis for our outstanding share awards that do not contain a performance condition. For awards subject to performance-based vesting conditions, we assess the probability of the individual milestones under the award being achieved and stock-based compensation expense is recognized over the service period using the graded vesting method once management believes the performance criteria is probable of being met. For awards with service or performance conditions, we recognize the effect of forfeitures in compensation cost in the period that the award was forfeited.

Basic and Diluted Net Loss per Share of Common Stock

Basic net loss per share is calculated by dividing the net loss attributable to ImmunityBio common stockholders by the weighted-average number of common shares outstanding for the period. Diluted loss per share is computed by dividing net loss attributable to ImmunityBio common stockholders by the weighted-average number of common shares, including the number of additional shares that would have been outstanding if the potential common shares had been issued and if the additional common shares were dilutive.

For all periods presented, potentially dilutive securities are excluded from the computation of fully diluted loss per share as their effect is anti-dilutive. The following table details those securities that have been excluded from the computation of potentially dilutive securities:

	As of September 30,	
	2021	2020
	(Unaudited)	
Outstanding stock options	4,194,268	5,221,543
Outstanding RSUs	7,076,402	480,292
Outstanding related-party warrants	1,638,000	1,638,000
Total	12,908,670	7,339,835

Amounts in the table above reflect the common stock equivalents of the noted instruments, including awards issued under the NantKwest 2015 Equity Incentive Plan (the "2015 Plan"), the NantKwest 2014 Equity Incentive Plan (the "2014 Plan"), and awards issued under the NantCell, Inc. 2015 Stock Incentive Plan (the "NC 2015 Plan") that, in the case of September 30, 2021, were outstanding immediately prior to the Effective Time of the Merger and in the case of September 30, 2020 have been adjusted to include the combined NC 2015 Plan and NantCell warrants then outstanding (in both cases adjusted using the Exchange Ratio of 0.8190). See Note 10, *Stock-Based Compensation*, for further information.

Recent Accounting Pronouncements

Application of New or Revised Accounting Standards – Not Yet Adopted

In June 2016, the FASB issued Accounting Standards Update ("ASU") 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"). The FASB subsequently issued amendments to ASU 2016-13, which have the same effective date and transition dates as described below. The new guidance supersedes existing U.S. GAAP for measuring and recording of credit losses on financial assets measured at amortized cost by replacing the incurred-loss model with an expected-loss model. Accordingly, these financial assets will be presented at the net amount expected to be collected. This new standard also requires that credit losses related to available-for-sale debt securities be recorded as an allowance through net income rather than reducing the carrying amount under the current, other-than-temporary-impairment model. For public business entities that meet the definition of an SEC filer, except entities that are eligible to be a smaller reporting company as defined by the SEC, the standard is effective for annual periods beginning after December 15, 2019, and interim periods therein. For all other entities, including us, the standard is effective for annual periods beginning after December 15, 2022, and interim periods therein. Early adoption is permitted for all entities for annual periods beginning after December 15, 2018. With certain exceptions, adjustments are to be applied using a modified-retrospective approach by reflecting adjustments through a cumulative-effect impact on retained earnings as of the beginning of the fiscal year of adoption. We continue to evaluate the impact that this new standard and its related amendments will have on our consolidated financial statements.

Other recent authoritative guidance issued by the FASB (including technical corrections to the ASC), the American Institute of Certified Public Accountants, and the SEC during the three months ended September 30, 2021 did not, or are not expected to, have a material effect on our consolidated financial statements.

3. Financial Statement Details

Prepaid expenses and other current assets

As of September 30, 2021 and December 31, 2020, prepaid expenses and other current assets consist of the following (in thousands):

	September 30, 2021 (Unaudited)	December 31, 2020
Insurance premium financing asset	$ 4,137	$ 1,421
Prepaid services	2,373	1,294
Prepaid insurance	2,208	1,365
Prepaid license fees	1,377	801
Prepaid preclinical and clinical trial services – with related party (Note 8)	1,035	4,626
Prepaid rent	672	589
Prepaid property taxes	373	—
Prepaid equipment maintenance	229	243
Insurance claims receivable	92	2,518
Interest receivable – marketable debt securities	25	473
Prepaid supplies – with related party (Note 8)	—	143
Equipment deposits	—	66
Other	255	110
Prepaid expenses and other current assets	$ 12,776	$ 13,649

We have reflected our right to insurance recoveries, limited to the extent of incurred or probable losses, as a receivable when such recoveries have been agreed to with our third-party insurers and receipt is deemed probable. This includes instances where our third-party insurers have agreed to pay, on our behalf, certain legal defense costs and settlement amounts directly to applicable law firms and a settlement fund. Our insurance claims receivable as of September 30, 2021 and December 31, 2020 were the result of the recovery of legal costs, which had been previously charged in prior periods to *selling, general and administrative expense*, on the condensed consolidated statements of operations.

Property, plant and equipment, net

As of September 30, 2021 and December 31, 2020, property, plant and equipment, net, consist of the following (in thousands):

	September 30, 2021 (Unaudited)	December 31, 2020
Leasehold improvements	$ 62,484	$ 52,251
Equipment	47,523	34,738
Construction in progress	6,730	1,333
Software	1,600	2,376
Furniture & fixtures	1,052	1,015
Building	—	22,690
Gross property, plant and equipment	119,389	114,403
Less: Accumulated depreciation and amortization	49,511	41,862
Property, plant and equipment, net	$ 69,878	$ 72,541

In September 2021, we entered into a sale transaction with Nant Capital, a related party, for a building located at 557 South Douglas Street, El Segundo, California. We subsequently leased back the building for an initial seven-year lease term with an option to extend the lease for two additional seven-year periods. The net proceeds from the transaction totaled $21.9 million and the net carrying value of the building was $20.5 million at the time of the transaction. We accounted for the transfer as a sale of an asset to an entity under common control, recorded the transfer at book value and recognized the excess of net consideration over carrying book value of $1.4 million as a capital contribution received from Nant Capital. See Note 8, *Related-Party Agreements*, for further information.

Depreciation and amortization expense related to property, plant and equipment totaled $10.6 million and $10.5 million for the nine months ended September 30, 2021 and 2020, respectively.

Other assets

As of September 30, 2021 and December 31, 2020, other assets consist of the following (in thousands):

	September 30, 2021 (Unaudited)	December 31, 2020
Prepaid insurance	$ 3,042	$ —
Prepaid preclinical and clinical trial services – with related party (Note 8)	1,549	92
Value-added tax (VAT) receivable	914	864
ERP system implementation costs	729	—
Security deposits	483	634
Restricted cash	179	179
Prepaid software license fees	132	455
Due from related party	55	51
Other	359	323
Other assets	$ 7,442	$ 2,598

Prepaid insurance consists of policies required by and associated with the Merger. Restricted cash is comprised of a certificate of deposit that serves as collateral for a letter of credit required by our landlord as a security deposit related to our facility in San Diego, California.

Accrued expenses and other liabilities

As of September 30, 2021 and December 31, 2020, accrued expenses and other liabilities consist of the following (in thousands):

	September 30, 2021	December 31, 2020
	(Unaudited)	
Accrued dissenting shares (Note 7)	$ 7,029	$ 6,769
Accrued bonus	5,560	5,288
Accrued preclinical and clinical trial costs	5,426	4,339
Accrued professional and service fees	4,785	7,668
Financing obligation – current portion	4,137	1,421
Accrued compensation	3,990	3,891
Accrued research and development costs	3,871	4,002
Accrued capital expenditures	1,585	337
Accrued laboratory equipment, supplies and related services	801	641
Accrued contingent consideration	397	856
Accrued franchise, sales, use and property taxes	199	103
Deferred revenue	145	270
Other	594	1,186
Accrued expenses and other liabilities	$ 38,519	$ 36,771

Interest and investment (loss) income, net

Interest and investment (loss) income, net consists of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
	(Unaudited)		(Unaudited)	
Unrealized (losses) gains from equity securities	$ (6,008)	$ (4)	$ 2,383	$ 490
Interest income	101	536	552	1,199
Investment amortization expense, net	(34)	(381)	(282)	(474)
Realized (losses) gains on investments	—	(2)	173	(2)
Interest and investment (loss) income, net	$ (5,941)	$ 149	$ 2,826	$ 1,213

Interest income includes interest from marketable securities, convertible notes receivable, other assets, and interest from bank deposits.

4. Financial Instruments

Investments in Marketable Debt Securities

As of September 30, 2021, the weighted-average remaining contractual life, amortized cost, gross unrealized gains, gross unrealized losses and fair value of marketable debt securities, which were considered as available-for-sale, by type of security were as follows (in thousands):

	September 30, 2021 (Unaudited)				
	Weighted-Average Remaining Contractual Life (in years)	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Current:					
Corporate debt securities	0.1	$ 1,805	$ —	$ (1)	$ 1,804
Foreign bonds	0.5	344	—	(18)	326
Mutual funds		35	3	—	38
Current portion		2,184	3	(19)	2,168
Noncurrent:					
Foreign bonds	5.1	747	55	—	802
Noncurrent portion		747	55	—	802
Total		$ 2,931	$ 58	$ (19)	$ 2,970

As of December 31, 2020, the amortized cost, gross unrealized gains, gross unrealized losses and fair value of marketable debt securities, which were considered as available-for-sale, by type of security were as follows (in thousands):

	December 31, 2020			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Current:				
Corporate debt securities	$ 54,789	$ 2	$ (19)	$ 54,772
Mutual funds	35	2	—	37
Current portion	54,824	4	(19)	54,809
Noncurrent:				
Foreign bonds	861	89	—	950
Noncurrent portion	861	89	—	950
Total	$ 55,685	$ 93	$ (19)	$ 55,759

Accumulated unrealized losses on marketable debt securities that have been in a continuous loss position for less than 12 months and more than 12 months as of September 30, 2021 and December 31, 2020 were as follows (in thousands):

	September 30, 2021			
	Less than 12 months		More than 12 months	
	Estimated Fair Value	Gross Unrealized Losses	Estimated Fair Value	Gross Unrealized Losses
Corporate debt securities	$ 1,804	$ (1)	$ —	$ —
Foreign bonds	207	(1)	—	—
Total	$ 2,011	$ (2)	$ —	$ —

	December 31, 2020			
	Less than 12 months		More than 12 months	
	Estimated Fair Value	Gross Unrealized Losses	Estimated Fair Value	Gross Unrealized Losses
Corporate debt securities	$ 42,762	$ (19)	$ —	$ —
Total	$ 42,762	$ (19)	$ —	$ —

We evaluated our securities for other-than-temporary impairment, and we did not recognize any other-than-temporary impairment losses for the nine months ended September 30, 2021 and 2020.

Realized gains and losses on sales of available-for-sale marketable debt securities were not significant for the nine months ended September 30, 2021 and 2020.

Marketable Equity Securities

We held investments in marketable equity securities with readily determinable fair values of $13.7 million and $6.3 million as of September 30, 2021 and December 31, 2020, respectively. Unrealized gains recorded on these securities totaled $2.4 million and $0.5 million in *interest and investment (loss) income, net*, on the condensed consolidated statements of operations for the nine months ended September 30, 2021 and 2020, respectively. We recorded a realized gain totaling $0.2 million from sales of marketable equity securities in *interest and investment (loss) income, net*, on the condensed consolidated statements of operations for the nine months ended September 30, 2021.

5. Fair Value Measurements

Fair value is defined as an exit price that would be received from the sale of an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. We use a three-tier fair value hierarchy to classify and disclose all assets and liabilities measured at fair value on a recurring basis, as well as assets and liabilities measured at fair value on a non-recurring basis, in periods subsequent to their initial measurement. The hierarchy requires us to use observable inputs when available, and to minimize the use of unobservable inputs, when determining fair value.

The three tiers are defined as follows:

- Level 1—Observable inputs that reflect quoted market prices (unadjusted) for identical assets or liabilities in active markets at the measurement date. Since valuations are based on quoted prices that are readily and regularly available in an active market, the valuation of these products does not entail a significant degree of judgment. Our Level 1 assets consist of bank deposits, money market funds, and marketable equity securities.

- Level 2—Observable inputs other than quoted prices in active markets that are observable either directly or indirectly in the marketplace for identical or similar assets and liabilities. Our Level 2 assets consist of corporate debt securities including commercial paper, government-sponsored securities and corporate bonds, as well as foreign municipal securities.
- Level 3—Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

We utilize a third-party pricing service to assist in obtaining fair value pricing for our investments in marketable debt securities. Inputs are documented in accordance with the fair value disclosure hierarchy. The fair values of financial instruments other than marketable securities and cash and cash equivalents are determined through a combination of management estimates and third-party valuations.

Recurring Valuations

Financial assets and liabilities measured at fair value on a recurring basis are summarized below as of September 30, 2021 and December 31, 2020 (in thousands):

	Fair Value Measurements at September 30, 2021 (Unaudited)			
	Total	Level 1	Level 2	Level 3
Assets:				
Current:				
Cash and cash equivalents	$ 64,524 (1)	$ 62,710	$ 1,814	$ —
Equity securities	13,680 (2)	13,680	—	—
Corporate debt securities	1,804	—	1,804	—
Foreign bonds	326	326	—	—
Mutual funds	38	38	—	—
Noncurrent:				
Foreign bonds	802	802	—	—
Total assets measured at fair value	$ 81,174	$ 77,556	$ 3,618	$ —
Liabilities:				
Contingent consideration	$ (419) (3)	$ —	$ —	$ (419)

	Fair Value Measurements at December 31, 2020			
	Total	Level 1	Level 2	Level 3
Assets:				
Current:				
Cash and cash equivalents	$ 34,915	$ 34,915	$ —	$ —
Corporate debt securities	54,772	—	54,772	—
Equity securities	6,337	6,337	—	—
Mutual funds	37	37	—	—
Noncurrent:				
Foreign bonds	950	950	—	—
Total assets measured at fair value	$ 97,011	$ 42,239	$ 54,772	$ —
Liabilities:				
Contingent consideration	$ (972) (3)	$ —	$ —	$ (972)

(1) Includes money market funds of $23.7 million and corporate debt securities of $1.8 million with original maturities of less than 90 days.

(2) Our equity securities include a $12.5 million investment in Viracta Therapeutics, Inc. (“Viracta”), a clinical stage drug development company with whom we have an exclusive worldwide license to develop and commercialize one of their proprietary drug candidates. In February 2021, Viracta merged with Sunesis Pharmaceuticals, Inc. (“Sunesis”), a public company. In connection with this transaction, our preferred stock investment in Viracta was converted into 1,562,604 shares of Viracta common stock effective February 25, 2021. Prior to the acquisition by Sunesis, we accounted for our investment in Viracta by applying the measurement alternative under ASC 321. As of December 31, 2020, the carrying value of our investment in Viracta, which was reflected in *non-marketable equity investment*, on the condensed consolidated balance sheets, was $7.8 million.

(3) Contingent consideration is recorded at estimated fair value and revalued each reporting period until the related contingency is resolved. The fair value measurement is based on inputs that are unobservable and significant to the overall fair value measurement (i.e., a Level 3 measurement within the fair value hierarchy) and are reviewed periodically by management. See Note 7, *Commitments and Contingencies*, for further information.

Changes in the carrying amount of contingent consideration were as follows (in thousands):

	Nine Months Ended September 30,	
	2021	2020
	(Unaudited)	
Fair value, beginning of period	$ (972)	$ (1,725)
Consideration paid	419	—
Net decrease in fair value	134	797
Fair value, end of period	$ (419)	$ (928)

Non-recurring Valuations

Non-financial assets and liabilities are recognized at fair value subsequent to initial recognition when they are deemed to be other-than-temporarily impaired. There were no material non-financial assets and liabilities deemed to be other-than-temporarily impaired and measured at fair value on a non-recurring basis for the nine months ended September 30, 2021 and 2020.

6. Collaboration and License Agreements

Collaboration Agreements

National Cancer Institute

2015 NCI CRADA

In May 2015, Etubics Corporation (“Etubics”) entered into a Cooperative Research and Development Agreement (“CRADA”) with the U.S. Department of Health and Human Services (“HHS”) as represented by the National Cancer Institute (“NCI”) of the National Institutes of Health (“NIH”) to collaborate on the preclinical and clinical development of an adenovirus technology expressing tumor-associated antigens for cancer immunotherapy. In January 2016, we acquired all of the outstanding equity interests in Etubics and Etubics became a wholly-owned subsidiary.

Effective January 2018, our subsidiary NantCell assumed the CRADA and it was amended to cover a collaboration for the preclinical and clinical development of our proprietary yeast-based Tarmogens expressing tumor-associated antigens and proprietary adenovirus technology expressing tumor-associated antigens for cancer immunotherapy. Pursuant to the CRADA, the NCI provides scientific staff and other support necessary to conduct research and related activities as described in the CRADA.

During the term of the CRADA, we were required to make annual payments of $0.6 million to the NCI for support of research activities. We made payments of $0.6 million in each of the nine months ended September 30, 2021 and 2020, respectively, and recorded $0.5 million in *research and development expense*, on the condensed consolidated statements of operations for the nine months ended September 30, 2021 and 2020.

In November 2021, NantCell entered into a third amendment to the CRADA, which was effective as of March 16, 2021. The principal changes effected by the third amendment are the following: (i) assignment of the CRADA from NantCell to ImmunityBio; (ii) modification of the research plan; (iii) extension of the CRADA term through May 2026; and (iv) an increase in funding for a total of $1.3 million per year, payable in semi-annual installments from 2022 through 2025.

Pursuant to the updated CRADA research plan, NCI and ImmunityBio will collaborate on the preclinical and clinical development of ImmunityBio's proprietary adenovirus platform expressing tumor-associated antigens; proprietary yeast platform expressing tumor-associated antigens; proprietary agent N-803 (Anktiva™) and derivatives, agent N-808 and derivatives, and/or TxM product candidates; proprietary recombinant NK cells and monoclonal antibodies ("mAbs"); proprietary RNA vaccines and adjuvants; and other proprietary agents owned or controlled by ImmunityBio as contemplated in the research plan, for cancer immunotherapy.

In accordance with the terms of the amended CRADA, the company is required to make an additional $0.7 million payment within 30 days of the execution date in addition to a $0.6 million payment to the NCI for support of research activities during 2021. We recorded an additional $0.4 million for the third amendment in *research and development expense*, on the condensed consolidated statement of operations for the nine months ended September 30, 2021.

2018 NCI CRADA

In February 2018, we entered into an amendment to a CRADA with the NCI that was originally executed between the NCI and Amgen, Inc. ("Amgen") in May 2012 and subsequently assigned by Amgen to us effective as of December 17, 2015. The research goal of this CRADA, as amended, is for the non-clinical and clinical development of ganitumab, our licensed monoclonal antibody targeting insulin-like growth factor one receptor, to evaluate its safety and efficacy in patients with hematological malignancies and solid tumors. The CRADA has a five-year term commencing on February 20, 2018 and expiring on February 20, 2023.

During the term of the agreement, we are required to make minimum annual payments of $0.2 million to the NCI for support of research activities and additional payments for the clinical trials based on the scope and phase of the clinical trials. Unpaid research and development expense was estimated at $0.5 million and $0.6 million as of September 30, 2021 and December 31, 2020, respectively.

National Institute of Deafness and Communication Disorders

2021 NIDCD CRADA

In February 2021, we entered into a CRADA with HHS as represented by the National Institute of Deafness and Communication Disorders ("NIDCD") of the NIH to conduct collaborative analysis of human clinical trial samples from clinical trials utilizing our proprietary recombinant NK cells and/or mAbs for preclinical development in monotherapy and in combination immunotherapies. The CRADA has a two-year term commencing on February 22, 2021 and expiring on February 22, 2023. During the term of the agreement, we are required to provide $0.1 million per year to the NIDCD for support of the research activities. We made a payment of $0.1 million during the nine months ended September 30, 2021.

Under any of the CRADAs, any party may unilaterally terminate the agreement by providing timely advance written notice to the other party before the desired termination date.

Pursuant to the terms of the CRADAs, we have an option to elect to negotiate an exclusive or non-exclusive commercialization license to any inventions discovered in the performance of any of the CRADAs. The parties jointly own any inventions and materials that are jointly produced by employees of both parties in the course of performing activities under the CRADAs.

License Agreements

Infectious Disease Research Institute

In May 2021, we entered into two license agreements with the Infectious Disease Research Institute ("IDRI") pursuant to which we received a license to certain patents and know-how relating to IDRI's (i) adjuvant formulations for the treatment, prevention and/or diagnosis of SARS-CoV-2 (the "IDRI Adjuvant Formulation License Agreement") and (ii) RNA vaccine platform as further described below (the "IDRI RNA License Agreement"). Under both agreements, we were obligated to pay one-time, non-creditable, non-refundable upfront cash payments totaling $2.0 million. In addition, under the IDRI Adjuvant Formulation License Agreement we owe IDRI milestone payments to a total of up to $2.5 million based on the achievement of certain development and regulatory milestones for the first licensed product and royalties on annual net sales of licensed products on a country-by-country and product-by-product basis of a low-single digit percentage, subject to certain royalty-reduction provisions. Under these agreements, we made a $2.0 million upfront payment and recognized $2.0 million in *research and development expense*, on the condensed consolidated statement of operations, and no milestone fees were incurred for the nine months ended September 30, 2021.

In September 2021, we amended and restated the IDRI RNA License Agreement, pursuant to which IDRI granted us an exclusive, worldwide, sublicensable license to IDRI's rights to an RNA vaccine platform for the development and commercialization of certain therapeutic, diagnostic or prophylactic products for the prevention, treatment or diagnosis of any indication, other than those subject to pre-existing third-party license grants, including, without limitation, SARS-CoV-2. Pursuant to the terms of the amended and restated IDRI RNA License Agreement, we are required to make an additional one-time, non-creditable, non-refundable, upfront payment to IDRI of $1.5 million. The company is also required to pay license maintenance fees to IDRI as follows: $3.0 million in 2022 and $5.5 million annually from 2023 through 2030. The company may terminate the restated agreement without cause by paying IDRI a $10.0 million one-time early termination fee. In addition, the milestone payments to IDRI based on the achievement of certain development and regulatory milestones for the first licensed product were amended to a total of up to $4.0 million. We are required to pay royalties on annual net sales of licensed products on a country-by-country and product-by-product basis of a low to mid-single digit percentage. We accrued $1.5 million in *research and development expense*, on the condensed consolidated statements of operations for the three months ended September 30, 2021.

In connection with the license agreements, in May 2021 we also entered into a Sponsored Research Agreement ("SRA") with IDRI pursuant to which we will fund continued research of at least $2.0 million per year, payable in four equal quarterly installments each year until May 2024, or such year of earlier termination. For the three and nine months ended September 30, 2021, we recorded $0.2 million and $0.7 million, respectively, in *research and development expense*, on the condensed consolidated statements of operations related to the SRA.

iosBio Ltd. Exclusive License Agreement

In August 2020, we executed an exclusive license agreement with iosBio Ltd., formerly Stabilitech Biopharma Ltd. ("iosBio"), pursuant to which we and our affiliates will receive an exclusive, worldwide license to certain of iosBio's intellectual property rights relating to the SARS-CoV-2 and successor vaccine candidates. In return, we are required to pay mid-to-high single-digit percentage royalties on net sales of the resulting licensed products. Concurrently we entered into a non-exclusive license agreement with iosBio, which grants iosBio and its affiliates a non-exclusive, worldwide license for the intellectual property and technology relating to our adenovirus constructs for the prevention and treatment of shingles and other infectious disease targets to be mutually agreed by the parties in good faith. As of September 30, 2021 and December 31, 2020, we accrued $0.2 million and $0.5 million payable, respectively, to iosBio for costs of supplies and reimbursable costs related to the clinical trial activities initiated by iosBio.

7. Commitments and Contingencies

Contingent Consideration Related to Business Combinations

VivaBioCell, S.p.A.

On April 10, 2015, NantWorks, LLC ("NantWorks"), a related party, acquired a 100% interest in VivaBioCell, S.p.A. ("VivaBioCell") through its wholly-owned subsidiary, VBC Holdings, LLC, ("VBC Holdings") for $0.7 million, less working capital adjustments. On June 15, 2015, NantWorks contributed its equity interest in VBC Holdings to the company, in exchange for cash consideration equal to its cost basis in the investment. VivaBioCell develops bioreactors and products based on cell culture and tissue engineering in Italy. In connection with this transaction, we are obligated to pay the former owners up to $3.7 million upon the achievement of certain sales milestones relating to scaffold technology and certain clinical and regulatory milestones relating to the GMP-in-a-Box technology. A clinical milestone totaling $0.8 million was earned by the former owners of VivaBioCell in connection with the acquisition, of which $0.4 million was paid during the three months ended September 30, 2021. The remaining $0.4 million was accrued as of September 30, 2021.

Altor BioScience Corporation

In connection with our July 2017 acquisition of Altor BioScience Corporation ("Altor"), we issued contingent value rights ("CVRs") under which we agreed to pay the prior stockholders of Altor approximately $304.0 million upon successful approval of the Biologics License Application ("BLA") or foreign equivalent, for Anktiva™ by December 31, 2022 and approximately $304.0 million upon the first calendar year before December 31, 2026 in which worldwide net sales of Anktiva™ exceed $1.0 billion (with amounts payable in cash or shares of our common stock or a combination thereof). Dr. Soon-Shiong and his related party hold approximately $279.5 million in the aggregate of CVRs and they have both irrevocably agreed to receive shares of the company's common stock in satisfaction of their CVRs. As the transaction was recorded as an asset acquisition, future CVR payments will be recorded when the corresponding events are probable of achievement or the consideration becomes payable.

Litigation

From time to time, we may be involved in various claims and legal proceedings relating to claims arising out of our operations. We are not currently a party to any legal proceedings that, in the opinion of our management, are likely to have a material adverse effect on our business. We are aware of complaints that have been filed regarding the Merger, but we have not been served with any of such complaints. If we are served with any such complaints, we will assess at that time any contingencies for which we may need to reserve. 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.

Altor BioScience, LLC Litigation

In 2017, NantCell announced it had entered into a definitive merger agreement to acquire Altor BioScience Corporation. An action captioned Gray v. Soon-Shiong, et al. was filed in Delaware Chancery Court by plaintiffs Clayland Boyden Gray ("Gray") and Adam R. Waldman. The plaintiffs, two minority stockholders, asserted claims against the company and other defendants for (1) breach of fiduciary duty and (2) aiding and abetting breach of fiduciary duty and filed a motion to enjoin the merger. The court denied the motion and permitted the merger to close.

Subsequent to the close of the merger, in 2017 the plaintiffs (joined by two additional minority stockholders, Barbara Sturm Waldman and Douglas E. Henderson ("Henderson")) filed a second amended complaint, asserting claims for (1) appraisal; (2) quasi-appraisal; (3) breach of fiduciary duty; and (4) aiding and abetting breach of fiduciary duty. The defendants moved to dismiss the second amended complaint, raising grounds that included a "standstill" agreement under which defendants maintained that Gray and Adam R. Waldman and Barbara Strum Waldman (the "Waldmans") agreed not to bring the lawsuit.

In a second action, Dyad Pharmaceutical Corporation, or Dyad, filed a petition in Delaware Chancery Court for appraisal in connection with the merger. Respondent moved to dismiss the appraisal petition in 2018, arguing in part that the petition was barred by the same "standstill" agreement. In 2018, the court heard oral arguments on the motions to dismiss in both consolidated cases and converted the motions to dismiss into motions for summary judgment with regard to the "standstill" agreement argument, or the Converted Motions.

The court issued an oral ruling in 2019 that dismissed certain claims and dismissed Altor BioScience from the action. The following claims remain: (a) the appraisal claims by all plaintiffs and Dyad (against Altor BioScience, LLC), and (b) Henderson's claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty.

In 2019, the court issued a written order implementing its ruling on the Converted Motions (the "Implementing Order"). In the Implementing Order, the court confirmed that all fiduciary duty claims brought by Gray, both individually and as trustee of the Gordon Gray Trust f/b/o C. Boyden Gray, were dismissed. Gray and the Waldmans filed answers denying the counterclaims and asserting defenses. The plaintiffs moved for leave to file a third amended complaint to add two former Altor stockholders as plaintiffs and a fiduciary duty claim on behalf of a purported class of former Altor stockholders, which the defendants opposed.

In 2020, the court granted the plaintiffs' motion, and the plaintiffs filed a third amended complaint. In 2020, the defendants answered the third amended complaint and asserted counter claims against the plaintiffs. The defendants are seeking damages for attorneys' fees and costs incurred as a result of these breaches. The plaintiffs filed an answer denying the counterclaims and asserting defenses. The trial has been set to commence on August 8, 2022.

The shares of these former Altor stockholders met the definition of dissenting shares under the merger agreement and were not entitled to receive any portion of the merger consideration at the closing date. However, these dissenting shares will automatically be converted to receive the portion of the merger consideration they were entitled to, on the later of the closing date or when the stockholder withdraws or loses the right to demand appraisal rights. Payment for dissenting shares will be on the same terms and conditions originally stated in the merger agreement.

As of September 30, 2021 and December 31, 2020, we had accrued $7.0 million and $6.8 million related to these obligations, respectively. The accrued amount represents the estimated low-end of the range of currently estimated payout amounts in accordance with ASC Topic 450, *Contingencies*, after considering the reasonable outcomes for settling the dissenting stockholder dispute along with any accrued statutory interest. We cannot reasonably estimate a range of loss or likelihood of loss beyond the amounts recorded for dissenting shares as of September 30, 2021, as the dissenting stockholders have not yet provided a quantified value of their claim and, therefore, an upper end of the range of loss cannot be determined. Discovery is ongoing, and class certification motions relating to the putative class have not yet been filed or decided. We reassess the reasonableness of the recorded amount at each reporting period. We believe the claims lack merit and intend to continue defending the case vigorously.

Sorrento Therapeutics, Inc. Litigation

Sorrento Therapeutics, Inc. ("Sorrento"), derivatively on behalf of NANTibody, LLC ("NANTibody"), filed an action in the Superior Court of California, Los Angeles County (the "Superior Court") against the company, Dr. Soon-Shiong and Charles Kim. The action alleged that the defendants improperly caused NANTibody to acquire IgDraSol, Inc. from our affiliate NantPharma, LLC ("NantPharma") and sought to have the transaction undone and the purchase amount returned to NANTibody. In 2019, we filed a demurrer to several causes of action alleged in the Superior Court action, and Sorrento filed an amended complaint, eliminating Mr. Kim as a defendant and dropping the causes of action we had challenged in our demurrer.

Sorrento filed a related arbitration proceeding, the Cynviloq arbitration, against Dr. Soon-Shiong and NantPharma; the company is not named in the Cynviloq arbitration. In 2020, the Superior Court granted Dr. Soon-Shiong's request for a preliminary injunction barring Sorrento from pursuing claims against him in the Cynviloq arbitration. Sorrento then filed the claims it had previously asserted in arbitration against Dr. Soon-Shiong in the Superior Court, and at Sorrento's request, the arbitrator entered an order dismissing Sorrento's claims against Dr. Soon-Shiong in the Cynviloq arbitration. The hearing in the Cynviloq arbitration commenced in June 2021, and continued with breaks until early October 2021. There may or may not be additional hearing days, depending on the outcome of a pending motion.

Also in 2019, the company and Dr. Soon-Shiong filed cross-claims in the Superior Court action against Sorrento and its Chief Executive Officer Henry Ji, asserting claims for fraud, breach of contract, breach of the covenant of good faith and fair dealing, tortious interference with contract, unjust enrichment, and declaratory relief. Our claims allege that Dr. Ji and Sorrento breached the terms of an exclusive license agreement between the company and Sorrento related to Sorrento's antibody library and that Sorrento did not perform its obligations under the exclusive license agreement. The Superior Court ruled that the company's claims should be pursued in arbitration and that Dr. Soon-Shiong's claims could be pursued in Superior Court.

In 2019, the company, along with NANTibody, filed an arbitration against Sorrento and Dr. Ji asserting our claims relating to the exclusive license agreement. In 2020, Sorrento sent letters purporting to terminate the exclusive license agreement with the company, and an exclusive license agreement with NANTibody and demanding the return of its confidential information and transfer of all regulatory filings and related materials. As required pursuant to the exclusive license agreements, both parties must engage in good-faith negotiations before attempting to invoke any termination provision contained in the agreement. Notwithstanding such negotiations, Sorrento sent a letter purporting to terminate the exclusive license agreements, maintaining the negotiations did not reach a successful resolution. We believe we have cured any perceived breaches during the 90-day contractual cure period provided under the agreements. Sorrento filed counterclaims against the company and NANTibody in the arbitration and requested leave to file a dispositive motion. The hearings in the antibody arbitration commenced in April 2021 and concluded in early August 2021. Post-hearing briefing has concluded and final arguments remain to be scheduled. We intend to prosecute our claims, and to defend the claims asserted against us, vigorously. An estimate of the possible loss or range of loss cannot be made at this time.

Shenzhen Beike Biotechnology Corporation Litigation

In 2020, we received a Request for Arbitration before the International Chamber of Commerce, International Court of Arbitration, served by Shenzhen Beike Biotechnology Corporation (“Beike”). The arbitration relates to a license, development, and commercialization agreement that Altor Bioscience Corporation (succeeded by our wholly-owned subsidiary Altor BioScience, LLC) entered into with Beike in 2014, which agreement was amended and restated in 2017, pursuant to which Altor granted to Beike an exclusive license to use, research, develop and commercialize products based on Anktiva™ in China for human therapeutic uses. In the arbitration, Beike is asserting a claim for breach of contract under the license agreement. Among other things, Beike alleges that we failed to use commercially reasonable efforts to deliver to Beike materials and data related to Anktiva™. Beike is seeking specific performance, or in the alternative, damages for the alleged breaches. On September 25, 2020, the parties entered into a standstill and tolling agreement under which, among other things, the parties affirmed they will perform certain of their obligations under the license agreement by specified dates and agreed that all deadlines in the arbitration are indefinitely extended. The standstill agreement may be terminated by any party on ten calendar days’ notice, and upon termination, the parties will have the right to pursue claims arising from the license agreement in any appropriate tribunal. The parties have been asked to provide an update to the International Chamber of Commerce by January 17, 2022 of any further developments.

Given that this action remains at the pleading stage and no discovery has occurred, it remains too early to evaluate the likely outcome of the case or to estimate any range of potential loss. We believe the claims lack merit and intend to defend the case vigorously and that we may have counterclaims.

Fox Chase Litigation

On July 21, 2020, ImmunityBio filed a declaratory judgment lawsuit in the Superior Court for San Diego County, California, naming Fox Chase Cancer Center Foundation and Institute for Cancer Research as the defendants (hereafter collectively “Fox Chase”). This litigation relates to the license with Fox Chase and includes various intellectual property rights (the “2004 License”). Our initial court filing requested the Court to find that we have not breached material obligations under the 2004 License and that Fox Chase has not and cannot terminate the 2004 License. Fox Chase filed a Cross-Complaint raising a patent inventorship challenge and moved the case to federal court. On June 4, 2021, the federal court separated the parties’ claims, and returned ImmunityBio’s declaratory judgment claims back to the San Diego County court but retained the patent inventorship challenge. While the litigation is in the early stage, its outcome cannot be predicted. We do not consider the 2004 License or the patent inventorship challenge to be material to our business.

Litigation Related to the Merger with ImmunityBio, Inc.

In connection with the Merger with NantCell, Inc. (formerly known as ImmunityBio, Inc., a private company), a Delaware corporation, via a wholly-owned subsidiary of NantKwest (the "Merger Sub"), seven complaints have been filed as individual actions in United States District Courts. Three complaints have been filed in the United States District Court for the District of Delaware against NantKwest and its directors and are captioned *Hargett v. NantKwest, Inc., et al.*, 1:21-cv-00197 (filed February 11, 2021) (the "Hargett Complaint"), *Franchi v. NantKwest, Inc., et al.*, 1:21-cv-00218 (filed February 16, 2021) (the "Franchi Complaint"), and *Gross v. NantKwest, Inc., et al.*, 1:21-cv-00223 (filed February 17, 2021) (the "Gross Complaint"). One complaint has been filed in the United States District Court for the Southern District of New York and is captioned *Leaman v. NantKwest, Inc., et al.*, 1:21-cv-01351 (filed February 16, 2021) (the "Leaman Complaint"). Two complaints have been filed in the United States District Court for the Southern District of California and are captioned *Weiss v. NantKwest, Inc., et al.*, 3:21-cv-00280 (filed February 16, 2021) (the "Weiss Complaint") and *Carlisle v. NantKwest, Inc., et al.*, 3:21-cv-00304 (filed February 19, 2021) (the "Carlisle Complaint"). One complaint has been filed in the United States District Court for the Eastern District of New York and was captioned *Shenk v. NantKwest, Inc., et al.*, 1:21-cv-00871 (filed February 18, 2021) (the "Shenk Complaint," and collectively with the Hargett Complaint, the Franchi Complaint, the Gross Complaint, the Leaman Complaint, the Weiss Complaint, and the Carlisle Complaint, the "Merger Actions"). The Shenk Complaint was voluntarily dismissed on March 10, 2021. The Franchi Complaint was voluntarily dismissed on May 6, 2021. The Leaman Complaint was voluntarily dismissed on May 7, 2021. The Hargett Complaint and the Gross Complaint were both voluntarily dismissed on May 18, 2021. The Hargett Complaint and the Gross Complaint also brought claims against ImmunityBio, and Merger Sub. The Merger Actions generally allege that the Definitive Proxy Statement filed with the SEC on February 2, 2021 misrepresents and/or omits certain purportedly material information relating to financial projections, analysis performed by the financial advisor to NantKwest's Special Committee, alleged past engagements of the Special Committee's financial advisor and industry consultant, and the terms of the engagement of such consultant. The Merger Actions assert violations of Sections 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 14a-9 promulgated thereunder against all defendants and violations of Section 20(a) of the Exchange Act against NantKwest's directors. The Merger Actions seek, among other things, an injunction enjoining the stockholder vote on the Merger and the consummation of the Merger unless and until certain additional information is disclosed to NantKwest's stockholders, costs of the action, including plaintiffs' attorneys' fees and experts' fees, and other relief the Court may deem just and proper. Neither the stockholder vote on the Merger nor the Merger were enjoined and occurred on March 8 and March 9, 2021, respectively. The company cannot predict the outcome of the Merger Actions. The company believes the Merger Actions are without merit and the company and the individual defendants intend to vigorously defend against the Merger Actions and any subsequently filed similar actions. If additional similar complaints are filed, absent new or significantly different allegations, the company will not necessarily disclose such additional filings.

Lease Arrangements

Substantially all of our operating lease right-of-use assets and operating lease liabilities relate to facilities leases. We have leases in multiple facilities across the U.S. and Italy, including El Segundo, California (general corporate and administrative activities, research and development and regulatory from related parties); San Diego, California (research facility and office space); Culver City, California (research and manufacturing space from a related party); Torrance, California (a research facility from a related party); Miramar, Florida (clinical development); Seattle, Washington (research and development); Louisville, Colorado (research and development and manufacturing); Woburn, Massachusetts (research facility); and Udine and Tavangnacco, Italy (GMP-in-a-Box, research facility and office space). See Note 8, *Related-Party Agreements*, for further information.

Our leases generally have initial terms ranging from two to ten years and often include one or more options to renew. These renewal terms can extend the lease term from one to seven years, and are included in the lease term when it is reasonably certain that we will exercise the option.

Information regarding our leases is as follows:

	September 30, 2021 (Unaudited)	December 31, 2020
Weighted average remaining lease term	7.7 years	3.9 years
Weighted average discount rate	9 %	9 %

The components of lease expense consist of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
	(Unaudited)		(Unaudited)	
Operating lease costs	$ 1,546	$ 863	$ 5,410	$ 4,269
Variable lease costs	856	909	2,039	2,483
Total lease costs	$ 2,402	$ 1,772	$ 7,449	$ 6,752

Cash paid for amounts included in the measurement of lease liabilities is as follows (in thousands):

	Nine Months Ended September 30,	
	2021	2020
	(Unaudited)	
Cash paid for operating leases (excluding variable lease costs)	$ 5,878	$ 4,222

Future minimum lease payments as of September 30, 2021, including $21.9 million related to options to extend lease terms that are reasonably certain of being exercised, are presented in the following table (in thousands). Common area maintenance costs and taxes are not included in these payments.

Years ending December 31:	Operating Leases
2021 (excluding the nine months ended September 30, 2021)	$ 2,162
2022	8,952
2023	7,462
2024	6,892
2025	6,550
Thereafter	28,144
Total future minimum lease payments	60,162
Less: Interest	19,507
Less: Tenant improvement allowance receivable	2,941
Present value of operating lease liabilities	$ 37,714

In February 2021, but effective on January 1, 2021, we entered into a lease agreement with 605 Nash, LLC, a related party, for a facility primarily used for pharmaceutical development and manufacturing purposes. In May 2021, but effective on April 1, 2021, we entered into an amendment to our lease agreement with 605 Nash, LLC. See Note 8, *Related-Party Agreements*, for further information.

In September 2021, we entered into a sale transaction with Nant Capital, a related party, for a building located at 557 South Douglas Street, El Segundo, California. We subsequently leased back the building for an initial seven-year lease term with an option to extend the lease for two additional seven-year periods. See Note 8, *Related-Party Agreements*, for further information.

In September 2021, we entered into a lease agreement with 420 Nash, LLC, a related party, for a property primarily used for the warehousing and storage of drug manufacturing supplies, products and equipment and ancillary office space. Future minimum lease payments totaling $5.2 million were not reflected in the operating lease table shown above since the lease term began on October 1, 2021. See Note 12, *Subsequent Events*, for further information.

There have been no other material changes related to our existing lease agreements from those disclosed in Note 8 of the Notes to Combined Consolidated Financial Statements included in the Combined Consolidated Financial Statements of ImmunityBio, Inc. as of December 31, 2020 and December 31, 2019 (including NantCell, Inc.) filed as Exhibit 99.2 to our Current Report on Form 8-K/A filed with the SEC on April 22, 2021.

Commitments

We did not enter into any significant contracts during the nine months ended September 30, 2021, other than those disclosed in these condensed consolidated financial statements.

In addition, we are also a party to various contracts with contract research organizations and contract manufacturers that generally provide for termination on notice, with the exact amounts in the event of termination to be based on the timing of the termination and the terms of the agreement. There have been no material changes in unconditional purchase commitments from those disclosed in Note 8 of the Notes to Combined Consolidated Financial Statements included in the Combined Consolidated Financial Statements of ImmunityBio, Inc. as of December 31, 2020 and December 31, 2019 (including NantCell, Inc.) filed as Exhibit 99.2 to our Current Report on Form 8-K/A filed with the SEC on April 22, 2021.

8. Related-Party Agreements

We conduct business with several affiliates under written agreements and informal arrangements. Below is a summary of outstanding balances and a description of significant relationships (in thousands):

	September 30, 2021 (Unaudited)	December 31, 2020
Due from related party–NantBio, Inc.	$ 1,294	$ 1,294
Due from related party–NantOmics LLC	—	591
Due from related parties–Various	10	118
Total due from related parties	$ 1,304	$ 2,003
Due to related party–NantWorks	$ 4,974	$ 10,650
Due to related party–Duley Road, LLC	2,374	2,787
Due to related party–NantBio, Inc.	943	943
Due to related party–605 Nash, LLC	284	—
Due to related party–Immuno-Oncology Clinic, Inc.	122	271
Due to related party–Various	—	187
Total due to related parties	$ 8,697	$ 14,838

Our Executive Chairman, Global Chief Scientific and Medical Officer, and principal stockholder founded and has a controlling interest in NantWorks, which is a collection of companies in the healthcare and technology space. As described below, we have entered into arrangements with NantWorks, and certain affiliates of NantWorks, to facilitate the development of new genetically modified NK cells for our product pipeline. Affiliates of NantWorks are also affiliates of the company due to the common control by and/or common ownership interest of our Executive Chairman and Global Chief Scientific and Medical Officer.

NantWorks

Under the NantWorks shared services agreement executed in November 2015, but effective August 2015, NantWorks, a related party, provides corporate, general and administrative, manufacturing strategy, research and development, regulatory and clinical trial strategy, and other support services. We are charged for the services at cost plus reasonable allocations of employee benefits, facilities and other direct or fairly allocated indirect costs that relate to the employees providing the services. For the three months ended September 30, 2021 and 2020, we recorded $1.2 million and $0.6 million, respectively, in *selling, general and administrative expense*, on the condensed consolidated statements of operations. For the three months ended September 30, 2021 and 2020, we recorded $0 million and $0.6 million of expense reimbursements under this arrangement in *research and development expense*, on the condensed consolidated statements of operations. For the nine months ended September 30, 2021 and 2020, we recorded $4.2 million and $4.5 million, respectively, in *selling, general and administrative expense*, and $0.4 million and $1.8 million, respectively, of expense reimbursements under this arrangement in *research and development expense*, on the condensed consolidated statements of operations. These amounts exclude certain general and administrative expenses provided by third-party vendors directly for our benefit, which were reimbursed to NantWorks based on those vendors' invoiced amounts without markup by NantWorks.

As of September 30, 2021 and December 31, 2020, we owed NantWorks a net amount of $5.0 million and $10.7 million, respectively, for all agreements between the two affiliates, which is included in *due to related parties*, on the condensed consolidated balance sheets. We also recorded $1.5 million and $1.1 million of prepaid expenses for services that have been passed through to the company from NantWorks as of September 30, 2021 and December 31, 2020, respectively, which are included in *prepaid expenses and other current assets*, on the condensed consolidated balance sheets.

In November 2015, we entered into a facility license agreement with NantWorks for approximately 9,500 square feet of office space in Culver City, California, which has been converted to a research and development laboratory and a current Good Manufacturing Practice ("cGMP") manufacturing facility. The initial license was effective from May 2015 through December 2020. The base rent for the initial lease term was $47,000 per month, with annual increases of 3% beginning in January 2017. In September 2020, we amended this agreement to extend the term of this lease through December 31, 2021. Commencing January 1, 2021, the base rent increased by 3% to approximately $54,500 per month. Subsequent to December 31, 2021, the lease term will automatically renew on a month-to-month basis, terminable by either party with at least 30 days' prior written notice to the other party. In addition, we have a one-time option to extend the lease term through December 31, 2022. If we exercise the option to extend the lease through December 31, 2022, or continue on a month-to-month basis, the base rent will increase by 3% annually commencing on January 1 of each year. On the date of the amendment, we recorded an increase of $1.2 million in both *operating lease right-of-use assets* and *operating lease liabilities*, on the condensed consolidated balance sheets, reflecting our belief that we will extend the term of this lease through December 31, 2022. Lease expense for this facility totaling $0.5 million and $0.5 million for the nine months ended September 30, 2021 and 2020, respectively, was recorded in *research and development expense*, on the condensed consolidated statements of operations.

Immuno-Oncology Clinic, Inc.

Beginning in 2017, we entered into multiple agreements with Immuno-Oncology Clinic, Inc. (the "Clinic") to conduct clinical trials related to certain of our product candidates. The Clinic is a related party as it is owned by an officer of the company and NantWorks manages the administrative operations of the Clinic. Prior to June 30, 2019, one of our officers was an investigator or sub-investigator for all of our trials conducted at the Clinic.

In July 2019, we entered into a new agreement with the Clinic (the "Clinic Agreement"), which became effective on July 1, 2019. The Clinic Agreement, as amended on March 31, 2020, covers clinical trial and research-related activities on a non-exclusive basis relating to existing clinical trials, commenced prior to July 1, 2019, and prospective clinical trials and research projects. The Clinic Agreement also specifies certain services and related costs that are excluded from the Clinic Agreement. Prior to commencing any work under the Clinic Agreement, the parties have agreed to execute written work orders setting forth the terms and conditions related to specific services to be performed, including financial terms. For clinical trials that commenced prior to July 1, 2019, excluding certain NantCell trials not covered by the agreement, fees incurred for services performed after July 1, 2019 are covered under the Clinic Agreement and applied towards the below-mentioned prepayments. The Clinic Agreement allows for automatic renewal and additional extensions beyond the initial one-year term.

In consideration of the services to be performed under the Clinic Agreement, as amended on March 31, 2020, we agreed to make payments of up to $7.5 million to the Clinic, of which $3.8 million and $1.9 million were paid in July 2019 and October 2019, respectively. As amended, a conditional payment of $1.9 million shall be due and payable at such time, if any, that the payments made in July 2019 and October 2019 have been earned by the Clinic through the performance of services. On a quarterly basis, our prepayment is increased by a nominal interest credit computed in accordance with terms specified in the Clinic Agreement.

To the extent any portion of the prepayments remain unearned by the Clinic on the third anniversary of the Clinic Agreement, we may elect at our sole discretion either to (i) not extend the term of the Clinic Agreement and have the Clinic reimburse us for the total amount of any remaining unused portion of the prepayments, or (ii) extend the term of the Clinic Agreement for up to three additional one-year periods, at which time the Clinic will reimburse us for the total amount of any remaining unused portion of the prepayments plus interest if reimbursement is not made within 60 days of expiration. The Clinic may terminate this agreement upon each anniversary date upon 60 days prior written notice and reimbursement in full to us of any outstanding unearned balance of the prepayments, provided that any such termination by the Clinic will not apply with respect to any work orders still in effect at the time of such termination.

We executed a clinical trial work order under the Clinic Agreement for an open-label, Phase I study of PD-L1.t-haNK for infusion in subjects with locally advanced or metastatic solid cancers. In July 2020, but effective on June 22, 2020, we and NantCell executed a clinical trial work order under our existing master agreement with the Clinic for an open-label, randomized, comparative Phase II study of NantCell's proprietary IL-15 superagonist ("N-803") and aldoxorubicin hydrochloride ("Aldoxorubicin") and our PD-L1.t-haNK with standard-of-care chemotherapy versus standard-of-care chemotherapy for patients with locally advanced or metastatic pancreatic cancer treated as first-line, second-line, or third-line or greater, in three separate cohorts, respectively.

During the nine months ended September 30, 2021, ImmunityBio executed multiple work orders under an existing master agreement with the Clinic. Under these work orders, the parties agreed that the Clinic would serve as a site for the following multi-site clinical trials:

- A Phase IB open-label study of the safety, reactogenicity, and immnogenicity of prophylactic vaccination with 2nd generation E1/E2B/E3-deleted adenoviral-COVID-19 in normal healthy volunteers;
- A Phase IB open-label study of the safety, reactogenicity, and immunogenicity of subcutaneously and orally administered prophylactic vaccination with 2nd generation E1/E2B/E3-deleted adenoviral-COVID-19 in normal healthy volunteers;
- A Phase I study of the safety, reactogenicity, and immunogenicity of subcutaneously- and orally-administered supplemental spike & nucleocapsid-targeted COVID-19 vaccine to enhance T cell-based immunogenicity in participants who have already received a vaccine authorized for emergency use;
- A Phase I study of the safety, reactogenicity, and immunogenicity of a supplemental spike & nucleocapsid-targeted COVID-19 vaccine to enhance T cell-based immunogenicity in participants who have already received a vaccine authorized for emergency use; and
- A Phase I open-label study of M-ceNK cells in subjects with locally advanced or metastatic solid tumors.

Based on a review of our updated clinical trial programs post-Merger, we updated our estimates of the investigator fees for the clinical trials currently underway or planned at the Clinic. As certain programs costs are excluded from and certain services are subject to credit adjustments under the Clinic Agreement, we determined the expected future fees for services to be performed are less than the carrying value of the prepaid asset on the condensed consolidated balance sheets. As a result, we partially wrote down the value of our prepayments under the Clinic Agreement and recorded approximately $1.9 million in *research and development expense*, on the condensed consolidated statements of operations for the nine months ended September 30, 2021. In addition, we reclassified $0.8 million of prepaid assets from *prepaid expenses and other current assets* to *other assets*, on the condensed consolidated balance sheets during the three months ended September 30, 2021 based on the additional time expected for them to be realized than initially estimated.

For the three months ended September 30, 2021 and 2020, we incurred $0.6 million and $0.2 million in *research and development expense*, on the condensed consolidated statements of operations related to the Clinic Agreement. For the nine months ended September 30, 2021 and 2020, we incurred $1.4 million and $0.4 million in *research and development expense*, on the condensed consolidated statements of operations related to the Clinic Agreement. As of September 30, 2021 and December 31, 2020, we owed the Clinic $0.1 million and $0.3 million, respectively, for services excluded from the Clinic Agreement. As of September 30, 2021 and December 31, 2020, we had prepaid balances related to the Clinic Agreement of $2.6 million and $4.7 million, respectively.

NantBio, Inc.

In March 2016, NantBio and the NCI entered into a CRADA. The initial five-year agreement covered NantBio and its affiliates, including us. Under the agreement, the parties collaborated on the preclinical and clinical development of proprietary recombinant NK cells and mAbs in monotherapy and combination immunotherapies. In each of the contractual years under the agreement, we paid $0.6 million to the NCI for services under the agreement. We recognized expenses related to this agreement ratably over a 12-month period for each funding year. This CRADA expired in March 2021. In November 2021, we entered into a third amendment to the 2015 NCI CRADA, which was effective as of March 16, 2021, and transferred the research plan from this expired CRADA into the research plan of the amended 2015 NCI CRADA. We accrued $0.4 million in *research and development expense*, on the condensed consolidated statements of operations related to the third amendment for the nine months ended September 30, 2021. See Note 6, *Collaboration and License Agreements—National Cancer Institute*, for further information.

In August 2018, we entered into a supply agreement with NantCancerStemCell, LLC (“NCSC”), a 60% owned subsidiary of NantBio (with the other 40% owned by Sorrento). Under this agreement, we agreed to supply VivaBioCell’s proprietary GMP-in-a-Box bioreactors and related consumables, made according to specifications mutually agreed to with both companies. The agreement has an initial term of five years and renews automatically for successive one-year terms unless terminated by either party in the event of material default upon prior written notice of such default and the failure of the defaulting party to remedy the default within 30 days of the delivery of such notice, or upon 90 days’ prior written notice by NCSC. We recognized revenue of $0.3 million for the nine months ended September 30, 2021. We recorded $0.1 million and $0.3 million of deferred revenue for bioreactors that were delivered but not installed as of September 30, 2021 and December 31, 2020, respectively. As of September 30, 2021 and December 31, 2020, we recorded $0.9 million in *due to related parties*, on the condensed consolidated balance sheets related to this agreement.

In 2018, we entered into a shared service agreement pursuant to which we are charged for services at cost, without mark-up or profit by NantBio, but including reasonable allocations of employee benefits that relate to the employees providing the services. In April 2019, we agreed with NantBio to transfer certain NantBio employees and associated research and development projects, comprising the majority of NantBio’s business, to the company. After the transfer, NantBio continued to make payments on our behalf for certain employee benefits and vendor costs related to the research and development projects that were transferred to the company. In addition, we settled certain employee bonuses and benefits that were accrued by NantBio for 2018. As of September 30, 2021 and December 31, 2020, we recorded a net receivable from NantBio of $1.3 million, which included $1.0 million for employee bonuses and $0.3 million for vendor costs we paid on behalf of NantBio.

NantOmics, LLC

In 2019, we made a strategic decision and transferred certain employees from NantOmics, a related party that is controlled by our Executive Chairman and Global Chief Scientific and Medical Officer, to the company. After the transfer, we settled certain employee bonuses and benefits that were accrued by NantOmics for the year ended December 31, 2020. We recorded no receivable and a $0.6 million receivable from NantOmics as of September 30, 2021 and December 31, 2020, respectively.

605 Doug St, LLC

In September 2016, we entered into a lease agreement with 605 Doug St, LLC, an entity owned by our Executive Chairman and Global Chief Scientific and Medical Officer, for approximately 24,250 rentable square feet in El Segundo, California, which has been converted to a research and development laboratory and a cGMP manufacturing facility. The lease runs from July 2016 through July 2023. We have the option to extend the lease for one additional three-year term through July 2026. The base rent is approximately $72,385 per month, with annual increases of 3% that began in July 2017. Lease expense of $0.7 million for this facility for the nine months ended September 30, 2021 and 2020, respectively, was recorded in *research and development expense*, on the condensed consolidated statements of operations. The prepaid rent for this lease was $0.1 million, which was included in *prepaid expenses and other current assets*, and the security deposit for this lease was $0.1 million, which was included in *other assets*, on the condensed consolidated balance sheets as of September 30, 2021.

