As filed with the Securities and Exchange Commission on March 4, 2022.

Registration No. 333-

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

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

AN2 Therapeutics, Inc.
(Exact name of registrant as specified in its charter)

Delaware	2834	82-0606654
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

AN2 Therapeutics, Inc.
1800 El Camino Real, Suite D
Menlo Park, California 94027
(650) 331-9090
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Eric Easom
Chief Executive Officer
1800 El Camino Real, Suite D
Menlo Park, California 94027
(650) 331-9090
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Josh Seidenfeld
Sally Kay
Anitha Anne
Cooley LLP
3175 Hanover Street
Palo Alto, California 94304
(650) 843-5000

Lucy Day
Chief Financial Officer
1800 El Camino Real, Suite D
Menlo Park, California 94027
(650) 331-9090

Emily Roberts
Alan F. Denenberg
Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, California 94025
(650) 752-2000

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box: ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

The information in this preliminary prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Prospectus (Subject to Completion) **Dated March 4, 2022**

Shares

AN2 Therapeutics

Common Stock

This is an initial public offering of shares of common stock of AN2 Therapeutics, Inc. We are offering shares of our common stock.

Prior to this offering, there has been no public market for our common stock. We currently expect that the initial public offering price will be between $ and $ per share of common stock.

We have applied to list our common stock on The Nasdaq Global Market under the symbol "ANTX."

We are an "emerging growth company" as defined in the Jumpstart Our Business Act of 2012 and, as such, we have elected to comply with certain reduced reporting requirements for this prospectus and may elect to do so in future filings.

Investing in our common stock involves a high degree of risk. See the section titled "Risk Factors" beginning on page 15.

Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

	Per Share	*Total*
Public offering price	**$**	**$**
Underwriting discounts and commissions(1)	**$**	**$**
Proceeds to AN2 Therapeutics, Inc., before expenses	**$**	**$**

(1) See the section titled "Underwriting" for a description of the compensation payable to the underwriters.

We have granted the underwriters an option for a period of 30 days to purchase up to an additional shares of our common stock at the initial public offering price, less the underwriting discounts and commissions.

The underwriters expect to deliver the shares against payment in New York, New York on , 2022.

Cowen **SVB Leerink** **Evercore ISI**

Oppenheimer & Co.

Prospectus dated , 2022

TABLE OF CONTENTS

Neither we nor the underwriters have authorized anyone to provide you any information or make any representations other than those contained in this prospectus or in any free writing prospectuses prepared by or on behalf of us or to which we have referred you. We and the underwriters take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We and the underwriters are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus or in any applicable free writing prospectus is current only as of its date, regardless of its time of delivery or any sale of shares of our common stock. Our business, financial condition, results of operations, and prospects may have changed since that date.

For investors outside of the United States: we have not, and the underwriters have not, done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than the United States. Persons outside of the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of common stock and the distribution of this prospectus outside of the United States.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus and is qualified in its entirety by the more detailed information and financial statements included elsewhere in this prospectus. This summary does not contain all of the information you should consider before investing in our common stock. You should carefully read this entire prospectus, including the information under the sections titled "Risk Factors," "Special Note Regarding Forward-Looking Statements," and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and the related notes included elsewhere in this prospectus, before making an investment decision. Unless the context requires otherwise, references in this prospectus to "AN2 Therapeutics," "AN2," the "Company," "we," "us," and "our" refer to AN2 Therapeutics, Inc.

Overview

We are a clinical-stage biopharmaceutical company developing treatments for rare, chronic, and serious infectious diseases with high unmet needs. Our initial product candidate is epetraborole, a once-daily oral treatment for patients with chronic non-tuberculous mycobacterial, or NTM, lung disease. Epetraborole has broad spectrum antimycobacterial activity through inhibition of an essential and universal step in bacterial protein synthesis. Its novel mechanism of action is enabled by boron chemistry, our core technology approach. We plan to conduct a Phase 2/3 pivotal clinical trial in treatment-refractory *Mycobacterium avium* complex, or MAC, lung disease, which is the most common type of NTM lung disease. Interim data from our completed Phase 1b dose-ranging study of epetraborole administered orally for 28 days in healthy volunteers in Australia and data from our two nonclinical chronic toxicology studies (six-month rats and nine-month non-human primates) have informed our selection of a 500 mg once-daily dose for our Phase 2/3 pivotal clinical trial in treatment-refractory MAC lung disease patients. We believe our Phase 2/3 pivotal clinical trial design, which is under review by the U.S. Food and Drug Administration, or FDA, has the potential to be sufficient for regulatory approval in the United States. We recently received clearance of our Investigational New Drug, or IND, application by the FDA to begin our Phase 1 renal impairment study, for which enrollment commenced in February 2022, and plan to initiate patient enrollment in our Phase 2/3 pivotal clinical trial in the first half of 2022, with topline results for the Phase 2 part of the trial anticipated in the middle of 2023 and for the Phase 3 part of the trial anticipated in the middle of 2024, pending any sample size adjustments that may be required to the Phase 3 portion based on treatment effects of epetraborole-containing regimens that may be observed in the Phase 2 portion of the trial, if any. We also recently received Fast Track designation by the FDA to investigate epetraborole for treatment-refractory MAC lung disease. Epetraborole has also recently been designated as a Qualified Infectious Disease Product, or QIDP, for treatment-refractory MAC lung disease by the FDA and received FDA orphan drug designation for the treatment of infections caused by NTM. Based on clinical and preclinical data generated with epetraborole, its novel mechanism of action, and the convenience associated with once-daily, oral dosing, we believe that epetraborole has the potential to become an important component of a multi-drug treatment regimen for patients suffering from NTM lung disease.

Our Pipeline

We are initially focused on advancing our first product candidate, epetraborole, to commercialization in NTM lung disease. We are developing epetraborole to treat MAC lung disease, which accounts for approximately 80% of NTM lung disease in the United States. We have in-licensed the exclusive worldwide development and commercialization rights for epetraborole from Anacor Pharmaceuticals, Inc., or Anacor, acquired by Pfizer Inc., or Pfizer, in 2016.

In addition to our development and commercial endeavors in NTM lung disease, we intend to develop epetraborole for global health initiatives, including melioidosis, using non-dilutive funding, which we plan to obtain from sources such as public and private agencies and foundations. We have entered into an Amended and Restated Global Health Agreement, or the Global Health Agreement, with Adjuvant Global Health Technology Fund L.P. and Adjuvant Global Health Technology Fund DE L.P., or together, Adjuvant, in connection with Adjuvant's investment of $12.0 million in our Series A and Series B redeemable convertible preferred stock financings. Pursuant to the Global Health Agreement, we must use reasonably diligent endeavors to develop epetraborole for melioidosis, tuberculosis, and any other mutually agreed-upon products for at-risk developing countries. We have entered into a research agreement with the National Institutes of Health, or NIH, to further early development and dose selection of epetraborole in melioidosis using the in vitro hollow fiber system. These studies are being conducted at no cost to us. We believe partnerships like this provide substantial technical and capital resources to advance the melioidosis program and provide material benefits to our company and to our NTM lung disease program as a whole.

The below table summarizes our development plans for epetraborole:

EPETRABOROLE	PRECLINICAL	PHASE 1	PHASE 2/3	NEXT STEPS	RIGHTS
NTM LUNG DISEASE					
Treatment-refractory MAC	US + EU			▪ 1H 2022 - Initiate Phase 2/3 pivotal clinical trial ▪ Mid-2023 - Phase 2 topline data	AN2Therapeutics (WW Rights excl. China, Hong Kong, Taiwan & Macau)
	Japan			▪ 2H 2022 - Initiate Phase 1 clinical trial in Japan	
Treatment-naïve MAC				▪ Review treatment-refractory MAC clinical data when available to see if supportive of further investigation as first-line therapy	Bri Biosciences (China, Hong Kong, Taiwan & Macau)
M. abscessus				▪ 2H 2022 – Complete nonclinical data package and dose selection	
GLOBAL HEALTH					
Melioidosis (IV formulation)				▪ 2H 2022 – Complete NIH funded nonclinical studies	AN2Therapeutics (WW Rights excl. China, Hong Kong, Taiwan, & Macau)

Our AN2 Drug Discovery Platform

Our core technology approach is based on the use of boron chemistry for our drug research and development initiatives. Boron has both a distinctive ability to bind with biological targets through a reversible covalent bond and the potential to address biological targets that have been difficult to inhibit using traditional carbon-based molecules. Boron chemistry has proven to be a highly productive technology leading to the discovery of many promising drugs, particularly focused in infectious diseases. Pioneering work at Anacor led to the generation of a class of boron compounds including two FDA-approved therapies, Kerydin and Eucrisa. Our founders consist of former leaders at Anacor, including an inventor of epetraborole and a leading infectious disease expert.

We are also actively pursuing the identification of additional antimicrobial product candidates that leverage our boron chemistry capabilities. Once identified, we plan to develop these candidates in NTM lung disease and other rare and chronic infectious diseases. We are also selectively evaluating in-licensing opportunities of development-stage candidates that have the potential to address rare and chronic infectious diseases consistent with our corporate strategy.

Our Market Opportunity

We are developing oral epetraborole for the treatment of NTM lung disease, a rare, chronic, and progressive infectious disease caused by bacteria known as mycobacteria that leads to irreversible lung damage and can be fatal. Unlike most bacteria, which replicate quickly and spread outside of cells, mycobacteria replicate slowly and mostly infect alveolar (lung) macrophages and survive within them. Due to the slow growth and survival within macrophages of mycobacteria, the current standard of care for NTM lung infections requires prolonged treatments, often for 18 months or longer, with a combination of three or more antibiotics. Initially, we are focused on developing epetraborole to treat the most common type of NTM, MAC, which accounts for approximately 80% of NTM lung disease in the United States.

There are an estimated 200,000 patients with NTM lung disease in the United States; however, many remain underdiagnosed due to lack of clinical suspicion, nonspecific respiratory symptoms, and underlying lung diseases that are frequent in patients with this infection. The prevalence of NTM lung disease is increasing in the U.S. by an estimated 8% per year. Among the approximately 55,000 patients diagnosed with NTM lung disease in the United States, approximately 44,000 patients have MAC lung disease, and approximately 35% of these patients, or 15,000 patients, have treatment-refractory MAC lung disease. There are approximately 20,000 total NTM lung disease patients in Europe, of which approximately 5,600 are estimated to have treatment-refractory MAC lung disease.

There is only one FDA-approved therapy for treatment-refractory MAC lung disease: Arikayce, an inhaled liposomal formulation of amikacin. In a clinical trial, the addition of Arikayce to standard of care combination antibiotic therapy resulted in the resolution of MAC infection in only 29% of patients, leaving more than 70% of treatment-refractory patients with limited or no treatment options. Furthermore, Arikayce has significant tolerability and safety issues, resulting in a boxed warning for risk of increased respiratory adverse reactions, and other warnings and precautions including ototoxicity, a known class effect with aminoglycosides, and other safety findings. Between 20.3% and 33.5% of patients treated with Arikayce in clinical trials discontinued treatment. Despite these shortcomings, Insmed reported net sales of Arikayce of approximately $189 million in 2021 ($160 million in the United States, $16 million in Japan, and $13 million in Europe and the rest of the world). We believe improved treatment of NTM lung disease will require an efficacious, safe, and well-tolerated antibiotic with a novel mechanism of action that is not affected by resistance to existing antibiotics, and that has a convenient, once-daily, oral dose.

Our Solution: Epetraborole

Epetraborole is a boron-containing, orally-available, small molecule inhibitor of bacterial leucyl-tRNA synthetase, or LeuRS, an enzyme that catalyzes the attachment of leucine to transfer RNA, or tRNA, molecules, an essential step in protein synthesis. As shown in Figure A below, epetraborole forms a complex with a $tRNA^{Leu}$ molecule, trapping the terminal ribonucleotide of $tRNA^{Leu}$ in the editing site of the enzyme, which prevents the synthetic site from attaching leucine to $tRNA^{Leu}$ thus shutting down tRNA leucylation and leading to a block in protein synthesis.

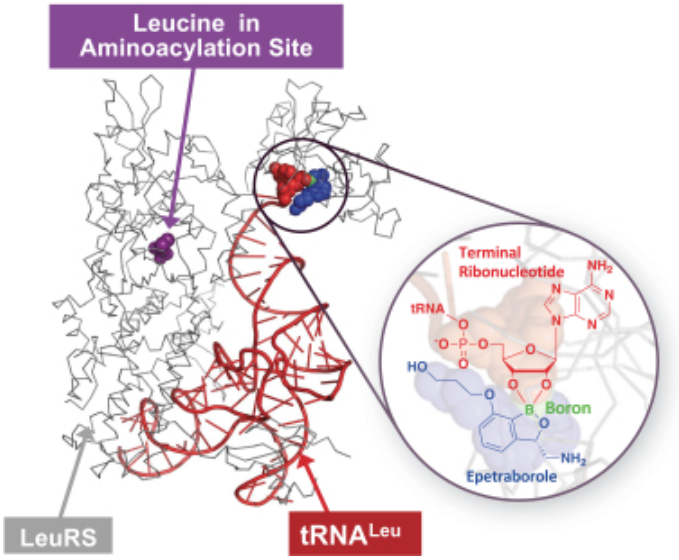


Figure A. Epetraborole inhibits the protein synthesis enzyme leucyl-tRNA synthetase, or LeuRS, by binding to the terminal adenosine ribose of $tRNA^{Leu}$ in the editing site.

We believe the development of epetraborole in NTM lung disease represents an attractive opportunity for the following reasons:

- Large market opportunity given the high unmet need in NTM lung disease and the potential for a safe, tolerable, effective, and oral antibacterial drug that could significantly improve patient outcomes;
- Novel mechanism of action with a broad spectrum of antimycobacterial activity;
- Substantial data package from the previously completed nonclinical and clinical studies conducted by Anacor and GlaxoSmithKline plc, or GSK, our recently completed chronic toxicology studies in two species, and our Phase 1b dose-ranging study;
- Convenient once-daily, oral dosing with the aim to serve as an important component of therapy for MAC lung disease; and
- Compatibility with guideline-based combination treatments.

Prior to our clinical development program in NTM lung disease, epetraborole had been administered intravenously or orally as a single agent to over 200 subjects at a wide range of clinical doses across six Phase 1 and two truncated Phase 2 clinical trials conducted by Anacor and Anacor's previous partner GSK with a focus on gram-negative infections that were unrelated to NTM lung disease. Clinical resistance was observed in four of twenty patients in one of the two Phase 2 clinical trials. As a result, the two Phase 2 trials and two other Phase 1 trials were terminated prior to completion. Clinical resistance occurs when bacteria, under drug pressure or through natural resistance, become less susceptible to an antibiotic. Clinical resistance is possible for all antibiotics and the rates and nature of emergence of resistance vary by bacterial species. Combination therapy has been shown to significantly reduce the risk of the emergence of clinical resistance. NTM is treated with combination therapy per treatment guidelines, which is distinct from earlier clinical trials of epetraborole in other infection types where monotherapy epetraborole was evaluated.

Although epetraborole was not tested by Anacor or GSK in patients with NTM lung disease, previous results from one of these trials, a Phase 1 trial conducted by GSK that measured the penetration of epetraborole into the lung, showed the exposure of epetraborole in alveolar (lung) macrophages, the cells that are infected with mycobacteria in NTM lung disease, was approximately five-fold higher than in plasma. In addition, epetraborole has demonstrated in vitro antibacterial activity against a panel of 51 isolates of MAC (*M. avium, M. intracellulare,* and *M. chimaera*) including against strains that are resistant to antibiotics currently used to treat NTM lung disease.

We have completed a double-blind, placebo-controlled Phase 1b dose-ranging study of epetraborole in healthy volunteers to assess the pharmacokinetics of the molecule at oral doses lower than those previously investigated in prior clinical trials conducted by Anacor and GSK, and in the range of the expected clinical dose, to obtain safety and tolerability data for 28 days of dosing. This dose-ranging study was conducted in Adelaide, Australia. A total of 43 subjects were enrolled in the double-blind, placebo-controlled portion of the study (Cohorts 1 through 6, including 31 epetraborole and 12 placebo subjects). The first five dosing cohorts have completed the 28-day dosing period and a sixth cohort was truncated after the enrollment of two patients. Enrollment and dosing in the final, open-label food-effect cohort has also been completed, in which eight subjects were administered a single dose of epetraborole.

In Cohorts 1 through 6 of this study, the treatment emergent adverse event, or TEAE, profile reported for the healthy subjects who received oral epetraborole was similar to that of the pooled placebo group. Overall, approximately 80% of subjects experienced at least one TEAE (80.6% of epetraborole subjects, 83.3% of placebo subjects), none of which were serious or severe. Most TEAEs were mild in severity (92.7% of all TEAEs), and the remainder were moderate (7.3% of all TEAEs). No TEAEs leading to withdrawal from study, life threatening TEAEs, or deaths were reported in the study. Two subjects (4.7% of all subjects) experienced TEAEs that caused premature discontinuation from epetraborole: one epetraborole subject at the 250 mg q24h dose level had mild aminotransferase increases during a concomitant upper respiratory tract infection; and one epetraborole subject at the 1,000 mg q48h dose level had mild nausea. These TEAEs were both considered possibly or probably related to epetraborole. The final cohort of the Phase 1b dose-ranging study recently completed enrollment and dosing and therefore safety data for this cohort is not yet available.

Gastrointestinal, or GI, disorders were the most common types of TEAEs in the study (experienced by 48.4% of epetraborole subjects and 41.7% of placebo subjects). The most common GI disorder was nausea, observed in 25.8% of epetraborole subjects and 16.7% of placebo subjects; all were mild in severity, and only one event was treatment-limiting. The treatment-limiting GI disorder TEAE was observed in an epetraborole subject at the 1,000 mg q48h dose level, who experienced mild nausea beginning on Day 1 of treatment, leading to premature discontinuation of epetraborole on Day 11. Diarrhea was observed in 12.9% of epetraborole subjects and 8.3% of placebo subjects, all events of which were mild except one moderately severe diarrhea event in a single epetraborole subject at the 1,000 mg q24h dose level. No cases of *Clostridioides difficile* infection were observed. Consistent with observations in chronic toxicology studies in non-human primates and rats, dose-dependent effects on red blood cell-related hematological parameters, such as hemoglobin and reticulocytes, were observed. The observed effects on hematological parameters were mild and most red blood cell count, or RBC, values remained within normal limits with a slight downward trend, the effects were not deemed clinically significant by the investigator, and the hematological parameters recovered following completion of dosing of epetraborole. No adverse hematological events were observed and no patients discontinued therapy as a result of the hematological effects that were observed.

Due to the prevalence of renal impairment among patients with NTM lung disease, we have initiated an open-label Phase 1 study of epetraborole in subjects with varying degrees of renal

impairment to determine any needed dosage adjustments for those patients. The objective of the Phase 1 renal impairment study will be to assess safety and pharmacokinetics of oral epetraborole in up to 40 subjects across five cohorts with varying degrees of renal function (normal to severe). We recently received clearance of our IND application by the FDA to begin this Phase 1 renal impairment study, for which enrollment commenced in February 2022, with topline results anticipated in the second half of 2022.

We have designed a Phase 2/3 pivotal clinical trial that, based on our three interactions to date with the FDA to discuss the design, including discussions regarding our nonclinical microbiology, toxicology, and pharmacology data package for epetraborole and tolerability and pharmacokinetic data from our Phase 1b dose-ranging study, we believe has the potential to be sufficient for regulatory approval in the United States. We plan to enroll patients with treatment-refractory MAC lung disease in this double-blind, placebo-controlled superiority trial, with planned enrollment of approximately 260 patients across approximately 80 clinical sites in up to six countries in North America and Europe. We expect that the primary objective in the Phase 2 part of the trial will be to determine the safety, efficacy, and pharmacokinetics of epetraborole plus an optimized background regimen, or OBR, when compared to a placebo plus an OBR. Additionally, we expect that the data from the Phase 2 trial will be used to inform the clinical response measures evaluated in the Phase 3 part of the trial. While the Phase 2 part of the trial is not powered for statistical significance, we believe the results will be the first showing of the impact of epetraborole plus an OBR in MAC lung disease patients. We expect that the primary objective in the Phase 3 part of the trial will be to determine if epetraborole plus an OBR consisting of two or more standard-of-care drugs, is superior to placebo plus an OBR. We are working with the FDA to finalize the primary endpoint for the Phase 3 part of our planned Phase 2/3 pivotal clinical trial, for which the FDA recommends a clinical response measure. We expect that the secondary endpoints will include other microbiological, clinical, or safety measures. We plan to initiate patient enrollment in our Phase 2/3 pivotal clinical trial in the first half of 2022, with topline results for the Phase 2 part of the trial anticipated in the middle of 2023 and for the Phase 3 part of the trial anticipated in the middle of 2024, pending any sample size adjustments that may be required for the Phase 3 portion based on treatment effects of epetraborole-containing regimens that may be observed in the Phase 2 portion of the trial, if any.

We intend to conduct trials and pursue marketing authorizations with epetraborole in additional geographies outside of the United States and Europe, with an initial focus in Japan. We estimate that there are approximately 20,000 patients with NTM lung disease and approximately 5,600 patients with treatment-refractory MAC lung disease in Europe (United Kingdom, Germany, France, Italy, and Spain). We estimate that there are approximately 220,000 patients with NTM lung disease and approximately 21,000 patients with treatment-refractory MAC lung disease in Japan. We have initiated discussions with the Japanese Pharmaceutical and Medical Devices Agency, or PMDA, to gain alignment on the development plan necessary for regulatory approval of epetraborole in MAC lung disease. Our initial planned indication in all geographies is the treatment of patients with treatment-refractory MAC lung disease. We also intend to expand the indications targeted by epetraborole by pursuing development in other mycobacterial diseases, including treatment-naïve MAC lung disease, which we believe is supported by tolerability and pharmacokinetic data received from our Phase 1b dose-ranging study and our existing nonclinical data package, and in *Mycobacterium abscessus* complex, or *M. abscessus*, lung infections, which is also supported by the tolerability and pharmacokinetic data from the Phase 1b study, but for which additional nonclinical work may be needed. Additionally, we have a strategic partnership with Brii Biosciences Limited, or Brii Biosciences, under which we have licensed out our rights to develop, manufacture, and commercialize epetraborole in China, Hong Kong, Taiwan, and Macau.

Our Strategy

Our mission is to develop novel therapeutics to treat rare, chronic, and serious infectious diseases in areas of high unmet medical need. Key components of our strategy to achieve this goal include:

- Advance epetraborole through clinical development in MAC lung disease with an initial focus on patients with treatment-refractory MAC lung disease;
- Develop epetraborole in additional territories and indications;
- Build and scale organizational capabilities to support commercialization of epetraborole in MAC lung disease;
- Continue to invest in expanding our pipeline of product candidates; and
- Apply our expertise in antimicrobial drug design and development to other global health problems.

Our Team

Our team is led by Eric Easom, M.B.A., M.Eng., our co-founder, president, and chief executive officer. Mr. Easom has over 31 years of leadership experience in the biotechnology and pharmaceutical industry, including the last 15 years in infectious disease. He previously led Anacor's research and development efforts in global health. Paul Eckburg, M.D., our chief medical officer, previously served as chief medical officer at a number of other biotechnology companies and was involved in the development of multiple approved antibiotics. Sanjay Chanda, Ph.D., our chief development officer, previously served as chief development officer at Tioma Therapeutics, Inc. and was senior vice president of drug development at Anacor. Lucy Day, our chief financial officer, previously served as chief financial officer at Anacor. Kevin Krause, M.B.A., our chief strategy officer, previously served in various roles at Achaogen, Inc., Cerexa, Inc., and Theravance, Inc. and has deep expertise in antibiotic research, development, and commercialization. Our team also includes George Talbot, M.D., FACP, FIDSA, our co-founder and clinical advisor, Joseph Zakrzewski, our co-founder and chairman of the board of directors, and two inventors of epetraborole, Vincent Hernandez, our vice president of chemistry, and Michael R.K. (Dickon) Alley, Ph.D., our co-founder and head of biology.

Risks Associated with Our Business

Our business is subject to a number of risks of which you should be aware before making an investment decision. These risks are discussed more fully in the "Risk Factors" section of this prospectus immediately following this prospectus summary. These risks include, but are not limited to, the following:

- We are a clinical-stage biopharmaceutical company with a limited operating history and no products approved for commercial sale. We have incurred significant losses since our inception. We expect to incur losses over the next several years and may never achieve or maintain profitability.
- We require substantial additional funding to meet our financial needs and to pursue our business objectives. If we are unable to raise capital when needed, we could be forced to delay, reduce, or altogether cease our current and future product development programs or future commercialization efforts.
- We depend to a large degree on the success of epetraborole, which is in clinical development, but for which we have not yet initiated a planned Phase 2/3 pivotal clinical trial. If we do not obtain regulatory approval for and successfully commercialize epetraborole or any of our future product candidates, or if we experience significant delays in doing so, we may never become profitable.

- If clinical trials of epetraborole or any future product candidate that we may advance to clinical trials fail to demonstrate safety, tolerability, and/or efficacy to the satisfaction of the FDA, the European Medicines Agency, or EMA, the PMDA, the Therapeutic Goods Administration in Australia, or TGA, or other comparable regulatory authorities, or do not otherwise produce favorable results, we may incur additional costs or experience delays in completing, or ultimately be unable to complete, the development and commercialization of epetraborole or any future product candidate.
- If we experience delays or difficulties in the enrollment of patients in clinical trials, our receipt of necessary regulatory approvals could be delayed or prevented.
- We rely on single-sourced third parties to conduct the preclinical and nonclinical studies, clinical trials, and manufacture of our clinical trial material for epetraborole and our future product candidates, and those third parties may not perform satisfactorily, including failing to meet deadlines for the completion of such studies, trials, and manufacturing services or failing to comply with applicable regulatory requirements.
- Even if epetraborole or any of our future product candidates receives marketing approval, they may fail to achieve the degree of market acceptance by physicians, patients, third-party payors, and others in the medical community necessary for commercial success. If we are unable to establish sales, marketing, and distribution capabilities for epetraborole or our future product candidates, or enter into sales, marketing, and distribution agreements with third parties, we may not be successful in commercializing our product candidates, if and when they are approved.
- We face substantial competition, which may result in others discovering, developing, or commercializing products before or more successfully than we do.
- We operate with a small team and our future success depends on our ability to retain key executives and to attract, retain, and motivate qualified personnel.
- We have identified material weaknesses in our internal control over financial reporting. If we are unable to remediate these material weaknesses, or if we identify additional material weaknesses in the future or otherwise fail to maintain effective internal control over financial reporting, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect our business.
- Our rights to develop and commercialize our technology, epetraborole, and our other future product candidates are subject, in large part, to the terms and conditions of licenses granted to us by others, including Anacor. If we fail to comply with our obligations in the agreements under which we in-license or acquire development or commercialization rights to products, technology, or data from third parties, we could lose such rights that are important to our business.
- If we are unable to obtain and maintain patent and other intellectual property protection for our technology, or for epetraborole or our future product candidates, or if the scope of the patent and other intellectual property protection obtained is not sufficiently broad, our competitors could develop and commercialize technology and drugs similar or identical to ours, and our ability to successfully commercialize our technology and product candidates may be impaired.
- If we are not able to obtain, or if there are delays in obtaining, required regulatory approvals, we will not be able to commercialize epetraborole or our future product candidates, and our ability to generate revenue will be materially impaired.
- Future legislation, and/or regulations and policies adopted by the FDA, the EMA, or comparable regulatory authorities, may increase the time and cost required for us to conduct and complete clinical trials of epetraborole or other future product candidates.
- The trading price of our common stock may be volatile, and you could lose all or part of your investment.

Corporate Information

We were incorporated in February 2017 as a Delaware corporation and launched operations in November 2019. Our principal executive offices are located at 1800 El Camino Real, Suite D, Menlo Park, California 94027 and our telephone number is (650) 331-9090. Our website address is www.an2therapeutics.com. Information contained in, or accessible through, our website is not a part of this prospectus and the inclusion of our website address in this prospectus is only an inactive textual reference.

Trademarks and Service Marks

We use the AN2 Therapeutics logo and other marks as trademarks in the United States and other countries. This prospectus contains references to our trademarks and service marks and to those belonging to other entities. Solely for convenience, trademarks and trade names referred to in this prospectus, including logos, artwork, and other visual displays, may appear without the ® or TM symbols, but such references are not intended to indicate in any way that the respective owners will not assert, to the fullest extent under applicable law, their rights or the rights of the applicable licensor to these trademarks and trade names. We do not intend our use or display of other entities' trade names, trademarks, or service marks to imply a relationship with, or endorsement or sponsorship of us by, any other entity.

Implications of Being an Emerging Growth Company and a Smaller Reporting Company

We are an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, or JOBS Act. We may take advantage of certain exemptions from various public company reporting requirements, including not being required to have our internal control over financial reporting audited by our independent registered public accounting firm under Section 404 of the Sarbanes-Oxley Act of 2002, or Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and any golden parachute payments. We may take advantage of these exemptions for up to five years or until we are no longer an "emerging growth company," whichever is earlier. We will cease to be an emerging growth company prior to the end of such five-year period if certain earlier events occur, including if (i) we become a "large accelerated filer" as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended, or Exchange Act, (ii) our annual gross revenues exceed $1.07 billion, or (iii) we issue more than $1.0 billion of non-convertible debt in any three-year period. In particular, in this prospectus, we have provided only two years of audited financial statements and have not included all of the executive compensation related information that would be required if we were not an emerging growth company. Accordingly, the information contained herein may be different than the information you receive from other public companies in which you hold stock.

In addition, the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. This provision allows an emerging growth company to delay the adoption of accounting standards that have different effective dates for public and private companies until those standards would otherwise apply to private companies. We have elected to avail ourselves of this exemption and, therefore, we will not be subject to the same requirements to adopt new or revised accounting standards as other public companies that are not "emerging growth companies."

We are also a "smaller reporting company" as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may continue to be a smaller reporting company after this offering if either (i) the market value of our shares

held by non-affiliates is less than $250 million as measured on the last business day of our second fiscal quarter or (ii) our annual revenue was less than $100 million during the most recently completed fiscal year and the market value of our shares held by non-affiliates is less than $700 million as measured on the last business day of our second fiscal quarter. Specifically, as a smaller reporting company, we may choose to present only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K and have reduced disclosure obligations regarding executive compensation. Further, if we are a smaller reporting company with less than $100 million in annual revenue, we would not be required to obtain an attestation report on internal control over financial reporting issued by our independent registered public accounting firm.

The Offering

Common stock offered by us	shares
Option to purchase additional shares	We have granted the underwriters an option for a period of 30 days to purchase up to an additional shares of our common stock at the initial public offering price, less underwriting discounts and commissions.
Common stock to be outstanding immediately after this offering	shares (or shares if the underwriters exercise their option to purchase additional shares in full).
Use of proceeds	We estimate that we will receive net proceeds from this offering of approximately $ million (or approximately $ million if the underwriters' option to purchase additional shares of our common stock from us is exercised in full), based on the assumed initial public offering price of $ per share, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We currently intend to use the net proceeds from this offering, together with our existing cash, to: ▪ fund the clinical development of epetraborole for treatment-refractory NTM lung disease caused by MAC through the receipt of topline data from our ongoing Phase 1 renal impairment study and planned Phase 2/3 pivotal clinical trial and to fund manufacturing and other pre-registration activities; ▪ fund the expansion of epetraborole in treatment-refractory MAC lung disease in other key markets, with an initial focus on Japan, as well as in other NTM indications such as treatment-naïve MAC lung disease and *M. abscessus* lung infections; and ▪ fund the further development of our AN2 drug discovery platform and for general corporate purposes, including working capital and operating expenses. See the section titled "Use of Proceeds" for additional information.

Risk factors	See the section titled “Risk Factors” and other information included in this prospectus for a discussion of factors you should consider carefully before deciding to invest in our common stock.
Nasdaq Global Market trading symbol	“ANTX”

The number of shares of our common stock to be issued and outstanding, pro forma and pro forma as adjusted is based on 6,009,446 shares of common stock outstanding as of December 31, 2021, after giving effect to the automatic conversion of all 4,849,064 shares of our outstanding redeemable convertible preferred stock as of December 31, 2021 into an equivalent number of shares of our common stock upon the closing of this offering, and excludes:

- 675,386 shares of our common stock issuable upon the exercise of outstanding stock options as of December 31, 2021, with a weighted-average exercise price of $14.00 per share;
- 16,150 shares of our common stock issuable upon the exercise of outstanding stock options granted subsequent to December 31, 2021 through February 15, 2022, with a weighted-average exercise price of $21.90 per share;
- shares of our common stock reserved for future issuance under our 2022 Equity Incentive Plan, or 2022 Plan, which will become effective once the registration statement of which this prospectus forms a part is declared effective, as well as any future automatic annual increases in the number of shares of common stock reserved for issuance under our 2022 Plan; and
- shares of our common stock reserved for issuance under our 2022 Employee Stock Purchase Plan, or ESPP, which will become effective once the registration statement of which this prospectus forms a part is declared effective, as well as any future automatic annual increases in the number of shares of common stock reserved for future issuance under our ESPP.

Unless otherwise indicated, this prospectus assumes or gives effect to:

- the automatic conversion of all 4,849,064 shares of our outstanding redeemable convertible preferred stock as of December 31, 2021 into an equivalent number of shares of our common stock upon the closing of this offering;
- no exercise of the outstanding options described above;
- no exercise by the underwriters of their option to purchase additional shares of common stock from us in this offering;
- an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus; and
- the filing and effectiveness of our amended and restated certificate of incorporation to be in effect immediately after the closing of this offering and the adoption of our amended and restated bylaws upon the closing of this offering.

Summary Financial Data

The following tables set forth our summary financial data for the periods and as of the dates indicated. The following summary statements of operations for the years ended December 31, 2020 and 2021 have been derived from our audited financial statements included elsewhere in this prospectus. The following summary balance sheet data as of December 31, 2021 have been derived from our audited financial statements included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results that may be expected for any period in the future. You should read the following summary financial data together with the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and the related notes included elsewhere in this prospectus. The summary financial data included in this section are not intended to replace the financial statements and are qualified in their entirety by our financial statements and the related notes included elsewhere in this prospectus.

	Year Ended December 31,	
	2020	2021
	(in thousands, except share and per share data)	
Statements of Operations		
Operating expenses:		
Research and development	$ 5,366	$ 16,156
Research and development—related party	653	750
General and administrative	1,265	4,668
Total operating expenses	7,284	21,574
Loss from operations	(7,284)	(21,574)
Interest income	3	69
Other expense	(6,322)	(38)
Net loss	(13,603)	(21,543)
Accretion to redemption value and cumulative dividends on preferred stock	(981)	(6,515)
Net loss attributed to common stockholders	$ (14,584)	$ (28,058)
Net loss per share attributable to common shareholders, basic and diluted(1)	$ (13.36)	$ (25.02)
Weighted-average number of shares used in computing net loss per share, basic and diluted(1)	1,091,678	1,121,238
Pro forma net loss per share, basic and diluted(2)		$ (3.61)
Pro forma weighted-average number of shares used in computing pro forma net loss per share, basic and diluted(2)		5,970,302

(1) See Note 12 to our financial statements included elsewhere in this prospectus for a description of how we compute basic and diluted net loss per common share and the number of shares used in computing these amounts.

(2) The unaudited pro forma basic and diluted net loss per share for the year ended December 31, 2021 has been prepared to give effect to an adjustment to the denominator in the pro forma basic and diluted net loss per share calculation for the automatic conversion of all 4,849,064 outstanding shares of our redeemable convertible preferred stock as of December 31, 2021 into an equivalent

number of shares of common stock, assuming they were outstanding as of the beginning of fiscal year 2021. Additionally, the numerator was adjusted to remove cumulative dividends on preferred stock of $6.5 million.

	As of December 31, 2021		
	Actual	Pro Forma(1)	Pro Forma As Adjusted(2)(3)
		(in thousands)	
Balance Sheet Data			
Cash, cash equivalents and investments	$ 62,041	$ 62,041	$
Working capital(4)	56,711	56,711	
Total assets	65,316	65,316	
Total liabilities	3,408	3,408	
Redeemable convertible preferred stock	109,319	–	
Accumulated deficit	(47,384)	(47,384)	
Total stockholders' (deficit) equity	(47,411)	61,908	

(1) The pro forma column in the balance sheet data gives effect to (i) the automatic conversion of all 4,849,064 shares of our outstanding redeemable convertible preferred stock as of December 31, 2021 into an equivalent number shares of common stock, which will occur upon the closing of this offering, and the related reclassification of the carrying value of our redeemable convertible preferred stock to permanent equity upon the closing of this offering and (ii) the filing and effectiveness of our amended and restated certificate of incorporation to be in effect immediately after the closing of this offering.

(2) The pro forma as adjusted column in the balance sheet data gives effect to (i) the items described in footnote (1) above and (ii) the issuance and sale of shares of our common stock in this offering at the assumed initial public offering price of $ per share after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

(3) The pro forma as adjusted information is illustrative only and will depend on the actual initial public offering price and other terms of this offering determined at pricing. Each $1.00 increase or decrease in the assumed initial public offering price of $ per share would increase or decrease, as applicable, each of our cash, working capital, total assets and total stockholders' deficit by $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase or decrease of 1.0 million shares in the number of shares of common stock offered by us would increase or decrease, as applicable, each of our cash, working capital, total assets, and total stockholders' deficit by $ million and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

(4) Working capital is defined as current assets less current liabilities. See our financial statements and the related notes included elsewhere in this prospectus for further details regarding our current assets and current liabilities.

RISK FACTORS

Investing in our common stock involves a high degree of risk. Before you invest in our common stock, you should carefully consider the risks described below together with all of the other information contained in this prospectus, including our audited financial statements and unaudited condensed financial statements and the related notes and the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this prospectus. The occurrence of any of the events or developments described below could harm our business, financial condition, results of operations, and growth prospects. Unless otherwise indicated, references in these risk factors to our business being harmed will include harm to our business, reputation, financial condition, results of operations, and prospects. In such an event, the market price of our common stock could decline, and you may lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations.

Risks Related to Our Financial Position and Capital Needs

We are a clinical-stage biopharmaceutical company with a limited operating history and no products approved for commercial sale. We have incurred significant losses since our inception. We expect to incur losses over the next several years and may never achieve or maintain profitability.

Biopharmaceutical product development is a highly speculative undertaking and involves a substantial degree of risk. We are a clinical-stage biopharmaceutical company with a limited operating history upon which you can evaluate our business and prospects. We currently have no products approved for commercial sale, have not generated any revenue from the sale of products and have incurred losses in each year since our inception in 2017. In addition, we have limited experience as a company 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. Our initial product candidate, epetraborole, is currently in clinical development. Our net loss was $13.6 million and $21.5 million for the years ended December 31, 2020 and 2021, respectively. As of December 31, 2021, we had an accumulated deficit of $47.4 million. We have funded our operations to date primarily with proceeds from the sale of our redeemable convertible preferred stock. We have devoted substantially all of our financial resources and efforts to research and development, including preclinical studies, manufacturing, clinical trials, and general and administrative costs associated with our operations. We are still in the early stages of development of epetraborole, and we have not completed development of any product candidates. We expect to continue to incur significant expenses and operating losses over the next several years. Our net losses may fluctuate significantly from quarter to quarter and year to year.

We anticipate that our expenses will increase substantially as we:

- continue our ongoing and planned preclinical, nonclinical, and clinical development of epetraborole;
- initiate preclinical and nonclinical studies and clinical trials for product candidates that we may pursue in the future;
- seek to discover and develop future product candidates;
- seek regulatory approvals for epetraborole and any of our future product candidates that successfully complete clinical trials;
- ultimately establish sales, marketing, and distribution infrastructure and scale up external manufacturing capabilities as we move into later-stage clinical trials and look to commercialize any product candidate for which we may obtain regulatory approval and intend to commercialize on our own;

- maintain, expand, and protect our intellectual property portfolio;
- hire additional clinical, scientific, chemistry, manufacturing, and controls personnel;
- add operational, financial, and management, and compliance information systems and personnel, including personnel to support our product development and planned future commercialization efforts; and
- incur additional legal, accounting, information systems, and other expenses associated with operating as a public company.

To become and remain profitable, we must succeed in developing and eventually commercializing drugs that generate significant revenue. This will require us to be successful in a range of challenging activities, including completing preclinical and nonclinical studies and clinical trials of epetraborole and any future product candidates, obtaining regulatory approval, manufacturing, marketing, and selling any products for which we may obtain regulatory approval, as well as discovering and developing additional product candidates. We are only in the preliminary stages of most of these activities. We may never succeed in these activities and, even if we do, may never generate revenues that are significant enough to achieve profitability.

Because of the numerous risks and uncertainties associated with drug development, we are unable to accurately predict the timing or amount of expenses or when, or if, we will be able to achieve profitability. If we are required by regulatory authorities to perform studies in addition to those currently expected, or if there are any delays in the initiation and completion of our clinical trials or the development of epetraborole and any of our future product candidates, our expenses could increase.

Even if we achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable would depress the value of our common stock and could impair our ability to raise capital, expand our business, maintain our research and development efforts, or continue our operations. A decline in the value of our common stock could also cause you to lose all or part of your investment.

Our limited operating history may make it difficult for you to evaluate the success of our business to date and to assess our future viability.

We commenced active operations in November 2019, and our operations to date have been largely focused on raising capital, identifying and developing epetraborole, broadening our expertise in the development of epetraborole, undertaking preclinical and nonclinical studies, manufacturing clinical trial material, preparing for and initiating clinical trials, and general and administrative operations. As a company, we have not yet demonstrated an ability to successfully complete pivotal clinical trials, obtain regulatory approvals, manufacture a commercial product or arrange for a third party to do so on our behalf, or conduct sales and marketing activities necessary for successful commercialization. Consequently, any predictions you make about our future success or viability may not be as accurate as they could be if we had a longer operating history.

We may encounter unforeseen expenses, difficulties, complications, delays, and other known or unknown factors in achieving our business objectives. We will need to transition successfully at some point from a company with a research and development focus to a company capable of supporting commercial activities. We may not be successful in such a transition.

We expect our financial condition and operating results to continue to fluctuate significantly from quarter to quarter and year to year due to a variety of factors, many of which are beyond our control. Accordingly, you should not rely upon the results of any quarterly or annual periods as indications of future operating performance.

We require substantial additional funding to meet our financial needs and to pursue our business objectives. If we are unable to raise capital when needed, we could be forced to delay, reduce, or altogether cease our current and future product development programs or future commercialization efforts.

We believe that the net proceeds from this offering, together with our existing cash, will enable us to fund our operating expenses and capital expenditure requirements for at least the next months. However, we will need to obtain substantial additional funding in connection with our continuing operations and planned activities. Our future capital requirements will depend on many factors, including:

- the timing, progress, and results of our ongoing and future clinical trials of epetraborole;
- the costs, timing, and outcome of regulatory review of epetraborole and any of our future product candidates;
- the scope, progress, results, and costs of identifying, obtaining, and conducting preclinical development, laboratory testing, and clinical trials of future product candidates that we may pursue;
- the cost and timetable of manufacturing processes for development, clinical trials, and potential commercial use;
- the number and development requirements of future product candidates that we may pursue;
- the amount of funding that we receive under our non-dilutive funding opportunities, including government awards and government awards that we may apply for;
- the costs and timing of future commercialization activities, including product manufacturing, marketing, sales, and distribution, for epetraborole or any future product candidates that receive marketing approval;
- the pricing and revenue, if any, received from commercial sales of epetraborole or any future product candidates that receive marketing approval;
- the costs and timing of preparing, filing, and prosecuting patent applications, maintaining, and enforcing our intellectual property rights, and defending any intellectual property-related claims;
- the costs of operating as a public company; and
- the extent to which we acquire or in-license other product candidates and technologies.

Identifying potential product candidates and conducting preclinical testing and clinical trials is a time-consuming, expensive, and uncertain process that takes years to complete, and we may never generate the necessary data or results required to obtain regulatory approval and achieve product sales. In addition, epetraborole and any of our future product candidates, if approved, may not achieve commercial success. Our commercial revenues, if any, will be derived from sales of drugs that we do not expect to be commercially available for several years, if at all. Accordingly, we will need to continue to rely on additional financing to achieve our business objectives. Adequate additional financing may not be available to us on acceptable terms, or at all. In addition, we may seek additional capital due to favorable market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. If we are unable to raise capital when needed or on attractive terms, we could be forced to delay, reduce or altogether cease our research and development programs or future commercialization efforts.

Raising additional capital may cause dilution to our stockholders, including purchasers of shares of our common stock in this offering, restrict our operations, or require us to relinquish rights to our technologies or to epetraborole or any of our future product candidates.

Until such time, if ever, as we can generate substantial product revenue, we expect to finance our cash needs through a combination of equity offerings and debt financings. To the extent that we raise

additional capital through the sale of equity or convertible debt securities, your ownership interest will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a stockholder. Debt financing and preferred equity financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures, or declaring dividends.

If we raise additional funds through collaborations, strategic alliances, or marketing, distribution, or licensing arrangements with third parties, we may be required to relinquish valuable rights to our technologies, future revenue streams, research programs, or epetraborole or any future product candidates, or to grant licenses on terms that may not be favorable to us. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce, or terminate our development of epetraborole or any future product candidate or future commercialization efforts or grant rights to a third party to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

We have a contractual commitment to develop epetraborole for global health initiatives, which may affect our ability to develop and commercialize epetraborole in certain countries and may impact our intellectual property rights. Our strategy for our global health initiatives depends on receiving non-dilutive funding, and we as a company have limited experience with this strategy.

Under our Global Health Agreement with Adjuvant, we have a contractual commitment to use reasonably diligent endeavors to develop epetraborole and any other mutually agreed-upon products for melioidosis, tuberculosis, and other indications for at-risk developing countries at accessible pricing and at reasonable volume, including selling epetraborole and any other mutually agreed-upon products in certain target countries at or slightly above the cost of sales, so long as we do not sell products at a loss. Under the Global Health Agreement, we made certain commitments to develop epetraborole and any other mutually agreed-upon products and to pursue regulatory strategies and product registrations. If we do not maintain compliance with these and other program-related global access commitments under the Global Health Agreement, Adjuvant may be entitled to repayment for any portion of its investment that is not used for the purposes outlined in the Global Health Agreement. Our obligations under the Global Health Agreement may affect our ability to commercialize epetraborole in certain countries.

Our strategy for developing epetraborole for global health initiatives depends on receiving non-dilutive funding from sources such as public and private agencies and foundations. We as a company have limited experience with non-dilutive funding, and we may not be able to obtain non-dilutive funding to support our needs. For example, we cannot be certain that there will be grants or funding sources available to support our development efforts, that our grant applications and funding proposals will be successful, or that we will be able to continue satisfying the award criteria of any grants or funding proposals awarded to us. If we fail to receive non-dilutive funding, progress in our global health initiatives may be impaired or delayed.

Risks Related to the Development of Our Current and Future Product Candidates

We depend to a large degree on the success of epetraborole, which is in clinical development, but for which we have not yet initiated a planned Phase 2/3 pivotal clinical trial. If we do not obtain regulatory approval for and successfully commercialize epetraborole or any of our future product candidates, or if we experience significant delays in doing so, we may never become profitable.

We currently have no products approved for sale and have invested a significant portion of our efforts and financial resources on the development of our initial product candidate, epetraborole, as a treatment for serious infections caused by NTM lung disease resulting from MAC bacteria. We expect that a

substantial portion of our efforts and expenses over the next few years will be devoted to the development of epetraborole. As a result, our business currently depends heavily on the successful development, regulatory approval, and, if approved, commercialization of epetraborole or any of our future product candidates. We cannot be certain that any product candidates will receive regulatory approval or will be successfully commercialized even if it receives regulatory approval. The research, development, manufacturing, safety, efficacy, labeling, approval, sale, marketing, and distribution of epetraborole or any of our future product candidates are, and will remain, subject to comprehensive regulation by the FDA, the EMA, the PMDA, the TGA, and other comparable foreign regulatory authorities. To date, we have only completed one clinical trial, a Phase 1b dose-ranging study of epetraborole in Australia, and have commenced enrollment in a Phase 1 renal impairment study of epetraborole, in the United States. Before obtaining regulatory approvals for the commercial sale of epetraborole and any future product candidates, we must demonstrate through preclinical and nonclinical studies and clinical trials that the product candidate is safe and effective for use in the target indication. Drug development is a long, expensive, and uncertain process, and delay or failure can occur at any stage during our nonclinical studies, clinical trials, or drug product manufacturing process. These delays could be caused by a variety of factors, including but not limited to, toxicity, safety, tolerability, efficacy, drug product availability, stability, and impurity issues related to drug product manufacturing. Failure to obtain regulatory approval for epetraborole and our future product candidates in the United States or other territories will prevent us from commercializing and marketing such product candidates. The success of epetraborole and our future product candidates will depend on several additional factors, including:

- successful completion of preclinical and nonclinical studies and requisite clinical trials;
- performing preclinical studies and clinical trials in compliance with the FDA, EMA, PMDA, or any comparable regulatory authority requirements;
- receipt of marketing approvals from applicable regulatory authorities;
- the ability to manufacture sufficient quantity of product for development, clinical trials, or potential commercialization;
- obtaining marketing approvals with labeling for sufficiently broad patient populations and indications, without unduly restrictive distribution limitations or safety warnings, such as black box warnings or a Risk Evaluation and Mitigation Strategies, or REMS, program;
- obtaining and maintaining patent, trademark, and trade secret protection, and regulatory exclusivity for epetraborole and any future product candidates;
- making and retaining sufficient and reliable arrangements with third parties for manufacturing capabilities;
- launching commercial sales of products, if and when approved;
- acceptance of our therapies, if and when approved, by physicians, patients, and third-party payors;
- competing effectively with other therapies;
- obtaining and maintaining healthcare coverage and adequate reimbursement from third-party payors;
- maintaining, protecting, and expanding our portfolio of intellectual property rights, including patents, trademarks, trade secrets, and know-how;
- avoid and defend against third-party infringement, misappropriation or other violation of intellectual property claims;
- maintaining a continued acceptable safety and tolerability profile of our drugs following approval; and
- approval of our future INDs.

If we do not achieve these factors in a timely manner or at all, we could experience significant delays or an inability to successfully commercialize epetraborole or any of our future product candidates, which would harm our business.

We may not be successful in our efforts to build a pipeline of product candidates.

A key element of our strategy is to develop our AN2 drug discovery platform, build a pipeline of product candidates and progress these product candidates through clinical development for the treatment of serious infections (including different forms of NTM lung disease). We may not be able to develop product candidates that are safe and effective. Even if we are successful in continuing to build our pipeline, the potential product candidates that we identify may not be suitable for clinical development, as a result of significant safety, tolerability, and other negative characteristics or limitations that may prevent successful marketing approval or limit market acceptance or reimbursements from third-party payors. If we do not successfully develop and commercialize epetraborole and/or any future product candidates, we will not be able to obtain product revenue in future periods, which could significantly harm our financial position and adversely affect the trading price of our common stock.

Success in preclinical or nonclinical studies or initial clinical trials may not be indicative of results in future clinical trials. To support our clinical development strategy for epetraborole, we are relying, in part, on clinical data from prior clinical trials conducted by Anacor and GlaxoSmithKline plc, or GSK, which were not conducted in patients with NTM. Differences with these prior clinical trials evaluating epetraborole will limit our use of prior clinical data for epetraborole and our ability to support our proposed clinical trial plan for epetraborole with the FDA.

Success in preclinical or nonclinical studies or initial clinical trials does not ensure that later clinical trials will generate the same results or otherwise provide adequate data to demonstrate the safety, tolerability, and efficacy of a product candidate. These clinical trials were not conducted in patients with NTM lung disease nor were they conducted over durations greater than 14 days, shorter than the typical treatment of patients with NTM lung disease. Epetraborole and our future product candidates may fail to show the desired safety, tolerability, and efficacy in clinical development despite promising results in preclinical studies or having successfully advanced through initial clinical trials in healthy volunteers. For instance, with respect to epetraborole, we cannot guarantee that the dose regimen used in our planned Phase 2/3 pivotal clinical trial will be safe, tolerable, or effective. We cannot guarantee that the dose selection approach—including input from preclinical infection models, preclinical mitigation of resistance development through use of combination antibiotic regimens, pharmacokinetic and pharmacodynamic modeling, data from chronic toxicology studies, plus pharmacokinetic and safety data from our Phase 1b dose-ranging study in healthy volunteers—will be validated in our planned Phase 2/3 pivotal clinical trial in patients with treatment-refractory MAC lung disease. The dosage regimen to be used in the planned single Phase 2/3 pivotal clinical trial will be the first evaluation of epetraborole in patients with MAC lung disease and specifically in treatment-refractory patients.

In addition, safety, tolerability, and pharmacokinetic observations of epetraborole, used as monotherapy, in previous clinical trials conducted by Anacor and GSK, including penetration into alveolar (lung) macrophages and the long-term effects on red blood cell-related hematological parameters, such as hemoglobin and reticulocytes, may not be predictive of safety or efficacy results in our Phase 1b study or our planned Phase 2/3 pivotal clinical trial. There are significant differences in the epetraborole Phase 1 clinical trial conducted by Anacor and the five Phase 1 clinical trials and two Phase 2 clinical trials conducted by GSK compared to the clinical trial design of our planned Phase 2/3 pivotal clinical trial. Other differences with these prior clinical trials, including differences in patient population, targeted indication, drug product formulation, and trial design, will limit our use of prior clinical data for epetraborole and our ability to support our proposed clinical trial plan for epetraborole with the FDA.

We plan to conduct a single Phase 2/3 pivotal clinical trial as the basis for submission to the FDA for product approval of epetraborole, and there can be no assurance that the single study will be sufficient for product approval.

The FDA generally requires two well-controlled Phase 3 clinical trials for product approval. However, in some cases the FDA has not required two Phase 3 clinical trials for product approval. For example, amikacin liposome inhalation suspension, marketed by Insmed Incorporated as Arikayce, was approved to treat treatment-refractory NTM lung disease caused by MAC on the basis of a single Phase 3 clinical trial. We plan to conduct a single Phase 2/3 pivotal clinical trial to support approval of epetraborole in MAC, but there can be no assurance that the FDA will not require additional clinical trials for approval of epetraborole.

We expect to receive additional feedback from the FDA on our proposed design for our planned Phase 2/3 pivotal clinical trial, including feedback based on final tolerability and pharmacokinetics data from our completed Phase 1b dose-ranging study; tolerability and pharmacokinetics data from our Phase 1 renal impairment study; and efficacy, tolerability and pharmacokinetics data from the Phase 2 portion of our planned Phase 2/3 pivotal clinical trial. The data we have collected and expect to collect in our recently completed Phase 1b dose-ranging study, ongoing Phase 1 renal impairment study, and from the Phase 2 portion of our planned Phase 2/3 pivotal clinical trial may lead to adjustments in trial design, rendering it not feasible to conduct or not acceptable to the FDA or to us, including adjustments to clinical trial endpoints and sample size for the Phase 3 portion of our planned Phase 2/3 pivotal clinical trial. Our current proposed trial design for our planned Phase 2/3 pivotal clinical trial includes a Phase 2 portion that we expect will inform endpoint selection for the Phase 3 portion of the trial and gather data on the treatment effects of epetraborole-containing regimens, if any, which may require increases or other adjustments in the sample size for the Phase 3 portion and which could result in a delay in topline results for the Phase 3 portion of the trial.

The FDA can recommend study design element changes at any time, including, for example, of endpoints, eligibility criteria, or statistical analyses. For example, Arikayce, the only drug currently approved by the FDA for treatment-refractory NTM lung disease caused by MAC, was approved based on the primary endpoint of microbiological culture conversion, whereas we will be required to demonstrate efficacy based on clinical endpoints that have not been finalized. As a company, we have limited experience designing NTM clinical trials and have no experience conducting clinical trials in the United States and may be unable to design and execute a clinical trial to support regulatory approval. In addition, the design and results of a Phase 2/3 pivotal clinical trial may not be sufficient to determine whether the trial results will support approval, since factors such as an insufficient dosage regimen or flaws in the design of a clinical trial may not become apparent until the clinical trial is in progress.

There is a high failure rate for drug and biologic products proceeding through clinical trials. Many companies in the pharmaceutical and biotechnology industries have suffered significant setbacks in later-stage clinical trials even after achieving promising results in preclinical testing and earlier-stage clinical trials. For example, a Phase 2 clinical trial conducted by GSK to evaluate epetraborole in patients with complicated urinary tract infections was terminated early due to microbiological findings of resistance to epetraborole, which caused GSK to discontinue its epetraborole development program. In addition, data obtained from preclinical and clinical activities are subject to varying interpretations, which may delay, limit, or prevent regulatory approval. Furthermore, the dosing duration for administering epetraborole in humans has been limited to a maximum of 28 days in previous clinical trials, and epetraborole has not yet been studied in patients with NTM lung disease for any dosing duration. We anticipate that the dosing duration for epetraborole in our planned Phase 2/3 pivotal clinical trial will extend to 16 months or longer. The longer dosing duration expected in our Phase 2/3

pivotal clinical trial, as well as the use of epetraborole in patients with NTM lung disease, may increase the risk of hematological abnormalities or the potential for the emergence of new, unknown treatment-emergent adverse events. In addition, we may experience regulatory delays or rejections as a result of many factors, including changes in regulatory policy during the period of our product candidate development. Any such delays could negatively impact our business, financial condition, results of operations, and prospects.

If clinical trials of epetraborole or any future product candidate that we may advance to clinical trials fail to demonstrate safety, tolerability, and/or efficacy to the satisfaction of the FDA, the EMA, the PMDA, the TGA, or other comparable regulatory authorities, or do not otherwise produce favorable results, we may incur additional costs or experience delays in completing, or ultimately be unable to complete, the development and commercialization of epetraborole or any future product candidate.

We may not commercialize, market, promote, or sell any product candidate without obtaining marketing approval from the FDA, the EMA, the PMDA, the TGA, or other comparable regulatory authorities, and we may never receive such approvals. It is impossible to predict when or if epetraborole or any future product candidates will prove effective or safe in humans and will receive regulatory approval. Before obtaining marketing approval from regulatory authorities for the sale of epetraborole or any future product candidates, we must complete preclinical and nonclinical development and conduct extensive clinical trials to demonstrate the safety, tolerability, and efficacy of such product candidates in humans. Clinical testing is expensive, difficult to design and implement, can take many years to complete, and is uncertain as to outcome. A failure of one or more clinical trials can occur at any stage of testing. Moreover, preclinical, nonclinical, and clinical data are often susceptible to varying interpretations and analyses, and many companies that have believed their product candidates performed satisfactorily in preclinical and nonclinical studies and clinical trials have nonetheless failed to obtain marketing approval of their products.

We may experience numerous unforeseen events prior to, during, or as a result of, clinical trials that could delay or prevent our ability to receive marketing approval or commercialize epetraborole or any of our future product candidates, including, but not limited to:

- the FDA, the EMA, the PMDA, the TGA, or other comparable regulatory authorities may disagree as to the design or implementation of our clinical trials, which may result in changes to our planned clinical trial design and potential target clinical outcomes, which could otherwise delay or otherwise negatively impact our ability to complete our clinical plans effectively;
- regulators or institutional review boards may not authorize us or our investigators to commence a clinical trial or conduct a clinical trial at a prospective trial site;
- we may not reach agreement on acceptable terms with prospective contract research organizations, or 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;
- clinical trials for epetraborole or any of our future product candidates may produce negative or inconclusive results;
- we may be unable to successfully defeat bacterial resistance mechanisms in our planned epetraborole Phase 2/3 pivotal clinical trial, which may require early termination of the trial or abandonment of our epetraborole program;
- we may decide, or regulators may require us, to conduct additional clinical trials or abandon product development programs;
- the number of patients required for clinical trials of epetraborole and any of our future product candidates may be larger than we anticipate, enrollment in these clinical trials may be slower than we anticipate, participants may drop out of these clinical trials at a higher rate than we anticipate, or we may fail to recruit suitable patients to participate in a trial;

- our third-party contractors may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- regulators may issue a clinical hold, or regulators or institutional review boards may require that we or our investigators suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements or a finding that the participants are being exposed to unacceptable health risks;
- the cost of clinical trials of epetraborole or any of our future product candidates may be greater than we anticipate;
- the FDA, the EMA, the PMDA, the TGA, or other comparable regulatory authorities may fail to approve the manufacturing processes or facilities of third-party manufacturers with whom we enter into agreements for clinical and commercial supplies;
- the supply or quality of epetraborole or any of our future product candidates or other materials necessary to conduct clinical trials of such product candidates may be insufficient or inadequate;
- epetraborole or our future product candidates may have undesirable side effects or other unexpected characteristics, causing us or our investigators, regulators, or institutional review boards to suspend or terminate the clinical trials; and
- the approval policies or regulations of the FDA, the EMA, the PMDA, the TGA, or other comparable regulatory authorities may significantly change in a manner rendering our clinical data insufficient for approval.

If we are required to conduct additional clinical trials (for instance, if regulatory authorities required us to conduct a separate Phase 2 clinical trial prior to the initiation of a Phase 3 clinical trial, rather than the planned registrational Phase 2/3 pivotal clinical trial as designed) or other testing of epetraborole or any of our future product candidates beyond the studies that we currently contemplate, if we are unable to successfully complete clinical trials or other testing of epetraborole or any of our future product candidates, or if the results of these trials or tests are not positive or are only modestly positive or if there are safety concerns observed in these trials or tests, we may:

- be delayed in obtaining marketing approval for our product candidates;
- not obtain marketing approval at all;
- obtain approval for indications or patient populations that are not as broad as intended or desired;
- obtain approval with labeling that includes significant use or distribution restrictions or safety warnings, such as black box warnings or a REMS program;
- be subject to additional post-marketing testing requirements; or
- be required to remove the product from the market after obtaining marketing approval.

Our product development costs may also increase if we experience delays in testing or marketing approvals and we may be required to obtain additional funds to complete clinical trials. We do not know whether any of our preclinical and nonclinical studies or clinical trials will begin as planned, will need to be restructured, or will be completed on schedule or at all. Significant preclinical and nonclinical study or clinical trial delays also could shorten any periods during which we may have the exclusive right to commercialize epetraborole or our future product candidates or allow our competitors to bring products to market before we do and impair our ability to successfully commercialize epetraborole or our future product candidates. In addition, many of the factors that cause, or lead to, delays of clinical trials may ultimately lead to the denial of regulatory approval of epetraborole or any of our future product candidates.

We cannot predict whether or when bacteria may develop resistance to epetraborole or any of our future product candidates, which could affect the revenue potential of our product candidates.

We are developing epetraborole to treat bacterial infections. The bacteria responsible for these infections evolve quickly and may readily transfer their resistance mechanisms within and between species. Prescription or use of epetraborole or our product candidates, if approved, may depend on the type and rate of resistance of the targeted bacteria. Although we do analyze the potential of epetraborole and any future product candidates to develop resistance and only select those that we believe have low resistance potential, we cannot predict whether or when bacterial resistance to epetraborole or future product candidates may develop should they obtain market approval and be broadly prescribed. For example, clinical resistance to epetraborole as a monotherapy was observed by GSK in its Phase 2 trial for the treatment of complicated urinary tract infection, and we cannot guarantee that clinical resistance will not be observed in any of our future clinical trials with epetraborole. The growth of drug-resistant infections in community settings or in countries with poor public health infrastructures, or the potential use of any product candidates outside of controlled hospital settings, could contribute to the rise of resistance.

Epetraborole or any of our future product candidates may cause undesirable side effects or have other properties that could delay or prevent their regulatory approval, limit the commercial potential, or result in significant negative consequences following any potential marketing approval.

Epetraborole is not yet approved by the FDA, the EMA, the PMDA, the TGA, or any other regulatory agency and has not yet been tested extensively in patients. In previous development programs evaluating epetraborole, which largely used higher doses administered intravenously and orally, subjects and patients receiving epetraborole experienced drug-related side effects. For example, the most common drug-related adverse events observed in oral administration of epetraborole in humans were gastrointestinal in nature. Further, in a recently completed 26-week study conducted with epetraborole in rats and in a 39-week study conducted with epetraborole in non-human primates, safety observations of reduced hematocrit, hemoglobin, and other associated red blood cell-related parameters (red cell distribution width, mean corpuscular volume, mean corpuscular hemoglobin concentration, mean corpuscular hemoglobin) levels were observed, which remained below normal during the recovery period of the study while other blood cell parameters returned to normal levels. In a recently completed 26-week study of epetraborole in rats, there were no external fetal malformations or variations, no soft-tissue (visceral or fixed-head) fetal malformations or variations, and no skeletal fetal malformations attributed to administration of epetraborole at any dose level evaluated in the study. There were multiple maternal and fetal adverse events, including reduced mean maternal body weight during gestation, reduced mean fetal weight, increased mean total resorptions per litter and higher mean post-implantation loss at the highest dose level tested, which was 1,000 mg/kg, compared to a control group. Decreased fetal body weights and increased incomplete fetal ossification was observed at all epetraborole dose levels. The significance of these observations in humans is unknown. Based on the observed maternal and fetal adverse events in rats, epetraborole could be harmful to human fetuses when taken during pregnancy.

Amongst the patients enrolled in the first six cohorts of our Phase 1b dose-ranging study of epetraborole in healthy volunteers, the most common treatment emergent adverse events, or TEAEs, were gastrointestinal events, such as nausea, abdominal discomfort and diarrhea, and headache and vascular site access pain. Most TEAEs observed in the Phase 1b dose-ranging study were mild or moderate in severity and no severe or serious TEAEs were observed in the study. Two subjects in the study experienced TEAEs that caused premature discontinuation from epetraborole: one epetraborole subject at the 250 mg q24h dose level had mild aminotransferase increases during a concomitant upper respiratory tract infection and one epetraborole subject at the 1,000 mg q48h dose level had mild nausea. These

TEAEs were both considered possibly or probably related to epetraborole. Consistent with observations in chronic toxicology studies in non-human primates and rats, dose-dependent effects on red blood cell-related hematological parameters, such as hemoglobin and reticulocytes, were observed in the Phase 1b dose-ranging study. The observed effects on hematological parameters were mild and most RBC values remained within normal limits with a slight downward trend, the effects were not deemed clinically significant by the investigator, and the hematological parameters recovered following completion of dosing of epetraborole. No adverse hematological events were observed and no patients discontinued therapy as a result of the hematological effects that were observed. The final cohort of the Phase 1b dose-ranging study recently completed enrollment and therefore safety data for this cohort are not yet available.

Additional adverse events may emerge in any ongoing or subsequent clinical trials and there may be unforeseen serious adverse events or side effects that differ from those seen in studies completed to date. The dosing duration for administering epetraborole in humans has been limited to a maximum of 28 days in previous clinical trials, and epetraborole has not yet been studied in patients with NTM lung disease for any dosing duration. We anticipate that the dosing duration for epetraborole in our planned Phase 2/3 pivotal clinical trial will extend to 16 months or longer. The longer dosing duration expected in our Phase 2/3 pivotal clinical trial, as well as the use of epetraborole in patients with NTM lung disease, may increase the potential for the emergence of new, unknown treatment-emergent adverse events. Often, it is not possible to determine whether or not a product candidate being studied caused side effects. Our current and planned clinical trials are designed to evaluate both the efficacy and safety of epetraborole. Consistent with all clinical trials, we will monitor the safety of our patients throughout our planned Phase 2/3 pivotal clinical trial. In addition, we plan to include an independent Safety Data Monitoring Committee (SDMC) to review safety as we increase dosing durations to 16 months and transition from clinical investigations in healthy volunteers to patients. Regulatory authorities may draw different conclusions or require additional testing to confirm these determinations, if they occur. In addition, it is possible that as we test epetraborole and our future product candidates in larger, longer, and more extensive clinical programs, or as use of such product candidates becomes more widespread, if they receive regulatory approval, subjects will report illnesses, injuries, discomforts, and other adverse events that were not observed in earlier trials, as well as conditions that did not occur or went undetected in previous trials. Many times, side effects are only detectable after investigational drugs are tested in large-scale, Phase 3 clinical trials or, in some cases, after they are made available to patients on a commercial scale after approval. If additional clinical experience indicates that epetraborole or any future product candidate has unexpected side effects or causes serious or life-threatening side effects, the development of the product candidate may fail or be delayed, or, if the product candidate has received regulatory approval, such approval may be revoked, which would harm our business.

Epetraborole is being developed for use in the treatment of MAC lung disease as an add-on therapy to an optimized background regimen, which would include current standard of care drugs as outlined in the NTM treatment guidelines. Even if our product candidates demonstrate clinical efficacy, any unacceptable adverse side effects or toxicities, when administered in the presence of other pharmaceutical products, which can arise at any stage of development, may outweigh potential benefits. We may observe adverse or significant adverse events or drug-drug interactions in future preclinical studies or clinical trial candidates, which could result in the delay or termination of development, prevent regulatory approval, or limit market acceptance if ultimately approved.

Moreover, if we elect, or are required, to delay, suspend, or terminate any clinical trial of any of epetraborole or any future product candidates, the commercial prospects of such product candidate may be harmed and our ability to generate revenue through its sale may be delayed or eliminated. Any of these occurrences may significantly harm our business.

Additionally, if epetraborole or any of our future product candidates receive marketing approval, regulatory authorities may require the addition of labeling statements, such as a “black box” warning or

a contraindication, or the adoption of a REMS program to ensure that the benefits outweigh its risks, which may include, among other things, a medication guide outlining the risks of the drug for distribution to patients and a communication plan to health care practitioners. Furthermore, if we or others later identify undesirable side effects caused by any product candidates, several potentially significant negative consequences could result, including:

- regulatory authorities may suspend or withdraw approvals of such product candidate;
- regulatory authorities may require additional warnings on the label or impose distribution or use restrictions;
- we may be required to change the way a product candidate is administered or conduct additional clinical trials, including one or more post-marketing research studies, similar to Arikayce;
- we could be sued and held liable for harm caused to patients;
- we may be required to implement REMS, including the creation of a medication guide outlining the risks of such side effects for distribution to patients;
- we may need to conduct a recall; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the affected product candidate, if approved, or could substantially increase commercialization costs and expenses, which could delay or prevent us from generating revenue from the sale of our product candidates and harm our business and results of operations.

If we are not successful in discovering, developing, and commercializing additional product candidates, our ability to expand our business and achieve our strategic objectives would be impaired.

Although a substantial amount of our effort will focus on the continued clinical testing and potential regulatory approval of epetraborole, an element of our strategy is to discover, develop, and commercialize a portfolio of product candidates to treat rare chronic lung infections including NTM lung disease. We are seeking to do so by utilizing our targeted-design AN2 drug discovery platform, which uses bacterial genomics and state-of-the-art molecular and dynamic models to design active new compounds that target validated mechanisms. We focus our clinical development on pathogens and patients with high, unmet medical needs to leverage the development and regulatory paths available for first-in-class or best-in-class anti-infectives. Research efforts to identify and develop product candidates require substantial technical, financial, and human resources, whether or not any product candidates are ultimately identified. Our research programs may initially show promise in identifying potential product candidates, yet fail to yield product candidates for clinical development for many reasons, including the following:

- the research methodology used may not be successful in identifying potential product candidates;
- competitors may develop alternatives that render our product candidates obsolete or less attractive;
- product candidates we develop may nevertheless be covered by third parties' patents or other exclusive rights;
- a product candidate may on further study be shown to have harmful side effects or other characteristics that indicate it is unlikely to be effective or otherwise does not meet applicable regulatory criteria;
- a product candidate may not be capable of being produced in commercial quantities at an acceptable cost, or at all;

- a product candidate may not be accepted as safe, tolerable, and effective by patients, the medical community or third-party payors, if applicable; and
- the FDA, the EMA, the PMDA, the TGA, or other regulatory authorities may not approve or agree with the intended use of a new product candidate.

If we fail to develop and successfully commercialize epetraborole or our future product candidates, our business and future prospects may be harmed and our business will be more vulnerable to any problems that we encounter in developing and commercializing epetraborole.

If we experience delays or difficulties in the enrollment of patients in clinical trials, our receipt of necessary regulatory approvals could be delayed or prevented.

We may not be able to initiate, continue, or complete clinical trials of epetraborole or any future product candidates that we develop if we are unable to locate and enroll a sufficient number of eligible patients to participate in these trials, as required by the FDA, the EMA, the PMDA, the TGA, or other comparable regulatory authorities. We have limited experience enrolling patients in our clinical trials and cannot predict how successful we will be in enrolling patients in future clinical trials.

We may face delays and difficulties in enrollment because NTM lung disease caused by MAC is considered a rare disease (*i.e.*, the size of the targeted patient population is small) and patients are generally managed in the outpatient setting by specialized clinics and caregivers. Patients may also be reluctant to participate in a clinical trial with an investigational drug. In addition, some of our competitors may have ongoing clinical trials to treat the same indications as our product candidates, and patients who would otherwise be eligible for our clinical trials may instead enroll in clinical trials of our competitors. Patient enrollment is also affected by other factors including:

- the severity of the disease under investigation;
- the proximity and availability of clinical trial sites for prospective patients;
- the eligibility criteria for participation in the clinical trial;
- the design of the clinical trial;
- the perceived risks and benefits of the product candidate under study;
- our ability to recruit clinical trial investigators with appropriate experience;
- the availability of drugs approved to treat the diseases under study;
- the patient referral practices of physicians;
- our ability to obtain and maintain patient consents;
- the ability to monitor patients adequately during and after treatment; and
- the risk that patients enrolled in clinical trials will drop out of the trials before completion.

Additionally, most patients with NTM lung disease have pre-existing co-morbidities, including underlying structural lung disease. Because of this, we expect difficulties in determining clinical responses in some patients in our planned Phase 2/3 pivotal clinical trial of epetraborole, which could result in a failure to meet prespecified clinical trial endpoints. For example, even if epetraborole has a beneficial effect on culture conversion, patient-reported symptom-based outcomes may not correlate with microbiological responses.

In addition, the COVID-19 pandemic may affect the timing of our planned clinical trials. For example, we truncated the sixth cohort of our Phase 1b dose-ranging study of epetraborole in Australia after a rise in COVID-19 cases in Australia resulted in recruitment challenges. Clinical trial activities, including patient enrollment and data collection, are dependent upon global clinical trial sites which have been and continue to be adversely affected by the COVID-19 pandemic. Patients may be unwilling to enroll in clinical trials due to fear of contracting COVID-19. In addition, after enrollment in

our trials, patients may drop out of our trials, miss scheduled doses or follow-up visits or otherwise fail to follow trial protocols, due to site-related restrictions or patient quarantines after COVID-19 exposures or infections. If patients are unable to follow the trial protocols or if our trial results are otherwise disputed due to the effects of the COVID-19 pandemic or actions taken to mitigate its spread, the integrity of data from our trials may be compromised or not accepted by the FDA or other regulatory authorities, which would represent a significant setback for our product development.

Our inability to enroll a sufficient number of patients for clinical trials would result in significant delays and could require us to abandon one or more clinical trials altogether. Enrollment delays in these clinical trials may result in increased development costs for our product candidates, which would reduce the capital we have available to support our current and future product candidates and may result in our need to raise additional capital earlier than planned and could cause the value of our common stock to decline and limit our ability to obtain additional financing.

We may expend our limited resources to pursue a particular product candidate or indication and fail to capitalize on product candidates or indications that may be more profitable or have a greater likelihood of success.

Because we have limited financial and management resources, we focus on research programs and product candidates that we identify for specific indications. As a result, we may forego or delay pursuit of opportunities with other product candidates or for other indications that later prove to have greater commercial potential. Our resource allocation decisions may cause us to fail to capitalize on viable commercial drugs or profitable market opportunities. Our spending on current and future research and development programs and product candidates for specific indications may not yield any commercially viable products. If we do not accurately evaluate the commercial potential or target market for a particular product candidate, we may relinquish valuable rights to that product candidate through collaboration, licensing, or other royalty arrangements in cases in which it would have been more advantageous for us to retain sole development and commercialization rights to such product candidate.

Interim "topline" 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 publish interim topline or preliminary data from our clinical trials. 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. Preliminary or topline 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, interim and preliminary data should be viewed with caution until the final data are available. Differences between preliminary or interim data and final data could significantly harm our business prospects and may cause the trading price of our common stock to fluctuate significantly.

Risks Related to Our Dependence on Third Parties

We rely on single-sourced third parties to conduct the preclinical and nonclinical studies, clinical trials, and manufacture of our clinical trial material for epetraborole and our future product candidates, and those third parties may not perform satisfactorily, including failing to meet deadlines for the completion of such studies, trials, and manufacturing services or failing to comply with applicable regulatory requirements.

We have engaged contract research organizations, or CROs, to conduct our ongoing and planned preclinical and nonclinical studies, clinical trials and manufacture of our clinical trial material. We also expect to engage CROs for any of our other future product candidates that may progress to clinical development. We expect to rely on CROs, as well as other third parties, such as clinical data

management organizations, medical institutions, and clinical investigators, to conduct those preclinical and nonclinical studies, clinical trials, and manufacture of our clinical trial material. Currently, we rely on single source third-party research institutions, laboratories, clinical research and manufacturing organizations for research and development. Agreements with such third parties might terminate for a variety of reasons, including a failure to perform by the third parties. If we need to enter into alternative arrangements, or fail to enter into alternative arrangements in a timely manner, our product development activities would be delayed.

Our reliance on these third parties for research and development activities will reduce our control over these activities but will not relieve us of our 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. Moreover, the FDA requires us to comply with regulatory standards, commonly referred to as good clinical practices, or GCPs, 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. Similar regulatory requirements apply outside the United States, including the International Council for Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use, or the ICH. We are also required to register certain ongoing 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 by us or third parties can result in FDA refusal to approve applications based on the clinical data, enforcement actions, adverse publicity, and civil and criminal sanctions.

Furthermore, these third parties may also have relationships with other entities, some of which may be our competitors. If these third parties do not successfully carry out their contractual duties, meet expected deadlines, or conduct our clinical trials in accordance with regulatory requirements or our stated protocols, we will not be able to obtain, or may be delayed in obtaining, marketing approvals for epetraborole and our future product candidates and will not be able to, or may be delayed in our efforts to, successfully commercialize such product candidates.

In addition, principal investigators for our clinical trials may serve as scientific advisors or consultants to us from time to time and may receive cash compensation in connection with such services. If these relationships and any related compensation result in perceived or actual conflicts of interest, or the FDA concludes that the financial relationship may have affected the interpretation of the trial, the integrity of the data generated at the applicable clinical trial site may be questioned and the utility of the clinical trial itself may be jeopardized, which could result in the delay or rejection by the FDA of any New Drug Application, or NDA, we submit. Any such delay or rejection could prevent us from commercializing epetraborole or any future product candidates.

We also expect to rely on other third parties to store and distribute product supplies for our clinical trials. Any performance failure or regulatory noncompliance on the part of our distributors could delay clinical development or marketing approval of epetraborole or any future product candidates or commercialization of such product candidates, resulting in additional losses, and depriving us of potential product revenue.

Our reliance on single-sourced third parties to manufacture our product candidates increases the risk that we will not have sufficient quantities of our product candidates or products or such quantities at an acceptable cost, which could delay, prevent, or impair our development or commercialization efforts.

We do not own or operate manufacturing facilities for the production of clinical or commercial supplies of the product candidates that we are developing or evaluating, nor are we contemplating plans to do so. We have limited personnel with experience in drug manufacturing and lack the resources and the capabilities to manufacture any of our product candidates on a clinical or commercial scale. We

currently rely on third parties, such as Esteve Química, S.A. and Catalent Pharma Solutions, for drug supply and drug product manufacture of our current product candidate, and our strategy is to continue to outsource all manufacturing of our product candidates and approved products, if any, to third parties.

In order to conduct clinical trials of our product candidates and prepare for commercialization, we will need to identify suitable manufacturers with the capabilities to manufacture our compounds in large quantities in a manner consistent with existing regulations. Our future plans include the identifying, qualifying, and contracting with a U.S. manufacturing site to manufacture epetraborole, assuming we have adequate financial resources to pursue contingency manufacturing plans. Our current and future third-party manufacturers may be unable to successfully increase the manufacturing capacity for any of our product candidates in a timely or cost-effective manner, or at all. In addition, quality issues may arise during scale-up activities at any other time. If our manufacturers are unable to successfully scale up the manufacture of our product candidates in sufficient quality and quantity, the development, testing, and clinical trials of that product candidate may be delayed or infeasible, and regulatory approval or commercial launch of that product candidate may be delayed or not obtained, which could significantly harm our business.

We do not currently have any agreements with third-party manufacturers for the long-term commercial supply of epetraborole or any of our future product candidates. In the future, we may be unable to enter into agreements with third-party manufacturers for commercial supplies of such product candidates or may be unable to do so on acceptable terms.

Even if we are able to establish and maintain arrangements with third-party manufacturers, reliance on third-party manufacturers entails risks, including:

- reliance on the third party for regulatory compliance and quality assurance;
- the possible breach of the manufacturing agreement by the third party;
- the possible misappropriation of our proprietary information, including our trade secrets and know-how; and
- the possible termination or nonrenewal of the agreement by the third party at a time that is costly or inconvenient for us.

Third-party manufacturers may not be able to comply with current Good Manufacturing Practice, or cGMP, regulations or similar regulatory requirements outside the United States. Our failure, or the failure of our third-party manufacturers, to comply with applicable regulations could result in sanctions being imposed on us, including fines, injunctions, civil penalties, delays, suspension, or withdrawal of approvals, license revocation, seizures, or recalls of product candidates or products, operating restrictions, and criminal prosecutions, any of which could significantly and adversely affect supplies of our product candidates.

Epetraborole and our future products and product candidates may compete with other product candidates and products for access to manufacturing facilities. There are a limited number of manufacturers that operate under cGMP regulations and that might be capable of manufacturing for us.

If the third parties that we engage to supply any materials or manufacture product for our preclinical and nonclinical studies and clinical trials should cease to continue to do so for any reason, we likely would experience delays in advancing these studies and trials while we identify and qualify replacement suppliers, and we may be unable to obtain replacement supplies on terms that are favorable to us. In addition, if we are not able to obtain adequate supplies of epetraborole or any future product candidates or the substances used to manufacture them, it will be more difficult for us to develop such product candidates and compete effectively.

Our current and anticipated future dependence upon others for the manufacture of our product candidates may adversely affect our future profit margins and our ability to develop product candidates and commercialize any products that receive marketing approval on a timely and competitive basis.

Risks Related to the Commercialization of Epetraborole and Our Future Product Candidates

Even if epetraborole or any of our future product candidates receives marketing approval, it may fail to achieve the degree of market acceptance by physicians, patients, third-party payors, and others in the medical community necessary for commercial success.

Even if we obtain approvals from the FDA, the EMA, the PMDA, the TGA, or other comparable regulatory agencies and are able to initiate commercialization of epetraborole or any future product candidates we develop, the product candidate may not achieve market acceptance among physicians, patients, and third-party payors and, ultimately, may not be commercially successful. The degree of market acceptance of our product candidates, if approved for commercial sale, will depend on a number of factors, including:

- the safety, tolerability, efficacy, and ease of use of a once-a-day oral dose and other potential advantages compared to alternative treatments;
- the potential and perceived advantages and disadvantages of the product candidates, including cost and clinical benefit relative to alternative treatments;
- the convenience and ease of once-a-day oral administration compared to alternative treatments (*e.g.*, inhaled drug through nebulizer);
- the willingness of the target patient population to try new therapies and of physicians to prescribe these therapies;
- acceptance by physicians, patients, payor-formularies, and treatment facilities and parties responsible for coverage and reimbursement of the product;
- the availability of coverage and adequate reimbursement by third-party payors, including government authorities;
- our ability to manufacture the product candidates in sufficient quantities and yields;
- the strength and effectiveness of marketing and distribution support;
- the prevalence and severity of any side effects;
- limitations or warnings, including distribution or use restrictions, contained in the product's approved labeling or an approved REMS;
- whether the product is designated under physician treatment guidelines as a first-line therapy or as a second- or third-line therapy for particular infections;
- whether the product is safe, tolerable, and efficacious when used in combination therapy with the current multi-drug standard of care regiment;
- the approval of other new products for the same indications;
- the timing of market introduction of the approved product as well as competitive products;
- the emergence of bacterial resistance to the product; and
- the rate at which resistance to other drugs in the target infections grow.

If the market size of any product candidate that obtains regulatory approval is significantly smaller than we anticipate, it may not achieve market acceptance or commercial success. This could significantly and negatively impact our business, financial condition, and results of operations.

We face substantial competition, which may result in others discovering, developing or commercializing products before or more successfully than we do.

The development and commercialization of new drug products is highly competitive. We face competition from major multi-national pharmaceutical companies, biotechnology companies, specialty pharmaceutical companies, and generic drug companies with respect to epetraborole and other product candidates that we may develop and commercialize in the future. There are a number of large pharmaceutical and biotechnology companies that currently market and sell products or are pursuing

the development of product candidates for the treatment of NTM lung infections. Potential competitors also include academic institutions, government agencies, and other public and private research organizations. If our competitors obtain marketing approval from the FDA, the EMA, the PMDA, the TGA, or other comparable regulatory authorities for their product candidates more rapidly than we do, it could result in our competitors establishing a strong market position before we are able to enter the market. Our competitors may also succeed in developing, acquiring, or licensing technologies and drug products that are more effective, more effectively marketed and sold, or less costly than epetraborole or any future product candidates that we may develop, which could render our product candidate non-competitive and obsolete.

Our initial product candidate, epetraborole, is being initially developed for the treatment of patients with treatment-refractory MAC lung disease, and Insmed's Arikayce is the only currently approved therapy for the treatment of MAC lung disease as part of a combination antibacterial drug regimen in patients who do not achieve negative sputum cultures after a minimum of six consecutive months of a multidrug background regimen therapy. Other drugs used to treat these patients include generic drugs such as macrolides (clarithromycin and azithromycin), ethambutol, rifabutin, and fluoroquinolones such as levofloxacin, bedaquiline, linezolid and clofazimine. There are a number of product candidates in clinical development by third parties that are intended to treat NTM lung disease. Some mid- to late-stage product candidates include SPR720 from Spero Therapeutics, Inc., RHB-204 from Redhill Biopharma Ltd., and omadacycline from Paratek Pharmaceuticals, Inc. In addition, there may also be unexpected or unknown competitors that we are not presently aware of.

Many of our competitors have significantly greater financial resources and expertise in research and development, manufacturing, preclinical and nonclinical testing, conducting clinical trials, obtaining regulatory approvals, and marketing approved products than we do as an organization. Mergers and acquisitions in the pharmaceutical and biotechnology industries may result in even more resources being concentrated among a smaller number of our competitors. Smaller and other 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, establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs.

Our commercial opportunity could be reduced or eliminated if our competitors develop and commercialize products that are safer, more effective, have fewer or less severe side effects, are more convenient, or are less expensive than any product candidates that we may develop. Our competitors also may obtain approval from the FDA, the EMA, the PMDA, the TGA, or other comparable regulatory agencies for their product candidates more rapidly than we may obtain approval for ours, which could result in product approval delays if a competitor obtains market exclusivity from the FDA, the EMA, the PMDA, the TGA, or any comparable regulatory agencies or our competitors establish a strong market position before we are able to enter the market. In addition, our ability to compete may be affected in many cases by insurers or other third-party payors seeking to encourage the use of generic drugs. Additional drugs may become available on a generic basis over the coming years. If epetraborole or any future product candidates achieve marketing approval, we expect that they will be priced at a significant premium over competitive generic drugs.

If we are unable to establish sales, marketing, and distribution capabilities for epetraborole or our future product candidates, or enter into sales, marketing, and distribution agreements with third parties, we may not be successful in commercializing our product candidates, if and when they are approved.

We do not have a sales or marketing infrastructure and have limited experience in the sale, marketing, or distribution of pharmaceutical products. To achieve commercial success for any product candidate for

which we may obtain marketing approval, we will need to establish a sales and marketing organization or enter into collaboration, distribution, and other marketing arrangements with one or more third parties to commercialize such product candidate. In the United States, we intend to build a commercial organization to target areas with the greatest incidence NTM lung infections and recruit experienced sales, marketing, and distribution professionals. The development of sales, marketing, and distribution capabilities will require substantial resources, will be time-consuming, and could delay any product launch. We may decide to work with regional specialty pharmacies, distributors, and/or multi-national pharmaceutical companies to leverage their commercialization capabilities to commercialize any product candidate for which we may obtain regulatory approval outside of the United States.

If the commercial launch of a product candidate for which we recruit a sales force and establish marketing and distribution capabilities is delayed or does not occur for any reason, we would have prematurely or unnecessarily incurred these commercialization costs. This may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel. In addition, we may not be able to hire a sales force in the United States that is sufficient in size or has adequate expertise to target the areas that we intend to target. If we are unable to establish a sales force and marketing and distribution capabilities, our operating results may be adversely affected.

Factors that may inhibit our efforts to commercialize our drugs on our own include:

- our inability to recruit, train, and retain adequate numbers of effective sales and marketing personnel;
- the inability of sales personnel to obtain access to physicians or persuade adequate numbers of physicians to prescribe any future products;
- the lack of complementary products to be offered by sales personnel, which may put us at a competitive disadvantage compared to companies with more extensive product lines;
- unforeseen costs and expenses associated with creating an independent sales and marketing organization; and
- unforeseen costs and limitations with regard to setting up a distribution network.

If we are unable to establish our own sales, marketing, and distribution capabilities in the United States and other jurisdictions in which epetraborole or any future product candidates are approved and, instead, enter into arrangements with third parties to perform these services, our revenues and profitability, if any, are likely to be lower than if we were to sell, market, and distribute any product candidates that we develop ourselves. We may not be successful in entering into arrangements with third parties to sell, market, and distribute our product candidates or may be unable to do so on terms that are favorable to us. We likely will have limited control over such third parties, and any of them may fail to devote the necessary resources and attention to sell and market our product candidates effectively. If we do not establish sales, marketing, and distribution capabilities successfully, either on our own or in collaboration with third parties, we will not be successful in commercializing any product candidates.

Coverage and adequate reimbursement may not be available for epetraborole or any future product candidates, which could make it difficult for us to sell profitably, if approved.

Market acceptance and sales of any product candidates that we commercialize, if approved, will depend in part on the extent to which reimbursement for these drugs and related treatments will be available from third-party payors, including government health administration authorities, managed care organizations and other private health insurers. Third-party payors decide which therapies they will pay for and establish reimbursement levels. Third-party payors often rely upon Medicare coverage policy and payment limitations in setting their own coverage and reimbursement policies. However, decisions regarding the extent of coverage and amount of reimbursement to be provided for any product candidates that we develop will be made on a payor-by-payor basis. One payor’s

determination to provide coverage for a drug does not assure that other payors will also provide coverage and adequate reimbursement for the drug. Additionally, a third-party payor's decision to provide coverage for a therapy does not imply that an adequate reimbursement rate will be approved. Each payor determines whether or not it will provide coverage for a therapy, what amount it will pay the manufacturer for the therapy, and on what tier of its list of covered drugs, or formulary, it will be placed. The position on a payor's formulary generally determines the co-payment that a patient will need to make to obtain the therapy and can strongly influence the adoption of such therapy by patients and physicians. Patients who are prescribed treatments for their conditions and providers prescribing such services generally rely on third-party payors to reimburse all or part of the associated healthcare costs. Patients are unlikely to use our drugs, and providers are unlikely to prescribe our drugs, unless coverage is provided and reimbursement is adequate to cover a significant portion of the cost of our drugs and their administration.

A primary trend in the U.S. healthcare industry and elsewhere is cost containment. Third-party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications. We cannot be sure that coverage and reimbursement will be available for any drug that we commercialize and, if reimbursement is available, what the level of reimbursement will be. Inadequate coverage and reimbursement may impact the demand for, or the price of, any drug for which we obtain marketing approval. If coverage and adequate reimbursement are not available, or are available only to limited levels, we may not be able to successfully commercialize epetraborole and any future product candidates that we develop.

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

We face an inherent risk of product liability exposure related to the testing of epetraborole and any future product candidates in human clinical trials and will face an even greater risk if we commercially sell any drugs that we may develop. If we cannot successfully defend ourselves against claims that our product candidates or products caused injuries, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- reduced resources of our management to pursue our business strategy;
- decreased demand for any product candidates or products that we may develop;
- injury to our reputation and significant negative media attention;
- withdrawal of clinical trial participants;
- initiation of investigations by regulators;
- product recalls, withdrawals, or labeling, marketing, or promotional restrictions;
- significant costs to defend the resulting litigation;
- substantial monetary awards paid to clinical trial participants or patients;
- loss of revenue;
- the inability to commercialize any drugs that we may develop; and
- a decline in our share price.

We currently hold $5.0 million in global product liability insurance coverage with a per incident limit of $5.0 million and an AUD $10.0 million product liability insurance coverage for the Phase 1b dose-ranging study in Australia with a per incident limit of AUD $10.0 million, which may not be adequate to cover all liabilities that we may incur. We may need to increase our insurance coverage as we expand our clinical trials or if we commence commercialization of any product candidates. Insurance coverage is increasingly expensive. We may not be able to maintain insurance coverage at a reasonable cost or in an amount adequate to satisfy any liability that may arise, if at all. Our product liability insurance policy contains various exclusions, and we may be subject to a product liability claim for which we have

no coverage. We may have to pay any 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 current or future collaborators entitle us to indemnification against losses, such indemnification may not be available or adequate should any claim arise.

There are a variety of risks associated with marketing epetraborole or any future product candidates internationally, which could affect our business.

We may seek regulatory approval for epetraborole or other future 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 and reimbursement landscapes in foreign countries;
- the potential for so-called parallel importing, which is what happens when a local seller, faced with high or higher local prices, opts to import goods from a foreign market with low or lower prices rather than buying them locally;
- 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;
- potential liability under the U.S. Foreign Corrupt Practices Act of 1977, as amended, or the 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; and
- business interruptions resulting from geo-political actions, including war and terrorism.

These and other risks associated with our international operations may compromise our ability to achieve or maintain profitability.

Risks Related to Our Business, Industry, and Managing Our Growth

We operate with a small team and our future success depends on our ability to retain key executives and to attract, retain, and motivate qualified personnel.

We currently have limited personnel: as of February 15, 2022, we had 22 full-time employees. We are highly dependent on the management, research and development, clinical, financial, and business development expertise of Eric Easom, M.B.A, M.Eng., our co-founder, president, and chief executive officer, Paul Eckburg, M.D., our chief medical officer, Sanjay Chanda, Ph.D., our chief development officer, Lucy Day, our chief financial officer, Kevin Krause, M.B.A., our chief strategy officer, George H.

Talbot, M.D., FACP, FIDSA, our co-founder and senior clinical advisor, and Michael R.K. (Dickon) Alley, Ph.D., our co-founder and head of biology, as well as the other members of our research, development, and business teams. Each of them may currently terminate their employment with us at any time and will continue to be able to do so after the completion of this offering. We do not maintain “key person” insurance for any of our executives or employees.

Our limited personnel and resources may result in greater workloads for our employees compared to those at companies with which we compete for personnel, which may lead to higher levels of employee dissatisfaction and turnover. Recruiting and retaining qualified research, development, and business personnel and, if we progress the development of any of epetraborole or any future product candidates, commercialization, manufacturing, and sales and marketing personnel, will be critical to our success. The loss of the services of our executive officers or other key employees could impede the achievement of our research, development and commercialization objectives and seriously harm our ability to successfully implement our business strategy. Furthermore, replacing executive officers and key employees may be difficult and may take an extended period of time because of the limited number of individuals in our industry with the breadth of skills and experience required to successfully develop, gain regulatory approval of and commercialize our product candidates. Competition to hire from this limited pool is intense, and we may be unable to hire, train, retain, or motivate these key personnel on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for similar personnel. We also experience competition for the hiring of research and development personnel from universities and research institutions. In addition, we rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our consultants and advisors may have commitments under consulting or advisory contracts with other entities that may limit their availability to us. If we are unable to continue to attract and retain high-quality personnel, our ability to pursue our growth strategy will be limited.

Our business could be adversely affected by the effects of health epidemics, including the ongoing COVID-19 pandemic.

Our business could be adversely affected by health epidemics, including the COVID-19 pandemic, in regions where we or third parties on which we rely have manufacturing facilities, concentrations of potential clinical trial sites or other business operations. For example, as a result of the COVID-19 pandemic, the State of California, where our operations are located, has issued orders limiting activities to varying levels, including at the most restrictive level, an order for all residents to remain at home, except for the performance of essential activities, which include biomedical research. We have implemented policies that enable our employees to work remotely, and such policies may continue for an indefinite period. We have also implemented various safety protocols for all on-site personnel, including the requirements to wear masks, suspend all non-essential travel for our employees and maintain social distance. We continue to evaluate our protocols and practices as the global response to the COVID-19 pandemic continues to evolve. There can be no assurance that we will be able to avoid part or all of any impact from the spread of COVID-19 or its consequences.

In addition, our current preclinical and nonclinical studies and current and future clinical trial plans may be affected by the COVID-19 pandemic. Site initiation and patient enrollment may be delayed due to prioritization of hospital resources toward the COVID-19 pandemic, which may delay enrollment in our future global clinical trials, and some patients may not be able to comply with clinical trial protocols if quarantines impede patient movement or interrupt healthcare services. Further, some of our suppliers may experience disruption to their respective supply chain due to the effects of health epidemics, including the COVID-19 pandemic, which could delay, prevent, or impair our development or commercialization efforts.

The ultimate impact of the COVID-19 pandemic or a similar health epidemic is highly uncertain and subject to change. Several measures are currently being implemented by the United States and other governments to address the current COVID-19 pandemic and its economic impacts. At this time, it is impossible to predict the impact of these measures and whether or not they will have unforeseen negative consequences for our business. We do not yet know the full extent of potential delays or impacts on our business, our planned preclinical studies or clinical trials, healthcare systems or the global economy as a whole; nor do we know when and how such regulations may be eased. The foregoing and other continued disruptions to our business as a result of COVID-19 could result in an adverse effect on our business, results of operations, financial condition and cash flows. Furthermore, the COVID-19 pandemic could heighten the risks in certain of the other risk factors described herein.

We have identified material weaknesses in our internal control over financial reporting. If we are unable to remediate these material weaknesses, or if we identify additional material weaknesses in the future or otherwise fail to maintain effective internal control over financial reporting, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect our business.

Prior to the completion of this offering, we have been a private company with limited accounting personnel to adequately execute our accounting processes and other supervisory resources with which to address our internal control over financial reporting. In connection with the preparation of our financial statements, we identified material weaknesses in our internal control over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. The material weaknesses are as follows:

- We did not design and maintain an effective control environment commensurate with our financial reporting requirements. Specifically, we lacked a sufficient complement of resources with (i) an appropriate level of accounting knowledge, experience and training to appropriately analyze, record and disclose accounting matters timely and accurately, and (ii) an appropriate level of knowledge and experience to establish effective processes and controls. Additionally, the lack of a sufficient number of professionals resulted in an inability to consistently establish appropriate authorities and responsibilities in pursuit of our financial reporting objectives, as demonstrated by, among other things, insufficient segregation of duties in our finance and accounting functions. This material weakness contributed to the following additional material weaknesses.
- We did not design and maintain effective controls related to the period-end financial reporting process, including designing and maintaining formal accounting policies, procedures and controls to achieve complete, accurate and timely financial accounting, reporting and disclosures. Additionally, we did not design and maintain controls over the preparation and review of account reconciliations and journal entries, including maintaining appropriate segregation of duties.
- We did not design and maintain effective controls related to the accounting for certain non-routine or complex transactions, including the proper application of U.S. GAAP to such transactions.

The above material weaknesses resulted in adjustments to the redeemable convertible preferred stock, tranche liability and accrued expenses balances, which were recorded prior to the issuance of the financial statements, as of and for the years ended December 31, 2019 and 2020. Additionally, these material weaknesses could result in a misstatement of substantially all of our accounts or disclosures that would result in a material misstatement to the annual or interim financial statements that would not be prevented or detected.

- We did not design and maintain effective controls over information technology, or IT, general controls for information systems that are relevant to the preparation of our financial statements. Specifically, we did not design and maintain (i) program change management controls to ensure that information technology program and data changes affecting financial IT applications and underlying accounting records are identified, tested, authorized and implemented appropriately, (ii) user access controls to ensure appropriate segregation of duties and that adequately restrict user and privileged access to financial applications, programs, and data to appropriate Company personnel, (iii) computer operations controls to ensure that critical batch jobs are monitored and data backups are authorized and monitored, and (iv) testing and approval controls for program development to ensure that new software development is aligned with business and IT requirements.

These IT deficiencies did not result in adjustments to the financial statements. However, the IT deficiencies, when aggregated, could impact maintaining effective segregation of duties, as well as the effectiveness of IT-dependent controls (such as automated controls that address the risk of material misstatement to one or more assertions, along with the IT controls and underlying data that support the effectiveness of system-generated data and reports) that could result in misstatements potentially impacting all financial statement accounts and disclosures that would not be prevented or detected. Accordingly, management has determined the IT deficiencies in the aggregate constitute a material weakness.

To address our material weaknesses, we are in the process of implementing measures designed to improve our internal control over financial reporting and remediate the control deficiencies that led to the material weaknesses. These measures include (i) the ongoing hiring of additional accounting personnel; (ii), initiating design and implementation of our financial control environment, including the establishment of formal accounting policies and procedures, financial reporting controls and controls to account for and disclose complex transactions; and (iii) initiating and designing IT controls to insure appropriate and restricted access to our accounting applications, programs, and data.

We are working to remediate the material weaknesses as efficiently and effectively as possible and expect full remediation could potentially go beyond December 31, 2022. We cannot assure you that there will not be future material weaknesses in our internal control over financial reporting in the future. Any failure to maintain internal control over financial reporting could severely inhibit our ability to accurately report our financial condition, results of operations, or cash flows. If we fail to remediate our identified material weaknesses, or identify additional material weaknesses, in our internal control over financial reporting investors may lose confidence in the accuracy and completeness of our financial reports, the market price of our common stock could decline, and we could be subject to sanctions or investigations by The Nasdaq Global Market, the Securities and Exchange Commission, or SEC, or other regulatory authorities. Failure to remedy any material weakness in our internal control over financial reporting, or to implement or maintain other effective control systems required of public companies, could also restrict our future access to the capital markets.

We expect to expand our research, development, and business capabilities and potentially implement sales, marketing, and distribution capabilities, and as a result, we may encounter difficulties in managing our growth, which could disrupt our operations.

As the clinical development of epetraborole and any of our future product candidates progresses, we also expect to experience significant growth in the number of our employees and the scope of our operations, particularly in the areas of research, drug development, regulatory affairs and, if epetraborole or any future product candidate receives marketing approval, sales, marketing, and distribution. To manage our anticipated future growth, we must continue to implement and improve our managerial, operational, and financial systems, expand our facilities, and continue to recruit and train additional qualified personnel. Due to our limited financial resources and the limited experience of our management team in managing a company with such anticipated growth, we may not be able to

effectively manage the expansion of our operations or recruit and train additional qualified personnel. The expansion of our operations may lead to significant costs and may divert our management and research and development resources. Any inability to manage growth could delay the execution of our business plans or disrupt our operations.

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

From time to time, we may evaluate various acquisitions and strategic collaborations, including licensing or acquiring complementary drug products, intellectual property rights, technologies, or businesses, as deemed appropriate to carry out our business plan. Any potential acquisition or strategic collaboration may entail numerous risks, including:

- increased operating expenses and cash requirements;
- the assumption of additional indebtedness or contingent liabilities;
- assimilation of operations, intellectual property, and drug products of an acquired company, including difficulties associated with integrating new personnel;
- the diversion of our management's attention from our existing drug programs and initiatives in pursuing such a strategic partnership, 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 drugs or drug candidates and regulatory approvals; and
- our inability to generate revenue from acquired technology and/or drugs sufficient to meet our objectives in undertaking the acquisition or even to offset the associated acquisition and maintenance costs.

Risks Related to Our Intellectual Property

If we are unable to obtain and maintain patent and other intellectual property protection for our technology, or for epetraborole or our future product candidates, or if the scope of the patent and other intellectual property protection obtained is not sufficiently broad, our competitors could develop and commercialize technology and drugs similar or identical to ours, and our ability to successfully commercialize our technology and product candidates may be impaired.

We do not own any issued patents and we in-license patents and patent applications for epetraborole, our lead drug compound, and our success depends in large part on our ability to obtain and maintain patent protection in the United States and other countries with respect to epetraborole and any of our future product candidates. We seek to protect our proprietary position by in-licensing intellectual property relating to our product candidates including patent applications in the United States and abroad related to our technology and product candidates that are important to our business. If we or our licensors do not adequately protect the intellectual property we in-license or own, competitors may be able to use our technologies and erode or negate any competitive advantage that we may have, which could harm our business and ability to achieve profitability. To protect our proprietary positions, we and our licensors file patent applications in the United States and abroad related to our novel technologies and product candidates that are important to our business. The patent application and prosecution process is expensive and time-consuming. We and our current licensors and licensees, or any future licensors and licensees may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. We or our current licensors and licensees, or any future licensors or licensees may also fail to identify patentable

aspects of our research and development before it is too late to obtain patent protection, or fail to continue to prosecute patents relating to our product candidates. Therefore, these and any of our in-licensed patents and patent applications may not be prosecuted and enforced in a manner consistent with the best interests of our business. It is possible that defects of form in the preparation or filing of our licensors' patents or our patent applications may exist, or may arise in the future, such as with respect to proper priority claims, inventorship, claim scope, or patent term adjustments. If our current licensors and licensees, or any future licensors or licensees, are not fully cooperative or disagree with us as to the prosecution, maintenance or enforcement of any patent rights, such patent rights could be compromised and we might not be able to prevent third parties from making, using, and selling competing products. We cannot predict whether the patent applications we and our licensors or licensees 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. If there are material defects in the form or preparation of our or our licensors' patents or patent applications, such patents or applications may be invalid and unenforceable. Moreover, our competitors may independently develop equivalent knowledge, methods, and know-how and we may not be able to prevent such competitors from commercializing such equivalent knowledge, methods, and know-how. Any of these outcomes could impair our ability to prevent competition from third parties and could have a material adverse effect on our business, financial condition, results of operations, or prospects. The patent position of biotechnology and pharmaceutical companies generally is highly uncertain and has been the subject of much litigation in recent years. Changes in either the patent laws or interpretation of the patent laws in the United States and other countries may diminish the value of our patents or narrow the scope of our patent protection. In addition, the laws of foreign countries may not protect our rights to the same extent as the laws of the United States. No consistent policy regarding the breadth of claims allowed in biotechnology and pharmaceutical patents has emerged to date in the United States or in many foreign jurisdictions. In addition, the determination of patent rights with respect to pharmaceutical compounds and technologies commonly involves complex legal and factual questions, which has in recent years been the subject of much litigation. As a result, the issuance, scope, validity, enforceability, and commercial value of our patent rights are highly uncertain. Furthermore, recent changes in patent laws in the United States, including the America Invents Act of 2011, and future changes in patent laws in or outside the United States may affect the scope, strength, and enforceability of our patent rights or the nature of proceedings that may be brought by us related to our patent rights.

We may not be aware of all third-party intellectual property rights potentially relating to epetraborole or our future product candidates. 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 patents or pending patent applications that we in-license or own, or that we or our licensors were the first to file for patent protection of such inventions. As a result, the issuance, scope, validity, and commercial value of our patent rights cannot be predicted with any certainty. Moreover, we or our licensors may be subject to a third-party pre-issuance submission of prior art to the U.S. Patent and Trademark Office, or USPTO, or become involved in opposition, derivation, reexamination, *inter partes* review, or interference proceedings, in the United States or elsewhere, challenging our patent rights or the patent rights of others. An adverse determination in any such submission, proceeding, or litigation could reduce the scope of, or invalidate, our patent rights, allow third parties to commercialize our technology or product candidates, and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize product candidates without infringing third-party patent rights.

Our licensors' pending and future patent applications and our own pending and future patent applications may not result in patents being issued that protect our technology or product candidates, in whole or in part, or which effectively prevent others from commercializing competitive technologies and products. Even if our or our licensors' patent applications issue as patents, they may not issue in a

form that will provide us with any meaningful protection against competing products or processes sufficient to achieve our business objectives, prevent competitors from competing with us or otherwise provide us with any competitive advantage. Our competitors may be able to circumvent our in-licensed patents or any patents we may own in the future by developing similar or alternative technologies or products in a non-infringing manner. Our competitors may seek to market generic versions of any approved products by submitting abbreviated NDAs to the FDA in which they claim that patents licensed by us or may be owned by us in the future are invalid, unenforceable, and/or not infringed. Alternatively, our competitors may seek approval to market their own products similar to or otherwise competitive with our product candidates. In these circumstances, we may need to defend and/or assert our in-licensed or owned patents, including by filing lawsuits alleging patent infringement. In any of these types of proceedings, a court, or other agency with jurisdiction may find our in-licensed patents or any owned patents, should such patents issue in the future, invalid and/or unenforceable.

The issuance of a patent is not conclusive as to its inventorship, scope, validity, or enforceability, and our in-licensed patents or patents we may own in the future may be challenged in the courts or patent offices in the United States and abroad. Such challenges may result in loss of exclusivity or freedom to operate or in patent claims being narrowed, invalidated or held unenforceable, in whole or in part, which could limit our ability to stop others from using or commercializing similar or identical technology and product candidates, or limit the duration of the patent protection of our technology and product candidates. In addition, given the amount of time required for the development, testing, and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized. Any impairment of our intellectual property rights, or our failure to protect our intellectual property rights adequately, could give third parties access to our technology and product candidates and could materially and adversely impact our business, financial condition, results of operations, and prospects.

Our rights to develop and commercialize our technology, epetraborole, and our other future product candidates are subject, in large part, to the terms and conditions of licenses granted to us by others, such as Anacor. If we fail to comply with our obligations in the agreements under which we in-license or acquire development or commercialization rights to products, technology, or data from third parties, we could lose such rights that are important to our business.

We are heavily reliant upon licenses to certain patent rights and other intellectual property that are important or necessary to the development of epetraborole or our future product candidates. For example, we depend on a license agreement from Anacor, a biopharmaceutical company that originally developed epetraborole and is currently a wholly-owned subsidiary of Pfizer. Additionally, we have licensed our rights under the Anacor agreement in China, Hong Kong, Taiwan, and Macau to Brii Biosciences.

Anacor has relied upon, and any future licensors may have relied upon, third-party companies, consultants or collaborators, or on funds from third parties such that our licensors are not the sole and exclusive owners of the patents we in-licensed. We have sublicensed certain patents from Anacor that are owned, maintained and prosecuted by GSK. If third-party companies such as GSK fail to prosecute, maintain, enforce, and defend such patents, or lose rights to those patents, the rights we have licensed may be reduced or eliminated, and our right to develop and commercialize epetraborole or our other future product candidates that are the subject of such licensed rights could be adversely affected. Further, we rely upon Anacor's compliance with its license agreement with GSK to maintain our sublicense to such patents owned by GSK, and any termination of Anacor's license agreement with GSK could result in us losing our license to epetraborole. Further development and commercialization of epetraborole, and development of any future product candidates may, require us to enter into additional license or collaboration agreements. For example, our licensors or other third parties may develop intellectual property covering epetraborole which we have not licensed. Our future licenses

may not provide us with exclusive rights to use the licensed patent rights and other intellectual property, or may not provide us with exclusive rights to use such patent rights and intellectual property in all relevant fields of use and in all territories in which we wish to develop or commercialize epetraborole or our future product candidates in the future.

Our license agreement with Anacor, and other intellectual property-related agreements we may enter into in the future may impose diligence and other obligations, including payment of milestones and royalties. For example, our license agreement from Anacor requires us to satisfy diligence requirements, including using commercially reasonable efforts to develop and commercialize products. If we fail to comply with our obligations to Anacor or any future licensors, those counterparties may have the right to terminate the license agreements, in which event we might not be able to develop, manufacture, or market any product candidate licensed under the agreements, which could materially adversely affect the value of the product candidate being developed under any such agreement and further involve termination of our rights to important intellectual property or technology.

In spite of our efforts, Anacor or any future licensors might conclude that we are in material breach of obligations under our license agreements and may therefore have the right to terminate the license agreements, thereby removing our ability to develop and commercialize product candidates and technology covered by such license agreements. If such in-licenses are terminated, or if the underlying patents fail to provide the intended exclusivity, our competitors would have the freedom to seek regulatory approval of, and to market, products identical to our product candidates and the licensors to such in-licenses could prevent us from commercializing product candidates that rely upon the patents or other intellectual property rights which were the subject matter of such terminated agreements. In addition, we may seek to obtain additional licenses from our licensors and, in connection with obtaining such licenses, we may agree to amend our existing licenses in a manner that may be more favorable to the licensors, including by agreeing to terms that could enable third parties (potentially including our competitors) to receive licenses to a portion of the intellectual property that is subject to our existing licenses. Any of these events could have a material adverse effect on our business, financial condition, results of operations, and prospects.

Under our license agreement with Anacor, and any future license agreements, 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 license agreements involving 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 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 condition, results of operations, and prospects.

We may not be successful in obtaining necessary rights to any product candidates we may develop through acquisitions and in-licenses.

We currently have rights to intellectual property, through licenses from third parties, to identify and develop product candidates. We may find it necessary or prudent to obtain licenses from such third-party intellectual property holders in order to avoid infringing these third-party patents. For example, many pharmaceutical companies, biotechnology companies, and academic institutions compete with us and may be filing patent applications potentially relevant to our business. The licensing or acquisition of third-party intellectual property rights is a competitive area, and several 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 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. If we are unable to successfully obtain rights to required third-party intellectual property rights or maintain the existing intellectual property rights we have, we may have to abandon development of the relevant program or product candidate, which could have a material adverse effect on our business, financial condition, results of operations, and prospects.

We may become involved in lawsuits to protect or enforce our owned or in-licensed patents or other intellectual property, which could be expensive, time-consuming, and unsuccessful.

Competitors or other third parties may infringe, misappropriate or otherwise violate our in-licensed issued patents or our other intellectual property we may own. To counter such infringement, misappropriation, or other unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming and divert the time and attention of our management and scientific personnel. Any claims we assert against third parties could provoke these parties to assert counterclaims against us alleging that we infringe, misappropriate or otherwise violate their patents, trademarks, copyrights, or other intellectual property. In addition, our in-licensed patents may become involved in inventorship or priority disputes. Third parties may raise challenges to the validity of certain of our or our in-licensed patent claims and may in the future raise similar claims before administrative bodies in the United States or abroad, even outside the context of litigation. For example, we may be subject to a third-party pre-issuance submission of prior art to the USPTO, or become involved in derivation, revocation, reexamination, post-grant review, or PGR, *inter partes* review, or IPR, interference proceedings, and equivalent proceedings in foreign jurisdictions, such as opposition proceedings challenging any patents that we may own or in-license. Such submissions may also be made prior to a patent's issuance, precluding the granting of a patent based on one of our owned or licensed pending patent applications. A third party may also claim that our potential future owned patents or licensed patent rights are invalid or unenforceable in a litigation. The outcome following legal assertions of invalidity and unenforceability is unpredictable. An adverse determination in any such submission, proceeding, or litigation could reduce the scope of, invalidate, or render unenforceable, our potential future owned patents or licensed patent rights, allow third parties to commercialize epetraborole or our other future product candidates 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 In a patent infringement proceeding, there is a risk that a court will decide that a patent we in-license is invalid or unenforceable, in whole or in part, and that we do not have the right to stop the other party from using the invention at issue. There is also a risk that, even if the validity of such patents are upheld, the court will construe the patent's claims narrowly or decide that we do not have

the right to stop the other party from using the invention at issue on the grounds that our in-licensed patents do not cover the invention. An adverse outcome in a litigation or proceeding involving our in-licensed patents could limit our ability to assert our in-licensed patents against those parties or other competitors and may curtail or preclude our ability to exclude third parties from making and selling similar or competitive products. Similarly, in the future, we expect to rely on trademarks to distinguish epetraborole and any of our other future product candidates that are approved for marketing, and if we assert trademark infringement claims, a court may determine that the marks we have asserted are invalid or unenforceable, or that the party against whom we have asserted trademark infringement has superior rights to the marks in question. In this case, we could ultimately be forced to cease use of such trademarks.

In any infringement litigation, any award of monetary damages we receive may not be commercially valuable. 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 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. Moreover, there can be no assurance that we will have sufficient financial or other resources to adequately file and pursue such infringement claims, which typically last for years before they are concluded. Some of our competitors and other third parties may be 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. Even if we ultimately prevail in such claims, the monetary cost of such litigation and the diversion of the attention of our management and scientific personnel could outweigh any benefit we receive as a result of the proceedings. Accordingly, despite our efforts, we may not be able to prevent third parties from infringing, misappropriating, or successfully challenging our intellectual property rights. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a negative impact on our ability to compete in the marketplace, which could have a material adverse effect on our business, financial condition, results of operations, and prospects.

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

Our commercial success depends, in part, on our ability to develop, manufacture, market, and sell epetraborole or other future product candidates and use our proprietary chemistry technology without infringing, misappropriating or otherwise violating the intellectual property of third parties. Numerous third-party U.S. and non-U.S. issued patents exist in the area of antibacterial treatment, including compounds, formulations, treatment methods, and synthetic processes that may be applied towards the synthesis of antibiotics. If any such patents of third parties cover our product candidates or technologies, we may not be free to manufacture or market our product candidates as planned.

There is a substantial amount of intellectual property litigation in the biotechnology and pharmaceutical industries, and we may become party to, or threatened with, litigation, or other adversarial proceedings regarding intellectual property rights with respect to our technology or product candidates, including interference proceedings before the USPTO. Third parties may assert claims against us based on existing or future intellectual property rights. The outcome of intellectual property litigation is subject to uncertainties that cannot be adequately quantified in advance.

If we are found to have infringed, misappropriated, or otherwise violated any third party's intellectual property rights, we could be forced, including by court order, to cease developing, manufacturing, or commercializing epetraborole or other future product candidates. Alternatively, we may be required to obtain a license from such third party in order to use technology and continue developing, manufacturing,

or marketing product candidates that infringe or violate such third party's intellectual property. However, we may not be able to obtain any such required license on commercially reasonable terms or at all. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors access to the same technologies licensed to us. We may also be required to pay substantial ongoing royalty or license payments, fees, or comply with other unfavorable terms. In addition, we could be found liable for monetary damages, including treble damages and attorneys' fees if we are found to have willfully infringed a patent or other intellectual property right. A finding of infringement could prevent us from commercializing epetraborole or other future product candidates or force us to cease some of our business operations. Claims that we have misappropriated the confidential information or trade secrets of third parties could have a similar negative effect on our business. Even if we were to prevail in such a dispute, any litigation regarding our intellectual property could be costly and time-consuming and divert the attention of our management and key personnel from our business operations. 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. During the court of litigation, there could be public announcements or the results of hearings, motions, or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. Negative publicity related to a decision by us to initiate such enforcement actions against a customer or former customer, regardless of its accuracy, may adversely impact our other customer relationships or prospective customer relationships, harm our brand and business and could cause the market price of our common stock to decline. Any of the foregoing arising from uncertainty in legal proceedings could materially and adversely impact our business, financial condition, results of operations, and prospects.

We may be subject to claims by third parties asserting that we or our employees, consultants, and advisors have misappropriated their intellectual property or claiming ownership of what we regard as our own intellectual property.