Duley Road, LLC

In February 2017, Altor BioScience Corporation (succeeded by our wholly-owned subsidiary Altor BioScience, LLC), through its wholly-owned subsidiary, entered into a lease agreement with Duley Road, a related party that is indirectly controlled by our Executive Chairman and Global Chief Scientific and Medical Officer, for approximately 12,000 rentable square feet of office and cGMP manufacturing facility space in El Segundo, California. The lease term is from February 2017 through October 2024. We have the option to extend the initial term for two consecutive five-year periods through July 2034. The base rent is approximately $40,700 per month, with annual increases of 3% that began in November 2018. As of September 30, 2021 and December 31, 2020, we recorded rent payable to Duley Road of $1.2 million and $1.0 million, respectively. For the nine months ended September 30, 2021 and 2020, we recorded rent expense of $0.4 million and $0.4 million, respectively, which is reflected in *research and development expense*, on the condensed consolidated statements of operations.

Effective in January 2019, we entered into two lease agreements with Duley Road for a second building located in El Segundo, California. The first lease is for the first floor of the building with approximately 5,650 rentable square feet. The lease has a seven-year term commencing in September 2019. The second lease is for the second floor of the building with approximately 6,488 rentable square feet. The lease has a seven-year term commencing in July 2019. Both floors of the building are used for research and development and office space. We have options to extend the initial terms of both leases for two consecutive five-year periods through 2036. The base rent for the two leases is approximately $35,800 per month that increases at a rate of 3% per year.

As of September 30, 2021 and December 31, 2020, we recorded $0.9 million and $0.7 million of leasehold improvement payables, respectively, and $0.3 million and $1.1 million of lease-related payables to Duley Road, which were included in *due to related parties*, on the condensed consolidated balance sheets. For the nine months ended September 30, 2021 and 2020, we recorded $0.3 million and $0.2 million of rent expense for the two leases, respectively, which was included in *research and development expense*, on the condensed consolidated statements of operations. The security deposits for the leases totaled $0.1 million as of September 30, 2021, which were included in *other assets*, on the condensed consolidated balance sheets.

605 Nash, LLC

In February 2021, but effective on January 1, 2021, we entered into a lease agreement with 605 Nash, a related party, whereby we leased approximately 6,883 square feet (the "Initial Premises") in a two story mixed use building containing approximately 64,643 rentable square feet on 605-607 Nash Street in El Segundo, California. This facility is used primarily for pharmaceutical development and manufacturing purposes. The lease term commenced in January 2021 and expires in December 2027, and includes an option to extend the lease for one three-year term through December 2030. The base rent is approximately $20,300 per month with an annual increase of 3% on January 1 of each year during the initial term and, if applicable, during the option term. In addition, under the agreement, we are required to pay our share of estimated property taxes and operating expenses. We will receive a rent abatement for the first seven months, and a tenant improvement incentive of $0.3 million from the landlord for costs and expenses associated with the construction of tenant improvements for the Initial Premises. During the nine months ended September 30, 2021, we recorded rent expense of $0.2 million, which is reflected in *research and development expense*, on the condensed consolidated statements of operations.

In May 2021, but effective on April 1, 2021, we entered into an amendment to our Initial Premises lease with 605 Nash. The amendment expanded the leased square feet by approximately 57,760 rentable square feet (the "Expansion Premises"). The lease term of the Expansion Premises commenced in April 2021 and expires in March 2028, whereby the company has the option to extend the initial term for three years. Per the terms of the amendment, the term of the Initial Premises lease was extended for an additional three months and now expires on March 31, 2028. Base rent for the Expansion Premises is approximately $170,400 per month with annual increases of 3% on April 1 of each year. We are responsible for the build out of the facility space and associated costs. The amended lease provides for a rent abatement for the first seven months, and for a tenant improvement allowance of approximately $2.6 million for costs and expenses related to improvements made by us to the Expansion Premises. During the nine months ended September 30, 2021, we incurred $1.0 million of rent expense related to the Expansion Premises lease agreement. The security deposits for the leases total $0.2 million as of September 30, 2021, which are included in *other assets*, on the condensed consolidated balance sheets.

557 Doug St, LLC

On September 27, 2021, we entered into a Membership Interest Purchase Agreement with Nant Capital (the "Purchase Agreement"). Nant Capital is a related party controlled by Dr. Patrick Soon-Shiong. The Purchase Agreement transferred all outstanding membership interests in 557 Doug St, LLC from the company to Nant Capital. The only asset owned by 557 Doug St, LLC is the improved property located at 557 South Douglas Street, El Segundo, California with a building area of approximately 36,434 rentable square feet (the "Douglas Property").

The purchase price under the Purchase Agreement was $22.0 million, and after the offset prorated property taxes of $0.1 million, the net proceeds from the sale were $21.9 million. An independent appraisal of the Douglas Property (the "Appraisal") assigned the Douglas Property a value of $22.0 million. The net carrying value of the property was $20.5 million as of the closing date. We accounted for the transfer as a sale of an asset to an entity under common control, recorded the transfer at book value and recognized the excess of net consideration over carrying book value of $1.4 million as a capital contribution received from Nant Capital in *additional paid-in capital*, on the condensed consolidated statements of stockholders' deficit for the three and nine months ended September 30, 2021.

In September 2021, we entered into a lease agreement with Nant Capital under which we leased back 557 South Douglas Street for an initial lease term of seven years, which commenced on September 27, 2021. The monthly base rent under the lease is approximately $81,976 per month with an annual increase of 3% on October 1 of each year beginning in 2022 during the initial term and, if applicable, during the option term. For the first two years under the lease we will not be charged rent; we will begin paying rent on October 1, 2023 at the current monthly base rent. We will prepay the first month rent and security deposit totaling $0.2 million upon the execution of the lease. We have an option to extend the lease for two additional seven-year periods when the prior term expires. We have included the first option to extend the lease term for seven years as part of the initial lease term as it is reasonably certain that we will exercise the option, which implies lease expiration on September 30, 2035. The lease is classified as an operating lease, and as of September 30, 2021, future minimum lease obligations associated with the lease total $7.1 million, which will be recognized over the lease term.

Related-Party Notes Payable

As of September 30, 2021 and December 31, 2020, related-party notes payable consist of the following (in thousands):

Related-Party Notes Payable	Note Year	Outstanding Advances	Interest Rate	Total Notes and Interest Payable			
				September 30, 2021 (Unaudited)		December 31, 2020	
Nant Capital (1)	2015	$ 55,226	5.0 %	$ 60,632	(2)	$ 58,482	(2)
Nant Capital (1)	2020	50,000	6.0 %	53,009	(3)	50,764	(3)
Nant Capital (4)	2021	40,000	6.0 %	40,000	(4)	—	
NantMobile (1)	2019	55,000	3.0 %	57,930	(5)	56,660	(5)
NantWorks (1)	2017	43,418	5.0 %	53,402	(6)	51,546	(6)
NCSC (1)	2018	33,000	5.0 %	38,267	(7)	36,901	(7)
Total related-party notes payable		$ 276,644		$ 303,240		$ 254,353	

(1) All outstanding advances and accrued and unpaid interest is due and payable on September 30, 2025. Interest on related-party notes payable is compounded annually. We may prepay the outstanding principal at any time without premium, penalty or the prior consent of the issuer. All outstanding amounts under the notes become due and payable upon certain bankruptcy and insolvency-related events. There are no equity or equity-linked convertible rights related to these promissory notes.

(2) Accrued and unpaid interest on this note totaled $5.4 million and $3.3 million as of September 30, 2021 and December 31, 2020, respectively.

(3) Accrued and unpaid interest on this note totaled $3.0 million and $0.8 million as of September 30, 2021 and December 31, 2020, respectively.

(4) The outstanding principal is due and payable on September 30, 2025. Interest on this related-party note is compounded annually and payable quarterly commencing on June 30, 2021. We paid $1.4 million in interest on this loan during the nine months ended September 30, 2021. All outstanding amounts under the note become due and payable upon certain bankruptcy and insolvency-related events. There are no equity or equity-linked convertible rights related to this promissory note.

(5) Accrued and unpaid interest on this note totaled $2.9 million and $1.7 million as of September 30, 2021 and December 31, 2020, respectively.

(6) Accrued and unpaid interest on this note totaled $10.0 million and $8.1 million as of September 30, 2021 and December 31, 2020, respectively.

(7) Accrued and unpaid interest on this note totaled $5.3 million and $3.9 million as of September 30, 2021 and December 31, 2020, respectively.

9. Stockholders' Deficit

Merger with NantCell

Under the terms of the Merger Agreement, at the Effective Time of the Merger, each share of NantCell common stock, par value $0.001 per share, issued and outstanding immediately prior to the Effective Time, subject to certain exceptions as set forth in the Merger Agreement, was converted automatically into a right to receive 0.8190 newly issued shares of common stock, par value $0.0001 per share, resulting in the issuance of approximately 273.7 million shares of Company Common Stock. From and after the Effective Time, all of such NantCell shares ceased to be outstanding, were canceled and ceased to exist. At the Effective Time, each share of our common stock issued and outstanding immediately prior to the Effective Time, remained an issued and outstanding share of the combined company.

Since the Merger has been accounted for as a transaction between entities under common control, the outstanding shares presented on the condensed consolidated financial statements assume that NantCell outstanding common stock was converted into shares of Company Common Stock for all periods presented, and in connection with the conversion, those shares of common stock have been recorded at the company's par value of $0.0001 per share.

Stock Repurchases

No shares of our common stock were repurchased during the nine months ended September 30, 2021 and 2020 under the company's 2015 Share Repurchase Program. As of September 30, 2021, $18.3 million remained authorized for repurchase under the program.

Common Stock Reserved for Future Issuance

As of September 30, 2021, a total of approximately 11.3 million shares of common stock were reserved for issuance, including awards issued under the NC 2015 Plan that were outstanding immediately prior to the Effective Time of the Merger. At the Effective Time, all outstanding equity awards granted under the NC 2015 Plan to purchase NantCell common stock were converted into equity awards to purchase shares of Company Common Stock (using the Exchange Ratio of 0.8190), on the same terms and conditions as immediately prior to the Effective Time. As of September 30, 2021, there were approximately 5.8 million RSUs and 0.6 million stock options outstanding under the NC 2015 Plan, and there were no additional shares available for future grants.

Open Market Sale Agreement

On April 30, 2021, we entered into an Open Market Sale Agreement (the "Sale Agreement") with respect to an ATM offering program under which we may offer and sell, from time to time at our sole discretion, shares of our common stock, having an aggregate offering price of up to $500.0 million through our sales agent. We pay our sales agent a commission of up to 3.0% of the gross sales proceeds of any shares of our common stock sold through them under the Sale Agreement, and also have provided them with customary indemnification and contribution rights.

During the nine months ended September 30, 2021, we received net proceeds totaling $136.9 million from the issuance of 10,216,978 shares under the ATM, which we expect to use for general corporate purposes, including to progress our clinical development programs, fund other research and development activities, make capital expenditures and fund working capital. We may also use a portion of the net proceeds to license intellectual property or to make acquisitions or investments. As of September 30, 2021, we had $359.0 million available for future stock issuances under the ATM.

We are not obligated to sell any shares and may at any time suspend solicitation and offers under the Sale Agreement. The Sale Agreement may be terminated by us at any time given written notice to the sales agent for any reason or by the sales agent at any time by giving written notice to us for any reason or immediately under certain circumstances, and shall automatically terminate upon the issuance and sale of all of the shares.

10. Stock-Based Compensation

2015 Equity Incentive Plan

In July 2015, the company's board of directors adopted, and the company's stockholders approved, the 2015 Plan. Pursuant to the Merger, we assumed 7,121,110 RSUs (adjusted for the Exchange Ratio of 0.8190) issued under NantCell's equity incentive plan. As of September 30, 2021, the 2015 Plan is the only equity plan available for grant of equity awards to employees, directors and consultants of the company. As of September 30, 2021, a total of approximately 5.3 million shares were available for future grants under the 2015 Plan.

Stock-based Compensation

The following table presents stock-based compensation included on the condensed consolidated statements of operations (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
	(Unaudited)		(Unaudited)	
Stock-based compensation expense:				
Stock options	$ 1,815	$ 548	$ 9,780	$ 876
RSUs	12,025	166	37,221	640
	$ 13,840	$ 714	$ 47,001	$ 1,516
Stock-based compensation expense in operating expenses:				
Research and development	$ 4,928	$ 78	$ 16,361	$ 186
Selling, general and administrative	8,912	636	30,640	1,330
	$ 13,840	$ 714	$ 47,001	$ 1,516

On March 18, 2021, the Board of Directors approved to modify certain non-qualified stock options that were assumed in the Merger and otherwise would have expired during a period when the grantees were legally restricted from exercising these awards. The expiration date of these options was extended to thirty (30) days following the effective date of Post-Effective Amendment No. 1 on Form S-3 to our Form S-4 Registration Statement. We recorded an incremental stock-based compensation expense of approximately $2.7 million for this stock option modification.

On March 29, 2021, in connection with the resignation of two former independent directors, the Board of Directors approved the acceleration of vesting of 83,333 shares of unvested stock options of the former directors on the date of their respective resignations. The modified options are exercisable for ninety (90) days after the date of the modification. We recorded an incremental stock-based compensation expense of approximately $2.3 million for this stock option modification.

The stock option modifications were measured as the excess of the fair value of the modified awards over the fair value of the original awards immediately before the modifications. The incremental stock-based compensation was recorded in *selling, general and administrative expense*, on the condensed consolidated statements of operations during the nine months ended September 30, 2021.

Stock Options

The following table summarizes stock option activity and related information for the nine months ended September 30, 2021:

	Number of Options	Weighted-Average Exercise Price	Aggregate Intrinsic Value (in thousands)	Weighted-Average Remaining Contractual Life (in years)
Outstanding at December 31, 2020	4,996,284	$ 9.96	$ 29,746	4.7
Granted	1,069,940	$ 21.38		
Exercised	(1,747,962)	$ 3.90		
Expired/forfeited	(123,994)	$ 10.07		
Outstanding at September 30, 2021	4,194,268	$ 15.44	$ 10,434	5.5
Vested and exercisable at September 30, 2021	3,082,660	$ 13.78	$ 9,823	4.1

On February 5, 2021, the compensation committee of the board of directors of the company granted Richard Adcock, our chief executive officer, a stock option award (the "Option Grant") to purchase 750,000 shares of our common stock pursuant to our 2015 Plan. The Option Grant has an exercise price of $23.72 per share, the closing price as reported on the Nasdaq on the date of grant. In addition, the Option Grant shall vest according to the following vesting schedule: one-third of the Option Grant (i.e., 250,000 options) shall vest in equal installments on each of the first, second, and third anniversaries of the date of grant, such that all shares shall be fully vested on the third anniversary of the date of grant, subject to Mr. Adcock remaining in continuous service as defined in the 2015 Plan through the applicable vesting dates. This grant of equity awards to Mr. Adcock was made in connection with his appointment as chief executive officer of the company, which was effective as of October 26, 2020, and was modified from the recommended equity grant described in Mr. Adcock's offer of employment as of that date.

On May 3, 2021, the compensation committee of the board of directors of the company granted each of our newly-appointed independent directors a non-qualified stock option award to purchase 21,873 shares of our common stock pursuant to the 2015 Plan at an exercise price of $17.24 per share, the closing price as reported on the Nasdaq on the date of grant. The shares subject to the award will vest in three (3) equal installments on each of the first, second and third anniversary date of their appointment to the board of directors, such that the award will be fully vested on the third anniversary date in 2024, subject to the director continuing to be a service provider as defined in the 2015 Plan through the applicable vesting dates.

On June 10, 2021, the compensation committee of the board of directors of the company granted our Chairman and each of the independent members of our board of directors a non-qualified stock option award to purchase 26,064 shares of our common stock pursuant to the 2015 Plan at an exercise price of $14.91 per share, the closing price as reported on the Nasdaq on the date of grant. The shares subject to the award will vest 100% on the earlier to occur of June 10, 2022 or the date immediately preceding the 2022 annual meeting of stockholders, subject to the recipient continuing to be a service provider as defined in the 2015 Plan through the applicable vesting date. These grants were made in connection with the re-election of our Executive Chairman and Global Chief Scientific and Medical Officer, and independent directors to the company's board of directors at the 2021 annual meeting of stockholders.

As of September 30, 2021, the unrecognized compensation cost related to outstanding stock options was $13.7 million, which is expected to be recognized over a remaining weighted-average period of 2.2 years.

The total intrinsic value of stock options exercised during the nine months ended September 30, 2021 was $21.2 million. Cash proceeds received from stock option exercises during the nine months ended September 30, 2021 was $5.0 million.

As of December 31, 2020, a total of 4,345,497 vested and exercisable shares were outstanding.

The fair value of stock options issued was estimated at the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions:

	Nine Months Ended September 30, 2021
	(Unaudited)
Expected term	5.9 years
Risk-free interest rate	0.7 %
Expected volatility	101.0 %
Dividend yield	0.0 %
Weighted-average grant date fair value	$ 16.80

The expected term was estimated using the average of the contractual term and the weighted-average vesting term of the options. The risk-free interest rate was based on the U.S. Treasury's rates for U.S. Treasury zero-coupon bonds with maturities similar to those of the expected term of the award being valued. The expected volatility was estimated based on the historical volatility of our common stock. The assumed dividend yield was based on our expectation of not paying dividends in the foreseeable future.

Restricted Stock Units

The following table summarizes RSU activity during the nine months ended September 30, 2021:

	Number of Units	Weighted-Average Grant Date Fair Value
Nonvested balance at December 31, 2020	466,842	$ 2.52
Granted	8,351,301	$ 23.93
Vested	(621,364)	$ 17.62
Forfeited/canceled	(1,120,377)	$ 24.72
Nonvested balance at September 30, 2021	7,076,402	$ 22.95

As of September 30, 2021, there was $134.3 million of unrecognized stock-based compensation expense related to RSUs that is expected to be recognized over a weighted-average period of 3.7 years. The total intrinsic value of RSUs vested during the nine months ended September 30, 2021 was $10.7 million.

We may grant RSUs to both employees and directors of the company and to employees of related parties that provide shared services to the company under our shared services agreement with NantWorks as discussed in Note 8, *Related-Party Agreements*.

On February 5, 2021, the compensation committee of the board of directors of the company granted Mr. Adcock two awards totaling 400,000 RSUs (each an "RSU Award" and collectively, the "RSU Awards") of our common stock pursuant to the 2015 Plan. The RSU Awards are comprised of two separate awards, one settled by issuing 150,000 shares of our common stock and the other to be settled by issuing 250,000 shares of our common stock upon vesting. The first RSU Award vested immediately on the date of grant with the company retaining shares equal in value to the company's tax withholding obligations. The second RSU Award will vest according to the following schedule: one-third (i.e. 83,333) of the shares subject to the RSU Award shall vest in equal annual installments on each of the first, second and third anniversaries of the date of grant, such that all shares shall be fully vested on the third anniversary of the date of grant, subject to Mr. Adcock remaining in continuous service as defined in the 2015 Plan through the applicable vesting dates. This grant of equity awards to Mr. Adcock was made in connection with his appointment as chief executive officer of the company, which was effective as of October 26, 2020, and was modified from the recommended equity grant described in Mr. Adcock's offer of employment as of that date.

On March 4, 2021, prior to the Merger, NantCell awarded 7,121,110 RSUs (adjusted for the Exchange Ratio of 0.8190) to employees and consultants of NantCell and its affiliated companies, pursuant to the NC 2015 Plan. These RSU awards were subject to a performance condition in connection with a "Liquidity Event", defined as either (i) NantCell's registration of shares for issuance on a securities offering or (ii) the closing of a corporate transaction. In addition, the vesting of certain performance-based RSU grants accelerates upon obtaining approval by the FDA of a BLA or equivalent application for approval of Anktiva™ for use in the treatment of non-muscle-invasive bladder cancer. These performance-based RSUs are also subject to service conditions and are scheduled to cliff vest on the last date of each tranche as defined by the individual grant agreements. On March 9, 2021, we completed the Merger with NantCell, and the performance condition related to the Liquidity Event was met.

The fair value of the RSUs was estimated based on a third-party valuation as of the grant date of March 4, 2021 and was derived primarily from the estimated probabilities of the Merger close on March 9, 2021 and the other exit assumptions. Once the liquidity event related performance condition was met as of March 9, 2021 due to the Merger, compensation expense for these RSUs began to be recognized on a graded vesting attribution approach over the requisite service period for each participant, which ranges from six-month to seventy (70)-month vesting periods. During the nine months ended September 30, 2021, we recorded approximately $33.0 million of stock-based compensation expense related to these awards, of which approximately $16.6 million was recorded in *research and development expense* and approximately $16.4 million was recorded in *selling, general and administrative expense*, on the condensed consolidated statements of operations.

The RSUs awarded to employees and consultants of affiliated companies were accounted for as stock-based compensation in accordance with ASU 2018-07, *Compensation—Stock Compensation (Topic 718)*, as the compensation was in exchange for continued support or services expected to be provided to the company over the vesting periods under the NantWorks shared services agreement discussed in Note 8, *Related-Party Agreements*. We have evaluated the associated benefit of these awards to the affiliated companies under common control and determined that the benefit is limited to the retention of their employees. We estimated such benefit at the grant date fair value of $4.0 million and recorded $0.8 million of deemed dividends for the nine months ended September 30, 2021 in *additional paid-in capital*, on the condensed consolidated balance sheets, with a corresponding credit to stock compensation expense.

Warrants

In connection with the Merger, warrants issued to NantWorks, a related party, in connection with NantCell's acquisition of Altor were assumed by the company. After applying the Exchange Ratio at the Effective Time of the Merger, a total of 1,638,000 warrants with an exercise price of $3.24 per share were outstanding as of September 30, 2021. The fair value of $18.0 million assigned to the warrants will be recognized in equity upon achievement of a performance-based vesting condition pertaining to building manufacturing capacity to support supply requirements for one of our product candidates.

11. Income Taxes

On March 9, 2021, the company completed the Merger with NantCell. The Merger is accounted for as a transaction between entities under common control, and is considered a nontaxable transaction for U.S. income tax purposes, as it is intended to qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended.

The company is subject to taxation in the United States, various state, and foreign jurisdictions. Earnings from non-U.S. activities are subject to local country income tax. The company computes its quarterly income tax provision by using a forecasted annual effective tax rate and adjusts for any discrete items arising during the quarter. No tax benefit was provided for losses incurred in the United States, Italy, and South Korea because those losses are offset by a full valuation allowance.

The difference between the federal statutory tax rate of 21% and the company's 0% tax rate is due to losses from which the company cannot benefit.

The company is no longer subject to income tax examination by the U.S. federal, state or local tax authorities for years ended December 31, 2015 or prior; however, its tax attributes, such as net operating loss ("NOL") carryforwards and tax credits, are still subject to examination in the year they are used.

12. Subsequent Events

420 Nash, LLC

On September 27, 2021, we entered into a lease agreement with 420 Nash, LLC, a related party, whereby we leased an approximately 19,125 rentable square foot property located at 420 Nash Street, El Segundo, California, to be used primarily for the warehousing and storage of drug manufacturing supplies, products and equipment and ancillary office space.

Under the terms of the lease agreement, the lease term began on October 1, 2021 and expires on September 30, 2026. The base rent is approximately $38,250 per month with an annual increase of 3% on October 1 of each year beginning in 2022 during the initial term. The company is responsible for the payment of real property taxes, repairs and maintenance, improvements, insurance and operating expenses during the term of the lease. We will receive a rent abatement for the first month of the lease, and a one-time improvement allowance of $15,000 from the landlord that will be credited against base rent obligations for the second month of the lease.

The company has options to extend the lease term for two additional consecutive periods of five years each. At the beginning of each option term, the initial monthly base rent will be adjusted to market rent (as defined in the lease agreement) with an annual increase of 3% during the option term.

Joint Venture with Amyris, Inc.

During the fourth quarter of 2021, the company signed a binding term sheet to pursue a 50:50 joint venture arrangement with Amyris, Inc., a leading synthetic biotechnology company, to accelerate the commercialization of a next-generation COVID-19 vaccine utilizing IDRI’s RNA vaccine platform to which Amyris holds a license.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

Forward-Looking Statements

The following discussion and analysis should be read together with our condensed consolidated financial statements and the notes to those statements included elsewhere in this Quarterly Report on Form 10-Q. This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended ("Securities Act") and Section 21E of the Securities Exchange Act of 1934, as amended ("Exchange Act") that are based on our management's beliefs and assumptions and on information currently available to our management. The forward-looking statements are contained in this Management's Discussion and Analysis of Financial Condition and Results of Operations. Forward-looking statements include, but are not limited to:

- our ability to pioneer immunotherapy, harness the power of the innate immune system, implement precision cancer medicine and change the current paradigm of cancer care;
- our ability to implement and support our COVID-19 vaccine and therapeutic programs;
- any impact of the coronavirus pandemic, or responses to the pandemic, on our business, clinical trials or personnel;
- our expectations regarding the potential benefits of our strategy and technology;
- our expectations regarding the operation of our product candidates and related benefits;
- our ability to utilize multiple modes to induce cell death;
- our beliefs regarding the benefits and perceived limitations of competing approaches, and the future of competing technologies and our industry;
- details regarding our strategic vision and planned product candidate pipeline, including that we eventually plan to advance therapies for virally induced infectious diseases;
- our beliefs regarding the success, cost and timing of our product candidate development activities and current and future clinical trials and studies, including study design;
- our expectations regarding our ability to utilize the Phase I and II aNK and haNK clinical trials data to support the development of our product candidates, including our haNK, taNK, t-haNK, MSC and M-ceNK product candidates;
- our expectations regarding the development, application, commercialization, marketing, prospects and use generally of our product candidates, including Anktiva™, hAd5 constructs and aldoxorubicin;
- the timing or likelihood of regulatory filings or other actions and related regulatory authority responses, including any planned investigational new drug ("IND"), Biologics License Application ("BLA") or New Drug Application ("NDA") filings or pursuit of accelerated regulatory approval pathways or orphan drug status and Breakthrough Therapy designations;
- our ability to implement an integrated discovery ecosystem and the operation of that planned ecosystem, including being able to regularly add neoepitopes and subsequently formulate new product candidates;
- the ability and willingness of strategic collaborators, including certain affiliates of NantWorks, LLC ("NantWorks") to share our vision and effectively work with us to achieve our goals;
- the ability and willingness of various third parties to engage in research and development activities involving our product candidates, and our ability to leverage those activities;
- our ability to attract additional third-party collaborators;
- our expectations regarding the ease of administration associated with our product candidates;
- our expectations regarding the patient compatibility associated with our product candidates;
- our beliefs regarding the potential markets for our product candidates and our ability to serve those markets;
- our ability to produce an "off-the-shelf" therapy;

- our beliefs regarding the potential manufacturing and distribution benefits associated with our product candidates, and our ability to scale up the production of our product candidates;
- our plans regarding our manufacturing facilities and our belief that our manufacturing is capable of being conducted in-house;
- our belief in the potential of our antibody cytokine fusion proteins, vaccine technologies and NK-92 and M-ceNK cell therapy technology, and the fact that our business is based upon the success individually and collectively of our platforms;
- our antibody cytokine fusion proteins, vaccine technologies and NK-92 and M-ceNK cell therapy technology along with other product candidate families, will require significant additional clinical testing;
- even if we successfully develop and commercialize specific product candidates like our Anktiva™ or haNK and t-haNK, our ability to develop and commercialize our other product candidates either alone or in combination with other therapeutic agents;
- the ability to obtain and maintain regulatory approval of any of our product candidates, and any related restrictions, limitations and/or warnings in the label of any approved product candidate;
- our ability to commercialize any approved products;
- the rate and degree of market acceptance of any approved products;
- our ability to attract and retain key personnel;
- the accuracy of our estimates regarding our future revenue, as well as our future operating expenses, capital requirements and needs for additional financing;
- our ability to obtain funding for our operations, including funding necessary to complete further development and any commercialization of our product candidates;
- our ability to obtain, maintain, protect and enforce intellectual property protection for our product candidates and technology and not infringe upon, misappropriate or otherwise violate the intellectual property of others;
- the terms and conditions of licenses granted to us and our ability to license additional intellectual property relating to our product candidates and technology;
- the impact on us, if any, if the contingent value rights (“CVRs”) held by former Altor BioScience Corporation (“Altor”) stockholders become due and payable in accordance with their terms; and
- regulatory developments in the United States (“U.S.”) and foreign countries.

Forward-looking statements include statements that are not historical facts and can be identified by terms such as “anticipates,” “believes,” “could,” “seeks,” “estimates,” “expects,” “intends,” “may,” “plans,” “potential,” “predicts,” “projects,” “should,” “will,” “would,” or similar expressions and the negatives of those terms. In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this Quarterly Report on Form 10-Q, and although we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted a thorough inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely upon these statements.

Forward-looking statements involve known and unknown risks, uncertainties, and other factors that may cause our actual results, performance, or achievements to be materially different from any future results, performance, or achievements expressed or implied by the forward-looking statements. We discuss these risks in greater detail in Part II, Item 1A. “Risk Factors” of this Quarterly Report on Form 10-Q. Given these uncertainties, you should not place undue reliance on these forward-looking statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame. Also, forward-looking statements represent our management’s beliefs and assumptions only as of the date of this Quarterly Report on Form 10-Q.

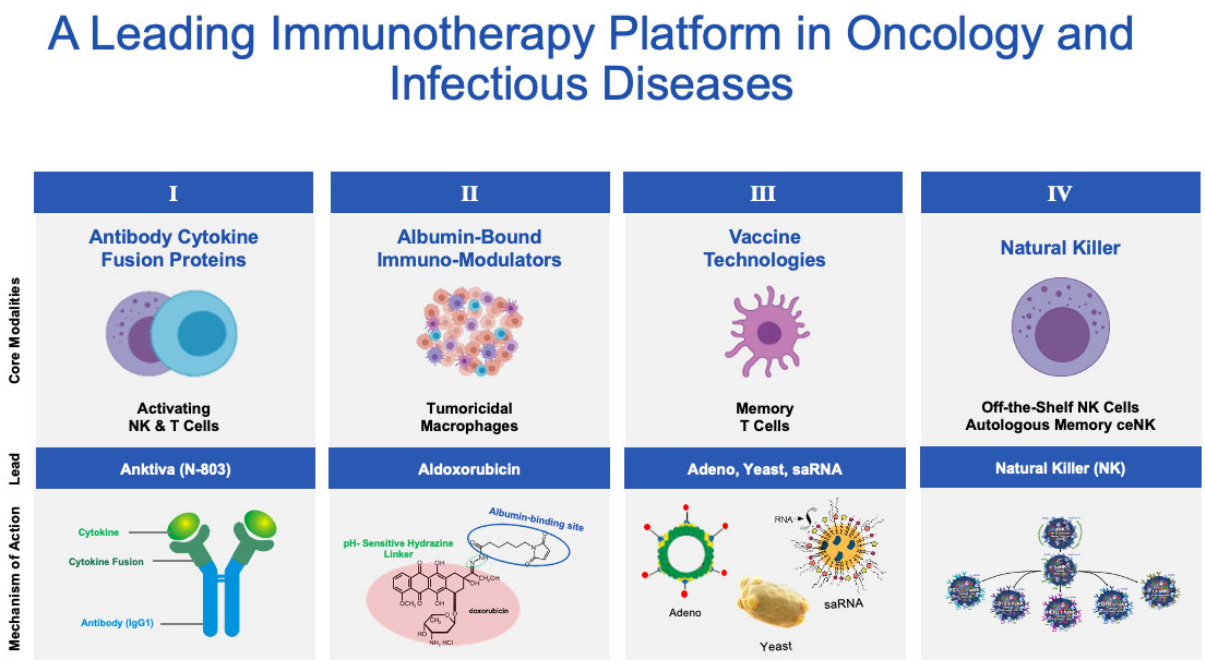
Except as required by law, we assume no obligation to update these forward-looking statements, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future. You should read this Quarterly Report on Form 10-Q completely and with the understanding that our actual future results may be materially different from what we expect.

This Quarterly Report on Form 10-Q contains references to our trademarks and trademarks belonging to other entities. Solely for convenience, trademarks and trade names referred to in this Quarterly Report on Form 10-Q, including logos, artwork and other visual displays, may appear without the ® or ™ symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the rights of the applicable licensor to these trademarks and trade names. We do not intend our use or display of other companies' trade names or trademarks to imply a relationship with, or endorsement or sponsorship of us, by any other companies.

In this Quarterly Report on Form 10-Q, "ImmunityBio," "the company," "the combined company," "we," "us," and "our" refer to ImmunityBio, Inc. and its subsidiaries.

Overview

We established ImmunityBio to advance next-generation immunotherapies and address unmet needs within the clinical fields of oncology and infectious disease. We are developing treatments based on a proprietary immunotherapy platform that is designed to overcome limitations of the current standards of T cell-based immunotherapies, including checkpoint inhibitors and CAR-T cells. Our platform is based on four key modalities: (1) activating natural killer ("NK"), and T cells using antibody cytokine fusion proteins, (2) activating tumoricidal macrophages using low-dose synthetic immuno-modulators, (3) generating memory T cells using vaccine candidates developed with our second-generation adenovirus ("hAd5"), yeast and saRNA technologies, and (4) off-the-shelf NK cells from the NK-92 cell line and memory-like cytokine-enriched NK cells ("M-ceNK") from allogenic and autologous donors.



ImmunityBio's immunotherapy pipeline includes an antibody cytokine fusion protein (an IL-15 superagonist (N-803) known as Anktiva™), an albumin-associated anthracycline synthetic immuno-modulator (aldoxorubicin), hAd5 and yeast vaccine technologies (targeting the novel strain of coronavirus disease ("SARS-CoV-2"), tumor-associated antigens and neoepitopes), off-the-shelf genetically engineered natural killer cell lines inducing cancer and virally infected cell death through a variety of concurrent mechanisms (including innate killing, antibody-mediated killing, and CAR-directed killing), patient specific NK cell product for cancer (M-ceNK), macrophage polarizing peptides, and bi-specific fusion proteins targeting CD20, PD-L1, TGF-b and IL-12. Our immunotherapy clinical pipeline consists of 20 actively recruiting clinical trials in Phase I, II, or III development. There are 13 active clinical trials in Phase II or III development across 12 indications in solid and liquid cancers (including bladder, pancreatic and lung cancers) and infectious diseases (including SARS-CoV-2 and the human immunodeficiency virus ("HIV")). We have an expansive clinical-stage pipeline and intellectual property portfolio with 16 first-in-human assets.

In December 2019, the U.S. Food and Drug Administration ("FDA") granted Breakthrough Therapy designation to Anktiva™ for bacillus Calmette-Guérin ("BCG") unresponsive non-muscle invasive bladder cancer carcinoma in situ ("CIS"). Based on patient readout data that was submitted with our application to obtain our Breakthrough Therapy designation, Anktiva™ achieved its primary endpoint of complete response rate at any time in the ongoing registrational Phase II/III trial. Other indications currently with registration-potential studies include BCG unresponsive papillary bladder cancer, lung cancer, and metastatic pancreatic cancer.

The Merger

On December 21, 2020, we and NantCell, Inc. (formerly known as ImmunityBio, Inc., a private company) ("NantCell") entered into an Agreement and Plan of Merger (the "Merger Agreement"), pursuant to which we and NantCell agreed to combine our businesses. The Merger Agreement provided that a wholly-owned subsidiary of the company would merge with and into NantCell (the "Merger"), with NantCell surviving the Merger as a wholly-owned subsidiary of the company.

On March 9, 2021, we completed the Merger pursuant to the terms of the Merger Agreement. Under the terms of the Merger Agreement, at the effective time of the Merger (the "Effective Time"), each share of NantCell common stock, par value $0.001 per share, issued and outstanding immediately prior to the Effective Time, subject to certain exceptions as set forth in the Merger Agreement, was converted automatically into a right to receive 0.8190 (the "Exchange Ratio") newly issued shares of common stock, par value $0.0001 per share, of the company ("Company Common Stock"), with cash paid in lieu of any fractional shares. At the Effective Time, each share of the company's common stock issued and outstanding immediately prior to the Effective Time, remained an issued and outstanding share of the combined company. At the Effective Time, each outstanding option, warrant or restricted stock unit to purchase NantCell common stock was converted using the Exchange Ratio into an option, warrant or restricted stock unit, respectively, on the same terms and conditions immediately prior to the Effective Time, to purchase shares of Company Common Stock.

Immediately following the Effective Time, the former stockholders of NantCell held approximately 71.5% of the outstanding shares of Company Common Stock and the stockholders of the company as of immediately prior to the Merger held approximately 28.5% of the outstanding shares of Company Common Stock. As a result of the Merger and immediately following the Effective Time, Dr. Patrick Soon-Shiong, our Executive Chairman and Global Chief Scientific and Medical Officer, and his affiliates beneficially owned, in the aggregate, approximately 81.8% of the outstanding shares of Company Common Stock. Following the consummation of the Merger, shares of the company's common stock were listed on the Nasdaq Global Select Market under the symbol "IBRX."

We incurred costs totaling $23.3 million in connection with the Merger, consisting of financial advisory, legal and other professional fees, of which $13.0 million was recorded during the nine months ended September 30, 2021.

Accounting Treatment of the Merger

The Merger represents a business combination pursuant to Financial Accounting Standards Board Accounting Standards Codification Topic 805-50, *Mergers*, which is accounted for as a transaction between entities under common control as Dr. Soon-Shiong and his affiliates were the controlling stockholders of both the company and NantCell for all of the periods presented in this report. As a result, all of the assets and liabilities of NantCell were combined with ours at their historical carrying amounts on the closing date of the Merger. We have recast our prior period financial statements to reflect the conveyance of NantCell's common shares as if the Merger had occurred as of the earliest date of the condensed consolidated financial statements presented in Item 1. "Financial Statements" of this Quarterly Report on Form 10-Q. All material intercompany accounts and transactions have been eliminated in consolidation.

Coronavirus Pandemic

In March 2020, the World Health Organization declared COVID-19 a pandemic. To date, our operations have not been significantly disadvantaged by the pandemic. However, we cannot at this time predict the specific extent, duration, or full impact that this pandemic may have on our financial condition and results of operations, including ongoing and planned clinical trials. More specifically, the pandemic may result in prolonged impacts that we cannot predict at this time and we expect that such uncertainties will continue to exist for the foreseeable future. The impact of the pandemic on our financial performance will depend on future developments, including the duration and spread of the outbreak, impact of potential variants and the related governmental advisories and restrictions. These developments and the impact of the ongoing pandemic on the financial markets and the overall economy are highly uncertain. If the financial markets and/or the overall economy are impacted for an extended period, our results may be adversely affected.

Given the unprecedented and continuously evolving nature of the pandemic, the future impact of these changes and potential changes on the company are unknown at this time. To date, we have seen no material adverse impact to our business from the pandemic. We anticipate, however, that enrollment of patients in certain studies will likely take longer than forecasted in prior Securities and Exchange Commission ("SEC") filings and that our clinical trials may require additional time to complete which would in turn impact the timeline in which we were previously forecasting BLA submissions of our product candidates and subsequent revenue generation. These factors have been accounted for in the company's anticipated upcoming milestones. During any such delays in our clinical trials, we will continue to incur fixed costs such as selling, general and administrative expenses and operating expenses related to our laboratory, Good Manufacturing Practice ("GMP") manufacturing, and office facilities.

Many of our office-based employees have been working from home since mid-March 2020. Essential staffing levels for our research and development operations remain in place, including maintaining key personnel in our laboratory and GMP manufacturing facilities. It is likely that the pandemic and resulting mitigation efforts could have an impact in the future on our third-party suppliers who manufacture laboratory supplies required for our in-house manufacturing process, which in turn could have an impact on having sufficient clinical product supply available for our clinical trials. We have addressed this in part by ensuring that we have sufficient supplies on hand to weather interruptions in our supply chain.

There is significant uncertainty about the progression and ultimate impact of the pandemic on our business and operations. While the pandemic did not materially impact our results during the periods presented in this Quarterly Report on Form 10-Q, we anticipate that it could impact our business in the future due to factors such as fewer patients accessing treatment for cancer.

Operating Results

To date, we have generated minimal revenue from non-exclusive license agreements related to our cell lines, the sale of our bioreactors and related consumables and grant programs. We have no clinical products approved for commercial sale and have not generated any revenue from therapeutic and vaccine product candidates that are under development. We have incurred net losses in each year since our inception and, as of September 30, 2021, we had an accumulated deficit of $1.9 billion. Our net losses attributable to ImmunityBio common stockholders were $255.5 million and $154.1 million for the nine months ended September 30, 2021 and 2020, respectively. Substantially all of our net losses resulted principally from costs incurred in connection with our ongoing clinical trials and operations, our research and development programs, and from selling, general and administrative costs associated with our operations, including stock-based compensation expense.

As of September 30, 2021, we had 538 employees. Personnel of related companies who provide corporate, general and administrative, manufacturing strategy, research and development, regulatory and clinical trial strategy and other support services under our shared services agreement with NantWorks are not included in this number. For additional information, see Note 8, *Related-Party Agreements*, of the "Notes to Unaudited Condensed Consolidated Financial Statements" that appears in Item 1. "Financial Statements" of this Quarterly Report on Form 10-Q. In anticipation of the commercialization of select drug candidates, we expect to continue to incur significant expenses and increasing operating losses for the foreseeable future, which may fluctuate significantly from quarter-to-quarter and year-to-year. See "*—Future Funding Requirements*" below for a discussion of our anticipated expenditures and sources of capital we expect to access to fund these expenditures.

Collaboration Agreements

As we continue the development of our pipeline, we anticipate that strategic collaborations with established biopharma companies and other research-based entities will become integral to our operations and the development of novel combination therapies. These collaborations would provide ImmunityBio with a range of opportunities to leverage our partners' expertise and capabilities to further expand the potential of our technologies and product candidates. We are currently pursuing this aspect of our business in seven clinical trials studying our IL-15 receptor agonist Anktiva™ in combination with complementary, approved therapies to determine if Anktiva™ may have broad potential to enhance the activity of those therapies, including therapeutic monoclonal antibodies and other standard-of-care therapeutics across a wide range of tumor types. We believe we are well positioned to become a leader in immunotherapy through the combined strength of our broad and vertically integrated platform and complementary strategic partnerships. We may also enter into supply arrangements for various investigational agents to be used in our clinical trials. See Note 6, *Collaboration and License Agreements*, of the "Notes to Unaudited Condensed Consolidated Financial Statements" that appears in Item 1. "Financial Statements" of this Quarterly Report on Form 10-Q for a more detailed discussion regarding our existing collaboration and license agreements.

Agreements with Related Parties

We conduct business with several affiliates under written and informal arrangements. Our Executive Chairman, Global Chief Scientific and Medical Officer and our principal stockholder, founded and has a controlling interest in NantWorks, which is a collection of companies in the healthcare and technology space. We have entered into arrangements with NantWorks, and certain affiliates of NantWorks, to facilitate the development of new immunotherapies for our product pipeline. Affiliates of NantWorks are also affiliates of the company due to the common control by and/or common ownership interest of our Executive Chairman and Global Chief Scientific and Medical Officer.

Related-Party Notes Payable

As of September 30, 2021, we have outstanding promissory notes with certain entities affiliated with Dr. Soon-Shiong in an aggregate amount of $303.2 million, including accrued interest. The notes bear interest at a per annum rate ranging from 3.0% to 6.0%. As of September 30, 2021, the notes provide that all outstanding principal is due and payable on September 30, 2025, and accrued and unpaid interest is payable on either the maturity date or, with respect to one of the notes, on a quarterly basis beginning June 30, 2021. We may prepay the outstanding amount of any advance under such notes, together with accrued and unpaid interest, at any time, in whole or in part, without premium or penalty.

Immuno-Oncology Clinic, Inc.

We entered into multiple agreements with Immuno-Oncology Clinic, Inc. (the "Clinic") to conduct clinical trials related to certain of our product candidates. The Clinic is a related party as it is owned by an officer of the company and NantWorks manages the administrative operations of the Clinic. Based on a review of our updated clinical trial programs post-Merger, we updated our estimates of the investigator fees for the clinical trials currently underway or planned at the Clinic. As certain programs costs are excluded from and certain services are subject to credit adjustments under the Clinic Agreement, we determined the expected future fees for services to be performed are less than the carrying value of the prepaid asset on the condensed consolidated balance sheets. As a result, we partially wrote down the value of our prepayments under the Clinic Agreement and recorded approximately $1.9 million in *research and development expense*, on the condensed consolidated statements of operations for the nine months ended September 30, 2021. In addition, we reclassified $0.8 million of prepaid assets from *prepaid expenses and other current assets* to *other current assets*, on the condensed consolidated balance sheets during the three months ended September 30, 2021 based on the additional time expected for them to be realized than initially estimated.

605 Nash, LLC

In February 2021, but effective on January 1, 2021, we entered into a lease agreement with 605 Nash, LLC, a related party, for a facility primarily used for pharmaceutical development and manufacturing purposes. In May 2021, but effective on April 1, 2021, we entered into an amendment to our lease agreement with 605 Nash, LLC.

557 Doug St, LLC

In September 2021, we entered into a sale transaction with Nant Capital, a related party, for a real estate property located at 557 South Douglas Street, El Segundo, California. We subsequently leased back the building for an initial seven-year lease term with an option to extend the lease for two additional seven-year periods.

See Note 8, *Related-Party Agreements*, of the "Notes to Unaudited Condensed Consolidated Financial Statements" that appears in Item 1. "Financial Statements" of this Quarterly Report on Form 10-Q for a more detailed discussion regarding our related-party agreements.

Components of our Results of Operations

Revenue

To date, we have generated minimal revenue from non-exclusive license agreements related to our cell lines, the sale of our bioreactors and related consumables and grant programs. We have no clinical products approved for commercial sale and have not generated any revenue from therapeutic and vaccine product candidates that are under development. If we fail to complete the development of our product candidates in a timely manner or fail to obtain regulatory approval for them, we may never be able to generate substantial future revenue.

Operating Expenses

We generally classify our operating expenses into research and development, and selling, general and administrative expenses. Personnel costs, including salaries, benefits, bonuses, and stock-based compensation expense comprise a significant component of our research and development, and selling, general and administrative expense categories. We allocate expenses associated with our facilities and information technology costs between these two categories, primarily based on the nature of each cost.

Research and Development

Research and development expense consists of expenses incurred while performing research and development activities to discover and develop our technology and product candidates. This includes conducting preclinical studies and clinical trials, manufacturing development efforts and activities related to regulatory filings for product candidates. We recognize research and development expenses as they are incurred. Our research and development expenses primarily consist of:

- clinical trial and regulatory-related costs;
- expenses incurred under agreements with investigative sites and consultants that conduct our clinical trials;
- expenses incurred under collaborative agreements;
- manufacturing and testing costs and related supplies and materials;
- employee-related expenses, including salaries, benefits, travel and stock-based compensation; and
- facility expenses dedicated to research and development.

We typically use our employee, consultant and infrastructure resources across our development programs. We track outsourced development costs by product candidate or development program, but we do not allocate personnel costs, other internal costs or external consultant costs to specific product candidates or development programs.

We expect our research and development expenses to continue to increase significantly for the foreseeable future as we advance our product candidates through clinical development, including the conduct of our ongoing and any future clinical trials.

The process of conducting clinical trials necessary to obtain regulatory approval is costly and time consuming. The successful development of product candidates is highly uncertain. At this time, we cannot reasonably estimate the nature, timing or costs required to complete the remaining development of any product candidates. This is due to the numerous risks and uncertainties associated with the development of product candidates.

The costs of clinical trials may vary significantly over the life of a project owing to, but not limited to, the following:

- per patient trial costs;
- the number of sites included in the clinical trials;
- the countries in which the clinical trials are conducted;
- the length of time required to enroll eligible patients;
- the number of patients that participate in the clinical trials;
- the number of doses that patients receive;
- the cost of comparative agents used in clinical trials;
- the drop-out or discontinuation rates of patients;
- potential additional safety monitoring or other studies requested by regulatory agencies;
- the duration of patient follow-up; and
- the efficacy and safety profile of the product candidate.

We do not expect any of our product candidates to be commercially available for the foreseeable future, if ever.

Selling, General and Administrative

Selling, general and administrative expense consists primarily of salaries and personnel-related costs, including employee benefits and any stock-based compensation, for employees performing functions other than research and development. This includes personnel in executive, finance, human resources, information technology, legal, and administrative support functions. Other selling, general and administrative expenses include facility-related costs not otherwise allocated to research and development expense, professional fees for auditing, tax and legal services, advertising costs, expenses associated with strategic business transactions and business development efforts, obtaining and maintaining patents, consulting costs, royalties and licensing costs, and costs of our information systems.

We expect that our selling, general and administrative expenses will increase for the foreseeable future as we expand operations, build out information systems and increase our headcount to support continued research activities and the development of our clinical programs. We have incurred and expect that we will continue to incur in the future, additional costs associated with operating as a public company, including costs to comply with stock exchange listing and SEC requirements, future funding efforts, corporate governance, internal controls, investor relations, disclosure and similar requirements applicable to public companies. Additionally, if and when we believe that a regulatory approval of a product candidate appears likely, we expect to incur significant increases in our selling, general and administrative expenses relating to the sales and marketing of the approved product candidate.

Other Income and Expense

Other income and expense consists primarily of interest income, interest expense, unrealized gains and losses on investments in equity securities, realized gains and losses on both debt and equity securities, and gains and losses on foreign currency transactions.

Income Taxes

The company is subject to taxation in the United States, various state, and foreign jurisdictions. Earnings from non-U.S. activities are subject to local country income tax. To date, we have not been required to pay U.S. federal income taxes or foreign income taxes because of our or our subsidiaries' current and accumulated net operating losses.

Results of Operations

Comparison of the three months ended September 30, 2021 and 2020

	Three Months Ended September 30,			
	2021	2020	$ Change	% Change
	(Unaudited, $ in thousands)			
Revenue	$ 66	$ 151	$ (85)	(56 %)
Operating expenses:				
Research and development (including amounts with related parties)	49,277	35,772	13,505	38 %
Selling, general and administrative (including amounts with related parties)	29,625	19,596	10,029	51 %
Impairment of intangible assets	—	10,660	(10,660)	(100 %)
Total operating expenses	78,902	66,028	12,874	19 %
Loss from operations	(78,836)	(65,877)	(12,959)	20 %
Other expense, net:				
Interest and investment (expense) income, net	(5,941)	149	(6,090)	(4087 %)
Interest expense (including amounts with related parties)	(3,614)	(2,226)	(1,388)	62 %
Other (expense) income, net (including amounts with related parties)	(38)	84	(122)	(145 %)
Total other expense, net	(9,593)	(1,993)	(7,600)	381 %
Loss before income taxes and noncontrolling interests	(88,429)	(67,870)	(20,559)	30 %
Income tax expense	—	1,700	(1,700)	(100 %)
Net loss	$ (88,429)	$ (66,170)	$ (22,259)	34 %

Research and Development Expense

Research and development expense increased $13.5 million during the three months ended September 30, 2021, as compared to the three months ended September 30, 2020. The increase in research and development expense was primarily driven by a $9.7 million increase in compensation expense, including a $4.9 million increase in personnel costs due to higher headcount to support our continued research and development efforts and a $4.8 million increase in stock compensation expense as a result of awards granted to new hires, a $2.5 million increase in license and research agreement costs, primarily driven by new license agreements entered into in the third quarter of 2021, a $1.9 million increase in facilities expense, primarily related to the expansion of our manufacturing facility in El Segundo, California during 2021, and a $1.5 million increase in consulting costs. These increases were partially offset by a $1.9 million reduction in laboratory supply expenses related to our COVID-19 programs and a $0.2 million decrease in other research and development costs.

We expect our research and development expense to increase significantly for the foreseeable future as we advance our product candidates through clinical development and conduct our ongoing and planned clinical trials.

Selling, General and Administrative Expense

Selling, general and administrative expense increased $10.0 million during the three months ended September 30, 2021, as compared to the three months ended September 30, 2020. The increase in selling, general and administrative expense was primarily attributable to a $9.5 million increase in compensation expense, including an $8.3 million increase in stock compensation expense driven awards granted to new hires and a $1.2 million increase in personnel costs related to higher headcount to support our business growth, and a $0.5 million increase in shared services needs with our growth.

Impairment of Intangible Assets

During the three months ended September 30, 2020, the company recorded an impairment charge totaling $10.7 million to write down the carrying value of indefinite-lived in-process research and development intangible assets associated with the acquisition of Receptome, LLC to zero in connection with the decision to discontinue certain programs based on results gathered from preclinical data.

Other Expense, Net

Other expense, net increased $7.6 million during the three months ended September 30, 2021, as compared to the three months ended September 30, 2020. The increase in other expense, net was mainly due to a $6.1 million increase in net unrealized losses related to our marketable equity securities, a $1.4 million increase in interest expense driven by higher related-party borrowings and a $0.1 million reduction in other income.

Comparison of the nine months ended September 30, 2021 and 2020

	Nine Months Ended September 30,			
	2021	2020	$ Change	% Change
	(Unaudited, $ in thousands)			
Revenue	$ 544	$ 752	$ (208)	(28 %)
Operating expenses:				
Research and development (including amounts with related parties)	144,205	96,151	48,054	50 %
Selling, general and administrative (including amounts with related parties)	107,345	47,436	59,909	126 %
Impairment of intangible assets	—	10,660	(10,660)	(100 %)
Total operating expenses	251,550	154,247	97,303	63 %
Loss from operations	(251,006)	(153,495)	(97,511)	64 %
Other expense, net:				
Interest and investment income, net	2,826	1,213	1,613	133 %
Interest expense (including amounts with related parties)	(10,359)	(6,238)	(4,121)	66 %
Other income, net (including amounts with related parties)	252	1,269	(1,017)	(80 %)
Total other expense, net	(7,281)	(3,756)	(3,525)	94 %
Loss before income taxes and noncontrolling interests	(258,287)	(157,251)	(101,036)	64 %
Income tax expense	(8)	1,637	(1,645)	(100 %)
Net loss	$ (258,295)	$ (155,614)	$ (102,681)	66 %

Research and Development Expense

Research and development expense increased $48.1 million during the nine months ended September 30, 2021, as compared to the nine months ended September 30, 2020. The increase in research and development expense was primarily driven by a $25.0 million increase in compensation expense, including a $16.2 million increase in stock compensation expense due to new grants issued to new hires and executives and an $8.8 million increase in personnel costs due to higher headcount in support of our continued research and development efforts, a $4.6 million increase in license and research agreement costs, a $4.5 million increase in clinical trial expenses and regulatory costs related to our Anktiva™ and COVID-19 programs, including a $1.9 million expense associated with the write down of a prepaid asset with the Clinic, a $4.5 million increase in quality control and research and development-related technology expense, a $4.3 million increase in facilities expense, primarily related to the expansion of our manufacturing facility in El Segundo, California during 2021 and increased maintenance costs at our various facilities, a $2.8 million increase in consulting costs, a $1.5 million increase in shared services to support our growth, and a $0.9 million increase in laboratory supply expenses related to our COVID-19 programs ramp up and NK-92 and M-ceNK cell therapy research.

We expect our research and development expense to increase significantly for the foreseeable future as we advance our product candidates through clinical development and conduct our ongoing and planned clinical trials.

Selling, General and Administrative Expense

Selling, general and administrative expense increased $59.9 million during the nine months ended September 30, 2021, as compared to the nine months ended September 30, 2020. The increase in selling, general and administrative expense was primarily attributable to a $31.9 million increase in compensation expense, including a $29.3 million increase in stock compensation expense driven by awards granted to new hires and executives and option modifications resulting in incremental stock-based compensation expense in 2021 and a $2.6 million increase in salaries and bonuses related to higher headcount needed to support our business activities, a $24.9 million increase in professional services fees related to merger costs, SOX compliance, combined company audit, recruitment and business growth strategy, various legal matters, and new system implementations, and a $3.3 million increase in insurance costs, primarily due to higher directors' and officers' insurance renewal rates and increased insurance coverage. These increases were partially offset by a $0.2 million decrease in other general and administrative expenses.