Many of our employees, consultants, and advisors were previously employed at universities or other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although we try to ensure that our employees, consultants, and advisors do not use the proprietary information or know-how of third parties in their work for us, we may be subject to claims that we or such employees, consultants, and advisors have inadvertently or otherwise used or disclosed intellectual property, including trade secrets or other proprietary information, of any such individual's former employer. We may also in the future be subject to claims that we have caused an employee to breach the terms of his or her non-competition or non-solicitation agreement. Litigation may be necessary to defend against these potential claims.

In addition, while it is our policy to require our employees and contractors who may be involved in the development of intellectual property to execute agreements assigning such intellectual property to us, such employees and contractors may breach the agreement and claim the developed intellectual property as their own. Further, we may be unsuccessful in executing such agreements 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 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.

If we fail in prosecuting or defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. A court could prohibit us from using technologies or features that are essential to epetraborole or other future product candidates if such technologies or features are found to incorporate or be derived from the trade secrets or other proprietary information of the former employers. Even if we are successful in prosecuting or defending against such claims, litigation could result in substantial costs and could be a distraction to

management. In addition, any litigation or threat thereof may adversely affect our ability to hire employees or contract with independent service providers. Moreover, a loss of key personnel or their work product could hamper or prevent our ability to commercialize our product candidates. Any of the foregoing could have a material adverse impact on our business, financial condition, results of operations, and prospects.

Any trademarks we may obtain may be infringed or successfully challenged, resulting in harm to our business.

We expect to rely on trademarks as one means to distinguish any of our product candidates that are approved for marketing from the products of our competitors. We have not yet selected trademarks for our product candidates and have not yet begun the process of applying to register trademarks for our product candidates. Once we select trademarks and apply to register them, our trademark applications may not be approved. Third parties who have prior rights to our trademarks or third parties who have prior rights to similar trademarks may oppose our trademark applications, or otherwise challenge our use of the trademarks. In the event that our trademarks are successfully challenged, we could be forced to rebrand our product candidates, which could result in loss of brand recognition and could require us to devote resources to advertising and marketing new brands. At times, competitors may adopt trade names or trademarks similar to ours, thereby diluting or impeding our ability to build brand identity and possibly leading to market confusion. Our competitors may infringe our trademarks and we may not have adequate resources to enforce our trademarks and may not be able to prevent such third parties from using and marketing any such trademarks.

In addition, any proprietary name we propose to use with epetraborole or any future product candidate in the United States must be approved by the FDA, regardless of whether we have registered it, or applied to register it, as a trademark. The FDA typically conducts a review of proposed product names, including an evaluation of the potential for confusion with other product names. If the FDA objects to any of our proposed proprietary product names, we may be required to expend significant additional resources in an effort to identify a suitable proprietary product name that would qualify under applicable trademark laws, not infringe the existing rights of third parties and be acceptable to the FDA. If we are unable to establish name recognition based on our trademarks, we may not be able to compete effectively and our business, financial condition, results of operations, and prospects may be adversely affected.

If we are unable to protect the confidentiality of our proprietary information, know-how, and trade secrets, the value of epetraborole or other future product candidates could be adversely affected and our business and competitive position would be harmed.

In addition to seeking patent protection for epetraborole or other future product candidates, we also rely on trade secrets, including unpatented know-how, technology, and other proprietary information, to maintain our competitive position. We seek to protect our trade secrets, in part, by entering into non-disclosure and confidentiality agreements with parties who have access to them, such as our employees, corporate collaborators, outside scientific collaborators, contract manufacturers, consultants, advisors, and other third parties. We also enter into confidentiality and invention or patent assignment agreements with our employees and consultants. However, these agreements may be inadequate to protect our proprietary and intellectual property rights. Despite these efforts, any of these parties may breach the agreements and disclose our proprietary information, including our trade secrets. In addition, we may not be able to obtain adequate remedies for any such breaches. Although we use reasonable efforts to protect this proprietary information and technology, we also cannot guarantee that we have entered into such agreements with each party that may have or have had access to our confidential information, know-how, trade secrets, or other proprietary information or each individual who has developed intellectual property on our behalf. Monitoring unauthorized uses and disclosures of our intellectual property is difficult, and we do not know whether the steps we have taken to protect our intellectual property will be effective. Enforcing a claim that a party illegally disclosed or misappropriated a

trade secret is difficult, expensive, distracting to management, and time-consuming, and the outcome is unpredictable and varied depending on the jurisdiction. In addition, some courts inside and outside the United States, in countries in which we operate or intend to operate, are less willing, or unwilling, to protect trade secrets, know-how, and other proprietary information. Any claims or litigation could cause us to incur significant expenses. Some third parties may be able to sustain the costs of complex litigation more effectively than we can because they have substantially greater resources.

Our employees, consultants, and other parties may unintentionally or willfully disclose our information or technology to competitors and there can be no assurance that the legal protections and precaution taken by us will be adequate to prevent misappropriation of our technology or that competitors will not independently develop technologies equivalent or superior to ours. Trade secrets and know-how can be difficult to protect. Our competitors or other third parties may independently develop knowledge, methods and know-how equivalent to our trade secrets. Additionally, competitors could purchase our product candidates and replicate some or all of the competitive advantages we derive from our development efforts for technologies on which we do not have patent protection. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them, or those to whom they communicate, from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed, which could have a material adverse effect on our business, financial condition, results of operations, and prospects.

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

Given the amount of time required for the development, testing, and regulatory review of new product candidates, patents we license or may own in the future protecting such candidates might expire before or shortly after such 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 our product candidates. Depending upon the timing, duration, and specifics of any FDA marketing approval of any of our product candidates, one or more of our in-licensed U.S. patents may be eligible for limited patent term extension under the Drug Price Competition and Patent Term Restoration Action of 1984, or Hatch-Waxman Amendments. The Hatch-Waxman Amendments permit a patent extension term 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 and only those claims covering the approved drug, a method for using it, or a method for manufacturing it may be extended. However, we may not be granted an extension 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 term of any such extension is less than we request, our competitors may obtain approval of competing products following our patent expiration, and our business, financial condition, results of operations, and prospects could be materially harmed.

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 applications will be due to be paid to the USPTO and various government patent agencies outside of the United States over the lifetime of our owned or in-licensed patents and applications. In

certain circumstances, we rely on our licensing partners to pay these fees due to U.S. and non-U.S. patent agencies. The USPTO and various non-U.S. government agencies require compliance with several procedural, documentary, fee payment, and other similar provisions during the patent application process. We are also dependent on our licensors to take the necessary action to comply with these requirements with respect to our licensed intellectual property. In some cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with the applicable rules. There are situations, however, in which non-compliance can result in abandonment or lapse of the patent or patent application, resulting in a partial or complete loss of patent rights in the relevant jurisdiction. In such an event, potential competitors might be able to enter the market with similar or identical products or technology, which could have a material adverse effect on our business, financial condition, results of operations, and prospects.

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

Filing, prosecuting, and defending patents on product candidates in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States could be less extensive than those in the United States. In some cases, we or our licensors may not be able to obtain patent protection for certain licensed technology outside 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, even in jurisdictions where we or our licensors do pursue patent protection. Consequently, we may not be able to prevent third parties from practicing our in-licensed inventions in all countries outside the United States, even in jurisdictions where our licensors do pursue patent protection 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 or our licensors have not pursued and 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 epetraborole, our future product candidates, and our preclinical programs. Our in-licensed patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents, trade secrets, and other intellectual property protection, particularly those relating to biotechnology products, which could make it difficult for us to stop the infringement of our in-licensed patents, if pursued and obtained, or the 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 in-licensed patents at risk of being invalidated or interpreted narrowly and our in-licensed 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 are 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.

Risks Related to Regulatory Approval of Epetraborole and Our Future Product Candidates and Other Legal Compliance Matters

If we are not able to obtain, or if there are delays in obtaining, required regulatory approvals, we will not be able to commercialize epetraborole or our future product candidates, and our ability to generate revenue will be materially impaired.

Epetraborole and our future product candidates and the activities associated with their development and commercialization, including their design, testing, manufacture, safety, efficacy, record-keeping, labeling, storage, approval, advertising, promotion, sale, and distribution, are subject to comprehensive regulation by the FDA and other regulatory agencies in the United States and by comparable foreign regulatory authorities, with regulations differing from country to country. Failure to obtain marketing approval for a product candidate will prevent us from commercializing the product candidate. We currently do not have any products approved for sale in any jurisdiction. We as a company only have limited experience in filing and supporting the applications necessary to gain marketing approvals and may rely on third-party contract research organizations to assist us in this process.

The time required to obtain approval, if any, by the FDA and comparable foreign authorities is unpredictable but typically takes many years following the commencement of clinical trials and depends upon numerous factors, including the substantial discretion of the regulatory authorities, government budget, and funding levels and statutory, regulatory, and policy changes. Average review times at the FDA have fluctuated in recent years, and disruptions at the FDA and other agencies may slow the time necessary for new drugs to be reviewed and/or approved. For example, over the last several years, including for 35 days beginning on December 22, 2018, the U.S. government has shut down several times and certain regulatory agencies, including the FDA, have had to furlough nonessential employees and stop routine activities. Events like this could significantly impact the ability of the FDA to timely review and process our regulatory submissions.

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. For instance, recent changes to leadership, enhanced focus on countermeasures related to the COVID-19 pandemic, and the reorganization and rededication of critical resources, at the FDA and within similar governmental health authorities across the world, may impact the ability of new products and services from being developed or commercialized in a timely manner. Regulations and requirements vary among jurisdictions, including in Europe and Japan. We have not obtained regulatory approval for any product candidate, and it is possible that epetraborole and any product candidates we may seek to develop in the future will never obtain regulatory approval. We are not permitted to market any product candidate in the United States until we receive regulatory approval of an NDA from the FDA.

In order to obtain approval to commercialize a product candidate in the United States or abroad, we or our collaborators must demonstrate to the satisfaction of the FDA or foreign regulatory agencies, that such product candidates are safe and effective for their intended uses. Results from nonclinical studies and clinical trials can be interpreted in different ways. Even if we believe that the nonclinical or clinical data for a product candidate is promising, such data may not be sufficient to support approval by the FDA and other regulatory authorities. The FDA may also require us to conduct additional nonclinical studies or clinical trials for product candidates either prior to or post-approval, and it may otherwise object to elements of our clinical development program.

We have not submitted a marketing application for epetraborole or any other product candidates in any country or region. Any marketing application must include extensive preclinical, nonclinical, and clinical data and supporting information to establish the product candidate's safety and efficacy for each desired indication. The marketing application(s) must also include significant information

regarding the chemistry, manufacturing, and controls for the product candidate. Obtaining marketing authorization is a lengthy, expensive, and uncertain process. The FDA, EMA, PMDA, TGA, and other comparable regulatory authorities have substantial discretion in the review and approval process and may refuse to accept for filing any application or may decide that our data are insufficient for approval and require additional nonclinical, clinical, or other studies. Foreign regulatory authorities have differing requirements for approval of drugs with which we must comply prior to marketing. There can be no assurance that any foreign regulatory authorities will accept FDA approval as sufficient to support approval in that country. Obtaining marketing approval for marketing of a product candidate in one country does not ensure that we will be able to obtain marketing approval in other countries, but the failure to obtain marketing approval in one jurisdiction could negatively affect our ability to obtain marketing approval in other jurisdictions. The FDA or any foreign regulatory bodies can delay, limit or deny approval of epetraborole or other future product candidates or require us to conduct additional nonclinical or clinical testing or abandon a program for many reasons, including:

- disagreement with the design or implementation of our clinical trials;
- negative or ambiguous results from our clinical trials or results that may not meet the level of statistical significance required by the FDA or comparable foreign regulatory agencies for approval (for example, otherwise positive epetraborole results may be called into question if patient reported outcomes introduce ambiguity due to factors such as co-morbidities and other underlying patient issues);
- serious and unexpected drug-related side effects experienced by participants in our clinical trials or by individuals using drugs similar to our product candidates;
- our inability to demonstrate to the satisfaction of the FDA or the applicable foreign regulatory body that our product candidates are safe and effective for the proposed indication;
- disagreement with the interpretation of data from nonclinical studies or clinical trials;
- our inability to demonstrate the clinical and other benefits of our product candidates outweigh any safety or other perceived risks;
- requirements for additional nonclinical studies or clinical trials;
- disagreement regarding the formulation, labeling, and/or the specifications we propose for our product candidates; or
- changes in a policies, requirements, or regulations rendering our clinical data insufficient for approval.

Of the large number of drugs in development, only a small percentage complete the FDA or foreign regulatory approval processes and are successfully commercialized. The lengthy review process as well as the unpredictability of future clinical trial results may result in our failing to obtain regulatory approval, which would significantly harm our business, financial condition, results of operations, and prospects.

Even if we eventually receive approval of an NDA or foreign marketing application for our product candidates, the FDA, or the applicable foreign regulatory agency may grant approval contingent on the performance of costly additional clinical trials, often referred to as Phase 4 clinical trials, and the FDA may require the implementation of a REMS, which may be required to ensure safe use of the drug after approval. The FDA or the applicable foreign regulatory agency also may approve a product candidate for a more limited indication or patient population than we originally requested, and the FDA or applicable foreign regulatory agency may not approve the labeling that we believe is necessary or desirable for the successful commercialization of a product candidate. Any delay in obtaining, or inability to obtain, applicable regulatory approval would delay or prevent commercialization of that product candidate and would materially adversely impact our business and prospects.

Future legislation, and/or regulations and policies adopted by the FDA, the EMA, or comparable regulatory authorities, may increase the time and cost required for us to conduct and complete clinical trials of epetraborole or other future product candidates.

The FDA has established regulations to govern the drug development and approval process, as have foreign regulatory authorities. The policies of the FDA and other regulatory authorities may change and additional laws may be enacted or government regulations may be promulgated that could prevent, limit, delay, or alternatively accelerate regulatory review of epetraborole or other future product candidates. Further, disruptions at the FDA and other agencies may prolong the time necessary for new drugs to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, over the last several years, the U.S. government has shut down several times and certain regulatory agencies, such as the FDA, have had to furlough critical employees and stop critical activities. If a prolonged government shutdown occurs, 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.

We have recently received orphan drug designation for epetraborole in the United States, and we may seek orphan drug designation for epetraborole in other regions or indications, or for our future product candidates. We may not be able to obtain or maintain orphan drug designations for any product candidates, and we may be unable to take advantage of the benefits associated with orphan drug designation, including the potential for market exclusivity.

Regulatory authorities in some jurisdictions, including the United States, may designate drugs for relatively small patient populations as orphan drugs. Under the Orphan Drug Act of 1983, the FDA may designate a product as an orphan product if it is intended to treat a rare disease or condition, which is generally defined as a patient population of fewer than 200,000 individuals in the United States, or a patient population of greater than 200,000 individuals in the United States, but for which there is no reasonable expectation that the cost of developing the drug will be recovered from sales in the United States. Similar laws exist in Europe and Japan. As part of our business strategy, we sought and have received orphan drug designation from the FDA for epetraborole for the treatment of infections caused by NTM; however, we may not be able to maintain this status. There can be no assurance that the FDA will grant orphan drug designation for epetraborole to treat any other indication for which we may apply. We may also seek orphan drug designation for future product candidates, and we may be unsuccessful in obtaining this designation.

In the United States, orphan designation entitles a party to financial incentives such as opportunities for grant funding towards clinical trial costs, tax advantages, and user-fee waivers. In addition, if a product candidate that has orphan drug designation subsequently receives the first FDA approval for the disease for which it has such designation, it is entitled to orphan drug exclusivity, which means that the FDA may not approve any other applications, including an NDA, to market the same drug for the same indication for seven years, except in limited circumstances, such as a showing of clinical superiority to the product with orphan drug exclusivity or where the manufacturer is unable to assure sufficient product quantity.

Pediatric exclusivity can provide an additional six months of market exclusivity in the United States. In addition, more than one product may be approved by the FDA for the same orphan indication or disease, as long as the products are different drugs. As a result, even though we have obtained orphan drug designation from the FDA for epetraborole for the treatment of infections caused by NTM, if epetraborole is approved by the FDA and receives orphan drug exclusivity, the FDA can still approve other drugs for use in treating the same indication or disease covered by epetraborole, which could create a more competitive market for us. The failure to successfully obtain orphan drug market exclusivity or pediatric drug market exclusivity would adversely affect our business.

Even if we obtain orphan drug exclusivity for a product, that exclusivity may not effectively protect the product from competition because different drugs can be approved for the same condition. Even after an orphan drug is approved, the FDA or comparable foreign regulatory authority can subsequently approve the same drug for the same condition if such regulatory authority concludes that the later drug is clinically superior if it is shown to be safer, more effective, or makes a major contribution to patient care. Orphan drug designation neither shortens the development time or regulatory review time of a drug nor gives the drug any advantage in the regulatory review or approval process. While we have obtained orphan drug designation for epetraborole for the treatment of infections caused by NTM, we may not be able to maintain such designation; and while we may seek orphan drug designations for epetraborole for other indications or for any future product candidates for applicable indications, we may never receive such designations. Even though we have received orphan drug designation for epetraborole for the treatment of infections caused by NTM, and may receive further such designations in the future, there is no guarantee that we will utilize the benefits of those designations.

We have recently received FDA Qualified Infectious Disease Product, or QIDP, designation for epetraborole, and may seek designation of any future candidates as QIDPs. Even if we receive such designations, there is no assurance that the FDA will approve a product candidate.

A QIDP is an antibacterial or antifungal drug intended to treat serious or life-threatening infections, including those caused by an antibacterial or antifungal resistant pathogen, including novel or emerging infectious pathogens or certain “qualifying pathogens.” Upon the regulatory approval of an NDA for a drug product designated by the FDA as a QIDP, the product is granted an additional period of five years of regulatory exclusivity. Even though we have received a QIDP designation for epetraborole, or may receive such designation for any future product candidate, there is no assurance that such product candidate will be approved by the FDA.

We have received, and may continue to seek, Fast Track designation or Breakthrough Therapy designation from the FDA, for certain of our product candidates, but receipt of such designation may not actually lead to a faster development, regulatory review, or approval process, and does not assure ultimate FDA approval.

We recently received Fast Track designation by the FDA to investigate epetraborole for treatment-refractory MAC lung disease. We may continue to seek Fast Track designation or Breakthrough Therapy designation for future product candidates or for other indications.

A breakthrough therapy is defined as a product that is intended, alone or in combination with one or more other products, to treat a serious or life-threatening disease or condition, and preliminary clinical evidence indicates that the product may demonstrate substantial improvement over existing therapies on one or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development. For products that have been designated as breakthrough therapies, interaction and communication between the FDA and the sponsor of the trial can help to identify the most efficient path for clinical development while minimizing the number of patients placed in ineffective control regimens. Products designated as breakthrough therapies by the FDA can also be eligible for accelerated approval.

Designation as a breakthrough therapy is within the discretion of the FDA. Accordingly, even if we believe one of our product candidates meets the criteria for designation as a breakthrough therapy, the FDA may disagree and instead determine not to make such designation. In any event, the receipt of a Breakthrough Therapy Designation for a product candidate may not result in a faster development process, review, or approval compared to products considered for approval under conventional FDA procedures and does not assure ultimate approval by the FDA. In addition, even if one or more of our product candidates qualify as breakthrough therapies, the FDA may later decide that the products no longer meet the conditions for qualification and rescind the breakthrough designation.

If a product is intended for the treatment of a serious or life-threatening condition and the product demonstrates the potential to address unmet medical needs for this condition, the product sponsor may apply for Fast Track designation. The FDA has broad discretion whether or not to grant this designation, so even if we believe a particular product candidate is eligible for this designation, we cannot assure you that the FDA would decide to grant it. Even though we have received Fast Track designation to develop Epetraborole in certain indications, or if we receive Fast Track designation for other product candidates or indications, we may not experience a faster development process, review, or approval compared to conventional FDA procedures and does not assure ultimate approval by the FDA. The FDA may withdraw Fast Track designation if it believes that the designation is no longer supported by data from our clinical development program.

We intend to seek FDA approval using the limited-population antibacterial drug, or LPAD, pathway. We may not be able to obtain or maintain LPAD designations for epetraborole and/or any future candidates, and we may be unable to take advantage of the benefits associated with LPAD designation.

We intend to seek FDA approval for epetraborole using the LPAD pathway, through which the FDA may review and approve new antibacterial drugs to treat serious bacterial diseases in patients with an unmet medical need and for which effective antibacterial drugs are limited or lacking. This pathway may allow us to conduct a more streamlined development program. In accordance with the 2017 FDA Guidance for Industry *Antibacterial Therapies for Patients With an Unmet Medical Need for the Treatment of Serious Bacterial Diseases*, any drug approved under this pathway must be labeled with the statement “Limited Population” in a prominent manner and adjacent to the proprietary name of the drug and the INDICATIONS AND USAGE section of the label pathway should summarize the limitations of available data that supported the approval. For example, but not limited to, the label must specify the limitations of the pathogens evaluated in the clinical trial or clinical trials conducted to evaluate the approved drug or the limitations of the amount of available safety data.

If we do not receive LPAD pathway approval (for example, because the FDA determines the trial does not meet the requirement of safety and efficacy necessary for approval), longer and more costly clinical trials may be required. The FDA does not determine if the LPAD pathway is applicable until the time of the NDA submission, and this creates uncertainty as to our ability to use this pathway.

Failure to obtain marketing approval in foreign jurisdictions would prevent epetraborole or our future product candidates from being marketed in these territories. Any approval we are granted for our product candidates in the United States would not assure approval of our product candidates in foreign jurisdictions.

In order to market and sell epetraborole or our future product candidates in the European Union, United Kingdom, Japan, other areas of Asia, and any other jurisdictions, we must obtain separate marketing approvals and comply with numerous and varying regulatory requirements. The approval procedure varies among countries and can involve additional testing. The time required to obtain approval may differ substantially from that required to obtain approval from the FDA. The regulatory approval process outside the United States generally includes all of the risks associated with obtaining approval from the FDA. In addition, in many countries outside the United States, it is required that the product be approved for reimbursement before the product can be approved for sale in that country. We may not obtain approvals from regulatory authorities outside the United States on a timely basis, if at all. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions, and data from clinical studies approved by the FDA may not be accepted by foreign regulatory agencies, and approval by one regulatory authority outside the United States does not ensure approval by regulatory authorities in other countries or jurisdictions or by the FDA. However, failure to obtain approval in one jurisdiction may impact our ability to obtain approval elsewhere. We may not be able to file for marketing authorization and may not receive necessary approvals to commercialize our product candidates in any market.

Even if we obtain marketing approvals for epetraborole or any future product candidates, the terms of approvals and ongoing regulation of such product candidates may limit how we manufacture and market the product candidates and compliance with such requirements may involve substantial resources, which could materially impair our ability to generate revenue.

Even if marketing approval of epetraborole or any future product candidates is granted, an approved product and its manufacturer and marketer are subject to ongoing review and extensive regulation, including the potential requirements to implement a risk evaluation and mitigation strategy or to conduct costly post-marketing studies or clinical trials and surveillance to monitor the safety or efficacy of the product. We must also comply with requirements concerning advertising and promotion for any of our product candidates for which we obtain marketing approval. Promotional communications with respect to prescription drugs are subject to a variety of legal and regulatory restrictions and must be consistent with the information in the product's approved labeling. Thus, we will not be able to promote any products we develop for indications or uses for which they are not approved. In addition, manufacturers of approved products and those manufacturers' facilities are required to comply with extensive FDA requirements including ensuring that quality control and manufacturing procedures conform to cGMP, which include requirements relating to quality control and quality assurance as well as the corresponding maintenance of records and documentation and reporting requirements. We and our contract manufacturers could be subject to periodic unannounced inspections by the FDA to monitor and ensure compliance with cGMP.

Accordingly, assuming we receive marketing approval for one or more product candidates, we and our contract manufacturers will continue to expend time, money, and effort in all areas of regulatory compliance, including manufacturing, production, product surveillance, and quality control. If we are not able to comply with post-approval regulatory requirements, we could have the marketing approvals for our product candidates withdrawn by regulatory authorities and our ability to market any future products could be limited, which could adversely affect our ability to achieve or sustain profitability. Thus, the cost of compliance with post-approval regulations may have a negative effect on our operating results and financial condition.

Any product candidate for which we obtain marketing approval could be subject to post-marketing restrictions or recall or withdrawal from the market, and we may be subject to penalties if we fail to comply with regulatory requirements or if we experience unanticipated problems with epetraborole or any future product candidates, when and if any of them are approved.

The FDA and other federal and state agencies, including the U.S. Department of Justice, or the DOJ, closely regulate compliance with all requirements governing prescription drug products, including requirements pertaining to marketing and promotion of drugs in accordance with the provisions of the approved labeling and manufacturing of products in accordance with cGMP requirements. The FDA and DOJ impose stringent restrictions on manufacturers' communications regarding off-label use and if we do not market epetraborole or our future product candidates for their approved indications, we may be subject to enforcement action for off-label marketing. Violations of such requirements may lead to investigations alleging violations of the Food, Drug and Cosmetic Act and other statutes, including the False Claims Act and other federal and state health care fraud and abuse laws as well as state consumer protection laws.

Our failure to comply with all regulatory requirements, and later discovery of previously unknown adverse events or other problems with our products, manufacturers or manufacturing processes, may yield various results, including:

- litigation involving patients taking our product candidates;
- restrictions on such products, manufacturers, or manufacturing processes;

- restrictions on the labeling or marketing of a product;
- restrictions on product distribution or use;
- requirements to conduct post-marketing studies or clinical trials;
- warning or untitled letters;
- withdrawal of the products from the market;
- refusal to approve pending applications or supplements to approved applications that we submit;
- recall of products;
- fines, restitution or disgorgement of profits or revenues;
- suspension or withdrawal of marketing approvals;
- damage to relationships with any potential collaborators;
- unfavorable press coverage and damage to our reputation;
- refusal to permit the import or export of our product candidates;
- product seizure; or
- injunctions or the imposition of civil or criminal penalties.

Non-compliance by us or any future collaborator with regulatory requirements regarding safety monitoring or pharmacovigilance, and with requirements related to the development of products for the pediatric population, can also result in significant financial penalties. Similarly, failure to comply with regulatory requirements regarding the protection of personal information can also lead to significant penalties and sanctions.

Non-compliance with EU requirements regarding safety monitoring or pharmacovigilance, and with requirements related to the development of products for the pediatric population, also can result in significant financial penalties. Similarly, failure to comply with the EU's requirements regarding the protection of personal information can also lead to significant penalties and sanctions.

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

We are exposed to the risk of employee fraud or other misconduct or failure to comply with applicable regulatory requirements. Misconduct by employees and independent contractors, such as principal investigators, CROs, consultants, commercial partners, and vendors, could include failures to comply with regulations of the FDA, the EMA, and other comparable regulatory authorities, to provide accurate information to such regulators, to comply with manufacturing standards we have established, to comply with healthcare fraud and abuse laws, to report financial information or data accurately, or to disclose unauthorized activities to us. In particular, sales, marketing, and other business arrangements in the healthcare industry are subject to extensive laws intended to prevent fraud, kickbacks, self-dealing, and other abusive practices. These laws may restrict or prohibit a wide range of business activities, including, but not limited to, research, manufacturing, distribution, pricing, discounting, marketing, and promotion, sales commission, customer incentive programs, and other business arrangements. Employee and independent contractor misconduct could also involve the improper use of individually identifiable information, including, without limitation, information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. In addition, federal procurement laws impose substantial penalties for misconduct in connection with government contracts and require certain contractors to maintain a code of business ethics and conduct. It is not always possible to identify and deter employee and independent contractor misconduct, and any precautions we take to detect and prevent improper activities may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in

compliance with such laws. If any such actions are instituted against us, those actions could have a significant impact on our business, including the imposition of civil, criminal and administrative penalties, damages, monetary fines, disgorgement, possible exclusion from participation in Medicare, Medicaid, and other federal healthcare programs, contractual damages, reputational harm, diminished profits, and future earnings, additional reporting or oversight obligations if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with the law and curtailment, or restructuring of our operations, any of which could adversely affect our ability to operate.

If we successfully commercialize epetraborole or one of our future product candidates, failure to comply with our reporting and payment obligations under U.S. governmental pricing programs could have a material adverse effect on our business, financial condition, and results of operations.

If we participate in the Medicaid Drug Rebate Program, Part D, if and when we successfully commercialize a product candidate, we will be required to report certain pricing information for such product candidate to the Centers for Medicare & Medicaid Services, the federal agency that administers the Medicaid and Medicare programs. We may also be required to report pricing information to the U.S. Department of Veterans Affairs. If we become subject to these reporting requirements, we will be liable for errors associated with our submission of pricing data, for failure to report pricing data in a timely manner, and for overcharging government payers, which can result in civil monetary penalties under the Medicaid statute, the federal civil False Claims Act, and other laws and regulations.

Our current and future relationships with healthcare professionals, principal investigators, consultants, customers, and third-party payors in the United States and elsewhere may be subject, directly or indirectly, to applicable anti-kickback, fraud and abuse, false claims, physician payment transparency, health information privacy and security, and other healthcare laws and regulations, which could expose us to penalties.

Healthcare providers, physicians, and third-party payors in the United States and elsewhere will play a primary role in the recommendation and prescription of any product candidates for which we obtain marketing approval. Our current and future arrangements with healthcare professionals, principal investigators, consultants, customers, and third-party payors may expose us to broadly applicable fraud and abuse and other healthcare laws, including, without limitation, the federal Anti-Kickback Statute and the federal False Claims Act, that may constrain the business or financial arrangements and relationships through which we research, sell, market, and distribute any product candidates for which we obtain marketing approval. In addition, we may be subject to physician payment transparency laws and patient privacy and security regulation by the federal government and by the states and foreign jurisdictions in which we conduct our business. The applicable federal, state, and foreign healthcare laws that may affect our ability to operate include the following:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward, or in return for, either the referral of an individual for, or the purchase, lease, order, or recommendation of, any good, facility, item or service, for which payment may be made, in whole or in part, under federal and state healthcare programs such as Medicare and Medicaid;
- federal civil and criminal false claims laws, including the federal False Claims Act, which impose criminal and civil penalties, including through civil whistleblower or *qui tam* actions, against individuals or entities for, among other things, knowingly presenting, or causing to be presented, to the federal government, including the Medicare and Medicaid programs, claims for payment that are false or fraudulent or making a false statement to avoid, decrease, or conceal an obligation to pay money to the federal government;
- the federal civil monetary penalties statute, which imposes penalties against any person or entity who, among other things, is determined to have presented or caused to be presented a

claim to a federal health program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent;

- the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which created additional federal criminal statutes that prohibit knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program or obtain, by means of false or fraudulent pretenses, representations or promises, any of the money or property owned by, or under the custody or control of, any healthcare benefit program, regardless of whether the payor is public or private, knowingly and willfully embezzling or stealing from a health care benefit program, willfully obstructing a criminal investigation of a health care offense and knowingly and willfully falsifying, concealing or covering up by any trick or device a material fact or making any materially false statements in connection with the delivery of, or payment for, healthcare benefits, items or services relating to healthcare matters;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, or HITECH, and their respective implementing regulations, which impose obligations on "covered entities," including certain healthcare providers, health plans, and healthcare clearinghouses, as well as their respective "business associates" and their respective subcontractors that create, receive, maintain, or transmit individually identifiable health information for or on behalf of a covered entity, with respect to safeguarding the privacy, security, and transmission of individually identifiable health information;
- the federal Physician Payments Sunshine Act, created under Section 6002 of Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, or collectively, the ACA, and its implementing regulations, created annual reporting requirements for manufacturers of drugs, devices, biologicals, and medical supplies for certain payments and "transfers of value" provided to physicians (defined to include doctors, dentists, optometrists, podiatrists, and chiropractors) and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members. As of January 1, 2022, these reporting obligations will extend to include transfers of value made in the previous year to certain non-physician providers such as physician assistants and nurse practitioners; and
- analogous state and foreign laws, such as state anti-kickback and false claims laws, which may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers; state and foreign laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government or to adopt compliance programs as prescribed by state laws and regulations, or that otherwise restrict payments that may be made to healthcare providers; state and foreign laws that require drug manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures; state and local laws requiring the licensure of pharmaceutical sales representatives; and state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Further, the ACA, among other things, amended the intent requirement of the federal Anti-Kickback Statute and certain criminal statutes governing healthcare fraud. A person or entity no longer needs to have actual knowledge of the statute or specific intent to violate it. In addition, the ACA provided that the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the False Claims Act.

Efforts to ensure that our future business arrangements with third parties will comply with applicable healthcare laws and regulations may involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal, and administrative penalties, including, without limitation, damages, monetary fines, disgorgement, possible exclusion from participation in Medicare, Medicaid, and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings, additional reporting or oversight obligations if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with the law and curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and pursue our strategy. If any of the physicians or other healthcare providers or entities with whom we expect to do business, including future collaborators, are found not to be in compliance with applicable laws, they may be subject to criminal, civil, or administrative sanctions, including exclusions from participation in government healthcare programs, which could also affect our business.

Changes in healthcare policies, laws, and regulations may impact our ability to obtain approval for, or commercialize epetraborole or our future product candidates, if approved.

In the United States and some foreign jurisdictions there have been, and continue to be, several legislative and regulatory changes and proposed reforms of the healthcare system in an effort to contain costs, improve quality, and expand access to care. In the United States, there have been and continue to be a number of healthcare-related legislative initiatives, as well as executive, judicial, and Congressional challenges to existing healthcare laws that have significantly affected, and could continue to significantly affect, the healthcare industry. For example, on June 17, 2021, the U.S. Supreme Court dismissed a challenge on procedural grounds that argued the ACA is unconstitutional in its entirety because the “individual mandate” was repealed by Congress. Thus, the Affordable Care Act will remain in effect in its current form. Further, prior to the U.S. Supreme Court ruling, on January 28, 2021, President Biden issued an executive order that initiated a special enrollment period for purposes of obtaining health insurance coverage through the ACA marketplace, which began on February 15, 2021 and remained open through August 15, 2021. The executive order also instructed certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA. It is possible that the Affordable Care Act will be subject to judicial or Congressional challenges in the future. In addition, recently there has been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several U.S. Congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to drug pricing, reduce the cost of prescription drugs under government payor programs and review the relationship between pricing and manufacturer patient programs. Further, based on a recent executive order, the Biden administration expressed its intent to pursue certain policy initiatives to reduce drug prices. We expect that additional U.S. federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that the U.S. federal government will pay for healthcare products and services, which could result in reduced demand for epetraborole or our future product candidates or additional pricing pressures.

We are subject to privacy and data security laws, rules, regulations, policies, industry standards, and contractual obligations, and our failure to comply with them could harm our business.

We maintain a large quantity of sensitive information, including confidential business information and information related to our employees and we expect to maintain personal information in connection

with the conduct of our clinical trials. As such, we are subject to laws and regulations governing the privacy and security of such information. In the United States, there are numerous federal and state privacy and data security laws and regulations governing the collection, use, disclosure, and protection of personal information, including federal and state health information privacy laws, federal and state security breach notification laws, and federal and state consumer protection laws. The legislative and regulatory landscape for privacy and data protection continues to evolve, and there has been an increasing focus on privacy and data protection issues, which may affect our business and is expected to increase our compliance costs and exposure to liability. In the United States, numerous federal and state laws and regulations could apply to our operations or the operations of our partners, including state data breach notification laws, state health information privacy laws, and federal and state consumer protection laws and regulations, including Section 5 of the Federal Trade Commission Act, that govern the collection, use, disclosure, and protection of health-related and other personal information. In addition, we may obtain health information from third parties, including research institutions from which we obtain clinical trial data, that are subject to privacy and security requirements under HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, and the regulations promulgated thereunder. Depending on the facts and circumstances, we could be subject to significant penalties if we obtain, use or disclose individually identifiable health information in a manner that is not authorized or permitted by HIPAA.

Compliance with these and any other applicable privacy and data security laws and regulations we may be subject to in the future is a rigorous and time-intensive process, and we may be required to put in place additional mechanisms ensuring compliance with the new data protection rules. If we fail to comply with any such laws or regulations, we may face significant fines and penalties that could adversely affect our business, financial condition, results of operations or prospects. Any failure by us or our third-party processors to comply with these data protection and privacy laws and regulations could result in significant government enforcement actions, which could include civil, criminal, and administrative penalties, orders requiring that we change our practices, claims for damages, and other liabilities, regulatory investigations and enforcement action, private litigation, significant costs of remediation, and adverse publicity, any of which could negatively affect our operating results and business. Furthermore, the laws are not consistent, and compliance in the event of a widespread data breach is costly. In addition, states are constantly adopting new laws or amending existing laws, requiring attention to frequently changing regulatory requirements.

With laws, regulations, and other obligations relating to privacy and data protection imposing new and relatively burdensome obligations, and with the substantial uncertainty over the interpretation and application of these and other obligations, we may face challenges in addressing their requirements and making necessary changes to our policies and practices and may incur significant costs and expenses in an effort to do so. We are currently in the process of developing and updating our policies and procedures in accordance with requirements under applicable data privacy and protection laws and regulations. We do not currently have any formal data privacy policies and procedures in place and have not completed formal assessments of whether we are in compliance with all applicable data privacy laws and regulations. Additionally, if third parties with which we work, such as vendors or service providers, violate applicable laws, rules or regulations or our policies, such violations may also put our or our clinical trial and employee data, including personal data, at risk, and our business, financial condition, results of operations, and prospects may be adversely affected.

Our product candidates may be subject to government price controls that may affect our revenue.

There has been heightened governmental scrutiny in the United States and abroad of pharmaceutical pricing practices in light of the rising cost of prescription drugs and biologics. In the United States, such scrutiny has resulted in several recent Congressional inquiries and proposed and enacted federal legislation designed to, among other things, bring more transparency to product pricing, review

the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products. At the state level, legislatures have become increasingly aggressive in passing legislation and implementing 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. Outside of the United States, particularly in the European Union, 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 epetraborole or our future product candidates to other available therapies. 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.

If we fail to comply with environmental, health, and safety laws and regulations, we could become subject to fines or penalties or incur costs that could harm our business.

We are subject to numerous environmental, health, and safety laws and regulations, including those governing laboratory procedures and the handling, use, storage, treatment, and disposal of hazardous materials and wastes. Our operations involve the use of hazardous materials, including chemicals and biological materials. Our operations also produce hazardous waste products. We generally contract with third parties for the disposal of these materials and wastes. We cannot eliminate the risk of contamination or injury from these materials. In the event of contamination or injury resulting from our use of hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources. 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 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 insurance for 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. Our failure to comply with these laws and regulations also may result in substantial fines, penalties or other sanctions.

We are subject to U.S. and certain foreign export and import controls, sanctions, embargoes, anti-corruption laws, and anti-money laundering laws and regulations. Compliance with these legal standards could impair our ability to compete in domestic and international markets. We can face criminal liability and other serious consequences for violations, which can harm our business.

We are subject to export control and import laws and regulations, including the U.S. Export Administration Regulations, U.S. Customs regulations, various economic and trade sanctions regulations administered by the U.S. Treasury Department's Office of Foreign Assets Controls, 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 other state and national anti-bribery and anti-money laundering laws in the countries in which we conduct activities. Anti-corruption laws are interpreted broadly and prohibit companies and their employees, agents, contractors, and other collaborators from authorizing, promising, offering, or providing, directly or indirectly, improper payments or anything else of value to recipients in the public or private sector.

We may engage third parties to sell epetraborole or our future product candidates outside the United States, to conduct clinical trials, and/or to obtain necessary permits, licenses, patent registrations, and other regulatory approvals. We have direct or indirect interactions with officials and employees of government agencies or government-affiliated hospitals, universities, and other organizations. We can be held liable for the corrupt or other illegal activities of our employees, agents, contractors, and other collaborators, even if we do not explicitly authorize or have actual knowledge of such activities. Any violations of the laws and regulations described above may result in substantial civil and criminal fines and penalties, imprisonment, the loss of export or import privileges, debarment, tax reassessments, breach of contract, and fraud litigation, reputational harm, and other consequences.

Risks Related to Ownership of Our Common Stock

If you purchase common stock in this offering, you will suffer immediate dilution of your investment.

The initial public offering price per share of our common stock is substantially higher than the pro forma as adjusted net tangible book value per share. Therefore, if you purchase common stock in this offering, you will pay a price per share that substantially exceeds our pro forma as adjusted net tangible book value per share after this offering. Based on an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, you will experience immediate dilution of $ per share, representing the difference between our pro forma as adjusted net tangible book value per share after this offering and the assumed initial public offering price per share. After this offering, we will also have outstanding options to purchase shares of our common stock with exercise prices lower than the initial public offering price. To the extent these outstanding options are exercised, there will be further dilution to investors in this offering. For further information regarding the dilution resulting from this offering, see the section titled “Dilution” in this prospectus.

A significant portion of our total outstanding shares are restricted from immediate resale but may be sold into the market in the near future. This could cause the market price of our common stock to drop significantly, even if our business is doing well.

Sales of a substantial number of shares of our common stock in the public market could occur at any time, subject to the restrictions and limitations described below. If our stockholders sell, or the market perceives that our stockholders intend to sell, substantial amounts of our common stock in the public market following this offering, the market price of our common stock could decline significantly.

Upon the closing of this offering, we will have outstanding shares of common stock, after giving effect to the conversion of all 4,849,064 shares of our outstanding redeemable convertible preferred stock into an equivalent number of shares of common stock, assuming no exercise of the underwriters’ overallotment option and no exercise of outstanding options. Of these shares, the shares sold in this offering will be freely tradable and the remaining shares of common stock will be available for sale in the public market beginning after the end of the 180th day after the date of this prospectus following the expiration of lock-up agreements between our stockholders and certain of the underwriters for this offering, subject, in the case of our affiliates, to the conditions of Rule 144 under the Securities Act of 1933, as amended, or the Securities Act. The representatives, on behalf of the underwriters, may release these stockholders from their lock-up agreements at any time and without notice, which would allow for earlier sales of shares in the public market subject to the conditions of Rule 144 under the Securities Act.

In addition, promptly following the closing of this offering, we intend to file one or more registration statements on Form S-8 registering the issuance of approximately million shares of common stock subject to options or other equity awards issued or reserved for future issuance under our equity incentive plans. Shares registered under these registration statements on Form S-8 will be available for sale in the

public market subject to vesting arrangements and exercise of options, the lock-up agreements described above and, in the case of our affiliates, the restrictions of Rule 144 under the Securities Act.

Additionally, after this offering, the holders of an aggregate of shares of our common stock, or their transferees, will have rights, subject to some conditions, to require us to file one or more registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or other stockholders. If we were to register the resale of these shares, they could be freely sold in the public market without limitation. If these additional shares are sold, or if it is perceived that they will be sold, in the public market, the trading price of our common stock could decline.

Concentration of ownership of our common stock among our existing executive officers, directors, and principal stockholders may prevent new investors from influencing significant corporate decisions and matters submitted to stockholders for approval.

Upon completion of this offering, our executive officers, directors, and current beneficial owners of 5% or more of our capital stock and their respective affiliates will, in the aggregate, beneficially own % of our outstanding common stock, based on the number of shares of our capital stock outstanding as of February 15, 2022 and after giving effect to the conversion of all 4,849,064 shares of our outstanding redeemable convertible preferred stock as of December 31, 2021 into an equivalent number of shares of common stock, assuming no exercise of the underwriters' overallotment option and no exercise of outstanding options. As a result, these persons, acting together, would be able to significantly influence all matters requiring stockholder approval, including the election and removal of directors, any merger, consolidation, or sale of all or substantially all of our assets, or other significant corporate transactions. In addition, these persons, acting together, may have the ability to control the management and affairs of our company. Accordingly, this concentration of ownership may harm the market price of our common stock by:

- delaying, deferring, or preventing a change in control;
- entrenching our management and/or the board of directors;
- impeding a merger, consolidation, takeover, or other business combination involving us; or
- discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of us.

In addition, some of these persons or entities may have interests different than yours. For example, because many of these stockholders purchased their shares at prices substantially below the price at which shares are being sold in this offering and have held their shares for a longer period, they may be more interested in selling our company to an acquirer than other investors, or they may want us to pursue strategies that deviate from the interests of other stockholders.

Provisions in our corporate charter documents and under Delaware law could make an acquisition of our company, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our amended and restated certificate of incorporation and our amended and restated bylaws that will become effective upon the completion of this offering may discourage, delay or prevent a merger, acquisition, or other change in control of our company that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. These provisions also could limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, because our board of directors is responsible for appointing the members of our management team, these provisions may frustrate or

prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Among other things, these provisions:

- establish a classified board of directors such that not all members of the board are elected at one time;
- allow the authorized number of our directors to be changed only by resolution of our board of directors;
- limit the manner in which stockholders can remove directors from the board;
- establish advance notice requirements for stockholder proposals that can be acted on at stockholder meetings and nominations to our board of directors;
- require that stockholder actions must be effected at a duly called stockholder meeting and prohibit actions by our stockholders by written consent;
- limit who may call stockholder meetings;
- authorize our board of directors to issue preferred stock without stockholder approval, which could be used to institute a stockholder rights plan, or so-called “poison pill,” that would work to dilute the stock ownership of a potential hostile acquirer, effectively preventing acquisitions that have not been approved by our board of directors; and
- require the approval of the holders of at least 66 2/3% of the votes that all our stockholders would be entitled to cast to amend or repeal certain provisions of our charter or bylaws.

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, or the DGCL, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired more than 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner. These provisions could discourage potential acquisition proposals and could delay or prevent a change in control transaction. They could also have the effect of discouraging others from making tender offers for our common stock, including transactions that may be in your best interests. These provisions may also prevent changes in our management or limit the price that investors are willing to pay for our stock.

Our amended and restated certificate of incorporation will provide that the Court of Chancery of the State of Delaware and the federal district courts of the United States will be the exclusive forums for substantially all disputes between us and our stockholders, including claims under the Securities Act, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our amended and restated certificate of incorporation will provide that the Court of Chancery of the State of Delaware is the exclusive forum for:

- any derivative action or proceeding brought on our behalf;
- any action asserting a breach of fiduciary duty;
- any action asserting a claim against us or any of our directors, officers, employees, or agents arising under the DGCL, our amended and restated certificate of incorporation, or our amended and restated bylaws;
- any action or proceeding to interpret, apply, enforce, or determine the validity of our amended and restated certificate of incorporation, or our amended and restated bylaws; and
- any action asserting a claim against us or any of our directors, officers, employees, or agents that is governed by the internal-affairs doctrine.

Furthermore, our amended and restated certificate of incorporation will also provide that unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising

under the Securities Act. However, these provisions would not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. In addition, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. To the extent the exclusive forum provision restricts the courts in which claims arising under the Securities Act may be brought, there is uncertainty as to whether a court would enforce such a provision. We note that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

Any person purchasing or otherwise acquiring or holding any interest in shares of our capital stock is deemed to have received notice of and consented to the foregoing provisions. These choice of forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds more favorable for disputes with us or with our directors, officers, other employees or agents, or our other stockholders, which may discourage such lawsuits against us and such other persons, or may result in additional expense to a stockholder seeking to bring a claim against us. Alternatively, if a court were to find this choice of forum provision inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business, results of operations, financial condition, and prospects.

We will have broad discretion in the use of proceeds from this offering and may invest or spend the proceeds in ways with which you do not agree and in ways that may not increase the value of your investment.

Our management will have broad discretion in the application of our cash, including the net proceeds from this offering, and could spend the proceeds in ways that do not improve our results of operations or enhance the value of our common stock. The failure by our management to apply these funds effectively could result in financial losses that could have a negative impact on our business, cause the price of our common stock to decline, and delay the development of epetraborole and planned pipeline and expansion programs as well as commercial preparedness. Pending their use, we may invest our cash, including the net proceeds from this offering, in a manner that does not produce value or that loses value. See the section titled "Use of Proceeds" for additional information.

We do not anticipate paying any cash dividends on our capital stock in the foreseeable future, and accordingly, stockholders must rely on capital appreciation, if any, for any return on their investment.

We do not anticipate paying any cash dividends on our common stock in the foreseeable future. Instead, we plan to retain any earnings to maintain and expand our existing operations. In addition, any future credit facility or debt securities may contain terms prohibiting or limiting the amount of dividends that may be declared or paid on our common stock. If we do not pay cash dividends, you could receive a return on your investment in our common stock only if you are able to sell your shares in the future and the market price of our common stock has increased when you sell your shares. As a result, investors seeking cash dividends should not purchase our common stock.

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

As of December 31, 2021, we had federal and state net operating loss, or NOLs, carryforwards of approximately $32.1 million and $29.7 million, respectively. Under the Tax Cuts and Jobs Act of 2017, or the Tax Act, as modified by the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, our NOLs generated in tax years beginning after December 31, 2017 may be carried forward indefinitely, but the deductibility of such federal NOLs in tax years beginning after December 31, 2020, is limited to 80% of taxable income. It is uncertain if and to what extent various states will conform to

the Tax Act or the CARES Act. In addition, under Sections 382 and 383 of the U.S. Internal Revenue Code of 1986, as amended, or the Code, if a corporation undergoes an "ownership change," generally defined as a greater than 50 percentage point change (by value) in its equity ownership by certain stockholders over a three-year period, the corporation's ability to use its pre-change NOLs and other pre-change tax attributes (such as research and development tax credits) to offset its post-change income or taxes may be limited. We may have experienced ownership changes in the past and may experience ownership changes in the future as a result of this offering and/or subsequent shifts in our stock ownership (some of which may be outside our control). As a result, our ability to use our pre-change NOLs and tax credits to offset post-change taxable income, if any, could be subject to limitations. Similar provisions of state tax law may also apply. In addition, at the state level, there may be periods during which the use of NOLs is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed.

General Risk Factors

An active trading market for our common stock may not develop and you may not be able to resell your shares at or above the initial offering price, if at all.

This offering constitutes the initial public offering of our common stock, and no public market has previously existed for our common stock. We have applied to list our common stock on The Nasdaq Global Market. Any delay in the commencement of trading of our common stock on The Nasdaq Global Market would impair the liquidity of the market for the shares and make it more difficult for holders to sell their shares of our common stock. If our common stock is listed and quoted on The Nasdaq Global Market, there can be no assurance that an active trading market for the shares will develop or be sustained after this offering is completed. The initial offering price will be determined by negotiations among the lead underwriters and us. Among the factors to be considered in determining the initial public offering price are our future prospects and the prospects of our industry in general, our financials and certain other financial and operating information in recent periods, and the market prices of securities and certain financial and operating information of companies engaged in activities similar to ours. However, there can be no assurance that, following the completion of this offering, the shares of our common stock will trade at a price equal to or greater than the public offering price.

The trading price of our common stock may be volatile, and you could lose all or part of your investment.

The trading price of our common stock following this offering is likely to be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control, including limited trading volume. 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. As a result of this volatility, investors may not be able to sell their shares at or above the price paid for the shares. In addition to the factors discussed in this "Risk Factors" section and elsewhere in this prospectus, these factors include:

- the commencement, enrollment, or results of our planned and future clinical trials;
- the loss of any of our key research, development, or management personnel;
- regulatory or legal developments in the United States and other countries;
- the success of competitive products or technologies;
- adverse actions taken by regulatory agencies with respect to our clinical trials or manufacturers;
- changes or developments in laws or regulations applicable to epetraborole or any future product candidates;
- changes to our relationships with collaborators, manufacturers, or suppliers;
- the results of our testing and clinical trials;

- unanticipated safety, tolerability, or efficacy concerns;
- announcements concerning our competitors or the pharmaceutical industry in general;
- actual or anticipated fluctuations in our operating results;
- changes in financial estimates or recommendations by securities analysts;
- potential acquisitions;
- the results of our efforts to discover, develop, acquire, or in-license additional product candidates;
- the trading volume of our common stock on The Nasdaq Global Market;
- sales of our common stock by us, our executive officers and directors or our stockholders or the anticipation that such sales may occur in the future;
- general economic, political, and market conditions and overall fluctuations in the financial markets in the United States or the United Kingdom (including those relating to macroeconomic events, such as the COVID-19 pandemic and the recent outbreak of hostilities between Russia and Ukraine);
- stock market price and volume fluctuations of comparable companies and, in particular, those that operate in the biopharmaceutical industry; and
- investors' general perception of us and our business.

These and other market and industry factors may cause the market price and demand for our common stock to fluctuate substantially, regardless of our actual operating performance, which may limit or prevent investors from selling their shares of our common stock at or above the price paid for the shares and may otherwise negatively affect the liquidity of our common stock. In addition, the stock market in general, and biopharmaceutical companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies.

Some companies that have experienced volatility in the trading price of their shares have been the subject of securities class action litigation. Any lawsuit to which we are a party, with or without merit, may result in an unfavorable judgment. We also may decide to settle lawsuits on unfavorable terms. Any such negative outcome could result in payments of substantial damages or fines, damage to our reputation or adverse changes to our business practices. Defending against litigation is costly and time-consuming and could divert our management's attention and our resources. Furthermore, during the course of litigation, there could be negative public announcements of the results of hearings, motions, or other interim proceedings or developments, which could have a negative effect on the market price of our common stock.

If equity research analysts do not publish research or reports, or publish unfavorable research or reports, about us, our business, or our market, our stock price and trading volume could decline.

The trading market for our common stock will be influenced by the research and reports that equity research analysts publish about us and our business. We do not currently have and may never obtain research coverage by equity research analysts. Equity research analysts may elect not to provide research coverage of our common stock after the completion of this offering, and such lack of research coverage may adversely affect the market price of our common stock. In the event we do have equity research analyst coverage, we will not have any control over the analysts or the content and opinions included in their reports. The price of our shares could decline if one or more equity research analysts downgrade our shares or issue other unfavorable commentary or research about us. If one or more equity research analysts ceases coverage of us or fails to publish reports on us regularly, demand for our shares could decrease, which in turn could cause the trading price or trading volume of our common stock to decline.

We will incur significantly increased costs as a result of operating as a company whose common stock is publicly traded in the United States, and our management will be required to devote substantial time to new compliance initiatives.

As a public company in the United States, we will incur significant legal, accounting, and other expenses that we did not incur previously. These expenses will likely be even more significant after we no longer qualify as an emerging growth company. The Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of The Nasdaq Global Market, and other applicable securities rules and regulations impose various requirements on public companies in the United States, including the establishment and maintenance of effective disclosure and financial controls and corporate governance practices. Our senior management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. For example, we expect that these rules and regulations may make it more difficult and more expensive for us to obtain director and officer liability insurance, which in turn could make it more difficult for us to attract and retain qualified senior management personnel or members for our board of directors. We cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

However, these rules and regulations are often subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices.

Pursuant to Section 404, we will be required to furnish a report by our senior management on our internal control over financial reporting. However, while we remain an emerging growth company, we will not be required to include an attestation report on internal control over financial reporting issued by our independent registered public accounting firm. To prepare for eventual compliance with Section 404, we will be engaged in a process to document and evaluate our internal control over financial reporting, which is both costly and challenging. In this regard, we will need to continue to dedicate internal resources, potentially engage outside consultants, and adopt a detailed work plan to assess and document the adequacy of internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are functioning as documented, and implement a continuous reporting and improvement process for internal control over financial reporting. Despite our efforts, there is a risk that we will not be able to conclude, within the prescribed timeframe or at all, that our internal control over financial reporting is effective as required by Section 404. Identifying material weaknesses could result in an adverse reaction in the financial markets due to a loss of confidence in the reliability of our financial statements.

Significant disruptions of our information technology systems or data security incidents could result in significant financial, legal, regulatory, business, and reputational harm to us.

We are increasingly dependent on information technology systems and infrastructure, including mobile technologies, to operate our business. In the ordinary course of our business, we collect, store, process, and transmit large amounts of sensitive information, including intellectual property, proprietary business information, personal information, and other confidential information. It is critical that we do so in a secure manner to maintain the confidentiality, integrity, and restricted availability of such sensitive information. We have also outsourced elements of our operations, including elements of our information technology infrastructure, to third parties and, as a result, we manage a number of third-party vendors who may or could have access to our computer networks or our confidential information. In addition, many of those third parties in turn subcontract or outsource some of their responsibilities to other third parties. While all information technology operations are inherently vulnerable to inadvertent or intentional security breaches, incidents, attacks, and exposures, the accessibility and distributed

nature of our information technology systems, and the sensitive information stored on those systems, make such systems potentially vulnerable to unintentional or malicious, internal, and external attacks on our technology environment. Potential vulnerabilities can be exploited from inadvertent or intentional actions of our employees, third-party vendors, business partners, or by malicious third parties. Attacks of this nature are increasing in their frequency, levels of persistence, sophistication, and intensity, and are being conducted by sophisticated and organized groups and individuals with a wide range of motives (including industrial espionage) and expertise, including organized criminal groups, “hacktivists,” nation states, and others. In addition to the extraction of sensitive information, such attacks could include the deployment of harmful malware, ransomware, denial-of-service attacks, social engineering, and other means to affect service reliability and threaten the confidentiality, integrity, and availability of information. In addition, the prevalent use of mobile devices increases the risk of data security incidents.

Significant disruptions of our or our third-party vendors’ or business partners’ information technology systems or other similar data security incidents could adversely affect our business operations and result in the loss, misappropriation, and unauthorized access, use or disclosure of, or the prevention of access to, sensitive information, which could result in financial, legal, regulatory, business, and reputational harm to us. In addition, information technology system disruptions, whether from attacks on our technology environment or from computer viruses, natural disasters, terrorism, war, and telecommunication and electrical failures, could result in a material disruption of our development programs and our business operations. For example, the loss of clinical trial data from ongoing, completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. We cannot ensure that our data protection efforts and our investment in information technology, or the efforts or investments of CROs, consultants or other third parties with which we work, will prevent breakdowns or breaches in our or their systems or other cybersecurity incidents that cause loss, destruction, unavailability, alteration, dissemination of, or damage, or unauthorized access to, our data, including personal data, assets, and other data processed or maintained on our behalf, that could have a material adverse effect upon our reputation, business, operations, or financial condition.

While we have implemented security measures intended to protect our information technology systems and infrastructure, there can be no assurance that such measures will successfully prevent service interruptions or security incidents. There is no way of knowing with certainty whether we have experienced any data security incidents that have not been discovered. While we have no reason to believe this to be the case, attackers have become very sophisticated in the way they conceal access to systems, and many companies that have been attacked are not aware that they have been attacked. Any event that leads to unauthorized access, use, or disclosure of personal information, including personal information regarding our patients or employees, could disrupt our business, harm our reputation, compel us to comply with applicable federal and state breach notification laws and foreign law equivalents, subject us to time-consuming, distracting, and expensive litigation, regulatory investigation and oversight, mandatory corrective action, require us to verify the correctness of database contents, or otherwise subject us to liability under laws, regulations, and contractual obligations, including those that protect the privacy and security of personal information. This could result in increased costs to us, and result in significant legal and financial exposure and reputational harm. In addition, any failure or perceived failure by us or our vendors or business partners to comply with our privacy, confidentiality, or data security-related legal or other obligations to third parties, or any further security incidents or other inappropriate access events, may result in governmental investigations, enforcement actions, regulatory fines, litigation, or public statements against us by advocacy groups or others, and could cause third parties, including clinical sites, regulators, or current and potential partners, to lose trust in us, or we could be subject to claims by third parties that we have breached our privacy- or confidentiality-related obligations. Moreover, data security incidents and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased

harm of the type described above. Any of the foregoing could have a material adverse effect on our reputation, business, operations, or financial condition.

We are an "emerging growth company" and as a result of the reduced disclosure and governance requirements applicable to emerging growth companies, our common stock may be less attractive to investors.

We are an "emerging growth company" as defined in the JOBS Act. For so long as we remain an emerging growth company, we are permitted by SEC rules and plan to rely on exemptions from certain disclosure requirements that are applicable to other SEC-registered public companies that are not emerging growth companies. These exemptions include not being required to comply with the auditor attestation requirements of Section 404, not being required to comply with the auditor requirements to communicate critical audit matters in the auditor's report on the financial statements, reduced disclosure obligations regarding executive compensation, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. As a result, the information we provide stockholders will be different than the information that is available with respect to other public companies. We have taken advantage of reduced reporting burdens in this prospectus. In particular, in this prospectus, we have provided only two years of audited financial statements and we have not included all of the executive compensation related information that would be required if we were not an emerging growth company. We cannot predict whether investors will find our common stock less attractive if we rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock, and our stock price may be more volatile.

In addition, the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. This allows an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to avail ourselves of this exemption and, therefore, we will not be subject to the same requirements to adopt new or revised accounting standards as other public companies that are not "emerging growth companies."

Recent and potential future changes to U.S. and non-U.S. tax laws could materially adversely affect our company.

Existing, new, or future changes in tax laws, regulations, and treaties, or the interpretation thereof, in addition to tax policy initiatives and reforms under consideration in the United States or internationally and other initiatives could have an adverse effect on the taxation of international businesses. Furthermore, countries where we are subject to taxes, including the United States, are independently evaluating their tax policy and we may see significant changes in legislation and regulations concerning taxation. On December 22, 2017, President Trump signed into law the Tax Act, which significantly revised the Code. The overall impact of the Tax Act is uncertain and our business and financial condition could be adversely affected. The impact of this tax reform on holders of our common stock is also uncertain and could be adverse. Other legislative changes could also affect the taxation of holders of our common stock. We are unable to predict what tax reform may be proposed or enacted in the future or what effect such changes would have on our business, but such changes, to the extent they are brought into tax legislation, regulations, policies or practices, could affect our effective tax rates in the future in countries where we have operations and have an adverse effect on our overall tax rate in the future, along with increasing the complexity, burden, and cost of tax compliance. We urge our stockholders to consult with their legal and tax advisors with respect to any such legislative changes and the potential tax consequences of investing in or holding our common stock.

Indemnity provisions in various agreements potentially expose us to substantial liability for intellectual property infringement, data protection, and other losses.

Our agreements with third parties may include indemnification provisions under which we agree to indemnify them for losses suffered or incurred as a result of claims of intellectual property infringement or other liabilities relating to or arising from our contractual obligations. Large indemnity payments could harm our business and financial condition. Although we normally contractually limit our liability with respect to such obligations, we may still incur substantial liability. Any dispute with a third party with respect to such obligations could have adverse effects on our relationship with that third party and relationships with other existing or new partners, harming our business.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. All statements other than statements of historical facts contained in this prospectus, including statements regarding our future results of operations and financial position, business strategy, product candidates, planned preclinical and nonclinical studies and clinical trials, results of preclinical and nonclinical studies, clinical trials, research and development costs, regulatory approvals, timing and likelihood of success, as well as plans and objectives of management for future operations, are forward-looking statements. These statements involve known and unknown risks, uncertainties, and other important factors that are in some cases beyond our control and 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.

In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “would,” “expect,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “believe,” “estimate,” “predict,” “potential,” or “continue,” or the negative of these terms or other similar expressions. Forward-looking statements contained in this prospectus include, but are not limited to, statements about:

- our use of the net proceeds from this offering;
- the initiation, timing, progress, and results of our preclinical and nonclinical studies and clinical trials, and our research and development programs, including the manufacture of clinical trial material and drug product for launch;
- the ability of our planned Phase 2/3 pivotal clinical trial in MAC lung disease to be sufficient for regulatory approval in the United States;
- our ability to retain the continued service of our key professionals and to identify, hire, and retain additional qualified professionals;
- our ability to advance product candidates into, and successfully complete, clinical trials;
- the timing of and our ability to obtain and maintain regulatory approvals for our product candidates;
- the commercialization of our product candidates, if approved;
- the ability of epetraborole, if approved, to successfully compete with other therapies, including therapies currently in development;
- the pricing, coverage, and reimbursement of our product candidates, if approved;
- the implementation of our business model, strategic plans for our business, and product candidates;
- the scope of protection we are able to establish and maintain for intellectual property rights covering our product candidates;
- our ability to identify additional product candidates and advance them into clinical development;
- our estimates regarding expenses, capital requirements, and needs for additional financing;
- our financial performance; and
- developments relating to our competitors and our industry.

We have based these forward-looking statements largely on our current expectations and projections about our business, the industry in which we operate and financial trends that we believe may affect our business, financial condition, results of operations, and prospects and these forward-looking statements are not guarantees of future performance or development. These forward-looking statements speak only as of the date of this prospectus and are subject to a number of risks, uncertainties, and assumptions described in the section titled “Risk Factors” and elsewhere in this

prospectus. Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein until after we distribute this prospectus, whether as a result of any new information, future events, or otherwise.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this prospectus, and while 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 an exhaustive inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain, and you are cautioned not to unduly rely upon these statements.

MARKET, INDUSTRY, AND OTHER DATA

We obtained the industry, market, and competitive position data used throughout this prospectus from our own internal estimates and research, as well as from independent market research, industry, and general publications and surveys, governmental agencies, and publicly available information in addition to research, surveys, and studies conducted by third parties. Internal estimates are derived from publicly available information released by industry analysts and third-party sources, our internal research and our industry experience, and are based on assumptions made by us based on such data and our knowledge of our industry and market, which we believe to be reasonable. In some cases, we do not expressly refer to the sources from which this data is derived. In that regard, when we refer to one or more sources of this type of data in any paragraph, you should assume that other data of this type appearing in the same paragraph is derived from the same sources, unless otherwise expressly stated or the context otherwise requires. In addition, while we believe the industry, market, and competitive position data included in this prospectus is reliable and based on reasonable assumptions, such data involve risks and uncertainties and are subject to change based on various factors, including those discussed in the section titled “Risk Factors.” These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties or by us.

USE OF PROCEEDS

We estimate that we will receive net proceeds from this offering of approximately $ million (or approximately $ million if the underwriters' option to purchase additional shares of our common stock is exercised in full) based on the assumed initial public offering price of $ per share, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

Each $1.00 increase or decrease in the assumed initial public offering price of $ per share would increase or decrease, as applicable, the net proceeds to us from this offering by approximately $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase or decrease of 1.0 million shares in the number of shares of common stock offered by us would increase or decrease, as applicable, the net proceeds to us from this offering by approximately $ million, assuming the initial public offering price of $ per share remains the same, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

The principal purposes of this offering are to obtain additional capital to support our operations, establish a public market for our common stock and facilitate our future access to the public capital markets.

We currently intend to use the net proceeds we receive from this offering, together with our existing cash, as follows:

- approximately $ to fund the clinical development of epetraborole for treatment-refractory NTM lung disease caused by MAC through the receipt of topline data from our ongoing Phase 1 renal impairment study and planned Phase 2/3 pivotal clinical trial and to fund manufacturing and other pre-registration activities;
- approximately $ to fund the expansion of epetraborole in treatment-refractory MAC lung disease in other key markets, with an initial focus on Japan, as well as in other NTM indications such as treatment-naïve MAC lung disease and *M. abscessus* lung infections; and
- the remainder to fund the further development of our AN2 drug discovery platform and for general corporate purposes, including working capital and operating expenses.

We may also use a portion of the net proceeds and our existing cash to in-license, acquire, or invest in complementary businesses, technology platforms, products, or assets. However, we have no current commitments or obligations to do so.

We believe, based on our current operating plan, that the net proceeds from this offering, together with our existing cash, will be sufficient to fund our operations for at least the next months. Our expected use of proceeds from this offering described above represents our current intentions based on our present plans and business conditions. As of the date of this prospectus, we cannot predict with certainty all of the particular uses for the proceeds to be received upon the closing of this offering or the actual amounts that we will spend on the uses set forth above. The net proceeds from this offering, together with our existing cash, will not be sufficient for us to fund epetraborole through regulatory approval, and we anticipate needing to raise additional capital to commercialize epetraborole and to develop any future product candidates.

The amounts and timing of our actual expenditures will depend on numerous factors, including the time and cost necessary to conduct our planned clinical trials, the results of our planned clinical trials

and other factors described in the section titled “Risk Factors” in this prospectus, as well as the amount of cash used in our operations and any unforeseen cash needs. Therefore, our actual expenditures may differ materially from the estimates described above. We may find it necessary or advisable to use the net proceeds for other purposes. We will have broad discretion over how to use the net proceeds to us from this offering. We intend to invest the net proceeds to us from this offering that are not used as described above in short-term, investment-grade, interest-bearing instruments.

DIVIDEND POLICY

We do not anticipate declaring or paying, in the foreseeable future, any cash dividends on our capital stock. We intend to retain all available funds and future earnings, if any, to fund the development and expansion of our business. Any future determination regarding the declaration and payment of dividends, if any, will be at the discretion of our board of directors, subject to applicable laws, and will depend on then-existing conditions, including our financial condition, operating results, contractual restrictions, capital requirements, business prospects, and other factors our board of directors may deem relevant. In addition, our ability to pay cash dividends on our capital stock in the future may be limited by the terms of any future debt or preferred securities we issue or any credit facilities we enter into.

CAPITALIZATION

The following table sets forth our cash, cash equivalents and investments and capitalization as of December 31, 2021:

- on an actual basis;
- on a pro forma basis, giving effect to the (i) automatic conversion of all 4,849,064 shares of our outstanding redeemable convertible preferred stock as of December 31, 2021 into an equivalent number of shares of our common stock, which will occur upon the closing of this offering, and the related reclassification of the carrying value of our redeemable convertible preferred stock to permanent equity upon the closing of this offering, and (ii) filing and effectiveness of our amended and restated certificate of incorporation that will be in effect immediately after the closing of this offering; and
- on a pro forma as adjusted basis, giving effect to the (i) pro forma adjustments set forth above and (ii) our receipt of net proceeds from the sale of shares of common stock in this offering at the assumed initial public offering price of $ per share, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

You should read this table together with the sections titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Description of Capital Stock,” and our financial statements and the related notes included elsewhere in this prospectus.

	As of December 31, 2021		
	Actual	Pro Forma	Pro Forma As Adjusted
	(in thousands, except share and per share amounts)		
Cash, cash equivalents and investments	$ 62,041	$ 62,041	$
Series A redeemable convertible preferred stock, $0.00001 par value per share; 2,582,403 shares authorized, 2,582,403 shares issued and outstanding, actual; no shares authorized, issued and outstanding, pro forma and pro forma as adjusted	$ 24,308	$ –	$
Series B redeemable convertible preferred stock, $0.00001 par value per share; 2,266,661 shares authorized, 2,266,661 shares issued and outstanding, actual; no shares authorized, issued and outstanding pro forma and pro forma as adjusted	85,011	–	
Stockholders’ (deficit) equity:			
Preferred stock, $0.00001 par value per share; no shares authorized, issued and outstanding, actual; shares authorized, pro forma and pro forma as adjusted; no shares issued and outstanding, pro forma, and pro forma as adjusted	–	–	
Common stock, $0.00001 par value per share; 7,295,839 shares authorized, 1,160,382 shares issued and outstanding, actual; shares authorized, shares issued and outstanding, pro forma; shares authorized, shares issued and outstanding, pro forma as adjusted	–	–	
Additional paid-in capital	–	109,319	
Accumulated other comprehensive loss	(27)	(27)	
Accumulated deficit	(47,384)	(47,384)	
Total stockholders’ (deficit) equity	(47,411)	61,908	
Total capitalization	$ 61,908	$ 61,908	$

The pro forma as adjusted information above is illustrative only, and our capitalization following the closing of this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing. Each $1.00 increase or decrease in the assumed initial public offering price of $ per share would increase or decrease, as applicable, each of our pro forma as adjusted cash, additional paid-in capital, total stockholders' deficit and total capitalization by approximately $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase or decrease of 1.0 million shares in the number of shares common stock offered by us would increase or decrease, as applicable, each of our pro forma as adjusted cash, additional paid-in capital, total stockholders' deficit, and total capitalization by approximately $ million, assuming the assumed initial public offering price of $ per share remains the same, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

The number of shares of our common stock to be issued and outstanding, pro forma and pro forma as adjusted in the table above is based on 6,009,446 shares of common stock outstanding as of December 31, 2021, after giving effect to the automatic conversion of all 4,849,064 shares of our outstanding redeemable convertible preferred stock as of December 31, 2021 into an equivalent number of shares of our common stock upon the closing of this offering, and excludes:

- 675,386 shares of our common stock issuable upon the exercise of outstanding stock options as of December 31, 2021, with a weighted-average exercise price of $14.00 per share;
- 16,150 shares of our common stock issuable upon the exercise of outstanding stock options granted subsequent to December 31, 2021 through February 15, 2022, with a weighted-average exercise price of $21.90 per share;
- shares of our common stock reserved for future issuance under our 2022 Plan, which will become effective once the registration statement of which this prospectus forms a part is declared effective, as well as any future automatic annual increases in the number of shares of common stock reserved for issuance under our 2022 Plan; and
- shares of our common stock reserved for issuance under our ESPP, which will become effective once the registration statement of which this prospectus forms a part is declared effective, as well as any future automatic annual increases in the number of shares of common stock reserved for future issuance under our ESPP.

DILUTION

If you invest in our common stock in this offering, your interest will be diluted to the extent of the difference between the initial public offering price per share of common stock and the pro forma as adjusted net tangible book value per share immediately after this offering.

As of December 31, 2021, we had a historical net tangible book deficit of $49.1 million, or $42.34 per share of common stock based on the 1,160,382 shares of common stock outstanding as of such date. Our historical net tangible book value (deficit) per share represents total tangible assets less total liabilities and redeemable convertible preferred stock, which is not included within permanent equity, divided by the number of shares of common stock outstanding as of December 31, 2021.

Our pro forma net tangible book value as of December 31, 2021 was $60.2 million, or $10.02 per share. Pro forma net tangible book value per share represents the amount of our total tangible assets less our total liabilities, divided by 6,009,446 shares of common stock outstanding as of such date, after giving effect to (i) the automatic conversion of all 4,849,064 shares of our outstanding redeemable convertible preferred stock as of December 31, 2021 into an equivalent number of shares of our common stock and the related reclassification of the carrying value of our redeemable convertible preferred stock to permanent equity upon the closing of this offering, and (ii) the filing and effectiveness of our amended and restated certificate of incorporation that will be in effect immediately after the closing of this offering.

After giving effect to the sale by us of shares of common stock in this offering at the assumed initial public offering price of $ per share, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of December 31, 2021 would have been $ million, or $ per share. This amount represents an immediate increase in pro forma as adjusted net tangible book value of $ per share to our existing stockholders and an immediate dilution in pro forma as adjusted net tangible book value of $ per share to investors purchasing common stock in this offering. We determine dilution by subtracting the pro forma as adjusted net tangible book value per share after this offering from the amount of cash paid by an investor for a share of common stock in this offering. The following table illustrates this dilution on a per share basis:

Assumed initial public offering price per share		$
Historical net tangible book deficit per share as of December 31, 2021	$(42.34)	
Pro forma increase in historical net tangible book value per share attributable to the pro forma transaction described in the preceding paragraphs	$ 52.36	
Pro forma net tangible book value per share as of December 31, 2021	$ 10.02	
Increase in pro forma as adjusted net tangible book value per share attributable to investors purchasing shares in this offering		
Pro forma as adjusted net tangible book value per share after this offering		
Dilution in pro forma as adjusted net tangible book value per share to investors purchasing shares in this offering		$

The dilution information discussed above is illustrative only and may change based on the actual initial public offering price and other terms of this offering. Each $1.00 increase or decrease in the

assumed initial public offering price of $ per share would increase or decrease, as applicable, our pro forma as adjusted net tangible book value per share after this offering by $ per share and increase or decrease, as applicable, the dilution to investors purchasing shares in this offering by $ per share, in each case assuming the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase or decrease of 1.0 million shares in the number of shares of common stock offered by us would increase or decrease our pro forma as adjusted net tangible book value by approximately $ per share and decrease or increase, as applicable, the dilution to investors purchasing shares in this offering by approximately $ per share, in each case assuming the assumed initial public offering price of $ per share remains the same, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their option to purchase additional shares of common stock in full, the pro forma net tangible book value per share, as adjusted to give effect to this offering, would be $ per share, and the dilution in pro forma net tangible book value per share to investors in this offering would be $ per share.

The following table summarizes, as of December 31, 2021:

- the total number of shares of common stock purchased from us by our existing stockholders and by investors purchasing shares in this offering;
- the total consideration paid to us by our existing stockholders and by investors purchasing shares in this offering, assuming an initial public offering price of $ per share, before deducting underwriting discounts and commissions and estimated offering expenses payable by us in connection with this offering; and
- the average price per share paid by existing stockholders for shares issued prior to this offering and by investors purchasing shares in this offering.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders			$		$
New investors					
Total		100%	$	100%	

The foregoing discussion and table above (other than the historical net tangible book value calculation) are based on 6,009,446 shares of common stock outstanding as of December 31, 2021, after giving effect to the automatic conversion of all 4,849,064 shares of our outstanding redeemable convertible preferred stock as of December 31, 2021 into an equivalent number of shares of our common stock upon the closing of this offering, and excludes:

- 675,386 shares of our common stock issuable upon the exercise of outstanding stock options as of December 31, 2021, with a weighted-average exercise price of $14.00 per share;
- 16,150 shares of our common stock issuable upon the exercise of outstanding stock options granted subsequent to December 31, 2021 through February 15, 2022, with a weighted-average exercise price of $21.90 per share;
- shares of our common stock reserved for future issuance under our 2022 Plan, which will become effective once the registration statement of which this prospectus forms a part is declared effective, as well as any future automatic annual increases in the number of shares of common stock reserved for issuance under our 2022 Plan; and

- shares of our common stock reserved for issuance under our ESPP, which will become effective once the registration statement of which this prospectus forms a part is declared effective, as well as any future automatic annual increases in the number of shares of common stock reserved for future issuance under our ESPP.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and the related notes included elsewhere in this prospectus. This discussion and analysis and other parts of this prospectus contain forward-looking statements based upon current beliefs, plans and expectations related to future events and our future financial performance that involve risks, uncertainties and assumptions, such as statements regarding our intentions, plans, objectives, and expectations for our business. Our actual results and the timing of selected events could differ materially from those described in or implied by these forward-looking statements as a result of several factors, including those set forth in the section titled "Risk Factors." See also the section titled "Special Note Regarding Forward-Looking Statements."

Overview

We are a clinical-stage biopharmaceutical company developing treatments for rare, chronic, and serious infectious diseases with high unmet needs. Our initial product candidate is epetraborole, a once-daily, oral treatment for patients with chronic NTM lung disease. Epetraborole has broad spectrum antimycobacterial activity through inhibition of an essential and universal step in bacterial protein synthesis. Its novel mechanism of action is enabled by boron chemistry, our core technology approach. We plan to conduct a Phase 2/3 pivotal clinical trial in treatment-refractory MAC lung disease, which is the most common type of NTM lung disease. Interim data from our completed Phase 1b dose-ranging study of epetraborole administered orally for 28 days in healthy volunteers in Australia and data from our two nonclinical chronic toxicology studies (six-month rats and nine-month non-human primates) have informed our selection of a 500 mg once-daily dose for our Phase 2/3 pivotal clinical trial in treatment-refractory MAC lung disease patients. We believe our Phase 2/3 pivotal clinical trial design, which is under review by the FDA, has the potential to be sufficient for regulatory approval in the United States. We recently received clearance of our IND application by the FDA to begin our Phase 1 renal impairment study, for which enrollment commenced in February 2022, and plan to initiate patient enrollment in our Phase 2/3 pivotal clinical trial in the first half of 2022, with topline results for the Phase 2 part of the trial anticipated in the middle of 2023 and for the Phase 3 part of the trial anticipated in the middle of 2024, pending any sample size adjustments that may be required to the Phase 3 portion based on treatment effects of epetraborole-containing regimens that may be observed in the Phase 2 portion of the trial, if any. We also recently received Fast Track designation by the FDA to investigate epetraborole for treatment-refractory MAC lung disease. Epetraborole has also recently been designated as a QIDP for treatment-refractory MAC lung disease by the FDA and received FDA orphan drug designation for the treatment of infections caused by NTM. Based on clinical and preclinical data generated with epetraborole, its novel mechanism of action, and the convenience associated with once-daily, oral dosing, we believe that epetraborole has the potential to become an important component of a multi-drug treatment regimen for patients suffering from NTM lung disease.

Since launching operations in November 2019, we have devoted substantially all of our resources to developing our initial product candidate. We have incurred significant operating losses to date. We expect that our operating expenses will increase significantly as we advance our current and future product candidates through preclinical, nonclinical and clinical development, seek regulatory approval, and prepare for and, if approved, proceed to commercialization; acquire, discover, validate, and develop additional product candidates; obtain, maintain, protect, and enforce our intellectual property portfolio; and hire additional personnel. In addition, upon the completion of this offering, we expect to incur additional costs associated with operating as a public company.

We do not have any products approved for sale and have not generated any revenue since inception. Our net losses were $13.6 million and $21.5 million for the years ended December 31, 2020 and 2021, respectively. As of December 31, 2021, we had an accumulated deficit of $47.4 million. We have funded our operations from the sale and issuance of redeemable convertible preferred stock. In

March 2021, we raised an aggregate of $80.0 million from the sale of Series B redeemable convertible preferred stock. From November 2019 through October 2020, we raised an aggregate of $12.0 million from the sale of Series A redeemable convertible preferred stock. As of December 31, 2021, we had cash, cash equivalents and investments of $62.0 million. We believe that our available cash will be sufficient to fund our planned operations for at least 12 months following the date of this prospectus without the proceeds from this offering.

Our ability to generate product revenue will depend on the successful development, regulatory approval and eventual commercialization of one or more of our product candidates. Until such time as we can generate revenue from our product sales, if ever, we expect to finance our operations through private or public equity or debt financings, collaborative or other arrangements with corporate sources, non-dilutive financing, or through other sources of financing. Adequate funding may not be available to us on acceptable terms, or at all. If we fail to raise capital or enter into such agreements as and when needed, we may have to significantly delay, scale back, or discontinue the development and commercialization of our product candidates.

We plan to continue to use third-party service providers, including outside research laboratories, clinical research organizations, or CROs, and contract manufacturing organizations, or CMOs, to carry out our preclinical, nonclinical, and clinical development, and to manufacture and supply the materials to be used during the development and commercialization of our product candidates. We do not currently have a sales force. If epetraborole is approved for the treatment of NTM lung disease, we intend to hire and deploy a specialty sales force, which will increase our operating costs.

Components of Our Operating Results

Operating Expenses

Research and Development Expenses

Substantially all of our research and development expenses consist of expenses incurred in connection with the development of our initial product candidate. These expenses include fees incurred under arrangements with third parties, including CROs, CMOs, preclinical and nonclinical testing organizations, and academic and non-profit institutions. Research and development expenses also include consulting fees, license fees, payroll, and personnel-related expenses, including salaries and bonuses, payroll taxes, employee benefit costs, and non-cash stock-based compensation for our research and development employees. We expense both internal and external research and development expenses as they are incurred.

In November 2019, we entered into an exclusive worldwide license agreement with Anacor Pharmaceuticals, Inc., or Anacor, for certain compounds and other intellectual property controlled by Anacor for the treatment, diagnosis, or prevention of all human diseases. In exchange for the worldwide, sublicensable, exclusive right and licenses to develop, manufacture, and commercialize the specified compounds, we paid Anacor a $2.0 million upfront payment and issued Anacor 466,376 shares of Series A redeemable convertible preferred stock in November 2019, and an additional 112,688 shares in October 2020 in conjunction with the first and second closings of our Series A financing, respectively. For financial reporting purposes, the fair market value of the 579,064 shares of Series A redeemable convertible preferred stock issued to Anacor, pursuant to our license agreement with Anacor, was $5.79 per share, for a total fair market value of approximately $3.4 million. By comparison, the issuance price for the 2,003,339 shares of Series A redeemable convertible preferred stock that we issued and sold from November 2019 through December 2020 was $5.99 per share, for an aggregate purchase price of approximately $12.0 million. See “Business—License Agreement with Anacor Pharmaceuticals, Inc.” for additional information.

Costs are not tracked on a project-by-project basis, because substantially all of our research and development resources to date are focused primarily on our lead drug product candidate, epetraborole. Our research and development costs include internal costs, such as payroll and other personnel expenses, and external costs, such as license payments and fees paid to third parties to conduct research and development activities on our behalf. The following table shows our research and development and research and development—related party expenses by type of activity:

	Year Ended December 31,	
	2020	2021
	(in thousands)	
Clinical, nonclinical and preclinical expenses	$2,688	$10,738
Chemistry, Manufacturing and Controls (CMC) expenses	2,359	4,118
Regulatory and other expenses	319	1,300
Research and development—related party	653	750
Total research and development and research and development—related party expenses	$6,019	$16,906

We expect our research and development expenses to increase substantially following this offering, and in the future, as we advance epetraborole and any future products into and through additional clinical trials and pursue regulatory approval. The process of conducting the necessary clinical studies to obtain regulatory approval is costly and time-consuming. Clinical studies generally become larger and more costly to conduct as they advance into later stages and we are required to make estimates for expense accruals related to clinical study expenses, which involve a degree of estimation. The successful development of our product candidates is highly uncertain. The actual probability of success for our product candidates may be affected by a variety of risks and uncertainties associated with drug development, including those set forth in the section of this prospectus titled “Risk Factors.” At this time, we cannot reasonably estimate the nature, timing, or costs required to complete the remaining development of our current or any future product candidates. As a result of these uncertainties, we are unable to determine the duration and completion costs of our research and development projects or when and to what extent we will generate revenue from the commercialization and sale of our product candidates.

General and Administrative Expenses

Our general and administrative expenses consist primarily of payroll and personnel-related expenses, including salaries and bonuses, payroll taxes, employee benefit costs, and non-cash stock-based compensation. Other general and administrative expenses include legal costs of pursuing patent protection of our intellectual property, and professional service fees for auditing, tax, and general legal services. We expect our general and administrative expenses to continue to increase in the future as we increase our headcount, expand our operating activities, prepare for potential commercialization of our current and future product candidates, and support our operations as a public company, including increased expenses related to legal, accounting, regulatory, and tax-related services associated with maintaining compliance with requirements of The Nasdaq Global Market and the SEC, directors and officers liability insurance premiums and investor relations activities.

Interest Income

Interest income consists of interest income and investment income earned on our cash, cash equivalents and investments.

Other Expense

Other expense consists of changes to the estimated fair value of the redeemable convertible preferred stock tranche liability and expense associated with foreign currency fluctuations.

Results of Operations

Comparison of the Years Ended December 31, 2020 and 2021

The following table sets forth the significant components of our results of operations:

	Year Ended December 31,			
	2020	2021	Change	% Change
	(in thousands, except percentages)			
Operating Expenses:				
Research and development	$ 5,366	$ 16,156	$ 10,790	201%
Research and development—related party	653	750	97	15
General and administrative	1,265	4,668	3,403	269
Total operating expenses	7,284	21,574	14,290	196
Loss from operations	(7,284)	(21,574)	(14,290)	196
Interest income	3	69	66	NM
Other expense	(6,322)	(38)	6,284	(99)
Net loss	$(13,603)	$(21,543)	$ (7,940)	58%

Research and Development Expenses

Research and development expenses were $5.4 million for the year ended December 31, 2020 compared to $16.2 million for the year ended December 31, 2021. The increase of $10.8 million was primarily due to increases in personnel-related expenses and expenses related to outside services, consultants and manufacturing. Personnel-related costs increased by $2.3 million, as a direct result of our increased research and development headcount. Outside services and consultants increased by $8.3 million for clinical trial expense, preclinical testing and manufacturing. Facility related expenses, including rent, utilities and information technology expenses, increased by $0.2 million to support our increased headcount.

Research and Development Expenses—Related Party

Research and development expenses—related party were $0.7 million for the year ended December 31, 2020 compared to $0.8 million for the year ended December 31, 2021. The increase of $0.1 million was a result of our $0.7 million issuance of redeemable convertible preferred stock to Anacor in 2020 and $0.8 million in milestone payments to Anacor that were recognized in 2021. See “Business—License Agreement with Anacor Pharmaceuticals, Inc.” for additional information.

General and Administrative Expenses

General and administrative expenses were $1.3 million for the year ended December 31, 2020 compared to $4.7 million for the year ended December 31, 2021. The increase of $3.4 million was primarily attributable to a $1.4 million increase in personnel-related costs as we expanded our headcount, and a $1.9 million increase in outside services for professional services, including legal, accounting and human resources, to support our ongoing operations. Facility related expenses, including rent, utilities and information technology expenses, increased by $0.1 million to support our increased headcount.

Interest Income

Interest income was less than $0.1 million for the year ended December 31, 2020 and $0.1 million for the year ended 2021. The income for both years represents interest and investment income from cash, cash equivalents and investments. The increase of $0.1 million was due to a higher average cash, cash equivalents and investments balance in the year ended December 31, 2021.

Other Expense

Other expense was $6.3 million during the year ended December 31, 2020, attributable to an increase in the fair value of the redeemable convertible preferred stock tranche liability during 2020. Other expense was less than $0.1 million during the year ended December 31, 2021, attributable to losses on foreign currency fluctuations.

Liquidity and Capital Resources

Sources of Liquidity

From our inception through December 31, 2021, we have funded our operations through private placements of our redeemable convertible preferred stock and have raised net cash proceeds of $91.6 million from the issuance of our redeemable convertible preferred stock. Key financing and corporate milestones include:

- In November 2019, we raised net cash proceeds of $8.1 million from issuance of our Series A redeemable convertible preferred stock.
- In January and March 2020, we raised net cash proceeds of $0.2 million from issuance of our Series A redeemable convertible preferred stock.
- In October 2020, we raised net cash proceeds of $3.6 million from additional issuances of our Series A redeemable convertible preferred stock.
- In March 2021, we raised net cash proceeds of $79.7 million from issuance of our Series B redeemable convertible preferred stock.

Future Funding Requirements

We have incurred net losses since our inception. For the years ended December 31, 2020 and 2021, we had net losses of $13.6 million and $21.5 million, respectively, and we expect to incur substantial additional losses in future periods. As of December 31, 2021, we had an accumulated deficit of $47.4 million. As of December 31, 2021, we had cash, cash equivalents and investments of $62.0 million. Based on our current business plan, we believe that our available cash will be sufficient to fund our planned operations for at least 12 months following the date of this prospectus without the proceeds from this offering.

We do not have any products approved for sale, and we have never generated any revenue from contracts with customers. We do not expect to generate any meaningful revenue unless and until we obtain regulatory approval for and commercialize any of our current and future product candidates and we do not know when, or if, those events will occur. Historically, we have incurred operating losses and negative cash flows as a result of ongoing efforts to develop our lead drug product candidate, epetraborole, including conducting ongoing preclinical and nonclinical studies, clinical trials, clinical trial materials manufacturing, and providing general and administrative support for these operations. We expect our negative cash flows to increase significantly over the next several years as we advance epetraborole and any future product candidates through clinical development, seek regulatory approval, prepare for and, if approved, proceed to commercialization, and continue our research and development efforts. We are subject to all the risks typically related to the development of new product candidates, and we may encounter unforeseen expenses, difficulties, complications, delays, and other unknown factors that may adversely affect our business. Moreover, following the completion of this offering, we expect to incur additional costs associated with operating as a public company. We anticipate that we will need substantial additional funding in connection with our continuing operations, as we do not expect positive cash flows from operations in the foreseeable future.

Until we can generate a sufficient amount of revenue from the commercialization of our product candidates, if ever, we expect to finance our future cash needs through public or private equity

offerings or debt financings. Additional capital may not be available on reasonable terms, if at all. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we may have to significantly delay, scale back or discontinue the development or commercialization of one or more of our current or future product candidates. If we raise additional funds by issuing equity or convertible debt securities, it could result in dilution to our existing stockholders and increased fixed payment obligations. In addition, as a condition to providing additional funds to us, future investors may demand, and may be granted, rights superior to those of existing stockholders. If we incur indebtedness, we could become subject to covenants that would restrict our operations and potentially impair our competitiveness, such as limitations on our ability to incur additional debt, limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business. Additionally, any future collaborations we enter into with third parties may provide capital in the near term but we may have to relinquish valuable rights to our product candidates or grant licenses on terms that are not favorable to us. Any of the foregoing could significantly harm our business, financial condition and prospects.

We have based our projections of operating capital requirements on assumptions that may prove to be incorrect and we may use all our available capital resources sooner than we expect. Because of the numerous risks and uncertainties associated with research, development and commercialization of product candidates, we are unable to estimate the exact amount of our operating capital requirements. Our future capital requirements depend on many factors, including:

- the scope, timing, rate of progress, results, and costs of our preclinical and nonclinical development activities and clinical trials for our current and future product candidates;
- the timing of, and the costs involved in, obtaining regulatory approvals for our drug product candidates;
- the scope and costs of development and commercial manufacturing activities;
- the number and characteristics of any additional product candidates we develop or acquire;
- the cost of manufacturing our product candidates that we successfully commercialize;
- the cost of building a specialty sales force in anticipation of product commercialization;
- the cost of commercialization activities, including building a commercial infrastructure, marketing, sales, and distribution costs;
- our ability to maintain existing, and establish new strategic collaborations, licensing, or other arrangements and the financial terms of any such agreements, including the timing and amount of any future milestone, royalty, or other payments due under any such agreement;
- any product liability or other lawsuits related to our products;
- the expenses needed to attract, hire, and retain skilled personnel;
- our implementation of operational, financial, and management systems;
- the costs associated with being a public company;
- the costs involved in preparing, filing, prosecuting, maintaining, defending, and enforcing our intellectual property portfolio; and
- the timing, receipt, and amount of sales of any future approved products, if any.

A change in the outcome of any of these or other variables with respect to the development of any of our current and future product candidates could significantly change the costs and timing associated with the development of that product candidate. Furthermore, our operating plans may change in the future, and we will continue to require additional capital to meet operational needs and capital requirements associated with such operating plans. Any future debt financing into which we enter may impose upon us additional covenants that restrict our operations, including limitation on our ability to incur liens or additional debt, pay dividends, repurchase our common stock, make certain investments

or engage in certain merger, consolidation or asset sale transactions. Any debt financing or additional equity that we raise may contain terms that are not favorable to us or our stockholders.

Adequate funding may not be available to us on acceptable terms or at all. Our failure to raise capital as and when needed could have a negative impact on our financial condition and ability to pursue our business strategies. If we are unable to raise additional funds when needed, we may be required to delay, reduce or terminate some or all of our development programs and clinical trials or we may also be required to terminate rights to our current and future product candidates. If we are required to enter into collaborations and other arrangements to supplement our funds, we may have to give up certain rights that limit our ability to develop and commercialize our product candidates or may have other terms that are not favorable to us or our stockholders, which could materially affect our business and financial condition.

See the section of this prospectus titled “Risk Factors” for additional risks associated with our substantial capital requirements.

Summary Statements of Cash Flows

The following table sets forth a summary of the primary sources and uses of cash:

	Year Ended December 31,	
	2020	2021
	(in thousands)	
Cash used in operating activities	$(5,364)	$(20,484)
Cash used in investing activities	–	(50,024)
Cash provided by financing activities	3,836	78,535
Net increase/(decrease) in cash	$(1,528)	$ 8,027

Cash Used in Operating Activities

Net cash used in operating activities was $5.4 million for the year ended December 31, 2020. Cash used in operating activities was primarily due to the use of funds in our operations to develop our initial product candidate resulting in a net loss of $13.6 million and an increase in prepaid expenses and other current assets of $0.1 million, partially offset by the non-cash expense on issuance of our Series A redeemable convertible preferred stock in connection with the Anacor license agreement of $0.7 million, the change in fair value of our redeemable convertible preferred stock tranche liability of $6.3 million and an increase in accounts payable and accrued liabilities of $1.3 million due to an increase in accrued research and development expenses and accrued compensation.

Net cash used in operating activities was $20.5 million for the year ended December 31, 2021. Cash used in operating activities was primarily due to the use of funds in our operations to develop our initial product candidate resulting in a net loss of $21.5 million and an increase in prepaid expenses and other current assets of $1.4 million, partially offset by non-cash stock-based compensation expense of $1.0 million and an increase in accounts payable, accrued compensation and accrued liabilities of $1.4 million due to an increase in accrued research and development expenses.

Cash Used in Investing Activities

Net cash used in investing activities was $50.0 million for the year ended December 31, 2021, which consisted of $77.3 million in purchases of investments offset by $27.3 million in proceeds from the maturity of investments.

Cash Provided by Financing Activities

Net cash provided by financing activities was $3.8 million for the year ended December 31, 2020, which consisted primarily of net proceeds from the second closing of our Series A redeemable convertible preferred stock.

Net cash provided by financing activities was $78.5 million for the year ended December 31, 2021, which consisted of net proceeds from the closing of our Series B redeemable convertible preferred stock of $79.7 million, offset by payment of deferred offering costs in conjunction with our planned initial public offering of $1.2 million.

Contractual Obligations and Commitments

In November 2019, we entered into an exclusive worldwide license agreement with Anacor for certain compounds and other intellectual property controlled by Anacor for the treatment, diagnosis, or prevention of disease. In exchange for the worldwide, sublicensable, exclusive right and licenses to develop, manufacture, and commercialize the specified compounds, we paid Anacor a $2.0 million upfront payment in November 2019 and issued Anacor 466,376 shares of Series A Preferred Stock in November 2019, and an additional 112,688 shares in October 2020 in conjunction with the first and second closings of our Series A redeemable convertible preferred stock financing, respectively. For financial reporting purposes, the fair market value of the 579,064 shares of Series A redeemable convertible preferred stock issued to Anacor, pursuant to our license agreement with Anacor, was $5.79 per share, for a total fair market value of approximately $3.4 million. By comparison, the issuance price for the remaining 2,003,339 shares of Series A redeemable convertible preferred stock that we issued and sold from November 2019 through December 2020 was $5.99 per share, for an aggregate purchase price of approximately $12.0 million. We agreed to make further payments to Anacor upon achievement of various development milestones for an aggregate maximum payment of $2.0 million, various commercial and sales threshold milestones for an aggregate maximum payment of $125.0 million, and up to 50% of royalties received under certain sublicensing arrangements. Royalties are subject to certain customary reductions, including lack of patent coverage and generic product entry. We also agreed to pay Anacor sales royalties as a percentage of net sales ranging from single to mid-teens. See “Business—License Agreement with Anacor Pharmaceuticals, Inc.” for additional information.

We enter into contracts in the normal course of business with third-party contract organizations for preclinical and nonclinical studies and clinical trials, manufacture and supply of our preclinical, nonclinical and clinical trial materials, and other services and products used for operating purposes. These contracts generally provide for termination following a certain period after notice, and therefore we believe that our non-cancelable obligations under these agreements are not material.

Critical Accounting Policies, Significant Judgements, and Use of Estimates

Our financial statements have been prepared in accordance with U.S. generally accepted accounting principles, or U.S. GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgements about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We believe that the accounting policies discussed below are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management’s judgements and estimates.

Accrued Research and Development

We have entered into various agreements with CMOs and CROs. Our research and development accruals are estimated based on the level of services performed, progress of the studies, including the receipt of deliverables or completion of agreed-upon events, and contracted costs. The estimated costs of research and development services provided, but not yet invoiced, are included in accrued liabilities on the balance sheet. If the actual timing of the performance of services or the level of effort varies from the original estimates, we will adjust the accrual accordingly. Payments made to CMOs and CROs under these arrangements in advance of the performance of the related services are recorded as prepaid expenses until the services are rendered. To date, our estimated accruals have not differed materially from the actual costs.

Stock-Based Compensation

We use a fair value-based method to account for all stock-based compensation arrangements with employees and non-employees, which include stock options. The fair value of the option granted is recognized on a straight-line basis over the period during which an optionee is required to provide services in exchange for the option award, known as the requisite service period, which usually is the vesting period. We account for forfeitures as they occur. In determining fair value of the stock options granted, we use the Black–Scholes option pricing model, which requires the input of subjective assumptions. These assumptions include: estimating the length of time employees will retain their vested stock options before exercising them (expected term), the estimated volatility of our common stock price over the expected term (expected volatility), risk-free interest rate, and expected dividends. See Note 10 to our audited financial statements included elsewhere in this prospectus for information concerning certain of the specific assumptions we used in applying the Black-Scholes option pricing model to determine the estimated fair value of our stock options granted in the years ended December 31, 2020 and 2021. Changes in the following assumptions can materially affect the estimate of fair value and ultimately how much stock-based compensation expense is recognized; and the resulting change in fair value, if any, is recognized in our statement of operations and comprehensive loss during the period the related services are rendered. These inputs are subjective and generally require significant analysis and judgment to develop.

- ***Fair Value of Common Stock***—See the subsection titled “Common Stock Valuations” below.
- ***Expected Term***—The expected term is calculated using the simplified method which is used when there is insufficient historical data about exercise patterns and post-vesting employment termination behavior. The simplified method is based on the vesting period and the contractual term for each grant, or for each vesting-tranche for awards with graded vesting. The mid-point between the vesting date and the maximum contractual expiration date is used as the expected term under this method. For awards with multiple vesting-tranches, the times from grant until the mid-points for each of the tranches may be averaged to provide an overall expected term.
- ***Expected Volatility***—We use an average historical stock price volatility of a peer group of comparable publicly traded companies in biotechnology and pharmaceutical-related industries to be representative of our expected future stock price volatility, as we do not have any trading history for our common stock. For purposes of identifying these peer companies, we consider the industry, therapeutic area, stage of development, size and financial leverage of potential comparable companies. For each grant, we measure historical volatility over a period equivalent to the expected term.
- ***Risk-Free Interest Rate***—The risk-free interest rate is based on the implied yield currently available on U.S. Treasury zero-coupon issues with a remaining term equivalent to the expected term of the stock award.
- ***Expected Dividend Rate***—We have not paid and do not anticipate paying any dividends in the near future. Accordingly, we estimate the dividend yield to be zero.

For the years ended December 31, 2020 and 2021, the total intrinsic value of stock option awards exercised was determined to be insignificant at the date of option exercise, and the total cash received upon exercise of stock options was $0.06 million and $0.01 million, respectively. The aggregate intrinsic value was calculated as the difference between the exercise prices of the underlying stock option awards and the estimated fair value of the common stock on the date of exercise.

Common Stock Valuations

The estimated fair value of the common stock underlying our stock options was determined at each grant date by our board of directors, with input from management. All options to purchase shares of our common stock are intended to be exercisable at a price per share not less than the per-share fair value of our common stock underlying those options on the date of grant.

In the absence of a public trading market for our common stock, on each grant date, we develop an estimate of the fair value of our common stock based on the information known to us on the date of grant, upon a review of any recent events and their potential impact on the estimated fair value per share of the common stock, and valuations from an independent third-party valuation firm.

The valuations of our common stock were determined in accordance with the guidelines outlined in the American Institute of Certified Public Accountants Practice Aid, Valuation of Privately-Held-Company Equity Securities Issued as Compensation, or the Practice Aid.

The assumptions used to determine the estimated fair value of our common stock are based on numerous objective and subjective factors, combined with management judgment, including:

- external market conditions affecting the pharmaceutical and biotechnology industry and trends within the industry;
- our stage of development and business strategy;
- the rights, preferences and privileges of our redeemable convertible preferred stock relative to those of our common stock;
- the prices at which we sold shares of our redeemable convertible preferred stock;
- our financial condition and operating results, including our levels of available capital resources;
- equity market conditions affecting comparable public companies; and
- general U.S. market conditions and the lack of marketability of our common stock.

The Practice Aid identifies various available methods for allocating enterprise value across classes and series of capital stock to determine the estimated fair value of common stock at each valuation date. In accordance with the Practice Aid, we considered the following methods:

- **Option Pricing Method.** Under the option pricing method, or OPM method, shares are valued by creating a series of call options with exercise prices based on the liquidation preferences and conversion terms of each equity class. The estimated fair values of the preferred and common stock are inferred by analyzing these options.
- **Current Value Method**. Under the current value method, or CVM method, the Company's current value is allocated among various equity holders based on liquidation preferences and other rights under the assumption that all capital owners act to maximize their financial return.
- **Probability-Weighted Expected Return Method.** The probability-weighted expected return method, or PWERM method, is a scenario-based analysis that estimates value per share based on the probability-weighted present value of expected future investment returns, considering each of the possible outcomes available to us, as well as the economic and control rights of each share class.

- **Hybrid Method**. Under the Hybrid Method the Company's current value is estimated based on a combination of the OPM, PWERM, and CVM methods, whereby each valuation method is applied to a different scenario. The different scenarios are then weighted based on their probable outcomes.

As we had recent arms-length financing transactions of our Series A and Series B redeemable convertible preferred stock, we determined that the subject company transaction method under the market approach was the most appropriate method for determining enterprise value through September 30, 2021. The subject company transaction method consists of examining prior arms-length transactions of the subject company and implies a total value of the enterprise based on the price paid in the recent transaction. In using the subject company transaction method, we took into account the total consideration paid for the most recent round of financing and the rights and preferences of the stockholders of the various classes of equity outstanding. In addition, the method for inferring the equity value implied by a recent financing transaction involved making assumptions for the expected time to liquidity, volatility, and risk-free rate.

Through September 30, 2021, based on our early stage of development and other relevant factors, we determined that the OPM method was the most appropriate method for allocating our enterprise value to determine the estimated fair value of our common stock.

Subsequent to September 30, 2021 and through December 31, 2021, based on the timing of our anticipated initial public offering, we used the Hybrid Method to determine our enterprise value. We took into account our estimated equity value of our anticipated initial public offering, the estimated present value of the assumed initial public offering price per share, the estimated time to initial public offering and a discount for lack of marketability. We also factored in the non-IPO Scenario, assumed that we will stay private and used a hybrid backsolve method to conclude our equity value based on our most recent arms-length financing transaction, adjusted for market trends. The non-IPO Scenario also involved making assumptions for the expected time to liquidity, volatility, and risk-free rate.

Subsequent to September 30, 2021 and through December 31, 2021, we determined that the Hybrid Method was also the most appropriate method for allocating our enterprise value to determine the estimated fair value of our common stock. The OPM and CVM methods were used based on the future IPO Scenario, equity value and the expected future allocation to the preferred and common stockholders. The CVM and OPM methods were combined and weighted to reflect our estimation of the occurrence of each scenario.

In determining the estimated fair value of our common stock, our board of directors also considered the fact that our stockholders could not freely trade our common stock in the public markets. Accordingly, we applied discounts to reflect the lack of marketability of our common stock based on the weighted-average expected time to liquidity. The estimated fair value of our common stock at each grant date reflected a non-marketability discount partially based on the anticipated likelihood and timing of a future liquidity event.

There are significant judgments and estimates inherent in the determination of our enterprise value and the fair value of our common stock, such as those regarding our discount rates, the selection of comparable companies, and the probability of possible future events. Such estimates involve inherent uncertainties and the application of significant judgment. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our stock-based compensation could be materially different. Changes in judgements could have a material impact on our results of operation. Following the completion of this offering, the fair value of our common stock will be based on the closing quoted market price of our common stock on the date of grant.

Income Taxes

We provide for income taxes under the asset and liability method. Current income tax expense or benefit represents the amount of income taxes expected to be payable or refundable for the current year. Deferred income tax assets and liabilities arise due to differences between when assets or liabilities are recognized for tax purposes and when they are recognized for financial reporting purposes. Net operating losses and credit carryforwards are also deferred tax assets. Deferred tax assets and liabilities are measured using the enacted tax rates and laws that will be in effect when such items are expected to reverse. Deferred income tax assets are reduced, as necessary, by a valuation allowance when management determines it is more likely than not that some or all of the tax benefits will not be realized.

We assess all material positions taken in any income tax return, including all significant uncertain positions, in all tax years that are still subject to assessment or challenge by relevant taxing authorities. Assessing an uncertain tax position begins with the initial determination that the position meets the more-likely-than-not threshold and is measured at the largest amount of benefit that is greater than fifty percent likely of being realized upon ultimate settlement.

As of each balance sheet date, unresolved uncertain tax positions must be reassessed, and we will determine whether the factors underlying the more-likely-than-not threshold assertion have changed and the amount of the recognized tax benefit is still appropriate. The recognition and measurement of tax benefits requires significant judgment. Judgments concerning the recognition and measurement of a tax benefit might change as new information becomes available. Our policy is to recognize interest and penalties related to the underpayment of income taxes as a component of income tax expense or benefit. To date, there have been no interest or penalties charged.

Net operating loss carryforwards and tax credit carryforwards are subject to review and possible adjustment by the IRS and may become subject to an annual limitation in the event of certain cumulative changes in the ownership interest of significant stockholders over a three-year period in excess of 50 percentage points as defined under Sections 382 and 383 in the Internal Revenue Code, which could limit the amount of tax attributes that can be utilized annually to offset future taxable income or tax liabilities. The amount of the annual limitation is determined based on our value immediately prior to the ownership change. Subsequent ownership changes may further affect the limitation in future years. We may experience ownership changes in the future as a result of this offering and/or subsequent shifts in our stock ownership (some of which shifts are outside our control). As a result, even if we attain profitability, we may be limited in our ability to utilize our NOLs and other tax attributes.

Redeemable Convertible Preferred Stock

We record all shares of redeemable convertible preferred stock at their respective fair values on the dates of issuance, net of issuance costs. The redeemable convertible preferred stock is recorded outside of permanent equity because while it is not mandatorily redeemable, in certain events considered not solely within our control, such as a merger, acquisition, or sale of all or substantially all of our assets (each, a deemed liquidation event), the redeemable convertible preferred stock will become redeemable at the option of the holders of at least a majority of the then outstanding such shares. In addition, shares of preferred stock must be redeemed by the Company at a price of $5.99 and $35.29 for Series A and Series B redeemable convertible stock, respectively, plus any accrued dividends (whether or not declared) in three annual installments on or after the seventh anniversary of the Series B original issue date (on or after March 5, 2028) upon a written request by at least two-thirds of the holders of the Series A and Series B redeemable convertible preferred stock, voting together as a single class. During the years ended December 31, 2020 and 2021, we have accreted $1.0 million and $6.5 million, respectively, to the redemption value of the redeemable convertible preferred stock representing cumulative dividends.

Redeemable Convertible Preferred Stock Tranche Liability

The redeemable convertible preferred stock issued in November 2019 contained an embedded feature that provides the investors the ability to participate in a second close of the Series A at the same price upon the attainment of a specific milestone. The obligation to issue additional shares of Series A redeemable convertible preferred stock at a future date was determined to be a freestanding instrument that should be accounted for as a liability. At initial recognition, the Company recorded the redeemable convertible preferred stock tranche liability on the balance sheets at its estimated value. The redeemable convertible preferred stock tranche liability is subject to remeasurement at each subsequent reporting date, with changes in fair value recognized as a component of other expense. Immediately prior to the settlement of the tranche financing occurring in October 2020, the Company remeasured the redeemable convertible preferred stock tranche liability, with the change in fair value recognized as a component of other expense. The redeemable convertible preferred stock tranche liability was then reclassified to the redeemable convertible preferred stock. The estimated fair value of the redeemable convertible preferred stock tranche liability was $0.3 million at issuance and $7.1 million at settlement.

Indemnification Agreements

We enter into standard indemnification arrangements in the ordinary course of business. Pursuant to these arrangements, we indemnify, hold harmless and agree to reimburse the indemnified parties for losses suffered or incurred by the indemnified party, including in connection with any trade secret, copyright, patent, or other intellectual property infringement claim by any third party with respect to its technology. The term of these indemnification agreements is generally perpetual any time after the execution of the agreement. The maximum potential amount of future payments we could be required to make under these arrangements is not determinable. We have never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, we believe the fair value of these agreements is minimal.

We have also agreed to indemnify our directors and officers for certain events or occurrences while the director or officer is, or was serving, at our request in such capacity. The indemnification period covers all pertinent events and occurrences during the director's or officer's service. The maximum potential amount of future payments we could be required to make under these indemnification agreements is not specified in the agreements; however, we have director and officer insurance coverage that reduces our exposure and enables us to recover a portion of any future amounts paid.

JOBS Act Accounting Election

The JOBS Act permits an "emerging growth company" or "EGC" such as us to delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. We have elected to use this extended period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that we (i) are no longer an EGC or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, the information we provide may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

In addition, we intend to rely on other exemptions provided by the JOBS Act, including without limitation, not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act.

We will remain an EGC until the earliest to occur of: (1) the last day of our first fiscal year in which we have total annual revenues of more than $1.07 billion; (2) the date we qualify as a "large accelerated filer," with at least $700.0 million of equity securities held by non-affiliates; (3) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-

year period; and (4) the last day of the fiscal year ending after the fifth anniversary of our initial public offering.

Recent Accounting Pronouncements

See the section titled “Summary of Significant Accounting Policies—Recent Accounting Pronouncements” in Note 2 to our financial statements included elsewhere in this prospectus for additional information.

Quantitative and Qualitative Disclosures about Market Risk

Interest Rate Sensitivity

We are exposed to market risk related to changes in interest rates. We had cash, cash equivalents, and investments of $62.0 million as of December 31, 2021, which consisted primarily of money market funds and marketable securities, largely composed of investment grade, short and long-term fixed income securities.

The primary objective of our investment activities is to preserve capital to fund our operations. We also seek to maximize income from our investments without assuming significant risk. To achieve our objectives, we maintain a portfolio of cash, cash equivalents, and investments in accordance with our board-approved investment charter.

Our investments are subject to interest rate risk and could fall in value if market interest rates increase. A hypothetical 10% relative change in interest rates during any of the periods presented would not have had a material impact on our financial statements.

Foreign Currency Risk

A portion of our expenses are denominated in foreign currencies, most notably the Australian Dollar. Future fluctuations in the value of the U.S. Dollar may affect the price we pay for services performed outside the United States.

BUSINESS

Overview

We are a clinical-stage biopharmaceutical company developing treatments for rare, chronic, and serious infectious diseases with high unmet needs. Our initial product candidate is epetraborole, a once-daily, oral treatment for patients with chronic NTM lung disease. Epetraborole has broad spectrum antimycobacterial activity through inhibition of an essential and universal step in bacterial protein synthesis. Its novel mechanism of action is enabled by boron chemistry, our core technology approach. We plan to conduct a Phase 2/3 pivotal clinical trial in treatment-refractory MAC lung disease, which is the most common type of NTM lung disease. Interim data from our completed Phase 1b dose-ranging study of epetraborole administered orally for 28 days in healthy volunteers in Australia, and data from our two nonclinical chronic toxicology studies (six-month rats and nine-month non-human primates) have informed our selection of a 500 mg once-daily dose for our Phase 2/3 pivotal clinical trial in treatment-refractory MAC lung disease patients. We believe our Phase 2/3 pivotal clinical trial design, which is under review by the FDA, has the potential to be sufficient for regulatory approval in the United States. We recently received clearance of our IND application by the FDA to begin our Phase 1 renal impairment study, for which enrollment commenced in February 2022, and plan to initiate patient enrollment in our Phase 2/3 pivotal clinical trial in the first half of 2022, with topline results for the Phase 2 part of the trial anticipated in the middle of 2023 and for the Phase 3 part of the trial anticipated in the middle of 2024 pending any sample size adjustments that may be required to the Phase 3 portion based on treatment effects of epetraborole-containing regimens that may be observed in the Phase 2 portion of the trial, if any. We also recently received Fast Track designation by the FDA to investigate epetraborole for treatment-refractory MAC lung disease. Epetraborole has also recently been designated as a QIDP for treatment-refractory MAC lung disease by the FDA and received FDA orphan drug designation for the treatment of infections caused by NTM. Based on clinical and preclinical data generated with epetraborole, its novel mechanism of action, and the convenience associated with once-daily, oral dosing, we believe that epetraborole has the potential to become an important component of a multi-drug treatment regimen for patients suffering from NTM lung disease.

Our core technology approach is based on the use of boron chemistry for our drug research and development initiatives. Boron chemistry has proven to be a highly productive technology leading to the discovery of many promising drugs, particularly focused in infectious diseases. Pioneering work at Anacor Pharmaceuticals, Inc., or Anacor, acquired by Pfizer Inc. in 2016, led to the generation of a class of boron compounds including two FDA-approved therapies, Kerydin and Eucrisa. Our founders consist of former leaders at Anacor, including an inventor of epetraborole and a leading infectious disease expert. We have in-licensed the exclusive worldwide development and commercialization rights for epetraborole from Anacor. We believe our management team's expertise in boron chemistry, infectious diseases, and regulatory approvals will help drive the rapid development and, if approved, the commercialization of novel therapies for infectious diseases.

We are developing oral epetraborole for the treatment of NTM lung disease, a rare, chronic, and progressive infectious disease caused by bacteria known as mycobacteria that leads to irreversible lung damage and can be fatal. Unlike most bacteria, which replicate quickly and spread outside of cells, mycobacteria replicate slowly and mostly infect alveolar (lung) macrophages and survive within them. Due to the slow growth and survival within macrophages of mycobacteria, the current standard of care for NTM lung infections requires prolonged treatments, often for 18 months or longer, with a combination of three or more antibiotics. Initially, we are focused on developing epetraborole to treat the most common type of NTM, MAC, which accounts for approximately 80% of NTM lung disease in the United States.

There are an estimated 200,000 patients with NTM lung disease in the United States; however, many remain underdiagnosed due to lack of clinical suspicion, nonspecific respiratory symptoms, and

underlying lung diseases that are frequent in patients with this infection. The prevalence of NTM lung disease is increasing in the United States by an estimated 8% per year. Among the approximately 55,000 patients diagnosed with NTM lung disease in the United States, approximately 44,000 patients have MAC lung disease, and approximately 35% of these patients, or 15,000 patients, have treatment-refractory MAC lung disease. There are approximately 20,000 total NTM lung disease patients in Europe, of which approximately 5,600 are estimated to have treatment-refractory MAC lung disease.

There is only one FDA-approved therapy for treatment-refractory MAC lung disease: Arikayce, an inhaled liposomal formulation of amikacin. In a clinical trial, the addition of Arikayce to standard of care combination antibiotic therapy resulted in the resolution of MAC infection in only 29% of patients, leaving more than 70% of treatment-refractory patients with limited or no treatment options. Furthermore, Arikayce has significant tolerability and safety issues, resulting in a boxed warning for risk of increased respiratory adverse reactions, and other warnings and precautions including ototoxicity, a known class effect with aminoglycosides, and other safety findings. Between 20.3% and 33.5% of patients treated with Arikayce in clinical trials discontinued treatment. Despite these shortcomings, Insmed reported net sales of Arikayce of approximately $189 million in 2021 ($160 million in the United States, $16 million in Japan, and $13 million in Europe and the rest of the world). We believe improved treatment of NTM lung disease will require an efficacious, safe, and well-tolerated antibiotic with a novel mechanism of action that is not affected by resistance to existing antibiotics, and that has a convenient, once-daily, oral dose.

Epetraborole is a boron-containing, orally-available, small molecule inhibitor of bacterial leucyl-tRNA synthetase, or LeuRS, an enzyme that catalyzes the attachment of leucine to transfer RNA, or tRNA, molecules, an essential step in protein synthesis. Prior to our clinical development program in NTM lung disease, epetraborole had been administered intravenously or orally as a single agent to over 200 subjects at a wide range of clinical doses across six Phase 1 and two truncated Phase 2 clinical trials conducted by Anacor and Anacor's previous partner GlaxoSmithKline plc, or GSK, with a focus on gram-negative infections that were unrelated to NTM lung disease, some of which were terminated prior to completion due to clinical resistance observed in a small number of patients in one of the two Phase 2 clinical trials. Although epetraborole was not tested by Anacor or GSK in patients with NTM lung disease, previous results from one of these trials, a Phase 1 trial conducted by GSK that measured the penetration of epetraborole into the lung, showed the exposure of epetraborole in alveolar (lung) macrophages, the cells that are infected with mycobacteria in NTM lung disease, was approximately five-fold higher than in plasma. In addition, epetraborole has demonstrated in vitro antibacterial activity against a panel of 51 isolates of MAC (*M. avium*, *M. intracellulare*, and *M. chimaera)* including against strains that are resistant to antibiotics currently used to treat NTM lung disease.