Impairment of Intangible Assets

During the nine months ended September 30, 2020, the company recorded an impairment charge totaling $10.7 million to write down the carrying value of indefinite-lived in-process research and development intangible assets associated with the acquisition of Receptome, LLC to zero in connection with the decision to discontinue certain programs based on results gathered from preclinical data.

Other Expense, Net

Other expense, net increased $3.5 million during the nine months ended September 30, 2021, as compared to the nine months ended September 30, 2020. The increase was due to a $4.1 million increase in interest expense driven primarily by higher related-party borrowings and a $1.0 million increase in other expense, which were partially offset by a $1.6 million increase in interest and investment income, driven primarily by a $1.9 million increase in net unrealized gains related to our marketable equity securities, a $0.5 million decrease in interest income, and a $0.2 million increase in realized gains from the sale of equity investments.

Liquidity and Capital Resources

Sources of Liquidity

Our principal sources of liquidity are our existing cash, cash equivalents, and marketable securities. We have historically invested our cash primarily in investment grade short- to intermediate-term corporate debt securities, commercial paper, government-sponsored securities, U.S. treasury securities, and foreign government bonds and classify these investments as available-for-sale. Certain of these investments are subject to general credit, liquidity and other market risks. The general condition of the financial markets and the economy may increase those risks and may affect the value and liquidity of investments and restrict our ability to access the capital markets.

As of September 30, 2021, we had cash and cash equivalents, and marketable securities of $81.2 million compared to $97.0 million as of December 31, 2020. On April 30, 2021, we entered into an Open Market Sale Agreement (the "Sale Agreement") with respect to an at-the-market (the "ATM") offering program under which we may offer and sell, from time to time at our sole discretion, shares of our common stock, having an aggregate offering price of up to $500.0 million through our sales agent. For the nine months ended September 30, 2021, we received net proceeds totaling $136.9 million from the issuance of 10,216,978 shares under the ATM, which we expect to use for general corporate purposes, including to progress our clinical development programs, fund other research and development activities, make capital expenditures and fund working capital. We may also use a portion of the net proceeds to license intellectual property or to make acquisitions or investments. As of September 30, 2021, we had $359.0 million available for future stock issuances under the ATM.

In order to complete the development of our current product candidates, and implement our business plan, we will require substantial additional funding. Furthermore, changing circumstances may cause us to increase our spending significantly faster than we currently anticipate, and we may need to raise even greater amounts of funds sooner if we choose to expand more rapidly than we presently anticipate. Moreover, our fixed expenses such as rent and other contractual commitments are substantial and are expected to increase in the future.

Uses of Liquidity

In addition to the cash used to fund our operating activities discussed in "*—Future Funding Requirements*" below, we will require cash to settle the following obligations:

As of September 30, 2021, we had related-party notes payable together with accrued interest thereon of $303.2 million compared to $254.4 million as of December 31, 2020. During the nine months ended September 30, 2021, we received a $40.0 million advance pursuant to a related-party promissory note. Such notes bear interest at 3.0% to 6.0% per year and may be prepaid by us without penalty. The notes allow for additional advances as we may request with the consent of the applicable lender. With the exception of interest on the recent $40.0 million advance, all outstanding principal and accrued and unpaid interest on these notes are due and payable on September 30, 2025.

In connection with our acquisition of Altor, we issued CVRs under which we have agreed to pay the prior stockholders of Altor approximately $304.0 million upon successful approval of the BLA, or foreign equivalent, for Anktiva™ by December 31, 2022 and approximately $304.0 million upon the first calendar year prior to December 31, 2026 in which worldwide net sales of Anktiva™ exceed $1.0 billion (with payments payable in cash or shares of our common stock or a combination thereof). Dr. Soon-Shiong and his related party hold approximately $279.5 million in the aggregate of CVRs and they have both irrevocably agreed to receive shares of common stock in satisfaction of their CVRs. We may need to seek additional sources of capital to satisfy the CVR obligations if they are achieved.

Cash Flows

The following table sets forth our primary sources and uses of cash for periods indicated:

	Nine Months Ended September 30,	
	2021	2020
	(Unaudited, in thousands)	
Cash (used in) provided by:		
Operating activities	$ (202,780)	$ (114,120)
Investing activities	52,916	(27,357)
Financing activities	179,490	150,434
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	(17)	(73)
Net change in cash, cash equivalents, and restricted cash	$ 29,609	$ 8,884

Operating Activities

For the nine months ended September 30, 2021, net cash used in operating activities of $202.8 million consisted of a net loss of $258.3 million and $12.3 million of cash used in net working capital changes, partially offset by $67.8 million in adjustments for non-cash items. The changes in net working capital consisted primarily of decreases of $4.8 million in other assets, $4.7 million with related parties, $3.6 million in operating lease liabilities and $0.2 million in accounts payable, partially offset by increases of $0.6 million in accrued expenses and other liabilities and $0.4 million in prepaid and other current assets. Adjustments for non-cash items primarily consisted of $47.0 million in stock compensation expense, $10.6 million in depreciation and amortization expense, $9.1 million in non-cash interest related primarily to related-party promissory notes, $3.5 million in non-cash lease expense related to operating lease right-of-use assets, and $0.3 million in amortization of net premiums and discounts on marketable debt securities, reduced by $2.4 million in unrealized gains on equity securities driven primarily by an increase in the value of our investments, $0.2 million in realized gains on sales of equity securities, and a $0.1 million change in the fair value of contingent consideration.

For the nine months ended September 30, 2020, net cash used in operating activities of $114.1 million consisted of a net loss of $155.6 million, partially offset by $28.2 million in adjustments for non-cash items and $13.3 million of cash provided by net working capital changes. Adjustments for non-cash items primarily consisted of an impairment of intangible assets totaling $10.7 million, $10.5 million in depreciation and amortization, $5.7 million in non-cash interest items, $3.4 million in non-cash lease expense related to operating lease right-of-use assets, $1.5 million in stock compensation expense and $0.4 million in amortization of net premiums and discounts on marketable debt securities, partially offset by a $2.7 million change in deferred tax liability, an $0.8 million change in the fair value of contingent consideration and a $0.5 million unrealized gain on equity securities. The changes in net working capital consisted primarily of increases related to $11.2 million in accrued expenses and other liabilities, $7.3 million in accounts payable and $4.7 million with related parties, partially offset by decreases related to $6.8 million in prepaid expenses and other current assets and $3.1 million in operating lease liabilities.

We have historically experienced negative cash flows from operating activities, with such negative cash flows likely to continue for the foreseeable future.

Investing Activities

For the nine months ended September 30, 2021, net cash provided by investing activities was $52.9 million, which included cash inflows of $58.3 million from maturities and sales of marketable debt and equity securities and $20.5 million in net proceeds from sales of property, plant and equipment, mainly due to the sale of 557 Doug St, LLC, partially offset by $23.2 million of purchases of property, plant and equipment and $2.7 million of purchases of marketable debt securities. Our investments in property, plant and equipment are primarily related to acquisitions of equipment that will be used for the manufacturing of our product candidates and expenditures related to the build out of our manufacturing facilities.

For the nine months ended September 30, 2020, net cash used in investing activities was $27.4 million, which included $85.7 million of purchases of marketable debt securities and $2.4 million of purchases of property, plant and equipment, partially offset by cash inflows of $60.7 million from maturities and sales of marketable debt securities.

We expect to accelerate our capital spending as we scale our GMP manufacturing capabilities, which will require significant capital for the foreseeable future.

Financing Activities

For the nine months ended September 30, 2021, net cash provided by financing activities was $179.5 million, which consisted of $137.0 million in net proceeds from the ATM offering, $40.0 million in proceeds from issuances of related-party promissory notes, $5.1 million in proceeds from exercises of stock options and a $1.4 million capital contribution related to the sale of 557 Doug St, LLC to an entity under common control. Net cash used in financing activities consisted of $3.6 million related to net share settlement of vested RSUs for payment of payroll tax withholding and a $0.4 million payment for contingent consideration.

For the nine months ended September 30, 2020, net cash provided by financing activities was $150.4 million, which consisted primarily of $86.3 million in net proceeds from an equity offering, $63.7 million in proceeds from issuances of related-party promissory notes and $0.9 million in proceeds from exercises of stock options, partially offset by $0.5 million related to net share settlement of vested RSUs for payment of payroll tax withholding.

Future Funding Requirements

To date, we have generated minimal revenue, and we have no clinical products approved for commercial sale and have not generated any revenue from therapeutic and vaccine product candidates that are under development. We do not expect to generate significant revenue unless and until we obtain regulatory approval of and commercialize any of our product candidates, and we do not know when, or if, this will occur. In addition, we expect our expenses to significantly increase in connection with our ongoing development activities, particularly as we continue the research, development and clinical trials of, and seek regulatory approval for, our product candidates. We have also incurred and expect that we will continue to incur in the future additional costs associated with operating as a public company as well as costs related to future fundraising efforts. In addition, subject to obtaining regulatory approval of our product candidates, we expect to incur significant commercialization expenses for product sales, marketing, manufacturing and distribution. We anticipate that we will need substantial additional funding in connection with our continuing operations. We expect that our expenses will increase substantially if and as we:

- continue research and development, including preclinical and clinical development of our existing product candidates;
- potentially seek regulatory approval for our product candidates;
- seek to discover and develop additional product candidates;
- establish a commercialization infrastructure and scale up our manufacturing and distribution capabilities to commercialize any of our product candidates for which we may obtain regulatory approval;
- seek to comply with regulatory standards and laws;
- maintain, leverage and expand our intellectual property portfolio;
- hire clinical, manufacturing, scientific and other personnel to support our product candidates' development and future commercialization efforts;
- add operational, financial and management information systems and personnel; and
- incur additional legal, accounting and other expenses in operating as a public company.

As a result of continuing anticipated operating cash outflows, we believe that substantial doubt exists regarding our ability to continue as a going concern without additional funding or financial support. However, we believe our existing cash, cash equivalents, and investments in marketable securities, together with capital to be raised through equity offerings (including the ATM) and our potential ability to borrow from affiliated entities, will be sufficient to fund our operations through at least the next 12 months following the issuance date of the condensed consolidated financial statements based primarily upon our Executive Chairman and Global Chief Scientific and Medical Officer's intent and ability to support our operations with additional funds, including loans from affiliated entities, as required, which we believe alleviates such doubt. We may also seek to sell additional equity, through one or more follow-on public offerings, or in separate financings, or obtain a credit facility. However, we may not be able to secure such financing in a timely manner or on favorable terms. Without additional funds, we may choose to delay or reduce our operating or investment expenditures. Further, because of the numerous risks and uncertainties associated with the development and commercialization of our product candidates, we may need additional funds to meet our needs sooner than planned.

We will need to obtain additional financing to fund our future operations, including completing the development and commercialization of our product candidates. Changing circumstances may cause us to increase our spending significantly faster than we currently anticipate and we may need to raise additional funds sooner than we presently anticipate. Moreover, research and development and our operating costs and fixed expenses such as rent and other contractual commitments, including those for our research collaborations, are substantial and are expected to increase in the future.

Our future funding requirements will depend on many factors, including, but not limited to:

- progress, timing, number, scope and costs of researching and developing our product candidates and our ongoing, planned and potential clinical trials;
- time and cost of regulatory approvals;
- our ability to successfully commercialize any product candidates, if approved and the costs of such commercialization activities;
- revenue from product candidates that we may commercialize, if any, including the selling prices for such potential products and the availability of adequate third-party coverage and reimbursement for patients;
- cost of building, staffing and validating our own manufacturing facilities in the United States, including having a product candidate successfully manufactured consistent with FDA and European Medicines Agency regulations;
- terms, timing and costs of our current and any potential future collaborations, business or product acquisitions, CVRs, milestones, royalties, licensing or other arrangements that we have established or may establish;
- time and cost necessary to respond to technological, regulatory, political and market developments; and
- costs of filing, prosecuting, maintaining, defending and enforcing any patent claims and other intellectual property rights.

Unless and until we can generate a sufficient amount of revenues, we may finance future cash needs through public or private equity offerings, license agreements, debt financings, collaborations, strategic alliances and marketing or distribution arrangements. However, we may be unable to raise additional funds or enter into such other arrangements when needed on favorable terms, or at all, including but not limited to the offering, issuance and sale by us of up to a maximum aggregate amount of $500.0 million of our common stock that may be issued and sold under the ATM. See Note 9, *Stockholders' Deficit*, of the "Notes to Unaudited Condensed Consolidated Financial Statements" that appear in Item 1. "Financial Statements" of this Quarterly Report on Form 10-Q.

To the extent that we raise additional capital through the sale of equity or convertible debt securities including through the ATM or other offerings, your ownership interest will be diluted, and the terms may include liquidation or other preferences that adversely affect your rights as a stockholder. The incurrence of additional indebtedness would result in increased fixed payment obligations and could involve certain restrictive covenants, such as limitations on our ability to incur additional debt, limitations on our ability to acquire or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business. If we raise additional funds through strategic partnerships and alliances and licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies or product candidates, or grant licenses on terms unfavorable to us. We have no committed source of additional capital and if we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we may be required to delay or reduce the scope of or eliminate one or more of our research or development programs or our commercialization efforts. Our current license and collaboration agreements may also be terminated if we are unable to meet the payment obligations under those agreements. As a result, we may seek to access the public or private capital markets whenever conditions are favorable, even if we do not have an immediate need for additional capital at that time.

Contractual Obligations, Commitments and Contingencies

Contractual Obligations and Commitments

See Note 7, *Commitments and Contingencies – Lease Arrangements*, and Note 8, *Related-Party Agreements*, of the "Notes to Unaudited Condensed Consolidated Financial Statements" that appear in Item 1. "Financial Statements" of this Quarterly Report on Form 10-Q.

Contingencies

From time to time, we may be involved in various claims and legal proceedings relating to claims arising out of our operations. We are not currently a party to any legal proceedings that, in the opinion of our management, are likely to have a

material adverse effect on our business. We are aware of complaints that have been filed regarding the Merger, but we have not been served with any of such complaints. If we are served with any such complaints, we will assess at that time any contingencies for which we may need to reserve. 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.

Off-Balance Sheet Arrangements

During the periods presented, we did not have, nor do we currently have, any off-balance sheet arrangements as defined under SEC rules.

Critical Accounting Policies and Significant Judgments

In the Notes to Combined Consolidated Financial Statements included in the Combined Consolidated Financial Statements of ImmunityBio, Inc. as of December 31, 2020 and December 31, 2019 (including NantCell, Inc.) filed as Exhibit 99.2 and the Management's Discussion and Analysis of Financial Condition and Results of Operations of ImmunityBio, Inc. filed as Exhibit 99.3 to our Current Report on Form 8-K/A filed with the SEC on April 22, 2021, we have disclosed those accounting policies that we consider to be significant in determining our results of operations and financial condition. There have been no material changes to those policies that we consider to be significant since the filing of our Current Report on Form 8-K/A on April 22, 2021. The accounting principles used in preparing our condensed consolidated financial statements conform in all material respects with accounting principles generally accepted in the United States of America ("U.S. GAAP").

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses for the reporting period. On an ongoing basis, we evaluate our estimates, including those related to the valuation of equity-based awards, deferred income taxes and related valuation allowances, preclinical and clinical trial accruals, impairment assessments, contingent value right measurement and assessments, the measurement of right-of-use assets and lease liabilities, useful lives of long-lived assets, loss contingencies, fair value measurements, and the assessment of our ability to fund our operations for at least the next 12 months from the date of issuance of these financial statements. We base our estimates on historical experience and on various other market-specific and relevant assumptions that we believe to be reasonable under the circumstances. Estimates are assessed each period and updated to reflect current information, such as the economic considerations related to the impact that the ongoing coronavirus pandemic could have on our significant accounting estimates. Actual results could differ from those estimates.

Stock-Based Compensation

We account for stock-based compensation under the provisions of FASB ASC Topic 718, *Compensation—Stock Compensation* ("ASC 718"). We measure the fair value of an equity-classified award at the grant date and recognize the stock-based compensation expense over the period of vesting on the straight-line basis for our outstanding share awards that do not contain a performance condition. For awards subject to performance-based vesting conditions, we assess the probability of the individual milestones under the award being achieved and stock-based compensation expense is recognized over the service period using the graded vesting method once management believes the performance criteria is probable of being met. For awards with service or performance conditions, we recognize the effect of forfeitures in compensation cost in the period that the award was forfeited.

Recent Accounting Pronouncements

Refer to Note 2, *Summary of Significant Accounting Policies*, of the "Notes to Unaudited Condensed Consolidated Financial Statements" that appears in Item 1. "Financial Statements" of this Quarterly Report on Form 10-Q for a discussion of recent accounting pronouncements or changes in accounting pronouncements that are of significance, or potential significance, to us.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

Financial market risks related to interest rates, equity investments, foreign currency exchange rates and inflation are described in the Management's Discussion and Analysis of Financial Condition and Results of Operations of ImmunityBio, Inc. filed as Exhibit 99.3 to our Current Report on Form 8-K/A filed with the SEC on April 22, 2021. There have been no material changes to such financial market risks as of the date of this Quarterly Report on Form 10-Q. We do not currently anticipate any other near-term changes in the nature of our financial market risk exposures or in management's objectives and strategies with respect to managing such exposures.

ITEM 4. CONTROLS AND PROCEDURES.

Evaluation of Disclosure Controls and Procedures

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives of ensuring that information we are required to disclose in the reports we file or submit under the Exchange Act is accumulated and communicated to our management, including our chief executive officer ("CEO") and chief financial officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosures, and is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. There is no assurance that our disclosure controls and procedures will operate effectively under all circumstances.

Management, with the participation of our CEO and CFO, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2021. The term "disclosure controls and procedures," as defined in Rule 13a-15(e) of the Exchange Act means controls and other procedures of a company that are designed to provide reasonable assurance that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to provide reasonable assurance that information required to be disclosed is accumulated and communicated to our management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their desired control objectives, and management necessarily is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of September 30, 2021, our CEO and CFO have concluded that, as of September 30, 2021, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) during the fiscal quarter ended September 30, 2021, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. However, as a result of the Merger, our internal control over financial reporting may change. Our process for evaluating controls and procedures is continuous and encompasses constant improvement of the design and effectiveness of established controls and procedures and the remediation of any deficiencies, which may be identified during this process. As of December 31, 2021, we will no longer qualify as a "non-accelerated filer." We have initiated the process of engaging and coordinating with our independent registered public accounting firm to perform an audit of, and give an opinion on, our internal control over financial reporting for the annual period ending December 31, 2021.

Inherent Limitations on Effectiveness of Controls

Management recognizes that 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 or error, 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.

PART II—OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS.

From time to time, we may be involved in various claims and legal proceedings relating to claims arising out of our operations. We are not currently a party to any legal proceedings that, in the opinion of our management, are likely to have a material adverse effect on our business. We are aware of complaints that have been filed regarding the Merger, but we have not been served with any of such complaints. If we are served with any such complaints, we will assess at that time any contingencies for which we may need to reserve. 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.

See Note 7, *Commitments and Contingencies—Litigation*, of the "Notes to Unaudited Condensed Consolidated Financial Statements" included in Part I, Item 1. "Financial Statements" of this Quarterly Report on Form 10-Q for a discussion of legal matters.

ITEM 1A. RISK FACTORS.

Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below, any of which may be relevant to decisions regarding an investment in or ownership of our stock. The occurrence of any of these risks could have a significant adverse effect on our reputation, business, financial condition, results of operations, growth and ability to accomplish our strategic objectives. We have organized the description of these risks into groupings in an effort to enhance readability, but many of the risks interrelate or could be grouped or ordered in other ways, so no special significance should be attributed to the groupings or order below.

On March 9, 2021, we completed the merger with ImmunityBio, Inc., a private company referred to below as "ImmunityBio." After the completion of this merger, we (formerly known as NantKwest, Inc.) changed our name to ImmunityBio, Inc., and references below to "the company," "the combined company," "we," "us," and "our" refer to ImmunityBio, Inc. and its subsidiaries.

Risk Factor Summary

Risks Related to Our Limited Operating History, Financial Condition and Capital Requirements

- We will need additional financing to fund our operations and complete the development and commercialization of our various product candidates, and if we are unable to obtain such financing when needed, or on acceptable terms, we may be unable to complete the development and commercialization of our product candidates. Raising additional capital may cause dilution to our stockholders, restrict our operations or require us to relinquish rights to our technologies or product candidates.
- Our debt could adversely affect our cash flows and limit our flexibility to raise additional capital.
- Our businesses may not be integrated successfully, or such integration may be more difficult, time consuming or costly than expected. Operating costs, customer loss and business disruption, including difficulties in maintaining relationships with employees, customers, suppliers or vendors, may be greater than expected for the combined company. Revenues may be lower than expected for the combined company.
- We are a clinical-stage biopharmaceutical company with a limited operating history and no products approved for commercial sale. We have a history of operating losses, and we expect to continue to incur losses and may never be profitable, which together with our limited operating history, makes it difficult to assess our future viability.
- We invest our cash on hand in various financial instruments, which are subject to risks that could adversely affect our business, results of operations, liquidity and financial condition.

Risks Related to Our Business and Industry

- We will be substantially dependent on the success of our product candidates and cannot guarantee that these product candidates will successfully complete development, receive regulatory approval or be successfully commercialized.
- We may develop product candidates in combination with other therapies, which exposes us to additional risks.
- Due to the significant resources required for the development of our product candidates, and depending on our ability to access capital, we must prioritize among many different opportunities. We may expend our limited resources on programs that do not yield successful product candidates as opposed to indications that may be more profitable or for which there is a greater likelihood of success.
- Our clinical trial costs may be higher than for more conventional therapeutic technologies or drug products.
- Our clinical trials may fail to demonstrate adequately the safety and efficacy of our product candidates, which would prevent or delay regulatory approval and commercialization.
- Interim, initial, "top-line" and preliminary data from our clinical trials that we announce or publish from time to time may change as more patient data become available and are subject to audit and verification procedures that could result in material changes in the final data.
- We have limited experience conducting clinical trials and have relied and will rely on third parties and related parties to conduct many of our preclinical studies and clinical trials and to manufacture products. Any failure by a third party, related party, or by us to conduct the clinical trials according to Good Clinical Practice ("GCP") regulations, and in a timely manner may delay or prevent our ability to seek or obtain regulatory approval for or commercialization of our product candidates.
- Our clinical trials may not be initiated or completed when we expect, or at all, they may take longer and cost more to complete than we project, and we may be required to conduct additional clinical trials or modify current or future clinical trials based on feedback we receive from the United States ("U.S.") Food and Drug Administration ("FDA").
- We will be unable to commercialize our product candidates if our trials are not successful.
- Even if one of our product candidates is approved and commercialized, we may not become profitable.
- We use Immuno-Oncology Clinic, Inc. (the "Clinic"), a related party, in some of our clinical trials which may expose us to significant regulatory risks. If our data for this site is not sufficiently robust or if there are any data integrity issues, we may be required to repeat such studies or required to contract with other clinical trial sites, and our clinical development plans will be significantly delayed, and we will incur additional costs.
- If we encounter delays or difficulties enrolling and/or maintaining patients in our clinical trials, our clinical development activities and receipt of necessary marketing approvals could be delayed or otherwise adversely affected.
- Our product candidates may cause undesirable side effects or have other properties that could halt their clinical development, prevent their regulatory approval, limit their commercial potential or result in significant negative consequences.
- The manufacture of our product candidates is complex, and we may encounter difficulties in production, particularly with respect to process development, quality control, or scaling-up of our manufacturing capabilities. If we or our related parties, or any of our third-party manufacturers encounter such difficulties, our ability to provide adequate supply of our product candidates for clinical trials or our products for patients, if approved, could be delayed or stopped, or we may be unable to maintain a commercially viable cost structure.
- Cell-based therapies and biologics rely on the availability of reagents, specialized equipment and other specialty materials, which may not be available to us on acceptable terms or at all. For some of these reagents, equipment and materials, we rely or may rely on sole source vendors or a limited number of vendors, which could impair our ability to manufacture and supply our products, if approved.
- Our ability to use net operating losses and research and development credits to offset future taxable income may be subject to certain limitations.

- Changes in tax law could adversely affect our business and financial condition. Negative or unexpected tax consequences could adversely affect our results of operations.
- Our transfer pricing policies may be subject to challenge by the Internal Revenue Service ("IRS") or other taxing authorities.
- We could be subject to additional income tax liabilities and to examinations of our tax returns by the IRS and other domestic and foreign tax authorities. An adverse outcome of any such audit or examination by the IRS or other tax authority could have a material adverse effect on our operating results and financial condition.
- Our projections regarding the market opportunities for our product candidates may not be accurate, and the actual market for our products, if approved, may be smaller than we estimate.
- Because our current product candidates represent, and our other potential product candidates will represent novel approaches to the treatment of disease, there are many uncertainties regarding the development, market acceptance, third-party reimbursement coverage and the commercial potential of our product candidates.
- If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of our product candidates.
- We will face significant competition from other biotechnology and pharmaceutical companies and from non-profit institutions.
- Public opinion and scrutiny of immunotherapy approaches may impact public perception of us and our product candidates, which may adversely affect our ability to conduct our business and implement our business plans.
- We may seek orphan drug status or Fast Track or Breakthrough Therapy designations or other designation for one or more of our product candidates, but even if any such designation or status is granted, it may not lead to faster development or a faster regulatory review or approval process, and it does not increase the likelihood that our product candidates will receive marketing approval and we may be unable to maintain any benefits associated with such designations or status, including market exclusivity.
- As a condition of approval, the FDA may require that we implement various post-marketing requirements and conduct post-marketing studies, any of which would require a substantial investment of time, effort, and money, and which may limit our commercial prospects.
- We have never commercialized a product candidate before, and we may lack the necessary expertise, personnel and resources to successfully commercialize any products on our own or together with suitable collaborators. We may be unable to establish effective marketing and sales capabilities or enter into agreements with third parties or related parties to market and sell our product candidates, if they are approved, and as a result, we may be unable generate product revenues.
- We expect to rely on third parties to perform many essential services for any products that we commercialize, including services related to distribution, government price reporting, customer service, accounts receivable management, cash collection and adverse event reporting. If these third parties fail to perform as expected or to comply with legal and regulatory requirements, our ability to commercialize our current or future product candidates will be significantly impacted and we may be subject to regulatory sanctions.
- If our product candidates do not achieve broad market acceptance, the revenues that we generate from their sales will be limited.
- Our product candidates may face competition sooner than anticipated.
- We will need to obtain FDA approval of any proposed branded product names, and any failure or delay associated with such approval may adversely affect our business.
- Our internal computer systems, or those used by our contract research organizations ("CROs"), contract manufacturing organizations ("CMOs"), clinical sites or other contractors or consultants, may fail or suffer security breaches.

- Our business could be adversely affected by the effects of health epidemics, pandemics or contagious diseases, including the recent COVID-19 pandemic, in regions where we or third parties on which we rely have significant manufacturing facilities, concentrations of clinical trial sites or other business operations.
- We have formed, and may in the future form or seek, strategic alliances or enter into collaborations with third parties or additional licensing arrangements in the future, and we may not realize the benefits of such alliances or licensing arrangements. If we fail to enter into such strategic alliances, collaborations or licensing arrangement, or such strategic alliances, collaborations or licensing arrangements are not successful, we may not be able to capitalize on the market potential of our product candidates.
- If conflicts arise between us and our collaborators or strategic partners, these parties may act in a manner adverse to us and could limit our ability to implement our strategies.
- We will be heavily dependent on our senior management, particularly Dr. Soon-Shiong, our Executive Chairman and Global Chief Scientific and Medical Officer, and a loss of a member of our senior management team in the future, even if only temporary, could harm our business.
- We will need to grow the size and capabilities of our organization, and we may experience difficulties in managing this growth.
- If we engage in future acquisitions or strategic partnerships, this may increase our capital requirements, dilute our stockholders, cause us to incur debt or assume contingent liabilities, and subject us to other risks.
- We may become involved in securities litigation or stockholder derivative litigation in connection with our recent merger, and this could divert the attention of our management and harm our business, and insurance coverage may not be sufficient to cover all related costs and damages.
- A variety of risks associated with marketing our product candidates internationally could materially adversely affect our business.

Risks Related to Government Regulation

- We may be unable to obtain U.S. or foreign regulatory approval and, as a result, be unable to commercialize our product candidates. We are, and if we receive regulatory approval of our product candidates, will continue to be subject to ongoing extensive regulation, regulatory obligations and continued regulatory review, which may result in significant additional expense.
- Obtaining and maintaining regulatory approval of our product candidates in one jurisdiction does not mean that we will be successful in obtaining regulatory approval of our product candidates in other jurisdictions.
- If we fail to comply with U.S. and foreign regulatory requirements, regulatory authorities could limit or withdraw any marketing or commercialization approvals we may receive and subject us to other penalties that could materially harm our business.
- Results for any patient who receives compassionate use access to our product candidates should not be viewed as representative of how the product candidate will perform in a well-controlled clinical trial, and cannot be used to establish safety or efficacy for regulatory approval.
- Our GMP-in-a-Box will be regulated by the FDA as a medical device, and regulatory compliance for medical devices is expensive, complex and uncertain, and a failure to comply could lead to enforcement actions against us and other negative consequences for our business.
- We will be subject to governmental export and import controls that could impair our ability to compete in international markets due to licensing requirements and subject us to liability if we are not in compliance with applicable laws.
- We are subject to U.S. and foreign anti-corruption and anti-money laundering laws with respect to our operations and non-compliance with such laws can subject us to criminal and/or civil liability and harm our business.
- Our failure to comply with state, national and/or international data protection laws and regulations could lead to government enforcement actions and significant penalties against us, and adversely impact our operating results.

- If we, or any third party contract manufacturers or suppliers that we engage, fail to comply with environmental, health, and safety laws and regulations, including regulations governing the handling, storage or disposal of hazardous materials, we could become subject to fines or penalties or incur costs that could harm our business.
- Disruptions at the FDA, the Securities and Exchange Commission ("SEC") and other government agencies caused by funding shortages or global health concerns could hinder their ability to hire and retain key leadership and other personnel, prevent new products and services from being developed or commercialized in a timely manner or otherwise prevent those agencies from performing normal functions on which the operation of our business may rely, which could negatively impact our business.
- If we fail to comply with federal and state healthcare and promotional laws, including fraud and abuse and information privacy and security laws, we could face substantial penalties and our business, financial condition, results of operations, and prospects could be adversely affected.
- Coverage and reimbursement may be limited or unavailable in certain market segments for our product candidates, which could make it difficult for us to sell our product candidates profitably.
- We may face difficulties from changes to current regulations and future legislation.
- Governments outside the United States tend to impose strict price controls, which may adversely affect our revenues, if any.
- Our employees, independent contractors, consultants, commercial partners, principal investigators, CROs, suppliers and vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements.

Risks Related to Intellectual Property

- If we are unable to obtain, maintain, protect and enforce patent protection and other proprietary rights for our product candidates and technologies, we may not be able to compete effectively or operate profitably and our ability to prevent our competitors from commercializing similar or identical technology and product candidates would be adversely affected.
- If any of our owned or in-licensed patent applications do not issue as patents in any jurisdiction, we may not be able to compete effectively.
- We or our licensors, collaborators, or any future strategic partners may become subject to third party claims or litigation alleging infringement of patents or other proprietary rights or seeking to invalidate patents or other proprietary rights, and we may need to resort to litigation to protect or enforce our patents or other intellectual property or the patents or other intellectual property of our licensors, all of which could be expensive, time-consuming and unsuccessful, may delay or prevent the development and commercialization of our product candidates, or may put our patents and other proprietary rights at risk.
- The use of our technology and product candidates could potentially conflict with the rights of others, and third-party claims of intellectual property infringement, misappropriation or other violation against us, our licensors or our collaborators may prevent or delay the development and commercialization of our product candidates and technologies.
- Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment, and other requirements imposed by government patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.
- Changes in United States patent law could diminish the value of patents in general, thereby impairing our ability to protect our product candidates.
- Our rights to develop and commercialize our product candidates and technologies are subject, in part, to the terms and conditions of licenses granted to us by others.

- If we fail to comply with our obligations in the agreements under which we license intellectual property rights from third parties or otherwise experience disruptions to our business relationships with our licensors, we may be required to pay damages and we could lose license rights that are important to our business.
- We have limited foreign intellectual property rights and may not be able to protect our intellectual property rights throughout the world.
- We may be subject to claims that our employees, consultants or independent contractors have wrongfully used or disclosed trade secrets or other confidential information of third parties or claims asserting ownership of what we regard as our own intellectual property.
- We may not be able to license or acquire new or necessary intellectual property rights or technology from third parties.
- If we do not obtain patent term extension and data exclusivity for any product candidates we may develop, our business may be materially harmed.
- We may be subject to claims challenging rights in our patents and other intellectual property.
- If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.
- If our trademarks and trade names are not adequately protected, then we may not be able to build name recognition in our markets of interest and our business may be adversely affected.
- Intellectual property rights do not necessarily address all potential threats.

Risks Related to Our Common Stock

- Dr. Patrick Soon-Shiong, our Executive Chairman, Global Chief Scientific and Medical Officer and our principal stockholder, has significant interests in other companies which may conflict with our interests.
- Dr. Soon-Shiong, through his voting control of the company, has the ability to control actions that require stockholder approval.
- The market price of our common stock has been and may continue to be volatile, and investors may have difficulty selling their shares.
- Future sales and issuances of our common stock or rights to purchase common stock, including pursuant to our equity incentive plan, could result in additional dilution of the percentage ownership of our stockholders and could cause our stock price to fall.
- 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 compliance initiatives and corporate governance practices, including maintaining an effective system of internal control over financial reporting.
- If a restatement of our financial statements were to occur, our stockholders' confidence in the company's financial reporting in the future may be affected, which could in turn have a material adverse effect on our business and stock price.
- We have not paid cash dividends in the past and do not expect to pay dividends in the future. Any return on investment may be limited to the value of our common stock.
- Because we are relying on the exemptions from corporate governance requirements as a result of being a "controlled company" within the meaning of the Nasdaq listing standards, you do not have the same protections afforded to stockholders of companies that are subject to such requirements.
- We are a "smaller reporting company," and the reduced disclosure requirements applicable to smaller reporting companies could make our common stock less attractive to investors.
- 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.

- We are not subject to the provisions of Section 203 of the Delaware General Corporation Law ("DGCL"), which could negatively affect your investment.
- Some provisions of our charter documents and Delaware law may have anti-takeover effects that could discourage an acquisition of us by others, even if an acquisition would be beneficial to our stockholders, and may prevent attempts by our stockholders to replace or remove our current management.
- Claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.

Risks Related to Our Limited Operating History, Financial Condition and Capital Requirements

We will need additional financing to fund our operations and complete the development and commercialization of our various product candidates, and if we are unable to obtain such financing when needed, or on acceptable terms, we may be unable to complete the development and commercialization of our product candidates.

The development of biopharmaceutical products, including conducting preclinical studies and clinical trials, is a very time-consuming, expensive and uncertain process that takes years to complete. Our operations have consumed substantial amounts of cash since inception. A significant portion of our funding had been in the form of promissory notes representing $303.2 million in indebtedness, including interest thereon, as of September 30, 2021 held by entities affiliated with Dr. Soon-Shiong with a maturity date of September 30, 2025.

As of September 30, 2021, we held cash, cash equivalents and marketable securities totaling $81.2 million. We will need to obtain additional financing to fund our future operations, including completing the development and commercialization of our product candidates. Changing circumstances may cause us to increase our spending significantly faster than we currently anticipate and we may need to raise additional funds sooner than we presently anticipate. Moreover, research and development and our operating costs and fixed expenses such as rent and other contractual commitments, including those for our research collaborations, are substantial and are expected to increase in the future.

Our future funding requirements will depend on many factors, including, but not limited to:

- progress, timing, number, scope and costs of researching and developing our product candidates and our ongoing, planned and potential clinical trials;
- time and cost of regulatory approvals;
- our ability to successfully commercialize any product candidates, if approved and the costs of such commercialization activities;
- revenue from product candidates that we may commercialize, if any, including the selling prices for such potential products and the availability of adequate third-party coverage and reimbursement for patients;
- cost of building, staffing and validating our own manufacturing facilities in the United States, including having a product candidate successfully manufactured consistent with FDA and European Medicines Agency regulations;
- terms, timing and costs of our current and any potential future collaborations, business or product acquisitions, contingent value rights ("CVRs"), milestones, royalties, licensing or other arrangements that we have established or may establish;
- time and cost necessary to respond to technological, regulatory, political and market developments; and
- costs of filing, prosecuting, maintaining, defending and enforcing any patent claims and other intellectual property rights.

Unless and until we can generate a sufficient amount of revenues, we may finance future cash needs through public or private equity offerings, license agreements, debt financings, collaborations, strategic alliances and marketing or distribution arrangements. However, we may be unable to raise additional funds or enter into such other arrangements when needed on favorable terms, or at all, including but not limited to the offering, issuance and sale by us of up to a maximum aggregate amount of $500.0 million of our common stock that may be issued and sold under an "at-the-market" sales agreement with Jefferies LLC (the "ATM").

To the extent that we raise additional capital through the sale of equity or convertible debt securities including through the ATM or other offerings, your ownership interest will be diluted, and the terms may include liquidation or other preferences that adversely affect your rights as a stockholder. The incurrence of additional indebtedness would result in increased fixed payment obligations and could involve certain restrictive covenants, such as limitations on our ability to incur additional debt, limitations on our ability to acquire or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business. If we raise additional funds through strategic partnerships and alliances and licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies or product candidates, or grant licenses on terms unfavorable to us. We have no committed source of additional capital and if we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we may be required to delay or reduce the scope of or eliminate one or more of our research or development programs or our commercialization efforts. Our current license and collaboration agreements may also be terminated if we are unable to meet the payment obligations under those agreements. As a result, we may seek to access the public or private capital markets whenever conditions are favorable, even if we do not have an immediate need for additional capital at that time.

Our debt could adversely affect our cash flows and limit our flexibility to raise additional capital.

We have a significant amount of debt and may need to incur additional debt to support our growth. As of September 30, 2021, our indebtedness was $303.2 million, consisting of related-party promissory notes and interest thereon, all held by entities affiliated with Dr. Soon-Shiong, with a maturity date of September 30, 2025.

Our substantial amount of debt could have important consequences and could:

- require us to dedicate a substantial portion of our cash and cash equivalents to make interest and principal payments on our debt, reducing the availability of our cash and cash equivalents and cash flow from operations to fund future capital expenditures, working capital, execution of our strategy and other general corporate requirements;
- increase our cost of borrowing and even limit our ability to access additional debt to fund future growth;
- increase our vulnerability to general adverse economic and industry conditions and adverse changes in governmental regulations;
- limit our flexibility in planning for, or reacting to, changes in our business and industry, which may place us at a disadvantage compared with our competitors; and
- limit our ability to borrow additional funds, even when necessary to maintain adequate liquidity, which would also limit our ability to further expand our business.

The occurrence of any of the foregoing factors could have a material adverse effect on our business, results of operations and financial condition.

We may also need to refinance a portion of our outstanding debt as it matures. We may not be able to refinance existing debt or the terms of any refinancing may not be as favorable as the terms of our existing debt. Furthermore, if prevailing interest rates or other factors at the time of refinancing result in higher interest rates upon refinancing, then the interest expense relating to that refinanced indebtedness would increase. These risks could materially adversely affect our financial condition, cash flows and results of operations.

Our businesses may not be integrated successfully, or such integration may be more difficult, time consuming or costly than expected. Operating costs, customer loss and business disruption, including difficulties in maintaining relationships with employees, customers, suppliers or vendors, may be greater than expected for the combined company. Revenues may be lower than expected for the combined company.

The combination of two businesses is complex, costly and time-consuming and may divert significant management attention and resources to combining our prior businesses. This process may disrupt our businesses. The failure to meet the challenges involved in combining the two businesses and to realize the anticipated benefits of the merger could cause an interruption of, or a loss of momentum in, the activities of the combined company and could adversely affect the results of operations of the combined company. Our ability to realize the anticipated benefits of the merger will depend, to a large extent, on our ability to integrate our businesses in a manner that facilitates growth opportunities and achieves the projected synergies

identified by each company without adversely affecting current revenues and investments in future growth. The overall combination of our businesses may also result in material unanticipated problems, expenses, liabilities, competitive responses, and loss of customer and other business relationships. The difficulties of combining the operations of the companies include, among others:

- the diversion of management attention to integration matters;
- difficulties in integrating operations and systems, including intellectual property and communications systems, administrative and information technology infrastructure and financial reporting and internal control systems;
- challenges in conforming standards, controls, procedures and accounting and other policies, business cultures and compensation structures between the two companies;
- difficulties in integrating employees and attracting and retaining key personnel, including talent;
- difficulties in achieving anticipated cost savings, synergies, accretion targets, business opportunities, financing plans and growth prospects from the combination;
- difficulties in managing the expanded operations of a significantly larger and more complex company;
- contingent liabilities that are larger than expected; and
- potential unknown liabilities, adverse consequences and unforeseen increased expenses associated with the merger.

Many of these factors are outside of our control, and any one of them could result in lower revenues, higher costs and diversion of management time and energy, which could materially impact the business, financial condition and results of operations of the combined company. In addition, even if the operations of our businesses are integrated successfully, the full benefits of the merger may not be realized, including, among others, the synergies or growth opportunities that are expected. These benefits may not be achieved within the anticipated time frame or at all. Further, additional unanticipated costs may be incurred in the integration of our businesses. All of these factors could negatively impact the company's operations and/or the price of the company's common stock. As a result, it cannot be assured that the combination of our businesses will result in the realization of the full benefits expected from the merger within the anticipated time frames or at all. Accordingly, holders of the combined company's common stock may experience a loss as a result of a decline in the market price of such common stock. In addition, a decline in the market price of the combined company's common stock could adversely affect the company's ability to issue additional securities and to obtain additional financing in the future.

We are a clinical-stage biopharmaceutical company with a limited operating history and no products approved for commercial sale. We have a history of operating losses, and we expect to continue to incur losses and may never be profitable, which together with our limited operating history, makes it difficult to assess our future viability.

We are a clinical stage biopharmaceutical company with a limited operating history upon which you can evaluate our business and prospects, and now that the merger has been completed, we have a much broader portfolio of product candidates at various stages of development. None of our products have been approved for commercial sale and we have not generated any revenue from product sales, although we have generated revenues from non-exclusive license agreements related to our cell lines, the sale of our bioreactors and related consumables and grant programs. In addition, we have limited experience and have not yet demonstrated an ability to successfully overcome many of the risks and uncertainties frequently encountered by companies in new and rapidly evolving fields, particularly in the biopharmaceutical industry, including in connection with obtaining marketing approvals, manufacturing a commercial-scale product or arranging for a third party to do so on our behalf or conducting sales and marketing activities necessary for successful product commercialization. Because of the numerous risks and uncertainties associated with our product development efforts, we are unable to predict when we may become profitable, if at all.

Since the commencement of our operations, we have incurred significant losses in each year and, as of September 30, 2021 we had an accumulated deficit of $1.9 billion. We expect to continue to incur significant expenses as we seek to expand our business, including in connection with conducting research and development across multiple therapeutic areas, participating in clinical trial activities, continuing to acquire or in-license technologies, maintaining, protecting and expanding our intellectual property, seeking regulatory approvals, increasing our manufacturing capabilities and, upon successful receipt of FDA approval, commercializing our products. Moreover, we do not expect to have significant product sales or revenue for the foreseeable future.

If our research and development efforts are successful, we may also face the risks associated with the shift from development to commercialization of new products based on innovative technologies. Our ability to achieve profitability is dependent upon obtaining regulatory approvals for our product candidates and successfully commercializing our product candidates alone or with third parties. However, our operations may not be profitable even if one or more of our product candidates under development are successfully developed and produced and thereafter commercialized. Even if we do become profitable, we may not be able to sustain or increase our profitability on a quarterly or annual basis. As a result, it may be more difficult for you to assess our future viability than it could be if we had a longer operating history.

We invest our cash on hand in various financial instruments which are subject to risks that could adversely affect our business, results of operations, liquidity and financial condition.

We invest our cash in a variety of financial instruments, principally commercial paper, corporate debt securities and foreign government bonds. All of these investments are subject to credit, liquidity, market and interest rate risk. Such risks, including the failure or severe financial distress of the financial institutions that hold our cash, cash equivalents and investments, may result in a loss of liquidity, impairment to our investments, realization of substantial future losses, or a complete loss of the investments in the long-term, which may have a material adverse effect on our business, results of operations, liquidity and financial condition. In order to manage the risk to our investments, we maintain an investment policy that, among other things, limits the amount that we may invest in any one issue or any single issuer and requires us to only invest in high credit quality securities to preserve liquidity.

Risks Related to Our Business and Industry

We will be substantially dependent on the success of our product candidates and cannot guarantee that these product candidates will successfully complete development, receive regulatory approval or be successfully commercialized.

Other than our proprietary GMP-in-a-Box bioreactors for which we have received nominal revenue to date, we currently have no products approved for commercial sale or for which regulatory approval to market has been sought. We have invested a significant portion of our efforts and financial resources in the development of our main product candidates, an antibody cytokine fusion protein (an IL-15 superagonist (N-803) known as Anktiva™), aldoxorubicin and second-generation adenovirus (“hAd5”) vaccine candidates, some or all of which are used in combination with our natural killer cells. Our product candidates will require additional clinical and non-clinical development, regulatory approval, commercial manufacturing arrangements, establishment of a commercial organization, significant marketing efforts, and further investment before we can generate any revenues from product sales. We expect to invest heavily in these product candidates as well as in our other existing product candidates and in any future product candidates that we may develop. Our business and our ability to generate revenues in the future substantially depends on the successful development, regulatory approval and commercialization of such product candidates, each of which may never occur. Our product candidates will be susceptible to the risks of failure inherent at any stage of product development, including the appearance of unexpected adverse events or failure to achieve primary endpoints in clinical trials. Furthermore, we cannot assure you that we will meet our timelines for current or future clinical trials, which may be delayed or not completed for a number of reasons. Additionally, our ability to generate revenues from our combination therapy products will also depend on the availability of the other therapies with which our products are intended to be used. We currently generate no meaningful revenues from the sale of any product candidates, and we may never be able to develop or commercialize a product.

We may develop product candidates in combination with other therapies, which exposes us to additional risks.

We may develop product candidates in combination with one or more other therapies. We are studying Anktiva™ therapy along with other product candidates, such as aldoxorubicin and hAd5 product candidates. The development of product candidates for use in combination with another product may present challenges. The FDA may require us to use more complex clinical trial designs in order to evaluate the contribution of each product and product candidate to any observed effects. To the extent that we do not have rights to already approved products, this may require us to work with another company to satisfy such a requirement. It is possible that the results of these trials could show that any positive results are attributable to the already approved product. Even if any product candidate we develop were to receive marketing approval or be commercialized for use in

combination with other existing therapies, we would continue to be subject to the risks that the FDA or comparable foreign regulatory authorities could revoke approval of the therapy used in combination with our product or that safety, efficacy, manufacturing or supply issues could arise with any of those existing therapies. Following product approval, the FDA may require that products used in conjunction with each other be cross labeled for combined use. If the therapies we use in combination with our product candidates are replaced as the standard of care for the indications we choose for any of our product candidates, the FDA or comparable foreign regulatory authorities may require us to conduct additional clinical trials. The occurrence of any of these risks could result in our own products, if approved, being removed from the market or being less successful commercially.

We also may evaluate product candidates in combination with one or more therapies that have not yet been approved for marketing by the FDA or comparable foreign regulatory authorities. We will not be able to market and sell any product candidate in combination with an unapproved therapy if that unapproved therapy does not ultimately obtain marketing approval. In addition, unapproved therapies face the same risks described with respect to our product candidates currently in development and clinical trials, including the potential for serious adverse effects, delays in clinical trials and lack of FDA approval. If the FDA or comparable foreign regulatory authorities do not approve or revoke their approval of these other therapies, or if safety, efficacy, quality, manufacturing or supply issues arise with, the therapies we choose to evaluate in combination with any of our product candidates, we may be unable to obtain approval of or market such combination therapy.

Due to the significant resources required for the development of our product candidates, and depending on our ability to access capital, we must prioritize among many different opportunities. We may expend our limited resources on programs that do not yield successful product candidates as opposed to indications that may be more profitable or for which there is a greater likelihood of success.

We do not have sufficient resources to pursue development of all or even a substantial portion of the potential opportunities that we believe will be afforded to us by our product candidates. Because we have limited resources and access to capital to fund our operations, our management must make significant prioritization decisions as to which product candidates and indications to pursue and how much of our resources to allocate to each. Our management must also evaluate the benefits of developing in-licensed or jointly owned technologies, which in some circumstances we may be contractually obligated to pursue, relative to developing other product candidates, indications or programs. Our management has broad discretion to suspend, scale down, or discontinue any or all of these development efforts, or to initiate new programs to treat other diseases. If we select and commit resources to opportunities that we are unable to successfully develop, or we forego more promising opportunities, our business, financial condition and results of operations will be adversely affected.

Our clinical trial costs may be higher than for more conventional therapeutic technologies or drug products.

Because our product candidates include, and we expect our future product candidates to include, candidates based on advanced therapy technologies, we expect that they will require extensive research and development and have substantial manufacturing costs. In addition, costs to treat patients and to treat potential side effects that may result from our product candidates can be significant. Some clinical trial sites may not bill, or obtain coverage from Medicare, Medicaid, or other third-party payors for some or all of these costs for patients enrolled in our clinical trials, and clinical trial sites outside of the United States may not reimburse for costs typically covered by third-party payors in the United States, and as a result we may be required by those trial sites to pay such costs. Accordingly, our clinical trial costs are likely to be significantly higher per patient than those of more conventional therapeutic technologies or drug products.

Our clinical trials may fail to demonstrate adequately the safety and efficacy of our product candidates, which would prevent or delay regulatory approval and commercialization.

The clinical trials of our product candidates as well as the manufacturing and marketing of our product candidates will be subject to extensive and rigorous review and regulation by numerous government authorities in the United States and in other countries where we intend to test and market our product candidates. Before obtaining regulatory approvals for the commercial sale of any of our product candidates, we must demonstrate through lengthy, complex and expensive preclinical testing and clinical trials that our product candidates are both safe and effective. Because most of our product candidates will be subject to

regulation as biological drug products, we will need to demonstrate that they are safe, pure, and potent for use in their target indications. Each product candidate must demonstrate an adequate risk versus benefit profile in its intended patient population and for its intended use. The risk/benefit profile required for product licensure will vary depending on these factors and may include not only the ability to show tumor shrinkage, but also adequate duration of response, a delay in the progression of the disease, and/or an improvement in survival. For example, response rates from the use of our product candidates may not be sufficient to obtain regulatory approval unless we can also show an adequate duration of response. Regulatory authorities may ultimately disagree with our chosen endpoints or may find that our studies or study results do not support product approval. Preclinical studies may reveal unfavorable product candidate characteristics, including safety concerns. Product candidates in later stages of clinical trials may fail to show the desired safety and efficacy traits despite having progressed through preclinical studies and initial clinical trials.

There is typically an extremely high rate of attrition from the failure of product candidates proceeding through clinical trials. Many companies in the biopharmaceutical industry have suffered significant setbacks in advanced clinical trials due to lack of efficacy or unacceptable safety issues, notwithstanding promising results in earlier trials. Most product candidates that begin clinical trials are never approved by regulatory authorities for commercialization.

In some instances, there can be significant variability in safety or efficacy results between different clinical trials of the same product candidate due to numerous factors, including changes in trial procedures set forth in protocols, differences in the size and type of the patient populations, changes in and adherence to the clinical trial protocols and the rate of dropout among clinical trial participants. Moreover, should there be a flaw in a clinical trial or cross-site variation that are not properly addressed, it may not become apparent until the clinical trial is well advanced or until data from different sites become available. For example, our current clinical trials are, and we expect our clinical trials to be, conducted at multiple sites in different geographies, with different levels of experience and expertise by medical professionals, and these professionals may make mistakes or introduce site-specific variation that could have an impact on clinical trials by disqualifying patients or impacting patient ability to continue in a study or on the clinical data. Further, because we currently plan to test our product candidates for use with other oncology products, the design, implementation and interpretation of the clinical trials necessary for marketing approval may be more complex than if we were developing our product candidates alone.

In addition, even if such trials are successfully completed, we cannot guarantee that the FDA or foreign regulatory authorities will interpret the results as we do, and more trials could be required before we submit our product candidates for approval. To the extent that the results of the trials are not satisfactory to the FDA or foreign regulatory authorities for support of a marketing application, we may be required to expend significant resources, which may not be available to us, to conduct additional trials in support of potential approval of our product candidates.

We have reported preliminary results for clinical trials of our product candidates, including Anktiva™. These preliminary results, which include assessments of efficacy, are subject to substantial risk of change due to small sample sizes and may change as patients are evaluated or as additional patients are enrolled in these clinical trials. These outcomes may be unfavorable, deviate from our earlier reports, and/or delay or prevent regulatory approval or commercialization of our product candidates, including candidates for which we have reported preliminary efficacy results.

Further, certain of our hypotheses regarding the potential benefits of our product candidates compared to alternative therapies and treatments are based on cross-trial comparisons of results that were not derived from head-to-head clinical trials. Such clinical trial data may not be directly comparable due to differences in study protocols, conditions and patient populations. Accordingly, these cross-trial comparisons may not be reliable predictors of the relative efficacy or other benefits of our product candidates compared to other product candidates that may have been approved previously.

We do not have data on possible harmful long-term effects of our product candidates and do not expect to have this data in the near future. As a result, our ability to generate clinical safety and effectiveness data sufficient to support submission of a marketing application or commercialization of our product candidates is uncertain and is subject to significant risk.

Interim, initial, "top-line" and preliminary data from our clinical trials that we announce or publish from time to time may change as more patient data become available and are subject to audit and verification procedures that could result in material changes in the final data.

From time to time, we may publicly disclose preliminary, interim or top-line data from our preclinical studies and clinical trials, which are based on preliminary analyses of then-available data, and the results and related findings and conclusions are subject to change following a more comprehensive review of the data related to the particular study or trial. Interim data from clinical trials that we may complete are subject to the risk that one or more of the clinical outcomes may materially change as patient enrollment continues and more patient data become available or as patients from our clinical trials continue other treatments for their disease. We also may make assumptions, estimations, calculations and conclusions as part of our analyses of data, and we may not have received or had the opportunity to fully and carefully evaluate all data. As a result, the interim, top-line or preliminary results that we report may differ from future results of the same studies, or different conclusions or considerations may qualify such results, once additional data have been received and fully evaluated. Top-line data also remain subject to audit and verification procedures that may result in the final data being materially different from the preliminary data we previously published. As a result, top-line data should be viewed with caution until the final data are available. Adverse differences between preliminary or interim data and final data could significantly harm our business prospects. Further, disclosure of interim data by us or by our competitors could result in volatility in the price of our common stock.

In addition, the information we choose to publicly disclose regarding a particular study or clinical trial is typically selected from a more extensive amount of available information, and you or others may not agree with what we determine is material or otherwise appropriate information to include in our disclosure. If the interim, top-line or preliminary data that we report differ from actual results, or if others, including regulatory authorities, disagree with the conclusions reached, our ability to obtain approval for, and commercialize, our product candidates may be harmed, which could harm our business, operating results, prospects or financial condition.

We have limited experience conducting clinical trials and have relied and will rely on third parties and related parties to conduct many of our preclinical studies and clinical trials and to manufacture products. Any failure by a third party, related party, or by us to conduct the clinical trials according to GCP regulations, and in a timely manner, may delay or prevent our ability to seek or obtain regulatory approval for or commercialization of our product candidates.