We have completed a double-blind, placebo-controlled Phase 1b dose-ranging study of epetraborole in healthy volunteers to assess the pharmacokinetics of the molecule at oral doses lower than those previously investigated in prior clinical trials conducted by Anacor and GSK, and in the range of the expected clinical dose, to obtain safety and tolerability data for 28 days of dosing. The first five dosing cohorts have completed the 28-day dosing period and a sixth cohort was truncated after the enrollment of two patients. Enrollment and dosing in the final, open-label food-effect cohort has also been completed, in which eight subjects were administered a single dose of epetraborole.

In Cohorts 1 through 6 of this study, the treatment emergent adverse event, or TEAE, profile reported for the healthy subjects who received oral epetraborole was similar to that of the pooled placebo group. Overall, approximately 80% of subjects experienced at least one TEAE (80.6% of epetraborole subjects, 83.3% of placebo subjects), none of which were serious or severe. Most TEAEs were mild in severity (92.7% of all TEAEs), and the remainder were moderate (7.3% of all TEAEs). No TEAEs leading to withdrawal from study, life threatening TEAEs, or deaths were reported in the study. Two subjects (4.7% of all subjects) experienced TEAEs that caused premature discontinuation from epetraborole: one epetraborole subject at the 250 mg q24h dose level had mild aminotransferase

increases during a concomitant upper respiratory tract infection; and one epetraborole subject at the 1,000 mg q48h dose level had mild nausea. These TEAEs were both considered possibly or probably related to epetraborole. The final cohort of the Phase 1b dose-ranging study recently completed enrollment and dosing and therefore safety data for this cohort is not yet available.

Gastrointestinal, or GI, disorders were the most common types of TEAEs in the study (experienced by 48.4% of epetraborole subjects and 41.7% of placebo subjects). The most common GI disorder was nausea, observed in 25.8% of epetraborole subjects and 16.7% of placebo subjects; all were mild in severity, and only one event was treatment-limiting. The treatment-limiting GI disorder TEAE was observed in an epetraborole subject at the 1,000 mg q48h dose level, who experienced mild nausea beginning on Day 1 of treatment, leading to premature discontinuation of epetraborole on Day 11. Diarrhea was observed in 12.9% of epetraborole subjects and 8.3% of placebo subjects, all events of which were mild except one moderately severe diarrhea event in a single epetraborole subject at the 1,000 mg q24h dose level. No cases of *Clostridioides difficile* infection were observed. Consistent with observations in chronic toxicology studies in non-human primates and rats, dose-dependent effects on red blood cell-related hematological parameters, such as hemoglobin and reticulocytes, were observed. The observed effects on hematological parameters were mild and most RBC values remained within normal limits with a slight downward trend, the effects were not deemed clinically significant by the investigator, and the hematological parameters recovered following completion of dosing of epetraborole. No adverse hematological events were observed and no patients discontinued therapy as a result of the hematological effects that were observed.

Due to the prevalence of renal impairment among patients with NTM lung disease, we have initiated an open-label Phase 1 study of epetraborole in subjects with varying degrees of renal impairment to determine any needed dosage adjustments for those patients. The objective of the Phase 1 renal impairment study will be to assess safety and pharmacokinetics of oral epetraborole in up to 40 subjects across five cohorts with varying degrees of renal function (normal to severe). We recently received clearance of our IND application by the FDA to begin this Phase 1 renal impairment study, for which enrollment commenced in February 2022, with topline results anticipated in the second half of 2022.

We have designed a Phase 2/3 pivotal clinical trial that, based on our three interactions to date with the FDA to discuss the design, including discussions regarding our nonclinical microbiology, toxicology, and pharmacology data package for epetraborole and tolerability and pharmacokinetic data from our Phase 1b dose-ranging study, we believe has the potential to be sufficient for regulatory approval in the United States. We plan to enroll patients with treatment-refractory MAC lung disease in this double-blind, placebo-controlled superiority trial, with planned enrollment of approximately 260 patients across approximately 80 clinical sites in up to 6 countries in North America and Europe. We expect that the primary objective in the Phase 3 part of the trial will be to determine if epetraborole plus an OBR, consisting of two or more standard-of-care drugs is superior to placebo plus an OBR. We are working with the FDA to finalize the primary endpoint for the Phase 3 part of our planned Phase 2/3 pivotal clinical trial, for which the FDA recommends a clinical response measure. We expect that the secondary endpoints will include other microbiological, clinical, or safety measures. We plan to initiate patient enrollment in our Phase 2/3 pivotal clinical trial in the first half of 2022 with topline results for the Phase 2 part of the trial anticipated in the middle of 2023 and for the Phase 3 part of the trial anticipated in the middle of 2024, pending any sample size adjustments that may be required to the Phase 3 portion based on treatment effects of epetraborole-containing regimens that may be observed in the Phase 2 portion of the trial, if any.

We intend to conduct trials and pursue marketing authorizations with epetraborole in additional geographies outside of the United States and Europe, with an initial focus in Japan. We estimate that there are approximately 20,000 patients with NTM lung disease and approximately 5,600 patients with treatment-refractory MAC lung disease in Europe (United Kingdom, Germany, France, Italy and Spain). We estimate that there are approximately 220,000 patients with NTM lung disease and approximately

21,000 patients with treatment-refractory MAC lung disease in Japan. We have initiated discussions with the Japanese Pharmaceutical and Medical Devices Agency, or PMDA, to gain alignment on the development plan necessary for regulatory approval of epetraborole in MAC lung disease. Our initial planned indication in all geographies is the treatment of patients with treatment-refractory MAC lung disease. We also intend to expand the indications targeted by epetraborole by pursuing development in other mycobacterial diseases, including treatment-naïve MAC lung disease, which we believe is supported by tolerability and pharmacokinetic data received from our Phase 1b dose-ranging study and our existing nonclinical data package, and in *Mycobacterium abscessus* complex, or *M. abscessus*, lung infections, which is also supported by the tolerability and pharmacokinetic data from the Phase 1b study, but for which additional nonclinical work may be needed. Additionally, we have a strategic partnership with Brii Biosciences Limited, or Brii Biosciences, under which we have licensed out our rights to develop, manufacture, and commercialize epetraborole in China, Hong Kong, Taiwan, and Macau.

The AN2 team has a deep expertise in boron chemistry, as exemplified by our management team's history, and we are actively pursuing the identification of additional antimicrobial product candidates that leverage our boron chemistry capabilities. Once identified, we plan to develop these candidates in NTM lung disease and other rare and chronic infectious diseases. We are also selectively evaluating in-licensing opportunities of development-stage candidates that have the potential to address rare and chronic infectious diseases consistent with our corporate strategy.

Our mission is to develop novel therapeutics to treat rare, chronic, and serious infectious diseases in areas of high unmet medical need. As leaders in the field of antimicrobials, we have both an obligation and a strong desire to combine our drug discovery and development expertise with resources available from public and private organizations to address high unmet needs in global health. To this end, in addition to the treatment of NTM lung disease, we are seeking non-dilutive funding to develop epetraborole for melioidosis, a disease that causes significant morbidity and mortality globally.

Our Team

Our team is led by Eric Easom, M.B.A., M.Eng., our co-founder, president, and chief executive officer. Mr. Easom has over 31 years of leadership experience in the biotechnology and pharmaceutical industry, including the last 15 years in infectious disease. He previously led Anacor's research and development efforts in global health. Paul Eckburg, M.D., our chief medical officer, previously served as chief medical officer at a number of other biotechnology companies and was involved in the development of multiple approved antibiotics. Sanjay Chanda, Ph.D., our chief development officer, previously served as chief development officer at Tioma Therapeutics, Inc. and was senior vice president of drug development at Anacor. Lucy Day, our chief financial officer, previously served as chief financial officer at Anacor. Kevin Krause, M.B.A., our chief strategy officer, previously served in various roles at Achaogen, Inc., Cerexa, Inc., and Theravance, Inc. and has deep expertise in antibiotic research, development, and commercialization. Our team also includes George Talbot, M.D., FACP, FIDSA, our co-founder and clinical advisor, Joseph Zakrzewski, our co-founder and chairman of the board of directors, and two inventors of epetraborole, Vincent Hernandez, our vice president of chemistry and Michael R.K. (Dickon) Alley, Ph.D., our co-founder and head of biology.

Our Strategy

We aim to develop a portfolio of therapies to treat rare, chronic, and serious infectious diseases. Key components of our strategy to achieve this goal include:

- **Advance epetraborole through clinical development in MAC lung disease with an initial focus on patients with treatment-refractory MAC lung disease.** We believe that

epetraborole has a high potential to bring therapeutic benefit to patients with treatment-refractory MAC lung disease. We recently received clearance of our IND application by the FDA to begin our Phase 1 renal impairment study, for which enrollment commenced in February 2022. We also have initiated pre-trial activities for our planned Phase 2/3 pivotal clinical trial, and anticipate initiating enrollment of patients in this trial in the first half of 2022, with topline results for the Phase 2 part of the trial anticipated in the middle of 2023 and for the Phase 3 part of the trial anticipated in the middle of 2024, pending any sample size adjustments that may be required to the Phase 3 portion based on treatment effects of epetraborole-containing regimens that may be observed in the Phase 2 portion of the trial, if any. Based on our discussions with the FDA, we believe this Phase 2/3 pivotal clinical trial has the potential to be sufficient for regulatory approval in the United States and we intend to pursue regulatory approvals in the United States and Europe.

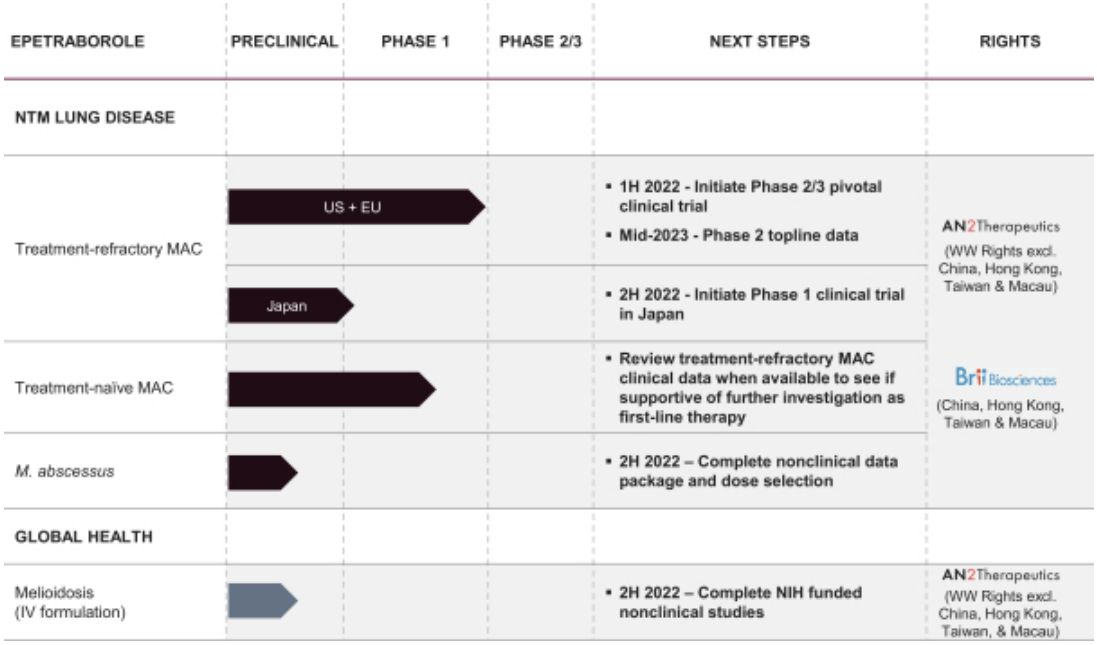
- **Develop epetraborole in additional territories and indications.** The number of cases of NTM lung disease in Japan is among the highest in the world and is estimated to exceed the number of cases in the United States or Europe. Given the high unmet medical need for the treatment of NTM lung disease in this particular geography, we intend to conduct clinical trials and pursue regulatory approval in Japan and potentially more widely in Asia. We also believe epetraborole has the potential to meet the ideal target product profile for treatment-naïve NTM lung disease caused by MAC due to its once-daily, oral dosing and recently received tolerability and pharmacokinetic data from the Phase 1b study. In addition, we believe that the broad-spectrum antimycobacterial activity and ideal target product profile demonstrated by epetraborole may allow for the development in other infectious diseases caused by mycobacteria, including *M. abscessus* lung infections. To expand epetraborole's market potential, we intend to pursue development in both of these indications.
- **Build and scale organizational capabilities to support commercialization of epetraborole in MAC lung disease.** We have in-licensed the exclusive worldwide development and commercialization rights for epetraborole, and have licensed out our rights and entered into a strategic partnership with Brii Biosciences in China, Hong Kong, Taiwan, and Macau. We plan to build a specialized commercial organization to launch epetraborole in the United States and other key markets, including Japan, if approved. Within certain ex-U.S. and Japan markets, we may consider strategic collaborations for commercialization.
- **Continue to invest in expanding our pipeline of product candidates.** We have several preclinical programs targeting the development of novel antimicrobial compounds based on boron chemistry technology. We anticipate that these compounds will have the potential to be developed in combination with epetraborole for the treatment of NTM lung disease and other rare or chronic infectious diseases. We are also actively pursuing in-licensing of other compounds that are complementary to our strategy.
- **Apply our expertise in antimicrobial drug design and development to other global health problems.** Our leadership team is committed to developing novel therapeutics to treat rare, chronic, and serious infectious diseases in areas of high unmet medical need. We have identified several serious infectious diseases, including melioidosis, where we believe our technology and global health development expertise has the potential to help deliver therapies to underserved populations. We intend to collaborate with both public and private organizations and foundations and are seeking non-dilutive capital to advance these global health initiatives.

Our Pipeline

We are initially focused on advancing our first product candidate, epetraborole, to commercialization in NTM lung disease. We are developing epetraborole to treat the most common type of NTM, MAC, which accounts for approximately 80% of NTM lung disease in the United States. We have in-licensed the exclusive worldwide development and commercialization rights for epetraborole. We also have a

strategic partnership with Brii Biosciences to develop epetraborole in China, Hong Kong, Taiwan, and Macau. In addition to our development and commercial endeavors in NTM lung disease, we intend to develop epetraborole for several global health initiatives, including melioidosis, using non-dilutive funding, which we have and plan to obtain from sources such as public and private agencies and foundations. We have entered into an Amended and Restated Global Health Agreement, or the Global Health Agreement, with Adjuvant Global Health Technology Fund L.P. and Adjuvant Global Health Technology Fund DE L.P., or together, Adjuvant, in connection with Adjuvant's investment of $12.0 million in our Series A and Series B redeemable convertible preferred stock financings. Pursuant to the Global Health Agreement, we must use reasonably diligent endeavors to develop epetraborole for melioidosis, tuberculosis, and any other mutually agreed-upon products for at-risk developing countries. We have entered into a research agreement with the National Institutes of Health to further early development and dose selection of epetraborole in melioidosis using the in vitro hollow fiber system. These studies are being conducted at no cost to us. We believe partnerships like this provide substantial technical and capital resources to advance the melioidosis program and provide material benefits to our company and to our NTM lung disease program as a whole.

The below table summarizes our development plans for epetraborole:



Our AN2 Drug Discovery Platform

Boron-Based Chemistry Enables the Targeting of Novel Biological Targets

Our core technology approach is based on the use of boron chemistry for our research and development initiatives. Boron has both a distinctive ability to bind with biological targets through a reversible covalent bond and the potential to address biological targets that have been difficult to inhibit using traditional carbon-based molecules.

Historically, the starting points for small molecule antibiotic drug discovery have been based on natural products or peptides. These molecules typically do not contain boron, which has led to a lack of focus on boron-based compounds and a reduced understanding of the physical and biological

properties of boron, thereby limiting the incorporation of this element into drug products. Additionally, boron-based compounds have been historically difficult to synthesize, but recent advancements in the science and practice of boron-based drug research have allowed for its incorporation in drug discovery efforts. In particular, advanced computational techniques have been developed to improve the understanding of boron and its interaction with key biological targets relevant to drug discovery efforts. Additionally, new tools and methods have been developed to facilitate the creation of novel boron-containing compound families. These unique compound families expand the universe of biological targets that can be addressed by small molecule boron-based compounds.

Boron-based inhibitors typically are highly selective for their biological target, thereby minimizing their potential off-target effects. The ability to modify boron's reactive center, an activity known as tuning, allows drug developers to modulate key properties of the resulting compounds. Properties such as solubility, permeability, molecular charge at different pH values, and metabolic stability, may be designed such that inhibitors can reach any compartment in the body.

Boron chemistry has proven to be a highly productive technology leading to the discovery of many promising drugs, particularly focused in infectious diseases. Pioneering work at Anacor led to the generation of a class of boron compounds known as fused boron heterocyclic compounds that demonstrated greatly improved drug-like properties. This work enabled the discovery of compounds that inhibited aminoacyl transfer RNA, or tRNA, synthetases in a novel way that is dependent on boron. One of these compounds, tavaborole, targets a fungal aminoacyl tRNA synthetase and is FDA-approved as Kerydin to treat onychomycosis of the toenails. Our lead compound, epetraborole, is a boron-containing analog of tavaborole and is designed to target bacterial leucyl-tRNA synthetase.

Targeting Bacterial Aminoacyl-tRNA Synthetases with Boron Containing Molecules

Aminoacyl-tRNA synthetases, or aaRSs, are enzymes that catalyze an essential step in protein synthesis—the attachment of amino acids to their corresponding tRNAs. These enzymes represent a promising set of targets for the development of new antibiotic drugs because of both their universal presence in bacteria and the significant structural and biochemical differences between bacterial and mammalian enzymes. These species-level differences allow for the design of selective inhibitors of bacterial enzymes that prevent bacterial protein synthesis without interfering with host protein synthesis.

With a few exceptions, each aaRS enzyme recognizes a single amino acid and attaches it to a corresponding tRNA that contains a specific three nucleotide sequence called an anticodon. This anticodon matches one or more corresponding three nucleotide sequences called codons in messenger RNA, or mRNA, that specify the addition of that specific amino acid in a growing protein chain. Each aaRS carries out a multi-step process: recognition of the correct amino acid, reaction of that amino acid with ATP to form a covalent intermediate referred to as an aminoacyl-adenylate, recognition of the tRNA, and reaction of the aminoacyl-adenylate with tRNA resulting in covalent attachment of the aminoacyl group to the tRNA and shutdown of the enzyme. The high fidelity of protein synthesis is maintained by stringent error-proofing functions of aaRS enzymes. This error-proofing takes place at several levels. The first level of specificity is controlled at the steps that involve the recognition of the amino acids and tRNA molecules and their covalent attachment. An additional level of specificity is obtained after the attachment, which in some aaRS enzymes occurs at an independent proof-reading or editing site on the same enzyme. When mismatched aminoacyl-tRNA molecules bind to this site, the aminoacyl group is removed and the tRNA molecule can be recycled.

The aaRS enzymes represent validated antibacterial targets but the properties of previous aaRS inhibitors have often limited their potential, especially inhibitors that target the aminoacylation site as they are often antagonized by the aaRS's cognant amino acid, thereby limiting their systemic efficacy. In addition, high protein binding and metabolic instability, as exemplified by mupirocin, an isoleucyl-

tRNA synthetase inhibitor, can limit these inhibitors' clinical use to topical treatment of staphylococcal and streptococcal skin infections. These hurdles are largely removed by the oxaborole-tRNA trapping, or OBORT, inhibitors. These molecules are non-competitive inhibitors of aminoacylation where the boron molecule effectively recruits tRNA to become part of the inhibitor complex. As shown in Figure 1 below, this property enables a small polar molecule, similar in size to an amino acid, to become a potent enzyme inhibitor.

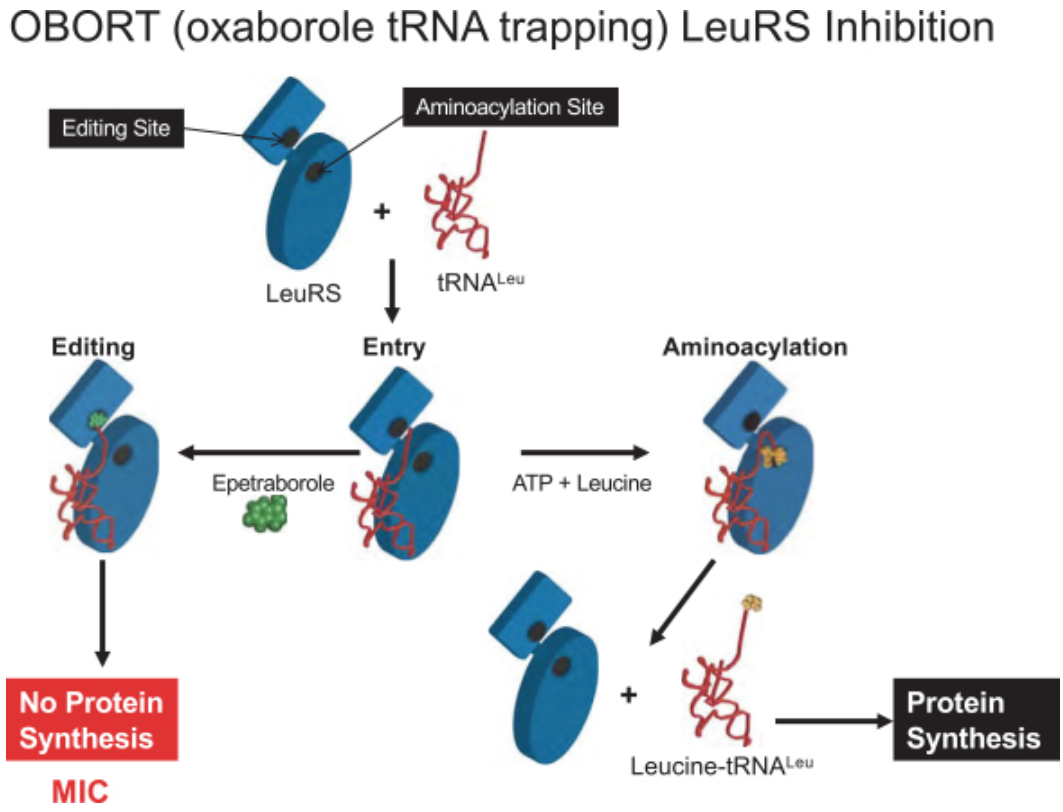


Figure 1. OBORT inhibitor (epetraborole) binds to the terminal adenosine ribose of $tRNA^{Leu}$ trapping it in the editing conformation thus inhibiting $tRNA^{Leu}$ leucylation in the aminoacylation site by leucyl-tRNA synthetase, or LeuRS, using ATP+Leucine.

NTM Lung Disease Overview

Background

NTM lung disease is a rare, chronic, and progressive infectious disease caused by bacteria known as mycobacteria that leads to irreversible lung damage and can be fatal. The mycobacteria causing NTM lung disease are ubiquitous environmental organisms in water and soil; however, most people do not become sick when exposed to these bacteria. NTM is not transmitted from person-to-person, unlike infections with other species of mycobacteria, such as *M. tuberculosis*. People with underlying lung conditions such as bronchiectasis, chronic obstructive pulmonary disease, cystic fibrosis, or a weakened immune system are predisposed to developing NTM lung disease; but for many patients it is not understood why they contract the disease.

The most common symptoms in individuals with NTM lung disease are similar to those in other respiratory infections and include cough, fatigue, shortness of breath, coughing up of blood, excessive mucus production, fever, night sweats, loss of appetite, and unintended weight loss. Wheezing and chest pain may also occur. Unlike most other respiratory infections, NTM causes a chronic infection that progresses to fibrosis, permanent lung damage, and respiratory failure. The diagnosis of NTM lung disease is based on a combination of clinical (e.g., pulmonary symptoms), radiographic (e.g., nodular or cavitary findings on chest radiograph), and microbiologic (e.g., positive sputum culture for pathogenic NTM) criteria. Approximately 80% of cases of NTM lung disease in the United States are caused by species within MAC (this complex includes *M. avium*, *M. intracellulare*, *M. chimaera*, and other related species). NTM is most common in women and individuals over the age of 65. The five-year mortality rate of patients with NTM lung disease ranges between 10% and 48% across multiple published studies.

The prevalence of NTM lung disease is increasing in the United States by an estimated 8% per year. There are an estimated 200,000 patients with NTM lung infections in the United States, yet only approximately 55,000 are diagnosed. Underdiagnosis or delayed diagnosis has been identified as a key challenge in the management of NTM lung disease, due to lack of clinical suspicion, nonspecific respiratory symptoms, and underlying lung diseases that are frequent in patients with this infection. Among patients diagnosed with NTM lung disease, approximately 44,000 patients have MAC lung disease and approximately 35% of these patients, or 15,000 patients, have treatment-refractory MAC lung disease. There are approximately 20,000 total NTM lung disease patients in Europe, of which approximately 5,600 are estimated to have treatment-refractory MAC lung disease.

Current Treatments

Unlike most bacteria, which replicate quickly and spread outside of cells, mycobacteria replicate slowly and mostly infect alveolar (lung) macrophages and survive within them. Due to the slow growth and survival within macrophages of mycobacteria, NTM infections require prolonged treatments, often for 18 months or longer. This extended dosing period increases the potential for antibiotic resistance to develop. Therefore, the first-line treatment for NTM is recommended to be a combination of three antibiotics that have non-overlapping mechanisms of action to reduce the emergence of resistance. A typical initial drug regimen for a patient with treatment-naïve NTM lung infection includes a macrolide such as clarithromycin or azithromycin that inhibits protein synthesis; ethambutol, an inhibitor of mycobacterial cell wall synthesis; and rifamycin, an inhibitor of RNA transcription. Use of these drugs is associated with the risks of developing side effects such as liver toxicity, ocular toxicity, and gastrointestinal intolerability as well as drug-drug interactions. Across multiple studies, treatment-emergent adverse effects occur in up to 70% of patients. As a result of these treatment-emergent adverse events, between 30% and 70% of patients receiving daily antimycobacterial therapy permanently discontinue at least one drug in their regimen.

As outlined in Figure 2 below, the current standard of care combination therapy for treatment-naïve patients is approximately 65% effective as determined by the ability to eliminate mycobacteria from sputum, defined as culture conversion by month six or three consecutive culture conversions measured once per month. Patients that do not culture convert after six months on standard of care treatment are then classified as treatment-refractory. Treatment-refractory patients are treated with increased frequency of dosing (daily vs. thrice weekly) of their previous combination therapies with the potential addition of new agents to the drug combination. The only FDA-approved drug for these patients is Arikayce, an inhaled liposomal formulation of amikacin, an IV-only protein synthesis inhibitor that has been commercially available since the 1970s. Treatment with Arikayce on top of the standard of care combination therapy increased the response rate (culture conversion) at six months to 29% compared to 9% for standard of care alone.

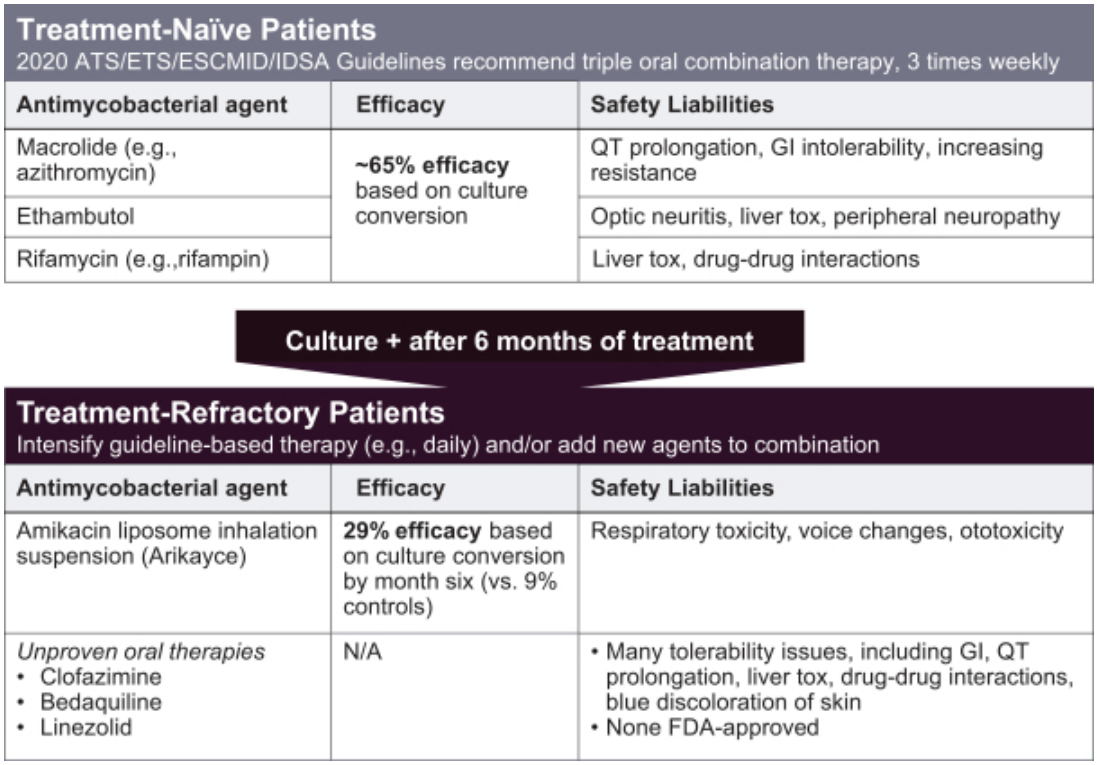


Figure 2. Treatment regimen for patients with NTM lung disease

Arikayce is associated with its own side effects including a number of warnings and precautions, adverse reactions, and a boxed warning that states, “Arikayce has been associated with a risk of increased respiratory adverse reactions, including hypersensitivity pneumonitis, hemoptysis, bronchospasm, and exacerbation of underlying pulmonary disease that have led to hospitalizations in some cases.” As shown in Table 1 below, ototoxicity, including deafness, dizziness, presyncope, tinnitus, and vertigo, was reported in 17% of patients treated with Arikayce plus standard of care compared to 9.8% of patients treated with standard of care alone. This is a well-described class effect of aminoglycosides, including amikacin. Between 20.3% and 33.5% of patients treated with Arikayce in clinical trials discontinued treatment compared to between 0% and 8% of patients on standard of care alone. Despite these shortcomings, Insmed reported net sales of Arikayce of approximately $189 million in 2021 ($160 million in the United States, $16 million in Japan, and $13 million in Europe and the rest of the world).

Arikayce Pivotal Results Study Parameter	Arikayce	Control
Efficacy		
Culture-converted by month six	**29%**	9%
Safety		
Withdrawn from study	**20%**	9%
Upper respiratory adverse events	**18%**	2%
Ototoxicity	**17%**	10%

Table 1. Arikayce is associated with a high discontinuation rate and increased adverse events versus standard of care therapy alone.

Given the limitations of current standard of care regimens and Arikayce in treatment-refractory NTM lung disease caused by MAC, we believe that NTM lung disease is an indication with a continued high unmet medical need. NTM lung disease will likely continue to be treated in combination with the current standard of care. Therefore, there is a strong preference for novel antibiotics that can combine with existing drugs without significantly increasing the rate of adverse reactions. We believe improved treatment of NTM lung disease will require a safe and well-tolerated antibiotic that provides: a novel mechanism of action that is not affected by resistance to existing antibiotics; a convenient, once-daily, oral dose; and additional efficacy.

Our Solution: Epetraborole

We are developing epetraborole, an orally available small molecule inhibitor of bacterial leucyl-tRNA synthetase, or LeuRS, an enzyme involved in bacterial protein synthesis. Based on clinical and preclinical data generated with epetraborole, its novel mechanism of action, and the convenience associated with once-daily, oral dosing, we believe that epetraborole has the potential to become an important component of a multi-drug treatment regimen for patients suffering from NTM lung disease. We recently received clearance of our IND application by the FDA to begin our Phase 1 renal impairment study, for which enrollment commenced in February 2022, and plan to initiate patient enrollment in a Phase 2/3 pivotal clinical trial of epetraborole in treatment-refractory MAC lung disease in the first half of 2022, with topline results for the Phase 2 part of the trial anticipated in the middle of 2023 and for the Phase 3 part of the trial anticipated in the middle of 2024, pending any sample size adjustments that may be required to the Phase 3 portion based on treatment effects of epetraborole-containing regimens that may be observed in the Phase 2 portion of the trial, if any. We also believe epetraborole has the potential to meet the ideal target product profile for treatment-naïve NTM lung disease caused by MAC due to its once-daily, oral dosing and recently received tolerability and pharmacokinetic data from the Phase 1b study. In addition, we believe that the broad antimycobacterial activity demonstrated by epetraborole in preclinical models may allow for its development in other infectious diseases caused by mycobacteria, including *M. abscessus* lung infections. To expand epetraborole's market potential, we intend to pursue development in both of these indications.

Key Attributes of Epetraborole

We believe the development of epetraborole in NTM lung disease represents an attractive opportunity for the following reasons:

- **Large market opportunity.** Treatment-refractory MAC lung disease requires long-term, daily antimycobacterial therapy. There is a high unmet need in MAC lung disease and an attractive opportunity for a safe, tolerable, effective, and oral antibacterial drug that could significantly improve patient outcomes. For example, Arikayce, the only FDA approved therapy for treatment-refractory MAC lung disease patients, had reported net sales of approximately $189 million in 2021 ($160 million in the United States, $16 million in Japan, and $13 million in Europe and the rest of the world), despite a boxed warning for severe respiratory adverse events.
- **Novel mechanism of action with a broad spectrum of antimycobacterial activity.** Epetraborole inhibits bacterial leucyl-tRNA synthetase, a bacterial target with a novel mechanism of action for which there are no approved drugs. Epetraborole has demonstrated broad antimycobacterial activity in preclinical models against MAC, including *M. avium*, *M. intracellulare*, and *M. chimaera*, which is the most common type of NTM that causes human disease (~80% cases) and is the initial focus of epetraborole's clinical development. Furthermore, because epetraborole works through a novel mechanism of action, it is also active against strains that are resistant to other antibiotics currently used to treat NTM lung disease.
- **Substantial clinical and non-clinical data package may support a streamlined development program.** Epetraborole has previously been investigated by Anacor and GSK

in intravenous and oral formulations in six previous Phase 1 and two truncated Phase 2 clinical trials in over 200 subjects at a wide range of clinical doses. We have completed the Phase 1b dose-ranging study cohorts in healthy volunteers, in order to assess the pharmacokinetics and safety of oral epetraborole doses relevant for MAC and administered for 28 days, and have completed enrollment and dosing in the final, open-label, food-effect cohort. In addition, we have begun enrollment in a separate Phase 1 study to assess the pharmacokinetics of epetraborole in subjects with varying degrees of renal function. Previously, epetraborole pharmacokinetics, distribution, and metabolism were well characterized using substantially higher doses. Results from a Phase 1 clinical trial showed the exposures of epetraborole in alveolar (lung) macrophages, the cells that are infected with mycobacteria in NTM lung disease, was approximately five-fold higher than in plasma. These results suggest therapeutically relevant exposures of epetraborole may be achieved in these macrophages with orally administered doses that are substantially lower than the maximum tolerated doses and exposures in previous trials. Furthermore, we have completed extensive toxicology and safety pharmacology studies, including chronic toxicology studies by oral administration in both rats (six months) and non-human primates (nine months) where epetraborole was tolerated at much higher exposures compared to the once-daily dose of 500 mg that we intend use to treat patients with treatment-refractory MAC lung disease in our planned Phase 2/3 pivotal clinical trial. Lastly, we have successfully manufactured drug substance and drug product in large-scale batches.

- **Convenient once-daily, oral dosing with the aim to serve as an important component of therapy for MAC lung disease.** Epetraborole is an orally available drug intended to be dosed once-daily, thereby providing a convenient addition to standard of care therapy compared to drugs delivered by other methods such as nebulizers (e.g., Arikayce), injections, or intravenous infusions.
- **Compatibility with guideline-based combination treatments.** The current standard of care therapy for NTM lung disease includes administration of three or more antimycobacterial agents, the combination of which improves efficacy, shortens the duration of therapy, and significantly reduces the chance that resistance to individual drugs will develop. Given epetraborole's novel mechanism of action and low potential for drug-drug interactions with existing antibiotics that would limit its ability to be added to standard of care combination regimens, epetraborole, if approved, has the potential to become an important component of a multi-drug treatment regimen for patients suffering from MAC lung disease. We believe that the attributes of epetraborole are aligned with the unmet need in treatment-refractory MAC lung disease and compare favorably to Arikayce, which is the only currently approved therapy for patients with this condition, and product candidates SPR-720, which is being developed by Spero Therapeutics, Inc., and RHB-204, which is being developed by Redhill Biopharma Ltd. For example, Arikayce has a boxed warning for severe respiratory adverse events, and both SPR-720 and RHB-204 are currently being developed for treatment-naïve patients.

Mechanism of Action

Epetraborole is a small molecule inhibitor of bacterial LeuRS, an aaRS enzyme, which catalyzes an essential step in protein synthesis. As shown in Figure 3 below, epetraborole forms a complex with a leucyl tRNA molecule, trapping the tRNA molecule in the editing site of the enzyme, which prevents the synthetic site from attaching leucine to tRNA thus shutting down tRNA leucylation and leading to a block in protein synthesis.

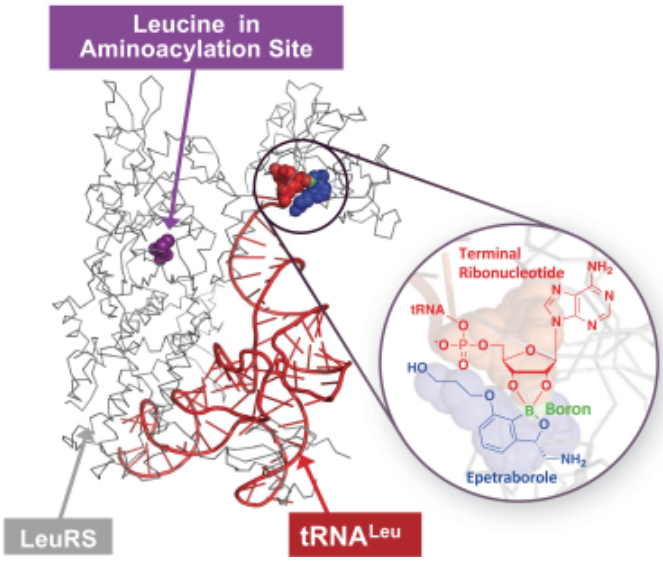


Figure 3. Epetraborole inhibits the protein synthesis enzyme leucyl-tRNA synthetase, or LeuRS, by binding to the terminal adenosine ribose of $tRNA^{Leu}$ in the editing site.

Properties of Epetraborole

Broad Antimicrobial Activity

As shown in Table 2 below, epetraborole has demonstrated antimicrobial activity against a broad panel of 51 isolates of MAC, with minimum inhibitory concentrations, or MICs, of 0.25 mg/ml to 8 mg/ml. Because epetraborole works via a novel mechanism of action, it also maintained activity against MAC isolates that are resistant to clarithromycin, a current therapy for NTM treatment regimens.

	MIC (mg/L)		
	Epetraborole	**Clarithromycin**	**Amikacin**
MIC Range	0.25 - 8	0.25 - >64	8 - >64
MIC_{50}	2	1	16
MIC_{90}	8	4	64

Table 2. Antimicrobial activity of epetraborole, clarithromycin and amikacin against 51 isolates of MAC including 17 *M. intracellulare* isolates, 1 *M. avium* isolates, 3 *M. avium* complex isolates, 20 *M. avium* subsp. *hominissuis* isolates, and 10 *M. chimaera* isolates

Epetraborole is Highly Selective for Bacterial LeuRS

Humans have two LeuRS enzymes: a mitochondrial LeuRS and a cytoplasmic LeuRS. Although there is weak sequence similarity between mitochondrial LeuRS and bacterial LeuRS, the human mitochondrial enzyme lacks a functional editing site. Research published by members of our founding team discovered that epetraborole was a poor inhibitor of human cytoplasmic LeuRS, with an IC_{50} of 185 µM and had virtually no activity against proliferation of a human liver cell line (>500 µM) when compared to the IC_{50} values of 0.12 and 0.25 µM measured against bacterial forms of the enzyme in *Escherichia coli* and *Klebsiella pneumoniae*, respectively. We believe the mitochondrial LeuRS enzymes lack of an editing function and the weak binding to cytoplasmic LeuRS make epetraborole an

attractive candidate as an antibiotic because it suggests that it is not likely to significantly inhibit host protein synthesis at the same drug concentrations that completely inhibit bacterial LeuRS.

Linearity of Epetraborole Pharmacokinetics

Pharmacokinetic data from a prior Phase 1 SAD/MAD clinical trial of epetraborole conducted by GSK was used to establish the linear relationship between doses of 200 mg to 4,000 mg per day administered via IV (summarized in Figure 4 below). These results demonstrate the highly linear pharmacokinetic profile of epetraborole. In addition, doses up to 4,000 mg IV per day for 14 days were used, at exposures much higher than we believe are needed to treat patients with MAC lung disease. These data, in combination with other available human pharmacokinetic data, were used to establish a population pharmacokinetics model that can predict exposures between doses and subjects due to the pharmacokinetic linearity and substantially low inter-patient variability. We believe these data indicate that expected efficacious exposures can be achieved with our target doses.

Cohort	SAD 1	SAD 2	SAD 3	SAD 4	SAD 5	MAD 1	MAD 2	MAD 3	MAD 4
Dose (mg)	200	400	900	2000	3000	500	750	1200	2000
Frequency	x1	x1	x1	x1	x1	Q12h	Q12h	Q12h	Q12h
Duration (d)	1	1	1	1	1	8	14	14	14
AUC (h.µg/mL)	9.8	19	46	107	145	56	75	117	194
C_{max} (µg/mL)	2.9	5.9	14	32	42	9.4	12	19	31
CL (L/h)	18.0	18.5	17.2	16.5	18.4	15.3	19.4	18.1	18.1
$T_{1/2}$ (h)	10.9	11.3	10.8	11.2	10.4	10.7	10.6	10.5	10.0

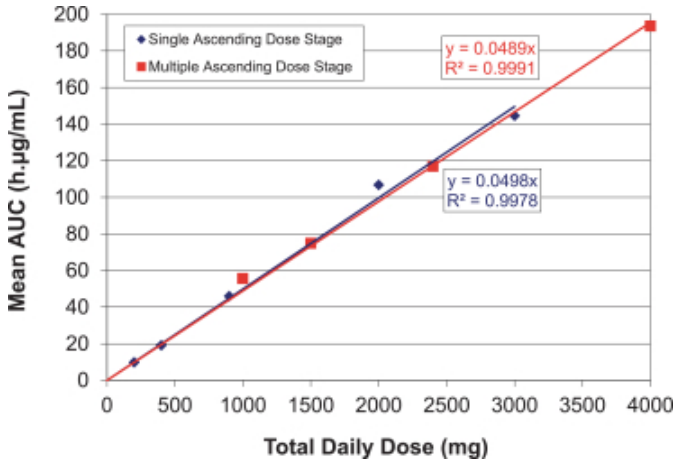


Figure 4. Pharmacokinetic data from a Phase 1 SAD/MAD clinical trial of epetraborole was used to establish the linear relationship between doses of 200 mg to 4,000 mg per day administered via IV.

Preclinical Experience for MAC

In vivo antibacterial activity of epetraborole has been demonstrated in the chronic mouse model of MAC lung disease. In this model, C57BL/6 mice were infected via aerosol with 10^{11} colony forming units, or CFU, per mouse of one of five different isolates of MAC: *M. avium* 2285 (R) (epetraborole MIC = 4 µg/mL); *M. avium* ATCC 700898 (epetraborole MIC = 2 µg/mL); *M. intracellulare* 1956 (epetraborole MIC = 2 µg/mL); *M. intracellulare* DNA00111 (epetraborole MIC = 8 µg/mL); or *M. intracellulare* DNA00055 (epetraborole MIC = 8 µg/mL). The higher MIC values for these isolates allows us to select a dose for our planned Phase 2/3 pivotal clinical trial that is expected to provide potentially efficacious clinical exposures against the full range of epetraborole MIC values (see Table 1). In these models, the infection was

allowed to proceed for 28 days before treatment was initiated, which approximates the human disease more closely than shorter mouse models as bacterial growth is largely stationary at initiation of dosing. Starting on day 28, mice were treated daily with orally administered antibacterial therapy for two months, after which the bacteria in lungs were plated on a media plate on day 84 to isolate the bacteria and to determine viable bacteria and CFUs.

Using this chronic mouse model of MAC lung disease and the biofilm forming isolate MAC, *M. avium 2285 (R), an initial study was conducted using a range of oral doses from 1 to 500 mg/kg daily of epetraborole. This study showed improved antibacterial activity of epetraborole at all doses compared to the daily humanized clarithromycin dose of 250 mg/kg.*

As shown in Figure 5 below, treatment with oral doses of 100 mg/kg (which is approximately equivalent to an oral human dose of 250 mg once-daily) reduced counts of viable *M. avium* 2285 (R) by >500-fold, or 2.7-$\log_{10}$. Doses at or above 200 mg/kg (dark green bar; approximately equivalent to an oral human dose of 500 mg once-daily) led to reduction in viable *M. avium* 2285(R) by 1,000-fold, or 3-$\log_{10}$. In addition, the lowest dose studied, 1 mg/kg (approximately equivalent to an oral human dose of 2.5 mg once-daily) produced a 250-fold, or 2.4-$\log_{10}$, reduction in viable bacteria, which was significantly better than clarithromycin treated animals at a p-value of 0.0007. No isolates with decreased susceptibility were found in any active epetraborole dosing group.

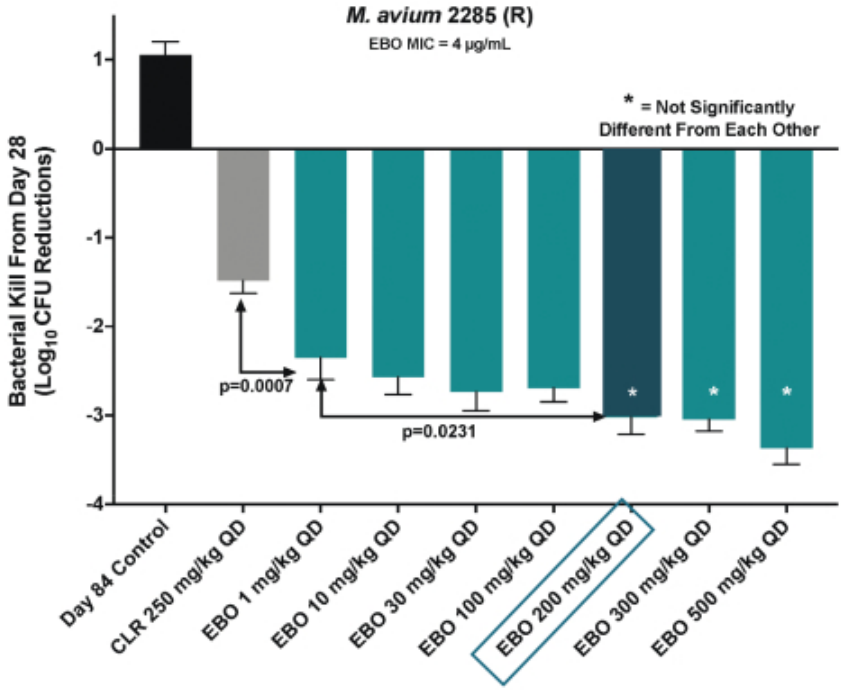


Figure 5. Epetraborole (EBO) and Clarithromycin (CLR) antibacterial activity in a chronic model of MAC lung disease in mice against *M. avium* 2285 (R).

These data were used to design subsequent experiments against the additional four isolates, which evaluated the activity of potential human equivalent doses using 100, 200, or 300 mg/kg epetraborole administered orally once-daily and 400 mg/kg epetraborole administered orally every other day. These active epetraborole treatment groups were compared against an untreated placebo control and the daily oral standard of care combination regimen of 250 mg/kg clarithromycin, 100 mg/

kg ethambutol and 100 mg/kg rifabutin. We also tested whether the addition of 200 mg/kg epetraborole on top of standard of care would improve the antibacterial activity of the once-daily standard of care regimen. This approach is consistent with our planned Phase 2/3 pivotal clinical trial.

Figure 6 shows the efficacy data for the other four isolates tested: *M. avium* ATCC 700898; *M. intracellulare* 1956; *M. intracellulare* DNA00111; and *M. intracellulare* DNA00055. A dose response was observed across the range of epetraborole doses studied, with all doses leading to at least a 100-fold, or 2-$\log_{10}$, reduction in viable bacteria for all isolates tested. Although the standard of care regimen led to a range of 1.7- to 4.2-$\log_{10}$ reductions in viable bacteria across the isolates tested, the addition of 200 mg/kg epetraborole (dark green bars; approximately equivalent to a 500 mg oral human equivalent dose based on area under the curve, or AUC, values from a human oral 500 mg dose) led to statistically significant reductions in viable bacterial colonies over the standard of care regimen alone with every strain tested. Reductions in viable bacteria for the standard of care plus epetraborole combination regimens ranged from 40,000 to 400,000-fold, or 4.6- to 5.6-$\log_{10}$, reductions in viable bacteria.

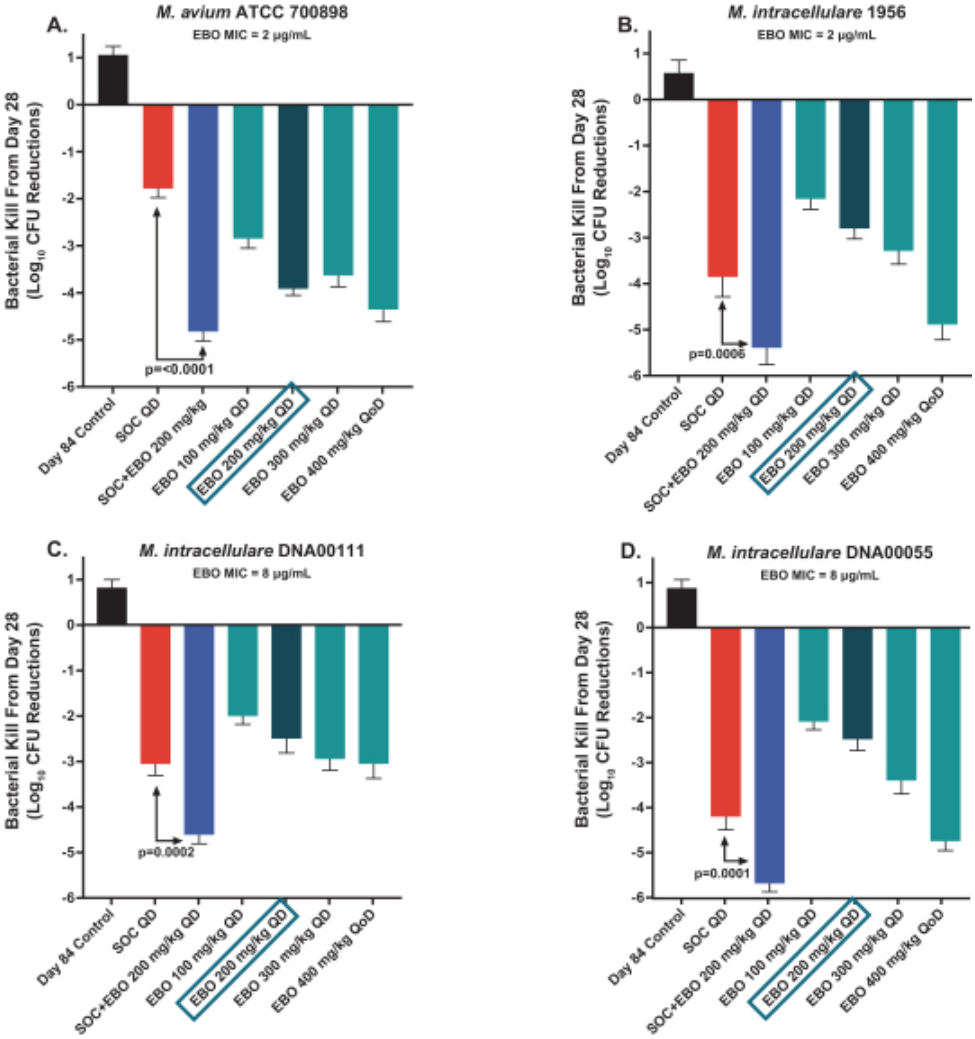


Figure 6. Epetraborole antibacterial activity in a chronic model of MAC lung disease in mice against *M. avium* ATCC 700898 (A), *M. intracellulare* 1956 (B), *M. intracellulare* DNA00111 (C), and *M. intracellulare* DNA00055 (D)

In summary, epetraborole monotherapy showed significant reductions in MAC CFUs, in some cases better than the triple-drug regimen. In every case, epetraborole on top of standard of care led to significant reductions in MAC CFUs.

Additionally, we assessed the potential for emergence of epetraborole resistance when dosed as monotherapy and the ability of combination regimens to suppress the emergence of epetraborole resistance in a hollow fiber system MAC model, or HFS-MAC. The HFS model is routinely used in antibacterial development to study the pharmacodynamics of drugs using human simulated pharmacokinetics, as a tool for dose selection, and as a means to define drug exposures that lead to and prevent emergence of resistance. The HFS-MAC model is tailored for use against bacteria that reside within macrophages. Specifically, human THP-1 monocytes are infected with MAC and transferred into a hollow fiber system in which cultures could be maintained for periods of 28 days. Bacterial growth media flows through the system and antibacterial drug is titrated in to simulate the pharmacokinetics of that drug. The infected macrophages are contained within a porous “hollow fiber” cartridge that retains the macrophages while allowing the growth media and drug to flow through the system. The cartridge contains a sampling port that allows for collection of bacteria over time throughout the experiment. We believe that there are four advantages of this HFS-MAC model to determine human doses, to suppress resistance, and to treat MAC lung disease:

- The HFS-MAC model mimics human infections in that MAC resides within human alveolar macrophages, which in this model are THP-1 cells;
- Human drug exposure can be replicated based on fluid flow through the HFS to help determine real-world target exposures in human pharmacokinetic experiments;
- The antibacterial effects of combination therapies can be assessed over a 28-day period; and
- The bacterial burden can be readily and repeatedly assessed to determine the kinetics of antibacterial activity and the rate of emergence of any drug resistant bacteria.

As illustrated in Figure 7 below, the results in this model showed treatment with epetraborole monotherapy led to a rapid 100-fold reduction in viable MAC within five days of treatment initiation and then plateaued after approximately ten days of dosing, which we believe is due most likely to the emergence of strains of *M. avium* that have developed resistance to epetraborole. This is an expected result that has been observed when all other antimycobacterial agents are used as monotherapy in this model. However, when epetraborole was dosed along with the standard of care combination therapy, no epetraborole resistance was observed.

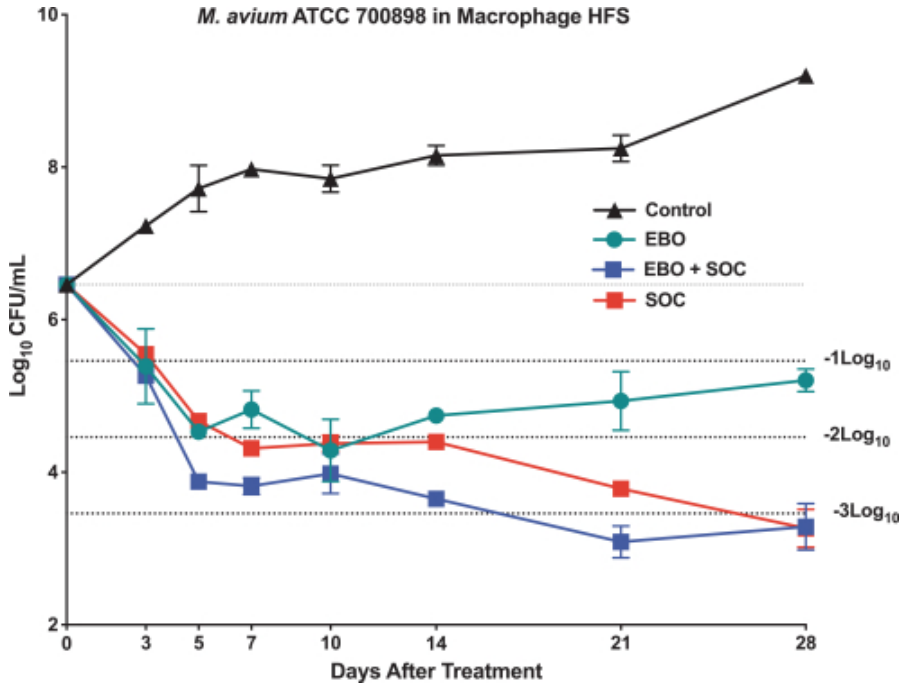


Figure 7. Epetraborole had antibacterial activity both as monotherapy and in combination therapy with a standard of care (clarithromycin, ethambutol, rifabutin) regimen in a HFS-MAC model.

Prior Clinical Experience with Epetraborole

Epetraborole was previously developed by Anacor and licensed by GSK, in 2010, where it was originally developed for the acute treatment of complicated urinary tract and intra-abdominal infections. Development of epetraborole was discontinued by GSK due to clinical resistance observed in four of 20 subjects enrolled in GSK's Phase 2 trial to evaluate epetraborole as a monotherapy in patients with complicated urinary tract infection, or cUTI, described below, which led GSK to return the molecule to Anacor. Clinical resistance occurs when bacteria, under drug pressure or through natural resistance, are increasingly not susceptible to an antibiotic. Clinical resistance is possible for all antibiotics and the rates and emergence of resistance vary by bacterial species. In the case of epetraborole, four resistant isolates (>32-fold decrease in susceptibility) emerged in the Phase 2 cUTI trial. No clinical resistance was observed in the other epetraborole trials conducted by GSK, including the complicated intra-abdominal infections, or cIAI, trial. Combination therapy has been shown to significantly reduce the risk of emergence of clinical resistance. NTM is treated with combination therapy per treatment guidelines. This is distinct from earlier clinical trials of epetraborole in other infection types where monotherapy epetraborole was evaluated.

Unlike cUTI and cIAI where monotherapy (a single drug) is standard of care, NTM lung disease is treated with combination therapy (multiple antibiotics used concurrently) consisting of different mechanisms of activity, per the treatment guidelines of the American Thoracic Society and the Infectious Diseases Society of America. Combination therapy is used to mitigate the development of clinical resistance, which is unavoidable with monotherapy antibiotic treatments. We believe that we can improve the treatment of patients with NTM lung disease with epetraborole as part of a combination therapy to avoid the development of clinical resistance. See "—Rationale for Use of Epetraborole in Treating NTM Lung Disease."

We obtained an exclusive license to epetraborole from Anacor in 2019 and initiated a Phase 1b dose-ranging study to evaluate oral dosing of epetraborole in healthy volunteers in 2021. Over 200 subjects were dosed with epetraborole at a wide range of clinical doses in one Phase 1 clinical trial conducted by Anacor and five Phase 1 clinical trials and two Phase 2 clinical trials conducted by GSK. Recently received data from our Phase 1b dose-ranging study (EBO-101) provide additional safety, tolerability, and pharmacokinetics data that, together with the data from Anacor and GSK's prior clinical experience with epetraborole described in Table 3 below, informed the dose selection of 500 mg once-daily for our Phase 2/3 pivotal clinical trial and any additional clinical trials in NTM lung disease patients.

Study Title	Patient Population	Epetraborole Formulation	Enrollment	Status
SAD/MAD (Anacor AN3365-PK-101) Phase 1 study to evaluate safety, tolerability, and pharmacokinetics of epetraborole	Healthy volunteers	Intravenous	72 participants total SAD: 40 (30 epetraborole) MAD: 32 (24 epetraborole)	Completed
Intrapulmonary PK (GSK LRS114926) Phase 1 study to evaluate serum and pulmonary pharmacokinetics of epetraborole	Healthy volunteers	Intravenous	30 participants total Single dose: 15 (15 epetraborole) q12h x 3 days: 15 (15 epetraborole)	Completed
Mass balance (GSK LRS115243) Phase 1 study to investigate recovery, excretion, and pharmacokinetics of epetraborole	Healthy volunteers	Intravenous	6 participants total Single dose: 6 (6 epetraborole)	Completed
SAD/MAD and supratherapeutic dose in Japanese subjects (GSK LRS116160) Phase 1 study to evaluate safety, tolerability, and pharmacokinetics of epetraborole	Healthy volunteers	Intravenous	8 participants total Single dose: 8 (8 epetraborole)	Terminated early due to results from study GSK LRS114688 Phase 2 trial
Complicated urinary tract infections (GSK LRS114688) Phase 2 study of safety, tolerability, and efficacy of epetraborole compared to imipenem-cilastatin	Patients with acute complicated urinary tract infection and acute pyelonephritis	Intravenous	20 patients total Multiple dose: 20 (14 epetraborole)	Terminated due to microbiological findings of resistance
Complicated intra-abdominal infections (GSK LRS114689) Phase 2 study of safety, tolerability, and preliminary efficacy of epetraborole compared to meropenem	Patients with complicated intra-abdominal infection	Intravenous	15 patients Multiple dose: 15 (9 epetraborole)	Terminated early due to results from study GSK LRS114688 Phase 2 trial
		Total enrollment with intravenous formulation:	**151 (121 epetraborole)**	

Study Title	Patient Population	Epetraborole Formulation	Enrollment	Status
SAD/MAD (GSK LRS114470) Phase 1 study to evaluate safety, tolerability, and pharmacokinetics of epetraborole	Healthy volunteers	Oral	77 participants total SAD: 22 (18 epetraborole) MAD: 55 (41 epetraborole)	Terminated early due to tolerability issues at 3,000 mg twice-daily dose level
Food effect (GSK LRS115244) Phase 1 study to investigate relative bioavailability, safety, and tolerability of various oral formulations of epetraborole	Healthy volunteers	Oral	24 participants total Single dose: 24 (24 epetraborole)	Terminated early due to results from study GSK LRS114688 Phase 2 trial
		Total enrollment with oral formulation:	**101 (83 epetraborole)**	
		Total enrollment (combined intravenous plus oral formulation):	**252 (204 epetraborole)**	

Table 3. Summary of prior clinical studies conducted by Anacor and GSK for evaluating epetraborole

SAD/MAD (Anacor AN3365-PK-101)—Phase 1 Study to Evaluate Safety, Tolerability, and Pharmacokinetics of Intravenous Epetraborole

Anacor previously conducted a first-in-human Phase 1 single ascending and multiple ascending dose study to evaluate the safety, pharmacokinetics, and tolerability of intravenous administration of epetraborole (AN3365) in healthy volunteers. The study enrolled 40 participants in a single ascending dose arm, with 30 subjects receiving epetraborole at doses ranging from 200 mg to 3,000 mg, and 32 participants in a multiple ascending dose arm, with 24 subjects receiving epetraborole twice-daily doses ranging from 500 mg to 2,000 mg for 14 days.

In the single ascending dose arm, the study found that following administration as a one-hour infusion, AUC and maximum concentration, or C_{max}, of epetraborole were approximately dose proportional after both single and repeat dosing. Mean $AUC_{0-¥}$ and C_{max} values after the highest single dose administered (3,000 mg) were 145 µg·h/mL and 42 µg/mL. In the multiple ascending dose arm, mean AUC_{0-12} and C_{max} values after the highest repeat dose regimen (2,000 mg) were 97 µg·h/mL and 31 µg/mL. No unexpected accumulation was observed after twice-daily dosing for up to 14 days, indicating no time-dependent changes in pharmacokinetics.

There were no deaths, serious adverse events, or SAEs, or any adverse events, or AEs, leading to withdrawal from the study. The three most common AEs reported in the trial were headache, postural hypotension, and cannulation site injury. There was no apparent dose response to these AEs and all were observed in placebo subjects. In both arms of the study, no clinically significant abnormalities were reported in laboratory values after administrations of intravenous epetraborole; however, variable decreases in reticulocyte counts and hemoglobin levels were observed, which were not considered treatment-emergent AEs by the investigator.

Intrapulmonary Pharmacokinetics (GSK LRS114926)—Phase 1 Study to Evaluate Serum and Pulmonary Pharmacokinetics of Intravenous Epetraborole

GSK previously conducted a Phase 1 parallel-cohort study to evaluate the safety, tolerability, and plasma and intrapulmonary pharmacokinetics of intravenous administration of epetraborole (GSK2251052) in healthy volunteers. The study enrolled 15 participants in a single dose cohort of 1,500 mg and 15 participants in a multiple dose arm of 1,500 mg twice-daily for three days.

Results of the study showed that exposures of epetraborole were five times higher in lung macrophages than in plasma. Because lung macrophages are the cells that are infected with MAC, we believe the ability of epetraborole to selectively reach these higher exposures in alveolar macrophages position the treatment of NTM lung disease as an attractive indication for development of epetraborole. Figure 8 below summarizes the exposures of epetraborole in plasma and alveolar macrophages observed in the study.

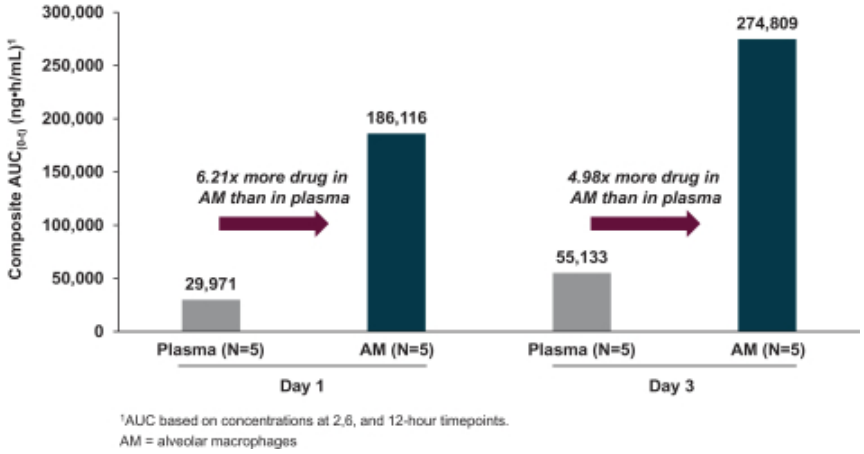


Figure 8. Intravenous dosing of epetraborole led to five times higher levels of the drug in alveolar macrophages than in plasma.

Results in the study indicated that following administration of 1,500 mg epetraborole via IV infusion, epetraborole was eliminated slowly with a median half-life value of 10.7 hours. On average, systemic clearance was low: approximately 23.1 L/h on day one and 20.6 L/h on day three. The fraction of unchanged epetraborole recovered in urine after 48 hours was approximately 26.8% of the total administered dose. The mean steady state volume of distribution, or V_{SS}, (approximately 231 L) exceeded the total body water and total body weight of a 70 kg human, indicating that epetraborole was highly distributed in tissues. In the single dose cohort, the epetraborole concentrations in alveolar macrophages relative to those in plasma were 621% based on composite AUC and, on average, 573%, 726%, and 544% at the 2-, 6-, and 12-h BAL sampling points, respectively, relative to the concentrations in plasma following a single dose and 498% based on composite AUC and, on average, 549%, 405%, and 566%, at the 2-, 6-, and 12-h BAL sampling points, respectively, relative to the concentrations in plasma following multiple doses.

There were no SAEs or other AEs leading to withdrawal from the study. The most common drug-related AE was infusion site reactions in six subjects, followed by chest pain, dizziness, and orthostatic hypotension in two subjects or fewer.

Mass Balance (GSK LRS115243)—Phase 1 Study to Investigate Recovery, Excretion, and Pharmacokinetics of Intravenous Epetraborole

GSK previously conducted a Phase 1 mass balance study to evaluate the recovery, excretion and pharmacokinetics of intravenous administration of epetraborole (GSK2251052) in healthy volunteers. The study enrolled six participants in a single dose cohort to receive a single intravenous dose of 1,500 mg of epetraborole containing a small amount of a radioactive radiolabel isotope to follow the absorption, metabolization, and excretion process.

The results indicated that following administration of 1,500 mg epetraborole with the radiolabel via intravenous infusion, radiocarbon was slowly eliminated from plasma with a mean half-life of 96 hours.

The mean half-life observed in whole blood was 14.3 hours. Total radioactivity was highly distributed in tissues, based on the mean V_{SS} of radiocarbon in plasma (348 L). The mean $AUC_{0-¥}$ values for epetraborole and metabolite M3 were 37% and 53% of the radiocarbon $AUC_{0-¥}$ value observed in plasma, respectively, indicating that the majority of plasma radioactivity is accounted for by the parent epetraborole and the metabolite M3.

There were no SAEs and only mild treatment-emergent AEs were observed, but none were considered related to epetraborole. There were no severe or serious adverse events or withdrawals from dosing of epetraborole due to an AE, and no clinically significant changes in vital signs were observed.

SAD/MAD and Supratherapeutic Dose in Japanese Subjects (GSK LRS116160)—Phase 1 Study to Evaluate Safety, Tolerability, and Pharmacokinetics of Epetraborole

GSK previously initiated a Phase 1 study to evaluate the safety, tolerability, and pharmacokinetics of intravenous administration of epetraborole (GSK2251052) in healthy Japanese and Caucasian volunteers. The study was designed to enroll a single ascending dose arm and a multiple ascending dose arm in several genotype groups; however, the first portion was only partially completed before the study was terminated early based on emerging data from the Phase 2 cUTI trial described below. The study enrolled eight Japanese participants receiving epetraborole in single doses of 750 mg or 1,500 mg before early termination of the study. Among the eight subjects enrolled, the plasma pharmacokinetics and tolerability of single doses of intravenous administration of epetraborole were generally consistent with those previously reported in the Anacor Phase 1 study described above.

There were no SAEs or drug-related AEs or withdrawals from dosing of epetraborole due to an AE.

Complicated Urinary Tract Infections (GSK LRS114688)—Phase 2 Study of Safety, Tolerability, and Preliminary Efficacy of Epetraborole Compared to Imipenem-Cilastatin

GSK previously initiated a Phase 2 trial to evaluate the safety, tolerability, pharmacokinetics, and efficacy of intravenous administration of epetraborole (GSK2251052) compared to imipenem-cilastatin in adult patients with cUTI, including acute pyelonephritis. The trial enrolled a total of 20 patients, with six patients treated with epetraborole at a dose of 750 mg, eight patients treated with epetraborole at a dose of 1,500 mg and six patients treated with imipenem-cilastatin.

After the first 20 patients were enrolled, the trial was terminated early after four urine culture isolates (*E. coli x2, P. mirabilis,* and *K. pneumoniae*) demonstrated a significant increase (³32-fold) in epetraborole MIC between baseline and day two. Sequencing analysis of *leuS* from the isolates showed that the baseline isolates were found to have no mutations in *leuS*, and post-baseline isolates were found to contain either single or double editing domain mutations in *leuS*. No other significant changes in the susceptibility of tested comparators were observed.

Emergence of epetraborole resistance was observed in four of 20 subjects enrolled in this Phase 2 cUTI trial, which led GSK to discontinue development of epetraborole for complicated gram-negative bacterial infections and to return the molecule to Anacor. Rifampicin, when studied in a monotherapy cUTI trial, showed similar to greater development of clinical resistance, which was ablated by the addition of another active drug, trimethoprim. In addition, rifampicin has been a frontline agent in treating NTM lung disease and tuberculosis for decades.

Sixteen of 20 patients reported AEs; nausea, increased alanine aminotransferase, and dizziness were the most commonly reported. SAEs of aspiration bronchial, hemoglobin decrease, cardiac arrest, *Escherichia* bacteremia, and pulmonary embolism were observed in three patients treated with epetraborole. The SAEs of hemoglobin decrease and *Escherichia* bacteremia were considered related to epetraborole.

Complicated Intra-Abdominal Infections (GSK LRS114689)—Phase 2 Study of Safety, Tolerability, and Preliminary Efficacy of Intravenous Epetraborole Compared to Meropenem

GSK previously initiated a Phase 2 trial to evaluate the safety, tolerability, pharmacokinetics, and efficacy of intravenous administration of epetraborole (GSK2251052) compared to meropenem in adult patients with complicated intra-abdominal infections. The trial enrolled a total of 14 patients, with five patients treated with epetraborole at a dose of 750 mg, four patients treated with epetraborole at a dose of 1,500 mg and five patients treated with 1,000 mg of meropenem. After the first 14 patients were enrolled, the trial was terminated early because of emergent bacterial resistance in the Phase 2 trial in cUTIs, as described above.

Twelve of 15 subjects reported AEs; diarrhea and pyrexia were the most common AEs reported. SAEs of abdominal abscess, pelvic abscess, blood creatinine increase, hemoglobin decrease, acute pancreatitis, and bile duct stone were observed in three patients treated with epetraborole, although no SAEs were considered related to epetraborole.

SAD/MAD (GSK LRS114470)—Phase 1 Study to Evaluate Safety, Tolerability, and Pharmacokinetics of Oral Epetraborole

GSK previously conducted a Phase 1 dose escalation study to evaluate the safety, tolerability and pharmacokinetics of orally administered epetraborole (GSK2251052) in healthy volunteers. Epetraborole was administered as either tablets or as an oral solution. The study enrolled 22 participants in a single ascending dose arm, with 18 subjects receiving epetraborole at doses ranging from 500 mg to 4,000 mg, and 55 participants in a multiple ascending dose arm, with 41 subjects receiving epetraborole at daily doses ranging from 4,000 mg to 6,000 mg for ten days as 2,000 mg administered in twice- or thrice-daily dosages.

In the single ascending dose arm, results indicated dose proportionality over the doses used in the study. Following single-dose administration of oral epetraborole as 500 mg, 2,000 mg, and 4,000 mg oral tablets in the fasted state, AUC and C_{max} increased with dose. The half-life was approximately ten hours. AUC and C_{max} exhibited low to moderate inter-subject variability. In the multiple dose ascending arm, results indicated that oral epetraborole AUC and C_{max} were similar in tablet and solution formulations, while time taken to reach C_{max}, or T_{max}, was slightly earlier for the solution formulation. The half-life for oral epetraborole was slightly lower on day one (approximately eight to 11 hours) compared to Day 10 (approximately ten to 12 hours), though the 2,000 mg thrice-daily regimen showed a much longer half-life of approximately 100 hours. In general, oral epetraborole AUC and C_{max} exhibited low to moderate inter-subject variability. Data in the study indicated that steady state for oral epetraborole was generally achieved by day seven for all twice-daily regimens and by day four for thrice-daily regimens. Observed accumulation ranged from 55% to 84% for AUC and 19% to 43% for C_{max} with the largest accumulation observed in the thrice-daily regimen.

In the study, there were no SAEs and no dose-limiting treatment-emergent AEs at doses up to 4,000 mg/day. Doses up to 2,000 mg twice-daily (4,000 mg/day) were generally well-tolerated; dose-limiting gastrointestinal intolerability was observed when this dose was increased to 3,000 mg twice-daily (6,000 mg/day). The most common drug-related AEs observed were gastrointestinal in nature (nausea and vomiting).

Food effect (GSK LRS115244)—Phase 1 Study to Investigate Relative Bioavailability, Safety, and Tolerability Of Various Oral Formulations of Epetraborole

GSK previously initiated a Phase 1 study to evaluate the relative bioavailability of orally administered epetraborole (GSK2251052) in healthy volunteers, as epetraborole was initially being developed by GSK as an intravenous-to-oral switch regimen for cUTI. The study was originally planned as a five-part study; however, the first portion was only partially completed before the study was

terminated early based on emerging data from the Phase 2 cUTI trial described above. The study enrolled 24 participants to evaluate the relative bioavailability of five different oral formulations of 2,000 mg of epetraborole: enteric coated, modified release, powder for oral suspension, immediate release, and oral solution. Before the study was terminated, each subject received several of the five oral formulations of epetraborole.

In the study, no SAEs were observed.

Rationale for Use of Epetraborole in Treating NTM Lung Disease

We believe that the profile of epetraborole supports further development in patients with NTM lung disease while avoiding the development of clinical resistance for several reasons, including:

- Standard of care therapy for NTM lung disease is always a combination therapy with multiple antibiotics, thereby reducing the potential for the development of resistance;
- We have not observed any clinical resistance formation in the chronic model of NTM disease in mice;
- We have demonstrated in a HFS-MAC model the lack of resistance formation when dosed in combination for 21 days;
- Other frontline NTM and tuberculosis drugs have similar or higher frequencies of resistance formation and have been used successfully in clinical practice for decades;
- Epetraborole has been shown in a Phase 1 clinical trial in healthy volunteers to preferentially concentrate in alveolar macrophages, which are the cells infected with mycobacteria in NTM lung disease; and
- Epetraborole has demonstrated bactericidal activity in macrophages.

Based on the lack of dose-limiting treatment-emergent AEs at doses below 3,000 mg twice-daily (6,000 mg/day) in prior studies and trials, we do not anticipate any dose-limiting TEAEs at our target doses.

EBO-101: Phase 1b Dose-Ranging and Food Effect Study

Previous clinical trials of epetraborole were limited to a maximum of 10-14 days of dosing. To support clinical development in NTM lung disease, we have conducted a randomized, double-blind, placebo-controlled Phase 1b dose-ranging study in Australia to assess the pharmacokinetics and safety of oral 28-day dosing of epetraborole (EBO-101). A total of 43 subjects were enrolled in the double-blind, placebo-controlled portion of the study (Cohorts 1 through 6, including 31 epetraborole and 12 placebo subjects). Dose Cohorts 1 through 5 were completed through the 28-day dosing period. One subject in Cohort 2 was replaced during the study due to an early withdrawal of consent. Cohort 6 was terminated early after a rise in COVID-19 cases in Australia resulted in recruitment difficulties and six of eight planned subjects were not enrolled. In addition, we determined that pharmacokinetic data from Cohort 6 was not necessary for selecting the expected epetraborole dose for our planned Phase 2/3 pivotal clinical trial, as adequate epetraborole exposures necessary for pharmacokinetic and pharmacodynamic target attainment for efficacy were obtained from lower doses in Cohorts 1 through 5 (ranging from 250 mg q24h to 1,000 mg q48h). The drug exposure data from Cohorts 1 through 4 was used to update the population pharmacokinetic model to determine the epetraborole dosage in our planned Phase 2/3 pivotal clinical trial (EBO-301). Based on the pharmacokinetic and pharmacodynamic targets derived from in vivo studies in preclinical mouse models of NTM lung disease and the high drug concentrations observed in a previous Phase 1 clinical trial conducted by GSK in lung macrophages, we intend to treat patients with NTM lung disease with an oral drug dose of 500 mg once daily. This dosage is substantially lower than those previously explored in the clinic for multidrug-resistant Enterobacterales, but we believe provides a high probability of reaching the target attainment to treat MAC lung disease along with a low number of drug-related adverse events, particularly dose-related adverse effects, including gastrointestinal events and hematological abnormalities that have been observed at higher epetraborole exposures.

We received safety and pharmacokinetic results from Cohorts 1 through 6 of the Phase 1b dose-ranging study in the fourth quarter of 2021. Enrollment and dosing in the final, open-label food-effect cohort has been completed, in which eight subjects were administered a single dose of epetraborole.

In Cohorts 1 through 6 of this study, the treatment emergent adverse event profile reported for the healthy subjects who received oral epetraborole was similar to that of the pooled placebo group. Overall, approximately 80% of subjects experienced at least one TEAE (80.6% of epetraborole subjects, 83.3% of placebo subjects), none of which were serious or severe. Most TEAEs were mild in severity (92.7% of all TEAEs), and the remainder were moderate (7.3% of all TEAEs). No TEAEs leading to withdrawal from study, life threatening TEAEs, or deaths were reported in the study. Two subjects (4.7% of all subjects) experienced TEAEs that caused premature discontinuation from epetraborole: one epetraborole subject at the 250 mg q24h dose level had mild aminotransferase increases during a concomitant upper respiratory tract infection; and one epetraborole subject at the 1,000 mg q48h dose level had mild nausea. These TEAEs were both considered possibly or probably related to epetraborole. The final cohort of the Phase 1b dose-ranging study recently completed enrollment and dosing and therefore safety data for this cohort are not yet available.

Gastrointestinal disorders were the most common types of TEAEs in the study (experienced by 48.4% of epetraborole subjects and 41.7% of placebo subjects). The most common GI disorder was nausea, observed in 25.8% of epetraborole subjects and 16.7% of placebo subjects; all were mild in severity, and only one event was treatment-limiting. The treatment-limiting GI disorder TEAE was observed in an epetraborole subject at the 1,000 mg q48h dose level, who experienced mild nausea beginning on Day 1 of treatment, leading to premature discontinuation of epetraborole on Day 11. Diarrhea was observed in 12.9% of epetraborole subjects and 8.3% of placebo subjects, all events of which were mild except one moderately severe diarrhea event in a single epetraborole subject at the 1,000 mg q24h dose level. No cases of *Clostridioides difficile* infection were observed. Consistent with observations in chronic toxicology studies in non-human primates and rats, dose-dependent effects on red blood cell-related hematological parameters, such as hemoglobin and reticulocytes, were observed. The observed effects on hematological parameters were mild and most RBC values remained within normal limits with a slight downward trend, the effects were not deemed clinically significant by the investigator, and the hematological parameters recovered following completion of dosing of epetraborole. No adverse hematological events were observed and no patients discontinued therapy as a result of the hematological effects that were observed.

We believe the safety and pharmacokinetic results support further clinical development of epetraborole in NTM lung disease. The results were used in combination with preclinical data to determine epetraborole dosage for future NTM lung disease studies (500 mg once-daily).

Dose Cohort	Epetraborole Dose (mg)	Active: Placebo	Dosing Frequency (28 Days)
1	250 mg	6:2	q24h
2	500 mg	6:3†	q48h
3	500 mg	6:2	q24h
4	750 mg	6:2	q24h
5	1,000 mg	6:2	q48h
6	1,000 mg	6:2*	q24h
7	Food effect	8:0	Single dose

† Total enrollment for this cohort was 9 subjects. One placebo subject withdrew from the study for family reasons and was replaced by an alternate subject.
* Actual total enrollment is two subjects, not eight. Cohort 6 was terminated early after six of eight planned subjects were not enrolled due to a rise in COVID-19 cases in Australia that resulted in recruitment difficulties. In addition, pharmacokinetic data from Cohort 6 was not necessary for selecting the expected epetraborole dose for our planned Phase 2/3 pivotal clinical trial, as adequate epetraborole exposures necessary for efficacy were obtained from lower doses in Cohorts 1 through 5 (ranging from 250 mg q24h to 1,000 mg q48h).

Table 4. Dosing in the 28-day Phase 1b dose-ranging study of epetraborole

EBO-301: Planned Phase 2/3 Pivotal Clinical Trial

We have designed a Phase 2/3 pivotal clinical trial (EBO-301) that, based on our interactions to date with the FDA, including discussions regarding our nonclinical microbiology, toxicology, and pharmacology data package for epetraborole and tolerability and pharmacokinetic data from our Phase 1b dose-ranging study, we believe has the potential to be sufficient for regulatory approval in the United States. We plan to enroll patients with treatment-refractory MAC lung disease in this double-blind, placebo-controlled superiority trial, with planned enrollment of approximately 260 patients across approximately 80 clinical sites in up to 6 countries in North America and Europe. We expect that the primary objective in the Phase 2 part of the trial will be to determine the safety, efficacy, and pharmacokinetics of epetraborole plus an OBR when compared to a placebo plus an OBR. Additionally, we expect that the data from the Phase 2 trial will be used to inform the clinical response measures evaluated in the Phase 3 part of the trial. While the Phase 2 part of the trial is not powered for statistical significance, we believe that the results will be the first showing the impact of epetraborole plus an OBR in MAC lung disease patients. We expect that the primary objective in the Phase 3 part of this trial will be to determine if epetraborole plus an OBR, consisting of two or more standard-of-care drugs, is superior to placebo plus an OBR. An overview of the clinical trial design is below in Figure 9. We are working with the FDA to finalize the primary endpoint for the Phase 3 part of our planned Phase 2/3 pivotal clinical trial, for which the FDA recommends a clinical response measure. We expect that the secondary endpoints will include other microbiological, clinical, or safety measures. We anticipate dosing of patients who culture convert to continue for an additional twelve months from the first month of culture clearance (three consecutive months of sputum clearance) in accordance with current treatment guidelines in a placebo-controlled blinded extension period of the trial. We recently received clearance of our IND application by the FDA to begin our Phase 1 renal impairment study, for which enrollment commenced in February 2022. We plan to initiate patient enrollment in our Phase 2/3 pivotal clinical trial in the first half of 2022, with topline results for the Phase 2 part of the trial anticipated in the middle of 2023 and for the Phase 3 part of the trial anticipated in the middle of 2024, pending any sample size adjustments that may be required to the Phase 3 portion based on treatment effects of epetraborole-containing regimens that may be observed in the Phase 2 portion of the trial, if any.

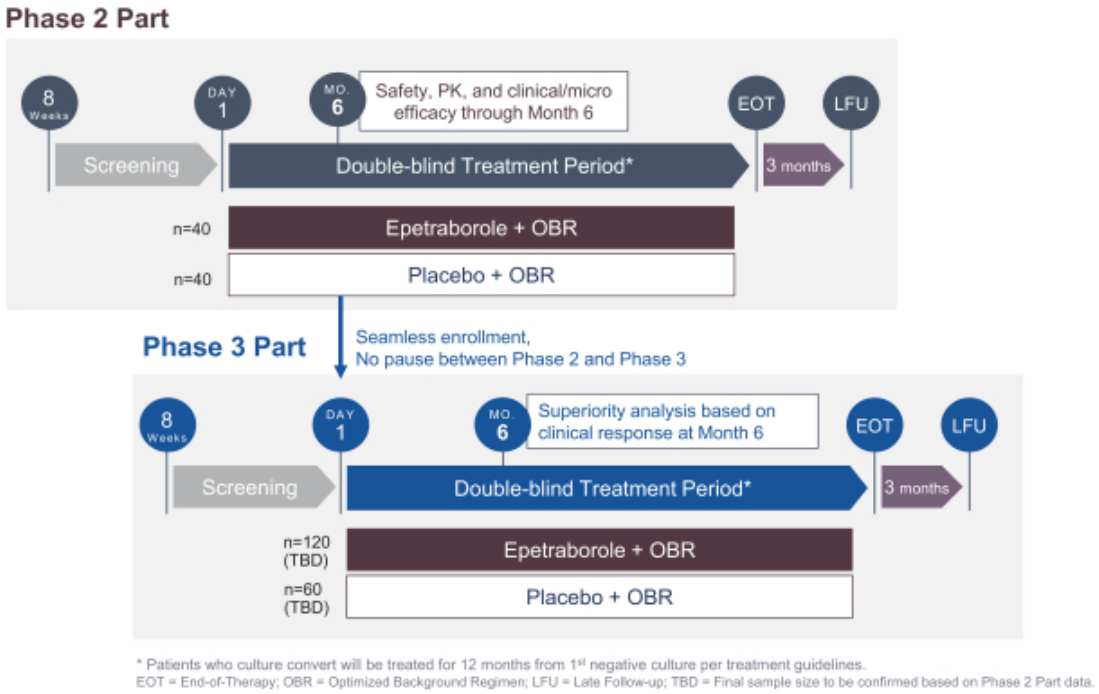


Figure 9. Proposed design of the Phase 2/3 pivotal clinical trial of epetraborole in treatment-refractory MAC lung disease

EBO-102: Phase 1 Renal Impairment Study

Due to the prevalence of renal impairment among patients with NTM lung disease, we have initiated an open-label Phase 1 study of epetraborole in subjects with varying degrees of renal impairment (EBO-102). The objective of the EBO-102 Phase 1 renal impairment study is to assess safety and pharmacokinetics of oral epetraborole in up to 40 non-NTM lung disease subjects across five cohorts with varying degrees of renal function (normal to severe). We recently received clearance of our IND application by the FDA to begin this Phase 1 renal impairment study and initiated enrollment in February 2022, with topline results anticipated in the second half of 2022. The EBO-102 Phase 1 renal impairment study will potentially enable enrollment of renally impaired patients into, but will not impact the start of, the planned Phase 2/3 pivotal clinical trial in patients with NTM lung disease.

Future Development of Epetraborole

We intend to conduct clinical trials in Japan in patients with treatment-refractory MAC lung disease. Japan has some of the highest rates of NTM lung disease in the world. It is believed that these high rates are related to a combination of environmental factors, such as soil and humidity and other climate conditions, behavioral differences, and an aging population. We estimate that there are 220,000 patients with NTM lung disease and 21,000 patients with treatment-refractory MAC lung disease in Japan. We have initiated discussions with the PMDA to gain alignment on the development plan necessary for regulatory approval of epetraborole in MAC lung disease. Our initial planned indication in all geographies is the treatment of patients with treatment-refractory MAC lung disease.

We also intend to conduct trials in which we plan to incorporate epetraborole as part of first-line combination treatment of treatment-naive patients with NTM lung disease, which we believe is supportable with data from our Phase 1b study. We believe that the addition of epetraborole to first-line treatment has the potential to significantly improve response rates without increasing adverse events.

Additionally, we intend to pursue development of epetraborole as a first-line therapy in *M. abscessus* lung disease. Many of the current treatments lead to poor efficacy (~50%), are delivered by intravenous infusion, have significant side effects, and lead to the development of multi-drug resistance. We believe that epetraborole, in combination with other drugs, has the potential to treat *M. abscessus* based on its in vitro and in vivo potency against multiple isolates.

Expansion of Our Portfolio of Product Candidates

We have deep expertise in boron chemistry as exemplified by our management team's history of developing epetraborole and we are actively pursuing the identification of additional antimicrobial product candidates that leverage our boron chemistry capabilities. Once identified, we plan to develop these candidates in NTM lung disease and other rare and chronic infectious diseases. We are also selectively evaluating in-licensing opportunities of development-stage candidates addressing rare and chronic infectious diseases consistent with our corporate strategy.

Our Global Health Initiatives

Our leadership team is committed to applying our know-how to help solve some of the toughest infections in global health. Our intent is to fund these efforts primarily through non-dilutive funding from sources such as public and private agencies and foundations. Our highest priority is melioidosis. We are have conducted preclinical research with the Mahidol Oxford Tropical Medicine Research Unit, or MORU, in Thailand and at Colorado State University, and are currently conducting hollow fiber work funded by the National Institutes of Health in the United States for melioidosis. We believe these partners provide substantial technical and capital resources to advance the melioidosis programs and provide material benefits to our company and to our NTM lung disease program.

Melioidosis is an infectious disease caused by the bacterium *B. pseudomallei*. It is endemic to tropical regions of the world with the majority of cases occurring in South Asia. It is contracted from direct contact with contaminated soil and water and is not transmitted person-to-person. Similar to NTM, *B. pseudomallei* is an intra-cellular pathogen in macrophages. Infections can manifest as localized infections causing pain, swelling and ulceration; as pulmonary infections causing cough, chest pain, high fever, and headache; and as blood stream infections causing fever, headache, respiratory distress, and abdominal discomfort. Current treatment generally starts with an intense phase of intravenous antibiotic treatment for a minimum of two weeks. Even with antibiotic treatment, the mortality rate is between 20% and 40%. Without treatment, six out of ten people die. There are an estimated 165,000 cases of melioidosis diagnosed globally each year. Beginning in 2011 and 2020, respectively, in vitro studies have been conducted by the U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID) (N=30 isolates) and MORU (N=277 isolates) with MIC_{90} values of 2 µg/mL and 4 µg/mL, including isolates that are resistant to the standard of care drug, ceftazidime. Studies conducted at Colorado State University (Slayden Lab) in 2021 showed that the addition of epetraborole to ceftazidime improves in vivo bacterial killing over ceftazidime alone. Currently we are conducting in vitro hollow fiber system experiments of epetraborole and ceftazidime in combination against *B. pseudomallei*, which are funded by the National Institutes of Health.

Adjuvant Global Health Agreement

We have entered into an Amended and Restated Global Health Agreement, or the Global Health Agreement, with Adjuvant Global Health Technology Fund L.P. and Adjuvant Global Health Technology Fund DE L.P., or together, Adjuvant, in connection with Adjuvant's investment of $12.0 million in our Series A and Series B redeemable convertible preferred stock financings. Pursuant to the Global Health Agreement, we agreed to support the creation of innovative and affordable drugs to treat disease, through public health programs and private purchasers in low and lower-middle income target countries. The purpose of Adjuvant's investment is to support the development of epetraborole for infectious diseases, including for use in target countries that are melioidosis-endemic, melioidosis-at-risk, tuberculosis-endemic, and tuberculosis-at-risk.

Under the Global Health Agreement, we are required to comply with certain program-related investment global access commitments. We must use reasonably diligent endeavors to develop epetraborole for melioidosis, tuberculosis, and any other mutually agreed-upon products using non-dilutive funding and we must make them accessible to people in need in target countries on commercially reasonable terms and at a reasonable volume. For instance, we may sell epetraborole for melioidosis, tuberculosis and any other mutually agreed-upon products in the target countries at a maximum price of 25% above the cost of sales and we must provide a sufficient volume to meet the demands of non-profit organizations and public-sector purchasers. We are not required to sell any products at a loss. In addition, we are required to develop regulatory strategies and pursue necessary product registrations, as well as actively seek funding from governmental grants and other granting sources, to advance the development of epetraborole for melioidosis, tuberculosis, and any other mutually agreed-upon products. If we do not maintain compliance with these and other program-related investment commitments under the Global Health Agreement, Adjuvant may be entitled to repayment for any portion of its investment that is not used for the purposes outlined in the Global Health Agreement. Risk of repayment under the Global Health Agreement is limited to Adjuvant's aggregate investment of $12.0 million in our Series A and Series B redeemable convertible preferred stock in 2019, 2020 and March 2021. Adjuvant's aggregate investment of $12.0 million has been fully utilized toward development of epetraborole, including toxicology studies, clinical trials, and manufacturing activities to the extent development of epetraborole for NTM lung disease overlaps with development of epetraborole for melioidosis, tuberculosis, and any other mutually agreed-upon products.

In the event of the assignment, sale, exclusive license, or other transfer of intellectual property related to epetraborole for melioidosis, tuberculosis, or any other mutually agreed-upon products, we must ensure that the program-related investment global access commitments are expressly assumed by the purchaser, transferee, licensee, or acquirer. Upon the occurrence of certain events, including the failure, by ourselves or any successor to prosecute material intellectual property that is subject to program-related investment commitments, to comply with the Global Health Agreement, we must grant Adjuvant a nonexclusive, perpetual, irrevocable, non-terminable, fully-paid up, royalty free license to epetraborole for melioidosis, tuberculosis, and any other mutually agreed-upon products. Such a license grant will be subject to the licensing terms associated with the Anacor license agreement.

In the event that we fail to operate in accordance with the program-related investment commitments under the Global Health Agreement or fail to comply with the provisions of the Global Health Agreement, we are required to notify Adjuvant in writing within 30 days of the event causing such non-compliance and must describe the steps we will take to rectify the situation within 30 days following the notice. If Adjuvant believes we have failed to operate in accordance with the program-related investment commitments under the Global Health Agreement or have failed to comply with the provisions of the Global Health Agreement, Adjuvant is required to notify us and specify the basis for their determination and request that we rectify the situation within 30 days following their notice.

These global access commitments became effective in 2019 at the closing of the Series A redeemable convertible preferred stock financing and will remain in effect until the latter of (i) the date that Adjuvant ceases to be a shareholder of our company or (ii) ten years following approval of epetraborole for melioidosis, tuberculosis, and any other mutually agreed-upon products by a stringent regulatory authority, such as the FDA or EMA.

Manufacturing

We do not own or operate manufacturing facilities for the production of any of our product candidates, nor do we have plans to develop our own manufacturing operations in the foreseeable future. We currently rely on a limited number of third-party contract manufacturers for all of our

required raw materials, drug substance, and finished drug product for our preclinical and nonclinical studies and clinical trials. We currently employ internal resources to manage our third-party manufacturing.

Licensing Agreements

License Agreement with Anacor Pharmaceuticals, Inc.

In November 2019, we entered into a license agreement, or the Anacor Agreement, with Anacor, pursuant to which we obtained a worldwide exclusive, sublicensable license under certain patent rights of Anacor and a non-exclusive license under certain know-how of Anacor to use, develop, manufacture, commercialize, or otherwise exploit certain compounds and products, including epetraborole, for the treatment, diagnosis, or prevention of all human diseases, and a worldwide non-exclusive license under certain chiral synthesis intellectual property rights from GSK for the sole purpose of manufacturing such compounds and products.

We granted Anacor a non-exclusive, sublicensable license to develop, manufacture or use (but not commercialize) licensed products under all intellectual property rights that are both (i) related to the licensed products and (ii) conceived or reduced to practice by us, our affiliates, or our sublicensees. We also granted Anacor a right of first refusal in the event a priority review voucher is issued for a licensed product and we desire to sell such priority review voucher.

We are obligated to use commercially reasonable efforts to develop, seek regulatory approval for, and commercialize (where such regulatory approval is received) for epetraborole.

In connection with the execution of the Anacor Agreement, we paid to Anacor a non-refundable upfront payment of $2.0 million and granted Anacor 579,064 shares of Series A redeemable convertible preferred stock. Additionally, we agreed to make further payments to Anacor upon achievement of various development milestones for an aggregate maximum payment of $2.0 million, various commercial and sales threshold milestones for an aggregate maximum payment of $125.0 million, and up to 50% of royalties received under certain sublicensing arrangements. Royalties are subject to certain customary reductions, including lack of patent coverage and generic product entry. We also agreed to pay Anacor non-refundable, non-creditable sales royalties on a tiered marginal royalty rate based on the country's status as a developing or developed country as defined in the license agreement. Sales royalties are a percentage of net sales, as specified in the Anacor Agreement, and range from mid-single digit percentages for developing countries and single to mid-teen percentages for developed countries or the China, Hong Kong, Taiwan, and Macau territories. The sales royalties are required to be paid on a product-by-product and country-by-country basis, until the latest to occur of (i) 15 years following from the date of first commercial sale of a product in such country, (ii) the expiration of all regulatory or data exclusivity for such product in such country, or (iii) the date of the expiration of the last to expire valid claim of a licensed patent covering such product in such country. Currently, the date of the expiration of the last to expire valid claim of a
licensed patent covering epetraborole in the licensed territory is June 2028. In addition, Anacor is entitled to certain milestone payments upon a change of control of our company.

On December 3, 2021, we entered into an amendment to the Anacor Agreement, pursuant to which we obtained a worldwide non-exclusive, sublicensable license under certain patent rights of Anacor for the treatment, diagnosis, or prevention of bacterial diseases caused by certain bacterial species, to support the continued manufacture of epetraborole by us.

The Anacor Agreement will expire upon expiration of the last to expire royalty term. Either party may terminate the Anacor Agreement for the other party's material breach following a cure period or immediately upon certain insolvency events relating to the other party.

License Agreement with Brii Biosciences Limited

In November 2019, we entered into a license agreement, or the Brii Biosciences License Agreement, pursuant to which we granted Brii Biosciences an exclusive, perpetual, sublicensable license to research, develop, manufacture, and commercialize certain compounds and products, including epetraborole, in China, Hong Kong, Taiwan, and Macau for the diagnosis, treatment, and prevention of human diseases. Under the terms of the agreement, we licensed the intellectual property rights we licensed under the Anacor Agreement, as they apply in these jurisdictions, to Brii Bioscience. Further, neither we nor Brii Biosciences can develop a competing product that is directed to the same target as a licensed compound during the term of the Brii Biosciences License Agreement.

The collaboration is overseen by a joint steering committee. In the event of a dispute relating to the determination of proof of concept criteria, or licensed products in China, Hong Kong, Taiwan, and Macau for which Brii Biosciences has delivered a proof of concept acceptance notice, Brii Biosciences has the final decision-making authority, subject to certain veto rights of ours. Upon commencing development, Brii Biosciences is obligated to use commercially reasonable efforts to develop, seek regulatory approval for, and commercialize at least one licensed product in China, Hong Kong, Taiwan, and Macau.

We did not receive an upfront payment, but we are eligible to receive up to $15.0 million in the aggregate for development and regulatory milestones for each licensed product and up to $150.0 million in the aggregate in commercial milestones upon achieving sales thresholds for each licensed product. We are also entitled to tiered mid-single digit percentage to high-first decile percentage sales-based royalties, subject to certain reductions, including lack of patent coverage and generic product entry. The sales royalties are required to be paid on a product-by-product and region-by-region basis, until the latest to occur of (i) 15 years following the date of first commercial sale of a product, (ii) the expiration of all regulatory or data exclusivity, or (iii) the date of the expiration of the last to expire valid claim of a licensed patent covering the composition of matter or approved use of such product in such region. The last to expire valid claim of a licensed patent covering the composition of matter or approved use of such product in the licensed territory is June 2028.

Global Health Agreement with Adjuvant Global Health Technology Fund

We entered into the Global Health Agreement with Adjuvant in connection with Adjuvant's investment of $12.0 million in our Series A and Series B redeemable convertible preferred stock financings. In connection with such investment, we issued Adjuvant an aggregate of 1,033,057 shares of our redeemable convertible preferred stock. Pursuant to the Global Health Agreement, we agreed to support the creation of innovative and affordable drugs to treat disease, through public health programs and private purchasers in low and low-middle income target countries.

Adjuvant's investment supports the development of epetraborole for use in target countries that are melioidosis-endemic, melioidosis at-risk, tuberculosis-endemic, and tuberculosis-at-risk. Under the Global Health Agreement, we are required to comply with certain program-related investment global access commitments. We must use reasonably diligent endeavors to develop epetraborole for melioidosis, tuberculosis, and any other mutually agreed-upon products using non-dilutive funding and we must make them accessible to people in need in target countries on commercially reasonable terms and at a reasonable volume. Upon the occurrence of certain events, including the failure by ourselves to comply with the Global Health Agreement, we must grant Adjuvant a nonexclusive, perpetual, irrevocable, non-terminable, fully-paid up, royalty free license to epetraborole for melioidosis, tuberculosis, and any other mutually agreed-upon products. For a more detailed description of the Global Health Agreement with Adjuvant, please see the section titled "—Our Global Health Initiatives—Adjuvant Global Health Agreement."

Intellectual Property

We strive to protect and enhance our proprietary technology, inventions, and improvements that we consider commercially important to the development of our business, including by seeking, maintaining, and defending U.S. and foreign patent rights. As of December 31, 2021, all of the issued patents in our entire patent portfolio are in-licensed and if our current licensors are not cooperative or disagree with us as to the prosecution, maintenance, or enforcement of any such licensed patent rights, such patent rights could be compromised. The patent positions of pharmaceutical companies are generally uncertain and can involve complex legal, scientific, and factual issues. We cannot predict whether any patent applications we pursue, or any patent applications that we have in-licensed, will issue as patents in any particular jurisdiction, or whether the claims of any issued patents will provide sufficient proprietary protection from competitors.

Our future commercial success depends, in part, on our ability to obtain and maintain patent and other proprietary protection for commercially important technology, inventions, and know-how related to our business, including our product candidates, to defend and enforce our intellectual property rights, in particular our patent rights, to preserve the confidentiality of our trade secrets, and to operate without infringing, misappropriating, or violating the valid and enforceable patents and other intellectual property rights of third parties. Our ability to preclude or restrict third parties from making, using, selling, offering to sell, or importing competing molecules to our products may depend on the extent to which we have rights under valid and enforceable patents and trade secrets that cover these activities. We seek to protect our proprietary technology and processes, in part, by confidentiality agreements with our employees, consultants, and contractors. We also seek to preserve the integrity and confidentiality of our data and trade secrets by maintaining physical security of our premises and physical and electronic security of our information technology systems.

In addition, the coverage claimed in a patent application may be significantly reduced before a patent is granted, and its scope can be reinterpreted and even challenged after issuance. As a result, we cannot guarantee that any of our products will be protected or remain protectable by enforceable patents. Moreover, any patents that we license or may own in the future may be challenged, circumvented, or invalidated by third parties. In addition, because of the extensive time required for clinical development and regulatory review of a product candidate we may develop, it is possible that, before our product candidate can be commercialized successfully, any related patents may expire or remain in force for only a short period following commercial launch, thereby limiting the protection such patent would afford the applicable product and any competitive advantage such patent may provide. For more information regarding the risks related to our intellectual property, please see “Risk Factors—Risks Related to Our Intellectual Property.”

For any individual patent, the term depends on the applicable law in the country in which the patent is issued. In most countries where we have in-licensed patents and patent applications, including the United States, patents have a term of 20 years from the application filing date or earliest claimed nonprovisional priority date. In the United States, the patent term may be shortened if a patent is terminally disclaimed over another patent that expires earlier. The term of a U.S. patent may also be lengthened by a patent term adjustment that is permitted in order to address administrative delays by the U.S. Patent and Trademark Office in examining and granting a patent.

In the United States, the term of a patent that covers an FDA-approved drug or biologic may be eligible for patent term extension in order to restore the period of a patent term lost during the premarket FDA regulatory review process. Specifically, the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Act, permits a patent term extension of up to five years beyond the natural expiration of the patent (but the total patent term, including the extension period, must not exceed 14 years following FDA approval). The patent term extension period granted on a patent covering a product is

typically one-half the time between the effective date of a clinical investigation involving human beings is begun and the submission date of an application, plus the time between the submission date of an application and the ultimate approval date. Only one patent applicable to an approved product is eligible for patent term extension, and only those claims covering the approved product, a method for using it, or a method for manufacturing it may be extended. The application for patent term extension must be submitted prior to the expiration of the patent. The United States Patent and Trademark Office reviews and approves the application for any Patent Term Extension in consultation with the FDA.

As of December 31, 2021, we exclusively licensed three U.S. patents, 38 foreign patents, and approximately six pending foreign patent applications, covering our key programs and pipeline. We do not own any issued patents. We own two pending U.S. provisional patent applications, which are not eligible to become issued patents until, among other things, we file a non-provisional U.S. patent application within one year of filing of the U.S. provisional patent application with the USPTO.

Prosecution is a lengthy process, during which the scope of the claims initially submitted for examination by the U.S. Patent and Trademark Office and other patent offices may be significantly revised before issuance, if granted at all. The in-licensed patents and patent applications for epetraborole are detailed below.

Epetraborole Product Candidate

The patent portfolio for our epetraborole product candidate is based upon our in-licensed patent portfolio, which includes patents and patent applications directed generally to compositions of matter, pharmaceutical compositions, and methods of treatment. We have two granted patents in the United States, from the in-licensed patent portfolio, covering compositions of matter of a genus of molecules, and the epetraborole product candidate molecule specifically, pharmaceutical compositions, and methods of treating a bacterial-associated or fungal-associated disease. We have granted foreign patents from the in-licensed patent portfolio from Argentina, Armenia, Australia, Azerbaijan, Belgium, Canada, China, Denmark, Finland, France, Germany, Hong Kong, India, Indonesia, Ireland, Israel, Italy, Japan, Kyrgyz Republic, Malaysia, Mexico, Moldovia, Netherlands, New Zealand, Norway, Russian Federation, Singapore, South Africa, South Korea, Spain, Sweden, Tajikistan, Turkey, United Kingdom, Uruguay, and Vietnam. Patent applications from the in-licensed patent portfolio are pending in Bangladesh, Brazil, Pakistan, South Africa, Thailand, and Venezuela. Patents and patent applications, if granted, in our in-licensed patent portfolio are expected to expire in 2028, without taking potential patent term extensions or patent term adjustment into account.

Trade Secrets

We also rely on trade secrets, know-how, confidential information and continuing technological innovation to develop, strengthen and maintain our proprietary position in our field and protect aspects of our business that are not amenable to, or that we do not consider appropriate for, patent protection. However, trade secrets can be difficult to protect. While we take measures to protect and preserve our trade secrets, such measures can be breached, and we may not have adequate remedies for any such breach. We seek to protect our proprietary information, in part, using confidentiality agreements and invention assignment agreements with our collaborators, employees and consultants. These agreements are designed to protect our proprietary information and, in the case of the invention assignment agreements, to grant us ownership of technologies that are developed through a relationship with a third party. We cannot guarantee, however, that we have executed such agreements with all applicable counterparties. Furthermore, these agreements may be breached, and we may not have adequate remedies for any breach. In addition, our trade secrets may otherwise become known or be independently discovered by competitors and other third parties, or misused by

any collaborator to whom we disclose such information. To the extent that our collaborators, employees and consultants use intellectual property owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions. For more information regarding the risks related to our intellectual property, please see “Risk Factors—Risks Related to Our Intellectual Property.”

Competition

The biopharmaceutical industry is characterized by intense competition and rapid innovation. Our potential competitors include large pharmaceutical and biotechnology companies, specialty pharmaceutical companies and generic drug companies. Many of our potential competitors have greater financial and technical human resources than we do, as well as greater experience in the discovery and development of product candidates, obtaining FDA and other regulatory approvals of products, and the commercialization of those products. Accordingly, our potential competitors may be more successful than us in obtaining FDA-approved drugs and achieving widespread market acceptance. We anticipate that we will face intense and increasing competition as new drugs enter the market and advanced technologies become available. Finally, the development of new treatment methods for the diseases we are targeting could render our product candidates non-competitive or obsolete.

We believe the key competitive factors that will affect the development and commercial success of our initial product candidate, epetraborole, if approved, will be convenience of oral dosing, efficacy, safety, and tolerability profile, coverage of drug-resistant bacteria strains, lack of cross-resistance, price, and availability of reimbursement from governmental and other third-party payors.

We are currently developing epetraborole for treatment-refractory NTM lung disease caused by MAC isolates. If approved, epetraborole would compete with Insmed’s Arikayce, which is the only currently approved therapy for patients with this condition. Other drugs used to treat these patients include generic drugs such as macrolides (clarithromycin and azithromycin), ethambutol, rifabutin, fluoroquinolones such as levofloxacin, bedaquiline, linezolid, and clofazimine. There are also a number of product candidates in clinical development by third parties that are intended to treat NTM lung disease, including mid- to late-stage product candidates such as SPR720 from Spero Therapeutics, Inc., RHB-204 from Redhill Biopharma Ltd., and omadacycline from Paratek Pharmaceuticals, Inc. We also expect that epetraborole, if approved, would compete with future and current generic versions of marketed antibiotics.

Government Regulation and Product Approval

Government authorities in the United States, at the federal, state, and local level, and other countries extensively regulate, among other things, the research, development, testing, manufacture, quality control, approval, labeling, packaging, storage, record-keeping, promotion, advertising, distribution, marketing, and export and import of drug products. A new drug must be approved by the FDA through the New Drug Application, or NDA, process before it may be legally marketed in the United States. We, along with any third-party contractors, will be required to navigate the various preclinical, clinical and commercial approval requirements of the governing regulatory agencies of the countries in which we wish to conduct studies or seek approval of our products and product candidates. The process of obtaining regulatory approvals and the subsequent compliance with applicable federal, state, local, and foreign statutes and regulations require the expenditure of substantial time and financial resources.

U.S. Drug Development Process

In the United States, the FDA regulates drugs under the federal Food, Drug, and Cosmetic Act, or FDCA, and its implementing regulations. The process of obtaining regulatory approvals and the subsequent compliance with appropriate federal, state, local, and foreign statutes and regulations require the expenditure of substantial time and financial resources. The process required by the FDA before a drug may be marketed in the United States generally involves the following:

- completion of preclinical laboratory tests, animal studies, and formulation studies in accordance with FDA's Good Laboratory Practice requirements and other applicable regulations;
- submission to the FDA of an IND application, which must become effective before human clinical trials may begin;
- approval by an independent Institutional Review Board, or IRB, or ethics committee at each clinical site before each trial may be initiated;
- performance of adequate and well-controlled human clinical trials in accordance with good clinical practices, or GCPs, to establish the safety and efficacy of the proposed drug for its intended use;
- preparation of and submission to the FDA of an NDA after completion of all pivotal trials;
- a determination by the FDA within 60 days of its receipt of an NDA to file the application for review;
- satisfactory completion of an FDA advisory committee review, if applicable;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the drug is produced to assess compliance with current Good Manufacturing Practice, or cGMP, requirements to assure that the facilities, methods and controls are adequate to preserve the drug's identity, strength, quality and purity, and of selected clinical investigation sites to assess compliance with GCPs; and
- FDA review and approval of the NDA to permit commercial marketing of the product for particular indications for use in the United States.

Prior to beginning the first clinical trial with a product candidate in the United States, a sponsor must submit an IND to the FDA. An IND is a request for authorization from the FDA to administer an investigational new drug product to humans. The central focus of an IND submission is on the general investigational plan and the protocol(s) for clinical studies. The IND also includes results of animal and in vitro studies assessing the toxicology, pharmacokinetics, pharmacology, and pharmacodynamic characteristics of the product; chemistry, manufacturing, and controls information; and any available human data or literature to support the use of the investigational product. An IND must become effective before human clinical trials may begin. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA, within the 30-day time period, raises safety concerns or questions about the proposed clinical trial. In such a case, the IND may be placed on clinical hold and the IND sponsor and the FDA must resolve any outstanding concerns or questions before the clinical trial can begin. Submission of an IND therefore may or may not result in FDA authorization to begin a clinical trial.

Clinical trials involve the administration of the investigational product to human subjects under the supervision of qualified investigators in accordance with GCPs, which include the requirement that all research subjects provide their informed consent for their participation in any clinical study. Clinical trials are conducted under protocols detailing, among other things, the objectives of the study, the parameters to be used in monitoring safety, and the effectiveness criteria to be evaluated. A separate submission to the existing IND must be made for each successive clinical trial conducted during product development

and for any subsequent protocol amendments. Furthermore, an independent IRB for each site proposing to conduct the clinical trial must review and approve the plan for any clinical trial and its informed consent form before the clinical trial begins at that site and must monitor the study until completed. Some studies also include oversight by an independent group of qualified experts organized by the clinical study sponsor, known as a data safety monitoring board, which provides authorization for whether or not a study may move forward at designated check points based on access to certain data from the study and may halt the clinical trial if it determines that there is an unacceptable safety risk for subjects or other grounds, such as no demonstration of efficacy. Depending on its charter, this group may determine whether a trial may move forward at designated check points based on access to certain data from the trial. The FDA or the sponsor may suspend a clinical trial at any time on various grounds, including a finding that the research subjects or patients are being exposed to an unacceptable health risk. Similarly, an IRB can suspend or terminate approval of a clinical trial at its institution if the clinical trial is not being conducted in accordance with the IRB's requirements or if the drug has been associated with unexpected serious harm to patients. There are also requirements governing the reporting of ongoing clinical studies and clinical study results to public registries.

Human clinical trials are typically conducted in three sequential phases that may overlap or be combined:

- ***Phase 1****:* The product candidate is initially introduced into healthy human subjects or patients with the target disease or condition. These studies are designed to test the safety, dosage tolerance, absorption, metabolism and distribution of the investigational product in humans, the side effects associated with increasing doses, and, if possible, to gain early evidence on effectiveness.
- ***Phase 2****:* The product candidate is administered to a limited patient population with a specified disease or condition to evaluate the preliminary efficacy, optimal dosages, and dosing schedule and to identify possible adverse side effects and safety risks. Multiple Phase 2 clinical trials may be conducted to obtain information prior to beginning larger and more expensive Phase 3 clinical trials.
- ***Phase 3****:* The product candidate is administered to an expanded patient population to further evaluate dosage, to provide statistically significant evidence of clinical efficacy, and to further test for safety, generally at multiple geographically dispersed clinical trial sites. These clinical trials are intended to establish the overall risk/benefit ratio of the investigational product and to provide an adequate basis for product approval.

In some cases, the FDA may require, or companies may voluntarily pursue, additional clinical trials after a product is approved to gain more information about the product. These so-called Phase 4 studies may be conducted after initial marketing approval and may be used to gain additional experience from the treatment of patients in the intended therapeutic indication. In certain instances, the FDA may mandate the performance of Phase 4 clinical trials as a condition of approval of an NDA.

Concurrent with clinical trials, companies usually complete additional animal studies and must also develop additional information about the chemistry and physical characteristics of the drug and finalize a process for manufacturing the product in commercial quantities in accordance with cGMP requirements. The manufacturing process must be capable of consistently producing quality batches of the product candidate and, among other things, the manufacturer must develop methods for testing the identity, strength, quality, and purity of the final drug. In addition, appropriate packaging must be selected and tested, and stability studies must be conducted to demonstrate that the product candidate does not undergo unacceptable deterioration over its shelf life.

While the IND is active and before approval, progress reports summarizing the results of the clinical trials and nonclinical studies performed since the last progress report must be submitted at

least annually to the FDA, and written IND safety reports must be submitted to the FDA and investigators for serious and unexpected suspected adverse events, findings from other studies suggesting a significant risk to humans exposed to the same or similar drugs, findings from animal or in vitro testing suggesting a significant risk to humans, and any clinically important increased incidence of a serious suspected adverse reaction compared to that listed in the protocol or investigator brochure.

In addition, during the development of a new drug, sponsors are given opportunities to meet with the FDA at certain points. These points may be prior to submission of an IND, at the end of Phase 2, and before an NDA is submitted. Meetings at other times may be requested. These meetings can provide an opportunity for the sponsor to share information about the data gathered to date, for the FDA to provide advice, and for the sponsor and the FDA to reach agreement on the next phase of development. Sponsors typically use the meetings at the end of the Phase 2 trial to discuss Phase 2 clinical results and present plans for the pivotal Phase 3 clinical trials that they believe will support approval of the new drug.

U.S. Review and Approval Process

Assuming successful completion of all required testing in accordance with all applicable regulatory requirements, the results of product development, preclinical, and other nonclinical studies and clinical trials, along with descriptions of the manufacturing process, analytical tests conducted on the chemistry of the drug, proposed labeling, and other relevant information are submitted to the FDA as part of an NDA requesting approval to market the product. Data can come from company-sponsored clinical studies intended to test the safety and effectiveness of a use of the product, or from a number of alternative sources, including studies initiated by independent investigators. The submission of an NDA is subject to the payment of substantial user fees; a waiver of such fees may be obtained under certain limited circumstances. Additionally, no user fees are assessed on NDAs for products designated as orphan drugs, unless the product also includes a non-orphan indication.

The FDA conducts a preliminary review of all NDAs within the first 60 days after submission, before accepting them for filing, to determine whether they are sufficiently complete to permit substantive review, The FDA may request additional information rather than accept an NDA for filing. In this event, the NDA must be resubmitted with the additional information. The resubmitted application also is subject to review before the FDA accepts it for filing. Once filed, the FDA reviews an NDA to determine, among other things, whether a product is safe and effective for its intended use and whether its manufacturing is cGMP-compliant to assure and preserve the product's identity, strength, quality, and purity. Under the Prescription Drug User Fee Act, or PDUFA, guidelines that are currently in effect, the FDA has a goal of ten months from the filing date to complete a standard review of an NDA for a drug that is a new molecular entity, and of ten months from the date of NDA receipt to complete a standard review of an NDA for a drug that is not a new molecular entity.

The FDA may refer an application for a novel drug to an advisory committee. An advisory committee is a panel of independent experts, including clinicians and other scientific experts, that reviews, evaluates, and provides a recommendation as to whether the application should be approved and under what conditions. The FDA is not bound by the recommendations of an advisory committee, but it considers such recommendations carefully when making decisions.