Large-scale clinical trials require significant financial and management resources. We expect to be heavily reliant on third and related parties, including medical institutions, academic institutions, clinical investigators or CROs to conduct, supervise or monitor some or all aspects of our clinical trials, and in some cases, CMOs to manufacture products. We have entered into agreements with the Clinic, a related party, to continue to conduct and oversee certain of our clinical trials. Our CROs, the Clinic and other third parties must communicate and coordinate with one another in order for our trials to be successful. We have a limited history of conducting clinical trials and have no experience as a company in filing and supporting the applications necessary to gain marketing approvals. Our relative lack of experience conducting clinical trials may contribute to our planned clinical trials not beginning or completing on time, if at all. Securing marketing approval also requires the submission of information about the product manufacturing process to, and inspection of manufacturing facilities and clinical trial sites by, applicable regulatory authorities.

Relying on third-party clinical investigators, CROs or CMOs may force us to encounter delays and challenges that are outside of our control. Nevertheless, we are responsible for ensuring that each of our trials is conducted in accordance with the applicable trial protocol and legal, regulatory and scientific standards, and our reliance on CROs, clinical trial sites, and other third parties does not relieve us of these responsibilities. For example, we will remain responsible for ensuring that each of our clinical trials is conducted in accordance with the general investigational plan and protocols for the trial and for ensuring that our preclinical studies are conducted in accordance with Good Laboratory Practice ("GLP") regulations, as appropriate. Moreover, the FDA and comparable foreign regulatory authorities require us and the third parties upon which we intend to rely for conducting our clinical trials to comply with GCP for conducting, recording, and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity, and confidentiality of trial participants are protected.

Regulatory authorities enforce these requirements through periodic inspections (including pre-approval inspections once a Biologics License Application ("BLA") or New Drug Application ("NDA") is filed with the FDA) of trial sponsors, clinical investigators, trial sites and certain third parties including CMOs. If we, our CROs, clinical trial sites, or other third parties fail to comply with applicable GCP or other regulatory requirements, we or they may be subject to enforcement or other legal actions, the clinical data generated in our clinical trials may be deemed unreliable and have to be repeated, and our submission of marketing applications may be delayed or the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials comply with GCP regulations.

Our clinical trials will need to be conducted with product candidates and materials that were produced under current Good Manufacturing Practices ("cGMP") and/or Good Tissue Practice regulations, which are enforced by regulatory authorities. Our failure to comply or our CMOs' failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process. We may not be able to demonstrate sufficient comparability between products manufactured at different facilities to allow for inclusion of the clinical results from patients treated with products from these different facilities, in our product registrations. We also are required to register certain clinical trials and post the results of certain completed clinical trials on a government sponsored database, ClinicalTrials.gov, within specified timeframes. Failure to do so could result in enforcement actions and adverse publicity.

We rely on third parties to manufacture, package, label and ship some of our product candidates for the clinical trials that we conduct. Any performance failure on the part of these third parties could delay clinical development or marketing approval of our product candidates or commercialization of our product candidates, if approved, producing additional losses and depriving us of potential product revenues.

Our CROs, the Clinic, clinical trial sites and other third parties may also have relationships with other entities, some of which may be our competitors, for whom they may also be conducting clinical trials or other therapeutic development activities that could harm our competitive position. In addition, these third parties are not our employees, and except for remedies available to us under our agreements with them, we cannot control whether or not they devote sufficient time and resources to our ongoing clinical and preclinical programs. If these third parties conducting our clinical trials (i) do not successfully carry out their contractual duties, (ii) do not meet expected deadlines, (iii) experience work stoppages, (iv) do not conduct our clinical trials in accordance with regulatory requirements or our stated protocols, (v) need to be replaced, (vi) experience financial hardships or (vii) terminate their agreements with us or if the quality or accuracy of the data they obtain is compromised due to the failure to adhere to our clinical trial protocols, GCP or other regulatory requirements or for other reasons, our trials may need to be repeated, extended, delayed or terminated, we may not be able to obtain, or may be delayed in obtaining, marketing approvals for our product candidates, we will not be able to, or may be delayed in our efforts to, successfully commercialize our product candidates or we or they may be subject to regulatory enforcement actions. Additionally, we may need to conduct additional clinical trials or enter into new arrangements with alternative CROs, clinical investigators or other third parties. We may be unable to enter into arrangements with alternative CROs on commercially reasonable terms, or at all. Switching or adding additional contractors involves additional cost and time and requires management time and focus. In addition, there is a natural transition period when a new third party commences work. As a result, delays could occur, which could compromise our ability to meet our desired development timelines. Furthermore, if any of the third parties conducting our clinical trials experience any financial hardships due to difficulties relating to the operation of their business, if could damage our business, financial condition, results of operations and prospects. In addition, if an agreement with any of our collaborators terminates, our access to technology and intellectual property licensed to us by that collaborator may be restricted or terminate entirely, which may delay the continued development of our product candidates utilizing the collaborator's technology or intellectual property or require us to stop development of those product candidates completely. As a result, our results of operations and the commercial prospects for our product candidates would be harmed, our costs could increase and our ability to generate revenues could be delayed. To the extent we are unable to successfully identify and manage the performance of third-party service providers in the future, our business may be materially and adversely affected.

Our reliance on third and related parties can also present intellectual property-related risks. For example, collaborators may not properly obtain, maintain, enforce or defend intellectual property or proprietary rights relating to our product candidates or technology or may use our proprietary information in such a way as to expose us to potential litigation or other intellectual property-related proceedings, including proceedings challenging the scope, ownership, validity and enforceability of our intellectual property. Collaborators may also own or co-own intellectual property covering our product candidates or technology that results from our collaboration with them, and in such cases, we may not have the exclusive right to commercialize such intellectual property or such product candidates or technology. Collaborators may also gain access to our trade secrets or formulations and impact our ability to commercialize proprietary technology. We may also need the cooperation of our collaborators to enforce or defend any intellectual property we contribute to or that arises out of our collaborations, which may not be provided to us.

We also anticipate that part of our strategy for pursuing the wide range of indications potentially addressed by Anktiva™ will involve further investigator-initiated clinical trials. While these trials generally provide us with valuable clinical data that can inform our future development strategy, we generally have less control over not only the conduct but also the design of these clinical trials. Third-party investigators may design clinical trials involving our product candidates with clinical endpoints that are more difficult to achieve or in other ways that increase the risk of negative clinical trial results compared to clinical trials we may design on our own. Negative results from investigator-initiated clinical trials, regardless of how the clinical trial was designed or conducted, could have a material adverse effect on our business and the perception of our product candidates.

Moreover, principal investigators for our clinical trials may serve as scientific advisors or consultants to us from time to time and receive compensation in connection with such services.

Our clinical trials may not be initiated or completed when we expect, or at all, they may take longer and cost more to complete than we project, and we may be required to conduct additional clinical trials or modify current or future clinical trials based on feedback we receive from the FDA.

We cannot guarantee that any current or future clinical trials will be conducted as planned or completed on schedule, if at all, or that any of our product candidates will receive regulatory approval. A failure of one or more clinical trials can occur at any stage of the clinical trial process, other events may cause us to temporarily or permanently stop a clinical trial, and our future clinical trials may not be successful. We may also experience delays in completing planned clinical trials for a variety of reasons, including delays related to:

- regulators or Institutional Review Boards (“IRBs”) may (i) not authorize us or our investigators to commence a clinical trial, conduct a clinical trial at a prospective trial site, or amend trial protocols, or (ii) require that we modify or amend our clinical trial protocols;
- delays in reaching, or a failure to reach, a consensus with regulatory authorities on trial design or eligibility criteria for patient enrollment;
- the FDA or comparable foreign regulatory authorities may (i) disagree with our intended indications, or our interpretation of data from preclinical studies and clinical trials, (ii) find that a product candidate’s benefits do not outweigh its safety risks, (iii) not accept data from trials with clinical trial sites in foreign countries, (iv) fail to approve or subsequently find fault with the manufacturing processes or our manufacturing facilities for clinical and future commercial supplies or (v) take longer than we anticipate when making a decision on our product candidates;
- the FDA may not allow us to use the clinical trial data from a research institution to support an investigational new drug (“IND”) application if we cannot demonstrate the comparability of our product candidates with the product candidate used by the relevant research institution in its clinical trials;
- delays in or failure to reach an agreement on acceptable terms with prospective CROs and clinical trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and clinical trial sites;
- imposition of a temporary or permanent clinical hold, such as the clinical hold on the Phase II/III clinical trial in the U.S. for our hAd5 COVID-19 vaccine candidate pending modifications to the protocol and the FDA’s review of additional information, including immunogenicity and safety data from the Phase I portion of the study;
- delays in adding new investigators or clinical trial sites, or withdrawal of clinical trial sites from a trial, including scheduling conflicts with participating clinicians and clinical institutions;

- difficulties in identifying and enrolling patients who meet trial eligibility criteria and who remain in the study until its conclusion;
- failure by our CROs, clinical trial sites or patients, or other third parties, or us to adhere to clinical trial requirements, including regulatory, contractual or protocol requirements;
- failure to perform in accordance with the GCP requirements, or applicable regulatory guidelines in other countries;
- occurrence of adverse events associated with the product candidate that are viewed to outweigh its potential benefits;
- changes in regulatory requirements and guidance that require amending or submitting new clinical protocols to regulatory authorities and IRBs, and which may cause delays in our development programs, or changes to regulatory review times;
- there may be regulatory questions or disagreements regarding interpretations of data and results, or new information may emerge regarding our product candidates;
- changes in the standard of care on which a clinical development plan was based, which may require new or additional trials;
- the availability of financial resources to commence and complete the planned trials;
- ambiguous or negative interim results, which may result in our deciding, or regulators requiring us, to conduct additional clinical trials, or preclinical studies, or abandon product development programs;
- obtaining sufficient supply of therapies that may be used in combination with our molecular agents or as comparative agents in clinical trials or interruption of, or delays in receiving, supplies of our product candidates or other drugs or components of our therapies due to staffing shortages, production slowdowns or stoppages and disruptions in delivery systems;
- early results from our clinical trials of our product candidates may be negatively affected by changes in efficacy measures such as overall response rate and duration of response as more patients are enrolled in our clinical trials or as new cohorts of our clinical trials are tested, and overall response rate and duration of response may be negatively affected by the inclusion of unconfirmed responses in preliminary results that we report if such responses are not later confirmed;
- we may not be able to demonstrate that a product candidate provides an advantage over current standards of care or current or future competitive therapies in development;
- there may be changes to the therapeutics or their regulatory status which we are administering in combination with our product candidates;
- transfer of our manufacturing processes to our CMOs or other larger-scale facilities operated by a CMO or by us and delays or failure by our CMOs or us to commence, make any necessary changes to or complete such manufacturing process;
- our use of different manufacturing processes within our clinical trials, and any effects that may result from the use of different processes on the clinical data that we have reported and will report in the future;
- delays in manufacturing, testing, releasing, validating, or importing/exporting sufficient stable quantities of our product candidates for use in clinical trials or the inability to do any of the foregoing, including as a result of any quality issues associated with the contract manufacturer; and
- delays and additional costs associated with business disruptions, new regulatory requirements, social distancing and other restrictions imposed by governmental or regulatory agencies and clinical trial sites due to the COVID-19 pandemic, which may include enrollment delays or failures to follow trial protocols.

Collaborations with other entities may be subject to additional delays because of the management of the trials, contract negotiations, the need to obtain agreement from multiple parties and the necessity of obtaining additional approvals for therapeutics used in the combination trials. These combination therapies will require additional testing and clinical trials will require additional FDA regulatory approval and will increase our future costs.

Any inability to successfully complete preclinical and clinical development could result in additional costs to us, slow down our product development and approval process or impair our ability to commence product sales and generate revenues. In addition, if we make manufacturing changes to our product candidates, we may be required to, or we may elect to, conduct additional trials to bridge our modified product candidates to earlier versions. These changes may require FDA approval or notification and may not have their desired effect. The FDA may also not accept data from prior versions of the product to support an application, delaying our clinical trials or programs or necessitating additional clinical trials or preclinical studies. We may find that this change has unintended consequences that necessitates additional development and manufacturing work, additional clinical and preclinical studies, or that results in refusal to file or non-approval of a BLA and/or NDA.

Clinical trial delays could shorten any periods during which our product candidates have patent protection and may allow our competitors to bring products to market before we do, which could impair our ability to successfully commercialize our product candidates and may harm our business and results of operations. If we fail to commence or complete, or experience delays in, any of our planned clinical trials, our stock price and our ability to conduct our business as currently planned could be harmed.

We will be unable to commercialize our product candidates if our trials are not successful.

Our research and development programs are each at an early stage and our current product candidates are in the early stages of development. We currently have ongoing clinical trials to evaluate our product candidates. We must demonstrate our product candidates' safety and efficacy in humans through extensive clinical testing. Success in early clinical trials does not ensure that large-scale clinical trials will be successful, nor does it predict final results. We may experience numerous unforeseen events during, or as a result of, the testing process that could delay or prevent commercialization of our product candidates, including but not limited to the following:

- safety and efficacy results in various human clinical trials reported in scientific and medical literature may not be indicative of results we obtain in our clinical trials;
- after reviewing test results, we or our collaborators may abandon projects that we might previously have believed to be promising;
- we, our collaborators or regulators may suspend or terminate clinical trials if the participating subjects or patients are being exposed to unacceptable health risks;
- the standard of care may change as the result of new technology or therapies in our target clinical indications, precluding regulatory approval or limited commercial use if approved;
- the effects our potential products have may not be the desired effects or may include undesirable side effects or other characteristics that preclude regulatory approval or limit their commercial use if approved;
- manufacturers may not meet the necessary standards for the production of the product candidates or may not be able to supply the product candidates in a sufficient quantity; and
- regulatory authorities may find that our clinical trial design or conduct does not meet the applicable approval requirements.

Clinical testing is very expensive, can take many years and the outcome is uncertain. It could take as much as 12 months or more before we learn the results from any clinical trial using Anktiva™, aldoxorubicin, adenovirus and yeast technologies or other therapy. The data collected from our clinical trials may not be sufficient to support approval by the FDA of our Anktiva™ product candidate for the treatment of bladder cancer or of other therapies, including our hAd5 COVID-19 vaccine candidate. Anktiva™ and many of our other product candidates have only been tested in a small number of patients. Results from these clinical trials may not necessarily be indicative of the safety and tolerability or efficacy of our product candidates as we expand into larger clinical trials. The clinical trials for our product candidates under development may not be completed on schedule and the FDA may not ultimately approve any of our product candidates for commercial sale. We may not ultimately be able to provide the FDA with substantial clinical evidence to support a claim of safety, purity and potency sufficient to enable the FDA to approve our product candidate for any indication. This may be because later clinical trials fail to reproduce favorable data obtained in earlier clinical trials, because the FDA disagrees with how we interpret the data from these clinical trials or because the FDA does not accept these therapeutic effects as valid endpoints in pivotal clinical trials necessary for market approval. If we fail to adequately demonstrate the safety and efficacy of any product candidate under development, we may not receive regulatory approval for those product candidates, which would prevent us from generating revenues or achieving profitability.

Even if one of our product candidates is approved and commercialized, we may not become profitable.

If approved for marketing by applicable regulatory authorities, our ability to generate revenues from our product candidates will depend on our ability to:

- price our product candidates competitively such that third-party and government reimbursement leads to broad product adoption;
- prepare a broad network of clinical sites for administration of our product;
- create market demand for our product candidates through our own marketing and sales activities, and any other arrangements to promote these product candidates that we may otherwise establish;
- receive regulatory approval for the targeted patient population(s) and claims that are necessary or desirable for successful marketing;
- manufacture product candidates through CMOs or in our own, or our affiliates', manufacturing facilities in sufficient quantities and at acceptable quality and manufacturing cost to meet commercial demand at launch and thereafter;
- establish and maintain agreements with wholesalers, distributors, pharmacies, and group purchasing organizations on commercially reasonable terms;
- obtain, maintain, protect and enforce patent and other intellectual property protection and regulatory exclusivity for our product candidates;
- successfully commercialize any of our product candidates that receive regulatory approval;
- maintain compliance with applicable laws, regulations, and guidance specific to commercialization including interactions with health care professionals, patient advocacy groups, and communication of health care economic information to payors and formularies;
- achieve market acceptance of our product candidates by patients, the medical community, and third-party payors;
- achieve appropriate reimbursement for our product candidates;
- maintain a distribution and logistics network capable of product storage within our specifications and regulatory guidelines, and further capable of timely product delivery to commercial clinical sites;
- effectively compete with other therapies or competitors; and
- following launch, assure that our product will be used as directed and that additional unexpected safety risks will not arise.

Even if the FDA approves Anktiva™ for certain indications, and even if we obtain significant market share for it, because the potential target population may be small, we may never achieve profitability without obtaining regulatory approval for additional indications. The FDA often approves new therapies initially only for use in patients with relapsed or refractory metastatic disease, which may limit our patient population.

Additionally, we may not be able to obtain the labeling claims necessary or desirable for the promotion of our product candidates.

Additionally, in connection with the merger with ImmunityBio, we assumed the obligation to issue CVRs to the former stockholders of Altor BioScience Corporation (succeeded by Altor BioScience LLC) ("Altor") in connection with the acquisition of Altor. These CVRs become payable upon the attainment of certain regulatory and sales milestones related to Anktiva™. The former Altor stockholders have the ability to choose to receive these payments either in cash, in an equivalent value of our common stock or in a combination of both cash and stock at the time such payments are due, except that Dr. Soon-Shiong and his related party, as prior stockholders of Altor, have irrevocably elected to receive all payments in respect of their CVRs in the form of our common stock. Such CVR payments to Dr. Soon-Shiong and his related party aggregate to approximately $279.5 million.

We may, however, still be required to pay the other prior Altor stockholders up to $164.2 million for the CVRs relating to the regulatory milestone and up to $164.2 million for the CVRs relating to the sales milestone should they choose to have these CVRs paid in cash instead of common stock. If this were to occur, we may need to seek additional sources of capital, and we may not be able to achieve profitability or positive cash flow. We plan to collaborate with governmental, academic and corporate partners, including affiliates, to improve and develop Anktiva™, hAd5 and other therapies for new indications for use in combination with other therapies and to improve and develop other product candidates, which may expose us to additional risks, or we may not realize the benefits of such collaborations.

We use the Clinic, a related party, in some of our clinical trials which may expose us to significant regulatory risks. If our data for this site is not sufficiently robust or if there are any data integrity issues, we may be required to repeat such studies or required to contract with other clinical trial sites, and our clinical development plans will be significantly delayed, and we will incur additional costs.

The Clinic has conducted, is currently conducting, and in the future may conduct, clinical trials involving our product candidates. The Clinic is a related party as it is owned by an officer of the company and additionally, NantWorks, LLC (“NantWorks”) manages the administrative operations of the Clinic. Prior to June 30, 2019, one of the company’s officers was an investigator or sub-investigator for certain of the company’s trials conducted at the Clinic. NantWorks, which is wholly owned by our Executive Chairman and Global Chief Scientific and Medical Officer, Dr. Soon-Shiong, provides certain administrative services (and has loaned money) to the Clinic. Under certain circumstances, we may be required to report some of these relationships to the FDA. Relying on a related party clinical site to develop data that is used as the basis to support regulatory approval can expose us to significant regulatory risks. The FDA may conclude that a financial relationship between us, the Clinic and/or a principal investigator has created a conflict of interest or otherwise affected interpretation of the study. The FDA or comparable regulatory authorities may therefore question the integrity of the data generated at the applicable clinical trial site and the utility of the clinical trial itself may be jeopardized. If any data integrity, or regulatory non-compliance issues occur during the study, we may not be able to use the data for our regulatory approval. This could result in a delay in approval, or rejection, of our marketing applications by the FDA and may ultimately lead to the denial of regulatory approval of one or more of our product candidates.

If we encounter delays or difficulties enrolling and/or maintaining patients in our clinical trials, our clinical development activities and receipt of necessary marketing approvals could be delayed or otherwise adversely affected.

The timely completion of clinical trials in accordance with their protocols depends, among other things, on our ability to enroll a sufficient number of patients who remain in the trial until its conclusion. We may experience difficulties or delays in patient enrollment and retention in our clinical trials for a variety of reasons, including:

- the size and nature of the patient population;
- the severity of the disease under investigation;
- the patient eligibility criteria defined in the protocol;
- the proximity of patients to trial sites;
- our ability to recruit clinical trial investigators with the appropriate competencies and experience;
- the efforts to facilitate timely enrollment in clinical trials and the effectiveness of recruiting publicity;
- the patient referral practices of physicians;
- patients that enroll in our studies may misrepresent their eligibility or may otherwise not comply with the clinical trial protocol or clinical investigators may enroll patients who do not meet the enrollment criteria, resulting in the need to drop such patients from the study or clinical trial, increase the needed enrollment size for the study or clinical trial or extend the study’s or clinical trial’s duration;
- clinicians’ and patients’ perceptions as to the potential advantages and side effects of the product candidate being studied in relation to other available therapies, including any new drugs or treatments that may be approved for the indications we are investigating;

- amendments to our clinical protocols, including amendments we have made to further define the patient population to be studied;
- ability to obtain and maintain patient consents;
- the impact of the current COVID-19 pandemic or other material adverse events, which may affect the conduct of a clinical trial, including by slowing potential enrollment or reducing the number of eligible patients for clinical trials; and
- the risk that patients enrolled in clinical trials will not complete a clinical trial, return for post-treatment follow-up, or follow the required study procedures.

In addition, we expect that our clinical trials will compete with other clinical trials for product candidates that are in the same therapeutic areas as our product candidates, and this competition will reduce the number and types of patients available to us, because some patients who might have opted to enroll in our trials may instead opt to enroll in a trial being conducted by one of our competitors. Because the number of qualified clinical investigators is limited, we may need to conduct some of our clinical trials at the same clinical trial sites that some of our competitors use, which will reduce the number of patients who are available for our clinical trials at such clinical trial sites. Moreover, because our product candidates represent a departure from more commonly used methods for cancer and/or viral disease treatment, potential patients and their doctors may be inclined to use conventional therapies, such as chemotherapy and approved immunotherapies that have established safety and efficacy profiles, rather than enroll patients in any future clinical trial.

Even if we are able to enroll a sufficient number of patients in our clinical trials, delays in patient enrollment or small population size may result in increased costs or may affect the timing or outcome of the planned clinical trials, which could prevent completion of these trials and adversely affect our ability to advance the development of our product candidates.

Our product candidates may cause undesirable side effects or have other properties that could halt their clinical development, prevent their regulatory approval, limit their commercial potential or result in significant negative consequences.

Results of our trials could reveal a high and unacceptable severity and prevalence of side effects, adverse events or unexpected characteristics. Combination immunotherapy that includes our current product candidates may be associated with more frequent adverse events or additional adverse events. Undesirable side effects or unacceptable toxicities caused by our product candidates could cause us, IRBs, Drug Safety Monitoring Boards, the FDA or comparable foreign regulatory authorities to interrupt, delay or halt clinical trials or order our clinical trials to be placed on clinical hold, and could result in a more restrictive label or the delay or denial of regulatory approval by the FDA or other comparable foreign regulatory authorities for any or all targeted indications. For example, we currently have a clinical hold on the Phase II/III clinical trial in the U.S. for our hAd5 COVID-19 vaccine candidate pending modifications to the protocol and the FDA's review of additional information, including immunogenicity and safety data from the Phase I portion of the study. In addition, the FDA or comparable foreign regulatory authorities may also require additional data, clinical studies, or preclinical studies should unacceptable toxicities arise. We may need to abandon development or limit development of that product candidate to certain uses or subpopulations in which the undesirable side effects or other characteristics are less prevalent, less severe or more acceptable from a risk/benefit perspective. Toxicities associated with our clinical trials and product candidates may also negatively impact our ability to conduct clinical trials using tumor-infiltrating lymphocyte therapy in larger patient populations, such as in patients that have not yet been treated with other therapies or have not yet progressed on other therapies. Even if we were to receive product approval, such approval could be contingent on inclusion of unfavorable information in our product labeling, such as limitations on the indicated uses for which the products may be marketed or distributed, a label with significant safety warnings, including boxed warnings, contraindications, and precautions, a label without statements necessary or desirable for successful commercialization, or requirements for costly post marketing testing and surveillance, or other requirements, including a Risk Evaluation and Mitigation Strategy ("REMS") to monitor the safety or efficacy of the products, and in turn prevent us from commercializing and generating revenues from the sale of our current or future product candidates. In addition, these serious adverse effects may not be appropriately recognized or managed by the treating medical staff, as toxicities resulting from our product candidates are not normally encountered in the general patient population and by medical personnel. Any of these occurrences may materially harm our business, financial condition and prospects.

The manufacture of our product candidates is complex, and we may encounter difficulties in production, particularly with respect to process development, quality control, or scaling-up of our manufacturing capabilities. If we or our related parties, or any of our third-party manufacturers encounter such difficulties, our ability to provide adequate supply of our product candidates for clinical trials or our products for patients, if approved, could be delayed or stopped, or we may be unable to maintain a commercially viable cost structure.

The manufacture of our product candidates involves complex processes, especially for our biologics, vectors and cell therapy product candidates, which are complex, highly regulated and subject to multiple risks. As a result of the complexities, the cost to manufacture biologics, vectors and cell therapies is generally higher than traditional small molecule chemical compounds, and the manufacturing process is less reliable and is more difficult to reproduce. The manufacture of cell therapy products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of cell therapy products often encounter difficulties in production, particularly in scaling up initial production. These problems include difficulties with production costs and yields, quality control, including stability of the product candidate and quality assurance testing, shortages of qualified personnel and compliance with strictly enforced federal, state, local and foreign regulations. We may also find that the manufacture of our product candidates is more difficult than anticipated, resulting in an inability to produce a sufficient amount of our product candidates for our clinical trials or, if approved, commercial supply. Even minor deviations from normal manufacturing processes could result in reduced production yields, product defects, and other supply disruptions. Currently, our product candidates are manufactured using processes developed or modified by us, our affiliates or by our third-party research institution collaborators that we may not utilize for more advanced clinical trials or commercialization.

Currently we manufacture our product candidates or we may use third-party CMOs or some of our related parties to manufacture our product candidates. Our product candidates may compete with other products and product candidates for access to manufacturing facilities. Moreover, because of the complexity and novelty of our manufacturing process, there are only a limited number of manufacturers that operate under cGMP regulations and that are both capable of manufacturing our product candidates for us and willing to do so. If our CMOs should cease manufacturing for us, we would experience delays in obtaining sufficient quantities of our product candidates for clinical trials and, if approved, commercial supply. Further, our CMOs may breach, terminate, or not renew our agreements with them. If we were to need to find alternative manufacturing facilities it may take us significant time to find a replacement, if we are able to find a replacement at all and it would significantly impact our ability to develop, obtain regulatory approval for or market our product candidates, if approved. The commercial terms of any new arrangement could be less favorable than our existing arrangements and the expenses relating to the transfer of necessary technology and processes could be significant.

Reliance on third-party manufacturers entails exposure to risks to which we would not be subject if we manufactured the product candidate ourselves, including:

- inability to negotiate manufacturing and quality agreements with third parties under commercially reasonable terms;
- reduced day-to-day control over the manufacturing process for our product candidates as a result of using third-party manufacturers for all aspects of manufacturing activities;
- reduced control over the protection of our trade secrets, know-how and other proprietary information from misappropriation or inadvertent disclosure or from being used in such a way as to expose us to potential litigation;
- termination or nonrenewal of manufacturing agreements with third parties in a manner or at a time that may be costly or damaging to us or result in delays in the development or commercialization of our product candidates; and
- disruptions to the operations of our third-party manufacturers or suppliers caused by conditions unrelated to our business or operations, including the bankruptcy of the manufacturer or supplier.

Moreover, any problems or delays we or our CMOs experience in preparing for commercial scale manufacturing of a product candidate may result in a delay in the FDA approval of the product candidate or may impair our ability to manufacture commercial quantities or such quantities at an acceptable cost, which could result in the delay, prevention, or impairment of clinical development and commercialization of our product candidates and could adversely affect our business. Furthermore, if we or our CMOs fail to deliver the required commercial quantities of our product candidates on a timely basis and at reasonable costs, we would likely be unable to meet demand for our products and we would lose potential revenues. We may ultimately be unable to reduce the cost of goods for our product candidates to levels that will allow for an attractive return on investment if and when those product candidates are commercialized.

In addition, the manufacturing process and facilities for any products that we may develop are subject to FDA and foreign regulatory authority approval processes, and we or our CMOs will need to meet all applicable FDA and foreign regulatory authority requirements, including cGMP, on an ongoing basis. The cGMP requirements include quality control, quality assurance and the maintenance of records and documentation. The FDA and other regulatory authorities enforce these requirements through facility inspections. Manufacturing facilities must submit to pre-approval inspections by the FDA that will be conducted after we submit our marketing applications, including our BLAs and NDAs, to the FDA. Manufacturers are also subject to continuing FDA and other regulatory authority inspections following marketing approval. Further, we and our third-party CMOs must supply all necessary chemistry, manufacturing and quality control documentation in support of a BLA or NDA on a timely basis. Our or our CMOs' manufacturing facilities may be unable to comply with our specifications, cGMP, and with other FDA, state, and foreign regulatory requirements, and there is no guarantee that we or our CMOs will be able to successfully pass all aspects of a pre-approval inspection by the FDA or other foreign regulatory authorities.

Poor control of production processes can lead to the introduction of adventitious agents or other contaminants, or to inadvertent changes in the properties or stability of product candidates that may not be detectable in final product testing. If microbial, viral, environmental or other contaminations are discovered in our product candidates or in the manufacturing facilities in which our product candidates are made, such manufacturing facilities may need to be closed for an extended period of time to investigate and remedy the contamination which could delay clinical trials and adversely harm our business. If we or our CMOs are unable to reliably produce products to specifications acceptable to the FDA or other regulatory authorities, or in accordance with the strict regulatory requirements, we may not obtain or maintain the approvals we need to commercialize such products. Even if we obtain regulatory approval for any of our product candidates, there is no assurance that either we or our CMOs will be able to manufacture the approved product to specifications acceptable to the FDA or other regulatory authorities, to produce it in sufficient quantities to meet the requirements for the potential launch of the product, or to meet potential future demand. Deviations from manufacturing requirements may further require remedial measures that may be costly and/or time-consuming for us or a third party to implement and may include the temporary or permanent suspension of a clinical trial or commercial sales or the temporary or permanent closure of a facility. Any such remedial measures imposed upon us or third parties with whom we contract could materially harm our business.

As product candidates progress through preclinical and clinical trials to marketing approval and commercialization, it is common that various aspects of the development program, such as manufacturing methods and formulation, are altered along the way in an effort to optimize yield and manufacturing batch size, minimize costs and achieve consistent quality and results. Such changes carry the risk that they will not achieve these intended objectives. Any of these changes could cause our product candidates to perform differently and affect the results of planned clinical trials or other future clinical trials conducted with the altered materials. This could delay completion of clinical trials, require the conduct of bridging clinical trials or the repetition of one or more clinical trials, increase clinical trial costs, delay approval of our product candidates and jeopardize our ability to commercialize our product candidates, if approved, and generate revenues.

To the extent we use CMOs, we are ultimately responsible for the manufacture of our products, if approved, and product candidates. A failure to comply with these requirements may result in regulatory enforcement actions against our manufacturers or us, including fines and civil and criminal penalties, which could result in imprisonment, suspension or restrictions of production, injunctions, delay or denial of product approval or supplements to approved products, clinical holds or termination of clinical trials, warning or untitled letters, regulatory authority communications warning the public about safety issues with the biologic, refusal to permit the import or export of the products, product seizure, detention, or recall, operating restrictions, suits under the federal civil False Claims Act ("FCA"), corporate integrity agreements, consent decrees, or withdrawal of product approval.

Any of these challenges could delay completion of clinical trials, require bridging clinical trials or the repetition of one or more clinical trials, increase clinical trial costs, delay approval of our product candidate, impair commercialization efforts, increase our cost of goods, and have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Cell-based therapies and biologics rely on the availability of reagents, specialized equipment and other specialty materials, which may not be available to us on acceptable terms or at all. For some of these reagents, equipment and materials, we rely or may rely on sole source vendors or a limited number of vendors, which could impair our ability to manufacture and supply our products, if approved.

Manufacturing our product candidates will require many reagents, which are substances used in our manufacturing processes to bring about chemical or biological reactions, and other specialty materials and equipment, some of which are manufactured or supplied by small companies with limited resources and experience to support commercial biologics production. For some of these reagents, equipment and materials used in the manufacture of our product candidates, we rely, and we may in the future rely, on sole source vendors or a limited number of vendors. Some of these suppliers may not have the capacity to support clinical trials and commercial products manufactured under cGMP by biopharmaceutical firms or may otherwise be ill-equipped to support our needs. We also do not have supply contracts with many of these suppliers and may not be able to obtain supply contracts with them on acceptable terms or at all. Accordingly, we may experience delays in receiving key materials and equipment to support clinical or commercial manufacturing. An inability to continue to source product from any of these suppliers, which could be due to a number of issues, including regulatory actions or requirements affecting the supplier, adverse financial or other strategic developments experienced by a supplier, labor disputes or shortages, unexpected demands or quality issues, could adversely affect our ability to satisfy demand for our product candidates, which could adversely and materially affect our product sales and operating results or our ability to conduct clinical trials, either of which could significantly harm our business.

As we seek to develop and scale our manufacturing process, we expect that we will need to obtain rights to and supplies of certain materials and equipment to be used as part of that process. We may not be able to obtain rights to such materials on commercially reasonable terms, or at all, and if we are unable to alter our process in a commercially viable manner to avoid the use of such materials or find a suitable substitute, it would have a material adverse effect on our business. Even if we are able to alter our process so as to use other materials or equipment, such a change may lead to a delay in our clinical development and/or commercialization plans. If such a change occurs for a product candidate that is already in clinical testing, the change may require us to perform both *ex vivo* comparability studies and to collect additional data from patients prior to undertaking more advanced clinical trials.

Our ability to use net operating losses and research and development credits to offset future taxable income may be subject to certain limitations.

In general, under Sections 382 and 383 of the Internal Revenue Code (“Code”), a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its pre-change net operating losses or tax credits (“NOLs”) or credits, to offset future taxable income or taxes. For these purposes, an ownership change generally occurs where the aggregate stock ownership of one or more stockholders or groups of stockholders who owns at least 5% of a corporation’s stock increases its ownership by more than 50 percentage points over its lowest ownership percentage within a specified testing period. We have not conducted a complete study to assess whether a change of control has occurred or whether there have been multiple changes of control since inception due to the significant complexity and cost associated with such a study. If we have experienced a change of control, as defined by Section 382, at any time since inception (including as a result of the merger), utilization of the net operating loss carryforwards or research and development tax credit carryforwards would be subject to an annual limitation under Section 382. Any limitation may result in expiration of a portion of the net operating loss carryforwards or research and development tax credit carryforwards before utilization. In addition, our NOLs or credits may also be impaired under state law. Accordingly, we may not be able to utilize a material portion of our NOLs or credits.

Since we will need to raise substantial additional funding to finance our operations, we may experience further ownership changes in the future, some of which may be outside of our control. Limits on our ability to use our pre-change NOLs or credits to offset U.S. federal taxable income could potentially result in increased future tax liability to us if we earn net taxable income in the future. In addition, under the legislation commonly referred to as the Tax Cuts and Jobs Act of 2017 (“TCJA”), as modified by the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the amount of NOLs generated in taxable periods beginning after December 31, 2017, that we are permitted to deduct in any taxable year beginning after December 31, 2020 is limited to 80% of our taxable income in such year, where taxable income is determined without regard to the NOL deduction itself. The TCJA allows post-2017 unused NOLs to be carried forward indefinitely. Similar rules may apply under state tax laws.

Changes in tax law could adversely affect our business and financial condition. Negative or unexpected tax consequences could adversely affect our results of operations.

New tax laws, statutes, rules, regulations or ordinances could be enacted at any time, which could adversely affect our domestic and international business operations, and our business and financial performance. The rules dealing with U.S. federal, state, and local income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department. Changes to tax laws (which changes may have retroactive application) could adversely affect us and our stockholders. In recent years, many such changes have been made and changes are likely to continue to occur in the future. For example, the TCJA significantly reformed the Code. We have generally accounted for such changes in accordance with our understanding of the TCJA and guidance available as of the date of this filing as described in more detail in our condensed consolidated financial statements. Additionally, on March 27, 2020, the CARES Act was enacted, which, among other things, suspends the 80% limitation on the deduction for net operating losses in taxable years beginning before January 1, 2021, permits a 5-year carryback of net operating losses arising in taxable years beginning after December 31, 2017 and before January 1, 2021, and generally caps the limitation on the deduction for net interest expense at 50% of adjusted taxable income for taxable years beginning in 2019 and 2020. It cannot be predicted whether, when, in what form, or with what effective dates, new tax laws may be enacted, or regulations and rulings may be enacted, promulgated or issued under existing or new tax laws, which could result in an increase in our tax liability or require changes in the manner in which we operate in order to minimize or mitigate any adverse effects of changes in tax law or in the interpretation thereof. In addition, adverse changes in the financial outlook of our operations or further changes in tax laws or regulations could lead to changes in our valuation allowances against deferred tax assets on our consolidated balance sheets, which could materially affect our results of operations.

Our transfer pricing policies may be subject to challenge by the IRS or other taxing authorities.

Our intercompany relationships are subject to complex transfer pricing regulations administered by taxing authorities in various jurisdictions. The relevant taxing authorities may disagree with our determinations as to the value of assets sold or acquired or income and expenses attributable to specific jurisdictions. If such a disagreement were to occur, and our position were not sustained, we could be required to pay additional taxes, interest and penalties, which could result in one-time tax charges, higher effective tax rates, reduced cash flows, and lower overall profitability of our operations. We believe that our financial statements reflect adequate reserves to cover such a contingency, but there can be no assurances in that regard.

We could be subject to additional income tax liabilities and to examinations of our tax returns by the IRS and other domestic and foreign tax authorities. An adverse outcome of any such audit or examination by the IRS or other tax authority could have a material adverse effect on our operating results and financial condition.

We are a U.S.-based company subject to tax in the U.S. and certain foreign tax jurisdictions. Significant judgment is required in determining our global provision for income taxes, deferred tax assets or liabilities, and in evaluating our tax positions on a worldwide basis. We may become subject to regular review and audit by the IRS and other tax authorities in various domestic and foreign jurisdictions. As a result, we may in the future receive assessments in multiple jurisdictions on various tax-related assertions. Taxing authorities may in the future challenge our tax positions and methodologies on various matters, including our positions regarding the collection of sales and use taxes, the determination and payment of value added taxes and the jurisdictions in which we are subject to taxes, which could expose us to additional taxes. We regularly assess the likelihood of adverse outcomes resulting from future tax examinations to determine the adequacy of our provision for income taxes. These assessments can require considerable estimates and judgments. The calculation of our tax liabilities involves dealing with uncertainties in the application of complex tax laws and regulations in a variety of jurisdictions. While we believe our tax positions are consistent with the tax laws in the jurisdictions in which we conduct our business, there can be no assurance that our tax positions and methodologies or calculation of our tax liabilities are accurate or that the outcomes from ongoing and future tax examinations will not have an adverse effect on our operating results and financial condition.

Our projections regarding the market opportunities for our product candidates may not be accurate, and the actual market for our products, if approved, may be smaller than we estimate.

We do not have verifiable data regarding the potential size of the commercial markets for our current product candidates or any future product candidates. Since our current product candidates and any future product candidates will represent novel approaches to treating various conditions, it may be difficult, in any event, to accurately estimate the potential revenues from these product candidates. Accordingly, we may spend significant capital trying to obtain approval for product candidates that have an uncertain commercial market. Our projections of addressable patient populations that may benefit from treatment with our product candidates are based on our beliefs and estimates. These estimates have been derived from a variety of sources, including scientific literature, surveys of clinics, patient foundations, or market research by third parties, and may prove to be incorrect. Further, new studies or approvals of new therapeutics may change the estimated incidence or prevalence of these diseases. The number of patients may turn out to be lower than expected. Additionally, the potentially addressable patient population for our product candidates may be limited or may not be amenable to treatment with our product candidates and may also be limited by the cost of our treatments and the reimbursement of those treatment costs by third-party payors. Even if we obtain significant market share for our product candidates, because the potential target populations may be small, we may never achieve profitability without obtaining regulatory approval for additional indications.

Because our current product candidates represent, and our other potential product candidates will represent novel approaches to the treatment of disease, there are many uncertainties regarding the development, market acceptance, third-party reimbursement coverage and the commercial potential of our product candidates.

Human immunotherapy products are a new category of therapeutics. Because this is a relatively new and expanding area of novel therapeutic interventions, there are many uncertainties related to development, marketing, reimbursement and the commercial potential for our product candidates. There can be no assurance as to the length of the trial period, the number of patients the FDA will require to be enrolled in the trials in order to establish the safety, efficacy, purity and potency of immunotherapy products, or that the data generated in these trials will be acceptable to the FDA to support marketing approval. The FDA may take longer than usual to come to a decision on any BLA and/or NDA that we submit and may ultimately determine that there is not enough data, information, or experience with our product candidates to support an approval decision. The FDA may also require that we conduct additional post-marketing studies or implement risk management programs, such as REMS, until more experience with our product candidates is obtained. Finally, after increased usage, we may find that our product candidates do not have the intended effect, do not work with other combination therapies or have unanticipated side effects, potentially jeopardizing initial or continuing regulatory approval and commercial prospects.

There is no assurance that the approaches offered by our product candidates will gain broad acceptance among doctors or patients or that governmental agencies or third-party medical insurers will be willing to provide reimbursement coverage for our proposed product candidates. The market for any products that we successfully develop will also depend on the cost of the product. We do not yet have sufficient information to reliably estimate what it will cost to commercially manufacture our current product candidates, and the actual cost to manufacture these products could materially and adversely affect the commercial viability of these products. Our goal is to reduce the cost of manufacturing and providing our therapies. However, unless we can reduce those costs to an acceptable amount, we may never be able to develop a commercially viable product. If we do not successfully develop and commercialize products based upon our approach or find suitable and economical sources for materials used in the production of our potential products, we will not become profitable, which would materially and adversely affect the value of our common stock. Our Anktiva™ therapies and our other therapies may be provided to patients in combination with other agents provided by third parties or our affiliates. The cost of such combination therapy may increase the overall cost of therapy and may result in issues regarding the allocation of reimbursements between our therapy and the other agents, all of which may affect our ability to obtain reimbursement coverage for the combination therapy from governmental or private third-party medical insurers.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of our product candidates.

We face an inherent risk of product liability as a result of the clinical development, testing and manufacturing of our product candidates and will face an even greater risk if we commercialize any products. For example, we may be sued if our product candidates cause or are perceived to cause injury or are found to be otherwise unsuitable during clinical 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 or a breach of warranties. Claims could also be asserted under state consumer protection acts. Large judgements have been awarded in class action lawsuits based on therapeutics that had unanticipated side effects. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our product candidates. Even successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in a regulatory investigation of the safety and effectiveness of our products, our third-party manufacturer's manufacturing processes and facilities or our marketing programs and potentially a recall of our products or more serious enforcement action, including limitations on the approved indications for which our product candidates may be used or suspension or withdrawal of approvals, decreased demand for our products, injury to our reputation, costs to defend the related litigation, a diversion of management's time and our resources, substantial monetary awards to trial participants or patients and a decline in our stock price.

Our inability to obtain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of products we may develop, alone or with corporate collaborators. Our insurance policies may also have various exclusions, and we may be subject to product liability claims for which we have no coverage. While we have obtained clinical trial insurance for our clinical trials, we may have to pay amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient capital to pay such amounts. Even if our agreements with any future corporate collaborators entitle us to indemnification against losses, such indemnification may not be available or adequate should any claim arise.

We will face significant competition from other biotechnology and pharmaceutical companies and from non-profit institutions.

Competition in the field of cancer and viral infectious disease therapy is intense and is accentuated by the rapid pace of technological development. Based on the breadth and depth of our platforms, we believe our competitors include large pharmaceutical and biotechnology companies, and specialized pharmaceutical and biotechnology firms acting either independently or together with other such companies. Furthermore, academic institutions, government agencies and other public and private organizations conducting research in the U.S. and Europe are also potential competitors and may seek patent protection or may establish collaborative arrangements for competitive products or programs. These competitors have developed, may develop and are developing product candidates and processes competitive with our product candidates. Research and discoveries by others may result in breakthroughs which may render our product candidates obsolete even before they generate any revenues. We believe that a significant number of products are currently under development, and may become commercially available in the future, for the treatment of conditions for which we are developing product candidates. Many of our competitors have several therapeutic products that have already been developed, approved and successfully commercialized, or are in the process of obtaining regulatory approval for their therapeutic products in the United States and internationally. Many of our potential competitors have substantially greater research and development capabilities and scientific, regulatory, manufacturing, marketing, sales, financial, managerial, and human resources and experience than we do. Our competitors may be more successful than us in obtaining regulatory approval for their treatments and products, often more rapidly than we may obtain approval for ours, and achieving widespread market acceptance and a strong market position, rendering our treatments obsolete or non-competitive, possibly even before we are able to enter the market. Accelerated merger and acquisition activity in the biotechnology and biopharmaceutical industries may result in even more resources being concentrated among a smaller number of our competitors. Early stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies. These third parties compete with us in recruiting and retaining qualified scientific and management personnel and establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs.

Our competitors may:

- develop safer, more convenient or more effective immunotherapies and other therapeutic products;
- develop therapies that are less expensive or have better reimbursement from private or public payors;
- reach the market more rapidly, reducing the potential sales of our product candidates; or
- establish superior proprietary positions.

Even if we obtain regulatory approval for our product candidates, the availability and price of our competitors' products could limit the demand and the price we are able to charge for our therapies. The level of generic competition and the availability of reimbursement from government and other third-party payors will also significantly affect the pricing and competitiveness of our products.

A large number of companies, government agencies and academic centers around the world are developing COVID-19 vaccines, and many of these entities are in more advanced stages of development than we are, including some that have started Phase II and/or III clinical trials or have already obtained emergency regulatory approval in the United States and internationally. Even if our COVID-19 vaccine candidate is ultimately approved for marketing, the value of our opportunity will be adversely impacted by other COVID-19 vaccines that have obtained emergency regulatory approval, obtain full regulatory approval, or demonstrate better efficacy or safety than our COVID-19 vaccine candidate.

We may not be able to implement our business plan if the acceptance of our product candidates is inhibited by price competition or the reluctance of physicians to switch from other methods of treatment to our product, or if physicians switch to other new therapies, drugs or biologic products or choose to reserve our product candidates for use in limited circumstances. We may be adversely impacted if any of these competitors gain market share as a result of new technologies, commercialization strategies or otherwise.

Public opinion and scrutiny of immunotherapy approaches may impact public perception of us and our product candidates, which may adversely affect our ability to conduct our business and implement our business plans.

We use relatively novel technologies involving the Anktiva™, aldoxorubicin, hAd5 and yeast technologies and cell-based therapies and our natural killer cell platform utilizes a relatively novel technology involving the genetic modification of human cells and utilization of those modified cells in other individuals. Public perception may be influenced by claims, such as claims that our technologies are unsafe, unethical or immoral and, consequently, our approach may not gain the acceptance of the public or the medical community. Negative public reaction to cell-based immunotherapy in general could result in greater government regulation and stricter labeling requirements of immunotherapy products, including our product candidates, and could cause a decrease in the demand for any products we may develop. Adverse public attitudes may adversely impact our ability to enroll patients in clinical trials. Moreover, our success will depend upon physicians specializing in the treatment of those diseases that our product candidates target prescribing, and their patients being willing to receive treatments that involve the use of our product candidates in lieu of, or in addition to, existing treatments they are already familiar with and for which greater clinical data may be available. More restrictive government regulations or negative public opinion could have an adverse effect on our business or financial condition and may delay or impair the development and commercialization of our product candidates or demand for any products we may develop. Adverse events in our clinical trials, even if not ultimately attributable to our product candidates, and the resulting publicity could result in increased governmental regulation, unfavorable public perception, potential regulatory delays in the testing or approval of our potential product candidates, stricter labeling requirements for those product candidates that are approved and a decrease in demand for any such product candidates.

We may seek orphan drug status or Fast Track or Breakthrough Therapy designations or other designation for one or more of our product candidates, but even if any such designation or status is granted, it may not lead to faster development or a faster regulatory review or approval process, and it does not increase the likelihood that our product candidates will receive marketing approval and we may be unable to maintain any benefits associated with such designations or status, including market exclusivity.

In 2012, the FDA established a Breakthrough Therapy designation, which is intended to expedite the development and review of products that treat serious or life-threatening conditions. We have received, and may seek in the future, Fast Track or Breakthrough Therapy designation for current or future product candidates. Receipt of a designation to facilitate product candidate development is within the discretion of the FDA. Accordingly, even if we believe one of our product candidates meets the criteria for a designation, the FDA may disagree. In any event, the receipt of such a designation for a product candidate may not result in a faster development process, review or approval compared to product candidates considered for approval under conventional FDA procedures and does not assure ultimate marketing approval by the FDA. In addition, the FDA may later decide that the product candidates no longer meet the designation conditions.

Under the Orphan Drug Act, the FDA may grant orphan designation to a drug or biologic intended to treat a rare disease or condition or for which there is no reasonable expectation that the cost of developing and making available the drug or biologic will be recovered from sales in the U.S. If a product that has orphan drug designation subsequently receives the first FDA approval for the disease for which it has such designation, the product is entitled to orphan product exclusivity, which means that the FDA may not approve any other applications, including a full BLA to market the same drug or biologic for the same indication for seven years, except in limited circumstances. We may seek orphan drug status for one or more of our product candidates, but exclusive marketing rights in the U.S. may be lost if we seek approval for an indication broader than the orphan designated indication and may be lost if the FDA later determines that the request for designation was materially defective or if we are unable to assure sufficient quantities of the product to meet the needs of patients with the rare disease or condition.

As a condition of approval, the FDA may require that we implement various post-marketing requirements and conduct post-marketing studies, any of which would require a substantial investment of time, effort, and money, and which may limit our commercial prospects.

As a condition of biologic licensing, the FDA is authorized to require that sponsors of approved BLAs implement various post-market requirements, including REMS and Phase IV trials. For example, in connection with FDA approval of another company's drug, the FDA required significant post-marketing commitments, including a Phase IV trial, revalidation of a test method, and a substantial REMS program that included, among other requirements, the certification of hospitals and their associated clinics that dispensed the drug, including the implementation of a training program and limited distribution only to certified hospitals and their associated clinics. If we receive approval of our product candidates, the FDA may determine that similar or additional or more burdensome post-approval requirements are necessary to ensure that our product candidates are safe, pure and potent. To the extent that we are required to establish and implement any post-approval requirements, we will likely need to invest a significant amount of time, effort and money. Such post-approval requirements may also limit the commercial prospects of our product candidates.

We have never commercialized a product candidate before, and we may lack the necessary expertise, personnel and resources to successfully commercialize any products on our own or together with suitable collaborators. We may be unable to establish effective marketing and sales capabilities or enter into agreements with third parties or related parties to market and sell our product candidates, if they are approved, and as a result, we may be unable to generate product revenues.

We have little to no prior experience in, and currently do not have a commercial infrastructure for, the marketing, sale and distribution of biopharmaceutical products. To achieve commercial success for the product candidates, which we may license to others, we will rely on the assistance and guidance of those collaborators. For product candidates for which we retain commercialization rights and marketing approval, if approved, in order to commercialize our product candidates, we must build our marketing, sales and distribution capabilities, including a comprehensive healthcare compliance program, or arrange with third parties to perform these services, which will take time and require significant financial expenditures and could delay any product launch and we may not be successful in doing so. There are significant risks involved with building and managing a

commercial infrastructure. We, or our collaborators, will have to compete with other pharmaceutical and biotechnology companies to recruit, hire, train, manage and retain medical affairs, marketing, sales and commercial support personnel. Recruiting, training and retaining a sales force is expensive and time-consuming and could delay any product launch. If the commercial launch of a product candidate for which we recruit a sales force and establish marketing capabilities is delayed or does not occur for any reason, we would have incurred these commercialization expenses prematurely or unnecessarily. These efforts may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel. In the event we are unable to develop a commercial infrastructure, we may not be able to commercialize our current or future product candidates, which would limit our ability to generate product revenues. Even if we are able to effectively establish a sales force and develop a marketing and sales infrastructure, our sales force and marketing teams may not be successful in commercializing our current or future product candidates. To the extent we rely on third parties to commercialize any products for which we obtain regulatory approval, we would have less control over their sales efforts and could be held liable if they failed to comply with applicable legal or regulatory requirements.

Factors that may inhibit our efforts to commercialize our current or future product candidates and generate product revenues include:

- if the COVID-19 pandemic continues or reoccurs it may negatively impact our ability to establish commercial operations, educate and interact with healthcare professionals, and successfully launch our product on a timely basis;
- the inability of sales personnel to obtain access to physicians or persuade adequate numbers of physicians to prescribe our current or future product candidates;
- our inability to effectively oversee a geographically dispersed sales and marketing team;
- the costs and time associated with the initial and ongoing training of sales and marketing personnel on legal and regulatory compliance matters and monitoring their actions;
- an inability to secure adequate coverage and reimbursement by government and private health plans;
- the clinical indications for which the products are approved and the claims that we may make for the products;
- limitations or warnings, including distribution or use restrictions, contained in the products' approved labeling;
- any distribution and use restrictions imposed by the FDA or to which we agree as part of a mandatory REMS or voluntary risk management plan;
- liability for sales or marketing personnel who fail to comply with the applicable legal and regulatory requirements;
- the lack of complementary products to be offered by sales personnel, which may put us at a competitive disadvantage relative to companies with more extensive product lines; and
- unforeseen costs and expenses associated with creating an independent sales and marketing organization or engaging a contract sales organization.

We expect to rely on third parties to perform many essential services for any products that we commercialize, including services related to distribution, government price reporting, customer service, accounts receivable management, cash collection and adverse event reporting. If these third parties fail to perform as expected or to comply with legal and regulatory requirements, our ability to commercialize our current or future product candidates will be significantly impacted and we may be subject to regulatory sanctions.

We expect to retain third-party service providers to perform a variety of functions related to the sale of our current or future product candidates, key aspects of which will be out of our direct control. These service providers may provide key services related to distribution, customer service, accounts receivable management, and cash collection. If we retain a service provider, we would substantially rely on it as well as other third-party providers that perform services for us, including entrusting our inventories of products to their care and handling. If these third-party service providers fail to comply with applicable laws and regulations, fail to meet expected deadlines or otherwise do not carry out their contractual duties to us, or encounter physical or natural damage at their facilities, our ability to deliver product to meet commercial demand would be significantly impaired and we may be subject to regulatory enforcement action.

In addition, we may engage in the future with third parties to perform various other services for us relating to adverse event reporting, safety database management, fulfillment of requests for medical information regarding our product candidates and related services. If the quality or accuracy of the data maintained by these service providers is insufficient, or these third parties otherwise fail to comply with regulatory requirements related to adverse event reporting, we could be subject to regulatory sanctions.

Additionally, we may contract in the future with a third party to calculate and report pricing information mandated by various government programs. If a third party fails to timely report or adjust prices as required or errs in calculating government pricing information from transactional data in our financial records, it could impact our discount and rebate liability, and potentially subject us to regulatory sanctions or FCA lawsuits.

If our product candidates do not achieve broad market acceptance, the revenues that we generate from their sales will be limited.

We have not commercialized a product candidate for any indication. Even if our product candidates are approved by the appropriate regulatory authorities for marketing and sale, they may not gain acceptance among physicians, patients, third-party payors and others in the medical community. If any product candidate for which we obtain regulatory approval does not gain an adequate level of market acceptance, we may not generate significant product revenues or become profitable. Market acceptance of our product candidates by the medical community, patients and third-party payors will depend on a number of factors, some of which are beyond our control. For example, physicians are often reluctant to switch their patients, and patients may be reluctant to switch from, existing therapies even when new and potentially more effective or safer treatments enter the market. Efforts to educate the medical community and third-party payors on the benefits of our product candidates may require significant resources and may not be successful. Even if the medical community accepts that our product candidates are safe and effective for their approved indications, physicians and patients may not immediately be receptive to such product candidates and may be slow to adopt them as an accepted treatment of the approved indications. If any of our product candidates is approved but does not achieve an adequate level of market acceptance, we may not generate significant revenues and we may not become profitable. The degree of market acceptance of any of our product candidates will depend on a number of factors, including:

- the continued safety and efficacy of our product candidates;
- the prevalence and severity of adverse events associated with such product candidates;
- the clinical indications for which the products are approved and the approved claims that we may make for the products;
- limitations or warnings contained in the product's FDA-approved labeling, including potential limitations or warnings for such products that may be more restrictive than other competitive products or distribution and use restrictions imposed by the FDA with respect to such product candidates or to which we agree as part of a mandatory REMS or voluntary risk management plan;
- changes in the standard of care for the targeted indications for such product candidates;
- the relative difficulty of administration of such product candidates;
- our ability to offer such product candidates for sale at competitive prices, including the cost of treatment versus economic and clinical benefit in relation to alternative treatments or therapies;
- the availability of adequate coverage or reimbursement by third parties, such as insurance companies and other healthcare payors, and by government healthcare programs, including Medicare and Medicaid;
- the extent and strength of our marketing and distribution of such product candidates;
- the safety, efficacy and other potential advantages over, and availability of, alternative treatments already used or that may later be approved for any of our intended indications;
- the timing of market introduction of such product candidates, as well as competitive products;
- the willingness of the target patient population to try new therapies and of physicians to prescribe these therapies;
- the extent and strength of our third-party manufacturer and supplier support;

- adverse publicity about the product or favorable publicity about competitive products; and
- potential product liability claims.

If any product candidate we commercialize fails to achieve market acceptance, it could have a material and adverse effect on our business, financial condition, results of operations and prospects.

Our product candidates may face competition sooner than anticipated.

The enactment of the Biologics Price Competition and Innovation Act of 2009 ("BPCIA") created an abbreviated pathway for the approval of biosimilar and interchangeable biological products. The abbreviated regulatory pathway establishes legal authority for the FDA to review and approve biosimilar biologics, including the possible designation of a biosimilar as "interchangeable" based on its similarity to an existing brand product. Under the BPCIA, the FDA cannot make an approval of an application for a biosimilar product effective until 12 years after the original branded product was approved under a BLA. Certain changes, however, and supplements to an approved BLA, and subsequent applications filed by the same sponsor, manufacturer, licensor, predecessor in interest or other related entity do not qualify for the 12-year exclusivity period.

Our product candidates may qualify for the BPCIA's 12-year period of exclusivity. However, there is a risk that the FDA will not consider our product candidates to be reference products for competing products, potentially creating the opportunity for biosimilar competition sooner than anticipated. Additionally, this period of regulatory exclusivity does not block companies pursuing regulatory approval via their own traditional BLA, rather than via the abbreviated pathway. Changes may also be made to this exclusivity period as a result of future legislation as there have been ongoing efforts to reduce the period of exclusivity. Even if we receive a period of BPCIA exclusivity for our first licensed product, if subsequent products do not include a modification to the structure of the product that impacts safety, purity, or potency, we may not receive additional periods of exclusivity for those products. Moreover, the extent to which a biosimilar, once approved, will be substituted for any one of our reference product candidates in a way that is similar to traditional generic substitution for non-biological products is not yet clear, and will depend on a number of marketplace and regulatory factors that are still developing. Medicare Part B encourages use of biosimilars by paying the provider the same percentage of the reference product average sale price as a mark-up, regardless of which product is reimbursed. It is also possible that payors will give reimbursement preference to biosimilars even over reference biologics absent a determination of interchangeability.

For our small molecular product candidates, if qualified, the regulatory exclusivity period is less than for our biologic product candidates. The Federal Food, Drug, and Cosmetic Act ("FDCA") provides a five-year period of non-patent marketing exclusivity within the United States to the first applicant to gain approval of an NDA for a drug where the FDA has not previously approved any other new drug containing the same active molecule or ion responsible for the action of the drug substance. During the exclusivity period, the FDA may not accept for review an abbreviated new drug application or a 505(b)(2) NDA submitted by another company for a generic version of such drug where the applicant does not own or have a legal right of reference to all the data required for approval. However, an application may be submitted after four years if it contains a certification of patent invalidity or non-infringement. The FDCA also provides three years of marketing exclusivity for an NDA, 505(b)(2) NDA or supplement to an existing NDA if new clinical investigations, other than bioavailability studies, that were conducted or sponsored by the applicant are deemed by the FDA to be essential to the approval of the application, for example, new indications, dosages or strengths of an existing drug. As such, we may face competition from generic versions of our small molecule product candidates, which will negatively impact our long-term business prospects and marketing opportunities.

We will need to obtain FDA approval of any proposed branded product names, and any failure or delay associated with such approval may adversely affect our business.

Any name we intend to use for our product candidates in the United States will require approval from the FDA regardless of whether we have secured a formal trademark registration from the U.S. Patent and Trademark Office ("USPTO"). The FDA typically conducts a review of proposed product names, including an evaluation of the potential for confusion with other product names. The FDA may also object to a product name if it believes the name inappropriately implies medical claims or contributes to an overstatement of efficacy. If the FDA objects to any of our proposed product names, we may be required to adopt alternative names for our product candidates. If we adopt alternative names, we would lose the benefit of any existing

trademark applications for such product candidate and may be required to expend significant additional resources in an effort to identify a suitable product name that would qualify under applicable trademark laws, not infringe or otherwise violate the existing rights of third parties, and be acceptable to the FDA. We may be unable to build a successful brand identity for a new product name in a timely manner or at all, which would limit our ability to commercialize our product candidates.

Our internal computer systems, or those used by our CROs, CMOs, clinical sites or other contractors or consultants, may fail or suffer security breaches.

We will be dependent upon information technology systems, infrastructure and data. In the ordinary course of our business, we will directly or indirectly collect, store and transmit sensitive data, including intellectual property, confidential information, preclinical and clinical trial data, proprietary business information, personal data and personally identifiable health information of our clinical trial subjects and employees, in our data centers and on our networks, or on those of third parties. The secure processing, maintenance and transmission of this information is critical to our operations. The multitude and complexity of our computer systems and those of our CROs, CMOs, clinical sites or other contractors or consultants make them inherently vulnerable to service interruption or destruction, malicious intrusion and random attack. Data privacy or security breaches by third parties, employees, contractors or others may pose a risk that sensitive data, including our intellectual property, trade secrets or personal information of our employees, patients, or other business partners may be exposed to unauthorized persons or to the public. Despite the implementation of security measures, our internal computer systems and those of our CROs, CMOs, clinical sites and other contractors and consultants are vulnerable to failure or damage from computer viruses and other malware, employee error, unauthorized and authorized access or other cybersecurity attacks, natural disasters, terrorism, war, fire and telecommunication and electrical failures. Cyberattacks are increasing in their frequency, sophistication and intensity. The techniques used by cyber criminals change frequently, may not be recognized until launched and can originate from a wide variety of sources, including outside groups such as external service providers, organized crime affiliates, terrorist organizations or hostile foreign governments or agencies. Cyberattacks could include the deployment of harmful malware, denial-of-service, social engineering and other means to affect service reliability and threaten data confidentiality, integrity and availability. While we and our shared services partner, NantWorks, have invested, and continue to invest, in the protection of our data and information technology infrastructure, there can be no assurance that our efforts, or the efforts of our partners, vendors, CROs, CMOs, clinical sites and other contractors and consultants will prevent service interruptions, or identify breaches in our or their systems, that could adversely affect our business and operations and/or result in the loss of critical or sensitive information, which could result in financial, legal, business or reputational harm to us. In addition, our liability insurance may not be sufficient in type or amount to cover us against claims related to security breaches, cyberattacks and other related breaches.

If any such event were to occur and cause interruptions in our operations, it could result in a disruption of our product development programs. For example, the loss of clinical trial data from completed or ongoing clinical trials for a product candidate could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data, or may limit our ability to effectively execute a product recall, if required. To the extent that any disruption or security breach were to result in a loss of or damage to our data or applications, or inappropriate disclosure of personal, confidential or proprietary information, we could incur liability and the further development and commercialization of any product candidates could be delayed. Any such event could also result in legal claims or proceedings, liability under laws that protect the privacy of personal information and significant regulatory penalties, and damage to our reputation and a loss of confidence in us and our ability to conduct clinical trials.

Our business could be adversely affected by the effects of health epidemics, pandemics or contagious diseases, including the recent COVID-19 pandemic, in regions where we or third parties on which we rely have significant manufacturing facilities, concentrations of clinical trial sites or other business operations.

Outbreaks of epidemic, pandemic or contagious diseases, such as the COVID-19 pandemic, may significantly disrupt our operations and adversely affect our business, financial condition and results of operations. In March 2020, the World Health Organization declared the outbreak of COVID-19 as a pandemic as the novel coronavirus continues to spread throughout the world. The spread of this pandemic has caused significant volatility and uncertainty in the U.S. and international markets and has resulted in increased risks to our operations. The COVID-19 pandemic and any actions we have taken in response, could

materially affect our operations, including at our headquarters and at our manufacturing facilities, which have been and may in the future be subject to state executive orders and shelter-in-place orders, and at our clinical trial sites, as well as the business or operations of our CROs, CMOs, clinical sites or other third parties with whom we conduct business. Any such epidemic or pandemic may heighten the risk that a significant portion of our workforce could suffer illness or otherwise not be permitted or be unable to work, and may require that certain of our employees work remotely, which heightens certain risks, including those related to cybersecurity and internal controls.

We are monitoring a number of risks related to this pandemic, including the following:

- Financial: We anticipate that the pandemic could have an adverse financial impact in the short-term and potentially beyond. We expect to continue spending on research and development during the year ending December 31, 2021 and beyond, and we could also have unexpected expenses related to the pandemic. The short-term continued expenses, as well as the overall uncertainty and disruption caused by the pandemic, will likely cause a delay in our ability to commercialize a product and adversely impact our financial results.
- Manufacturing: The pandemic has impacted, and may continue to impact, our manufacturing locations, including through the effects of facility closures, reductions in operating hours and other social distancing efforts. For example, if even a small number of our employees in our working clusters related to manufacturing, analytical, process development, or translational research, tested positive for COVID-19, it would require us to temporarily close a number of our offices or manufacturing facilities and temporarily suspend operations in order to conduct a deep clean of the facilities in order to ensure the safety of our employees. Additionally, we cannot predict whether these conditions and concerns will continue or whether we will experience more significant or frequent disruptions in the future, including the complete closure of one or more of our facilities.
- Supply Chain: An extended duration of this pandemic could result in significant disruptions in our respective supply chains and distribution channels in the future. For example, quarantines, shelter-in-place and similar government orders, travel restrictions and health impacts of the COVID-19 pandemic, could impact the availability or productivity of personnel at third-party laboratory supply manufacturers, distributors, freight carriers and other necessary components of our supply chain. In addition, there may be unfavorable changes in the availability or cost of raw materials, intermediates and other materials necessary for production, which may result in disruptions in our supply chain and adversely affect our ability to have manufactured certain product candidates for clinical supply.
- Clinical Trials: This pandemic may adversely affect certain of our clinical trials, including our ability to initiate and complete our clinical trials within the anticipated timelines. Due to site and participant availability during the pandemic, new subject enrollment is expected to slow, at least in the short-term, for most of our clinical trials. For ongoing trials, we have seen an increasing number of clinical trial sites imposing restrictions on patient visits to limit risks of possible COVID-19 exposure, and we may experience issues with participant compliance with clinical trial protocols as a result of quarantines, travel restrictions and interruptions to healthcare services. The current pressures on medical systems and the prioritization of healthcare resources toward the COVID-19 pandemic have also resulted in interruptions in data collection and submissions for certain clinical trials and delayed starts for certain planned studies. As a result, our anticipated filing and marketing timelines may be adversely impacted.
- Overall Economic and Capital Markets Environment: The impact of the COVID-19 pandemic could result in a prolonged recession or depression in the United States or globally that could harm the banking system, limit demand for all products and services and cause other seen and unforeseen events and circumstances, all of which could negatively impact us. The continued spread of COVID-19 has led to and could continue to lead to severe disruption and volatility in the United States and global capital markets, which could result in a decline in stock price, increase our cost of capital and adversely affect our ability to access the capital markets in the future. In addition, trading prices on the public stock market have been highly volatile as a result of the COVID-19 pandemic.
- Regulatory Reviews: The operations of the FDA or other regulatory agencies may be adversely affected. In response to COVID-19, federal, state and local governments are issuing new rules, regulations, orders and advisories on a regular basis. These government actions can impact us, our members and our suppliers. There is also the possibility that we may experience delays with obtaining approvals for our IND applications, BLAs, and/or NDAs.

We have formed, and may in the future form or seek, strategic alliances or enter into collaborations with third parties or additional licensing arrangements in the future, and we may not realize the benefits of such alliances or licensing arrangements. If we fail to enter into such strategic alliances, collaborations or licensing arrangements, or such strategic alliances, collaborations or licensing arrangements are not successful, we may not be able to capitalize on the market potential of our product candidates.

We have formed, and may in the future form or seek, strategic alliances, create joint ventures or collaborations or enter into additional licensing arrangements with third and related parties that we believe will complement or augment our development and commercialization efforts with respect to our product candidates and any future product candidates that we may develop. For example, we have entered into an agreement whereby Viracta Therapeutics, Inc. ("Viracta") granted to us exclusive world-wide rights to Viracta's Phase II drug candidate, VRx-3996, for use in combination with our platform of NK cell therapies. However, if Viracta fails to raise sufficient capital to complete their pivotal Phase II trial, if their trial is unsuccessful, or if our future clinical trial of NK cell therapy in combination with VRx-3996 fails, the value of the Viracta license would be adversely affected. We plan to collaborate with governmental, academic and corporate partners, including affiliates, to improve and develop Anktiva™, hAd5 and other therapies for new indications for use in combination with other therapies and to improve and develop other product candidates, which may expose us to additional risks, or we may not realize the benefits of such collaborations.

Because some of our collaborations are conducted at outside laboratories, and we do not have complete control over how the studies are conducted or reported or over the manufacturing methods used to manufacture our Anktiva™ product candidate, the results of such studies, which we may use as the basis for our conclusions, projections or decisions with respect to our current or future product candidates, may be incorrect or unreliable, or may have a negative impact on us if the results of such studies are imputed to our product candidates or proposed indications, even if such imputation is improper. Additionally, we may use third-party data to analyze, reach conclusions or make predictions or decisions with respect to our product candidates that may be incomplete, inaccurate or otherwise unreliable.

Further, collaborations involving our product candidates will be subject to numerous risks, which may include the following:

- collaborators, including their related or affiliated companies, may be entitled to receive exclusive rights for or involving our products;
- collaborators have significant discretion in determining the efforts and resources that they will apply to a collaboration;
- collaborators may not pursue development and commercialization of our product candidates or may elect not to continue or renew development or commercialization of our product candidates based on clinical trial results, changes in their strategic focus due to the acquisition of competitive products, availability of funding or other external factors, such as a business combination that diverts resources or creates competing priorities;
- collaborators may delay clinical trials, provide insufficient funding for a clinical trial, stop a clinical trial, abandon a product candidate, repeat or conduct new clinical trials or require a new formulation of a product candidate for clinical testing;
- collaborators could independently develop, or develop with third parties, products that compete directly or indirectly with our product candidates;
- a collaborator with marketing and distribution rights to one or more products may not commit sufficient resources to their marketing and distribution;
- collaborators may not properly maintain, defend or enforce our intellectual property rights or may use our intellectual property or proprietary information in a way that gives rise to actual or threatened litigation that could jeopardize or invalidate our intellectual property or proprietary information or expose us to potential liability;
- disputes may arise between us and a collaborator that cause the delay or termination of the research, development or commercialization of our product candidates, or that result in costly litigation or arbitration that diverts management attention and resources;

- collaborations may be terminated and, if terminated, may result in a need for additional capital to pursue further development or commercialization of the applicable product candidates;
- if an agreement with any collaborator terminates, our access to technology and intellectual property licensed to us by that collaborator may be restricted or terminate entirely, which may delay our continued development of our product candidates utilizing the collaborator's technology or intellectual property or require us to stop development of those product candidates completely; and
- collaborators may own or co-own intellectual property covering our product candidates or technology that results from our collaborating with them, and in such cases, we may not have the exclusive right to commercialize such intellectual property.

As a result, if we enter into collaboration agreements and strategic partnerships or license our product candidates, we may not be able to realize the benefit of such transactions if we are unable to successfully integrate them with our existing operations and company culture, which could delay our timelines or otherwise adversely affect our business. Additionally, exclusive rights that we may grant in connection with collaboration agreements may limit our ability to enter into new or additional collaboration agreements or strategic partnerships if we experience issues with existing collaborations. We also cannot be certain that, following a strategic transaction or license, we will achieve the revenues or specific net income that justifies such transaction. Any delays in entering into new collaborations or strategic partnership agreements related to our product candidates could delay the development and commercialization of our product candidates in certain geographies for certain indications, which would harm our business prospects, financial condition and results of operations.

Any of these relationships may require us to incur non-recurring and other charges, increase our near and long-term expenditures, issue securities that dilute our existing stockholders or disrupt our management and business. In addition, we face significant competition in seeking appropriate strategic partners and the negotiation process is time-consuming and complex. Moreover, we may not be successful in our efforts to establish a strategic partnership or other alternative arrangements for our product candidates because they may be deemed to be at too early of a stage of development for collaborative effort and third parties may not view our product candidates as having the requisite potential to demonstrate safety and efficacy.

If conflicts arise between us and our collaborators or strategic partners, these parties may act in a manner adverse to us and could limit our ability to implement our strategies.

If conflicts arise between our corporate or academic collaborators or strategic partners and us, the other party may act in a manner adverse to us and could limit our ability to implement our strategies. Some of our existing academic collaborators and strategic partners are conducting multiple product development efforts. Such current or future collaborators or strategic partners could become our competitors in the future and could develop competing products, preclude us from entering into collaborations with their competitors, fail to obtain timely regulatory approvals, terminate their agreements with us prematurely or fail to devote sufficient resources to the development and commercialization of our product candidates. Competing product candidates, either developed by the collaborators or strategic partners or to which the collaborators or strategic partners have rights, may result in the withdrawal of our collaborator's or partner's support for our product candidates.

For example, in May 2019, Sorrento Therapeutics, Inc. ("Sorrento") with which we jointly established a new entity called Immunotherapy NANTibody, LLC ("NANTibody") as a stand-alone biotechnology company, commenced litigation against us and certain of our officers and directors, alleging that we improperly caused NANTibody to acquire IgDraSol, Inc. and in January 2020 and April 2020, Sorrento sent letters purporting to terminate an exclusive license agreement with us and an exclusive license agreement with NANTibody. Additionally, in July 2020, we received a Request for Arbitration before the International Chamber of Commerce, International Court of Arbitration, served by Shenzhen Beike Biotechnology Co. Ltd. asserting breach of contract under our subsidiary Altor's license agreement with them. For more information regarding these disputes, see Note 7, *Commitments and Contingencies—Litigation*, of the "Notes to Unaudited Condensed Consolidated Financial Statements" that appear in Part 1. Item 1. "Financial Statements" of this Quarterly Report on Form 10-Q. Any of these developments could harm our product development efforts.

We will be heavily dependent on our senior management, particularly Dr. Soon-Shiong, our Executive Chairman and Global Chief Scientific and Medical Officer, and a loss of a member of our senior management team in the future, even if only temporary, could harm our business.

Our operations will be dependent upon the services of our executives and our employees who are engaged in research and development. If we lose the services of members of our senior management, particularly Dr. Soon-Shiong, for a short or an extended time, for any reason, we may not be able to find appropriate replacements on a timely basis, and our business, financial condition and results of operations could be materially adversely affected. Our existing operations and our future development depend to a significant extent upon the performance and active participation of certain key individuals, particularly Dr. Soon-Shiong, our Executive Chairman and Global Chief Scientific and Medical Officer. Although Dr. Soon-Shiong focuses heavily on our matters and is highly active in our management, he does devote a significant amount of his time to a number of different endeavors and companies, including NantHealth, Inc., NantMedia Holdings, LLC (which operates the Los Angeles Times and the San Diego Union-Tribune) and NantWorks, which is a collection of multiple companies in the healthcare and technology space. The risks related to our dependence upon Dr. Soon-Shiong are particularly acute given his ownership percentage, the commercial and other relationships that we have with entities affiliated with him, his role in our company and his public reputation. We may also be dependent on additional funding from Dr. Soon-Shiong and his affiliates, which may not be available when needed and which he is under no obligation to provide.

To induce valuable employees to remain at our company, in addition to salary and cash incentives, we have provided, and plan to continue providing, equity incentive awards that vest over time. The value to employees of equity incentive awards that vest over time may be significantly affected by movements in our stock price that are beyond our control and may at any time be insufficient to counteract more lucrative offers from other companies. Despite our efforts to retain valuable employees, members of our management, scientific and development teams may terminate their employment with us on short notice. We do not have employment agreements with our key employees and all of our employees are hired on an “at-will” basis, which means that any of our employees could leave our employment at any time, with or without notice. We do not maintain “key man” insurance policies on the lives of these individuals or the lives of any of our other employees.

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

Our future financial performance and our ability to commercialize our product candidates will depend, in part, on our ability to effectively manage any future growth, and our management may also have to divert a disproportionate amount of their attention away from day-to-day activities in order to devote a substantial amount of time to managing these growth activities. In order to develop our business in accordance with our business plan, we will have to hire additional qualified personnel, including in the areas of research, manufacturing, clinical trials management, regulatory affairs, and sales and marketing. We are continuing our efforts to recruit and hire the necessary employees to support our planned operations in the near term. However, competition for qualified personnel in the biotechnology and pharmaceuticals industry is intense due to the limited number of individuals who possess the skills and experience required, and no assurance can be given that we will be able attract, hire, retain and motivate the highly skilled employees that we need, on acceptable terms or at all. Future growth will impose significant added responsibilities on members of management, including:

- identifying, recruiting, integrating, maintaining, and motivating additional employees;
- managing our internal development efforts effectively, including the clinical and FDA review process for our product candidates, while complying with our contractual obligations to contractors and other third parties; and
- improving our operational, financial and management controls, reporting systems, and procedures.

We currently rely, and for the foreseeable future we expect to rely, in substantial part on certain independent organizations, advisors and consultants to provide certain services. There can be no assurance that the services of these independent organizations, advisors and consultants will continue to be available to us on a timely basis when needed, or that we can find qualified replacements on economically reasonable terms, or at all. In addition, if we are unable to effectively manage our outsourced activities or if the quality, compliance or accuracy of the services provided by consultants is compromised for any reason, our clinical trials may be extended, delayed, or terminated, and we may not be able to obtain regulatory approval of our product candidates or otherwise advance our business.

If we are not able to effectively expand our organization by hiring new employees and expanding our groups of consultants and contractors, we may not be able to successfully implement the tasks necessary to further develop and commercialize our product candidates and, accordingly, may not achieve our research, development, and commercialization goals on a timely basis, or at all.

If we engage in future acquisitions or strategic partnerships, this may increase our capital requirements, dilute our stockholders, cause us to incur debt or assume contingent liabilities, and subject us to other risks.

We may evaluate various acquisitions and strategic partnerships, including licensing or acquiring complementary products, intellectual property rights, technologies, or businesses. Any potential acquisition or strategic partnership may entail numerous risks, including:

- assimilation of operations, intellectual property and products of an acquired company or product, including difficulties associated with integrating new personnel;
- the diversion of our management's attention from our existing product programs and initiatives in pursuing such a strategic merger or acquisition;
- retention of key employees, the loss of key personnel, and uncertainties in our ability to maintain key business relationships;
- risks and uncertainties associated with the other party to such a transaction, including the prospects of that party and their existing products or product candidates and regulatory approvals; and
- our inability to generate revenues from acquired technology and/or products sufficient to meet our objectives in undertaking the acquisition or even to offset the associated acquisition and maintenance costs.

Depending on the size and nature of future strategic acquisitions, we may acquire assets or businesses that require us to raise additional capital or to operate or manage businesses in which we have limited experience. Making larger acquisitions that require us to raise additional capital to fund the acquisition will expose us to the risks associated with capital raising activities. Acquiring and thereafter operating larger new businesses will also increase our management, operating and reporting costs and burdens (including increased cash requirements). In addition, if we undertake acquisitions, we may issue dilutive equity securities, assume or incur additional debt obligations or contingent liabilities, incur large one-time expenses and acquire intangible assets that could result in significant future amortization expense. Moreover, we may not be able to locate suitable acquisition opportunities and this inability could impair our ability to grow or obtain access to technology or products that may be important to the development of our business.

We may become involved in securities litigation or stockholder derivative litigation in connection with our recent merger, and this could divert the attention of our management and harm our business, and insurance coverage may not be sufficient to cover all related costs and damages.

Securities litigation or stockholder derivative litigation frequently follows the announcement of certain significant business transactions, such as the sale of a business division or announcement of a business combination transaction. We are involved in this type of litigation in connection with our recent merger, and we may become involved in this type of litigation in the future. Litigation often is expensive and diverts management's attention and resources, which could adversely affect our business and the combined company.

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

We plan to seek regulatory approval of our product candidates outside of the United States and, accordingly, we expect that we will be subject to additional risks related to operating in foreign countries if we obtain the necessary approvals, including:

- differing regulatory requirements in foreign countries;
- unexpected changes in tariffs, trade barriers, price and exchange controls and other regulatory requirements;
- economic weakness, including inflation, or political instability in particular foreign economies and markets;

- compliance with tax, employment, immigration and labor laws for employees living or traveling abroad;
- foreign taxes, including withholding of payroll taxes;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenues, and other obligations incident to doing business in another country;
- difficulties staffing and managing foreign operations;
- workforce uncertainty in countries where labor unrest is more common than in the United States;
- differing payor reimbursement regimes, governmental payors or patient self-pay systems, and price controls;
- potential liability under the Foreign Corrupt Practices Act of1977 ("FCPA") or comparable foreign regulations;
- challenges enforcing our contractual and intellectual property rights, especially in those foreign countries that do not respect and protect intellectual property rights to the same extent as the United States;
- production shortages resulting from any events affecting raw material supply or manufacturing capabilities abroad;
- the impact of public health epidemics on the global economy, such as the coronavirus pandemic currently having an impact throughout the world; and
- business interruptions resulting from geo-political actions, including war and terrorism.

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

Risks Related to Government Regulation

We may be unable to obtain U.S. or foreign regulatory approval and, as a result, unable to commercialize our product candidates. We are, and if we receive regulatory approval of our product candidates, will continue to be subject to ongoing extensive regulation, regulatory obligations and continued regulatory review, which may result in significant additional expense.

Our product candidates are subject to extensive governmental regulations relating to, among other things, the research, development, testing, manufacture, quality control, import, export, safety, effectiveness, labeling, packaging, storage, distribution, record keeping, approval, advertising, promotion, marketing, post-approval monitoring and post-approval reporting of drugs and therapeutic biologics. Rigorous preclinical testing and clinical trials and an extensive regulatory approval process are required to be successfully completed in the United States and in many foreign jurisdictions before a new drug or therapeutic biologic can be marketed. Satisfaction of these and other regulatory requirements is costly, lengthy, time-consuming, uncertain and subject to unanticipated delays and can vary substantially based upon the type, complexity and novelty of the products involved. We will not be permitted to market or promote any of our product candidates without receiving regulatory approval from the FDA or comparable foreign regulatory authorities, and we may never receive such regulatory approval for any of our product candidates or regulatory approval that will allow us to successfully commercialize our product candidates. In addition, regulatory agencies may lack experience with our technologies and products, which may lengthen the regulatory review process, increase our development costs and delay or prevent their commercialization.

We have not previously submitted a BLA or NDA or similar marketing or drug approval application to the FDA or comparable foreign authorities, for any product candidate, which may impede our ability to obtain timely FDA approvals, if at all, and we cannot be certain that any of our current product candidates or any future product candidates will be successful in clinical trials or receive regulatory approval. Regulatory authorities have substantial discretion in the approval process and may refuse to accept any application or may decide that our data are insufficient for approval and require additional preclinical studies, clinical trials or other research. The number and types of preclinical studies and clinical trials that will be required for regulatory approval also vary depending on the product candidate, the disease or condition that the product candidate is designed to address and the regulations applicable to any particular product candidate. Approval policies, regulations or the type and amount of clinical data necessary to gain approval may change during the course of a product candidate's clinical development and may vary among jurisdictions and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our product candidates.

Any delay in completing development or obtaining, or failing to obtain, required approvals would have a material and adverse effect on our ability to generate revenue from the particular product candidate for which we are developing and seeking approval. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained, be subject to other regulatory enforcement action, and we may not achieve or sustain profitability.

Obtaining and maintaining regulatory approval of our product candidates in one jurisdiction does not mean that we will be successful in obtaining regulatory approval of our product candidates in other jurisdictions.

Obtaining and maintaining regulatory approval of our product candidates in one jurisdiction does not guarantee that we will be able to obtain or maintain regulatory approval in any other jurisdiction, however a failure or delay in obtaining regulatory approval in one jurisdiction may have a negative effect on the regulatory approval process in others. Approval policies, procedures and requirements may vary among jurisdictions and can involve requirements and administrative review periods different from, and greater than, those in the United States, including additional preclinical studies or clinical trials as clinical trials conducted in one jurisdiction may not be accepted by regulatory authorities in other jurisdictions. For example, even if the FDA grants marketing approval of a product candidate, comparable regulatory authorities in foreign jurisdictions must also approve the manufacturing, marketing and promotion of the product candidate in those countries. In many jurisdictions outside the United States, a product candidate must be approved for reimbursement before it can be approved for sale in that jurisdiction. In some cases, the price that we intend to charge for our product candidates is also subject to approval.

Obtaining foreign regulatory approvals and establishing and maintaining compliance with foreign regulatory requirements could result in significant delays, difficulties and costs for us and could delay or prevent the introduction of our product candidates in certain countries. If we fail to comply with the regulatory requirements in international markets and/or fail to receive applicable marketing approvals, our target market will be reduced and our ability to realize the full market potential of our product candidates will be harmed.

If we fail to comply with U.S. and foreign regulatory requirements, regulatory authorities could limit or withdraw any marketing or commercialization approvals we may receive and subject us to other penalties that could materially harm our business.

Any regulatory approvals that we receive for our product candidates will require surveillance to monitor the safety and efficacy of the product candidate. The FDA may also require a REMS to approve our product candidates, which could entail requirements for a medication guide, physician communication plans or additional elements to ensure safe use, such as restricted distribution methods, patient registries and other risk minimization tools. The FDA may also require post-approval Phase IV trials. Moreover, the FDA and comparable foreign regulatory authorities will continue to closely monitor the safety profile of any product even after approval.

In addition, we, our contractors, and our collaborators are and will remain responsible for FDA compliance, including requirements related to product design, testing, clinical trials and preclinical studies approval, manufacturing processes and quality, labeling, packaging, distribution, adverse event and deviation reporting, storage, advertising, marketing, promotion, sale, import, export, submissions of safety and other post-marketing information and reports such as deviation reports, registration, product listing, annual user fees, and recordkeeping for our product candidates. We and any of our collaborators, including our contract manufacturers, could be subject to periodic unannounced inspections by the FDA to monitor and ensure compliance with regulatory requirements. Application holders must further notify the FDA, and depending on the nature of the change, obtain FDA pre-approval for product and manufacturing changes. The cost of compliance with post-approval regulations may have a negative effect on our operating results and financial condition.

If the FDA or comparable foreign regulatory authorities become aware of new safety information or previously unknown problems after approval of any of our product candidates, including: (i) adverse events of unanticipated severity or frequency, (ii) that the product is less effective than previously thought, (iii) problems with our third-party manufacturers or manufacturing processes, or (iv) failure to comply with regulatory requirements, or if we violate regulatory requirements at any stage, whether before or after marketing approval is obtained, we may face a number of regulatory consequences, including refusal to approve pending applications, license suspension or revocation, withdrawal of an approval, imposition of a clinical hold or termination of clinical trials, warning letters, untitled letters, modification of promotional materials or labeling (including required additional warnings), provision of corrective information, imposition of post-market requirements, including the need for additional testing or costly post-approval studies or post-market surveillance, imposition of distribution, manufacturing or other restrictions under a REMS, imposition of restrictions on a product's indicated uses, product recalls, product seizures or detentions, refusal to allow imports or exports, total or partial suspension of production or distribution, FDA debarment, injunctions, fines, consent decrees, corporate integrity agreements, debarment from receiving government contracts, exclusion from participation in federal and state healthcare programs, issuance of safety alerts, Dear Healthcare Provider letters, press releases or other communications containing warnings or other safety information, restitution, disgorgement, or civil or criminal penalties, including fines and imprisonment, reputational harm and adverse publicity, among other adverse consequences. Any such restrictions could limit sales of the product. Any of these events could further have other material and adverse effects on our operations and business and could adversely impact our stock price and could significantly harm our business, financial condition, results of operations, and prospects.

Results for any patient who receives compassionate use access to our product candidates should not be viewed as representative of how the product candidate will perform in a well-controlled clinical trial, and cannot be used to establish safety or efficacy for regulatory approval.

We often receive requests for compassionate use access to our investigational drugs by patients that do not meet the entry criteria for enrollment into our clinical trials. Generally, patients requesting compassionate use have no other treatment alternatives for life threatening conditions. We evaluate each compassionate use request on an individual basis, and in some cases grant access to our investigational product candidates outside of our sponsored clinical trials if a physician certifies that the patient receiving treatment is critically ill and does not meet the entry criteria for one of our open clinical trials. Individual patient results from compassionate use access may not be used to support submission of a regulatory application, may not support approval of a product candidate and should not be considered to be indicative of results from any on-going or future well-controlled clinical trial. Before we can seek regulatory approval for any of our product candidates, we must demonstrate in well-controlled clinical trials statistically significant evidence that the product candidate is both safe and effective for the indication we are seeking approval. The results of our compassionate use program may not be used to establish safety or efficacy or regulatory approval.

Our GMP-in-a-Box will be regulated by the FDA as a medical device, and regulatory compliance for medical devices is expensive, complex and uncertain, and a failure to comply could lead to enforcement actions against us and other negative consequences for our business.

The FDA and similar agencies regulate medical devices. All of our potential medical device products and material modifications will be subject to extensive regulation and clearance or approval from the FDA and non-U.S. regulatory agencies prior to commercial sale and distribution as well as after clearance or approval. Complying with these regulations is costly, time-consuming, complex and uncertain. For instance, before a new medical device, or a new intended use for an existing device, can be marketed in the United States, a company must first submit and receive either 510(k) clearance or pre-marketing approval from the FDA, unless an exemption applies.

FDA regulations and regulations of similar agencies are wide-ranging and include, among other things, oversight of:

- product design, development, manufacture (including suppliers) and testing;
- laboratory and preclinical studies and clinical trials;
- product safety and effectiveness;
- product labeling;
- product storage and shipping;

- record keeping;
- pre-market clearance or approval;
- marketing, advertising and promotion;
- product sales and distribution;
- product changes;
- product recalls; and
- post-market surveillance and reporting of deaths or serious injuries and certain malfunctions.

Medical devices regulated by the FDA are subject to general controls which include: registration with the FDA; listing commercially distributed products with the FDA; complying with cGMP under Quality Systems Regulations; filing reports with the FDA of and keeping records relative to certain types of adverse events associated with devices under the medical device reporting regulation; assuring that device labeling complies with device labeling requirements; reporting certain device field removals and corrections to the FDA; and obtaining pre-market notification 510(k) clearance for devices prior to marketing. Some devices known as 510(k)-exempt devices can be marketed without prior marketing-clearance or approval from the FDA. In addition to the general controls, some Class II medical devices are also subject to special controls, including adherence to a particular guidance document and compliance with the performance standard. Instead of obtaining 510(k) clearance, most Class III devices are subject to pre-market approval ("PMA").

The FDA can also refuse to clear or approve pre-market applications for any medical device we develop. We may not be able to obtain the necessary clearances or approvals or may be unduly delayed in doing so, for any medical device products we develop, which could harm our business. Furthermore, even if we are granted regulatory clearances or approvals for any medical device products, they may include significant limitations on the indicated uses for the product, which may limit the market for the product.

Any enforcement action by the FDA and other comparable non-U.S. regulatory agencies could have a material adverse effect on our business, financial condition and results of operations. Our failure to comply with applicable regulatory requirements could result in enforcement action by the FDA or state agencies, which may include any of the following actions:

- untitled letters, warning letters, fines, injunctions, consent decrees and civil penalties;
- unanticipated expenditures to address or defend such actions;
- customer notifications for repair, replacement or refunds;
- recall, detention or seizure of our products;
- operating restrictions or partial suspension or total shutdown of production;
- refusing or delaying our requests for 510(k) clearance or PMA approval of new products or modified products;
- operating restrictions;
- withdrawing 510(k) clearances or PMA approvals that have already been granted;
- refusal to grant export approval for our products; or
- criminal prosecution.

If any of these events were to occur, it would have a material and adverse effect on our business, financial condition and results of operations.

The FDA also regulates the advertising and promotion of medical devices to ensure that the claims are consistent with their regulatory clearances or approvals, that there are adequate and reasonable data to substantiate the claims and that the promotional labeling and advertising is neither false nor misleading in any respect. If the FDA determines that any of our advertising or promotional claims are misleading, not substantiated or not permissible, we may be subject to enforcement actions, including warning letters, and we may be required to revise our promotional claims and make other corrections or restitutions. Failure to comply with applicable U.S. requirements regarding, for example, promoting, manufacturing, or labeling our medical device products, may subject us to a variety of administrative or judicial actions and sanctions, such as Form 483 observations, warning letters, untitled letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, civil penalties and criminal prosecution. If any of our medical device products cause or contribute to a death or a serious injury or malfunction in certain ways, we will be required to report under applicable medical device reporting regulations, which can result in voluntary corrective actions or agency enforcement actions.

We will be subject to governmental export and import controls that could impair our ability to compete in international markets due to licensing requirements and subject us to liability if we are not in compliance with applicable laws.

Our product candidates will be subject to export control and import laws and regulations, including the U.S. Export Administration Regulations, U.S. Customs regulations and various economic and trade sanctions regulations administered by the U.S. Treasury Department's Office of Foreign Assets Controls. Exports of our product candidates and solutions outside of the United States must be made in compliance with these laws and regulations. If we fail to comply with these laws and regulations, we and certain of our employees could be subject to substantial civil or criminal penalties, including the possible loss of export or import privileges; fines, which may be imposed on us and responsible employees or managers; and, in extreme cases, the incarceration of responsible employees or managers.

In addition, changes in our product candidates or solutions or changes in applicable export or import laws and regulations may create delays in the introduction, provision, or sale of our product candidates and solutions in international markets, prevent customers from using our product candidates and solutions or, in some cases, prevent the export or import of our product candidates and solutions to certain countries, governments or persons altogether. Any limitations on our ability to export, provide, or sell our product candidates and solutions could adversely affect our business, financial condition and results of operations.

We are subject to U.S. and foreign anti-corruption and anti-money laundering laws with respect to our operations and non-compliance with such laws can subject us to criminal and/or civil liability and harm our business.

We are subject to the FCPA, the U.S. domestic bribery statute contained in 18 U.S.C. §201, the U.S. Travel Act, the USA PATRIOT Act and possibly other state and national anti-bribery and anti-money laundering laws in countries in which we conduct activities. Anti-corruption laws are interpreted broadly and prohibit companies and their employees, agents, third-party intermediaries, joint venture partners and collaborators from authorizing, promising, offering or providing, directly or indirectly, improper payments or benefits to recipients in the public or private sector. We use CROs abroad for clinical trials. In addition, we may engage third-party intermediaries to sell our product candidates and solutions abroad once we enter a commercialization phase for our product candidates and/or to obtain necessary permits, licenses, and other regulatory approvals. We or our third-party intermediaries may have direct or indirect interactions with officials and employees of government agencies or state-owned or affiliated entities. We can be held liable for the corrupt or other illegal activities of these third-party intermediaries, our employees, representatives, contractors, partners and agents, even if we do not explicitly authorize or have actual knowledge of such activities.

We have adopted an anti-corruption policy, which mandates compliance with the FCPA and other anti-corruption laws applicable to our business throughout the world. However, there can be no assurance that our employees and third-party intermediaries will comply with this policy or such anti-corruption laws. Non-compliance with anti-corruption and anti-money laundering laws could subject us to whistleblower complaints, investigations, sanctions, settlements, prosecution, other investigations, or other enforcement actions. If such actions are launched, or governmental or other sanctions are imposed, or if we do not prevail in any possible civil or criminal litigation, our business, results of operations and financial condition could be materially harmed. In addition, responding to any action will likely result in a materially significant diversion of management's attention and resources and significant defense and compliance costs and other professional fees. In certain cases, enforcement authorities may even cause us to appoint an independent compliance monitor, which can result in added costs and administrative burdens.

Our failure to comply with state, national and/or international data protection laws and regulations could lead to government enforcement actions and significant penalties against us, and adversely impact our operating results.

There are numerous laws and legislative and regulatory initiatives at the federal and state levels addressing privacy and security concerns, and some state privacy laws apply more broadly than the Health Insurance Portability and Accountability Act ("HIPAA") and associated regulations. For example, California recently enacted legislation—the California Consumer Privacy Act of 2018 ("CCPA")—which went into effect on January 1, 2020. The CCPA, among other things, creates new data privacy and security obligations for covered companies and provides new privacy rights to California consumers, including the right to opt out of certain disclosures of their information. The CCPA also provides for civil penalties as well as a private right of action with statutory damages for certain data breaches, thereby potentially increasing risks associated with a data breach. Although the law includes limited exceptions, including for certain information collected as part of clinical trials as specified in the law, it may regulate or impact our processing of personal information depending on the context. Additionally, a new privacy law, the California Privacy Rights Act ("CPRA"), was approved by California voters in November 2020. The CPRA significantly modified the CCPA, which may require us to modify our practices and policies and may further increase our compliance costs and potential liability. To the extent these state laws as well as other federal and state privacy laws, including new laws and changes in existing laws, apply to our business and operations, our compliance costs and potential liability with respect to personal information we collect could expose us to great liability and increase compliance costs.

There are also various laws and regulations in other jurisdictions relating to privacy and security. For example, European Union ("EU") member states and other foreign jurisdictions, including Switzerland, have adopted data protection laws and regulations which impose significant compliance obligations on us. The collection and use of health data in the EU is governed by the EU General Data Protection Regulation ("GDPR"). The GDPR, which is wide-ranging in scope and applies extraterritorially, imposes several requirements relating to the consent of the individuals to whom the personal data relates, the information provided to such individuals, the security and confidentiality of the personal data, data breach notification, the adoption of appropriate privacy governance, including policies, procedures, training and audits, and the use of third-party processors in connection with the processing of personal data. The GDPR also imposes strict rules on the transfer of personal data out of the EU, including to the United States, provides an enforcement authority and imposes large penalties for noncompliance, including the potential for fines of up to €20 million or up to 4% of the total worldwide annual global revenues of the noncompliant entity, whichever is greater. The GDPR requirements apply not only to third-party transactions, but also to transfers of information between us and our subsidiaries, including employee information.

Complying with these numerous, complex and often changing regulations is expensive and difficult, and failure to comply with any privacy laws or data security laws or any security incident or breach involving the misappropriation, loss or other unauthorized processing, use or disclosure of sensitive or confidential patient, consumer or other personal information, whether by us, one of our CROs or business associates or another third party, could adversely affect our business, financial condition and results of operations, including but not limited to: investigation costs; material fines and penalties; compensatory, special, punitive and statutory damages; litigation; consent orders regarding our privacy and security practices; requirements that we provide notices, credit monitoring services and/or credit restoration services or other relevant services to impacted individuals; adverse actions against our licenses to do business; reputational damage; and injunctive relief. The recent implementation of the CCPA and GDPR has increased our responsibility and liability in relation to personal data that we process, including in clinical trials, and we may in the future be required to put in place additional mechanisms to ensure compliance with the CCPA, GDPR and other applicable laws and regulations, which could divert management's attention and increase our cost of doing business. In addition, new regulation or legislative actions regarding data privacy and security (together with applicable industry standards) may increase our costs of doing business. In this regard, we expect that there will continue to be new proposed laws, regulations and industry standards relating to privacy and data protection in the United States, the EU and other jurisdictions, and we cannot determine the impact such future laws, regulations and standards may have on our business.

We cannot assure you that our CROs or other third-party service providers with access to our or our customers', suppliers', trial patients' and employees' personally identifiable and other sensitive or confidential information in relation to which we are responsible will not breach contractual obligations imposed by us, or that they will not experience data security breaches, which could have a corresponding effect on our business, including putting us in breach of our obligations under privacy laws and regulations and/or which could in turn adversely affect our business, results of operations and financial condition. We cannot assure you that our contractual measures and our own privacy and security-related safeguards will protect us from the risks associated with the third-party processing, use, storage and transmission of such information. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and prospects.

If we, or any third-party contract manufacturers or suppliers that we engage, fail to comply with environmental, health, and safety laws and regulations, including regulations governing the handling, storage or disposal of hazardous materials, we could become subject to fines or penalties or incur costs that could harm our business.

We and any of our third-party contract manufacturers or suppliers will be subject to numerous environmental, health and safety laws and regulations, including those governing laboratory procedures and the handling, use, manufacture, storage, treatment and disposal of hazardous materials and wastes. Our operations and research and development activities involve the controlled use of medical and hazardous materials, including chemicals, biological materials and infectious agents. Our operations also may produce hazardous waste products. We generally contract with third parties for the disposal of these materials and wastes. Although we believe that our procedures for using, storing and disposing of these materials comply with legally prescribed standards, we will not be able to eliminate the risk of contamination or injury from these materials. In the event of contamination or injury resulting from any use by us of hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources or local, city, state or federal authorities may curtail the use of these materials and interrupt our business operations. We also could incur significant costs associated with civil or criminal fines and penalties for failure to comply with such laws and regulations.

Although we will maintain workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from the use of hazardous materials, this insurance may not provide adequate coverage against potential liabilities. We do not maintain comprehensive insurance coverage for liabilities arising from medical or hazardous materials, environmental liability or toxic tort claims that may be asserted against us in connection with our storage or disposal of biological or hazardous materials.

In addition, we may incur substantial costs in order to comply with current or future environmental, health, and safety laws and regulations. These current or future laws and regulations may impair our research, development, or production efforts, which could harm our business, prospects, financial condition or results of operations. Our failure to comply with these laws and regulations also may result in substantial fines, penalties or other sanctions.

Disruptions at the FDA, the SEC and other government agencies caused by funding shortages or global health concerns could hinder their ability to hire and retain key leadership and other personnel, prevent new products and services from being developed or commercialized in a timely manner or otherwise prevent those agencies from performing normal functions on which the operation of our business may rely, which could negatively impact our business.

The ability of the FDA to review and approve new products can be affected by a variety of factors, including government budget and funding levels, ability to hire and retain key personnel and accept payment of user fees and statutory, regulatory, and policy changes. Average review times at the agency have fluctuated in recent years as a result. In addition, government funding of the FDA, SEC, and other government agencies on which our operations may rely is inherently fluid and unpredictable.

Disruptions at the FDA and other agencies may also slow the time necessary for new drugs to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, in recent years, including in 2018 and 2019, the U.S. government has shut down several times and certain regulatory agencies, such as the FDA and the SEC, have had to furlough critical employees and stop critical activities. In response to the COVID-19 pandemic, in 2020, the FDA announced that it would postpone domestic and foreign routine surveillance inspections. Based on updated guidance issued in May 2021, the FDA continues to conduct "mission-critical" inspections on a case-by-case basis, or, where possible to do so safely, has resumed prioritized domestic inspections, such as pre-approval and surveillance inspections. While the FDA indicated that it will consider alternative methods for inspections and exercise discretion on a case-by-case basis to approve products based on a desk review, if a prolonged government shutdown occurs, or if the government experiences a protracted backlog of inspections and regulatory review, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business. Further, future government shutdowns, delays, or prioritization policies could potentially impact our ability to access the public markets and obtain necessary capital in order to properly capitalize and continue our operations.

If we fail to comply with federal and state healthcare and promotional laws, including fraud and abuse and information privacy and security laws, we could face substantial penalties and our business, financial condition, results of operations, and prospects could be adversely affected.

As a biopharmaceutical company, we are subject to many federal and state healthcare laws, including the federal Anti-Kickback Statute ("AKS"), the FCA, the civil monetary penalties statute, the Medicaid Drug Rebate statute and other price reporting requirements, the federal Physician Payment Sunshine Act, the Veterans Health Care Act of 1992, HIPAA (as amended by the Health Information Technology for Economics and Clinical Health Act), the FCPA, the Patient Protection and Affordable Care Act of 2010 (as amended by the Health Care and Education Reconciliation Act) (the "ACA") and similar state laws. Even though we do not make referrals of healthcare services or bill directly to Medicare, Medicaid, or other third-party payors, certain federal and state healthcare laws and regulations pertaining to fraud and abuse and patients' rights are and will be applicable to our business. If we do not comply with all applicable fraud and abuse laws, we may be subject to healthcare fraud and abuse enforcement by both the federal government and the states in which we conduct our business.

Laws and regulations require calculation and reporting of complex pricing information for prescription drugs, and compliance will require us to invest in significant resources to develop a price reporting infrastructure or depend on third parties to compute and report our drug pricing. Pricing reported to the Centers for Medicare and Medicaid Services ("CMS") must be certified. Non-compliant activities expose us to FCA risk if they result in overcharging agencies, underpaying rebates to agencies, or causing agencies to overpay providers.

If we or our operations are found to be in violation of any federal or state healthcare law, or any other governmental regulations that apply to us, we may be subject to penalties, including civil, criminal, and administrative penalties, damages, fines, disgorgement, debarment from government contracts, refusal of orders under existing contracts, exclusion from participation in U.S. federal or state health care programs, corporate integrity agreements and the curtailment or restructuring of our operations, any of which could materially adversely affect our ability to operate our business and our financial results. If any of the physicians or other healthcare providers or entities with whom we expect to do business, including our collaborators, is found not to be in compliance with applicable laws, they may be subject to criminal, civil, or administrative sanctions, including but not limited to, exclusions from participation in government healthcare programs, which could also materially affect our business.

In particular, if we are found to have impermissibly promoted any of our product candidates, we may become subject to significant liability and government fines. We, and any of our collaborators, must comply with requirements concerning advertising and promotion for any of our product candidates for which we or they obtain marketing approval. Promotional communications with respect to therapeutics are subject to a variety of legal and regulatory restrictions and continuing review by the FDA, Department of Justice, Department of Health and Human Services' Office of Inspector General, state attorneys general, members of Congress, and the public. When the FDA or comparable foreign regulatory authorities issue regulatory approval for a product candidate, the regulatory approval is limited to those specific uses and indications for which a product is approved. If we are not able to obtain FDA approval for desired uses or indications for our product candidates, we may not market or promote our product candidates for those indications and uses, referred to as off-label uses, and our business may be adversely affected.

While physicians may choose to prescribe products for uses that are not described in the product's labeling and for uses that differ from those tested in clinical trials and approved by the regulatory authorities, we are prohibited from marketing and promoting the products for indications and uses that are not specifically approved by the FDA. These off-label uses are common across medical specialties and may constitute an appropriate treatment for some patients in varied circumstances. Regulatory authorities in the United States generally do not restrict or regulate the behavior of physicians in their choice of treatment within the practice of medicine. Regulatory authorities do, however, restrict communications by biopharmaceutical companies concerning off-label use. We further must be able to sufficiently substantiate any claims that we make for our product candidates including claims comparing our product candidates to other companies' products and must abide by the FDA's strict requirements regarding the content of promotion and advertising.

The FDA and other agencies actively enforce the laws and regulations regarding product promotion, particularly those prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted a product may be subject to significant sanctions. The federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. The FDA has also requested that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed. Thus, we and any of our collaborators will not be able to promote any products we develop for indications or uses for which they are not approved.

In the United States, engaging in the impermissible promotion of our products, following approval, for off-label uses can also subject us to false claims and other litigation under federal and state statutes, including fraud and abuse and consumer protection laws, which can lead to civil and criminal penalties and fines, agreements with governmental authorities that materially restrict the manner in which we promote or distribute therapeutic products and do business through, for example, corporate integrity agreements, suspension or exclusion from participation in federal and state healthcare programs, and debarment from government contracts and refusal of future orders under existing contracts. These false claims statutes include the FCA, which allows any individual to bring a lawsuit against a biopharmaceutical company on behalf of the federal government alleging submission of false or fraudulent claims or causing others to present such false or fraudulent claims, for payment by a federal program such as Medicare or Medicaid. If the government decides to intervene and prevails in the lawsuit, the individual will share in the proceeds from any fines or settlement funds. If the government declines to intervene, the individual may pursue the case alone. These FCA lawsuits against manufacturers of drugs and biologics have increased significantly in volume and breadth, leading to several substantial civil and criminal settlements, up to $3.0 billion, pertaining to certain sales practices and promoting off-label uses. In addition, FCA lawsuits may expose manufacturers to follow-on claims by private payors based on fraudulent marketing practices. This growth in litigation has increased the risk that a biopharmaceutical company will have to defend a false claim action, pay settlement fines or restitution, as well as criminal and civil penalties, agree to comply with burdensome reporting and compliance obligations, and be excluded from Medicare, Medicaid, or other federal and state healthcare programs. If we or our future collaborators do not lawfully promote our approved products, if any, we may become subject to such litigation and, if we do not successfully defend against such actions, those actions may have a material adverse effect on our business, financial condition, results of operations and prospects.

Although an effective compliance program can mitigate the risk of investigation and prosecution for violations of these laws, the risks cannot be entirely eliminated. Moreover, achieving and sustaining compliance with applicable federal and state fraud laws may prove costly. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business.

Coverage and reimbursement may be limited or unavailable in certain market segments for our product candidates, which could make it difficult for us to sell our product candidates profitably.

In both domestic and foreign markets, sales of our product candidates, if approved, depend on the availability of coverage and adequate reimbursement from third-party payors. Third-party payors, whether domestic or foreign, or governmental or commercial, are developing increasingly sophisticated methods of controlling healthcare costs. Regulatory authorities and third-party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications, which could affect our ability or that of our collaborators to sell our product candidates profitably. In addition, third-party payors are requiring higher levels of evidence of the benefits and clinical outcomes of new technologies and are challenging the prices charged. Patients who are provided medical treatment for their conditions generally rely on third-party payors to reimburse all or part of the costs associated with their treatment. Patients are unlikely to use our product candidates unless coverage is provided, and reimbursement is adequate to cover a significant portion of the cost of our product candidates. Such third-party payors include government health programs such as Medicare and Medicaid, managed care providers, private health insurers and other organizations. Obtaining coverage and adequate reimbursement from governmental healthcare programs, such as Medicare and Medicaid, and commercial payors is critical to new product acceptance. In addition, because our product candidates represent new approaches to the treatment of cancer, we cannot accurately estimate the potential revenues from our product candidates.

Government authorities and third-party payors decide which drugs and treatments they will cover and the amount of reimbursement. Coverage decisions may depend upon clinical and economic standards that disfavor new drug products when more established or lower cost therapeutic alternatives are already available or subsequently become available. These payors may not view our products, if any, as cost-effective, and coverage and reimbursement may not be available to our customers, or those of our collaborators, or may not be sufficient to allow our products, if any, to be marketed on a competitive basis. If reimbursement is not available, or is available only to limited levels, our product candidates may be competitively disadvantaged, and we, or our collaborators, may not be able to successfully commercialize our product candidates. Alternatively, securing favorable reimbursement terms may require us to compromise pricing and prevent us from realizing an adequate margin over cost. Reimbursement by a third-party payor may depend upon a number of factors, including, but not limited to, the third-party payor's determination that use of a product is:

- a covered benefit under its health plan;
- safe, effective and medically necessary;
- appropriate for the specific patient;
- cost-effective; and
- neither experimental nor investigational.