Before approving an NDA, the FDA will typically inspect the facility or facilities where the product is manufactured. The FDA will not approve an application unless it determines that the manufacturing processes and facilities are in compliance with cGMP and adequate to assure consistent production of the product within required specifications. Additionally, before approving an NDA, the FDA will typically inspect one or more clinical sites to assure compliance with GCPs. If the FDA determines that the application, manufacturing process or manufacturing facilities are not acceptable, it will outline the

deficiencies in the submission and often will request additional testing or information. Notwithstanding the submission of any requested additional information, the FDA ultimately may decide that the application does not satisfy the regulatory criteria for approval.

After the FDA evaluates an NDA and conducts inspections of manufacturing facilities where the investigational product and/or its drug substance will be produced, the FDA may issue an approval letter or a Complete Response Letter, or CRL. An approval letter authorizes commercial marketing of the product with specific prescribing information for specific indications. A CRL will describe all of the deficiencies that the FDA has identified in the NDA, except that where the FDA determines that the data supporting the application are inadequate to support approval, the FDA may issue the CRL without first conducting required inspections and/or reviewing proposed labeling. In issuing the CRL, the FDA may recommend actions that the applicant might take to place the NDA in condition for approval, including requests for additional information or clarification. The FDA may delay or refuse approval of an NDA if applicable regulatory criteria are not satisfied, require additional testing or information and/or require post-marketing testing and surveillance to monitor safety or efficacy of a product.

If regulatory approval of a product is granted, such approval will be granted for particular indications and may entail limitations on the indicated uses for which such product may be marketed. For example, the FDA may approve the NDA with a Risk Evaluation and Mitigation Strategy, or REMS, to ensure the benefits of the product outweigh its risks. A REMS is a safety strategy to manage a known or potential serious risk associated with a medicine and to enable patients to have continued access to such medicines by managing their safe use, and could include medication guides, physician communication plans, or elements to assure safe use, such as restricted distribution methods, patient registries, and other risk minimization tools. The FDA also may condition approval on, among other things, changes to proposed labeling or the development of adequate controls and specifications. The FDA may also require one or more Phase 4 post-market studies and surveillance to further assess and monitor the product's safety and effectiveness after commercialization and may limit further marketing of the product based on the results of these post-marketing studies.

In addition, the Pediatric Research Equity Act, or PREA, requires a sponsor to conduct pediatric clinical trials for most drugs, for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration. Under PREA, original NDAs and supplements must contain a pediatric assessment unless the sponsor has received a deferral or waiver. The required assessment must evaluate the safety and effectiveness of the product for the claimed indications in all relevant pediatric subpopulations and support dosing and administration for each pediatric subpopulation for which the product is safe and effective. The sponsor or FDA may request a deferral of pediatric clinical trials for some or all of the pediatric subpopulations. A deferral may be granted for several reasons, including a finding that the drug is ready for approval for use in adults before pediatric clinical trials are complete or that additional safety or effectiveness data needs to be collected before the pediatric clinical trials begin. The FDA must send a non-compliance letter to any sponsor that fails to submit the required assessment, keep a deferral current, or fails to submit a request for approval of a pediatric formulation.

Expedited Development and Review Programs

The FDA offers a number of expedited development and review programs for qualifying product candidates. For example, the Fast Track program is intended to expedite or facilitate the process for reviewing new products that are intended to treat a serious or life-threatening disease or condition and demonstrate the potential to address unmet medical needs for the disease or condition. Fast Track designation applies to the combination of the product and the specific indication for which it is being

studied. The sponsor of a Fast Track designated product has opportunities for more frequent interactions with the applicable FDA review team during product development and, once an NDA is submitted, the product candidate may be eligible for priority review. A Fast Track designated product may also be eligible for rolling review, where the FDA may consider for review sections of the NDA on a rolling basis before the complete application is submitted, if the sponsor provides a schedule for the submission of the sections of the NDA, the FDA agrees to accept sections of the NDA and determines that the schedule is acceptable, and the sponsor pays any required user fees upon submission of the first section of the NDA.

A product candidate intended to treat a serious or life-threatening disease or condition may also be eligible for Breakthrough Therapy designation to expedite its development and review. A product candidate can receive Breakthrough Therapy designation if preliminary clinical evidence indicates that the product candidate, alone or in combination with one or more other drugs or biologics, may demonstrate substantial improvement over existing therapies on one or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development. The designation includes all of the Fast Track program features, as well as more intensive FDA interaction and guidance beginning as early as Phase 1 and an organizational commitment to expedite the development and review of the product candidate, including involvement of senior managers.

A marketing application for a drug submitted to the FDA for approval, including a product candidate with a Fast Track designation and/or Breakthrough Therapy designation, may be eligible for other types of FDA programs intended to expedite the FDA review and approval process, such as priority review. A product candidate is eligible for priority review if it is designed to treat a serious or life-threatening disease or condition, and if approved, would provide a significant improvement in safety or effectiveness compared to available alternatives for such disease or condition. For new-molecular-entity NDAs, priority review designation means the FDA's goal is to take action on the marketing application within six months of the 60-day filing date, or with respect to non-new-molecular-entity NDAs, within six months of the NDA receipt date.

Additionally, product candidates studied for their safety and effectiveness in treating serious or life-threatening diseases or conditions may utilize an accelerated approval pathway upon a determination that the product has an effect on a surrogate endpoint that is reasonably likely to predict clinical benefit, or on a clinical endpoint that can be measured earlier than irreversible morbidity or mortality, that is reasonably likely to predict an effect on irreversible morbidity or mortality or other clinical benefit, taking into account the severity, rarity, or prevalence of the condition and the availability or lack of alternative treatments. As a condition of accelerated approval, the FDA will generally require the sponsor to perform adequate and well-controlled post-marketing clinical studies to verify and describe the anticipated effect on irreversible morbidity or mortality or other clinical benefit. Products receiving accelerated approval may be subject to expedited withdrawal procedures if the sponsor fails to conduct the required post-marketing studies or if such studies fail to verify the predicted clinical benefit. In addition, the FDA currently requires as a condition for accelerated approval pre-approval of promotional materials, which could adversely impact the timing of the commercial launch of the product.

Fast Track designation, Breakthrough Therapy designation, priority review designation, and the accelerated approval pathway do not change the standards for approval, but may expedite the development or approval process. Even if a product candidate qualifies for one or more of these programs, the FDA may later decide that the product no longer meets the conditions for qualification or decide that the time period for FDA review or approval will not be shortened.

Orphan Drug Designation and Exclusivity

Under the Orphan Drug Act, the FDA may grant orphan designation to a drug intended to treat a rare disease or condition, defined as a disease or condition with a patient population of fewer than 200,000 individuals in the United States, or a patient population greater than 200,000 individuals in the United States and when there is no reasonable expectation that the cost of developing and making available the drug in the United States will be recovered from sales in the United States for that drug. Orphan drug designation must be requested before submitting an NDA. After the FDA grants orphan drug designation, the generic identity of the therapeutic agent and its potential orphan use are disclosed publicly by the FDA.

If a product that has orphan drug designation subsequently receives the first FDA approval for a particular active ingredient 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 NDA, to market the same drug for the same indication for seven years, except in limited circumstances, such as a showing of clinical superiority to the product with orphan drug exclusivity or if the FDA finds that the holder of the orphan drug exclusivity has not shown that it can assure the availability of sufficient quantities of the orphan drug to meet the needs of patients with the disease or condition for which the drug was designated. Orphan drug exclusivity does not prevent the FDA from approving a different drug for the same disease or condition, or the same drug for a different disease or condition. Among the other benefits of orphan drug designation are tax credits for certain research and a waiver of the NDA application user fee.

A designated orphan drug many not receive orphan drug exclusivity if it is approved for a use that is broader than the indication for which it received orphan designation. In addition, orphan drug exclusive marketing rights in the United States may be lost if the FDA later determines that the request for designation was materially defective or, as noted above, if a second applicant demonstrates that its product is clinically superior to the approved product with orphan exclusivity or the manufacturer of the approved product is unable to assure sufficient quantities of the product to meet the needs of patients with the rare disease or condition.

Exclusivity

The FDA provides periods of non-patent regulatory exclusivity, which provides the holder of an approved NDA limited protection from new competition in the marketplace for the innovation represented by its approved drug for a period of three or five years following the FDA's approval of the NDA. Five years of exclusivity are available to new chemical entities, or NCEs. An NCE is a drug that contains no active moiety that has been approved by the FDA in any other NDA. An active moiety is the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt, including a salt with hydrogen or coordination bonds, or other noncovalent, or not involving the sharing of electron pairs between atoms, derivatives, such as a complex (*i.e.*, formed by the chemical interaction of two compounds), chelate (*i.e.*, a chemical compound), or clathrate (*i.e.*, a polymer framework that traps molecules), of the molecule, responsible for the therapeutic activity of the drug substance. During the exclusivity period, the FDA may not accept for review or approve an Abbreviated New Drug Application, or ANDA, or a 505(b)(2) NDA submitted by another company that contains the previously approved active moiety. An ANDA or 505(b)(2) application, however, may be submitted one year before NCE exclusivity expires if a Paragraph IV certification is filed. Five-year and three-year exclusivity will not delay the submission or approval of a 505(b)(1) NDA; however, an applicant submitting a 505(b)(1) NDA would be required to conduct or obtain a right of reference to all of the preclinical studies and adequate and well-controlled clinical trials necessary to demonstrate safety and efficacy.

In addition, under the Generating Antibiotic Incentives Now, or GAIN, Act, the FDA may designate a product as a Qualified Infectious Disease Product, or QIDP. In order to receive this designation, a drug must qualify as an antibiotic or antifungal drug for human use intended to treat serious or life-threatening infections, including those caused by either (1) an antibiotic or antifungal resistant pathogen, including novel or emerging infectious pathogens, or (2) a so-called ‘‘qualifying pathogen’’ found on a list of potentially dangerous, drug-resistant organisms to established and maintained by the FDA. A sponsor must request such designation before submitting a marketing application. Upon approving a marketing application for a QIDP-designated product, the FDA will extend by an additional five years any non-patent marketing exclusivity period awarded. This extension is in addition to any pediatric exclusivity extension awarded, and the extension will be awarded only to a drug first approved on or after the date of enactment of the GAIN Act. The GAIN Act prohibits the grant of an exclusivity extension where the application is a supplement to an application for which an extension is in effect or has expired, is a subsequent application for a specified change to an approved product, or is an application for a product that does not meet the definition of QIDP based on the uses for which it is ultimately approved.

Post-approval Requirements

Drug products manufactured or distributed pursuant to FDA approvals are subject to pervasive and continuing regulation by the FDA, including, among other things, requirements relating to record-keeping, reporting of adverse experiences, periodic reporting, product sampling and distribution, and advertising and promotion of the product. After approval, most changes to the approved product, such as adding new indications or other labeling claims, are subject to prior FDA review and approval. There also are continuing, annual program fees for any marketed products. Drug manufacturers and their subcontractors are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMP, which impose certain procedural and documentation requirements upon us and our third-party manufacturers. Changes to the manufacturing process are strictly regulated, and, depending on the significance of the change, may require prior FDA approval before being implemented. FDA regulations also require investigation and correction of any deviations from cGMP and impose reporting requirements. Accordingly, manufacturers must continue to expend time, money, and effort in the area of production and quality control to maintain compliance with cGMP and other aspects of regulatory compliance.

The FDA may withdraw approval if compliance with regulatory requirements and standards is not maintained or if problems occur after the product reaches the market. Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with manufacturing processes, or failure to comply with regulatory requirements, may result in revisions to the approved labeling to add new safety information; imposition of post-market studies or clinical studies to assess new safety risks; or imposition of distribution restrictions or other restrictions under a REMS program. Other potential consequences include, among other things:

- restrictions on the marketing or manufacturing of the product, complete withdrawal of the product from the market or product recalls;
- fines, warning letters, or untitled letters;
- clinical holds on clinical studies;
- refusal of the FDA to approve pending applications or supplements to approved applications, or suspension or revocation of product approvals;
- product seizure or detention, or refusal to permit the import or export of products;
- consent decrees, corporate integrity agreements, debarment, or exclusion from federal healthcare programs;

- mandated modification of promotional materials and labeling and the issuance of corrective information;
- the issuance of safety alerts, Dear Healthcare Provider letters, press releases, and other communications containing warnings or other safety information about the product; or
- injunctions or the imposition of civil or criminal penalties.

The FDA closely regulates the marketing, labeling, advertising, and promotion of drug products. A company can make only those claims relating to safety and efficacy, purity, and potency that are approved by the FDA and in accordance with the provisions of the approved label. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses. Failure to comply with these requirements can result in, among other things, adverse publicity, warning letters, corrective advertising, and potential civil and criminal penalties. Physicians may prescribe, in their independent professional medical judgment, legally available products for uses that are not described in the product's labeling and that differ from those tested by us and approved by the FDA. Physicians may believe that such off-label uses are the best treatment for many patients in varied circumstances. The FDA does not regulate the behavior of physicians in their choice of treatments. The FDA does, however, restrict manufacturer's communications on the subject of off-label use of their products. However, companies may share truthful and not misleading information that is otherwise consistent with a product's FDA-approved labelling.

Other Healthcare Laws

In the United States, we are subject to a number of federal and state healthcare regulatory laws that restrict business practices in the healthcare industry. These laws include, but are not limited to, federal and state anti-kickback, false claims, and other healthcare fraud and abuse laws, as follows:

The U.S. federal Anti-Kickback Statute prohibits, among other things, any person or entity from knowingly and willfully offering, paying, soliciting, receiving, or providing any remuneration, directly or indirectly, overtly or covertly, to induce or in return for purchasing, leasing, ordering, or arranging for, or recommending the purchase, lease, or order of any good, facility, item or service reimbursable, in whole or in part, under Medicare, Medicaid, or other federal healthcare programs. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.

The federal false claims, including the civil False Claims Act, prohibit, among other things, any person or entity from knowingly presenting, or causing to be presented, a false, fictitious or fraudulent claim for payment to, or approval by, the federal government, knowingly making, using, or causing to be made or used a false record or statement material to a false or fraudulent claim to the federal government, or knowingly making a false statement to avoid, decrease, or conceal an obligation to pay money to the U.S. federal government. A claim includes "any request or demand" for money or property presented to the U.S. government. Actions under the civil False Claims Act may be brought by the Attorney General or as a qui tam action by a private individual in the name of the government. Moreover, a claim including items or services resulting from a violation of the U.S. federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act.

In addition, the civil monetary penalties statute, subject to certain exceptions, prohibits, among other things, the offer or transfer of remuneration, including waivers of copayments and deductible amounts (or any part thereof), to a Medicare or state healthcare program beneficiary if the person knows or should know it is likely to influence the beneficiary's selection of a particular provider, practitioner or supplier of services reimbursable by Medicare or a state healthcare program.

HIPAA created additional federal criminal statutes that prohibit, among other actions, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private third-party payors, knowingly and willfully embezzling or stealing from a healthcare benefit program, willfully obstructing a criminal investigation of a healthcare offense, and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the U.S. federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.

HIPAA, as amended by HITECH, and their respective implementing regulations, which impose obligations on "covered entities," including certain healthcare providers, health plans, and healthcare clearinghouses, as well as their respective "business associates" and their respective subcontractors that create, receive, maintain, or transmit individually identifiable health information for or on behalf of a covered entity, with respect to safeguarding the privacy, security, and transmission of individually identifiable health information.

The federal Physician Payments Sunshine Act requires certain manufacturers of drugs, devices, biologics, and medical supplies for which payment is available under Medicare, Medicaid, or the Children's Health Insurance Program, with specific exceptions, to report annually to the Centers for Medicare & Medicaid Services, or CMMS, information related to payments or other transfers of value made to physicians (defined to include doctors, dentists, optometrists, podiatrists, and chiropractors), certain other healthcare professionals including physician assistants and nurse practitioners beginning in 2022, and teaching hospitals, and applicable manufacturers and applicable group purchasing organizations to report annually to CMMS ownership and investment interests held by physicians and their immediate family members.

Similar state and local laws and regulations may also restrict business practices in the pharmaceutical industry, such as state anti-kickback and false claims laws, which may apply to business practices, including but not limited to, research, distribution, sales, and marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers, or by patients themselves; state laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government, or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state laws and regulations that require drug manufacturers to file reports relating to pricing information and marketing expenditures or which require tracking gifts and other remuneration and items of value provided to physicians, other healthcare providers and entities; and state and local laws that require the registration of pharmaceutical sales representatives.

Violations of any of these laws and other applicable healthcare fraud and abuse laws may be punishable by criminal and civil sanctions, including fines and civil monetary penalties, the possibility of exclusion from federal healthcare programs (including Medicare and Medicaid), disgorgement and corporate integrity agreements, which impose, among other things, rigorous operational and monitoring requirements on companies. Similar sanctions and penalties, as well as imprisonment, also can be imposed upon executive officers and employees of such companies.

Coverage and Reimbursement

Sales of any pharmaceutical product depend, in part, on the extent to which such product will be covered by third-party payors, such as federal, state, and foreign government healthcare programs, commercial insurance and managed healthcare organizations, and the level of reimbursement for such product by third-party payors. In the United States, no uniform policy exists for coverage and

reimbursement for pharmaceutical products among third-party payors. Therefore, decisions regarding the extent of coverage and amount of reimbursement to be provided are made on a plan-by-plan basis. The process for determining whether a third-party payor will provide coverage for a product typically is separate from the process for setting the price of such product or for establishing the reimbursement rate that the payor will pay for the product once coverage is approved.

Third-party payors may limit coverage to specific products on an approved list, also known as a formulary, which might not include all of the FDA-approved products for a particular indication, or place products at certain formulary levels that result in lower reimbursement levels and higher cost-sharing obligation imposed on patients. One third-party payor's decision to cover a particular medical product or service does not ensure that other payors will also provide coverage for the medical product or service and the level of coverage and reimbursement can differ significantly from payor to payor. As a result, the coverage determination process will often require us to provide scientific and clinical support for the use of our products to each payor separately and can be a time-consuming process, with no assurance that coverage and adequate reimbursement will be applied consistently or obtained in the first instance. Additionally, a third-party payor's decision to provide coverage for a product does not imply that an adequate reimbursement rate will be approved.

Moreover, as a condition of participating in, and having products covered under, certain federal healthcare programs, such as Medicare and Medicaid, we are subject to federal laws and regulations that require pharmaceutical manufacturers to calculate and report certain price reporting metrics to the government, such as Medicaid Average Manufacturer Price, or AMP, and Best Price, Medicare Average Sales Price, the 340B Ceiling Price, and Non-Federal AMP reported to the Department of Veteran Affairs, and with respect to Medicaid, pay statutory rebates on utilization of manufacturers' products by Medicaid beneficiaries. Compliance with such laws and regulations require significant resources and any findings of non-compliance may have a material adverse effect on our revenues.

Healthcare Reform

In the United States and certain foreign jurisdictions, there have been, and we expect there will continue to be, a number of legislative and regulatory changes to the healthcare system. In the United States, by way of example, in March 2010, the ACA was signed into law, which substantially changed the way healthcare is financed by both governmental and private insurers in the United States and significantly affected the pharmaceutical industry. The ACA, among other things, increased the minimum level of Medicaid rebates payable by manufacturers of brand name drugs; required collection of rebates for drugs paid by Medicaid managed care organizations; required manufacturers to participate in a coverage gap discount program, under which they must agree to offer point-of-sale discounts (increased to 70 percent, effective as of January 1, 2019) off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D; imposed a non-deductible annual fee on pharmaceutical manufacturers or importers who sell certain "branded prescription drugs" to specified federal government programs; implemented a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs that are inhaled, infused, instilled, implanted, or injected expanded the types of entities eligible for the 340B drug discount program; expanded eligibility criteria for Medicaid programs; created a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research; and established a Center for Medicare Innovation at CMMS to test innovative payment and service delivery models to lower Medicare and Medicaid spending, potentially including prescription drug spending.

Since its enactment, there have been judicial, administrative, executive, and Congressional legislative challenges to certain aspects of the ACA. For example, on June 17, 2021 the U.S. Supreme

Court dismissed a challenge on procedural grounds that argued the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress. Thus, the ACA will remain in effect in its current form. Further, prior to the U.S. Supreme Court ruling, President Biden issued an executive order that initiated a special enrollment period from February 15, 2021 through August 15, 2021 for purposes of obtaining health insurance coverage through the ACA marketplace. The executive order also instructed certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA. It is possible that the Affordable Care Act will be subject to judicial or Congressional challenges in the future. It is unclear how such challenges and the healthcare reform measures of the Biden administration will impact the ACA.

Other legislative changes have been proposed and adopted since the ACA was enacted, including aggregate reductions of Medicare payments to providers of 2% per fiscal year, which was temporarily suspended from May 1, 2020 through December 31, 2021, and reduced payments to several types of Medicare providers. Moreover, there has recently been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several Congressional inquiries and proposed and enacted legislation designed, among other things, to bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs and reform government program reimbursement methodologies for pharmaceutical products. By way of example, the American Taxpayer Relief Act of 2021, effective January 1, 2024, would eliminate the statutory cap on rebate amounts owed by drug manufacturers under the Medicaid Drug Rebate Program, or MDRP, which is currently capped at 100% of the AMP for a covered outpatient drug. Further, based on a recent executive order, the Biden administration expressed its intent to pursue certain policy initiatives to reduce drug prices.

Individual states in the United States have also become increasingly active in implementing regulations designed to control pharmaceutical 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, mechanisms to encourage importation from other countries and bulk purchasing. In addition, regional healthcare authorities and individual hospitals are increasingly using bidding procedures to determine which drugs and suppliers will be included in their healthcare programs. Furthermore, there has been increased interest by third-party payors and governmental authorities in reference pricing systems and publication of discounts and list prices.

We expect additional state and federal healthcare reform measures to be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, which could result in reduced demand for our products or additional pricing pressure.

Data Privacy and Security Laws

Numerous state, federal and foreign laws, including consumer protection laws and regulations, govern the collection, dissemination, use, access to, confidentiality, and security of personal information, including health-related information. In the United States, numerous federal and state laws and regulations, including data breach notification laws, health information privacy and security laws, including Health Insurance Portability and Accountability Act, or HIPAA, and federal and state consumer protection laws and regulations (*e.g.*, Section 5 of the Federal Trade Commission Act) that govern the collection, use, disclosure, and protection of health-related and other personal information could apply to our operations or the operations of our partners. In addition, certain state and non-U.S.

laws, such as the California Consumer Privacy Act, or CCPA, the California Privacy Rights Act, or CPRA, and the General Data Protection Regulation, or GDPR, govern the privacy and security of personal information, including health-related information in certain circumstances, some of which are more stringent than HIPAA and many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts. Failure to comply with these laws, where applicable, can result in the imposition of significant civil and/or criminal penalties and private litigation. Privacy and security laws, regulations, and other obligations are constantly evolving, may conflict with each other to make compliance efforts more challenging, and can result in investigations, proceedings, or actions that lead to significant penalties and restrictions on data processing.

Regulation and Procedures Governing Approval of Medicinal Products in the EU

In addition to regulations in the United States, we will be subject to a variety of foreign regulations governing clinical trials and commercial sales and distribution of our product candidates to the extent we choose to sell any of our product candidates outside of the United States. Whether or not we obtain FDA approval for a product, we must obtain approval of a product by equivalent competent authorities in foreign jurisdictions before we can commence clinical trials or marketing of the product in those countries. The approval process varies from country to country and the time may be longer or shorter than that required for FDA approval. The requirements governing the conduct of clinical trials, product licensing, pricing, and reimbursement vary greatly from country to country. As in the United States, post-approval regulatory requirements, such as those regarding product manufacture, marketing, or distribution would apply to any product that is approved outside the United States.

The process governing the marketing authorization, or MA, of medicinal products in the EU entails satisfactory completion of preclinical studies and adequate and well-controlled clinical trials to establish the safety, quality, and efficacy of the medicinal product for each proposed therapeutic indication.

It also requires the submission to the relevant competent authorities of a marketing authorization application, or MAA and granting of an MA by these authorities before the product can be marketed and sold in the EU.

The aforementioned EU rules are generally applicable in the European Economic Area, or EEA, which consists of the 27 EU member states, as well as Norway, Liechtenstein, and Iceland.

Failure to comply with EU and member state laws that apply to the conduct of clinical trials, manufacturing approval, MA of medicinal products and marketing of such products, both before and after grant of the MA, or with other applicable regulatory requirements may result in administrative, civil, or criminal penalties. These penalties could include delays or refusal to authorize the conduct of clinical trials, or to grant MA, product withdrawals and recalls, product seizures, suspension, withdrawal, or variation of the MA, total or partial suspension of production, distribution, manufacturing or clinical trials, operating restrictions, injunctions, suspension of licenses, fines, and criminal penalties.

Non-Clinical Studies and Clinical Trials

Similar to the United States, the various phases of non-clinical research in the EU are subject to significant regulatory controls.

Non-clinical studies are performed to demonstrate the health or environmental safety of new chemical or biological substances. Non-clinical studies must be conducted in compliance with the principles of good laboratory practice, or GLP, as set forth in Directive 2004/10/EC. In particular, non-clinical studies, both in vitro and in vivo, must be planned, performed, monitored, recorded, reported and archived in accordance with the GLP principles, which define a set of rules and criteria for a quality

system for the organizational process and the conditions for non-clinical studies. These GLP standards reflect the Organization for Economic Co-operation and Development requirements.

The Clinical Trials Directive 2001/20/EC, the Directive 2005/28/EC on GCP and the related national implementing provisions of the individual EU member states govern the system for the approval of clinical trials in the EU.

Clinical trials of medicinal products in the EU must be conducted in accordance with EU and national regulations and the International Conference on International Conference on Harmonization, or ICH, guidelines on GCP, as well as the applicable regulatory requirements and the ethical principles that have their origin in the Declaration of Helsinki. If the sponsor of the clinical trial is not established within the EU, it must appoint an EU entity to act as its legal representative. The sponsor must take out a clinical trial insurance policy, and in most EU member states, the sponsor is liable to provide 'no fault' compensation to any study subject injured in the clinical trial.

Under the applicable regulatory system, an applicant must obtain prior approval from the competent national authority of the EU member states in which the clinical trial is to be conducted. Furthermore, the applicant may only start a clinical trial at a specific study site after the competent ethics committee has issued a related favorable opinion. The application for authorization of a clinical trial must be accompanied by, among other documents, a copy of the trial protocol and an investigational medicinal product dossier containing information about the manufacture and quality of the medicinal product under investigation as prescribed by Directive 2001/20/EC, Directive 2005/28/EC, where relevant the related implementing national provisions of the individual EU member states, and further detailed in applicable guidance documents. Any substantial changes to the trial protocol or to other information submitted with the clinical trial application must be notified to or approved by the relevant competent national authorities and ethics committees. Medicinal products used in clinical trials must be manufactured in accordance with GMP.

In April 2014, the new Clinical Trials Regulation, (EU) No 536/2014, or Clinical Trials Regulation, was adopted. The Regulation is anticipated to enter into force on January 31, 2022. The Clinical Trials Regulation will be directly applicable in all of the EU member states, repealing the current Clinical Trials Directive 2001/20/EC. Conduct of all clinical trials performed in the EU will continue to be bound by currently applicable provisions until the new Clinical Trials Regulation becomes applicable. The extent to which on-going clinical trials will be governed by the Clinical Trials Regulation will depend on the duration of the individual clinical trial. If a clinical trial continues for more than three years from the day on which the Clinical Trials Regulation becomes applicable, the Clinical Trials Regulation will at that time begin to apply to the clinical trial.

The new Clinical Trials Regulation aims to simplify and streamline the approval of clinical trials in the EU. The main characteristics of the regulation include: a streamlined application procedure via a single-entry point, the "EU portal"; a single set of documents to be prepared and submitted for the application, as well as simplified reporting procedures for clinical trial sponsors; and a harmonized procedure for the assessment of applications for clinical trials, which is divided in two parts. Part I is assessed by the competent authorities of all EU member states in which an application for authorization of a clinical trial has been submitted (member states concerned). Part II is assessed separately by each member state concerned. Strict deadlines have been established for the assessment of clinical trial applications. The role of the relevant ethics committees in the assessment procedure will continue to be governed by the national law of the concerned EU member state. However, overall related timelines will be defined by the Clinical Trials Regulation.

Marketing Authorizations

To obtain an MA for a product in the EU, an applicant must submit an MAA either under a centralized procedure administered by the EMA or one of the procedures administered by competent authorities in the EU member states (decentralized procedure, national procedure, or mutual recognition procedure). An MA may be granted only to an applicant established in the EU.

The centralized procedure provides for the grant of a single MA by the European Commission that is valid for all EU member states. Pursuant to Regulation (EC) No 726/2004, the centralized procedure is compulsory for specific products, including for (i) medicinal products derived from biotechnological processes, (ii) products designated as orphan medicinal products, (iii) advanced therapy medicinal products, or ATMPs, and (iv) products with a new active substance indicated for the treatment of HIV/AIDS, cancer, neurodegenerative diseases, diabetes, auto-immune, and other immune dysfunctions and viral diseases. For products with a new active substance indicated for the treatment of other diseases and products that are highly innovative or for which a centralized process is in the interest of patients, the centralized procedure may be optional.

Under the centralized procedure, the EMA's Committee for Medicinal Products for Human Use, or CHMP, is responsible for conducting the initial assessment of a product. The CHMP is also responsible for several post-authorization and maintenance activities, such as the assessment of modifications or extensions to an existing MA.

Under the centralized procedure in the EU, the maximum timeframe for the evaluation of an MAA is 210 days, excluding clock stops when additional information or written or oral explanation is to be provided by the applicant in response to questions of the CHMP. Accelerated assessment may be granted by the CHMP in exceptional cases, when a medicinal product targeting an unmet medical need is expected to be of major interest from the point of view of public health and in particular from the viewpoint of therapeutic innovation. If the CHMP accepts a request for accelerated assessment, the time limit of 210 days will be reduced to 150 days (not including clock stops). The CHMP can, however, revert to the standard time limit for the centralized procedure if it considers that it is no longer appropriate to conduct an accelerated assessment.

Unlike the centralized authorization procedure, the decentralized MA procedure requires a separate application to, and leads to separate approval by, the competent authorities of each EU member state in which the product is to be marketed. This application is identical to the application that would be submitted to the EMA for authorization through the centralized procedure. The reference EU member state prepares a draft assessment and drafts of the related materials within 120 days after receipt of a valid application. The resulting assessment report is submitted to the concerned EU member states who, within 90 days of receipt, must decide whether to approve the assessment report and related materials. If a concerned EU member state cannot approve the assessment report and related materials due to concerns relating to a potential serious risk to public health, disputed elements may be referred to the Heads of Medicines Agencies' Coordination Group for Mutual Recognition and Decentralised Procedures—Human (CMDh) for review. The subsequent decision of the European Commission is binding on all EU member states.

The mutual recognition procedure allows companies that have a medicinal product already authorized in one EU member state to apply for this authorization to be recognized by the competent authorities in other EU member states. Like the decentralized procedure, the mutual recognition procedure is based on the acceptance by the competent authorities of the EU member states of the MA of a medicinal product by the competent authorities of other EU member states. The holder of a national MA may submit an application to the competent authority of an EU member state requesting that this authority recognize the MA delivered by the competent authority of another EU member state.

In principle, an MA has an initial validity of five years. The MA may be renewed after five years on the basis of a re-evaluation of the risk-benefit balance by the EMA or by the competent authority of the EU member state in which the original MA was granted. To support the application, the MA holder must provide the EMA or the competent authority with a consolidated version of the Common Technical Document, or eCTD, providing up-to-date data concerning the quality, safety and efficacy of the product, including all variations introduced since the MA was granted, at least nine months before the MA ceases to be valid. The European Commission or the competent authorities of the EU member states may decide, on justified grounds relating to pharmacovigilance, to proceed with one further five-year renewal period for the MA. Once subsequently definitively renewed, the MA shall be valid for an unlimited period. Any authorization which is not followed by the actual placing of the medicinal product on the EU market (in case of centralized procedure) or on the market of the authorizing EU member state within three years after authorization ceases to be valid (the so-called sunset clause).

Innovative products that target an unmet medical need and are expected to be of major public health interest may be eligible for a number of expedited development and review programs, such as the Priority Medicines, or PRIME, scheme, which provides incentives similar to the breakthrough therapy designation in the United States. PRIME is a voluntary scheme aimed at enhancing the EMA's support for the development of medicinal products that target unmet medical needs. It permits increased interaction and early dialogue with companies developing promising medicinal products, to optimize their product development plans and speed up their evaluation to help the product reach patients earlier than normal. Product developers that benefit from PRIME designation are potentially eligible for accelerated assessment of their MAA although this is not guaranteed. Benefits accrue to sponsors of product candidates with PRIME designation, including but not limited to, early and proactive regulatory dialogue with the EMA, frequent discussions on clinical trial designs and other development program elements, and potentially accelerated MAA assessment once a dossier has been submitted.

In the EU, a "conditional" MA may be granted in cases where all the required safety and efficacy data are not yet available. The conditional MA is subject to conditions to be fulfilled for generating the missing data or ensuring increased safety measures. It is valid for one year and must be renewed annually until all related conditions have been fulfilled. Once any pending studies are provided, the conditional MA can be converted into a traditional MA. However, if the conditions are not fulfilled within the timeframe set by the EMA, the MA will cease to be renewed.

An MA may also be granted "under exceptional circumstances" where the applicant can show that it is unable to provide comprehensive data on the efficacy and safety under normal conditions of use even after the product has been authorized and subject to specific procedures being introduced. These circumstances may arise in particular when the intended indications are very rare and, in the state of scientific knowledge at that time, it is not possible to provide comprehensive information, or when generating data may be contrary to generally accepted ethical principles. Like a conditional MA, an MA granted in exceptional circumstances is reserved to medicinal products intended to be authorized for treatment of rare diseases or unmet medical needs for which the applicant does not hold a complete data set that is required for the grant of a standard MA. However, unlike the conditional MA, an applicant for authorization in exceptional circumstances is not subsequently required to provide the missing data. Although the MA "under exceptional circumstances" is granted definitively, the risk-benefit balance of the medicinal product is reviewed annually and the MA is withdrawn in case the risk-benefit ratio is no longer favorable.

In addition to an MA, various other requirements apply to the manufacturing and placing on the EU market of medicinal products. Manufacture of medicinal products in the EU requires a manufacturing authorization, and import of medicinal products into the EU requires a manufacturing authorization allowing for import. The manufacturing authorization holder must comply with various requirements set

out in the applicable EU laws, regulations and guidance. These requirements include compliance with EU GMP standards when manufacturing medicinal products and APIs, including the manufacture of APIs outside of the EU with the intention to import the APIs into the EU. Similarly, the distribution of medicinal products within the EU is subject to compliance with the applicable EU laws, regulations and guidelines, including the requirement to hold appropriate authorizations for distribution granted by the competent authorities of the EU member states. MA holders, manufacturing and import authorization (MIA) holders, or distribution authorization holders may be subject to civil, criminal or administrative sanctions, including suspension of manufacturing authorization, in case of non-compliance with the EU or EU member states' requirements applicable to the manufacturing of medicinal products.

Data and Market Exclusivity

The EU provides opportunities for data and market exclusivity related to MAs. Upon receiving an MA, innovative medicinal products are generally entitled to receive eight years of data exclusivity and ten years of market exclusivity. Data exclusivity, if granted, prevents regulatory authorities in the EU from referencing the innovator's data to assess a generic application or biosimilar application for eight years from the date of authorization of the innovative product, after which a generic or biosimilar MAA can be submitted, and the innovator's data may be referenced. The market exclusivity period prevents a successful generic or biosimilar applicant from commercializing its product in the EU until ten years have elapsed from the initial MA of the reference product in the EU. The overall ten-year period may, occasionally, be extended for a further year to a maximum of 11 years if, during the first eight years of those ten years, the MA holder obtains an authorization for one or more new therapeutic indications which, during the scientific evaluation prior to their authorization, are held to bring a significant clinical benefit in comparison with existing therapies. However, there is no guarantee that a product will be considered by the EU's regulatory authorities to be a new chemical/biological entity, and products may not qualify for data exclusivity.

In the EU, there is a special regime for biosimilars, or biological medicinal products that are similar to a reference medicinal product but that do not meet the definition of a generic medicinal product. For such products, the results of appropriate preclinical or clinical trials must be provided in support of an application for MA. Guidelines from the EMA detail the type of quantity of supplementary data to be provided for different types of biological product.

Pediatric Development

In the EU, Regulation (EC) No 1901/2006 provides that all MAAs for new medicinal products have to include the results of trials conducted in the pediatric population, in compliance with a pediatric investigation plan, or PIP, agreed with the EMA's Pediatric Committee, or PDCO. The PIP sets out the timing and measures proposed to generate data to support a pediatric indication of the medicinal product for which MA is being sought. The PDCO can grant a deferral of the obligation to implement some or all of the measures provided in the PIP until there are sufficient data to demonstrate the efficacy and safety of the product in adults. Further, the obligation to provide pediatric clinical trial data can be waived by the PDCO when these data are not needed or appropriate because the product is likely to be ineffective or unsafe in children, the disease or condition for which the product is intended occurs only in adult populations, or when the product does not represent a significant therapeutic benefit over existing treatments for pediatric patients. Once the MA is obtained in all EU member states and study results are included in the product information, even when negative, the product is eligible for a six-month extension to the Supplementary Protection Certificate, or SPC, if any is in effect at the time of authorization or, in the case of orphan medicinal products, a two-year extension of orphan market exclusivity.

Orphan Medicinal Products

Regulation (EC) No. 141/2000, as implemented by Regulation (EC) No. 847/2000, provides that a medicinal product can be designated as an orphan medicinal product by the European Commission if its sponsor can establish that (1) the product is intended for the diagnosis, prevention or treatment of a life-threatening or chronically debilitating condition; (2) either (a) such condition affects no more than five in ten thousand persons in the EU when the application is made, or (b) the product, without the benefits derived from orphan status, would not generate sufficient return in the EU; and (3) there exists no satisfactory method of diagnosis, prevention or treatment of the condition in question that has been authorized in the EU or, if such method exists, the product will be of significant benefit to those affected by that condition.

In the EU, an application for designation as an orphan product can be made any time prior to the filing of the MAA. Orphan medicinal product designation entitles an applicant to incentives such as fee reductions or fee waivers, protocol assistance, and access to the centralized MA procedure. Upon grant of an MA, orphan medicinal products are entitled to a ten-year period of market exclusivity for the approved therapeutic indication, which means that the EMA cannot accept another MAA, or grant an MA, or accept an application to extend an MA for a similar product for the same indication for a period of ten years. The period of market exclusivity is extended by two years for orphan medicinal products that have also complied with an agreed PIP. No extension to any SPC can be granted on the basis of pediatric studies for orphan indications. Orphan medicinal product designation does not convey any advantage in, or shorten the duration of, the regulatory review and approval process.

The period of market exclusivity may, however, be reduced to six years if, at the end of the fifth year, it is established that the product no longer meets the criteria on the basis of which it received orphan medicinal product designation, including where it can be demonstrated on the basis of available evidence that the original orphan medicinal product is sufficiently profitable not to justify maintenance of market exclusivity or where the prevalence of the condition has increased above the threshold. Additionally, an MA may be granted to a similar medicinal product with the same orphan indication during the ten year period if: (i) if the applicant consents to a second original orphan medicinal product application, (ii) if the manufacturer of the original orphan medicinal product is unable to supply sufficient quantities; or (iii) if the second applicant can establish that its product, although similar, is safer, more effective or otherwise clinically superior to the original orphan medicinal product. A company may voluntarily remove a product from the register of orphan products.

Post-Approval Requirements

Where an MA is granted in relation to a medicinal product in the EU, the holder of the MA is required to comply with a range of regulatory requirements applicable to the manufacturing, marketing, promotion, and sale of medicinal products.

Similar to the United States, both MA holders and manufacturers of medicinal products are subject to comprehensive regulatory oversight by the EMA, the European Commission, or the competent regulatory authorities of the individual EU member states. The holder of an MA must establish and maintain a pharmacovigilance system and appoint an individual qualified person for pharmacovigilance who is responsible for oversight of that system. Key obligations include expedited reporting of suspected serious adverse reactions and submission of periodic safety update reports, or PSURs.

All new MAAs must include a risk management plan describing the risk management system that the company will put in place and documenting measures to prevent or minimize the risks associated with the product. The regulatory authorities may also impose specific obligations as a condition of the MA. Such risk-minimization measures or post-authorization obligations may include additional safety monitoring, more frequent submission of PSURs, or the conduct of additional clinical trials or post-authorization safety studies.

In the EU, the advertising and promotion of medicinal products are subject to both EU and EU member states' laws governing promotion of medicinal products, interactions with physicians and other healthcare professionals, misleading and comparative advertising and unfair commercial practices. Although general requirements for advertising and promotion of medicinal products are established under EU directives, the details are governed by regulations in each member state and can differ from one country to another. For example, applicable laws require that promotional materials and advertising in relation to medicinal products comply with the product's Summary of Product Characteristics, or SmPC, as approved by the competent authorities in connection with an MA. The SmPC is the document that provides information to physicians concerning the safe and effective use of the product. Promotional activity that does not comply with the SmPC is considered off-label and is prohibited in the EU. Direct-to-consumer advertising of prescription medicinal products is also prohibited in the EU.

Japanese Drug Regulation

Being a member of the ICH, Japan has pharmaceutical regulations fundamentally similar to those of the United States and the EU. Clinical trials of medicinal products in Japan must be conducted in accordance with Japanese regulations based on ICH guidelines governing GCP. If the sponsor of the clinical trial is not established within Japan, it must appoint an entity within the country to act as its caretaker who should be authorized to act on the sponsor's behalf. The sponsor must take out a clinical trial insurance policy, and, according to the industry agreement, should put in place a common compensation policy for the injuries from the trial. Prior to the commencement of human clinical studies, the sponsor must complete an evaluation of the safety of the investigative product and submit a clinical trial notification and clinical trial protocol to the authorities in advance, upon agreement of the IRB of the participating institutions. When the authorities do not comment on the notification, the sponsor may proceed with the clinical trial. Any substantial changes to the trial protocol or other information submitted must be cleared by the IRB and notified to the authorities. Medicines used in clinical trials must be manufactured in accordance with GMP.

To market a medicinal product in Japan, we must obtain regulatory approval. To obtain regulatory approval of an investigational medicinal product, we must submit a new drug application. If the product is designed for treating certain "difficult diseases" or those whose patient size is limited, we may be able to obtain designation as an orphan drug product if it demonstrates unique therapeutic value. Separately, the latest amendment to the law introduced separate pathways for (i) truly innovative products with a unique mode of action and (ii) those which will satisfy unmet medical needs.

The evaluation of new drug applications is based on an assessment of the risk-benefit balance of the product on the basis of scientific criteria concerning its quality, safety, and efficacy. Once the review organization completes its review, the matter is considered by the advisory committee of experts, and the government grants approval upon positive recommendation from the committee.

The volume and quality of the clinical data are key determinants of the approval decision. Clinical trial data generated overseas is accepted as part of the data package consistent with the ICH recommendation. Typically, a limited dose response clinical trial for Japanese subjects is required to ensure that data are extrapolatable for the Japanese population.

Separate from the approval requirement, it is also mandatory to possess a distribution license of an appropriate class for the manufacturer to commercially distribute the product in Japan. Non-Japanese companies who possess only the product approval may designate an appropriate license holder in Japan to commercially distribute the product, rather than distributing it on its own. The license is valid for five years.

Employees and Human Capital Resources

As of February 15, 2021, we had 22 full-time employees, consisting of clinical, research, development, manufacturing, regulatory, finance, and operational personnel. Nine of our employees hold Ph.D. or M.D. degrees. None of our employees is subject to a collective bargaining agreement. We consider our relationship with our employees to be good.

We recognize that our continued ability to attract, retain, and motivate exceptional employees is vital to ensuring our long-term competitive advantage. Our employees are critical to our long-term success and are essential to helping us meet our goals. Among other things, we support and incentivize our employees in the following ways:

- ***Talent development, compensation, and retention:*** We strive to provide our employees with a rewarding work environment, including the opportunity for growth, success, and professional development. We provide a competitive compensation and benefits package, including bonus and equity incentive plans, a 401(k) plan—all designed to attract and retain a skilled and diverse workforce.
- ***Health and safety:*** We support the health and safety of our employees by providing comprehensive insurance benefits, an employee assistance program, company-paid holidays, a personal time-off program, and other additional benefits which are intended to assist employees to manage their well-being.
- ***Inclusion and diversity:*** We are committed to efforts to increase diversity and foster an inclusive work environment that supports our workforce.

Facilities

Our current corporate headquarters are located in Menlo Park, California, where we lease approximately 1,731 square feet of office space pursuant to a lease agreement that commenced in May 2021 and expires in August 2022. We leased approximately 2,500 additional square feet of adjacent office space pursuant to a lease agreement that commenced in September 2021 and expires in August 2022.

We believe that these existing facilities will be adequate for our near-term needs. If required, we believe that suitable additional or alternative space would be available in the future on commercially reasonable terms.

COVID-19 Impact on Facilities

We have implemented policies that enable our employees to work remotely, and such policies may continue for an indefinite period. As prescribed by the U.S. Center for Disease Control, state and local guidelines, we have also implemented various safety protocols for all on-site personnel, including the requirements to wear masks, suspend all non-essential travel for our employees, and maintain social distance. We continue to evaluate our protocols and practices as the global response to the COVID-19 pandemic continues to evolve. While we are partially operating virtually to align with local COVID-19 guidelines, we believe our operational needs are being met for the time being. To date, we have not experienced any material impact on our ability to operate our business. We plan to periodically reassess the impact of COVID-19 on our facility needs.

Legal Proceedings

From time to time, we may become involved in material legal proceedings or be subject to claims arising in the ordinary course of our business. We are currently not party to any legal proceedings material to our operations or of which any of our property is the subject, nor are we aware of any such proceedings that are contemplated by a government authority.

Regardless of outcome, such proceedings or claims can have an adverse impact on us because of defense and settlement costs, diversion of resources, and other factors, and there can be no assurances that favorable outcomes will be obtained.

MANAGEMENT

Executive Officers, Management, and Directors

The following table sets forth information regarding our executive officers and directors as of February 15, 2022.

Name	Age	Position
Executive Officers:		
Eric Easom	54	Chief Executive Officer and Director
Lucy Day	63	Chief Financial Officer
Sanjay Chanda, Ph.D.	57	Chief Development Officer
Paul Eckburg, M.D.	51	Chief Medical Officer
Kevin Krause	47	Chief Strategy Officer
Non-Employee Directors:		
Joseph Zakrzewski(1)(3)	59	Chair and Director
Kabeer Aziz(1)	32	Director
Gilbert Lynn Marks, M.D.(2)	64	Director
Patricia Martin(2)	61	Director
Rob Readnour, Ph.D.(3)	57	Director
Melvin Spigelman, M.D.(2)	73	Director
Stephanie Wong(1)(3)	48	Director

(1) Member of the audit committee.

(2) Member of the compensation committee.

(3) Member of the nominating and corporate governance committee.

Executive Officers

Eric Easom has served as our President and Chief Executive Officer and a member of our board of directors since November 2019. From February 2009 to June 2017, Mr. Easom served as Vice President, Neglected Diseases at Anacor Pharmaceuticals, Inc., or Anacor, a publicly traded biopharmaceutical company that was acquired by Pfizer Inc. From July 2007 to January 2009, Mr. Easom served as the Senior Director, Business Development and Marketing at InteKrin Therapeutics, Inc., a biopharmaceutical company. From April 2006 to July 2007, he served as the Director of Marketing at MedImmune, a biotechnology company that was acquired by AstraZeneca. Mr. Easom currently serves as a member of the board of directors of the Chagas Disease Foundation and Resilient Biotics and is an advisor for the California Life Sciences Institute. Mr. Easom received a B.S. and M.S. in Electrical Engineering from the University of Louisville and an M.B.A. from Indiana University, Kelley School of Business. We believe that Mr. Easom's extensive work in high-growth biotechnology and pharmaceutical companies makes him an appropriate member of our board of directors.

Lucy Day has served as our Chief Financial Officer since November 2019. From March 2002 to August 2016, Ms. Day served in various financial and administrative roles, including as the initial Chief Financial Officer, Vice President of Finance, and Vice President, Human Resources and Finance at Anacor. From February 1994 to January 2002, Ms. Day served in various financial roles at Centaur Pharmaceuticals, Inc., a biopharmaceutical company, including as Chief Financial Officer. Ms. Day has previous experience at Bank of America, Sohio Petroleum Company, and Ernst and Young LLP. Ms. Day received a B.A. in Political Economies from the University of California, Berkeley and is a CPA (inactive) in California.

Sanjay Chanda, Ph.D., has served as our Chief Development Officer since November 2019. Since October 2017, Dr. Chanda has provided expert advice related to drug development through

Sanjay Chanda Consulting Services. Since February 2017, Dr. Chanda has been serving as the Chief Development Officer at Cortene Inc., a biopharmaceutical company. Since January 2014, Dr. Chanda has also served as the Co-Founder and Development Consultant at Auration Biotech, Inc., a pharmaceutical company. From October 2016 to August 2017, he served as the Chief Development Officer of Tioma Therapeutics, Inc., an immune-oncology company. From January 2008 to October 2016, Dr. Chandra served as the Senior Vice President of Drug Development of Anacor. Dr. Chanda received a Ph.D. in Pharmacology and Toxicology from Northeast Louisiana University and an M. Pharmacy and B. Pharmacy from Birla Institute of Technology, Mesra, India.

Paul Eckburg, M.D., has served as our Chief Medical Officer since November 2019, initially as a 50% consultant and as a full-time employee as of April 30, 2021. Since 2000, he has been the owner of Eckburg Medical Consulting, a consulting company involved in anti-infective biopharmaceutical development. Since August 2019, Dr. Eckburg served as an interim Chief Medical Officer and subsequent expert scientific advisor at SNIPR Biome ApS, a CRISPR microbiome company. Since June 2016, he served as an interim Chief Medical Officer and subsequent scientific advisory board member at Bugworks Research Inc., a biopharmaceutical company. Since July 2016, he has served as a consultant at Spero Therapeutics, Inc., a biopharmaceutical company. Since February 2015, Dr. Eckburg has served as a consultant and Safety Monitoring Board member at Paratek Pharmaceuticals, Inc., a biopharmaceutical company. Since February 2015, he has served as a scientific advisory board member for Cūrza Global, Inc., a biopharmaceutical company. From February 2018 to May 2019, he served as acting Chief Medical Officer at UTILITY Therapeutics Ltd., a biotechnology company. From April 2017 to May 2019, Dr. Eckburg served as the acting Vice President of Clinical Development at Recida Therapeutics, Inc., a biopharmaceutical company. From April 2016 to May 2019, he served as the acting Chief Medical Officer at Geom Therapeutics, Inc., a biopharmaceutical company. From March 2016 to July 2018, Dr. Eckburg served as the acting Chief Medical Officer at Zavante Therapeutics, Inc., a biopharmaceutical company, and continued as a consultant at Nabriva Therapeutics plc, a biopharmaceutical company, from June 2018 to June 2019. From September 2015 to January 2018, he served as the acting Chief Medical Officer at Nexgen Biosciences Inc., a biopharmaceutical company. From September 2013 to April 2017, Dr. Eckburg served as a consultant at MicuRx Pharmaceuticals, Inc., a biopharmaceutical company. From November 2012 to April 2016, he served as an ID Consultant at Genentech, Inc., a biotechnology company. Dr. Eckburg received an M.D. from Rush University and a B.S. in Cell and Structural Biology from the University of Illinois at Urbana-Champaign. He completed both an Internal Medicine residency and an Infectious Diseases fellowship at Stanford University School of Medicine, where he continues to teach as an Adjunct Clinical Assistant Professor.

Kevin Krause has served as our Chief Strategy Officer since August 2021. He was previously our Vice President of Clinical Sciences and Development Operations since November 2019. From January 2015 to June 2019, Mr. Krause served multiple roles at Achaogen, Inc., a biotechnology company, including the positions of Director of Microbiology, Senior Director, Head of Microbiology, and Senior Director of Corporate Development. From August 2010 to December 2014, Mr. Krause was a member of the Clinical Microbiology team at Cerexa, Inc., a biopharmaceutical company, and played a key role on the Scientific Assessment teams for all antibacterial and antiviral in-licensing opportunities. Prior to that, Mr. Krause worked at Theravance, Inc. from March 1999 to July 2010 in various research and clinical microbiology roles. Mr. Krause received an M.B.A. from the University of California, Berkeley Haas School of Business and a B.S. in Molecular Biology from San Francisco State University.

Non-Employee Directors

Joseph Zakrzewski has served as a member of our board of directors since May 2017. Mr. Zakrzewski currently serves as the Chairman of the board of directors of Cerecin, Inc., a biopharmaceutical company and Cyteir Therapeutics, Inc., a publicly traded biotechnology company. Mr. Zakrzewski also currently

serves as a member of the board of directors of Amarin Corporation, a publicly traded biopharmaceutical company, or Amarin. From 2014 to 2020, Mr. Zakrzewski served as a member of the board of directors of SiteOne Therapeutics, Inc., a pharmaceutical company. From December 2009 to December 2013, Mr. Zakrzewski also served as the Chairman and Chief Executive Officer of Amarin. Mr. Zakrzewski received a B.S. in Chemical Engineering from Drexel University, an M.S. in Biochemical Engineering from Drexel University, and an M.B.A. in Finance from Indiana University. We believe that Mr. Zakrzewski's over 25 years of experience as an executive in the biotechnology and pharmaceutical industry makes him an appropriate member of our board of directors.

Kabeer Aziz has served as a member of our board of directors since November 2019. In October 2018, Mr. Aziz co-founded Adjuvant Capital, a life sciences investment fund focused on global public health, and currently serves as a Principal and is responsible for sourcing, executing, and managing investments primarily focused on vaccines and therapeutics for infectious disease. Mr. Aziz currently serves as a member of the board of directors of MinervaX ApS, Pulmocide Ltd., Quantoom Biosciences S.A. and Frontier Nutrition, Inc. and is a board observer to Yisheng Biopharma Co., Ltd., each a healthcare company. From October 2015 to September 2018, Mr. Aziz was a Senior Associate at the Global Health Investment Fund, a healthcare focused impact fund. Prior to this, Mr. Aziz was an Investment Associate at Metalmark Capital from July 2013 to September 2015 as well as an Analyst at Greenhill & Co. from June 2011 to June 2013. Mr. Aziz received a B.S. in Finance and Economics from the Stern School of Business at New York University. We believe that Mr. Aziz's work in the infectious disease space and experience in healthcare finance makes him an appropriate member of our board of directors.

Gilbert Lynn Marks, M.D., has served as a member of our board of directors since February 2020. From September 2017 to September 2021, Dr. Marks was employed by Tunnell Government Services, Inc., or TGS, and became a Vice President in January 2020 at TGS, a subsidiary of Tunnell Consulting, Inc. that supports clients in medical product development. As an employee of TGS, he served as a contractor supporting the Office of the Director for the Biomedical Advanced Research and Development Authority, or BARDA, a U.S. Department of Health and Human Services office responsible for the procurement and development of medical countermeasures for chemical, biological radiological, nuclear, and pandemic threats, including COVID-19. From 2016 to 2021, Dr. Marks served as a member of the Advisory Committee for the National Center for Advancing Translational Sciences, or NCATS, an institute at the National Institutes of Health. As part of his support for NCATS, he also served as Chair of the Cures Acceleration Network Review Board. From 2006 to 2018, Dr. Marks served on the Scientific Advisory Board for the TB Alliance, a not-for-profit organization, including serving as Chair. Since 2020, he has served on the Scientific Review Board for the Medicines for Malaria Venture, a not-for-profit organization and has agreed to Chair the Committee starting in 2022. Since 2009, he has served on the Scientific Advisory Committee for the Polio Antiviral Initiative. Since 2017, Dr. Marks has served as a member of the Board of Directors for WOAR, Philadelphia, Pennsylvania's not for profit rape crisis support center. From 1993 to 2017, Dr. Marks served in multiple roles at GSK, a publicly traded pharmaceutical company, including serving as Senior Vice President in Research and Development and as a member of the Pharmaceuticals Research and Development Leadership team. He also served as Senior Clinical Advisor for Infectious Diseases at GSK. Dr. Marks received a B.S. in Chemistry from Auburn University and an M.D. from University of South Alabama College of Medicine. He is Board Certified in Internal Medicine and Infectious Diseases. We believe that Dr. Marks' over 30 years of experience in the field of infectious diseases and as a senior executive in the pharmaceutical industry makes him an appropriate member of our board of directors.

Patricia (Patty) Martin has served as a member of our board of directors since April 2021. Since July 2019, Ms. Martin has served as the President and Chief Executive Officer of BioCrossroads, a not-for-profit organization that supports and promotes the life sciences industry in the state of Indiana. Since July 2019, Ms. Martin has also served as the Managing Partner of BC Initiative, Inc., a company

that supports seed fund investing in life sciences. From June 1991 to June 2017, Ms. Martin held multiple positions at Eli Lilly and Company, a publicly traded pharmaceutical company, or Eli Lilly, including Chief Operations Officer of Lilly Diabetes, Chief Diversity Officer and Chief Alliance Officer. Ms. Martin currently also serves as a member of the board of directors of CareSource, Inc., Flame Biosciences, Inc., Indiana Biosciences Research Institute, Indiana Health Information Exchange, Indiana University Foundation, Indiana University Research and Technology Corporation, Regenstrief Institute, and Christian Theological Seminary. Ms. Martin received a B.S. in Accounting from the Kelley School of Business at Indiana University and an M.B.A. from Harvard Business School. We believe that Ms. Martin's 25 years of experience as an executive at biopharmaceutical companies makes her an appropriate member of our board of directors.

Rob Readnour, Ph.D., has served as a member of our board of directors since November 2019. Since July 2018, Dr. Readnour has served as the Managing Director at Mountain Group Partners, a venture capital firm that invests in early-stage companies in the life science, agricultural technology, and technology sectors. From October 1990 to June 2018, Dr. Readnour served in multiple senior management positions at Elanco Animal Health Incorporated, a publicly traded pharmaceutical company that was previously part of Eli Lilly, including Senior Director of Product Development and Senior Advisor and Chief Scientific Officer at Elanco Alternative Innovation. Dr. Readnour currently serves as a member of the board of or has visitation rights to Targan Inc., a bio-systems company focused on animal health, Advanced Animal Diagnostics, Inc., an animal health device company, Skyline Vet Pharma, Inc., a veterinary pharmaceutical company, Exubrion Therapeutics, Inc., a radiotherapeutic veterinary device company, Appello Pharmaceuticals, Inc., a drug development company, and NuSirt Biopharma, Inc., a drug and nutraceutical compound development company. Dr. Readnour also currently serves as the Executive Chairman of In the Bowl Animal Health, Inc., an animal health company. Dr. Readnour is also the Chief Executive Officer of Borah, Inc., an animal health discovery company. Dr. Readnour received a Ph.D. in Analytical Chemistry from University of Illinois and a B.S. in Chemistry from Southeast Missouri State University. We believe that Dr. Readnour's more than 30 years of experience moving products from discovery through commercialization makes him an appropriate member of our board of directors.

Melvin Spigelman, M.D., has served as a member of our board of directors since February 2022. Since January 2009, Dr. Spigelman has served as President and Chief Executive Officer for the Global Alliance for TB Drug Development, a non-profit organization which seeks to accelerate the discovery and development of faster-acting and affordable drugs to fight tuberculosis. From June 2003 to June 2008, Dr. Spigelman served as a Director of Research and Development for the Global Alliance for TB Drug Development. Dr. Spigelman was also President of Hudson-Douglas Ltd, a consulting company, from June 2001 to June 2003. From 2000 to 2001, Dr. Spigelman served as a Vice President, Global Clinical Centers at Knoll Pharmaceuticals, a pharmaceutical unit of BASF Corporation, and from 1992 to 2000, Dr. Spigelman was the Vice President of Research and Development at Knoll Pharmaceuticals. Dr. Spigelman served as a director of The Medicines Company, a pharmaceutical company, from 2005 to 2018 and as director of Synergy Pharmaceuticals Inc., a pharmaceutical company, from 2005 to 2019. Dr. Spigelman received a B.A. in Engineering from Brown University and an M.D. from the Mount Sinai School of Medicine. We believe that Dr. Spigelman's expertise in drug development and management makes him an appropriate member of our board of directors.