In the United States, no uniform policy of coverage and reimbursement for products exists among third-party payors. Therefore, coverage and reimbursement for products can differ significantly from payor to payor. As a result, the coverage determination process is often a time-consuming and costly process that will require us to provide scientific and clinical support for the use of our product candidates to each payor separately, with no assurance that coverage and adequate reimbursement will be obtained. Moreover, the factors noted above have continued to be the focus of policy and regulatory debate that has, thus far, shown the potential for movement towards permanent policy changes; this trend is likely to continue, and may result in more or less favorable impacts on pricing. The recent and ongoing series of congressional hearings relating to drug pricing has presented heightened attention to the biopharmaceutical industry, creating the potential for political and public pressure, while the potential for resulting legislative or policy changes presents uncertainty.

Prices paid for a drug also vary depending on the class of trade. Prices charged to government customers are subject to price controls, including ceilings, and private institutions obtain discounts through group purchasing organizations. Net prices for drugs may be further reduced by mandatory discounts or rebates required by government healthcare programs and demanded by private payors. It is also not uncommon for market conditions to warrant multiple discounts to different customers on the same unit, such as purchase discounts to institutional care providers and rebates to the health plans that pay them, which reduces the net realization on the original sale.

In addition, federal programs impose penalties on manufacturers of drugs marketed under a BLA or NDA, in the form of mandatory additional rebates and/or discounts if commercial prices increase at a rate greater than the Consumer Price Index-Urban, and these rebates and/or discounts, which can be substantial, may impact our ability to raise commercial prices. Cost control initiatives could cause us, or our collaborators, to decrease, discount, or rebate a portion of the price we, or they, might establish for products, which could result in lower than anticipated product revenues. If the realized prices for our product candidates, if any, decrease or if governmental and other third-party payors do not provide adequate coverage or reimbursement, our prospects for revenues and profitability will suffer.

Even if we obtain coverage for a given product, the resulting approved reimbursement payment rates might not be high enough to allow us to establish or maintain a market share sufficient to realize a sufficient return on our or their investments or achieve or sustain profitability or may require co-payments that patients find unacceptably high. If payors subject our product candidates to maximum payment amounts or impose limitations that make it difficult to obtain reimbursement, providers may choose to use therapies which are less expensive when compared to our product candidates. Additionally, if payors require high copayments, beneficiaries may decline prescriptions and seek alternative therapies. We may need to conduct post-marketing studies in order to demonstrate the cost-effectiveness of any future products to the satisfaction of hospitals and other target customers and their third-party payors. Such studies might require us to commit a significant amount of management time and financial and other resources. Our future products might not ultimately be considered cost-effective. Adequate third-party coverage and reimbursement might not be available to enable us to maintain price levels sufficient to realize an appropriate return on investment in product development.

We, and our collaborators, cannot be sure that coverage will be available for any product candidate that we, or they, commercialize and, if available, that the reimbursement rates will be adequate. Further, the net reimbursement for drug products may be subject to additional reductions if there are changes to laws that presently restrict imports of drugs from countries where they may be sold at lower prices than in the United States. An inability to promptly obtain coverage and adequate payment rates from both government-funded and private payors for any of our product candidates for which we obtain marketing approval could have a material adverse effect on our operating results, our ability to raise capital needed to commercialize products, and our overall financial condition.

There have been, and likely will continue to be, legislative and regulatory proposals at the federal and state levels directed at broadening the availability of healthcare and containing or lowering the cost of healthcare. We cannot predict the initiatives that may be adopted in the future. The continuing efforts of the government, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare and/or impose price controls may adversely affect:

- the demand for our product candidates, if we obtain regulatory approval;
- our ability to set a price that we believe is fair for our product candidates;
- our ability to generate revenues and achieve or maintain profitability;
- the level of taxes that we are required to pay; and
- the availability of capital.

Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors, which may adversely affect our future profitability. A particular challenge for our product candidates arises from the fact that they will primarily be used in an inpatient setting. Inpatient reimbursement generally relies on stringent packaging rules that may mean that there is no separate payment for our product candidates. Additionally, data used to set the payment rates for inpatient admissions is usually several years old and would not take into account all of the additional therapy costs associated with the administration of our product candidates. If special rules are not created for reimbursement for immunotherapy treatments such as our product candidates, hospitals might not receive enough reimbursement to cover their costs of treatment, which will have a negative effect on their adoption of our product candidates.

We may face difficulties from changes to current regulations and future legislation.

In the United States and some foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay marketing approval of our product candidates, restrict or regulate post-approval activities, and affect our ability, or the ability of our collaborators, to profitably sell any products for which we obtain marketing approval. We expect that current laws, as well as other federal and state healthcare reform measures that may be adopted in the future, may result in more rigorous coverage criteria, increased regulatory burdens and operating costs, decreased revenues from our biopharmaceutical product candidates, decreased potential returns from our development efforts, and additional downward pressure on the price that we, or our collaborators, may receive for any approved products.

Since enactment of the ACA in 2010, in both the United States and certain foreign jurisdictions, there have been a number of legislative and regulatory changes to the health care system that could impact our ability to sell our product candidates profitably. These changes included aggregate reductions of Medicare payments to providers of up to 2% per fiscal year, effective April 1, 2013, which, due to subsequent legislative amendments, will stay in effect through 2030, with the exception of a temporary suspension implemented under various COVID-19 relief legislation from May 1, 2020 through the end of 2021, unless additional Congressional action is taken. In January 2013, the American Taxpayer Relief Act of 2012 (“ATRA”) was approved which, among other things, reduced Medicare payments to several providers, with primary focus on the hospital outpatient setting and ancillary services, including hospitals, imaging centers and cancer treatment centers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. These new laws may result in additional reductions in Medicare and other healthcare funding, which could have a material adverse effect on customers for our product candidates, if approved, and accordingly, our financial operations.

Since its enactment, various portions of the ACA have been subject to judicial and constitutional challenges. Some of the provisions of the ACA have yet to be implemented, and there have been judicial and Congressional challenges to certain aspects of the ACA, as well as recent efforts to repeal or replace certain aspects of the ACA. It is unclear how judicial decisions, future litigation, and healthcare measures promulgated by the Biden administration will impact the ACA and our business, financial condition and results of operations. Complying with any new legislation or reversing changes implemented under the ACA could be time-intensive and expensive, resulting in a material adverse effect on our business.

Any reduction in reimbursement from Medicare or other government healthcare programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenues, attain profitability or commercialize our product candidates.

Legislative and regulatory proposals may also be made to expand post-approval requirements and restrict sales and promotional activities for drugs. We cannot be sure whether additional legislative changes will be enacted, or whether the FDA regulations, guidance, or interpretations will be changed, or what the impact of such changes on the marketing approvals of our product candidates, if any, may be. In addition, increased scrutiny by Congress of the FDA's approval process may significantly delay or prevent marketing approval, as well as subject us to more stringent product labeling and post-marketing testing and other requirements.

In addition, there have been increasing legislative efforts and enforcement interest in the United States with respect to drug pricing practices, including Congressional inquiries and proposed federal and state legislation designed to, among other things, bring more transparency to drug pricing, reduce the cost of prescription drugs under Medicare, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drugs. At the federal level, in 2020, the Trump administration used several means to propose or implement drug pricing reform, including through federal budget proposals, executive orders and policy initiatives, some of which resulted in lawsuits against the U.S Department of Health and Human Services challenging various aspects of the rules. In January 2021, the Biden administration issued a "regulatory freeze" memorandum that directs department and agency heads to review new or pending rules of the prior administration. The impact of these lawsuits as well as legislative, executive, and administrative actions of the Biden administration on us and the pharmaceutical industry as a whole remains unclear. At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing.

We are unable to predict the future course of federal or state healthcare legislation in the United States directed at broadening the availability of healthcare and containing or lowering the cost of healthcare. The ACA and any further changes in the law or regulatory framework that reduce our revenues or increase our costs could also have a material and adverse effect on our business, financial condition and results of operations.

Governments outside the United States tend to impose strict price controls, which may adversely affect our revenues, if any.

In international markets, reimbursement and health care payment systems vary significantly by country, and many countries have instituted price ceilings on specific products and therapies. In some countries, particularly the countries of the EU, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. To obtain coverage and reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidate to other available therapies. There can be no assurance that our product candidates will be considered cost-effective by third-party payors, that an adequate level of reimbursement will be available, or that the third-party payors' reimbursement policies will not adversely affect our ability to sell our product candidates profitably. If reimbursement of our product candidates is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be harmed, possibly materially.

Our employees, independent contractors, consultants, commercial partners, principal investigators, CROs, suppliers and vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements.

We are exposed to the risk of employee fraud or other illegal activity by our employees, independent contractors, consultants, commercial partners, principal investigators, CROs, suppliers and vendors. Misconduct by these parties could include intentional, reckless and/or negligent conduct that fails to: comply with the laws of the FDA and other similar foreign regulatory bodies, provide true, complete and accurate information to the FDA and other similar foreign regulatory bodies, comply with manufacturing standards we have established, comply with healthcare fraud and abuse laws in the United States and similar foreign fraudulent misconduct laws, or report financial information or data accurately or to disclose unauthorized activities to us. If we obtain FDA approval of any of our product candidates and begin commercializing those product candidates in the United States, our potential exposure under such laws will increase significantly, and our costs associated with compliance with such laws are also likely to increase. In particular, the promotion, sales and marketing of healthcare items and services, as well as certain business arrangements in the healthcare industry, are subject to extensive laws designed to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, structuring and commission(s), certain customer incentive programs and other business arrangements generally. Activities subject to these laws also involve the improper use of information obtained in the course of patient recruitment for clinical trials.

It is not always possible to identify and deter misconduct or other improper activities by our employees or third parties that we engage for our business operations and the precautions we take to detect and prevent inappropriate conduct 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 such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of civil, criminal and administrative penalties, damages, disgorgement, monetary fines, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings, compliance agreements, withdrawal of product approvals, and curtailment of our operations, among other things, any of which could adversely affect our ability to operate our business and our results of operations. In addition, the approval and commercialization of any of our product candidates outside the United States will also likely subject us to foreign equivalents of the healthcare laws mentioned above, among other foreign laws. Efforts to ensure that our business arrangements will comply with applicable healthcare laws may involve substantial costs.

Risks Related to Intellectual Property

If we are unable to obtain, maintain, protect and enforce patent protection and other proprietary rights for our product candidates and technologies, we may not be able to compete effectively or operate profitably and our ability to prevent our competitors from commercializing similar or identical technology and product candidates would be adversely affected.

Our success is dependent in large part on our obtaining, maintaining, protecting and enforcing patents and other proprietary rights in the United States and other countries with respect to our product candidates and technology and on our ability to avoid infringing the intellectual property and other proprietary rights of others. Certain of our intellectual property rights are licensed from other entities, and as such the preparation and prosecution of any such patents and patent applications was not performed by us or under our control. Furthermore, patent law relating to the scope of claims in the biotechnology field in which we operate is still evolving and, consequently, patent positions in our industry may not be as strong as in other more well-established fields. The patent positions of biotechnology and pharmaceutical companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved and has been the subject of much litigation in recent years. No consistent policy regarding the breadth of claims allowed in biotechnology patents has emerged to date. As a result, the issuance, scope, validity, enforceability, or commercial value of our patent rights remain highly uncertain.

Any future patents we obtain may not be sufficiently broad to prevent others from using our technology or from developing competing therapeutics and technology. There is no guarantee that any of our pending patent applications will result in issued or granted patents, any of our issued or granted patents will not later be found to be invalid or unenforceable, or any issued or granted patents will include claims sufficiently broad to cover our product candidates and technology, or to provide meaningful protection from our competitors. Our owned or in-licensed pending and future patent applications may not result in patents being issued which protect our Anktiva™, hAd5, aldoxorubicin or other product candidates or other technologies or which effectively prevent others from commercializing competitive technologies and product candidates.

Moreover, the coverage claimed in a patent application can be significantly reduced before the patent is issued, and its scope can be reinterpreted after issuance. Even if patent applications we license or own currently or in the future issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors or other third parties from competing with us, or otherwise provide us with any competitive advantage. Any patents that we own or in-license may be challenged, narrowed, circumvented, or invalidated by third parties. Consequently, we do not know whether our Anktiva™, hAd5 or other product candidates or other technologies will be protectable or remain protected by valid and enforceable patents. Our competitors or other third parties may be able to circumvent our patents by developing similar or alternative technologies or products in a non-infringing manner which could materially adversely affect our business, financial condition, results of operations and growth prospects.

The issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability and it is uncertain how much protection, if any, will be provided by our patents, including if they are challenged in the courts or patent offices or in other proceedings, such as re-examinations or oppositions, which may be brought in the United States or foreign jurisdictions to challenge the validity of a patent. A third party may challenge the validity or enforceability of a patent after its issuance. It is possible that a competitor may successfully challenge our patents or that a challenge will result in limiting their coverage. Moreover, it is possible that competitors may infringe our patents or successfully avoid the patented technology through design innovation. To counter infringement or other unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming, even if we were successful in stopping the violation of our patent rights.

We or our licensors may be subject to a third-party preissuance submission of prior art to the USPTO, or become involved in opposition, derivation, revocation, reexamination, post-grant and *inter partes* review, or interference proceedings or other similar proceedings challenging our owned or licensed patent rights. Should third parties file patent applications, or be issued patents claiming technology also used or claimed by our licensor(s) or by us in any future patent application, we, or one of our licensors, may be required to participate in interference proceedings in the USPTO to determine priority of invention for those patents or patent applications that are subject to the first-to-invent law in the United States, or may be required to participate in derivation proceedings in the USPTO for those patents or patent applications that are subject to the first-inventor-to-file law in the United States. We may be required to participate in such interference or derivation proceedings involving our issued patents and pending applications. We may also be required to participate in post-grant challenge proceedings, such as oppositions in a foreign patent office, that challenge our or our licensor's priority of invention or other features of patentability with respect to our owned or in-licensed patents and patent applications. Such challenges may result in loss of patent rights, loss of exclusivity, or in patent claims being narrowed, invalidated, or held unenforceable, which could limit our ability to stop others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our Anktiva™, hAd5 or other product candidates and other technologies. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, or invalidate or render unenforceable, our owned or in-licensed patent rights, allow third parties to commercialize our Anktiva™, hAd5 or other product candidates or other technologies and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize products without infringing third-party patent rights.

If we or our collaborators are unsuccessful in any such proceeding or other priority or inventorship dispute, we may be required to cease using the technology or to obtain and maintain license rights from prevailing third parties, including parties involved in any such interference proceedings or other priority or inventorship disputes. A prevailing party in that case may not offer us a license on commercially acceptable terms or at all. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors and other third parties access to the same technologies licensed to us, and it could require us to make substantial licensing and royalty payments. If we are unable to obtain and maintain such licenses, we may need to cease the development, manufacture, and commercialization of one or more of the product candidates we may develop. The loss of exclusivity or the narrowing of our owned and licensed patent claims could limit our ability to stop others from using or commercializing similar or identical technology and products. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and prospects.

In addition, given the amount of time required for the development, testing, and regulatory review of new product candidates, patents protecting such product candidates might expire before or shortly after such product candidates are commercialized. As a result, our intellectual property may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

Some of our owned and in-licensed patents and patent applications are, and may in the future be, co-owned with third parties. In addition, certain of our licensors co-own the patents and patent applications we in-license with other third parties with whom we do not have a direct relationship. Our exclusive rights to certain of these patents and patent applications are dependent, in part, on inter-institutional or other operating agreements between the joint owners of such patents and patent applications, who are not parties to our license agreements. If our licensors do not have exclusive control of the grant of licenses under any such third-party co-owners' interest in such patents or patent applications or we are otherwise unable to secure such exclusive rights, such co-owners may be able to license their rights to other third parties, including our competitors, and our competitors could market competing products and technology. In addition, we may need the cooperation of any such co-owners of our patents in order to enforce such patents against third parties, and such cooperation may not be provided to us. Any of the foregoing could have a material adverse effect on our competitive position, business, financial conditions, results of operations and growth prospects.

If any of our owned or in-licensed patent applications do not issue as patents in any jurisdiction, we may not be able to compete effectively.

Changes in either the patent laws or their interpretation in the United States and other countries may diminish our ability to protect our inventions, obtain, maintain, and enforce our intellectual property rights and, more generally, could affect the value of our intellectual property or narrow the scope of our owned and licensed patents. With respect to both in-licensed and owned intellectual property, we cannot predict whether the patent applications we and our licensors are currently pursuing will issue as patents in any particular jurisdiction or whether the claims of any issued patents will provide sufficient protection from competitors or other third parties. The patent prosecution process is expensive, time-consuming, and complex, and we may not be able to file, prosecute, maintain, enforce, or license all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we will fail to identify patentable aspects of our research and development output in time to obtain patent protection. Although we enter into nondisclosure and confidentiality agreements with parties who have access to confidential or patentable aspects of our research and development output, such as our employees, corporate collaborators, outside scientific collaborators, CROs, CMOs, consultants, advisors, and other third parties, any of these parties may breach the agreements and disclose such output before a patent application is filed, thereby jeopardizing our ability to seek patent protection. In addition, our ability to obtain and maintain valid and enforceable patents depends on whether the differences between our inventions and the prior art allow our inventions to be patentable over the prior art. Furthermore, publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the United States and other jurisdictions are typically not published until 18 months after filing, or in some cases not at all. Therefore, we cannot be certain that we or our licensors were the first to make the inventions claimed in any of our owned or licensed patents or pending patent applications, or that we or our licensors were the first to file for patent protection of such inventions.

We or our licensors, collaborators, or any future strategic partners may become subject to third party claims or litigation alleging infringement of patents or other proprietary rights or seeking to invalidate patents or other proprietary rights, and we may need to resort to litigation to protect or enforce our patents or other intellectual property or the patents or other intellectual property of our licensors, all of which could be expensive, time-consuming and unsuccessful, may delay or prevent the development and commercialization of our product candidates, or may put our patents and other proprietary rights at risk.

If we or one of our licensors initiate legal proceedings against a third party to enforce a patent covering one of our product candidates or other technologies, the defendant could counterclaim that the patent is invalid and/or unenforceable or that we infringe their patents. In patent litigation in the United States, defendant counterclaims alleging invalidity and/or unenforceability are commonplace, and there are numerous grounds upon which a third party can assert invalidity or unenforceability of a patent. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness, or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant information from the USPTO or other applicable body, or made a misleading statement, during prosecution. Third parties may also raise similar claims before administrative bodies in the United States or abroad, even outside the context of litigation. Such mechanisms include re-examination, post grant review, *inter partes* review, interference proceedings, derivation proceedings, and equivalent proceedings in foreign jurisdictions (e.g., opposition proceedings).

With respect to the validity question, for example, we cannot be certain that there is no invalidating prior art, of which we, our licensor, our or our licensor's patent counsel and the patent examiner were unaware during prosecution. Moreover, even if our patents were to survive such a litigation challenge to their validity, the patents might still be held to be valid but unenforceable if a court were to decide that the patents are being enforced in a manner inconsistent with the antitrust laws, or that the patents were obtained through deceit during patent office examination or other such failure of sufficient candor to the patent office. If a third party were to prevail on a legal assertion of invalidity and/or unenforceability, we would lose at least part, and perhaps all, of the patent protection on our product candidates. Such a loss of patent protection could have a material adverse impact on our business, financial condition, results of operations and prospects.

The cost to us of any litigation or other proceeding relating to intellectual property rights, even if resolved in our favor, could be substantial. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources, including our scientists and management, from our business.

An adverse result in any litigation or defense proceeding could put one or more of our owned or licensed patents at risk of being invalidated, held unenforceable, or interpreted narrowly, and could put our patent applications at risk of not issuing. Such proceedings could result in revocation or cancellation of, or amendment to, our patents in such a way that they no longer cover our product candidates or technologies. If the outcome of litigation is adverse to us, third parties may be able to use our patented invention without payment to us. In addition, in an infringement proceeding, there is a risk that a court may decide that one or more of our patents is not valid or is unenforceable and that we do not have the right to stop the other party from using the inventions. There is also the risk that, even if the validity of our patents were upheld, a court would refuse to stop the other party on the grounds that its activities are not covered by, that is, do not infringe, our patents. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation.

In addition, there could be public announcements of the results of hearings, motions, or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing, or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be better able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources and more mature and developed intellectual property portfolios. The outcome following legal assertions of invalidity and unenforceability is unpredictable. 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.

The use of our technology and product candidates could potentially conflict with the rights of others, and third-party claims of intellectual property infringement, misappropriation or other violation against us, our licensors or our collaborators may prevent or delay the development and commercialization of our product candidates and technologies.

Our commercial success depends in part on our, our licensors' and our collaborators' ability to avoid infringing, misappropriating and otherwise violating the patents and other intellectual property rights of third parties. There is a substantial amount of complex litigation involving patents and other intellectual property rights in the biopharmaceutical industry. Our potential competitors or other parties may have, develop or acquire patent or other intellectual property rights that they could assert against us. If they do so, then we may be required to alter our product candidates, pay licensing fees or cease our development and commercialization activities with respect to the applicable product candidates or technologies. If our product candidates conflict with patent or other intellectual property rights of others, such parties could bring legal actions against us or our collaborators, licensees, suppliers or customers, claiming damages and seeking to enjoin manufacturing, use and marketing of the affected products.

Although we have conducted freedom-to-operate ("FTO") analyses of the patent landscape with respect to our lead product candidates and continue to undertake FTO analyses of our manufacturing processes, our Anktiva™ product candidate, and contemplated future processes and products, because patent applications do not publish for 18 months, and because the claims of patent applications can change over time, no FTO analysis can be considered exhaustive. We may not be aware of patents that have already been issued and that a competitor or other third party might assert are infringed by our current or future product candidates or technologies. It is also possible that we could be found to have infringed patents owned by third parties of which we are aware, but which we do not believe are relevant to our product candidates or technologies. In addition, because patent applications can take many years to issue, there may be currently pending patent applications that may later result in issued patents that our product candidates or technologies may infringe. Furthermore, patent and other intellectual property rights in biotechnology remains an evolving area with many risks and uncertainties. As such, we may not be able to ensure that we can market our product candidates without conflict with the rights of others.

If intellectual property-related legal actions asserted against us are successful, in addition to any potential liability for damages (including treble damages and attorneys' fees for willful infringement), we could be enjoined from, or required to obtain a license to continue, manufacturing, promoting the use of or marketing the affected products. We may not prevail in any legal action and a required license under the applicable patent or other intellectual property may not be available on acceptable terms or at all. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors and other third parties access to the same technologies licensed to us, and it could require us to make substantial licensing and royalty payments. We also could be required to redesign our infringing products, which may be impossible or require substantial time and monetary expenditure.

Defense of infringement claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of management and other employee resources from our business, and may impact our reputation. Some of our competitors may be able to sustain the costs of litigation or administrative proceedings more effectively than we can because of greater financial resources. In addition, there could be public announcements of the results of hearings, motions, or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. The occurrence of any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and prospects.

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

Periodic maintenance fees, renewal fees, annuity fees, and various other government fees on patents and patent applications are due to be paid to the USPTO and foreign patent agencies in several stages over the lifetime of a patent. The USPTO and various foreign governmental patent agencies require compliance with several procedural, documentary, fee payment and other similar provisions during the patent application process. In certain circumstances, we rely on our licensors to pay these fees and take the necessary actions to comply with these requirements. While an inadvertent lapse can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Noncompliance events that could result in abandonment or lapse of a patent or patent application include, but are not limited to, failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. In such an event, our competitors might be able to enter the market with similar or identical products or technology, which would have a material adverse impact on our business, financial condition, results of operations and prospects.

Changes in United States patent law could diminish the value of patents in general, thereby impairing our ability to protect our product candidates.

As is the case with other immunotherapy and biopharmaceutical companies, our success is dependent on intellectual property, particularly patents. Obtaining and enforcing patents in the biopharmaceutical industry involve both technological and legal complexity, and is therefore costly, time-consuming and inherently uncertain. In addition, the United States has recently enacted and is currently implementing wide-ranging patent reform legislation. Assuming that other requirements for patentability are met, prior to March 2013, in the United States, the first to invent the claimed invention was entitled to the patent, while outside the United States, the first to file a patent application was entitled to the patent. After March 2013, under the Leahy-Smith America Invents Act (the "America Invents Act") enacted in September 2011, the United States transitioned to a first-to-file system in which, assuming that other requirements for patentability are met, the first inventor to file a patent application will be entitled to the patent on an invention regardless of whether a third party was the first to invent the claimed invention. A third party that files a patent application in the USPTO after March 2013, but before us could therefore be awarded a patent covering an invention of ours even if we had made the invention before it was made by such third party. This will require us to be cognizant of the time from invention to filing of a patent application. Since patent applications in the United States and most other countries are confidential for a period of time after filing or until issuance, we cannot be certain that we or our licensors were the first to either file any patent application related to our product candidates or other technologies or invent any of the inventions claimed in our or our licensor's patents or patent applications. The America Invents Act also includes a number of significant changes that affect the way patent applications will be prosecuted and also may affect patent litigation. These include allowing third-party submission of prior art to the USPTO during patent prosecution and additional procedures to attack the validity of a patent by USPTO-administered post-grant proceedings, including post-grant review, *inter partes* review, and derivation proceedings. Therefore, the America Invents Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our owned or in-licensed patent applications and the enforcement or defense of our owned or in-licensed issued patents, all of which could have a material adverse effect on our business, financial condition, results of operations, and prospects.

Additionally, recent U.S. Supreme Court rulings have narrowed the scope of patent protection available in certain circumstances and weakened the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents, once obtained. Depending on decisions by Congress, the federal courts, and the USPTO, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future. While we do not believe that any of the patents owned or licensed by us will be found invalid based on the foregoing, we cannot predict how future decisions by Congress, the federal courts or the USPTO may impact the value of our patents.

Our rights to develop and commercialize our product candidates and technologies are subject, in part, to the terms and conditions of licenses granted to us by others.

We will rely on licenses to certain patent rights and proprietary technology from third parties that are important or necessary to the development of aldoxorubicin as well as products enabled by our adenoviral and yeast, including Tarmogen, vaccine technologies.

License agreements may not provide exclusive rights to use certain licensed intellectual property and technology in all relevant fields of use and in all territories in which we may wish to develop or commercialize our technology and product candidates in the future. As a result, we may not be able to prevent competitors or other third parties from developing and commercializing competitive products that also utilizes technology that we have in-licensed.

In addition, subject to the terms of any such license agreements, we do not have the right to control the preparation, filing, prosecution and maintenance, and we may not have the right to control the enforcement, and defense of patents and patent applications covering the technology that we license from third parties. We cannot be certain that our in-licensed or out-licensed patents and patent applications that are controlled by our licensors or licensees will be prepared, filed, prosecuted, maintained, enforced, and defended in a manner consistent with the best interests of our business. If our licensors or licensees fail to prosecute, maintain, enforce, and defend such patents, or lose rights to those patents or patent applications, the rights we have licensed may be reduced or eliminated, our right to develop and commercialize Anktiva™ and any of our product candidates that are subject of such licensed rights could be adversely affected, and we may not be able to prevent competitors from making, using and selling competing products. In addition, even where we have the right to control patent prosecution of patents and patent applications we have licensed to and from third parties, we may still be adversely affected or prejudiced by actions or inactions of our licensees, our licensors and their counsel that took place prior to the date upon which we assumed control over patent prosecution.

Furthermore, our owned and in-licensed patents may be subject to a reservation of rights by one or more third parties. For example, certain of our in-licensed intellectual property was funded in part by the U.S. government. As a result, the U.S. government may have certain rights to such intellectual property. When new technologies are developed with U.S. government funding, the U.S. government generally obtains certain rights in any resulting patents, including a non-exclusive license authorizing the U.S. government to use the invention or to have others use the invention on its behalf. The U.S. government's rights may also permit it to disclose the funded inventions and technology to third parties and to exercise march-in rights to use or allow third parties to use the technology we have licensed that was developed using U.S. government funding. The U.S. government may exercise its march-in rights if it determines that action is necessary because we fail to achieve practical application of the government-funded technology, or because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations, or to give preference to U.S. industry. In addition, our rights in such inventions may be subject to certain requirements to manufacture products embodying such inventions in the United States in certain circumstances if this requirement is not waived. Any exercise by the U.S. government of such rights or by any third party of its reserved rights could have a material adverse effect on our competitive position, business, financial condition, results of operations and growth prospects.

If we fail to comply with our obligations in the agreements under which we license intellectual property rights from third parties or otherwise experience disruptions to our business relationships with our licensors, we may be required to pay damages and we could lose license rights that are important to our business.

We have entered into license agreements with third parties and may need to obtain additional licenses from others to advance our research or allow commercialization of our product candidates. We may be unable to obtain certain additional licenses at a reasonable cost or on reasonable terms, if at all. In that event, we may be required to expend significant time and resources to redesign our technology, product candidates, or the methods for manufacturing them or to develop or license replacement technology, all of which may not be feasible on a technical or commercial basis. If we are unable to do so, we may be unable to develop or commercialize the affected product candidates or continue to utilize our existing technology, which could harm our business, financial condition, results of operations and growth prospects significantly. We cannot provide any assurances that third-party patents do not exist which might be enforced against our current technology, manufacturing methods, product candidates, or future methods or products resulting in either an injunction prohibiting our manufacture or future sales, or, with respect to our future sales, an obligation on our part to pay royalties and/or other forms of compensation to third parties, which could be significant.

In addition, each of our license agreements, and we expect our future agreements, will impose various development, diligence, commercialization, and other obligations on us. Certain of our license agreements also require us to meet development timelines, or to exercise commercially reasonable efforts to develop and commercialize licensed products, in order to maintain the licenses. In spite of our efforts, our licensors might conclude that we have materially breached our obligations under such license agreements and might therefore terminate the license agreements, thereby removing or limiting our ability to develop and commercialize products and technology covered by these license agreements. If these in-licenses are terminated, or if the underlying patents fail to provide the intended exclusivity, competitors or other third parties would have the freedom to seek regulatory approval of, and to market, products identical to ours and we may be required to cease our development and commercialization of certain of our product candidates or of Anktiva™. Any of the foregoing could have a material adverse effect on our competitive position, business, financial conditions, results of operations and growth prospects.

Moreover, disputes may arise regarding intellectual property subject to a licensing agreement, including:

- the scope of rights granted under the license agreement and other interpretation-related issues;
- the extent to which our technology and processes infringe on intellectual property of the licensor that is not subject to the licensing agreement;
- the sublicensing of patent and other rights under our collaborative development relationships;
- our diligence obligations under the license agreement and what activities satisfy those diligence obligations;
- the inventorship and ownership of inventions and know-how resulting from the joint creation or use of intellectual property by our licensors and us and our partners; and
- the priority of invention of patented technology.

In addition, the agreements under which we currently license intellectual property or technology from third parties are complex, and certain provisions in such agreements may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology, or increase what we believe to be our financial or other obligations under the relevant agreement, either of which could have a material adverse effect on our business, financial condition, results of operations and growth prospects. Moreover, if disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on commercially acceptable terms, we may be unable to successfully develop and commercialize the affected product candidates, which could have a material adverse effect on our business, financial conditions, results of operations and growth prospects.

We have limited foreign intellectual property rights and may not be able to protect our intellectual property rights throughout the world.

We have limited intellectual property rights outside the United States. 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 product candidates 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 biopharmaceutical 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. 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 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.

Many countries have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In addition, many countries limit the enforceability of patents against government agencies or government contractors. In these countries, the patent owner may have limited remedies, which could materially diminish the value of such patent. If we or any of our licensors is forced to grant a license to third parties with respect to any patents relevant to our business, our competitive position may be impaired, and our business, financial condition, results of operations and prospects may be adversely affected.

We may be subject to claims that our employees, consultants or independent contractors have wrongfully used or disclosed trade secrets or other confidential information of third parties or claims asserting ownership of what we regard as our own intellectual property.

We have received confidential and proprietary information from third parties and their employees and contractors. In addition, we plan to employ and contract with individuals who were previously employed at other biotechnology or pharmaceutical companies. We may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed the trade secrets or other confidential information of these third parties or our employees' former employers. Litigation may be necessary to defend against or pursue these claims. Even if we are successful in resolving these claims, litigation could result in substantial cost and be a distraction to our management and employees.

In addition, while it is our policy to require our employees, consultants and independent contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property that we regard as our own. The assignment of intellectual property rights may not be self-executing, or the assignment agreements may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations, and prospects.

We may not be able to license or acquire new or necessary intellectual property rights or technology from third parties.

An element of our intellectual property strategy is to license intellectual property rights and technologies from third parties and/or our affiliates. Other parties, including our competitors or our affiliates, may have patents relevant to our business, may have already filed patent applications relevant to our business, and are likely filing patent applications potentially relevant to our business. In order to avoid infringing these patents, we may find it necessary or prudent to obtain licenses to such patents from such parties. In addition, with respect to any patents we co-own with other parties, including our affiliates, we may require licenses to such co-owners' interest to such patents. The licensing or acquisition of intellectual property rights is a competitive area, and other more established companies may pursue strategies to license or acquire third-party intellectual property rights that we may consider attractive or necessary. These established companies may have a competitive advantage over us due to their size, capital resources, and greater clinical development and commercialization capabilities. In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We also may be unable to license or acquire

third-party intellectual property rights on terms that would allow us to make an appropriate return on our investment or at all. No assurance can be given that we will be successful in licensing any additional rights or technologies from third parties and/or our affiliates. Our inability to license the rights and technologies that we have identified, or that we may in the future identify, could have a material adverse impact on our ability to complete the development of our product candidates or to develop additional product candidates. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors and other third parties access to the same technologies licensed to us, and it could require us to make substantial licensing and royalty payments. Failure to obtain any necessary rights or licenses may detrimentally affect our planned development of our current or future additional product candidates and could increase the cost, and extend the timelines associated with our development, of such other products, and we may have to abandon development of the relevant program or product candidate. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and prospects.

If we do not obtain patent term extension and data exclusivity for any product candidates we may develop, our business may be materially harmed.

Depending upon the timing, duration and specifics of any FDA marketing approval of any product candidates we may develop, one or more of our owned or in-licensed U.S. patents may be eligible for limited patent term extension under the Drug Price Competition and Patent Term Restoration Act of 1984 (the "Hatch-Waxman Act"). The Hatch-Waxman Act permits a patent term extension of up to five years as compensation for patent term lost during the FDA regulatory review process. A patent term extension cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval. Only one patent may be extended per new drug, and only those claims covering the approved drug, a method for using it, or a method for manufacturing it may be extended. Similar extensions as compensation for patent term lost during regulatory review processes are also available in certain foreign countries and territories, such as in Europe under a Supplementary Patent Certificate. However, we may not be granted an extension in the United States and/or foreign countries and territories because of, for example, failing to exercise due diligence during the testing phase or regulatory review process, failing to apply within applicable deadlines, failing to apply prior to expiration of relevant patents, or otherwise failing to satisfy applicable requirements. Moreover, the applicable time period or the scope of patent protection afforded could be less than we request. If we are unable to obtain patent term extension or the term of any such extension is shorter than what we request, our competitors may obtain approval of competing products following our patent expiration, and our business, financial condition, results of operations and growth prospects could be materially harmed.

We may be subject to claims challenging rights in our patents and other intellectual property.

We or our licensors may be subject to claims that former employees, collaborators or other third parties have an interest in our owned or in-licensed patents, trade secrets, or other intellectual property, including as an inventor or co-inventor. For example, we or our licensors may have disputes arise from conflicting obligations of employees, 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 our or our licensors' ownership of our owned or in-licensed patents, trade secrets or other intellectual property. If we or our licensors 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. 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. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

On September 10, 2020, a legal complaint was filed in a California court where Institute for Cancer Research (d/b/a Fox Chase Cancer Center) argued that it has a co-ownership interest in U.S. Patent No. 10,456,420 and its underlying U.S. Patent Application No. 15/529,848, as well as in certain related patent applications or issued patents that include claimed subject matter allegedly invented by one of the claimant's employees. We disagree that this claim for co-ownership has merit and intend to vigorously defend our position. All of the named inventors have assigned their rights in this patent to us. We will continue to have an undivided interest in the entire patent even if claimant succeeds in this suit. However, litigating this matter could result in substantial costs and be a distraction to management and other employees. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

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

In addition to seeking patents for Anktiva™, hAd5 and yeast technologies and other product candidates and technologies, we also rely on trade secrets and confidentiality agreements to protect our unpatented know-how, technology, and other proprietary information and to maintain our competitive position. Trade secrets and know-how can be difficult to protect. We expect our trade secrets and know-how will over time be disseminated within the industry through independent development, the publication of journal articles describing the methodology, and the movement of personnel from academic to industry scientific positions.

We seek to protect these trade secrets and other proprietary technology, in part, by entering into nondisclosure and confidentiality agreements with parties who have access to them, such as our employees, corporate collaborators, outside scientific collaborators, CROs, CMOs, consultants, advisors, and other third parties. We also enter into confidentiality and invention or patent assignment agreements with our employees and consultants as well as train our employees not to bring or use proprietary information or technology from former employers to us or in their work, and remind former employees when they leave their employment of their confidentiality obligations. We cannot guarantee that we have entered into such agreements with each party that may have or have had access to our trade secrets or proprietary technology and processes. Despite our efforts, any of these parties may breach the agreements and disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive, and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor or other third party, we would have no right to prevent them from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor or other third party, our competitive position would be materially and adversely harmed.

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

Our registered or unregistered trademarks or trade names may be challenged, infringed, circumvented or declared generic or determined to be infringing on other marks. We may not be able to protect our rights to these trademarks and trade names, which we need to build name recognition among potential partners or customers in our markets of interest. At times, competitors or other third parties may adopt trade names or trademarks similar to ours, thereby impeding our ability to build brand identity and possibly leading to market confusion. In addition, there could be potential trade name or trademark infringement claims brought by owners of other registered trademarks or trademarks that incorporate variations of our registered or unregistered trademarks or trade names. Over the long term, if we are unable to establish name recognition based on our trademarks and trade names, then we may not be able to compete effectively and our business may be adversely affected. Our efforts to enforce or protect our proprietary rights related to trademarks, trade secrets, domain names, copyrights or other intellectual property may be ineffective and could result in substantial costs and diversion of resources and could adversely affect our business, financial condition, results of operations and growth prospects.

Intellectual property rights do not necessarily address all potential threats.

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. For example:

- others may be able to make products that are similar to our product candidates or utilize similar technology but that are not covered by the claims of the patents that we license or may own;
- we, or our current or future licensors or collaborators, might not have been the first to make the inventions covered by the issued patent or pending patent application that we license or own now or in the future;
- we, or our current or future licensors or collaborators, might not have been the first to file patent applications covering certain of our or their inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our owned or licensed intellectual property rights;

- it is possible that our current or future pending owned or licensed patent applications will not lead to issued patents;
- issued patents that we hold rights to may be held invalid or unenforceable, including as a result of legal challenges by our competitors or other third parties;
- our competitors or other third parties 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 not develop additional proprietary technologies that are patentable;
- the patents of others may harm our business; and
- we may choose not to file a patent in order to maintain certain trade secrets or know-how, and a third party may subsequently file a patent covering such intellectual property.

Should any of these events occur, they could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Risks Related to Our Common Stock

Dr. Soon-Shiong, our Executive Chairman, Global Chief Scientific and Medical Officer and our principal stockholder, has significant interests in other companies which may conflict with our interests.

Our Executive Chairman, Global Chief Scientific and Medical Officer and our principal stockholder, Dr. Soon-Shiong, is the founder of NantWorks. The various NantWorks companies are currently exploring opportunities in the immunotherapy, oncology, infectious disease and inflammatory disease fields. In particular, we have agreements with a number of related parties that provide services, technology and equipment for use in their efforts to develop their product pipelines. Dr. Soon-Shiong holds a controlling interest, either directly or indirectly, in these entities. Consequently, Dr. Soon-Shiong's interests may not be aligned with our other stockholders and he may from time to time be incentivized to take certain actions that benefit his other interests and that our other stockholders do not view as being in their interest as investors in our company. In addition, other companies affiliated with Dr. Soon-Shiong may compete with us for business opportunities or, in the future, develop products that are competitive with ours (including products in other therapeutic fields which we may target in the future). Moreover, even if they do not directly relate to us, actions taken by Dr. Soon-Shiong and the companies with which he is involved could impact us.

We are also pursuing supply arrangements for various investigational agents controlled by affiliates to be used in their clinical trials. If Dr. Soon-Shiong were to cease his affiliation with us or NantWorks, these entities may be unwilling to continue these relationships with us on commercially reasonable terms, or at all, and as a result may impede our ability to control the supply chain for our combination therapies. These collaboration agreements do not typically specify how sales will be apportioned between the parties upon successful commercialization of the product. As a result, we cannot guarantee that we will receive a percentage of the revenues that is at least proportional to the costs that we will incur in commercializing the product candidate.

We have entered into shared services agreements with NantWorks, pursuant to which NantWorks and its affiliates provide corporate, general and administrative and other support services to us. If Dr. Soon-Shiong was to cease his affiliation with us or with NantWorks, we may be unable to establish or maintain this relationship with NantWorks on a commercially reasonable basis, if at all. As a result, we could experience a lack of business continuity due to loss of historical and institutional knowledge and a lack of familiarity of new employees and/or new service providers with business processes, operating requirements, policies and procedures, and we may incur additional costs as new employees and/or service providers gain necessary experience. In addition, the loss of the services of NantWorks might significantly delay or prevent the development of our product candidates or achievement of other business objectives by diverting management's attention to transition matters and identification of suitable replacements, if any, and could have a material adverse effect on our business and results of operations.

Dr. Soon-Shiong, through his voting control of the company, has the ability to control actions that require stockholder approval.

Dr. Soon-Shiong, through his direct and indirect ownership of the company's common stock, has voting control of the company. As of September 30, 2021, Dr. Soon-Shiong and his affiliates beneficially own approximately 79.4% of the company's common stock outstanding. Additionally, an affiliate of Dr. Soon-Shiong holds a warrant to purchase an additional 1,638,000 shares of the company's common stock that will become exercisable if certain performance conditions are satisfied. Dr. Soon-Shiong and his related party also hold approximately $279.5 million in the aggregate of CVRs issued to the former stockholders of Altor in connection with NantCell's acquisition of Altor. If the underlying conditions for payment are met, the CVRs become payable in cash or shares of the company's common stock or any combination as the holder elects. Dr. Soon-Shiong and his related party have irrevocably agreed to receive shares of the company's common stock in satisfaction of their CVRs.

Dr. Soon-Shiong is in a position to control the outcome of corporate actions that require, or may be accomplished by, stockholder approval, including amending the bylaws of the company, the election or removal of directors and transactions involving a change of control. Dr. Soon-Shiong's controlling ownership could limit the ability of the remaining stockholders of the company to influence corporate matters, and the interests of Dr. Soon-Shiong may not coincide with the company's interests or the interests of its remaining stockholders. In addition, entities affiliated with Dr. Soon-Shiong hold promissory notes representing $303.2 million in indebtedness, including interest thereon, of the company as of September 30, 2021.

In addition, pursuant to the Nominating Agreement between us and Cambridge Equities, LP ("Cambridge"), an entity that Dr. Soon-Shiong controls, Cambridge has the ability to designate one director to be nominated for election to our board of directors for as long as Cambridge continues to hold at least 20% of the issued and outstanding shares of our common stock. Dr. Soon-Shiong was selected by Cambridge to hold this board seat. Dr. Soon-Shiong and his affiliates will therefore have significant influence over management and significant control over matters requiring stockholder approval, including the annual election of directors and significant corporate transactions, such as a merger or other sale of our company or its assets, for the foreseeable future. This control will limit stockholders' ability to influence corporate matters and, as a result, we may take actions that our stockholders do not view as beneficial. As a result, the market price of our common stock could be adversely affected.

The market price of our common stock has been and may continue to be volatile, and investors may have difficulty selling their shares.

Although our common stock is listed on the Nasdaq Global Select Market, the market for our shares has demonstrated varying levels of trading activity. You may not be able to sell your shares quickly or at the market price if trading in shares of our common stock is not active. Further, an inactive market may also impair our ability to raise capital by selling shares of our common stock and may impair our ability to enter into strategic partnerships or acquire companies or products by using our shares of common stock as consideration.

The stock market in general and the market for biopharmaceutical companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. The market price of our common stock has been and may continue to be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control, including:

- the commencement, enrollment or results of the planned clinical trials of our product candidates or any future clinical trials we may conduct, or changes in the development status of our product candidates;
- any delay in our regulatory filings for our product candidates and any adverse development or perceived adverse development with respect to the applicable regulatory authority's review of such filings, including without limitation the FDA's issuance of a "refusal to file" letter or a request for additional information;
- adverse results or delays in clinical trials;
- our decision to initiate a clinical trial, not to initiate a clinical trial or to terminate an existing clinical trial;
- adverse regulatory decisions, including failure to receive regulatory approval of our product candidates;

- changes in laws or regulations applicable to our products, including but not limited to clinical trial requirements for approvals;
- our failure to commercialize our product candidates;
- additions or departures of key scientific or management personnel;
- unanticipated serious safety concerns related to the use of our product candidates;
- announcements by us or our competitors of significant contracts, acquisitions, strategic partnerships, joint ventures or capital commitments;
- our ability to effectively manage our growth;
- variations in our quarterly operating results;
- our liquidity position and the amount and nature of any debt we may incur;
- announcements that our revenue or income are below or that costs or losses are greater than analysts' expectations;
- publication of research reports about us or our industry, or immunotherapy in particular, or positive or negative recommendations or withdrawal of research coverage by securities analysts;
- changes in the market valuations of similar companies;
- sales of large blocks of our common stock;
- fluctuations in stock market prices and volumes;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- significant lawsuits, including patent or stockholder litigation;
- the perception of our clinical trial results by retail investors, which investors may be subject to the influence of information provided by third party investor websites and independent authors distributing information on the internet;
- general economic slowdowns;
- coordinated actions by independent third-party actors to affect the price of certain stocks, coordinated via the Internet and otherwise; and
- other factors described in this "*Risk Factors*" section.

In the past, securities class action litigation has often been instituted against companies following periods of volatility in the market price of a company's securities. This type of litigation could result in substantial costs and a diversion of management's attention and resources, which would harm our business, operating results or financial condition.

Future sales and issuances of our common stock or rights to purchase common stock, including pursuant to our equity incentive plan, could result in additional dilution of the percentage ownership of our stockholders and could cause our stock price to fall.

Sales of a substantial number of shares of our common stock in the public market could occur at any time. If our stockholders sell, or the market perceives that our stockholders intend to sell substantial amounts of our common stock in the public market, the market price of our common stock could decline significantly. In addition, our Executive Chairman and Global Chief Scientific and Medical Officer, Dr. Soon-Shiong, and his affiliates currently beneficially own approximately 79.4% of our outstanding shares of common stock as of September 30, 2021. Sales of stock by Dr. Soon-Shiong and his affiliates could have an adverse effect on the trading price of our common stock.

Certain holders of our common stock are entitled to certain rights with respect to the registration of their shares under the Securities Act of 1933, as amended ("Securities Act"). Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act, except for shares held by our affiliates as defined in Rule 144 under the Securities Act. Any sales of securities by these stockholders could have an adverse effect on the market price of our common stock.

In addition, we expect that additional capital may be needed in the future to continue our planned operations, including conducting clinical trials, commercialization efforts, expanded research and development activities and costs associated with operating as a public company. To raise capital, we may sell common stock, including as part of the ATM, convertible securities or other equity securities in one or more transactions at prices and in a manner we determine from time to time. If we sell common stock, including through the ATM, convertible securities or other equity securities, investors may be materially diluted and new investors could gain rights, preferences and privileges senior to the holders of our common stock.

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 compliance initiatives and corporate governance practices, including maintaining an effective system of internal control over financial reporting.

As a public company listed in the U.S., and increasingly after we no longer qualify as a "smaller reporting company" as of December 31, 2021, we have incurred and will continue to incur significant additional legal, accounting and other expenses as a result of operating as a public company. In addition, changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002 ("Sarbanes Oxley") and regulations implemented by the SEC and Nasdaq, may increase legal and financial compliance costs and make some activities more time consuming. These laws, regulations and standards are subject to varying interpretations and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. We intend to invest resources to create a larger finance function with additional personnel to comply with evolving laws, regulations and standards, and this investment will result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If, notwithstanding our efforts to comply with new laws, regulations and standards, we fail to comply, regulatory authorities may initiate legal proceedings against us, and our business may be harmed.

As a public company in the U.S., we are required, pursuant to Section 404 of Sarbanes-Oxley ("Section 404") to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting. The controls and other procedures are designed to ensure that information required to be disclosed by us in the reports that we file with the SEC is disclosed accurately and is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms. In addition, we are required to disclose any material weaknesses identified by our management in our internal control over financial reporting, and, since we no longer qualify as a "non-accelerated filer" as of December 31, 2021, we will be required to provide a statement that our independent registered public accounting firm has issued an opinion on our internal control over financial reporting in our Annual Report on Form 10-K. We have initiated the process of engaging and coordinating with our independent registered public accounting firm to perform an audit of, and give an opinion on, our internal control over financial reporting for the annual period ending December 31, 2021. There can be no assurance that we will not discover deficiencies or a material weakness in our internal control over financial reporting or that our independent registered public accounting firm will agree with management's assessment of our internal control over financial reporting when they conduct such audit and deliver an opinion.

In the normal course of business our controls and procedures may become inadequate because of changes in conditions or the degree of compliance with these policies or procedures may deteriorate and material weaknesses in our internal control over financial reporting may be discovered. We may err in the design or operation of our controls, and all internal control systems, no matter how well designed and operated, can provide only reasonable assurance that the objectives of the control system are met. Because there are inherent limitations in all control systems, there can be no absolute assurance that all control issues have been or will be detected. If we are unable, or are perceived as unable, to produce reliable financial reports due to internal control deficiencies, investors could lose confidence in our reported financial information and operating results, which could result in a negative market reaction.

To fully comply with Section 404, we will need to retain additional employees to supplement our current finance staff, and we may not be able to do so in a timely manner, or at all. In addition, in the process of evaluating our internal control over financial reporting, we expect that certain of our internal control practices will need to be updated to comply with the requirements of Section 404 and the regulations promulgated thereunder, and we may not be able to do so on a timely basis, or at all. In the event that we are not able to demonstrate compliance with Section 404 in a timely manner, or are unable to produce timely or accurate financial statements, we may be subject to sanctions or investigations by regulatory authorities, such as the SEC or Nasdaq, and investors may lose confidence in our operating results and the price of our common stock could decline. Furthermore, if we are unable to certify that our internal control over financial reporting is effective and in compliance with Section 404, we may be subject to sanctions or investigations by regulatory authorities, such as the SEC or stock exchanges, and investors could lose confidence in the accuracy and completeness of our financial reports, which could hurt our business, the price of our common stock and our ability to access the capital markets.

Operating as a public company makes it more expensive for us to obtain directors' and officers' liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, on committees of our board of directors, or as members of senior management.

If a restatement of our financial statements were to occur, our stockholders' confidence in the company's financial reporting in the future may be affected, which could in turn have a material adverse effect on our business and stock price.

If any material weaknesses in our internal control over financial reporting are discovered or occur in the future, our consolidated financial statements may contain material misstatements, and we could be required to restate our financial results. In addition, if we are unable to successfully remediate any future material weaknesses in our internal controls or if we are unable to produce accurate and timely financial statements, our stock price may be adversely affected, and we may be unable to maintain compliance with applicable stock exchange listing requirements.

We have not paid cash dividends in the past and do not expect to pay dividends in the future. Any return on investment may be limited to the value of our common stock.

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends in the foreseeable future. The payment of dividends on our common stock will depend on earnings, financial condition and other business and economic factors affecting us at such time as the board of directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on your investment will only occur if our stock price appreciates.

Because we are relying on the exemptions from corporate governance requirements as a result of being a "controlled company" within the meaning of the Nasdaq listing standards, you do not have the same protections afforded to stockholders of companies that are subject to such requirements.

Our Executive Chairman and Global Chief Scientific and Medical Officer, Dr. Patrick Soon-Shiong, and entities affiliated with him, control a majority of our common stock. As a result, we are a "controlled company" within the meaning of the Nasdaq listing standards. Under these rules, a company of which more than 50% of the voting power is held by an individual, a group or another company is a "controlled company" and may elect not to comply with certain Nasdaq corporate governance requirements, including (1) the requirement that a majority of the board of directors consist of independent directors, and (2) the requirement that we have a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities. Accordingly, you do not have the same protections afforded to stockholders of companies that are subject to all of the Nasdaq corporate governance requirements. However, our board of directors is currently comprised of a majority of independent directors and we currently have a nominating and corporate governance committee and the majority of the members of such committee are independent directors.

We are a "smaller reporting company," and the reduced disclosure requirements applicable to smaller reporting companies could make our common stock less attractive to investors.

Although we no longer qualify as an emerging growth company, we qualify as a "smaller reporting company" during fiscal year 2021, which allows us to take advantage of many of the same exemptions from disclosure requirements, including reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. These exemptions include:

- being permitted to provide only two years of audited financial statements, in addition to any required unaudited interim financial statements, with correspondingly reduced "Management's discussion and analysis of financial condition and results of operations" disclosure;
- not being required to comply with the auditor attestation requirements in the assessment of our internal control over financial reporting; and
- reduced disclosure obligations regarding executive compensation.

Investors may find our common stock less attractive as a result of our reliance 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 the market price of our common stock may be reduced or more volatile.

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. 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.

We are not subject to the provisions of Section 203 of the DGCL, which could negatively affect your investment.

We elected in our amended and restated certificate of incorporation to not be subject to the provisions of Section 203 of the DGCL. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. A "business combination" includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder. An "interested stockholder" is a person who, together with affiliates and associates, owns (or, in certain cases, within three years prior, did own) 15% or more of the corporation's voting stock. Our decision not to be subject to Section 203 will allow, for example, our Executive Chairman and Global Chief Scientific and Medical Officer (who, with members of his immediate family and entities affiliated with him, currently beneficially own, in the aggregate, approximately 79.4% of our common stock as of September 30, 2021) to transfer shares in excess of 15% of our voting stock to a third-party free of the restrictions imposed by Section 203. This may make us more vulnerable to takeovers that are completed without the approval of our board of directors and/or without giving us the ability to prohibit or delay such takeovers as effectively.

Some provisions of our charter documents and Delaware law may have anti-takeover effects that could discourage an acquisition of us by others, even if an acquisition would be beneficial to our stockholders, and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws, as well as provisions of Delaware law, could make it more difficult for a third party to acquire us or increase the cost of acquiring us, even if doing so would benefit our stockholders. These provisions include:

- a requirement that special meetings of stockholders be called only by the board of directors, the president or the chief executive officer;
- advance notice requirements for stockholder proposals and nominations for election to our board of directors; and
- the authority of the board of directors to issue preferred stock on terms determined by the board of directors without stockholder approval and which preferred stock may include rights superior to the rights of the holders of common stock.

These anti-takeover provisions and other provisions in our amended and restated certificate of incorporation and amended and restated bylaws could make it more difficult for stockholders or potential acquirers to obtain control of our board of directors or initiate actions that are opposed by the then-current board of directors and could also delay or impede a merger, tender offer or proxy contest involving our company. These provisions could also discourage proxy contests and make it more difficult for you and other stockholders to elect directors of your choosing or cause us to take other corporate actions you desire. Any delay or prevention of a change of control transaction or changes in our board of directors could cause the market price of our common stock to decline.

Claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.

Our amended and restated certificate of incorporation and amended and restated bylaws provide that we will indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law. In addition, as permitted by Section 145 of the DGCL, our amended and restated bylaws and our indemnification agreements that we have entered into with our directors and officers provide that:

- We will indemnify our directors and officers for serving us in those capacities or for serving other business enterprises at our request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the registrant and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful.
- We may, in our discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.
- We are required to advance expenses, as incurred, to our directors and officers in connection with defending a proceeding, except that such directors or officers shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.
- We are not obligated pursuant to our amended and restated bylaws to indemnify a person with respect to proceedings initiated by that person against us or our other indemnitees except with respect to proceedings authorized by our board of directors or brought to enforce a right to indemnification.
- The rights conferred in our amended and restated bylaws are not exclusive, and we are authorized to enter into indemnification agreements with our directors, officers, employees and agents and to obtain insurance to indemnify such persons.
- We may not retroactively amend our bylaw provisions to reduce our indemnification obligations to directors, officers, employees and agents.

To the extent that a claim for indemnification is brought by any of our directors or officers, it would reduce the amount of funds available for use in our business.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.

(a) Recent Sales of Unregistered Securities

None.

(b) Issuer Purchases of Equity Securities

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

None.

ITEM 4. MINE SAFETY DISCLOSURES.

Not applicable.

ITEM 5. OTHER INFORMATION.

On November 9, 2021 (the "Start Date"), the board of directors (the "Board") of ImmunityBio, Inc. appointed Regan Lauer as the company's Chief Accounting Officer to serve as its Principal Accounting Officer for filings under the Securities Exchange Act of 1934, as amended ("Exchange Act") and requirements under other applicable rules and laws.

Ms. Lauer, age 52, was Corporate Vice President of Accounting at Progenity, Inc., a biotechnology company, from October 2019 to November 2021. Previously, Ms. Lauer worked for Silvergate Capital Corporation where she was Chief Financial Officer from June 2016 to April 2019 and Senior Vice President and Corporate Controller from February 2013 to June 2016. Prior to that, Ms. Lauer worked for First PacTrust Bancorp, Inc. from 2000 to 2012 holding many executive positions including Principal Accounting Officer and Senior Vice President and Corporate Controller. Ms. Lauer began her career with Deloitte and holds a Bachelor's degree in accounting from the Saint Louis University. There are no family relationships between Ms. Lauer and any director or executive officer of the company.

In accordance with the terms of the Offer Letter by and between the company and Ms. Lauer, dated October 12, 2021 (the "Offer Letter"), she will earn an annual base salary of $300,000. Ms. Lauer will also be eligible to participate in the company's annual discretionary bonus plan (the "Bonus Plan") beginning on the Start Date, with an annual target bonus of 40% of her annual salary, or $120,000 (her "Target Bonus"). For 2021, Ms. Lauer will receive a prorated cash bonus under the Bonus Plan equal to 66% of her Target Bonus, or $80,000, payable in cash in 2022. Beginning in 2022 and after, her Target Bonus will be subject to adjustment (at, under or above the prescribed amount) based on company performance targets and other factors as may be determined by the Board in its sole discretion.

Subject to the recommendation of the Compensation Committee of the Board and the approval of the Board, Ms. Lauer will receive a one-time award under the NantKwest 2015 Equity Incentive Plan (the "2015 Plan") with a value of $400,000 (the "Award"). The Award, if approved, will consist of restricted stock units ("RSUs"), the amount of which will be based on a trailing 20-trading day average from the grant date of the Award (the "Grant Date"). Each RSU, once vested, entitles the holder to one share of the company's common stock. The RSUs subject to the Award will vest as follows: one-third will vest on the date 18 months after the Grant Date, one-third will vest on the date 24 months after the Grant Date and one-third will vest on the date 36 months after the Grant Date, in each case subject to Ms. Lauer's continuous employment with the company through the applicable vesting date. The Award, if approved, will be subject to the terms and conditions of the 2015 Plan and the Award Agreement approved thereunder.

Ms. Lauer will also be eligible to receive a severance payment equal to 18 weeks of her then-current base salary, in the event she is terminated by the company without Cause (as defined in the Offer Letter). Such severance payment, if made, will be a single cash payment paid on the 60th day following Ms. Lauer's date of termination without Cause. Ms. Lauer will be eligible to receive benefits available to the company's full-time employees, including healthcare and retirement benefits. Also in connection with her appointment, Ms. Lauer executed the company's standard form of indemnification agreement.

ITEM 6. EXHIBITS.

The documents listed below are incorporated by reference or are filed with this Quarterly Report, in each case as indicated therein (numbered in accordance with Item 601 of Regulation S-K).

Exhibit Number	Description of Exhibit
2.1	Agreement and Plan of Merger, dated as of December 21, 2020, by and among ImmunityBio, Inc. (f/k/a NantKwest, Inc.), NantCell, Inc. (f/k/a ImmunityBio, Inc.) and Nectarine Merger Sub, Inc. (incorporated by reference to Exhibit 2.1 to the company's Current Report on Form 8-K filed with the SEC on December 22, 2020).
3.1	Amended and Restated Certificate of Incorporation of ImmunityBio, Inc., as amended (incorporated by reference to Exhibit 3.1 to the company's Form 8-K filed with the SEC on August 4, 2015, and to Exhibit 3.1 to the company's Form 8-K with the SEC on March 10, 2021).
3.2	Amended and Restated Bylaws of ImmunityBio, Inc. (incorporated by reference to Exhibit 3.2 to the company's Quarterly Report on Form 10-Q filed with the SEC on August 12, 2021).
10.1	First Amendment to Lease made and entered into as of May 28, 2021, but made effective as of April 1, 2021, by and between 605 Nash, LLC and ImmunityBio, Inc. (incorporated by reference to Exhibit 10.1 to the company's Quarterly Report on Form 10-Q filed with the SEC on August 12, 2021).
10.2*	Membership Interest Purchase Agreement entered into as of September 27, 2021, by and among Nant Capital, LLC and ImmunityBio, Inc.
10.3*	Industrial/Commercial Lease Agreement, dated September 27, 2021, by and between 557 Doug St, LLC and ImmunityBio, Inc.
10.4*	Commercial Lease Agreement, dated September 27, 2021 and made effective October 1, 2021, by and between 420 NASH, LLC and ImmunityBio, Inc.
31.1*	Rule 13a-14(a) / 15(d)-14(a) Certification of Principal Executive Officer.
31.2*	Rule 13a-14(a) / 15(d)-14(a) Certification of Principal Financial Officer.
32.1**	Section 1350 Certification of Chief Executive Officer.
32.2**	Section 1350 Certification of Chief Financial Officer.
99.2	Combined Consolidated Financial Statements of ImmunityBio, Inc. as of December 31, 2020 and December 31, 2019 (including NantCell, Inc.) (incorporated by reference to Exhibit 99.2 to the company's Current Report on Form 8-K/A filed with the SEC on April 22, 2021).
101.INS	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document).
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith.

** The certifications attached as Exhibits 32.1 and 32.2 that accompany this Quarterly Report on Form 10-Q are deemed furnished and not filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of ImmunityBio, 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 Quarterly Report, irrespective of any general incorporation language contained in such filing.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

IMMUNITYBIO, INC.

Date: November 12, 2021

By: /s/ Richard Adcock
Richard Adcock
Chief Executive Officer
(Principal Executive Officer)

Date: November 12, 2021

By: /s/ David C. Sachs
David C. Sachs
Chief Financial Officer
(Principal Financial Officer)

MEMBERSHIP INTEREST PURCHASE AGREEMENT

This Membership Interest Purchase Agreement (this "***Agreement***") is entered into as of September 27, 2021 (the "***Effective Date***"), by and among Nant Capital, LLC, a Delaware limited liability company ("***Buyer***") and ImmunityBio, Inc., a Delaware corporation ("***Seller***"). Each of Buyer and Seller are referred to herein as a "***Party***" and collectively as the "***Parties***."

RECITALS

A. Seller is the sole member of 557 Doug St, LLC, a California limited liability company (the "***Company***").

B. This Agreement contemplates a transaction pursuant to which Buyer will purchase from Seller, and Seller will sell to Buyer, 100% of the outstanding membership interests in the Company, which purchase and sale the Parties desire to consummate on the Effective Date (the "Closing Date"), in accordance with the terms and conditions of this Agreement.

AGREEMENT

Now, therefore, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows.

ARTICLE I
DEFINITIONS

1.1 Definitions. The definitions set forth in Exhibit Z attached hereto will apply throughout this Agreement.

1.2 Construction of Certain Terms and Phrases. Unless the context otherwise requires, (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement (including any schedules, exhibits and attachments hereto), and not to any particular article, clause, paragraph section, subparagraph or subsection contained in this Agreement; (d) all references to articles, clauses, paragraphs, section, subparagraphs, subsection or the terms "Article," "Exhibit" or "Section" refer to the specified article, clause, paragraph, section, subparagraph, subsection, Article, Exhibit or Section of this Agreement; (e) the phrases "ordinary course of business" and "ordinary course of business consistent with past practice" refer to the business and practice of the Person specified; (f) all references to statutes and related regulations will include all amendments of the same and any successor or replacement statutes and regulations; (g) references to any Person will be deemed to mean and include the successors and permitted assigns of such Person (or, in the case of any Governmental Authority, Persons succeeding to the relevant functions of such Person); (h) reference to the words "include" and "including" will mean and be read as "include without limitation" and "including without limitation;" and (i) the

title of and the article, clause, paragraph, section, subparagraph and subsection headings contained in this Agreement are for convenience of reference only and will not affect or govern the interpretation of any covenant, term or provision of this Agreement. Whenever this Agreement refers to a number of days, such number will refer to calendar days unless this Agreement expressly specifies business days. All accounting terms used herein and not expressly defined herein have the meanings given to them under GAAP. The Exhibits and Schedules attached to this Agreement are hereby incorporated by reference.

ARTICLE II
PURCHASE AND SALE OF THE COMPANY INTERESTS

2.1 Purchase and Sale. On and subject to the terms and conditions of this Agreement, effective as of the Effective Date, Buyer purchases from Seller, and Seller sells to Buyer, 100% of the outstanding membership interests in the Company (collectively, the "***Company Interests***"), free and clear of all Encumbrances. Seller agrees that, upon the effectiveness of the assignment of the Company Interests from Seller to Buyer as of the Effective Date, Buyer will be deemed to have become the sole member of the Company as of the Effective Date, and Seller will be deemed to have ceased to be a member of the Company and not have any interest in the Company as a member of the Company on and after the Effective Date.

2.2 Purchase Price. In consideration of the Company Interests, Buyer agrees to pay to Seller Twenty-Two Million Dollars ($22,000,000.00), concurrent with the execution and delivery of this Agreement (the "***Purchase Price***").

2.3 Closing. The closing of the transactions contemplated by this Agreement (the "***Closing***") will become effective as of the Effective Date upon and via the Parties' remote exchange of closing deliveries in accordance with Section 2.4.

2.4 Deliveries at Closing. On the Closing Date, (i) Seller will deliver to Buyer the various certificates, instruments, and documents referred to in Section 6.1, and (ii) Buyer will deliver to Seller the payment and various certificates, instruments, and documents referred to in Section 6.2.

2.5 Proration of Costs Related to the Real Property. The parties hereby agree that all real and personal property taxes, utilities and other operating expenses for the Real Property (internet, IT services and local tax) accruing (a) prior to Closing shall be the responsibility of and paid when due by Seller and (b) from and after such date shall be the responsibility of and paid when due by Buyer (except as allocated in the Lease). All prorations shall be made on the basis of the actual number of days of the month which have elapsed as of 12:01 a.m. on the Closing Date. All prorations which can be reasonably estimated as of the Closing Date shall be made through an adjustment to the amounts payable under Sections 2.2 above on the Closing Date. Buyer and Seller have agreed upon a schedule of prorations in accordance with the provisions of this section which is as complete and accurate as is reasonably possible. The additional amount of the credit to Buyer pursuant to the estimated schedule of prorations agreed between Buyer and Seller pursuant to this Section 2.5 is $67,373.00; and the net amount to be wired at Closing is $21,932,627.00. All prorations and any adjustments to the initial estimated prorations, shall be

made by Buyer and Seller within thirty (30) days following the Closing or such later time as may be reasonably required, in the exercise of due diligence to obtain the necessary information. Any net credit due one party from the other as the result of such post-Closing prorations and adjustments shall be paid to the other in cash immediately upon the parties' written agreement to a final schedule of post-Closing adjustments and prorations.

ARTICLE III
PARTIES' REPRESENTATIONS AND WARRANTIES

3.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer that the statements contained in this Section 3.1 are correct as of the Closing Date.

(a) Organization. Seller (i) is an entity duly organized, validly existing, (ii) is in good standing under the laws of the jurisdiction of its organization, (iii) has the entity power to own its properties and to conduct its business as now being conducted, (iv) is duly qualified to do business and is in good standing in the jurisdiction where the Real Property is located, and (v) is not in violation of any of the provisions of its Organizational Documents.

(b) Authorization of Transaction. Seller has full and all requisite power and authority to execute and deliver this Agreement and to perform Seller's obligations hereunder. Assuming due authorization, execution and delivery by each other party hereto, this Agreement constitutes the valid and legally binding obligation of Seller, enforceable in accordance with its terms and conditions, except as such enforceability may be subject to the effects of bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or affecting the rights of creditors, and general principles of equity.

(c) Non-contravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which Seller is subject or any provision of any of the Organizational Documents of Seller, (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Seller is a party or by which Seller is bound or to which any of Seller's assets is subject, or (iii) result in the imposition or creation of any Encumbrances upon or with respect to any of the assets of the Company, in each case, in a manner that will materially and adversely impact the ability of the Parties to consummate the transactions contemplated by this Agreement.

(d) Brokers' Fees. Seller has not agreed to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which Buyer or the Company could become liable or obligated.

(e) Company Interests. The Company Interests are the sole interests in the Company held by Seller. No Person has a right to acquire any securities in the Company from Seller. Seller holds beneficially and of record 100% of all equity interests in the Company, free

and clear of all Encumbrances. Seller is not a party to any voting trust, proxy, or other agreement or understanding with respect to the voting of any Units.

3.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that the statements contained in this Section 3.2 are correct as of the Closing Date.

(a) Organization of Buyer. Buyer is a limited liability company duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization.

(b) Authorization of Transaction. Buyer has full and all requisite limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Without limiting the generality of the foregoing, the sole managing member of Buyer has duly authorized the execution, delivery, and performance of this Agreement by Buyer. Assuming due authorization, execution and delivery by each other party hereto, this Agreement constitutes the valid and legally binding obligation of Buyer, enforceable in accordance with its terms and conditions, except as such enforceability may be subject to the effects of bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or affecting the rights of creditors, and general principles of equity.

(c) Non-contravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which Buyer is subject or any provision of any of the Organizational Documents of Buyer, (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Buyer is a party or by which it is bound or to which any of its assets is subject, or (iii) result in the imposition or creation of a Lien upon or with respect to any of the assets of Buyer, in each case, in a manner that will materially and adversely impact the ability of the Parties to consummate the transactions contemplated by this Agreement.

(d) Brokers' Fees. Buyer has no Liability to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which Seller or the Company could become liable or obligated.

(e) Investment. Buyer is not acquiring the Company Interests with a view to or for sale in connection with any distribution thereof within the meaning of the Securities Act. Buyer was not formed for the specific purpose of acquiring the Company Interests. Buyer is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act. Buyer understands that the Company Interests have not been registered under the Securities Act or any state or foreign securities laws by reason of specified exemptions therefrom that depend upon, among other things, the bona fide nature of its investment intent as expressed herein and as explicitly acknowledged hereby and that under such laws and applicable regulations such securities may not be resold without registration under the Securities Act or

under applicable state or foreign law unless an applicable exemption from registration is available.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES CONCERNING COMPANY

Seller represents and warrants to Buyer that the statements contained in this Article IV are correct as of the Closing Date, except as set forth in the disclosure schedule delivered by them to Buyer on the Closing Date (the "***Disclosure Schedule***"). The Disclosure Schedule will be arranged in sections and subsections corresponding to the lettered and numbered sections and subsections contained in this Article IV.

4.1 Organization. The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization. The Company has the limited liability company power to own its properties and to conduct its business as now being conducted. The Company is duly qualified to do business and is in good standing in each jurisdiction where the Company's properties are owned or its business is conducted. The Company is not in violation of any of the provisions of its Organizational Documents.

4.2 Broker's Fees. The Company has not agreed to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated.

4.3 Company Interests. All the issued and outstanding equity and other security interests in the Company consist solely of the Company Interests held by Seller immediately prior to the Closing. Other than the Company Interests, there are no other issued and outstanding securities in the Company. There are no outstanding commitments or agreements to issue any securities in the Company, and no Person has a right to acquire any securities in the Company from the Company. All the Company Interests are duly authorized, validly issued, fully paid and non-assessable and are free of any Encumbrances. The Company has issued all of the Company Interests solely to Seller in full compliance with all applicable legal requirements and all requirements set forth in applicable agreements. There are no outstanding equity appreciation, phantom equity, profit participation, or similar rights with respect to the Company. There are no voting trusts, proxies, or other agreements or understandings with respect to the voting of any securities of the Company. There is no Liability for distributions accrued and unpaid by the Company. None of the Company Interests are certificated.

4.4 Title to Assets. The Company has title to all of its properties and assets, all of which are free and clear of all Encumbrances, other than Permitted Encumbrances. The Real Property is the only asset owned by the Company.

4.5 Subsidiaries. The Company has no Subsidiaries.

4.6 Undisclosed Liabilities. Except as set forth on the Disclosure Schedule, the Company does not have any Liabilities.

4.7 Legal Compliance. The Company has complied in all material respects with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder and including the Foreign Corrupt Practices Act, 15 U.S.C. 78dd-1 *et seq*.) of federal, state, local, and non-U.S. governments (and all agencies thereof), and, to the Company's knowledge, no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against the Company alleging any failure so to comply.

4.8 Tax Matters. The Company has filed all Tax Returns that it was required to file under applicable laws and regulations. All such Tax Returns were correct and complete in all respects and were prepared in compliance with all applicable laws and regulations. All Taxes due and owing by the Company (whether shown on any Tax Return) have been timely paid other than real property taxes that are not yet delinquent. The Company currently is not the beneficiary of any extension of time within which to file any Tax Return. There are no Liens for Taxes or any failure to pay Taxes (other than Taxes not yet delinquent) on any of the assets of the Company.

4.9 Real Property. The Company owns the Real Property free and clear of all liens, claims and Encumbrances of any kind or nature whatsoever other than Permitted Encumbrances. To the Seller's knowledge, the Real Property is in compliance in all material respects with all applicable real estate laws. There are no leases of the Real Property and no tenants, licensees or occupants have any possessory rights to the Real Property.

4.10 Contracts. The Company is not a party to any material contract or agreement (written or oral).

4.11 Insurance. With respect to each insurance policy covering the Real Property: (a) the Company is not in breach or default (including with respect to the payment of premiums or the giving of notices), and no event has occurred that, with notice or the lapse of time, would constitute such a breach or default, or permit termination, modification, or acceleration, under the policy; and (b) the Company has not, and no other party to the policy has, repudiated any provision thereof.

4.12 Litigation. To Seller's knowledge, Seller has not received written notice of any claim, action, suit, proceeding, arbitration, complaint, charge or investigation pending or currently threatened against the Company.

4.13 Employees. The Company has no employees.

4.14 Environmental, Health, and Safety Matters. Since acquiring the Real Property, the Company has at all times complied and is in compliance with all applicable Environmental, Health, and Safety Requirements, except where the failure to so comply will not have a Material Adverse Effect. Without limiting the generality of the foregoing, since acquiring the Real Property the Company has obtained and at all times complied with, and in compliance with, all permits, licenses, and other authorizations that are required of the Company pursuant to applicable Environmental, Health, and Safety Requirements for the occupation of its facilities

and the operation of its businesses, except where the failure to so comply will not have a Material Adverse Effect.

4.15 Permits. To Seller's knowledge, the Company has all material franchises, approvals, permits, licenses, orders, registrations, certificates, variances, and any similar right or authority obtained from governments and governmental agencies necessary for the conduct of the Business, except when the failure to have such right or authority will not, individually or when aggregated with other failures, have a Material Adverse Effect. The Company is not in default in any material respects under any of such franchises, approvals, permits, licenses, orders, registrations, certificates, variances, and any similar right or authority except to the extent such default would not have a Material Adverse Effect.

4.16 FCPA. The Company, directly or indirectly, has not, in violation of the U.S. Foreign Corrupt Practices Act of 1977, as amended ("***FCPA***"), and the rules and regulations thereunder, in order to obtain or retain business or gain an unfair advantage, directly or indirectly, corruptly: (i) offered, paid or promised to pay, or authorized the payment of any money or other thing of value (including any fee, gift, sample, travel expense or entertainment) to: (A) any Person who is an official, officer, agent, employee or representative of any governmental entity; (B) any political party or official thereof; or (C) any candidate for political or political party office; or (ii) made any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment. No Person with whom the Company has done business or engaged in any transaction (i) is currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury, and/or on any other similar list maintained by the Office of Foreign Assets Control pursuant to any authorizing statute, executive order or regulation, and (ii) is a Person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law or executive order of the President of the United States.

ARTICLE V
POST-CLOSING COVENANTS

The Parties agree as follows with respect to the period following the Closing:

5.1 Further Assurances. If, at any time after the Closing, any further actions are necessary or desirable to carry out the purposes of this Agreement, each of the Parties will take such further actions (including the execution and delivery of such further instruments and documents) as any other Party may reasonably request, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification therefor under this Agreement).

5.2 Confidentiality. From and after the Closing Date, each Party will treat and hold as such all of the Confidential Information, refrain from using any of the Confidential Information of any other Party except in connection with this Agreement, and deliver promptly to the other Party or destroy, at the request and option of the disclosing Party, all tangible embodiments (and all copies) of the Confidential Information that are in his or its possession. If

any Party is requested or required pursuant to written or oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process to disclose any Confidential Information of the other, such Person will notify the disclosing Party promptly of the request or requirement so that the disclosing Party may seek an appropriate protective order or waive compliance with the provisions of this Section 5.2. If, in the absence of a protective order or the receipt of a waiver hereunder, any Party is, on the advice of counsel, compelled to disclose any Confidential Information of any other Party to any tribunal or else stand liable for contempt, such Person may disclose the Confidential Information to the tribunal; *provided*, that if it legally able to do so, the Person required to disclose the Confidential Information of another Party will use the Person's commercially reasonable efforts to obtain, at the request of the Party whose Confidential Information is being disclosed, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed. The foregoing provisions will not apply to any Confidential Information that is generally available to the public immediately prior to the time of disclosure, unless such Confidential Information is so available due to a breach of this Section 5.2.

5.3 Transfer Tax. After the Closing, Seller shall be responsible for payment of any documentary or transfer tax payable in connection with the transactions contemplated herein.

5.4 Leaseback. Within thirty (30) days of Closing, Buyer and Seller shall enter into a lease back agreement (the "**Lease**") in a form prepared by Buyer and reasonably acceptable to Seller, pursuant to which Seller, as tenant, shall lease from Company, as landlord, the building located on the Real Property. On or prior to the date which is ten (10) days after the Closing, Buyer shall deliver to Seller an initial draft of the Lease. Although the exact terms and provisions of the Lease will be negotiated, the parties generally agree that the Lease will include the basic terms set forth on Schedule 5.4 attached hereto.

ARTICLE VI
ACTIONS AT OR PRIOR TO CLOSING

At or prior to the Closing:

6.1 Seller's Actions. Buyer may waive the performance of any of the following actions required at or prior to the Closing:

(a) Seller will have duly executed and delivered to Buyer the Assignment and Assumption of Membership Interests, in the form attached as Exhibit A to this Agreement, to be effective as of the Effective Date;

(b) Seller will have delivered to Buyer a non-foreign affidavit dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Code Section 1445 stating that such Seller is not a "foreign person" as defined in Code Section 1445;

(c) Seller will have delivered to Buyer a copy of the Certificate of Organization (or similar Organizational Document) of the Company certified on or soon before the Closing Date by the Secretary of State of the State in which such entity was formed;

(d) Seller will have delivered to Buyer a copy of the certificate of good standing of the Company issued on or soon before the Closing Date by the Secretary of State of each State in which such entity was formed and is qualified to do business;

(e) Seller will have delivered to Buyer a certificate of the manager of the Company, dated as of the Closing Date, in form and substance reasonably satisfactory to Buyer, as to: (i) no amendments to the certificate of formation (or similar Organization Document) of the Company since the date of certification specified in Section 6.1(d); (ii) any other Organizational Documents of the Company, and (iii) any resolutions of the manager of the Company relating to this Agreement and the transactions contemplated hereby.

6.2 Buyer Actions. Seller's Representative may waive the performance of any of the following actions required at or prior to the Closing:

(a) Buyer will have delivered to Seller the Purchase Price in accordance with Section 2.2;

(b) All actions to be taken by Buyer in connection with consummation of the transactions contemplated this Agreement, and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated this Agreement, will be reasonably satisfactory in form and substance to Seller.

ARTICLE VII
REMEDIES FOR BREACHES OF THIS AGREEMENT

7.1 Survival of Representations and Warranties. All claims based on breaches of the representations and warranties set forth in Article III of this Agreement will survive the Closing and continue in full force and effect indefinitely (subject to any applicable statutes of limitations). All claims based on breaches of the representations and warranties of Seller contained in Article IV of this Agreement (subject to exclusions set forth in the proviso attached to the end of this sentence) will survive the Closing and continue in full force and effect indefinitely. All claims based on (i) any breach of any of the covenants and agreements in this Agreement, and (ii) fraud may be made at any time and will survive the Closing (subject to any applicable statutes of limitations).

7.2 Indemnification Provisions for Buyer's Benefit.

(a) Seller will indemnify Buyer from and against the entirety of any Adverse Consequences Buyer may suffer resulting from, arising out of, relating to, in the nature of, or caused by any of the following:

(i) any breach (or the alleged breach) of any of the representations or warranties made by Seller under Article IV of this Agreement (determined without regard to any limitations or qualifications by materiality), subject to limitations set forth in Section 7.5; or

(ii) any fraud by Seller.

(b) Seller will indemnify Buyer from and against the entirety of any Adverse Consequences Buyer may suffer resulting from, arising out of, relating to, in the nature of, or caused by any of the following:

(i) any breach (or the alleged breach) of any of the representations or warranties made by Seller under in Article III of this Agreement; or

(ii) any breach (or the alleged breach) of any of the agreements or covenants made by such Person under this Agreement.

7.3 Indemnification Provisions for Benefit of Seller. Buyer will indemnify Seller from and against the entirety of any Adverse Consequences Seller may suffer resulting from, arising out of, relating to, in the nature of, or caused by any of the following:

(a) any breach (or the alleged breach) of any of representations, warranties, agreements, and covenants made by Buyer contained in this Agreement; or

(b) any fraud by Buyer.

7.4 Matters Involving Third Parties.

(a) If any third party notifies any Party (the "***Indemnified Party***") with respect to any matter (a "***Third-Party Claim***") that may give rise to a claim for indemnification against any other Party (the "***Indemnifying Party***") under this Article VII (each, an "***Indemnification Notice***"), then the Indemnified Party will promptly notify each Indemnifying Party thereof in writing; *provided*, that no delay on the part of the Indemnified Party in delivering the Indemnification Notice to any Indemnifying Party will relieve the Indemnifying Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party is thereby prejudiced.

(b) Upon receipt of an Indemnification Notice, each Indemnifying Party will have the right to defend the Indemnified Party against the Third-Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party, so long as (i) the Indemnifying Party notifies the Indemnified Party in writing within 30 days after the receipt of the Indemnification Notice that the Indemnifying Party will indemnify the Indemnified Party from and against the entirety of any Adverse Consequences the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third-Party Claim; *provided*, that if the Indemnifying Party believes that it is not responsible for indemnification under this Article VII, the giving of the notice under item (i) of this sentence will not prohibit the Indemnified Party

from challenging the indemnity obligation hereunder, (ii) the Third-Party Claim involves only money damages and does not seek an injunction or other equitable relief, and (iii) the Indemnifying Party conducts the defense of the Third-Party Claim in a reasonably diligent manner.

(c) So long as the Indemnifying Party is conducting the defense of the Third-Party Claim in accordance with Section 7.4(b) above, (i) the Indemnifying Party may continue its efforts to reduce or limit the damages arising out of the Third-Party Claim, (ii) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third-Party Claim, (iii) the Indemnified Party will not consent to the entry of any judgment on or enter into any settlement with respect to the Third-Party Claim without the prior written consent of the Indemnifying Party (not to be unreasonably withheld; *provided*, that, notwithstanding the forgoing, the Indemnifying Party may at all times refuse to consent (regardless of whether the Indemnified Party believes the lack of consent is unreasonable, if the settlement of or an adverse judgment with respect to the Third-Party Claim is not, in the good faith judgment of the Indemnified Party, likely to establish a precedential custom or practice materially adverse to the continuing business interests or the reputation of the Indemnified Party), and (iv) the Indemnifying Party will not consent to the entry of any judgment on or enter into any settlement with respect to the Third-Party Claim without the prior written consent of the Indemnified Party (not to be unreasonably withheld).

(d) If any of the conditions in Section 7.4(b) above is or becomes unsatisfied, however, (A) the Indemnified Party may defend against, and consent to the entry of any judgment on or enter into any settlement with respect to, the Third-Party Claim in any manner it may reasonably deem appropriate (and the Indemnified Party need not consult with, or obtain any consent from, any Indemnifying Party in connection therewith), (B) the Indemnifying Parties will reimburse the Indemnified Party promptly and periodically for the reasonable costs of defending against the Third-Party Claim (including all reasonable attorneys' fees and expenses), and (C) the Indemnifying Parties will remain responsible for any Adverse Consequences the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third-Party Claim to the fullest extent provided in this Article VII.

7.5 Limitations On and Other Matters Regarding Indemnification. The indemnification obligations of Seller under Section 7.2(a)(i), subject to exclusions set forth in the proviso attached to the end of this sentence, will (i) be effective only after the aggregate amount of all claims for which Seller is liable thereunder exceeds $25,000 (the "***Indemnification Basket***"), upon which occurrence Seller will be liable for the entire amount of such liability.

7.6 Determination of Adverse Consequences. The Parties will take into account the time cost of money (using the Applicable Rate as the discount rate) in determining Adverse Consequences for purposes of this Article VII. All indemnification payments under Article VII will be deemed as adjustments to the Purchase Price.

7.7 Exclusive Remedy. All claims made in connection with any breach of any representation or warranty contained in Article III or Article IV of this Agreement will be made under Article VII, which, from and after the Closing, will be the exclusive remedy for any Party

hereto for any such breach, and each Party hereby waives the right to assert, and agrees not to assert, any other remedy. For purposes of clarification, this Section 7.7 may not be interpreted in any manner to limit or otherwise impair the Parties' rights under any provisions of this Agreement that is not part of Article III or Article IV.

7.8 Specific Performance. Except as otherwise set forth in Section 7.7, each Party will be entitled to injunctive relief to prevent breaches of any provisions of this Agreement and to enforce specifically any terms and provisions of this Agreement, in addition to any other remedy to which such Party may be entitled, at law or in equity. In particular, the Parties acknowledge that the Business is unique and recognize and affirm that if Seller breaches any agreement or covenant of this Agreement, or commits fraud, money damages may be inadequate and Buyer may have no adequate remedy at law, so that Buyer will have the right, in addition to any other rights and remedies existing in its favor, to enforce its rights and Seller's obligations hereunder not only by action for damages but also by action for specific performance, injunctive, and/or other equitable relief.

7.9 Speculative Damages. Notwithstanding any implication to the contrary contained in this Agreement, no Party will be liable for, nor will the measure of damages include, any speculative or (absent fraud) punitive damages ("***Speculative Damages***") arising out of or relating to its performance or failure to perform under this Agreement, regardless of the basis on which a Party is entitled to claim damages, whether in contract or tort (including breach of warranty, negligence and strict liability) even if such Party has been advised of the possibility of such damages, unless such Speculative Damages are included in a Third-Party Claim and the Indemnified Party is liable to the third party claimant for such Speculative Damages.

7.10 Buyer's Knowledge. Buyer acknowledges and agrees that it is familiar with the Company and its assets, and in no event shall Seller have any liability to Buyer with respect to the breach of any representation or warranty in this Agreement to the extent Buyer knew of such breach as of the Closing or the Closing Date.

ARTICLE VIII
MISCELLANEOUS

8.1 No Third-Party Beneficiaries. This Agreement will not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

8.2 Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement among the Parties with respect to the transactions contemplated by this Agreement and the documents referred to herein and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

8.3 Succession and Assignment. This Agreement will be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of his, her, or its rights, interests, or obligations

hereunder without the prior written approval of all of the Parties; *provided*, that Buyer may (i) assign any or all of its rights and interests hereunder to one or more of its Affiliates and (ii) designate one or more of its Affiliates to perform its obligations hereunder (in any or all of which cases Buyer nonetheless will remain responsible for the performance of all of its obligations hereunder).

8.4 Counterparts. This Agreement may be executed in one or more counterparts (including by means of facsimile or scanned signatures), each of which will be deemed an original but all of which together will constitute one and the same instrument.

8.5 Headings. The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

8.6 Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder will be deemed duly given (i) when delivered personally to the recipient, (ii) 1 business day after being sent to the recipient by reputable overnight courier service (charges prepaid), (iii) 1 business day after being sent to the recipient by facsimile transmission or electronic mail, or (iv) 4 business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

Seller: ImmunityBio, Inc.
2040 East Mariposa Avenue
El Segundo, California 90245
Attention: David Sachs

Buyer: Nant Capital, LLC
9922 Jefferson Boulevard
Culver City, California 90232
Attention: Charles Kenworthy

Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

8.7 Governing Law. This Agreement will be governed by and construed in accordance with the domestic laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California.

8.8 ADR. If a dispute arises between the Parties, they must promptly hold a meeting or teleconference attended by individuals with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute. The Parties agree to participate in good faith discussions for a period of not less than 5 business days. If the Parties are not

successful in resolving the dispute through good faith discussions, then either Party may initiate arbitration by submitting the dispute to JAMS in County of Los Angeles, State of California. There will be only one arbitrator appointed, who will be a retired or former judge of either the U.S. District Court in State of California or the California Superior Court and not have any prior association with the Parties. If the Parties are unable to agree upon an arbitrator, JAMS will select the arbitrator in accordance with its applicable rules. The arbitrator will apply the law applicable to this Agreement. The arbitrator may only award monetary damages, subject to any limitation of liability set forth in this Agreement. All arbitration proceedings will be confidential. The arbitration award will be binding upon the Parties and a judgment or decree upon the award may be entered in the U.S. District Court in the Southern District of State of California or in the California Superior Court in the County of Los Angeles over the subject matter of the controversy. The prevailing party (if any) as determined by the arbitrator will be awarded its reasonable attorney fees and costs from the non-prevailing party.

8.9 Amendments and Waivers. No amendment of any provision of this Agreement will be valid unless the same will be in writing and signed by all of the Parties. No waiver by any Party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be valid unless the same will be in writing and signed by the Party making such waiver nor will such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such default, misrepresentation, or breach of warranty or covenant.

8.10 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

8.11 Expenses. Seller will bear all of the costs and expenses (including legal and accounting fees and expenses) incurred by Seller and the Company in connection with this Agreement and the transactions contemplated hereby, and Buyer will bear all of its own costs and expenses (including legal and accounting fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

8.12 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or non-U.S. statute or law will be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The Parties intend that each representation, warranty, and covenant contained herein will have independent significance. If any Party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of

specificity) that the Party has not breached will not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant.

8.13 Rights Cumulative. No right granted to the Parties under this Agreement on default or breach is intended to be in full or complete satisfaction of any damages arising out of such default or breach, and each and every right under this Agreement, or under any other document or instrument delivered hereunder, or allowed by law or equity, will be cumulative and may be exercised from time to time.

8.14 Jurisdiction. Subject to the requirement of Section 8.8, each of the Parties submits to the jurisdiction of any state or federal court sitting in County of Los Angeles, State of California in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each Party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto.

* * * * *

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, to be effective as of the Effective Date.

"SELLER"

IMMUNITYBIO, INC.,
a Delaware Corporation

By: /s/ DAVID C. SACHS
Name: David C. Sachs
Its: CFO

"BUYER"

NANT CAPITAL, LLC,
a Delaware limited liability company

By: /s/ CHARLES KENWORTHY
Name: Charles Kenworthy
Its: Authorized Signatory

List of Schedules and Exhibits:

Disclosure Schedule
Schedule 5.4

Exhibit A: Form of Assignment and Assumption of Membership Interests
Exhibit Z: Definitions

EXHIBIT Z

DEFINITIONS

"***Adverse Consequences***" means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, amounts paid in settlement, Liabilities, obligations, Taxes, liens, losses, expenses, and fees, including court costs and attorneys' fees and expenses.

"***Affiliate***" has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act.

"***Agreement***" has the meaning set forth in the preamble to this Agreement. "***Business***" means the business of owning and operating the Real Property. "***Buyer***" has the meaning set forth in the preamble to this Agreement.

"***Cash***" means cash and cash equivalents (including marketable securities and short-term investments).

"***Closing***" has the meaning set forth in Section 2.3.

"***Closing Date***" has the meaning set forth in the preamble to this Agreement.

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

"***Company***" has the meaning set forth in the recitals to this Agreement.

"***Company Interests***" has the meaning set forth in Section 2.1.

"***Confidential Information***" means (a) in the case of Buyer or the Company, any information concerning the Business that is not already generally available to the public through no breach of confidentiality under this Agreement by or other bad faith or wrongful act of any Seller, and (b) in the case of Seller, any personal or financial information of the applicable Seller that is not already generally available to the public through no breach of confidentiality under this Agreement by or other bad faith or wrongful act of Buyer, and (c) in the case of all Parties, the terms of this Agreement and any agreement entered into in connection with this Agreement.

"***Disclosure Schedule***" has the meaning set forth in Article IV.

"***Effective Date***" has the meaning set forth in the recitals to this Agreement.

"***Encumbrance***" means any Lien, Tax, hypothecation, claim, lease, license, option, warrants, demands, commitments, Order, imperfection of title, preemptive right, right of first refusal, repurchase right, conversion right, exchange right, redemption right or "put" or "call" right, or any other condition or restriction (including without limitation any restriction on the transfer of any asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset, any restriction on the possession, exercise or transfer of any

other attribute of ownership of any asset, or any requirement to issue, sell, or otherwise cause to become outstanding any asset), whether or not created by statute or agreement.

"***Environmental, Health, and Safety Requirements***" means all federal, state, local, and non-U.S. statutes, regulations, ordinances, and other provisions having the force or effect of law, all judicial and administrative orders and determinations, all contractual obligations, and all common law concerning public and worker health and safety (as relates to exposure to hazardous materials), pollution, or protection of the environment, including, without limitation, all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, exposure to, or cleanup of any hazardous materials, substances, wastes, chemical substances, mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise, odor, mold, or radiation.

"***FCPA***" has the meaning set forth in Section 4.16.

"***Fiduciary***" has the meaning set forth in ERISA Section 3(21).

"***GAAP***" means United States generally accepted accounting principles as in effect from time to time, consistently applied.

"***Indemnification Basket***" has the meaning set forth in Section 7.5.

"***Indemnified Party***" has the meaning set forth in Section 7.4(a).

"***Indemnifying Notice***" has the meaning set forth in Section 7.4(a).

"***Indemnifying Party***" has the meaning set forth in Section 7.4(a).

"***Liability***" means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any liability for Taxes.

"***Lien***" means any mortgage, pledge, lien, encumbrance, charge, or other security interest.

"***Material Adverse Effect***" or "***Material Adverse Change***" means any effect or change that would be (or could reasonably be expected to be) materially adverse to the Business, including the assets, financial condition, operating results or operations of the Business conducted by the Company, taken as a whole, or to the ability of the Parties to consummate timely the transactions contemplated hereby (regardless of whether or not such adverse effect or change can be or has been cured at any time or whether Buyer has knowledge of such effect or change on the date hereof) (but excluding, where the context applies, any such adverse item, event or circumstance arising out of or relating to (i) any change or development applicable to the United States economy generally, (ii) any change in applicable law or in accounting requirements or principles required under GAAP, or (iii) any acts of terrorism or war (whether declared or not) or natural disaster). In no event need any effect or change adversely affect the

Business's long-term earnings power or potential in a durationally significant manner in order to constitute a Material Adverse Effect or a Material Adverse Change, it being understood and agreed that a short-term adverse effect may constitute a Material Adverse Effect or a Material Adverse Change.

"***Ordinary Course of Business***" means the ordinary course of the conduct of the Business consistent with past custom and practice (including with respect to quantity and frequency).

"***Organizational Document***" of any Person that is an entity means, as applicable, the Articles of Incorporation, Articles of Organization, Certificate of Formation, bylaws, charter, operating agreement, limited liability company agreement, partnership agreement, or other equivalent organizational or governing document of such Person.

"***Party***" or "***Parties***" has the meaning set forth in the preamble to this Agreement.

"***Permitted Encumbrance***" means those Encumbrances shown on the Title Policy issued to the Company on or about September 20, 2017.

"***Person***" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity, or a governmental entity (or any department, agency, or political subdivision thereof).

"***Purchase Price***" has the meaning set forth in Section 2.2.

"***Real Property***" means the improved real property owned by the Company, which is located at 557 South Douglas Street, El Segundo, California, 90245.

"***Security***" has the meaning given to such term by the Securities Act, and "***securities***" means more than one security.

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

"***Securities Exchange Act***" means the Securities Exchange Act of 1934, as amended.

"***Seller***" has the meaning set forth in the preamble to this Agreement.

"***Speculative Damages***" has the meaning set forth in Section 7.9.

"***Subsidiary***" means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (ii) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of the partnership or other similar ownership interests thereof is at the time owned or controlled,

directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons own a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons will be allocated a majority of such business entity's gains or losses or will be or control any managing director or general partner of such business entity (other than a corporation). The term "Subsidiary" will include all Subsidiaries of such Subsidiary.

"***Tax***" or "***Taxes***" means any federal, state, local, or non-U.S. income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the Tax liability of any other Person.

"***Tax Return***" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"***Third-Party Claim***" has the meaning set forth in Section 7.4(a)

STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE - NET
(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions").

1.1 Parties. This Lease ("**Lease**"), dated for reference purposes only September 27, 2021 , is made by and between 557 Doug St, LLC, a California limited liability company ("**Lessor**") and ImmunityBio, Inc., a Delaware corporation ("**Lessee**"), (collectively the "**Parties**," or individually a "**Party**").

1.2 Premises: That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as(street address, city, state, zip): the building located at 557 South Douglas Street, El Segundo, California, 90245 consisting of 36,434 square feet ("**Premises**"). The Premises are located in the County of Los Angeles , and are generally described as (describe briefly the nature of the property and , if applicable, the "**Project**," if the property is located within a Project): ___. (See also Paragraph 2)

1.3 Term: Seven (7) years and zero (0) months ("**Original Term**") commencing September 27, 2021 ("**Commencement Date**") and ending September 30, 2028 ("**Expiration Date**"). (See also Paragraph 3)

1.4 Early Possession: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing not applicable ("**Early Possession Date**"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: $81,976.50 per month ("**Base Rent**"), payable on the first (1st) day of each month commencing on the Commencement Date . (See also Paragraph 4 and Addendum)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph (See Addendum).

1.6 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** $86,968.87 for the period October 1, 2023 - October 31, 2023.
(b) **Security Deposit:** $81,976.50 ("**Security Deposit**"). (See also Paragraph 5)
(c) **Association Fees**: $0.00 for the period .
(d) **Other:** $0.00 for .
(e) **Total Due Upon Execution of this Lease:** $168,945.37.

1.7 Agreed Use. The Premises shall be used for GMP pharmaceutical drug manufacturing, research and development laboratory, related office and other related uses consistent with the character of the Premises and otherwise in compliance with the provisions of Paragraph 6 hereof. (See also Paragraph 6)

1.8 Insuring Party. Lessor is the "**Insuring Party**" unless otherwise stated herein. (See also Paragraph 8)

1.10 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by ("Guarantor"). (See also Paragraph 37)

1.11 Attachments. Attached hereto are the following, all of which constitute a part of this Lease:

☑ an Addendum consisting of Paragraphs 52 through 62;

☐ a plot plan depicting the Premises;

☐ a current set of the Rules and Regulations;

☐ a Work Letter;

☑ other (specify): Option(s) to Extend Standard Lease Addendum (Paragraph 51).

2. Premises.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 Condition. Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("**Start Date**"), with the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, including the structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "**Building**").

2.3 **Compliance**. Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the particular use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's particular use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the use of the Premises by Lessee, Lessee shall be fully responsible for the cost thereof.

(b) If such Capital Expenditure is not the result of the use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to a fraction (the numerator of which is one, and the denominator of which is the number of months in the useful life of the item in question) of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 **Acknowledgements**. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant**. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. **Term**.

3.1 **Term**. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

4. **Rent**.

4.1 **Rent Defined**. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 **Payment**. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit**. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. **Use**.

6.1 **Use**. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) **Reportable Uses** . The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or defined by any governmental authority, or (iii) constitutes a basis for potential liability to any governmental agency or third party under Applicable Requirements, in each case due to its hazardous or toxic characteristics or propensities. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by- products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor, not to be unreasonably withheld, and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor**. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation**. Lessee shall not cause or permit its agents, employees, contractors , or invitees to cause any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) in violation of Environmental Law and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action required under Applicable Requirements, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, its agents, employees, contractors and invitees.

(d) **Lessee Indemnification**. Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, its agents, employees, contractors and invitees (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment to the extent created or suffered by Lessee or its agents, employees, contractors, and invitees, and the cost of investigation, removal, remediation, restoration and/or abatement, of such contamination and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(e) **Lessor Indemnification**. Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall promptly upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises. In addition, Lessee shall provide copies of all relevant safety data sheets (**SDS**) to Lessor within 10 days of the receipt of a written request therefor. In addition, Lessee shall provide Lessor with copies of its business license, certificate of occupancy and/or any similar document within 10 days of the receipt of a written request therefor.

6.4 Inspection; Compliance. Lessor and Lessor's "**Lender**" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition caused by Lessee or its agents, employees, contractors and invitees (see paragraph 9.1(e)) is found to exist or be imminent. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) **In General**. Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts**. Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, and (vi) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform**. If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement**. Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is the number of months in the useful life of the item in question. Lessee shall pay Interest on the unamortized balance equal to the lesser of Lessor's actual costs of funds or the prime rate plus three percent (3%) but may prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions**. The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures"** shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent**. Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds**. Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days' notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership**. Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal**. By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease or at the time it consents thereto (only if Lessee requests such determination at such time), Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration**. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, its agents, employees, contractors and invitees to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below. Notwithstanding anything contained herein to the contrary, Lessee's obligations with respect to the surrender of the Premises shall be fulfilled if Lessee surrenders possession of the Premises in the condition existing on the Commencement Date, ordinary wear and tear, casualties, condemnation, Hazardous Substances (other than those released or emitted by Lessee), permitted alterations (unless Lessor required removal pursuant to Section 7.4 (b)) or other interior improvements that Lessee is not responsible for under the Lease, excepted.

8. Insurance; Indemnity.

8.1 Payment For Insurance. Lessee shall pay for all insurance premiums required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of $2,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within 30 days following receipt of an invoice.

8.2 Liability Insurance.

(a) **Carried by Lessee**. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "**insured contract**" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor**. Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements**. The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed a commercially reasonable amount, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

(b) **Rental Value**. The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any commercially reasonable deductible amount in the event of such loss.

(c) **Adjacent Premises**. If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's particular use of the Premises.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage**. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption**. Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance**. Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage**. Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days' prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein or risk which would normally be covered by all risk property insurance, without regard to the negligence of the entity so released. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct or violation of this Lease, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee or risk which would normally be covered by all risk property insurance, without regard to the negligence of the entity so released. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain.

9. Damage or Destruction.

9.1 Definitions.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 12 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 12 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "**Replacement Cost**" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "**Hazardous Substance Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration pursuant to the Applicable Requirements.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds three (3) month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by exercising such option on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement**. In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition or risk which would normally be covered by all risk property insurance, without regard to the negligence of the entity so released for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies**. If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments**. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

10.1 **Definition**. As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes**. In addition to Base Rent, Lessee shall pay to Lessor an amount equal to the Real Property Tax installment due within 30 days following Lessee's receipt of an invoice therefor. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such installment shall be prorated.

10.3 **Joint Assessment**. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 **Personal Property Taxes**. Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 30 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services.

11.1 Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

11.2 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

12. Assignment and Subletting.

12.1 **Lessor's Consent Required**.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Lessee may, without Lessor's prior written consent (but upon prior written notice and delivery of evidence that the proposed entity qualifies as permitted transferee hereunder) and without constituting an assignment or sublease hereunder, sublet the Premises or assign this Lease to (i) an entity controlling, controlled by or under common control with Lessee, or (ii) an entity related to Lessee by merger, consolidation or reorganization (each, a "Permitted Transferee"). A sale, transfer, cancellation or issuance of Lessee's capital stock or equity interests shall not be deemed an assignment, subletting or any other transfer of this Lease or the Premises.

(c) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d).

(d) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(e) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(f) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 Default; Breach. A "**Default**" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "**Breach**" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises prior to the expiration or termination of this Lease without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "**debtor**" as defined in 11 U.S.C. § 101 or any successor statute thereto of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, following the expiration of all applicable notice and cure periods, Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (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 the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder.

13.4 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.3.

13.5 Breach by Lessor.

(a) **Notice of Breach**. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor**. In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation**. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

16. **Estoppel Certificates**.

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor Lessee's most recently prepared financial statements. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor**. The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability**. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days**. Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability**. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence**. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements**. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours 3 business days after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 1 business day after delivery of the same to the Postal Service or courier. Notices delivered by hand shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

23.3 Options. Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. At or prior to the expiration or termination of this Lease Lessee shall deliver exclusive possession of the Premises to Lessor. For purposes of this provision and Paragraph 13.1(a), exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. In the event that Lessee does not deliver exclusive possession to Lessor as specified above, then Lessor's damages during any holdover period shall be computed at the amount of the Rent (as defined in Paragraph 4.1) due during the last full month before the expiration or termination of this Lease (disregarding any temporary abatement of Rent that may have been in effect), but with Base Rent being 150% of the Base Rent payable during such last full month. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 Non-Disturbance. With respect to all Security Devices whether entered into by Lessor before or after the execution of this Lease, Lessee's subordination of this Lease shall be subject to Lessor receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long. All such activities shall be without abatement of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents**. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for consents to an assignment, a subletting, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor (not to exceed $2,500 per request). Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

38. **Quiet Possession**. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options**. If Lessee is granted any Option, as defined below, then the following provisions shall apply.

39.1 **Definition**. "**Option**" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.3 **Multiple Options**. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options**.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), or (iii) during the time Lessee is in Breach of this Lease.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

41. **Security Measures**. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. **Reservations**. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. **Performance Under Protest**. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

44. **Authority; Multiple Parties; Execution**.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each party represents that the individual executing this Lease on behalf of such entity is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Offer. Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. Waiver of Jury Trial. **THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS LEASE**.

49. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☑ is not attached to this Lease.

50. Accessibility; Americans with Disabilities Act.

(a) **The Premises:**

☑ have not undergone an inspection by a Certified Access Specialist (CASp). Note: 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.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: THE PARTIES ARE URGED TO:

1. **SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.**
2. **RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.**

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Culver City, CA
On: September 27, 2021

By LESSOR:
557 DOUG ST, LLC,
a California limited liability company

By: /s/ CHARLES KENWORTHY
Name: Charles Kenworthy
Its: Manager

By LESSEE:
IMMUNITYBIO, INC.,
a Delaware Corporation

By: /s/ DAVID SACHS
Name: David Sachs
Its: CFO

OPTION(S) TO EXTEND

STANDARD LEASE ADDENDUM

Dated: September 27, 2021

By and Between:

Lessor: 557 Doug St, LLC, a California limited liability company

Lessee: ImmunityBio, Inc., a Delaware corporation

Property Address: 557 South Douglas Street, El Segundo, California, 90245 consisting of 36,434 square feet
(street address, city, state, zip)

Paragraph: **51.**

A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this Lease for 2 additional 7 year period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 9 months but not more than 12 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:

(Check Method(s) to be Used and Fill in Appropriately)

☐ **I. Cost of Living Adjustment(s) (COLA)**

a. On (Fill in COLA Dates): _____ the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): ☐ CPI W (Urban Wage Earners and Clerical Workers) or ☐ CPI U (All Urban Consumers), for (Fill in Urban Area): _____. All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly Base Rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): ☐ the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month"): _____. The sum so calculated shall constitute the new monthly Base Rent hereunder, but in no event, shall any such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

☑ **II. Market Rental Value Adjustment(s) (MRV)**

a. On (Fill in MRV Adjustment Date(s)) first day of each option period (if any) the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Upon Lessee's exercise of an option to extend the Term, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then Lessee may rescind its exercise of the option to extend by giving Lessor written notice of such election to rescind prior to the expiration of such thirty (30) day period, or:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an independent third party ☑ appraiser or ☑ broker ("Consultant" – check one) of their choice to act as an arbitrator (Note: the parties may not select either of the Brokers that was involved in negotiating the Lease). The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but not be limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants, shall be based on rental of comparable space of similar age, construction, size, and located within the vicinity of the Premises and shall take into account Lessee's obligations to pay additional rent under this Lease and any applicable tenant improvement allowance, free rent or other concessions being granted in comparable market transactions.

b. Upon the establishment of each New Market Rental Value: —

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

☐ III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
—	—
—	—
—	—
—	—
—	—

☐ IV. Initial Term Adjustments

The formula used to calculate adjustments to the Base Rent during the original Term of the Lease shall continue to be used during the extended term.

B. NOTICE:

Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

ADDENDUM TO STANDARD INDUSTRIAL COMMERCIAL MULTI-TENANT LEASE- NET

557 SOUTH DOUGLAS STREET, EL SEGUNDO, CALIFORNIA, 90245

This Addendum ("**Addendum**") is attached to and made a part of that certain Standard Industrial/Commercial Single-Multi-Tenant Lease – Net (the "**Lease**") dated September 27, 2021, by and between **557 DOUG ST, LLC**, a California limited liability company ("**Lessor**") and **IMMUNITYBIO, INC.**, a Delaware corporation ("**Lessee**"). Unless otherwise defined in this Addendum, or the context of this Addendum otherwise requires, each term used in this Addendum with its initial letter capitalized has the meaning given to such term in the Lease.

52. **AS-IS CONDITION**. Except for the representations and warranties otherwise expressly set forth in the Lease, Lessor has delivered possession of the Premises to Lessee in its "As-Is" condition. Lessor shall have no obligation to improve, repair, restore or refurbish the Premises for Lessee's use or occupancy, nor shall Lessor be obligated to provide or pay for any improvement work, any tenant improvement allowance or provide any other services related to the improvement of the Premises, except as otherwise expressly set forth in the Lease. Further, Lessee acknowledges and agrees that neither Lessor, nor any of its agents or representatives, have made or herein makes any representation, warranty or promise concerning the Premises, or the suitability of the Premises for the particular use contemplated by Lessee, except as otherwise expressly set forth in the Lease.

53. **BASE RENT ADJUSTMENT**. Base Rent shall be payable in advance on or before the 1st day of each month (subject to the abatement period provided below). The monthly Base Rent shall be increased by three percent (3%) annually commencing on October 1, 2022 and each year thereafter during the Term on October 1st.

54. **MONTHLY BASE RENT ABATEMENT**. Provided that Lessee is not then in default under the Lease (beyond any applicable notice and cure period) at any time during the Term which results in an early termination of the Lease, Lessee shall be entitled to an abatement of the monthly Base Rent (the "**Base Rent Abatement**") due under the Lease for the Premises from the Commencement Date through September 30, 2023 (collectively, the "**Base Rent Abatement Period**"). Lessee acknowledges and agrees that the Base Rent Abatement has been granted to Lessee as additional consideration for entering into the Lease, and for agreeing to pay the rental and performing the terms and conditions otherwise required under the Lease. If Lessee shall be in default under this Lease, and shall fail to cure such default within the notice and cure period which results in an early termination of the Lease, if any, permitted for cure pursuant to this Lease, then Lessee shall immediately become obligated to pay to Lessor all of the unamortized Base Rent Abatement Amount abated hereunder (amortized over a straight-line basis) with interest as provided in the Lease from the date such Base Rent Abatement Amount would have otherwise been due under the Lease but for the Base Rent Abatement Period provided herein. Only monthly Base Rent shall be abated during the Base Rent Abatement Period. Lessee shall continue to pay all other Rent payable under the Lease during the Base Rent Abatement Period. The rights contained in this Paragraph 54 shall be personal to the original Lessee named in the Lease ("**Original Lessee**") or any assignee that qualifies as a Permitted Transferee and may only be exercised by the Original Lessee (and not any assignee, sublessee or transferee of the Original Lessee's interest in the Lease) other than an assignee that qualifies as a Permitted Transferee.

55. **ACCESS**. Subject to Lessor's reasonable rules and regulations and any Applicable Requirements, during the Term, Lessee shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week.

56. **BROKERS**. Lessor and Lessee 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, and that they know of no 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, occurring by, through, or under the indemnifying party.

57. **INCONSISTENCY**. The provisions of this Addendum are a part of the Lease. In the event there is any inconsistency between the terms of this Addendum and other terms of the Lease, then the terms of this Addendum shall prevail to the extent of such inconsistency.

58. **WAIVER OF LANDLORD LIEN**. Upon written request by Lessee, Lessor shall execute (at Lessee's sole cost, including attorney's fees) within thirty (30) days of receipt of such request, a waiver of Lessor's right in any of Lessee's personal property in favor of Lessee's lender and confirm the license to enter granted to such lender, all in form and substance reasonably acceptable to Lessor and Lessee's lender.

59. **HAZARDOUS SUBSTANCES**. Notwithstanding anything in this Lease to the contrary, Lessee and its agents, employees and contractors may use Hazardous Substances as needed for the operation of Lessee's business, so long as such Hazardous Substances are used, handled, transported and disposed of in compliance with Applicable Requirements.

60. **PARKING LOT AND EXTERIOR AREAS**. Notwithstanding anything in this Lease to the contrary, Lessee shall have the exclusive right to use the parking lot and exterior areas of the land upon which the Premises is located.

61. **REAL PROPERTY TAXES DEFINITION**. "Real Property Taxes" shall not include and Tenant shall not be required to pay any portion of any tax or assessment expense or any increase therein (a) levied on Landlord's rental income, unless such tax or assessment is imposed in lieu of real property taxes; (b) in excess of the amount which would be payable if such tax or assessment expense were paid in installments over the longest permitted term; (c) imposed on land and improvements other than the Project; or (d) attributable to Landlord's net income, inheritance, gift, transfer, estate or state taxes.

62. **COSTS FOR WHICH LESSEE IS NOT RESPONSIBLE**. Notwithstanding anything contained herein to the contrary, Lessee shall have no obligation to reimburse Lessor for all or any portion of costs incurred in connection with the presence of any Hazardous Substances, except to the extent caused by the release or emission of the Hazardous Substances in question by Lessee.

(Signature page to follow)

LESSEE:

IMMUNITYBIO, INC.,
a Delaware Corporation

By: /s/ DAVID SACHS
Name: David Sachs
Its: CFO

LESSOR:

557 DOUG ST, LLC,
a California limited liability company

By: /s/ CHARLES KENWORTHY
Name: Charles Kenworthy
Its: Manager

COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement (this "Lease"), dated September 27, 2021 and made effective October 1, 2021 ("Effective Date") is made by and between 420 NASH, LLC, a California limited liability company ("Landlord") and IMMUNITYBIO, INC., a Delaware Corporation ("Tenant").

ARTICLE 1
BASIC PROVISIONS

1.1 Premises. That certain real property commonly known as 420 Nash Street, , located in El Segundo, California, including without limitation, that industrial warehouse building containing approximately 19,125 rentable square feet (the "Building"), all landscaping, hardscaping, parking facilities and all other improvements thereon (collectively, the "Premises").

1.2 Term; Option Term.

(a) The term (the "Term") shall commence on the Effective Date ("Commencement Date") and end on September 30, 2026 ("Expiration Date").

(b) If Tenant has not committed a default beyond applicable cured periods at any time during the Term, and Tenant is occupying the entire Premises at the time of such election, Landlord hereby grants the originally named Tenant herein (including its Affiliates, as defined in Section 12.4 below), the "Original Tenant"), the right to extend the Term for two (2) (each an "Extension Option") additional consecutive periods of five (5) years each (the "Option Term") on the terms and conditions set forth in this Section 1.2. Each Extension Option shall be exercised by Tenant, if at all, by Tenant delivering written notice to Landlord not less than nine (9) months, and not more than eighteen (18) months prior to the expiration of the then applicable Lease Term, stating that Tenant is exercising its Option Term. Landlord has no duty to advise or remind Tenant of Tenant's rights hereunder. If Tenant exercises the Extension Option, the Option Term shall be upon the same terms, covenants and conditions as those contained in the Lease, except for the Option Rent provided below.

(c) The "Base Rent," as that term is defined in Section 1.3 of this Lease, payable by Tenant at the commencement of the applicable Option Term (the "Option Rent") shall be an initial Base Rent equal to the "Market Rent" as that term is defined below and shall increase annually on each anniversary of the commencement date of such Option Term by three percent (3%). As used herein, the term "Market Rent" shall mean the total square footage in the Premises multiplied by the applicable rental rate per square foot then being charged in similar industrial warehouse buildings in El Segundo, California (the "Submarket"), for space comparable to the Premises ("Comparable Properties"); provided, however, that the Option Rent shall in no event be lower than the Base Rent in effect under the Lease prior to the commencement of the Option Term (the "Minimum Rent"). Market Rent shall be determined as follows:

(i) Upon receipt of Tenant's renewal notice pursuant to Section 1.2(b) above, Landlord will determine the proposed Market Rent and deliver written notice of the same to Tenant within thirty (30) days after the date Landlord receives notice of Tenant's election to exercise the Extension Option ("Landlord's Market Rent Notice"). If Landlord's proposed Market Rent is the same as the Minimum Rent, then Tenant shall not have any right to dispute the same, and the Minimum Rent shall become the Option Rent for the Option Term. If Landlord's proposed Market Rent is more than the

Minimum Rent and Tenant disagrees with Landlord's proposed Market Rent, and Landlord and Tenant cannot agree on the Market Rent in writing within thirty (30) days after Tenant receives Landlord's Market Rent Notice, Tenant shall, within fifteen (15) days after such thirty (30) period, give Landlord written notice stating Tenant's proposed determination of the Market Rent (not lower than the Minimum Rent) and requesting arbitration of the Market Rent ("Tenant's Arbitration Notice").

(ii) Within ten (10) business days after Tenant's Arbitration Notice, each party shall deliver written notice to the other party of its proposed final determination of the Market Rent of the Premises for the Option Term which notice shall be accompanied by the identity of an arbitrator appointed by each party. The Market Rent set forth in Landlord's notice shall not be higher than the last offer made by Landlord to Tenant during the thirty (30) day negotiation period and the Market Rent set forth in Tenant's notice shall not be lower than the last offer made by Tenant to Landlord during the thirty (30) day negotiation period (and shall in all events be higher than the Minimum Rent). Each arbitrator shall be a qualified real estate broker with over ten (10) years' experience immediately prior to the date in question in the leasing and evaluation of Comparable Properties in the Submarket and who has not represented Landlord or Tenant in the Submarket in the prior three (3) years. Within fifteen (15) days of the selection of each of Landlord's arbitrator and Tenant's arbitrator, the two arbitrators theretofore appointed shall appoint a third arbitrator (the "Arbitrator"), who shall meet the qualifications set forth above. If the two arbitrators cannot agree on the appointment of a third arbitrator within fifteen (15) days, then either party may apply to any court having jurisdiction to make such selection.

(iii) The Arbitrator shall be instructed to determine the Market Rent in accordance with this Lease within thirty (30) days after such selection. The Arbitrator shall be authorized only to select, and shall select, either Landlord's determination of Market Rent or Tenant's determination of Market Rent (but not any compromise between the two and not any amount lower than the lower of the two offers and not any amount higher than the higher of the two offers), and the Market Rent so selected by the Arbitrator shall be the Market Rent. The determination of the Arbitrator shall be final and binding upon both Landlord and Tenant and both parties do hereby agree to stipulate to a judgment to that effect if requested by the other party. The determination of the Market Rent in accordance with this subparagraph shall be final and binding on the parties. Each party shall bear the cost, if any, of its own appointed arbitrator, and each party shall pay one-half (1/2) of the cost of the Arbitrator.

(iv) Upon determination of the Market Rent, whether by agreement of the parties, arbitration, or otherwise, without any further instrument, lease or agreement, the then existing Lease Term shall be so extended in accordance with the Extension Option, or, at Landlord's request, Tenant shall execute such reasonable documentation as Landlord may request and as is reasonably acceptable to Tenant to memorialize the exercise of the Extension Option.

1.3 Base Rent. The initial monthly base rent for the lease of the Premises shall be $2.00 per rentable square foot ("Base Rent") and shall increase by three percent (3%) annually commencing on October 1, 2022, and each year thereafter during the initial Term (the "Annual Increase") as set forth below:

Period	Monthly Base Rent
October 1, 2021 – September 30, 2022	$38,250.00*
October 1, 2022 – September 30, 2023	$39,397.50
October 1, 2023 – September 30, 2024	$40,579.43
October 1, 2024 – September 30, 2025	$41,796.81
October 1, 2025 – September 30, 2026	$43,050.71

*The parties acknowledge that the Base Rent shall be abated by one hundred percent (100%) for the first full month of the Term, and pursuant to Section 1.9 Tenant shall be credited the Improvement Allowance against the second full month of the Term.

1.4 Parking. Tenant shall have the right to use all the parking spaces on the Premises.

1.5 Security Deposit. $38,250.00 (the "Security Deposit")

1.6 Payment by Tenant Upon Execution. Pursuant to the terms of Section 4.3 herein, upon execution of this Lease, Tenant shall pay Base Rent for the first full month of the initial Term and the Security Deposit.

1.7 Agreed Use. The Premises shall be used for the warehousing and storage of drug manufacturing supplies, products and equipment and ancillary office, all in compliance with the provisions of Section 6 hereof ("Agreed Use").

1.8 Tenant Improvement Allowance. The parties acknowledge and agree that in lieu of Landlord installing carpet in the Premises and painting the Premises, Landlord shall grant Tenant a one-time improvement allowance (the "Improvement Allowance") in the amount of $15,000 which amount shall be credited against the second month's Base Rent.

ARTICLE 2
PREMISES

2.1 Letting. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, for the Term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating rental, is an approximation that the parties agree is reasonable and the rental based thereon is not subject to revision whether or not the actual size is more or less. Tenant's rights hereunder shall include Tenant's right to exclusively use and access all portions of the Premises including, without limitation, janitorial closets, risers, electrical and telephone rooms, the roof, the landscaped and hardscaped areas of the Premises, the parking facilities and any other improvements thereon.

2.2 Condition. Landlord shall deliver the Premises to Tenant broom clean and free of debris on the Commencement Date. Landlord represents that the existing electrical, plumbing, fire sprinkler, lighting systems shall be in good operating condition on the Commencement Date and that the structural

elements of the roof, bearing walls and foundation of the Building shall be free of material defects on the Commencement Date. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises and the Building were at such time complete and in good, sanitary and satisfactory condition and without any obligation on Landlord's part to make any alterations, upgrades or improvements thereto.

2.3 Compliance. Landlord warrants that to its actual knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Tenant will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Tenant's use, or to any Alterations made or to be made by Tenant.

2.4 Acknowledgments. Tenant acknowledges that: (a) it has been advised by Landlord to satisfy itself with respect to the condition of the Premises (including but not limited to the information technology infrastructure, electrical, ventilation systems and other air-handling equipment, fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Tenant's intended use, (b) Tenant has made such investigation as it deems necessary with reference to such matters, assumes all responsibility therefor as the same relate to its occupancy of the Premises, and finds the Premises and title to the Premises satisfactory for all purposes, and (c) neither Landlord nor Landlord's agents has made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PREMISES IS BEING DELIVERED TO TENANT IN ITS "AS IS," "WHERE IS" CONDITION, AND LANDLORD IS NOT MAKING AND EXPRESSLY DENIES MAKING ANY REPRESENTATIONS OR WARRANTIES AS TO THE PHYSICAL CONDITION OF THE PREMISES, THE FUNCTIONALITY OF THE PREMISES OR THE BUILDING, OR THE HABITABILITY OF THE PREMISES OR THE SUITABILITY OF THE PREMISES GENERALLY OR FOR ANY PARTICULAR PURPOSE, AND TENANT WAIVES ANY RIGHT OR REMEDY OTHERWISE ACCRUING TO TENANT ON ACCOUNT OF THE CONDITION OR SUITABILITY OF THE PREMISES OR TITLE TO THE PREMISES, AND TENANT AGREES THAT IT TAKES THE PREMISES "AS IS" WITHOUT ANY SUCH REPRESENTATION OR WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES.

2.5 Net Lease. The obligations of Tenant hereunder shall be separate and independent covenants. This is a net lease and Rent and all other sums payable hereunder by Tenant shall be paid without notice or demand, and without setoff, counterclaim, recoupment, abatement, suspension or reduction, or defense. This Lease is the absolute and unconditional obligation of Tenant, and the obligations of Tenant under this Lease shall not be affected by any interference with Tenant's use of the premises for any reason subject only to: (i) any damage to or destruction of the Premises, as provided in Article 9 of this Lease, or (ii) any condemnation or eminent domain, as provided in Article 14 of this Lease. All costs and expenses of every kind and nature whatsoever relating to the Premises (other than depreciation, interest on or amortization of debt incurred by Landlord, and costs incurred by Landlord in financing or refinancing the Premises) and the appurtenances thereto and the use and occupancy thereof which may arise or become due and payable with respect to the period which ends on the expiration or earlier termination of the Term in accordance with the provisions hereof (whether or not the same shall become payable during the Term or thereafter) shall be paid by Tenant. Tenant shall pay all expenses related to the repair, maintenance, management or operations on the Premises, and taxes (subject to Article 10 of this Lease) and insurance costs. Tenant shall not have any right to abate Rent or other sums payable hereunder by Tenant during the Term.

ARTICLE 3
TERM

3.1 Term. The Commencement Date, Expiration Date and Term of this Lease are as specified in Section 1.2 above.

3.2 Delay in Possession. Landlord agrees to use its commercially reasonable efforts to deliver possession of the Premises to Tenant by the Commencement Date. If, despite said efforts, Landlord is unable to deliver possession by such date, Landlord shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Tenant shall not, however, be obligated to pay Rent or perform its other obligations until Landlord delivers possession of the Premises. If possession is not delivered within thirty (30) days after the Commencement Date, Tenant may, at its option, by notice in writing within ten (10) days after the end of such thirty (30) day period, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder. If such written notice is not received by Landlord within said ten (10) day period, Tenant's right to cancel shall terminate. If possession of the Premises is not delivered within sixty (60) days after the Commencement Date, this Lease shall terminate.

ARTICLE 4
RENT

4.1 Rent Defined. All monetary obligations of Tenant to Landlord under the terms of this Lease, and all taxes, costs, expenses and other amounts that Tenant is required to pay pursuant to this Lease to any other party, together with every fine, penalty, interest and costs which may be added for late payment thereof, are deemed to be rent ("Rent").

4.2 Payment. Tenant shall cause payment of Rent to be received by Landlord in lawful money of the United States, without offset or deduction, on or before the day on which it is due. Rent for any period during the term hereof which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Landlord at its address stated herein or to such other persons or place as Landlord may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Landlord's rights to the balance of such Rent, regardless of Landlord's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Tenant to Landlord is dishonored for any reason, Tenant agrees to pay to Landlord the sum of $25 in addition to any late charge and Landlord, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorneys' fees, second to accrued interest, then to Base Rent, insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

ARTICLE 5
SECURITY DEPOSIT

Tenant shall deposit with Landlord upon execution hereof the Security Deposit as security for Tenant's faithful performance of its obligations under this Lease. If Tenant fails to pay Rent, or otherwise Defaults under this Lease, Landlord may, in addition to all other remedies available to Landlord at law or in equity, use, apply or retain all or any portion of the Security Deposit for the payment of any amount due Landlord, for Rents which will be due in the future and/or to reimburse or compensate Landlord for any liability, cost, expense, loss or damage which Landlord may suffer or incur by reason thereof. If Landlord uses or applies all or any portion of the Security Deposit, Tenant shall within ten (10) days after written

request therefor deposit monies with Landlord sufficient to restore the Security Deposit to the full amount required by this Lease. Within 90 days after the expiration or termination of this Lease, Landlord shall return that portion of the Security Deposit not used or applied by Landlord. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Tenant under this Lease.

ARTICLE 6
USE

6.1 Use. Tenant shall use and occupy the Premises only for the Agreed Use, and for no other purpose. Tenant shall not use or permit the Premises to be used for any other purpose without Landlord's prior written consent, which may be granted or withheld in Landlord's sole discretion. Tenant shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to, neighboring properties.

6.2 Hazardous Substances.

(a) Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Tenant shall not engage in any activity in or on the Premises that constitutes a Reportable Use of Hazardous Substances. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Tenant may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier, toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any material risk of contamination or damage or expose Landlord to any liability therefor. Landlord may require such additional assurances as Landlord reasonably deems necessary in Landlord's sole and absolute judgment to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements).

(b) Duty to Inform Landlord. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, Tenant shall immediately give written notice of such fact to Landlord, and provide Landlord with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) Tenant Remediation. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary

sewer system) and shall promptly, at Tenant's expense, comply with Applicable Requirements and take all necessary or reasonably recommended investigatory and/or remedial action, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Tenant, or pertaining to or involving any Hazardous Substance brought onto the Premises at any time during the term of this Lease, by or for Tenant, or any third party.

(d) Tenant Indemnification. Tenant shall be solely responsible for and shall indemnify, defend, reimburse and hold Landlord, its agents, lenders and employees, if any, harmless from and against any and all loss of rents and/or damages, losses, liabilities, judgments, claims, costs, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought, spilled or released in, on, under or about the Premises by or for Tenant, or any third party (provided, that Tenant shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Tenant). Tenant's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No expiration, termination or cancellation of this Lease and no release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing at the time of such agreement.

(e) Compliance with Applicable Requirements. Tenant shall, at Tenant's sole expense, fully, diligently and in a timely manner, comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Landlord's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Commencement Date. Tenant shall, within ten (10) days after receipt of Landlord's written request, provide Landlord with copies of all permits and other documents, and other information evidencing Tenant's compliance with any Applicable Requirements specified by Landlord, and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Tenant or the Premises to comply with any Applicable Requirements.

(f) Inspection; Compliance. Landlord and Landlord's "Lender" (as defined in Section 17.13(a) below), if applicable, and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease. The cost of any such inspections shall be paid by Landlord, unless a violation of Applicable Requirements, or a Hazardous Substance condition is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Tenant shall, upon request, reimburse Landlord for the cost of such inspections, so long as such inspection is reasonably related to the violation or contamination.

ARTICLE 7
MAINTENANCE; REPAIRS; UTILITY INSTALLATIONS; FIXTURES AND ALTERNATIONS

7.1 Tenant's Obligations.

(a) In General. It is expressly understood and agreed that Landlord is under no obligation to provide Tenant with any services (including, without limitation, any security services,

janitorial services, or landscaping services). Tenant shall, at Tenant's sole expense, keep the Premises, Utility Installations and Alterations (including, without limitation, the roof, walls, footings and foundations, ventilation systems, mechanical and electrical equipment and systems in or serving the Premises, and structural and nonstructural components and systems of the Premises, driveways, parking areas and lots, sidewalks, roadways, landscaping, any clarifiers and utility feed to the perimeter of the Building) in good order, condition, appearance and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Tenant, whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises, and whether such maintenance or repair is foreseen or unforeseen), including, but not limited to, all equipment and facilities, plumbing, ventilation equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, landscaping, and driveways. Tenant, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) Failure to Perform. If Tenant fails to perform Tenant's obligations under this Section 7.1, Landlord may enter upon the Premises after ten (10) days' prior written notice to Tenant (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Tenant's behalf, and put the Premises in good order, condition and repair, and Tenant shall promptly pay to Landlord a sum equal to 110% of the cost thereof.

7.2 Landlord's Obligations. It is intended by the parties hereto that Landlord has no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of Tenant. Landlord shall not be required to make any repair, replacement, maintenance or other work whatsoever, or to maintain the Premises in any way, and Tenant waives the right to make repairs, replacements or to perform maintenance or other work at the expense of Landlord, which right may be provided for in any Applicable Requirements. It is the intention of the parties that the terms of this Lease govern the respective obligations of the parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) Definitions. The term "Utility Installations" refers to all floor and window coverings, air lines, steam lines, power panels, electrical distribution, security and fire protection systems, communication systems, information technology infrastructure, lighting fixtures, ventilation systems and other air-handling equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Tenant's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification or improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Tenant Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Tenant that are not yet owned by Landlord pursuant to Section 7.4(a).

(b) Consent. Tenant shall not make any Alterations or Utility Installations to the Premises without Landlord's prior written consent. Tenant may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Landlord, as long as they are not visible from the outside, do not involve puncturing, relocating or

removing the roof or any existing walls, will not affect the electrical, plumbing, ventilation, and/or life safety systems, and the cumulative cost thereof during this Lease does not exceed $100,000 in the aggregate. Notwithstanding the foregoing, Tenant shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Landlord. Any Alterations or Utility Installations that Tenant shall desire to make and which require the consent of Landlord. Consent shall be deemed conditioned upon Tenant's: (i) acquiring all applicable governmental permits, (ii) furnishing Landlord with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Tenant shall promptly upon completion furnish Landlord with as-built plans and specifications. For work which costs an amount equal to the greater of one month's Base Rent, Landlord may condition its consent upon Tenant providing a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Alteration or Utility Installation. Tenant must reimburse Landlord within ten (10) days after Tenant's receipt of Landlord's invoice for Landlord's actual and reasonable costs incurred relating to any Utility Installations, Trade Fixtures or Alterations, including but not limited to all management, engineering, consulting, construction and legal fees incurred by Landlord for the review and approval of Tenant's plans and specifications or for monitoring Tenant's construction of any Utility Installations, Trade Fixtures or Alterations.

(c) Liens; Bonds. Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Tenant shall give Landlord not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises, and Landlord shall have the right to post notices of non-responsibility. If Tenant shall contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense, defend and protect itself, Landlord and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Landlord shall require, Tenant shall furnish a surety bond in an amount equal to one and one-half times the amount of such contested lien, claim or demand, indemnifying Landlord against liability for the same. Landlord shall not be liable for any labor, services or materials furnished to Tenant or to any party holding any portion of the Premises through or under Tenant and no mechanic's liens or other liens for any labor, services or materials shall attaché to the Premises or the leasehold estate created thereby.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) Ownership. Subject to Landlord's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Tenant shall be the property of Tenant, but considered a part of the Premises. Landlord may, at any time, elect in writing to be the owner of all or any specified part of the Tenant Owned Alterations and Utility Installations. Unless otherwise instructed per Section 7.4(b) hereof, all Tenant Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Landlord and be surrendered by Tenant with the Premises.

(b) Removal. By delivery to Tenant of written notice from Landlord at least thirty (30) days prior to the end of the term of this Lease, Landlord may require that any or all Tenant Owned Alterations or Utility Installations installed by or for the benefit of Tenant after the date of this Lease be removed by the expiration or earlier termination of this Lease. Landlord may require the removal at any time of all or any part of any Tenant Owned Alterations or Utility Installations made without the required consent.

(c) Surrender; Restoration. Tenant shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, normal wear and tear excepted. Tenant shall perform all restorations, replacements or renewals required to deliver the Premises and all improvements thereon or a part thereof to Landlord in good order, condition and state of repair, normal wear and tear excepted. Tenant shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Tenant Owned Alterations or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Tenant, and the removal, replacement, or remediation of any soil, material or groundwater contaminated by Tenant. Trade Fixtures shall remain the property of Tenant and shall be removed by Tenant. Any personal property of Tenant not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Tenant and may be disposed of or retained by Landlord as Landlord may desire. The failure by Tenant to timely vacate the Premises pursuant to this Section 7.4(c) without the express written consent of Landlord shall constitute a holdover under the provisions of Section 17.9 below.

7.5 Tenant's Default of Maintenance and Repair Obligations. If Tenant shall be in default of any of the provisions of this Section 7, Landlord may, after thirty (30) days' written notice to Tenant and failure of Tenant to cure during said period, but without notice in the case of an emergency, do whatever is necessary to cure such default as may be appropriate under the circumstances for the account of and at the expense of Tenant. All reasonable sums so paid by Landlord and all reasonable expenses (including without limitation reasonable attorneys' fees and costs) so incurred, together with Interest from the date of payment or the incurring of such expenses, shall constitute Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

ARTICLE 8
INSURANCE; INDEMNITY

8.1 Payment for Insurance. Tenant shall pay for all insurance required under Paragraph 8. Premiums for policy periods commencing prior to or extending beyond the Term shall be prorated to correspond to the Term. At Landlord's election, payment for any insurance to be held or maintained by Landlord for the Premises may be made by Tenant directly to the insurance carrier or reimbursed by Tenant to Landlord within thirty (30) days following Tenant's receipt of an invoice.

8.2 Liability Insurance. Tenant shall obtain and keep in force during the term of this Lease a Commercial General Liability policy of insurance protecting Tenant and Landlord as an additional insured against claims for bodily injury, property damage and personal injury based upon, relating to, involving, or arising out of the ownership, use, occupancy, or maintenance of the Premises and all areas appurtenant thereto. Tenant shall promptly provide Landlord with evidence of such insurance in the form of a certificate of insurance. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. The insurance shall include an "Additional Insured – Managers, Landlords, of Premises" endorsement and contain the "Amendment of the Pollution Exclusion" endorsement or similar coverage amendment for damage or injury caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any inter-insured exclusions as between insured persons or organizations, shall contain endorsements for cross-liability to ensure a severability of interests, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease. The limits of said insurance required by this Lease or as carried by Tenant shall not, however, limit the liability of Tenant, nor relieve Tenant of any obligation hereunder. All

insurance to be carried by Tenant shall be primary to and not contributory with any insurance carried by Landlord, whose insurance shall be considered excess insurance only and shall not insure Tenant.

8.3 Property Insurance – Building and Improvements.

(a) Building and Improvements. Landlord shall obtain and keep in force, at Tenant's sole cost and expense, a policy or policies in the name of Landlord, with loss payable to Landlord insuring loss or damage to the Premises. The amount of such insurance shall be equal to either the Replacement Cost of the Premises, as the same shall exist from time to time, or any amount required by a lender of the Premises, but in no event more than the commercially reasonable and available insurable value thereof. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage, including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall not exclude flood coverage if the Premises are located in a flood zone, and shall exclude earthquake coverage; provided, however, nothing shall prevent Landlord from obtaining such coverage at Landlord's expense. Said policy or policies shall also contain, if available and commercially appropriate, an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises is located. Such insurance coverage shall have a deductible clause, the deductible amount shall not be less than $5,000 per occurrence, and Tenant shall be liable for such deductible amount in the event of an Insured Loss. Notwithstanding any of the foregoing, Landlord may insure the Premises and Building on an affiliate global policy, and Tenant shall be responsible for the proportionate share of the cost of such insurance, as reasonably determined by Landlord. Tenant, at Tenant's option, by providing written notice to Landlord, shall have the right to obtain the insurance required in this section.

8.4 Tenant's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) Property Damage. Tenant shall obtain and maintain insurance coverage on all of Tenant's personal property, Trade Fixtures, and Tenant Owned Alterations and Utility Installations. The proceeds from any such insurance shall be used by Tenant for the replacement of personal property, Trade Fixtures and Tenant Owned Alterations and Utility Installations.

(b) Worker's Compensation Insurance. Tenant shall obtain and maintain worker's compensation insurance in such amount as may be required by Applicable Requirements. Such policy shall include a "Waiver of Subrogation" endorsement.

(c) No Representation of Adequate Coverage. Landlord makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Tenant's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be reasonably required by a Lender. Tenant shall not do or permit to be done anything that invalidates the required insurance policies. Tenant shall, prior to the Commencement Date, deliver to Landlord certified copies of policies of such insurance or

endorsements or certificates of insurance evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after thirty (30) days prior written notice to Landlord. Tenant shall, at least fifteen (15) days prior to the expiration of such policies, furnish Landlord with evidence satisfactory to Landlord of renewals or "insurance binders" evidencing renewal thereof, or Landlord may order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant to Landlord upon demand. Such policies shall be for a term of at least one (1) year, or the length of the remaining term of this Lease, whichever is less. If Tenant shall fail to procure and maintain the insurance required to be carried by it, Landlord may, but shall not be required to, procure and maintain the same at Tenant's expense, for which Tenant shall promptly reimburse Landlord together with Interest thereon from the date paid by Landlord. Tenant shall pay all premiums for the insurance required by this Section 8 as they become due.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Tenant and Landlord each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Landlord or Tenant, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Landlord's gross negligence or willful misconduct, Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord and its agents and Lenders from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Tenant or Tenant's agents, contractors, employees, licensees or invitees (collectively, "Tenant Parties") or any act, omission or negligence of any Tenant Parties. If any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant shall upon notice defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall reasonably cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Landlord and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Landlord or its agents, neither Landlord nor its agents shall be liable under any circumstances for injury or damage to the person or goods, wares, merchandise or other property of Tenant or any Tenant Parties in or about the Premises, by reason of the condition of the Premises or the operation thereof or for any other reason, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, or from other sources or places. Landlord and its agents shall not be liable for any damages arising from any act or neglect of any other tenant of Landlord. Notwithstanding Landlord's negligence or breach of this Lease, Landlord shall under no circumstances be liable for injury to Tenant's business or for any loss of income or profit therefrom and Tenant waives any claim against Landlord for actual, consequential, incidental, exemplary or punitive damages. Instead, it is intended that Tenant's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Tenant is required to maintain pursuant to the provisions of this Section 8.

8.9 Failure to Provide Insurance. Tenant acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Landlord to risks and potentially cause Landlord to

incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Tenant does not maintain the required insurance and/or does not provide Landlord with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Tenant, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Landlord will incur by reason of Tenant's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Tenant's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Tenant of its obligation to maintain the insurance specified in this Lease.

ARTICLE 9
DAMAGE OR DESTRUCTION

9.1 Definitions.

(a) "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Tenant Owned Alterations and Utility Installations, which can reasonably be repaired in six (6) months or less from the date of the damage or destruction.

(b) "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Tenant Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction.

(c) "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Tenant Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Section 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Landlord at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires remediation.

9.2 Notification. Upon the occurrence of a casualty, damage or destruction to the Premises, Landlord shall notify Tenant within thirty (30) days from the date of such event informing Tenant if such casualty, damage or destruction constitutes Premises Partial Damage or Premises Total Destruction; provided, that Tenant shall, at Landlord's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Landlord shall make any applicable insurance proceeds available to Tenant on a reasonable basis for that purpose.

9.3 Partial Damage – Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Landlord shall, at Tenant's expense, repair such damage (but not Tenant's Trade Fixtures or Tenant Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect. Premises Partial Damage due to flood or earthquake shall be subject to

Section 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either party.

9.4 Partial Damage – Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Tenant (in which event Tenant shall make the repairs at Tenant's sole cost and expense), Landlord may either: (i) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (ii) either party may terminate this Lease by giving written notice to the other party within thirty (30) days after receipt by Landlord of knowledge of the occurrence of such damage. Such termination shall be effective sixty (60) days following the date of such notice. In the event Landlord elects to terminate this Lease, Tenant shall have the right within ten (10) days after receipt of the termination notice to give written notice to Landlord of Tenant's commitment to pay for the repair of such damage without reimbursement from Landlord. Tenant shall provide Landlord with said funds or satisfactory assurance thereof within thirty (30) days after making such commitment. In such event this Lease shall continue in full force and effect, and Landlord shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Tenant does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.5 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate sixty (60) days following such Destruction. If the damage or destruction was caused by the negligence or willful misconduct of Tenant, Landlord shall have the right to recover Landlord's damages from Tenant.

9.6 Damage Near End of Term. If at any time during the last six (6) months of this Lease there is damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Landlord may terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving a written termination notice to Tenant within thirty (30) days after the date of occurrence of such damage.

9.7 Abatement of Rent; Tenant's Remedies.

(a) Abatement. In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Tenant is not responsible under this Lease, the Rent payable by Tenant for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value Insurance. All other obligations of Tenant hereunder shall be performed by Tenant, and Landlord shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) Remedies. If Landlord is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within ninety (90) days after such obligation shall accrue, Tenant may, at any time prior to the commencement of such repair or restoration, give written notice to Landlord of Tenant's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Tenant gives such notice and such repair or restoration is not commenced within thirty (30) days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such thirty (30) days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

(c) Waive Statutes. Landlord and Tenant agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

ARTICLE 10
REAL PROPERTY TAXES

10.1 Definition. As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary, unforeseen or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Landlord in the Premises, Landlord's right to other income therefrom, and/or Landlord's business of leasing, including, without limitation, gross rentals, taxes by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county, state or other taxing authority of a jurisdiction within which the Premises are located. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises or any other tax or assessment imposed in lieu of any other Real Property.

10.2 Payment.

(a) Payment of Taxes. In addition to Base Rent, Tenant shall pay the Real Property Taxes applicable to the Premises during the term of this Lease. Landlord shall receive invoices for taxes due and, at Landlord's election, Landlord shall either (i) pay such invoice for Real Property Taxes and obtain reimbursement from Tenant, in which case, Tenant shall reimburse Landlord within thirty (30) days of request for reimbursement from Landlord, or (ii) deliver such invoices or bills directly to Tenant, in which case Tenant shall pay the invoice at least ten (10) days prior to any delinquency date and promptly furnish Landlord with satisfactory evidence that such taxes have been paid; provided, that Landlord's failure to deliver any such bill or invoice shall not limit Tenant's obligation to pay such tax. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Tenant's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect, and Landlord shall reimburse Tenant for any overpayment. If Tenant shall fail to pay any required Real Property Taxes, Landlord shall have the right to pay the same, and Tenant shall reimburse Landlord within thirty (30) days of request for reimbursement from Landlord.

(b) Advance Payment. Landlord may, at Landlord's option, estimate the current Real Property Taxes, and require that such taxes be paid in advance to Landlord by Tenant, either: (i) in a lump sum amount equal to the installment due, at least twenty (20) days prior to the applicable delinquency date, or (ii) monthly in advance with the payment of the Base Rent. If Landlord elects to require payment monthly in advance, the monthly payment shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Landlord is insufficient to pay such Real Property Taxes when due, Tenant shall pay Landlord, upon demand, such additional sums as are necessary to pay such obligations. All moneys paid to Landlord under this Section may be intermingled with other moneys of Landlord and shall not bear interest. In the event of a Breach by Tenant in the performance of its obligations under this Lease, then any balance of funds paid to Landlord under the provisions of this Section may at the option of Landlord, be treated as a credit against the next payment of Rent.

10.3 Joint Assessment. If the Premises are not separately assessed, Tenant's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be reasonably determined by Landlord from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 Personal Property Taxes. Tenant shall pay, prior to delinquency, all taxes assessed against and levied upon Tenant Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Tenant. When possible, Tenant shall cause such property to be assessed and billed separately from the real property of Landlord. If any of Tenant's said personal property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant's property within ten (10) days after receipt of a written statement.

ARTICLE 11
UTILITIES

Tenant shall obtain and timely pay for all water, gas, heat, light, power, electricity, telephone and other information technology infrastructure, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Tenant must arrange and pay for connection and activation of any and all utilities and the installation of any required utility meters. Tenant must pay any fees or deposits required for any of the utilities. It is expressly understood and agreed that Landlord shall have no liability for any provision, interruption or termination of utility services to the Premises and Tenant shall have no right to abatement of Rent or other charges hereunder nor any right to terminate this Lease in the event of any such failure to provide, interruption or termination of utility services.

ARTICLE 12
ASSIGNMENT AND SUBLETTING

12.1 Landlord's Consent Required.

(a) Subject to Section 12.4 below, Tenant shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Tenant's interest in this Lease or in the Premises without Landlord's prior written consent.

(b) Subject to Section 12.4 below, an assignment or subletting without consent shall, at Landlord's option, be a Default curable after notice per Section 13.1(e), or a noncurable Breach without the necessity of any notice and grace period. If Landlord elects to treat such unapproved assignment or subletting as a noncurable Breach, in addition to all other rights and remedies of Landlord herein, Landlord may either: (i) terminate this Lease, or (ii) upon thirty (30) days written notice, increase the monthly Base Rent to one hundred ten percent (110%) of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, all fixed rental adjustments scheduled during the remainder of the Term, including, but not limited to the annual increase in Base Rent pursuant to Section 1.3 herein, shall be increased to One Hundred Ten Percent (110%) of the scheduled adjusted rent.

(c) Tenant's remedy for any breach of Section 12.1 by Landlord shall be limited to compensatory damages.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Landlord's consent, any assignment or subletting shall not: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Tenant under this Lease, (ii) release Tenant of any obligations hereunder, or (iii) alter the primary liability of Tenant for the payment of Rent or for the performance of any other obligations to be performed by Tenant.

(b) Landlord may accept Rent or performance of Tenant's obligations from any person other than Tenant pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Landlord's right to exercise its remedies for Tenant's Default or Breach.

(c) Landlord's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Tenant, Landlord may proceed directly against Tenant or anyone else responsible for the performance of Tenant's obligations under this Lease, including any assignee or sublessee, without first exhausting Landlord's remedies against any other person or entity responsible therefore to Landlord, or any security held by Landlord.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Landlord's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $1,000 as consideration for Landlord's considering and processing said request. Tenant agrees to provide Landlord with such other or additional information and/or documentation as may be reasonably requested.

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Tenant during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Landlord has specifically consented to in writing.

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Tenant of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Tenant hereby assigns and transfers to Landlord all of Tenant's interest in all Rent payable on any sublease, and Landlord may collect such Rent and apply same toward Tenant's obligations under this Lease; provided, that until a Breach shall occur in the performance of Tenant's obligations, Tenant may collect said Rent. Landlord shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Tenant to perform and comply with any of Tenant's obligations to such sublessee. Tenant hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Landlord stating that a Breach exists in the performance of Tenant's obligations under this Lease, to pay to Landlord all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Landlord and shall pay all Rents to Landlord without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Tenant to the contrary.

(b) In the event of a Breach by Tenant, Landlord may, at its option, require sublessee to attorn to Landlord, in which event Landlord shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, that Landlord shall not be liable for any prepaid rents paid or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor. If Tenant does not require the sublessor to attorn to Landlord, the sublease shall be extinguished upon the termination of this Lease as a result of Tenant's breach hereunder, and the sublessee shall have no further right to occupy the Premises.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Landlord.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Landlord's prior written consent.

12.4 Affiliated Companies/Restructuring of Business Organization. Neither (A) the assignment or subletting by Tenant of all or any portion of this Lease or the Premises to (i) a parent or subsidiary of Tenant, or (ii) any person or entity which controls, is controlled by or under common control with Tenant, or (iii) any entity which purchases all or substantially all of the assets of Tenant in one or a series of transactions, or (iv) any entity into which Tenant is merged or consolidated (all such persons or entities described in (i), (ii), (iii) and (iv) being sometimes hereinafter referred to as "Affiliates"), nor (B) any transfer of the membership interest, stock or shares of Tenant, shall be deemed a Transfer under this Article 12, provided that

(a) Any such Affiliate was not formed, nor was such financing intended, as a subterfuge to avoid the obligations of this Article 12;

(b) Tenant gives Landlord prior written notice of any such assignment, sublease, financing or public offering, unless precluded by non-disclosure obligations, in which case Tenant shall notify Landlord promptly thereafter;

(c) Tenant or any such Affiliate has, following the effective date of any such assignment, sublease, financing or public offering, a tangible net worth, in the aggregate, computed in accordance with generally accepted accounting principles, which is equal to or greater than Tenant as of the effective date of any such assignment, sublease, financing or public offering;

(d) Any such Affiliate shall assume, in a written document reasonably satisfactory to Landlord and delivered to Landlord upon or prior to the effective date of such assignment or sublease, all the obligations of Tenant under this Lease; and; and

(e) Tenant shall remain fully liable for all obligations to be performed by Tenant under this Lease.

12.5 Special Transferees. Tenant shall be permitted, upon prior written notice to Landlord (without otherwise triggering the provisions of this Article 12) to enter into any license/use agreement for Tenant's affiliates, subsidiaries or parents in connection with Tenant's business, and such licensees shall not be deemed a Transfer under this Article 12; provided that (a) Tenant shall give Landlord written notice of any such license/use agreement and promptly supply Landlord with any documents or information reasonably requested by Landlord regarding such licensees/users (including, but not limited to, applicable certificates of insurance), and (b) Tenant shall not be permitted to separately demise any

such space nor shall such licensees/users be permitted to maintain a separate reception area in the premises.

ARTICLE 13
DEFAULT; BREACH; REMEDIES

13.1 Default; Breach. A "Default" is defined as a failure by Tenant timely to comply with or perform any of the terms, covenants, conditions or rules under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Tenant to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Section 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Tenant to make any payment of Rent or any Security Deposit required to be made by Tenant hereunder, whether to Landlord or to a third party, within three (3) business days after written notice that the same is past due, or to fulfill any obligation under this Lease which endangers or threatens life or property. THE ACCEPTANCE BY LANDLORD OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LANDLORD'S RIGHTS, INCLUDING LANDLORD'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Tenant to allow Landlord and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Tenant, where such actions continue for a period of five (5) business days following written notice to Tenant. In the event that Tenant commits waste, a nuisance or an illegal activity a second time then, Landlord may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Tenant to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the rescission of an unauthorized assignment or sublease, or (iii) any other documentation or information which Landlord may reasonably require of Tenant under the terms of this Lease, where any such Default continues for a period of five (5) business days after written notice.

(e) A Default by Tenant as to the terms, covenants, conditions or provisions of this Lease, other than those described in Section 13.1(a), (b), (c) or (d) above, where such Default continues for a period of thirty (30) days after written notice; provided, that if the nature of Tenant's Default is such that it is reasonably capable of cure but more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach if Tenant promptly (but in no event later than thirty (30) days) commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where

possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this Section 13.1(f) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) Tenant does or permits anything that creates a lien on the Premises, and Tenant fails to discharge the lien within thirty days of its filing.

(h) If a Default occurs more than four times within any period of twelve (12) months, then, notwithstanding that Tenant cured those prior Defaults, any further Default is a Breach of this Lease for which no notice is required or cure available.

13.2 Remedies. If Tenant fails to perform any of its affirmative duties or obligations, within five (5) days after written notice (or in case of an emergency, without notice), Landlord may, at its option, perform such duty or obligation on Tenant's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Tenant shall pay to Landlord an amount equal to 110% of the costs and expenses of any such performance by Landlord promptly upon receipt of invoice therefor. In the event of a Breach, Landlord may, with or without further notice or demand, and without limiting Landlord in the exercise of any other right or remedy which Landlord may have by reason of such Breach:

(a) Terminate Tenant's right of possession, in which case this Lease shall immediately terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant: (i) the unpaid Rent which has been earned at the time of termination; (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; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and (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, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, and reasonable attorneys' fees. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the prime rate of interest published in the Wall Street Journal, or a comparable publication if the prime rate is no longer available in the Wall Street Journal plus four percent. Efforts by Landlord to mitigate damages caused by Tenant's Breach of this Lease shall not waive Landlord's right to recover damages under this Article 13 or otherwise. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Landlord shall have the right to recover in such proceeding any unpaid Rent and damage as are recoverable therein, or Landlord may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period are required under Section 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Tenant under the unlawful detainer statute shall also constitute the notice required by Section 13.1. In such case, the applicable grace period required by Section 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Tenant to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Landlord to the remedies provided for in this Lease and/or by said statute.

(b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Premises. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due. Acts of maintenance, efforts to relet, and/or the appointment or a receiver to protect Landlord's interests shall not constitute a termination of Tenant's right to possession.

(c) Pursue the remedy of specific performance and/or injunctive relief.

(d) Change or alter the locks at the Premises and otherwise lock Tenant out of the Premises.

(e) Pursue any other remedy now or hereafter available in equity under the laws or judicial decisions of the state wherein the Premises are located.

(f) The expiration or termination of this Lease and/or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provisions of this Lease as to matters occurring or accruing prior to the expiration or earlier termination of this Lease.

(g) The acceptance by Landlord of any payments from Tenant after the expiration or earlier termination of this Lease shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction.

(h) If Tenant shall hold over or remain in possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease, then Tenant shall be subject to summary proceeding for eviction and liable for all damages related thereto. All damages of Landlord by reason of such holding over by Tenant may be the subject of a separate action and need not be asserted by Landlord in any summary proceedings against Tenant.

13.3 Late Charges. Tenant hereby acknowledges that late payment by Tenant of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by any Lender. Accordingly, if any Rent shall not be received by Landlord (or received by any other third party that Tenant is directed to pay, as provide herein), within five (5) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a one-time late charge equal to the greater of $250 or five percent (5%) of each such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) installments of Base Rent in any twelve (12) month period, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Landlord's option, become due and payable quarterly in advance.

13.4 Interest. Any monetary payment due Landlord hereunder, other than late charges, not received by Landlord, when due as to scheduled payments (such as Base Rent) or within thirty (30) days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the thirty-first (31st) day after it was due as to non-scheduled payments. The interest ("Interest") charged shall be equal to ten percent (10%) per annum, but shall not exceed the

maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Section 13.3.

ARTICLE 14
CONDEMNATION

If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by the Building, is taken by Condemnation, Tenant may, at Tenant's option, to be exercised in writing within ten (10) days after Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, that Tenant shall be entitled to any compensation paid by the condemnor for Tenant's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Article 14. All Alterations and Utility Installations made to the Premises by Tenant, for purposes of Condemnation only, shall be considered the property of Tenant and Tenant shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Landlord shall repair any damage to the Premises caused by such Condemnation.

ARTICLE 15
BROKERS

Tenant and Landlord each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder in connection with this Lease, and that no person is entitled to any commission or finder's fee in connection herewith. Tenant and Landlord do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

ARTICLE 16
ESTOPPEL CERTIFICATES

16.1 Each party (as "Responding Party") shall within ten (10) business days after written notice from the other party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

16.2 If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such ten (10) day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) this

Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Landlord is the Requesting Party, not more than one (1) month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

16.3 If Landlord desires to finance, refinance, or sell the Premises, or any part thereof, Tenant shall deliver to any potential lender or purchaser designated by Landlord such financial statements as may be reasonably required by such lender or purchaser. All such financial statements shall be received by Landlord and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

ARTICLE 17
MISCELLANEOUS

17.1 Definition of Landlord. The term "Landlord" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises. In the event of a transfer of Landlord's title or interest in the Premises or this Lease, the prior Landlord shall fully be released from and relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by Landlord. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by Landlord shall be binding only upon Landlord as hereinabove defined.

17.2 Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

17.3 Day. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

17.4 Limitation on Liability. The obligations of Landlord under this Lease shall not constitute personal obligations of Landlord or its affiliates, individual partners, directors, officers or shareholders. Tenant shall look to the Premises, and to no other assets of Landlord, for the satisfaction of any liability of Landlord with respect to this Lease, and shall not seek recourse against the individual partners of Landlord or its individual partners, directors, officers or shareholders, or any of their personal assets for such satisfaction.

17.5 Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the parties under this Lease.

17.6 No Prior or Other Agreements. This Lease constitutes the entire agreement between Landlord and Tenant with respect to the lease of the Premises and supersedes any and all other prior written or oral agreements or understandings with respect to this transaction. Except as expressly set forth in this Lease, no representations, inducements, understanding or anything of any nature whatsoever, made, stated or represented by Landlord or anyone acting on Landlord's behalf, either orally or in writing have induced Tenant to enter into this Lease, and Tenant acknowledges, represents and warrants that Tenant has entered into this Lease under and by virtue of Tenant's own independent investigation.

17.7 Notices.

(a) Notice Requirements. All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or

registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Section 17.7. The addresses noted adjacent to a party's signature on this Lease shall be that party's address for delivery or mailing of notices. Either party may by written notice to the other specify a different address for notice. A copy of all notices to Landlord shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate in writing.

(b) Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt, provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

17.8 Waivers. No waiver by Landlord of the Default or Breach of any term, covenant or condition hereof by Tenant, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Tenant of the same or of any other term, covenant or condition hereof. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to, or approval of, any subsequent or similar act by Tenant, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Landlord shall not be a waiver of any Default or Breach by Tenant. Any payment by Tenant may be accepted by Landlord on account of moneys or damages due Landlord, notwithstanding any qualifying statements or conditions made by Tenant in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Landlord at or before the time of deposit of such payment. THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

17.9 No Right to Holdover. Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Tenant holds over, then such holdover shall be deemed a "Tenancy at Sufferance" (with Tenant waiving, to the fullest extent permitted by applicable law, any required statutory notices to vacate the Premises) and the Base Rent shall be increased to one hundred fifty percent (150%) of the Base Rent applicable during the month immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Landlord to any holding over by Tenant.

17.10 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

17.11 Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Tenant are both covenants and conditions. It is expressly understood and agreed that Tenant's obligation to pay Rent and other charges due hereunder is an independent covenant. In construing this Lease, all headings and titles are for the convenience of the parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural

and vice versa. This Lease shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had prepared it.

17.12 Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State of California. Any litigation between the parties hereto concerning this Lease shall be initiated only in the county of Los Angeles, California.

17.13 Subordination; Attornment; Non-Disturbance.

(a) Subordination. This Lease shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof, subject to Tenant's receipt of a non-disturbance agreement in Lender's standard form. Tenant agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Landlord under this Lease. Any Lender may elect to have this Lease superior to the lien of its Security Device by giving written notice thereof to Tenant, whereupon this Lease shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

(b) Attornment. In the event that Landlord transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Tenant shall attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Tenant and such new owner, and (ii) Landlord shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Landlord's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Tenant might have against any prior lessor, (c) be bound by prepayment of more than one (1) month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

(c) Self-Executing. The agreements contained in this Section 17.13 shall be effective without the execution of any further documents; provided, however, that, upon written request from Landlord or a Lender in connection with a sale, financing or refinancing of the Premises, Tenant and Landlord shall execute such further writings as may be reasonably required to separately document any subordination or attornment agreement provided for herein.

(d) Modifications Required by Lender. If any Lender requires a modification of this Lease that will not increase Tenant's cost or expense or materially or adversely change Tenant's rights and obligations, this Lease shall be so modified and Tenant shall execute whatever documents are required and deliver them to Landlord within ten (10) business days after the request.

17.14 Attorneys' Fees. If any party brings an action or proceeding involving the Premises to enforce the terms hereof or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to recover its reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or

proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Landlord shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach. In addition, if, as a result of any action or request of Tenant, Landlord consults or retains attorneys, Tenant must reimburse Landlord for its attorneys' fee within ten (10) days following Tenant's receipt of Landlord's invoice for those attorneys' fees.

17.15 Landlord's Access; Showing Premises; Repairs. Landlord and Landlord's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times for the purpose of: (i) showing the same to prospective purchasers, lenders, or lessees; (ii) making such alterations, repairs, improvements or additions to the Premises as Landlord may deem necessary, so long as they do not interfere with Tenant's business or use of the Premises; or, (iii) any other reason as Landlord shall deem necessary. All such activities shall be without abatement of rent or liability to Tenant. Landlord may at any time place on the Premises any ordinary "For Sale" signs and Landlord may during the last nine (9) months of the term hereof place on the Premises any ordinary "For Lease" signs.

17.16 Termination; Merger. Unless specifically stated otherwise in writing by Landlord, the voluntary or other surrender of this Lease by Tenant, the mutual termination or cancellation hereof, or a termination hereof by Landlord for Breach by Tenant, shall automatically terminate any sublease or lesser estate in the Premises; provided, that Landlord may elect to continue any one or all existing subtenancies. Landlord's failure within ten (10) days following any such event to elect to the contrary by written notice to the holder of any such lesser interest shall constitute Landlord's election to have such event constitute the termination of such interest. No payment of money by Tenant to Landlord after this Lease has expired or terminated will reinstate or extend the Term or make ineffective any notice given to Tenant prior to Tenant's payment. If after Landlord has filed and served a lawsuit against Tenant or after a final judgment granting Landlord possession of the Premises, Landlord may receive any sums due under this Lease and the payment will not make ineffective any notice, or in any manner affect any pending lawsuit or previously obtained judgment.

17.17 Consents. Except as otherwise provided herein, wherever in this Lease the consent of a party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Landlord's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers', attorneys and other consultants' fees) incurred in the consideration of, or response to, a request by Tenant for any Landlord consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Tenant upon receipt of an invoice and supporting documentation therefor. Landlord's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Tenant of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Landlord at the time of such consent. In the event that either party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within ten (10) business days following such request.

17.18 Quiet Possession. Subject to payment by Tenant of the Rent and performance of all of the covenants, conditions and provisions on Tenant's part to be observed and performed under this Lease, Tenant shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

17.19 Security Measures. Tenant hereby acknowledges that the Rent payable to Landlord hereunder does not include the cost of guard service or other security measures, and that Landlord shall have no obligation whatsoever to provide same. Tenant assumes all responsibility for the protection of the Premises, Tenant, its agents and invitees and their property from the acts of third parties.

17.20 Reservations. Landlord reserves to itself the right, from time to time, to grant, without the consent or joinder of Tenant, such easements, rights and dedications that Landlord deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Tenant. Tenant agrees to sign any documents reasonably requested by Landlord to effectuate any such easement rights, dedication, map or restrictions.

17.21 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, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

17.22 Offer. Preparation of this Lease by either party or its agent and submission of same to the other party shall not be deemed an offer to lease to the other party. This Lease is not intended to be binding until executed and delivered by all parties hereto.

17.23 Amendments. This Lease may be modified only in writing, signed by the parties in interest at the time of the modification. As long as they do not materially change Tenant's obligations hereunder, Tenant agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

17.24 Waiver of Trial By Jury. Tenant hereby waives, to the fullest extent permitted by applicable law, the right to a trial by jury in any action brought by Landlord against Tenant in connection with this Lease.

17.25 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.

17.26 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of California.

[*Signature Page Follows*]

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

IN WITNESS WHEREOF, the parties have executed this Commercial Lease Agreement as of the date first written above.

LANDLORD:

420 NASH, LLC
a California limited liability company

By: /s/ James Ho
Name: James Ho, Authorized Agent

Address:

9922 Jefferson Blvd.
Culver City, CA 90232
Attn: General Counsel

TENANT:

IMMUNITYBIO, INC.
a Delaware corporation

By: /s/ David Sachs
Name: David Sachs
Title: Chief Financial Officer

Address:

2040 E. Mariposa Avenue
El Segundo, CA 90245
Attn: General Counsel

Exhibit 31.1

CERTIFICATION OF PERIODIC REPORT UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Richard Adcock, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of ImmunityBio, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

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: November 12, 2021

By: /s/ Richard Adcock
Richard Adcock
Chief Executive Officer and President
(*Principal Executive Officer*)

Exhibit 31.2

CERTIFICATION OF PERIODIC REPORT UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, David C. Sachs, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of ImmunityBio, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

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: November 12, 2021

By: /s/ David C. Sachs
David C. Sachs
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. § 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Richard Adcock, the chief executive officer of ImmunityBio, Inc. (the "Company"), certify for the purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

i. the Quarterly Report of the Company on Form 10-Q for the quarter ended September 30, 2021 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

ii. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 12, 2021

By: /s/ Richard Adcock
Richard Adcock
Chief Executive Officer and President
(*Principal Executive Officer*)

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. § 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, David C. Sachs, the chief financial officer of ImmunityBio, Inc. (the "Company"), certify for the purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

i. the Quarterly Report of the Company on Form 10-Q for the quarter ended September 30, 2021 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

ii. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 12, 2021

By: /s/ David C. Sachs
David C. Sachs
Chief Financial Officer
(Principal Financial Officer)