Stephanie Wong has served as a member of our board of directors since April 2021. Ms. Wong has served as the Chief Financial Officer at Calithera Biosciences, Inc., or Calithera, a publicly traded biopharmaceutical company, since January 2021, and as Secretary since January 2017. Ms. Wong previously served in various roles at Calithera, as Senior Vice President, Finance from January 2018 to December 2020 and as Vice President, Finance from April 2014 to December 2017. Since December 2016, she has also served as a member of the board of directors of the Northern California Chapter of The Association of Bioscience Financial Officers, an association for financial executives working in the

bioscience industry. From 2009 to 2013, Ms. Wong was at SciClone Pharmaceuticals, Inc., a publicly traded pharmaceutical company, most recently as Vice President, Finance and Controller. Prior to that, Ms. Wong served in senior finance roles at AcelRx Pharmaceuticals, Inc. and Kosan Biosciences, Inc., both biopharmaceutical companies, and as an audit manager at PricewaterhouseCoopers LLP, an independent registered public accounting firm. Ms. Wong received a B.S. in Business Administration from the University of California, Berkeley and is a Certified Public Accountant (inactive) in the state of California. We believe that Ms. Wong's extensive work in high-growth, publicly traded biopharmaceutical companies makes her an appropriate member of our board of directors.

Composition of Our Board of Directors

Our business and affairs are organized under the direction of our board of directors, which currently consists of seven members. The primary responsibilities of our board of directors are to provide oversight, strategic guidance, counseling, and direction to our management. Our board of directors meets on a regular basis and additionally as required.

Certain members of our board of directors were elected under the provisions of our Amended and Restated Voting Agreement entered into in March 2021 and subsequently amended in April 2021 and January 2022, or the Voting Agreement, which will terminate upon the closing of this offering. Under the terms of our Voting Agreement, the stockholders who are party to the Voting Agreement have agreed to vote their respective shares to elect: (i) one director designated by MGC Venture Partners 2018 LP, currently Rob Readnour; (ii) one director designated by Adjuvant Global Health Technology Fund L.P., currently Kabeer Aziz; (iii) one director who shall be our then-current Chief Executive Officer, currently Eric Easom; (iv) one director elected by the holders of a majority of the shares of our common stock, currently Joseph Zakrzewski; and (v) five directors who are not our employees or affiliates, with such individuals to be designated by mutual agreement of our board of directors, currently Gilbert Lynn Marks, Patricia Martin, Melvin Spigelman, Stephanie Wong and one vacancy. The Voting Agreement will terminate upon the closing of this offering, and upon the closing of the offering no stockholder will have any special rights regarding the election or designation of the members of our board of directors. Our current directors elected to our board of directors pursuant to the Voting Agreement will continue to serve as directors until their successors are duly elected and qualified by holders of our common stock.

Our board of directors may establish the authorized number of directors from time to time by resolution. In accordance with our amended and restated certificate of incorporation to be filed in connection with this offering, immediately after this offering, our board of directors will be divided into three classes with staggered three-year terms. At each annual meeting of stockholders, the successors to directors whose terms then expire will be elected to serve from the time of election and qualification until the third annual meeting following election. Our directors will be divided among the three classes as follows:

- the Class I directors will be Kabeer Aziz, Gilbert Lynn Marks and Rob Readnour, and their terms will expire at the annual meeting of stockholders to be held in 2023;
- the Class II directors will be Patricia Martin and Melvin Spigelman, and their terms will expire at the annual meeting of stockholders to be held in 2024; and
- the Class III directors will be Eric Easom, Stephanie Wong and Joseph Zakrzewski, and their terms will expire at the annual meeting of stockholders to be held in 2025.

We expect that any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one third of the directors. The division of our board of directors into three classes with staggered three-year terms may delay or prevent a change of our management or a change in control.

Director Independence

Under the Nasdaq Listing Rules independent directors must comprise a majority of our board of directors as a listed company within one year of the listing date.

Our board of directors has undertaken a review of the independence of each director. Based on information provided by each director concerning her or his background, employment and affiliations, including family relationships, our board of directors has determined that none of our directors, other than Mr. Easom, has any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is "independent" as that term is defined under the Nasdaq Listing Rules. Our board of directors has determined that Mr. Easom, by virtue of his position as our Chief Executive Officer, is not independent under applicable rules and regulations of the SEC and the Nasdaq Listing Rules. In making these determinations, our board of directors considered the current and prior relationships that each non-employee director has with our company and all other facts and circumstances our board of directors deemed relevant in determining their independence, including the beneficial ownership of our shares by each non-employee director and the transactions described in the section titled "Certain Relationships and Related Person Transactions."

Committees of Our Board of Directors

Our board of directors has established an audit committee, a compensation committee, and a nominating and corporate governance committee. The composition and responsibilities of each of the committees of our board of directors are described below. Members serve on these committees until their resignation or until otherwise determined by our board of directors. Each committee intends to adopt a written charter that satisfies the application rules and regulation of the SEC and the Nasdaq Listing Rules, which we will post to our website at www.an2therapeutics.com upon the closing of this offering. Our board of directors may establish other committees as it deems necessary or appropriate from time to time.

Audit Committee

Our audit committee currently consists of Stephanie Wong, Kabeer Aziz, and Joseph Zakrzewski, each of whom our board of directors has determined satisfies the independence requirements under the Nasdaq Listing Rules and Rule 10A-3(b)(1) of the Exchange Act. The chair of our audit committee is Stephanie Wong, who our board of directors has determined is an "audit committee financial expert" within the meaning of SEC regulations. Each member of our audit committee can read and understand fundamental financial statements in accordance with applicable requirements. In arriving at these determinations, the board of directors has examined each audit committee member's scope of experience and the nature of their employment in the corporate finance sector.

The primary purpose of the audit committee is to discharge the responsibilities of our board of directors with respect to our corporate accounting and financial reporting processes, systems of internal control and financial-statement audits, and to oversee our independent registered accounting firm. Specific responsibilities of our audit committee include:

- helping our board of directors oversee our corporate accounting and financial reporting processes;
- managing the selection, engagement, qualifications, independence, and performance of a qualified firm to serve as the independent registered public accounting firm to audit our financial statements;
- discussing the scope and results of the audit with the independent registered public accounting firm, and reviewing, with management and the independent accountants, our interim and year-end operating results;
- developing procedures for employees to submit concerns anonymously about questionable accounting or audit matters;

- reviewing related person transactions;
- obtaining and reviewing a report by the independent registered public accounting firm at least annually, that describes our internal quality control procedures, any material issues with such procedures, and any steps taken to deal with such issues when required by applicable law; and
- approving, or, as permitted, pre-approving, audit and permissible non-audit services to be performed by the independent registered public accounting firm.

Compensation Committee

Our compensation committee currently consists of Patricia Martin, Gilbert Lynn Marks, and Melvin Spigelman. The chair of our compensation committee is Patricia Martin. Our board of directors has determined that each member of our compensation committee is independent under the Nasdaq Listing Rules and as a "non-employee director" as defined in Rule 16b-3 promulgated under the Exchange Act.

The primary purpose of our compensation committee is to discharge the responsibilities of our board of directors in overseeing our compensation policies, plans and programs, and to review and determine the compensation to be paid to our executive officers, directors and other senior management, as appropriate. Specific responsibilities of our compensation committee include:

- reviewing and approving the compensation of our chief executive officer, other executive officers, and senior management;
- reviewing and recommending to our board of directors the compensation paid to our directors;
- reviewing and approving the compensation arrangements with our executive officers and other senior management;
- administering our equity incentive plans and other benefit programs;
- reviewing, adopting, amending, and terminating, incentive compensation and equity plans, severance agreements, profit sharing plans, bonus plans, change-of-control protections, and any other compensatory arrangements for our executive officers and other senior management;
- reviewing, evaluating, and recommending to our board of directors succession plans for our executive officers; and
- reviewing and establishing general policies relating to compensation and benefits of our employees, including our overall compensation strategy, including base salary, incentive compensation, and equity-based grants, to assure that it promotes stockholder interests and supports our strategic and tactical objectives, and that it provides for appropriate rewards and incentives for our management and employees.

Nominating and Corporate Governance Committee

Our nominating and corporate governance committee consists of Rob Readnour, Joseph Zakrzewski and Stephanie Wong. The chair of our nominating and corporate governance committee is Rob Readnour. Our board of directors has determined that each member of the nominating and corporate governance committee is independent under the Nasdaq Listing Rules, a non-employee director, and free from any relationship that would interfere with the exercise of his or her independent judgment.

Specific responsibilities of our nominating and corporate governance committee include:

- identifying and evaluating candidates, including the nomination of incumbent directors for reelection and nominees recommended by stockholders, to serve on our board of directors;
- considering and making recommendations to our board of directors regarding the composition and chairmanship of the committees of our board of directors;

- instituting plans or programs for the continuing education of our board of directors and orientation of new directors;
- developing and making recommendations to our board of directors regarding corporate governance guidelines and matters; and
- overseeing periodic evaluations of the board of directors' performance, including committees of the board of directors and management.

Code of Business Conduct and Ethics

In connection with this offering, we intend to adopt a written Code of Business Conduct and Ethics that applies to all our employees, officers, and directors. This includes our principal executive officer, principal financial officer, and principal accounting officer or controller, or persons performing similar functions. The full text of our Code of Business Conduct and Ethics will be posted on our website at www.an2therapeutics.com. We intend to disclose on our website any future amendments of our Code of Business Conduct and Ethics or waivers that exempt any principal executive officer, principal financial officer, principal accounting officer or controller, persons performing similar functions, or our directors from provisions in the Code of Business Conduct and Ethics. Information contained on, or accessible through, our website is not a part of this prospectus, and the inclusion of our website address in this prospectus is only an inactive textual reference.

Compensation Committee Interlocks and Insider Participation

None of the members of the compensation committee is currently, or has been at any time, one of our executive officers or employees. None of our executive officers currently serves, or has served during the last calendar year, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our board of directors or compensation committee.

Non-Employee Director Compensation

During the year ended December 31, 2021, each of the following individuals served on our board of directors as non-employee directors: Kabeer Aziz, Gilbert Lynn Marks, Patricia Martin, Rob Readnour, Stephanie Wong, and Joseph Zakrzewski.

The following table presents all of the compensation awarded to or earned by or paid to our named non-employee directors during the fiscal year ended December 31, 2021.

Name	Fees Earned or Paid in Cash ($)	Option Awards ($)(1)	Total ($)
Gilbert Lynn Marks, M.D.(2)	25,000	50,349	75,349
Patricia Martin(3)	18,750	118,014	136,764
Stephanie Wong(4)	18,750	118,014	136,764
Joseph Zakrzewski(5)	60,000	472,056	532,056

(1) All of the option awards were granted under the 2017 Plan, the terms of which plan are described below under "Executive Compensation—Equity Benefit Plans—2017 Equity Incentive Plan." The amounts shown represent the grant date fair values of option awards granted in 2021 as computed in accordance with Financial Accounting Standards Board (FASB) Accounting Standard Codification (ASC) Topic 718. See Note 2 to our financial statements included elsewhere in this prospectus for a discussion of the assumptions used in the calculation.

(2) During the year ended December 31, 2021, Dr. Marks was granted 4,533 options to purchase common stock. These options vest over 36 months, subject to Dr. Marks' continued service with us through each vesting date. All options are exercisable. As of December 31, 2021, 3,526 options were not vested.

(3) During the year ended December 31, 2021, Ms. Martin was granted 10,625 options to purchase common stock. These options vest over 36 months, subject to Ms. Martin's continued service with us through each vesting date. As of December 31, 2021, 8,264 shares were not vested.

(4) During the year ended December 31, 2021, Ms. Wong was granted 10,625 options to purchase common stock. These options vest over 36 months, subject to Ms. Wong's continued service with us through each vesting date. As of December 31, 2021, 8,264 shares were not vested.

(5) During the year ended December 31, 2021, Mr. Zakrzewski was granted 42,500 options to purchase common stock. These options vest over 36 months, subject to Mr. Zakrzewski's continued service with us through each vesting date. As of December 31, 2021, 33,056 shares were not vested.

Mr. Aziz and Dr. Readnour also served on our board of directors during the year ended December 31, 2021 but did not receive any compensation for their service as directors. Mr. Easom also served on our board of directors during the year ended December 31, 2021 but did not receive any additional compensation for his service as a director. See the section titled "Executive Compensation" for more information regarding the compensation earned by Mr. Easom.

We have reimbursed and will continue to reimburse all of our non-employee directors for their reasonable out-of-pocket expenses incurred in attending board of directors and committee meetings.

We intend to adopt a non-employee director compensation policy, pursuant to which our non-employee directors will be eligible to receive compensation for service on our board of directors and committees of our board of directors, to be effective following the completion of this offering.

In connection with this offering, our board of directors adopted a non-employee director compensation policy, to be effective the day immediately prior to the date on which the registration statement of which this prospectus forms a part is declared effective by the SEC. The policy is designed to enable us to attract and retain, on a long-term basis, highly qualified non-employee directors. Under the policy, our non-employee directors will be eligible to receive cash retainers (which will be prorated for partial years of service) and equity awards as set forth below:

Annual Retainer for Board Membership	
Annual service on the board of directors	$35,000
Additional retainer for annual service as non-executive chairperson or lead director of the board of directors	$30,000
Additional Annual Retainer for Committee Membership	
Annual service as audit committee chairperson	$15,000
Annual service as member of the audit committee (other than chair)	$ 7,500
Annual service as compensation committee chairperson	$15,000
Annual service as member of the compensation committee (other than chair)	$ 7,500
Annual service as nominating and corporate governance committee chairperson	$ 8,000
Annual service as member of the nominating and corporate governance committee (other than chair)	$ 4,000

In addition, our policy will provide that, upon initial election or appointment to our board of directors, each new non-employee director will be granted a one-time grant, or Director Initial Grant, of a non-statutory stock option with a grant-date value of $209,093 on the date of such director's election or appointment to the board of directors. The Director Initial Grant will vest in substantially equal monthly installments over three years. On the date of each annual meeting of stockholders of our company following the completion of this offering, each non-employee director who continues as a non-employee director following such meeting will be granted an annual award, or Director Annual Grant, of a non-statutory stock option with a grant-date value of $104,546, provided however, that any director

who receives a Director Initial Grant at least three months, but less than six months, prior to the annual meeting of stockholders of our company will be granted an award of a non-statutory stock option with a grant-date value of $52,273. The Director Annual Grant will vest in full on the earlier of the one-year anniversary of the grant date or on the date prior to the date of our next annual meeting of stockholders. The Director Initial Grant and Director Annual Grant are subject to full acceleration vesting upon the sale of our company.

We will reimburse all reasonable out-of-pocket expenses incurred by directors for their attendance at meetings of our board of directors or any committee thereof.

Employee directors will receive no additional compensation for their service as a director.

EXECUTIVE COMPENSATION

Our named executive officers for the year ended December 31, 2021 were:

- Eric Easom, our Chief Executive Officer;
- Lucy Day, our Chief Financial Officer; and
- Paul Eckburg, M.D., our Chief Medical Officer.

Summary Compensation Table

The following table presents all of the compensation awarded to or earned by or paid to our named executive officers during the fiscal year ended December 31, 2021.

Name and Principal Position	Year	Salary ($)	Option Awards ($)(1)	Non-Equity Incentive Plan Compensation ($)(2)	All Other Compensation ($)	Total ($)
Eric Easom *President and Chief Executive Officer*	2021	377,300	1,190,689	151,000	–	1,718,989
Lucy Day *Chief Financial Officer*	2021	301,017	350,853	90,000	–	741,870
Paul Eckburg, M.D.(3) *Chief Medical Officer*	2021	258,125	567,928	77,000	–	903,053

(1) Amounts reflect the full grant-date fair value of stock options granted during 2021 computed in accordance with Financial Accounting Standards Board (FASB) Accounting Standard Codification (ASC) Topic 718, rather than the amounts paid to or realized by the named individual. See Note 2 to our financial statements included elsewhere in this prospectus for a discussion of the assumption used in the calculation. All of the option awards were granted under the 2017 Plan, the terms of which plan are described below under “Executive Compensation—Equity Benefit Plans—2017 Equity Incentive Plan.”

(2) Amounts represent the annual performance-based cash bonuses earned by our named executive officers based on the achievement of certain corporate performance objectives during 2021. The target bonus amounts for Mr. Easom, Ms. Day, and Dr. Eckburg were $151,000, $90,000, and $77,000, respectively. In February 2022, our board of directors assessed company performance against our 2021 corporate goals and based on such performance, awarded a cash annual incentive bonus to each of our named executive officers equal to 100% of his or her target bonus amount for 2021. These amounts will be paid to the named executive officers in 2022.

(3) Dr. Eckburg commenced employment with us on April 30, 2021. Prior to his employment, Dr. Eckburg was a consultant for us.

Outstanding Equity Awards as of December 31, 2021

The following table presents the outstanding equity incentive plan awards held by each named executive officer as of December 31, 2021.

Name	Option Awards[1]					Stock Awards	
	Grant Date	Number of Securities Underlying Unexercised Options Exercisable (#)	Number of Securities Underlying Unexercised Options Unexercisable (#)	Option Exercise Price Per Share ($)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested ($)
Eric Easom	2/24/2017[2]	–	–	–	–	–	–
	4/30/2021[3]	17,708	88,542	$ 15.52	4/29/2031	–	–
Lucy Day	1/23/2020[4]	10,040	5,506	$ 0.99	1/22/2030	–	–
	10/5/2020[5]	1,095	2,661	$ 0.99	9/23/2030	–	–
	12/9/2020[6]	2,400	7,200	$ 0.99	12/08/2030	–	–
	4/30/2021[7]	5,218	26,090	$ 15.52	4/29/2031	–	–
Paul Eckburg, M.D.	1/23/2020[8]	7,773	–	$ 0.99	1/22/2030	–	–
	10/5/2020[9]	1,878	–	$ 0.99	9/23/2030	–	–
	4/30/2021[10]	–	50,575	$ 15.52	4/29/2031	–	–

(1) All of the option awards were granted under the 2017 Plan, the terms of which plan are described below under “Executive Compensation—Equity Benefit Plans—2017 Equity Incentive Plan.”

(2) Mr. Easom acquired 550,000 shares of our common stock pursuant to a common stock purchase agreement. As of December 31, 2020, all shares were vested.

(3) The option vests in respect of 1/48th of the underlying shares on each monthly anniversary of the vesting commencement date, subject to Mr. Easom’s continued service with us through each vesting date. As of December 31, 2021, 17,708 shares were vested and 88,542 shares were not vested. The option is subject to the vesting acceleration provision described below under “—Potential Payments upon Termination or Change in Control.”

(4) The option vests in respect of 25% of the underlying shares on the first anniversary of the vesting commencement date, with the remaining 75% of the underlying shares vesting on a monthly basis thereafter, subject to Ms. Day’s continued service with us through each vesting date. As of December 31, 2021, 10,040 shares were vested and 5,506 shares were not vested. The option is subject to the vesting acceleration provision described below under “—Potential Payments upon Termination or Change in Control.”

(5) The option vests in respect of 1/48th of the underlying shares on each monthly anniversary of the vesting commencement date, subject to Ms. Day’s continued service with us through each vesting date. All options are exercisable. As of December 31, 2021, 1,095 shares were vested and 2,661 shares were not vested. The option is subject to the vesting acceleration provision described below under “—Potential Payments upon Termination or Change in Control.”

(6) The option vests in respect of 1/48th of the underlying shares on each monthly anniversary of the vesting commencement date, subject to Ms. Day’s continued service with us through each vesting date. As of December 31, 2021, 2,400 shares were vested and 7,200 shares were not vested. The option is subject to the vesting acceleration provision described below under “—Potential Payments upon Termination or Change in Control.”

(7) The option vests in respect of 1/48th of the underlying shares on each monthly anniversary of the vesting commencement date, subject to Ms. Day’s continued service with us through each vesting date. As of December 31, 2021, 5,218 shares were vested and 26,090 shares were not vested. The option is subject to the vesting acceleration provision described below under “—Potential Payments upon Termination or Change in Control.”

(8) Dr. Eckburg acquired 7,773 shares of our common stock pursuant to the early exercise of a stock option agreement. As of December 31, 2021, all shares were vested.

(9) The option vests in respect of 1/12th of the underlying shares on each monthly anniversary of the vesting commencement date, subject to Dr. Eckburg's continued service with us through each vesting date. As of December 31, 2021, all shares were vested.

(10) The option vests in respect of 25% of the underlying shares on the first anniversary of the vesting commencement date, with the remaining 75% of the underlying shares vesting on a monthly basis thereafter, subject to Dr. Eckburg's continued service with us through each vesting date. As of December 31, 2021, 50,575 shares were not vested. The option is subject to the vesting acceleration provision described below under "—Potential Payments upon Termination or Change in Control."

Emerging Growth Company Status

We are an "emerging growth company," as defined in the JOBS Act. As an emerging growth company we will be exempt from certain requirements related to executive compensation, including the requirements to hold a nonbinding advisory vote on executive compensation and to provide information relating to the ratio of total compensation of our chief executive officer to the median of the annual total compensation of all of our employees, each as required by the Investor Protection and Securities Reform Act of 2010, which is part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Pension Benefits

Our named executive officers did not participate in, or otherwise receive any benefits under, any pension or retirement plan sponsored by us during the fiscal year ended December 31, 2021.

Nonqualified Deferred Compensation

Our named executive officers did not participate in, or earn any benefits under, a non-qualified deferred compensation plan sponsored by us during the fiscal year ended December 31, 2021.

Offer Letters

Below are descriptions of our offer letters with our named executive officers. The offer letters with our executive officers generally provide for at-will employment and set forth the executive officer's initial base salary, annual target bonus, and eligibility to participate in our employee benefit plans.

Eric Easom

On November 19, 2019, Eric Easom entered into an employment agreement with us to serve as our President and Chief Executive Officer on an at-will basis. Pursuant to Mr. Easom's employment agreement, Mr. Easom's initial base salary was $340,000. Currently, his annual base salary is $405,600, and he is eligible for an annual target bonus of 40% of his base salary. Upon the completion of this offering, Mr. Easom's annual base salary will be increased to $504,100 and he will be eligible for an annual target bonus of 50% of his base salary. On April 30, 2021, Mr. Easom was granted an option award to purchase 106,250 shares of our common stock, 1/48th of which vest on a monthly basis. All such awards are reflected in the "Outstanding Equity Awards as of December 31, 2021" table above.

Mr. Easom is entitled to certain equity acceleration benefits in the event of an employment termination in certain circumstances, which are described below under "—Potential Payments upon Termination or Change in Control."

Lucy Day

On November 19, 2019, Lucy Day entered into an employment agreement with us to serve as our Chief Financial Officer on an at-will basis. Currently, her annual base salary is $324,300, and she is eligible for an annual target bonus of 30% of her base salary. Upon the completion of this offering, Ms. Day's annual base salary will be increased to $396,800 and she will be eligible for an annual target

bonus of 40% of her base salary. In connection with her employment, Ms. Day was granted an initial first option award to purchase 15,546 shares of our common stock, 25% of which vest on the one-year anniversary of the vesting commencement date, and the remainder vesting on a monthly basis thereafter, a second option award to purchase 3,756 shares of our common stock, 1/48th of which vest on a monthly basis, a third option award to purchase 9,600 shares of our common stock, 1/48th of which vest on a monthly basis, and a fourth option award to purchase 31,308 shares of our common stock, 1/48th of which vest on a monthly basis. All such awards are reflected in the "Outstanding Equity Awards as of December 31, 2021" table above.

Ms. Day is entitled to certain equity acceleration benefits in the event of an employment termination in certain circumstances, which are described below under "—Potential Payments upon Termination or Change in Control."

Paul Eckburg, M.D.

On April 30, 2021, Paul Eckburg, M.D. entered into an employment agreement with us to serve as our Chief Medical Officer on an at-will basis. Pursuant to Dr. Eckburg's employment agreement, Dr. Eckburg's initial base salary is $385,000. Currently his annual base salary is $395,400 and he is eligible for an annual target bonus of 30% of his base salary. Upon the completion of this offering, Dr. Eckburg's annual base salary will be increased to $437,100 and he will be eligible for an annual target bonus of 40% of his base salary. In connection with his employment, Dr. Eckburg was granted an initial first option award to purchase 50,575 shares of our common stock, 25% of which vest on the one-year anniversary of the vesting commencement date, and the remainder vesting on a monthly basis thereafter. Prior to his employment with us, Dr. Eckburg was granted option awards to purchase 9,651 shares of our common stock, 1/12th of which vest on a monthly basis. All such awards are reflected in the "Outstanding Equity Awards as of December 31, 2021" table above.

Dr. Eckburg is entitled to certain equity acceleration benefits in the event of an employment termination in certain circumstances, which are described below under "—Potential Payments upon Termination or Change in Control."

Potential Payments and Benefits upon Termination or Change in Control

Each of our named executive officers entered into a Change in Control Agreement with us on June 23, 2020, each of which provides that, if the executive is terminated by us without "cause" (other than as a result of death or disability), or if the executive resigns for "good reason," in each case, in connection with or within 12 months following a "change in control," then, subject to the executive's execution of a release of claims, 100% of his or her unvested stock awards will immediately vest and become exercisable, and, to the extent applicable, our right of repurchase or reacquisition with respect to such stock awards will lapse.

"Cause" has the same meaning as such term in any effective employment agreement, or, in the event that an employment agreement does not provide for such definition, any one of the following events: (i) the commission of any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (ii) the attempted commission of, or participation in, a fraud or act of dishonesty against us; (iii) the intentional, material violation of any contract or agreement between the executive and us or of any statutory duty owed to us; (iv) unauthorized use or disclosure of our confidential information or trade secrets; or (v) gross misconduct.

"Good reason" means the occurrence of any of the following without the executive's written consent: (i) a material reduction in job duties or responsibilities inconsistent with the executive's position with the Company; provided, however, that any such reduction or change after a "change in

control" will not constitute "good reason" if executive retains reasonably comparable duties and responsibilities with respect to the company's business within the successor entity following a "change in control"; (ii) a material reduction of the executive's then-current base salary or target bonus; (iii) the relocation of executive's principal place of employment to a place that increases executive's one-way commute by more than 50 miles as compared to the executive's then-current principal place of employment immediately prior to such relocation; (iv) any material breach by the Company of the 2017 Plan or any other written agreement between the Company and the executive; or (v) the failure by any successor to the Company to assume the 2017 Plan and any obligations under the 2017 Plan. The executive must give written notice to the Company of the event forming the basis of the termination for "good reason" within 60 days after the date on which the Company gives written notice to the executive of the Company's affirmative decision to take an action set forth in clauses (i), (ii), (iii), (iv), or (v) above, the Company fails to cure such basis for "good reason" resignation within 30 days after receipt of the executive's written notice and the executive terminates his or her position with the Company within 30 days following the expiration of the cure period.

"Change in control" means the first to occur of any of the following transactions that also constitutes a change in the ownership or effective control of the Company, or a change in the ownership of a substantial portion of the Company's assets, as described in U.S. Treasury Regulation Section 1.409A-3(i)(5): (A) a merger or consolidation in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the state in which the Company is incorporated or any transaction that is a financing transaction (*i.e.*, one in which a majority of the members of the board of directors prior to such financing transaction constitute the majority of the members of the board of directors immediately after the closing of such financing transaction); (B) the sale, transfer, lease, or other disposition of all or substantially all of the assets of the Company (including the capital stock of the Company's subsidiary corporations); (C) any reverse merger in which the Company is the surviving entity but in which securities possessing more than 50% of the total combined voting power of the Company's outstanding securities are transferred to a person or persons different from those who held such securities immediately prior to such merger; or (D) an acquisition in a single or series of related transactions by any person or related group of persons (other than the Company or by a Company-sponsored employee benefit plan) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than 50% of the total combined voting power of the Company's outstanding securities.

Severance and Change in Control Plan

Our board of directors has adopted a Severance and Change in Control Plan, or the Severance Plan, that is subject to the effectiveness of this offering, in which our named executive officers, and certain other executives, will participate. The benefits provided in the Severance Plan will replace any severance for which our named executive officers may be eligible under their existing offer letters or other employment agreements or arrangements, except to the extent such offer letters or other agreements or arrangements provide for greater benefits; provided, that, the defined terms in the Severance Plan will supersede the corresponding defined terms or other similar terms in such offer letter or other agreements or arrangements.

The Severance Plan will provide that upon a termination by us for any reason other than for "cause," as defined in the Severance Plan, death or "disability," as defined in the Severance Plan, outside of the change in control period (*i.e.*, the period starting three months before and ending one year after a "change in control," as defined in the Severance Plan), an eligible participant will be entitled to receive, subject to the execution and delivery of an effective release of claims in favor of our company and continued compliance with all applicable restrictive covenants, (i) a lump sum amount equal to 100% of the annual base salary in effect immediately prior to the date of termination for our Chief Executive Officer and 75% of the annual base salary in effect immediately prior to the date of termination for our other named executive officers, (ii) an additional cash lump sum equal to any

earned but unpaid annual bonus for any performance years that were completed as of the date of termination, and (iii) if the named executive officer timely elects, continued group health plan continuation coverage under the Consolidated Omnibus Budget Reconciliation Act, or COBRA, the premiums on behalf of such officer and any eligible dependents for 12 months following termination for our Chief Executive Officer and nine months following termination for our other named executive officers. The payments under (i) and (ii) will be paid within 30 days after the delivery of an effective release of claims by the named executive officers.

The Severance Plan will also provide that upon a (A) termination by us other than for cause, death or disability or (B) resignation for "good reason," as defined in the Severance Plan, in each case within the change in control period, an eligible participant will be entitled to receive, in lieu of the payments and benefits above and subject to the execution and delivery of an effective release of claims in favor of our company and continued compliance with all applicable restrictive covenants, (i) a lump sum amount equal to 150% of the base salary and 150% of the target annual bonus in effect immediately prior to the date of termination for our Chief Executive Officer and 100% of the base salary and 100% of the target annual bonus in effect immediately prior to the date of termination for our other named executive officers, (ii) an additional cash lump sum equal to any earned but unpaid annual bonus for any performance years that were completed as of the date of termination, (iii) if the named executive officer timely elects continued group health plan continuation coverage, the COBRA premiums on behalf of such officer and any eligible dependents for 18 months following termination for our Chief Executive Officer and 12 months following termination for our other named executive officers, and (iv) for all outstanding and unvested equity awards of our company that are subject to vesting held by the participant, full accelerated vesting of such awards; provided, that the performance conditions applicable to any outstanding and unvested equity awards subject to performance-based vesting will be deemed satisfied at the target level specified in the terms of the applicable award agreement.

The payments and benefits provided under the Severance Plan in connection with a change in control may not be eligible for a federal income tax deduction by us pursuant to Section 280G of the Code. These payments and benefits may also subject an eligible participant, including the named executive officers, to an excise tax under Section 4999 of the Code. If the payments or benefits payable in connection with a change in control would be subject to the excise tax imposed under Section 4999 of the Code, then those payments or benefits will be reduced if such reduction would result in a higher net after-tax benefit to the participant.

Other Compensation and Benefits

All of our current named executive officers are eligible to participate in our employee benefit plans, including our medical, dental, and vision plans, in each case on the same basis as all of our other employees. We pay the premiums for the medical, disability, and accidental death and dismemberment insurance for all of our employees, including our named executive officers. We generally do not provide perquisites or personal benefits to our named executive officers.

401(k) Plan

Our named executive officers are eligible to participate in our defined contribution retirement plan that provides eligible employees with an opportunity to save for retirement on a tax advantaged basis. Eligible employees may elect to defer a percentage of their eligible compensation into the plan on a pretax or after tax basis, up to annual limits prescribed by the Code.

Equity Benefit Plans

We believe that our ability to grant equity-based awards is a valuable and necessary compensation tool that aligns the long-term financial interests of our employees, consultants, and directors with the financial interests of our stockholders. In addition, we believe that our ability to grant options and other

equity-based awards helps us to attract, retain, and motivate employees, consultants, and directors, and encourages them to devote their best efforts to our business and financial success. The principal features of our equity incentive plans are summarized below. These summaries are qualified in their entirety by reference to the actual text of the plans, which are filed as exhibits to the registration statement of which this prospectus forms a part.

2022 Equity Incentive Plan

In , our board of directors adopted, and our stockholders approved, our 2022 Plan. We expect our 2022 Plan will become effective on the date of the underwriting agreement related to this offering. Our 2022 Plan came into existence upon its adoption by our board of directors, but no grants will be made under our 2022 Plan prior to its effectiveness. Once our 2022 Plan becomes effective, no further grants will be made under our 2017 Plan.

Awards. Our 2022 Plan provides for the grant of incentive stock options, or ISOs, within the meaning of Section 422 of the Code, to our employees and our parent and subsidiary corporations' employees, and for the grant of nonstatutory stock options, or NSOs, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance awards, and other forms of awards to our employees, directors, and consultants, and any of our affiliates' employees and consultants.

Authorized Shares. Initially, the maximum number of shares of our common stock that may be issued under our 2022 Plan after it becomes effective will not exceed shares of our common stock, which is the sum of (i) new shares, plus (ii) an additional number of shares not to exceed shares, consisting of (a) shares that remain available for the issuance of awards under our 2017 Plan as of immediately prior to the time our 2022 Plan becomes effective and (b) any shares of our common stock subject to outstanding stock options or other stock awards granted under our 2017 Plan that, on or after our 2022 Plan becomes effective, terminate, or expire prior to exercise or settlement; are not issued because the award is settled in cash; are forfeited because of the failure to vest; or are reacquired or withheld (or not issued) to satisfy a tax withholding obligation or the purchase or exercise price. In addition, the number of shares of our common stock reserved for issuance under our 2022 Plan will automatically increase on January 1 of each year for a period of ten years, beginning on January 1, 2023 and continuing through January 1, 2032, in an amount equal to (1) % of the total number of shares of our common stock outstanding on December 31 of the immediately preceding year, or (2) a lesser number of shares determined by our board of directors no later than December 31 of the immediately preceding year. The maximum number of shares of our common stock that may be issued on the exercise of ISOs under our 2022 Plan is shares.

Shares subject to stock awards granted under our 2022 Plan that expire or terminate without being exercised in full or that are paid out in cash rather than in shares will not reduce the number of shares available for issuance under our 2022 Plan. Shares withheld under a stock award to satisfy the exercise, strike or purchase price of a stock award or to satisfy a tax withholding obligation will not reduce the number of shares available for issuance under our 2022 Plan. If any shares of our common stock issued pursuant to a stock award are forfeited back to or repurchased or reacquired by us (i) because of a failure to meet a contingency or condition required for the vesting of such shares; (ii) to satisfy the exercise, strike or purchase price of a stock award; or (iii) to satisfy a tax withholding obligation in connection with a stock award, the shares that are forfeited or repurchased or reacquired will revert to and again become available for issuance under our 2022 Plan.

Plan Administration. Our board of directors, or a duly authorized committee of our board of directors, administers our 2022 Plan. Our board of directors may delegate to one or more of our officers the authority to (i) designate employees (other than officers) to receive specified stock awards; and (ii) determine the number of shares subject to such stock awards. Under our 2022 Plan, our board

of directors has the authority to determine stock award recipients, the types of stock awards to be granted, grant dates, the number of shares subject to each stock award, the fair market value of our common stock, and the provisions of each stock award, including the period of exercisability and the vesting schedule applicable to a stock award.

Under our 2022 Plan, our board of directors also generally has the authority to effect, with the consent of any materially adversely affected participant, (i) the reduction of the exercise, purchase, or strike price of any outstanding option or stock appreciation right; (ii) the cancellation of any outstanding option or stock appreciation right and the grant in substitution therefore of other awards, cash, or other consideration; or (iii) any other action that is treated as a repricing under generally accepted accounting principles.

***Stock Options*.** ISOs and NSOs are granted under stock option agreements adopted by the administrator. The administrator determines the exercise price for stock options, within the terms and conditions of our 2022 Plan, except the exercise price of a stock option generally will not be less than 100% of the fair market value of our common stock on the date of grant. Options granted under our 2022 Plan will vest at the rate specified in the stock option agreement as determined by the administrator.

The administrator determines the term of stock options granted under our 2022 Plan, up to a maximum of ten years. Unless the terms of an optionholder's stock option agreement, or other written agreement between us and the optionholder, provide otherwise, if an optionholder's service relationship with us or any of our affiliates ceases for any reason other than disability, death, or cause, the optionholder may generally exercise any vested options for a period of three months following the cessation of service. This period may be extended in the event that exercise of the option is prohibited by applicable securities laws. If an optionholder's service relationship with us or any of our affiliates ceases due to death, or an optionholder dies within a certain period following cessation of service, a beneficiary may generally exercise any vested options for a period of 18 months following the date of death. If an optionholder's service relationship with us or any of our affiliates ceases due to disability, the optionholder may generally exercise any vested options for a period of 12 months following the cessation of service. In the event of a termination for cause, options generally terminate upon the termination date. In no event may an option be exercised beyond the expiration of its term.

Acceptable consideration for the purchase of common stock issued upon the exercise of a stock option will be determined by the administrator and may include (i) cash, check, bank draft, or money order; (ii) a broker-assisted cashless exercise; (iii) the tender of shares of our common stock previously owned by the optionholder; (iv) a net exercise of the option if it is an NSO; or (v) other legal consideration approved by the administrator.

Unless the administrator provides otherwise, options generally are not transferable except by will or the laws of descent and distribution. Subject to approval of the administrator or a duly authorized officer, an option may be transferred pursuant to a domestic relations order, official marital settlement agreement, or other divorce or separation instrument.

***Tax Limitations on ISOs*.** The aggregate fair market value, determined at the time of grant, of our common stock with respect to ISOs that are exercisable for the first time by an award holder during any calendar year under all of our stock plans may not exceed $100,000. Options or portions thereof that exceed such limit will generally be treated as NSOs. No ISO may be granted to any person who, at the time of the grant, owns or is deemed to own stock possessing more than 10% of our total combined voting power or that of any of our parent or subsidiary corporations unless (i) the option exercise price is at least 110% of the fair market value of the stock subject to the option on the date of grant; and (ii) the term of the ISO does not exceed five years from the date of grant.

Restricted Stock Unit Awards. Restricted stock unit awards are granted under restricted stock unit award agreements adopted by the administrator. Restricted stock unit awards may be granted in consideration for any form of legal consideration that may be acceptable to our board of directors and permissible under applicable law. A restricted stock unit award may be settled by cash, delivery of stock, a combination of cash and stock as deemed appropriate by the administrator, or in any other form of consideration set forth in the restricted stock unit award agreement. Additionally, dividend equivalents may be credited in respect of shares covered by a restricted stock unit award. Except as otherwise provided in the applicable award agreement, or other written agreement between us and the recipient, restricted stock unit awards that have not vested will be forfeited once the participant's continuous service ends for any reason.

Restricted Stock Awards. Restricted stock awards are granted under restricted stock award agreements adopted by the administrator. A restricted stock award may be awarded in consideration for cash, check, bank draft, or money order, past or future services to us, or any other form of legal consideration that may be acceptable to our board of directors and permissible under applicable law. The administrator determines the terms and conditions of restricted stock awards, including vesting and forfeiture terms. If a participant's service relationship with us ends for any reason, we may receive any or all of the shares of common stock held by the participant that have not vested as of the date the participant terminates service with us through a forfeiture condition or a repurchase right.

Stock Appreciation Rights. Stock appreciation rights are granted under stock appreciation right agreements adopted by the administrator. The administrator determines the purchase price or strike price for a stock appreciation right, which generally will not be less than 100% of the fair market value of our common stock on the date of grant. A stock appreciation right granted under our 2022 Plan will vest at the rate specified in the stock appreciation right agreement as determined by the administrator. Stock appreciation rights may be settled in cash or shares of our common stock or in any other form of payment as determined by our board of directors and specified in the stock appreciation right agreement.

The administrator determines the term of stock appreciation rights granted under our 2022 Plan, up to a maximum of ten years. If a participant's service relationship with us or any of our affiliates ceases for any reason other than cause, disability, or death, the participant may generally exercise any vested stock appreciation right for a period of three months following the cessation of service. This period may be further extended in the event that exercise of the stock appreciation right following such a termination of service is prohibited by applicable securities laws. If a participant's service relationship with us, or any of our affiliates, ceases due to disability or death, or a participant dies within a certain period following cessation of service, the participant or a beneficiary may generally exercise any vested stock appreciation right for a period of 12 months in the event of disability and 18 months in the event of death. In the event of a termination for cause, stock appreciation rights generally terminate upon the termination date. In no event may a stock appreciation right be exercised beyond the expiration of its term.

Performance Awards. Our 2022 Plan permits the grant of performance awards that may be settled in stock, cash or other property. Performance awards may be structured so that the stock or cash will be issued or paid only following the achievement of certain pre-established performance goals during a designated performance period. Performance awards that are settled in cash or other property are not required to be valued in whole or in part by reference to, or otherwise based on, our common stock.

The performance goals may be based on any measure of performance selected by our board of directors. The performance goals may be based on company-wide performance or performance of one or more business units, divisions, affiliates, or business segments, and may be either absolute or

relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by our board of directors at the time the performance award is granted, our board will appropriately make adjustments in the method of calculating the attainment of performance goals as follows: (i) to exclude restructuring or other nonrecurring charges; (ii) to exclude exchange rate effects; (iii) to exclude the effects of changes to generally accepted accounting principles; (iv) to exclude the effects of any statutory adjustments to corporate tax rates; (v) to exclude the effects of items that are "unusual" in nature or occur "infrequently" as determined under generally accepted accounting principles; (vi) to exclude the dilutive effects of acquisitions or joint ventures; (vii) to assume that any business divested by us achieved performance objectives at targeted levels during the balance of a performance period following such divestiture; (viii) to exclude the effect of any change in the outstanding shares of our common stock by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (ix) to exclude the effects of stock-based compensation and the award of bonuses under our bonus plans; (x) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to be expensed under generally accepted accounting principles; and (xi) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under generally accepted accounting principles.

Other Stock Awards. The administrator may grant other awards based in whole or in part by reference to our common stock. The administrator will set the number of shares under the stock award (or cash equivalent) and all other terms and conditions of such awards.

Non-Employee Director Compensation Limit. The aggregate value of all compensation granted or paid to any non-employee director with respect to any fiscal year, including awards granted and cash fees paid by us to such non-employee director, will not exceed $ in total value, except such amount will increase to $ for the first year for newly appointed or elected non-employee directors.

Changes to Capital Structure. In the event there is a specified type of change in our capital structure, such as a stock split, reverse stock split, or recapitalization, appropriate adjustments will be made to (i) the class and maximum number of shares reserved for issuance under our 2022 Plan, (ii) the class and maximum number of shares by which the share reserve may increase automatically each year, (iii) the class and maximum number of shares that may be issued on the exercise of ISOs and (iv) the class and number of shares and exercise price, strike price, or purchase price, if applicable, of all outstanding stock awards.

Corporate Transactions. In the event of a corporate transaction (as defined in the 2022 Plan), unless otherwise provided in a participant's stock award agreement or other written agreement with us or one of our affiliates or unless otherwise expressly provided by the administrator at the time of grant, any stock awards outstanding under our 2022 Plan may be assumed, continued or substituted for by any surviving or acquiring corporation (or its parent company), and any reacquisition or repurchase rights held by us with respect to the stock award may be assigned to the successor (or its parent company). If the surviving or acquiring corporation (or its parent company) does not assume, continue or substitute for such stock awards, then (i) with respect to any such stock awards that are held by participants whose continuous service has not terminated prior to the effective time of the corporate transaction, or current participants, the vesting (and exercisability, if applicable) of such stock awards will be accelerated in full (or, in the case of performance awards with multiple vesting levels depending on the level of performance, vesting will accelerate at 100% of the target level) to a date prior to the effective time of the corporate transaction (contingent upon the effectiveness of the corporate transaction), and such stock awards will terminate if not exercised (if applicable) at or prior to the effective time of the corporate transaction, and any reacquisition or repurchase rights held by us with

respect to such stock awards will lapse (contingent upon the effectiveness of the corporate transaction); and (ii) any such stock awards that are held by persons other than current participants will terminate if not exercised (if applicable) prior to the effective time of the corporate transaction, except that any reacquisition or repurchase rights held by us with respect to such stock awards will not terminate and may continue to be exercised notwithstanding the corporate transaction.

In the event a stock award will terminate if not exercised prior to the effective time of a corporate transaction, the administrator may provide, in its sole discretion, that the holder of such stock award may not exercise such stock award but instead will receive a payment equal in value to the excess (if any) of (i) the value of the property the participant would have received upon the exercise of the stock award, over (ii) any per share exercise price payable by such holder, if applicable. In addition, any escrow, holdback, earn out, or similar provisions in the definitive agreement for the corporate transaction may apply to such payment to the same extent and in the same manner as such provisions apply to the holders of our common stock.

***Change in Control*.** Stock awards granted under our 2022 Plan may be subject to acceleration of vesting and exercisability upon or after a change in control (as defined in the 2022 Plan) as may be provided in the applicable stock award agreement or in any other written agreement between us or any affiliate and the participant, but in the absence of such provision, no such acceleration will automatically occur.

***Plan Amendment or Termination*.** Our board of directors has the authority to amend, suspend, or terminate our 2022 Plan at any time, provided that such action does not materially impair the existing rights of any participant without such participant's written consent. Certain material amendments also require the approval of our stockholders. No ISOs may be granted after the tenth anniversary of the date our board of directors adopted our 2022 Plan. No stock awards may be granted under our 2022 Plan while it is suspended or after it is terminated.

2022 Employee Stock Purchase Plan

In , our board of directors adopted, and our stockholders approved, our ESPP. Our ESPP will become effective immediately prior to and contingent upon the execution of the underwriting agreement related to this offering. The purpose of our ESPP is to secure the services of new employees, to retain the services of existing employees, and to provide incentives for such individuals to exert maximum efforts toward our success and that of our affiliates. Our ESPP includes two components. One component is designed to allow eligible U.S. employees to purchase our common stock in a manner that may qualify for favorable tax treatment under Section 423 of the Code. The other component permits the grant of purchase rights that do not qualify for such favorable tax treatment in order to allow deviations necessary to permit participation by eligible employees who are foreign nationals or employed outside of the United States while complying with applicable foreign laws.

***Share Reserve*.** Our ESPP authorizes the issuance of shares of our common stock under purchase rights granted to our employees or to employees of any of our designated affiliates. The number of shares of our common stock reserved for issuance will automatically increase on January 1 of each year for a period of ten years, beginning on January 1, 2023 and continuing through January 1, 2032, by the lesser of (i) % of the total number of shares of our common stock outstanding on December 31 of the immediately preceding year; and (ii) shares, except before the date of any such increase, our board of directors may determine that such increase will be less than the amount set forth in clauses (i) and (ii).

***Administration*.** Our board of directors, or a duly authorized committee of our board of directors, administers our ESPP. Our ESPP is implemented through a series of offerings under which eligible

employees are granted purchase rights to purchase shares of our common stock on specified dates during such offerings. Under our ESPP, our board of directors may specify offerings with durations of not more than 27 months and to specify shorter purchase periods within each offering. Each offering will have one or more purchase dates on which shares of our common stock will be purchased for employees participating in the offering. Our ESPP provides that an offering may be terminated under certain circumstances.

***Payroll Deductions*.** Generally, all regular employees, including executive officers, employed by us or by any of our designated affiliates, may participate in our ESPP and to contribute, normally through payroll deductions, a percentage of their earnings (as defined in our ESPP) for the purchase of our common stock under our ESPP. Unless otherwise determined by our board of directors, common stock will be purchased for the accounts of employees participating in our ESPP at a price per share that is not less than the lesser of (i) 85% of the fair market value of a share of our common stock on the first day of an offering; or (ii) 85% of the fair market value of a share of our common stock on the date of purchase.

***Limitations*.** Employees may have to satisfy one or more of the following service requirements before participating in our ESPP, as determined by our board of directors: (i) being customarily employed for more than 20 hours per week; (ii) being customarily employed for more than five months per calendar year; or (iii) continuous employment with us or one of our affiliates for a period of time (not to exceed two years). No employee may purchase shares under our ESPP at a rate in excess of $25,000 worth of our common stock (based on the fair market value per share of our common stock at the beginning of an offering) for each calendar year such a purchase right is outstanding. Finally, no employee will be eligible for the grant of any purchase rights under our ESPP if immediately after such rights are granted, such employee has voting power over 5% or more of our outstanding capital stock measured by vote or value under Section 424(d) of the Code.

***Changes to Capital Structure*.** Our ESPP provides that in the event there occurs a change in our capital structure through such actions as a stock split, merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, liquidating dividend, combination of shares, exchange of shares, change in corporate structure, or similar transaction, our board of directors will make appropriate adjustments to: (i) the class(es) and maximum number of shares reserved under our ESPP; (ii) the class(es) and maximum number of shares by which the share reserve may increase automatically each year; (iii) the class(es) and number of shares subject to, and purchase price applicable to, outstanding offerings and purchase rights; and (iv) the class(es) and number of shares that are subject to purchase limits under ongoing offerings.

***Corporate Transactions*.** Our ESPP provides that in the event of a corporate transaction (as defined in the ESPP), any then-outstanding rights to purchase our common stock under our ESPP may be assumed, continued, or substituted for by any surviving or acquiring entity (or its parent company). If the surviving or acquiring entity (or its parent company) elects not to assume, continue, or substitute for such purchase rights, then the participants' accumulated payroll contributions will be used to purchase shares of our common stock within ten business days before such corporate transaction, and such purchase rights will terminate immediately after such purchase.

***Plan Amendment or Termination*.** Our board of directors has the authority to amend or terminate our ESPP, except in certain circumstances such amendment or termination may not materially impair any outstanding purchase rights without the holder's consent. We will obtain stockholder approval of any amendment to our ESPP as required by applicable law or listing requirements.

Amended and Restated 2017 Equity Incentive Plan

Our board of directors adopted, and our stockholders approved, the AN2 Therapeutics, Inc. Amended and Restated 2017 Equity Incentive Plan, or 2017 Plan, in February 2017. The 2017 Plan was most recently amended in November 2019. The 2017 Plan will be terminated on the date the 2022 Plan becomes effective, and thereafter no further stock awards will be granted under the 2017 Plan. However, any outstanding stock awards granted under the 2017 Plan will remain outstanding, subject to the terms of our 2017 Plan and award agreements, until such outstanding options are exercised or until any stock awards terminate or expire by their terms.

Awards. Our 2017 Plan provides for the grant of incentive stock options, or ISOs, nonstatutory stock options, or NSOs, restricted stock units, stock appreciation rights, restricted stock awards, and other awards. ISOs may only be granted to our employees, including employees of any parent or subsidiary. All other stock awards may be granted to our employees, directors, and consultants, including employees and consultants of any parent or subsidiary.

Authorized Shares. As of December 31, 2021, options to purchase 675,386 shares of our common stock were outstanding, and 398,506 shares of our common stock remained available for future issuance under our 2017 Plan. The options outstanding as of December 31, 2021 had a weighted-average exercise price of $14.00 per share. Subject to capitalization adjustments, the maximum aggregate number of shares of our common stock that may be issued under the 2017 Plan is 1,249,274 shares, and the maximum number of shares issuable pursuant to ISOs is 1,249,274 shares.

Plan Administration. Our board or a duly authorized committee of our board administers our 2017 Plan and the awards granted under it. Under our 2017 Plan, the administrator has the authority to, among other things, determine who will be granted stock awards, to determine the terms and conditions of each stock award (including the number of shares subject to the stock award, when the stock award will vest and, as applicable, become exercisable), to accelerate the time(s) at which a stock award may vest or be exercised, and to construe and interpret the terms of our 2017 Plan and stock awards granted thereunder.

Options. Options granted under our 2017 Plan have terms substantially similar to options that may be granted under our 2022 Plan once it becomes effective.

Changes to Capital Structure. In the event there is a specified type of change in our capital structure, such as a stock split, reverse stock split, or recapitalization, proportionate adjustments will be made to (i) the class and maximum number of shares reserved for issuance under our 2017 Plan, and (ii) the class and number of shares and exercise price or purchase price, if applicable, of all outstanding stock awards.

Corporate Transactions. Our 2017 Plan provides that in the event of a "corporate transaction" (as defined under our 2017 Plan), stock awards outstanding under our 2017 Plan will be treated as provided in the agreement evidencing such acquisition or other combination, which may provide for one or more of the following: (i) acquisition or continuation of outstanding stock awards by the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company); (ii) assignment of reacquisition or repurchase rights we hold to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company); (iii) acceleration of vesting, in whole or in part, of a stock award; (iv) lapse, in whole or in part, of any reacquisition or repurchase rights we hold; (v) cancellation of the stock award to the extent not vested or exercised prior to the effective time of the "corporate transaction" in exchange for cash consideration; and (vi) payment in such form as may be determined by our board equal to the excess, if any, of (A) the value of the property (B) over the applicable exercise price. Our board need not take the same action or actions with respect to all stock awards or portions thereof or with respect to all participants.

***Plan Amendment or Termination*.** Our board has the authority to terminate or amend our 2017 Plan at any time, except any amendment of our 2017 Plan will be subject to stockholder approval if required by applicable law. The termination or amendment of our 2017 Plan will not affect any share previously issued or any stock award previously granted under our 2017 Plan. As described above, our 2017 Plan will be terminated upon the effective date of the 2022 Plan and no future awards will be granted under the 2017 Plan following such termination.

Limitations on Liability and Indemnification

Our amended and restated certificate of incorporation, which will become effective immediately after the closing of this offering, will contain provisions that limit the liability of our current and former directors for monetary damages to the fullest extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for any breach of fiduciary duties as directors, except liability for:

- any breach of the director's duty of loyalty to the corporation or its stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

Such limitation of liability does not apply to liabilities arising under federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our amended and restated certificate of incorporation will authorize us to indemnify our directors, officers, employees and other agents to the fullest extent permitted by Delaware law. Our amended and restated bylaws will provide that we are required to indemnify our directors and officers to the fullest extent permitted by Delaware law and may indemnify our other employees and agents. Our amended and restated bylaws will also provide that, on satisfaction of certain conditions, we will advance expenses incurred by a director or officer in advance of the final disposition of any action or proceeding, and permit us to secure insurance on behalf of any officer, director, employee, or other agent for any liability arising out of his or her actions in that capacity regardless of whether we would otherwise be permitted to indemnify him or her under the provisions of Delaware law. We have entered and expect to continue to enter into agreements to indemnify our directors, executive officers and other employees as determined by the board of directors. With certain exceptions, these agreements provide for indemnification for related expenses including attorneys' fees, judgments, fines, and settlement amounts incurred by any of these individuals in any action or proceeding.

We believe that these amended and restated certificate of incorporation and amended and restated bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers. We also maintain customary directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted for directors, executive officers, or persons controlling us, we have been informed that, in the opinion of

the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Rule 10b5-1 Plans

Our directors, officers and key employees may adopt written plans, known as Rule 10b5-1 plans, in which they will contract with a broker to buy or sell shares of our common stock on a periodic basis. Under a Rule 10b5-1 plan, a broker executes trades under parameters established by the director or officer when entering into the plan, without further direction from them. The director or officer may amend a Rule 10b5-1 plan in some circumstances and may terminate a plan at any time. Our directors and executive officers may also buy or sell additional shares outside of a Rule 10b5-1 plan when they do not possess of material nonpublic information, subject to compliance with the terms of our insider trading policy. During the first 180 days from this offering, the sale of any shares under such plan would be subject to the lock-up agreement that the director or officer has entered into with the underwriters.

CERTAIN RELATIONSHIPS AND RELATED PERSON TRANSACTIONS

The following includes a summary of transactions since our inception and any currently proposed transactions to which we have been or are to be a party in which the amount involved exceeded or will exceed $120,000, and in which any of our directors, executive officers or, to our knowledge, beneficial owners of more than 5% of our capital stock or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest, other than equity and other compensation, termination, change in control and other arrangements, which are described under the section titled “Executive Compensation.” We also describe below certain other transactions with our directors, executive officers and stockholders.

Series A Redeemable Convertible Preferred Stock Financing

In multiple closings held between November 2019 and December 2020, we issued and sold an aggregate of 2,582,403 shares of our Series A redeemable convertible preferred stock. For financial reporting purposes, the fair market value of 579,064 shares of Series A redeemable convertible preferred stock issued to Anacor, pursuant to our license agreement with Anacor, was $5.79 per share, for a total fair market value of approximately $3.4 million. The issuance price for the remaining 2,003,339 other shares of Series A redeemable convertible preferred stock was $5.99 per share, for an aggregate purchase price of approximately $12.0 million.

The following table summarizes the Series A redeemable convertible preferred stock purchased by holders of more than 5% of our capital stock and entities affiliated with our executive officers and members of our board of directors.

Participants[1]	Shares of Series A Redeemable Convertible Preferred Stock Purchased (#)	Aggregate Purchase Price ($)
Entities affiliated with Adjuvant[2]	834,724	4,999,996.76
Entities affiliated with MGC Venture Partners[3]	262,775	1,574,022.25
Anacor Pharmaceuticals, Inc.[4]	579,064	3,352,780.56
Brii Biosciences Limited[5]	500,834	2,999,995.66
Z Investments LLC[6]	41,735	249,992.65
Total	**2,219,132**	**13,176,787.88**

(1) Additional details regarding these stockholders and their equity holdings are included in this prospectus under the section titled “Principal Stockholders.”

(2) Adjuvant Global Health Technology Fund L.P. and Adjuvant Global Health Technology Fund DE, L.P. (together, Adjuvant) is a holder of 5% or more of our capital stock, and is affiliated with Kabeer Aziz, one of our non-employee directors.

(3) MGC Venture Partners 2018, LP and MGC Venture Partners QP 2018 LP (together, MGC Venture Partners) is a holder of 5% or more of our capital stock, and is affiliated with Rob Readnour, one of our non-employee directors.

(4) Anacor is a holder of 5% or more of our capital stock.

(5) Brii Biosciences is a holder of 5% or more of our capital stock.

(6) Z Investments, LLC is affiliated with Joseph Zakrzewski, one of our non-employee directors.

Series B Redeemable Convertible Preferred Stock Financing

In March 2021, we issued and sold an aggregate of 2,266,661 shares of our Series B redeemable convertible preferred stock at a purchase price of $35.29 per share for an aggregate purchase price of approximately $80.0 million.

The following table summarizes the Series B redeemable convertible preferred stock purchased by holders of more than 5% of our capital stock and entities affiliated with our executive officers and members of our board of directors.

Participants[1]	Shares of Series B Redeemable Convertible Preferred Stock Purchased (#)	Aggregate Purchase Price ($)
Entities affiliated with Adjuvant[2]	198,333	6,999,972.84
Entities affiliated with MGC Venture Partners[3]	56,666	1,999,972.08
Entities affiliated with RA Capital[4]	850,001	29,999,969.30
Entities affiliated with Biotechnology Value Fund[5]	389,584	13,749,993.29
Total	**1,494,584**	**52,749,907.51**

(1) Additional details regarding these stockholders and their equity holdings are included in this prospectus under the section titled "Principal Stockholders."

(2) Adjuvant is a holder of 5% or more of our capital stock, and is affiliated with Kabeer Aziz, one of our non-employee directors.

(3) MGC Venture Partners is a holder of 5% or more of our capital stock, and is affiliated with Rob Readnour, one of our non-employee directors.

(4) RA Capital Healthcare Fund, L.P. and RA Capital Nexus Fund II, L.P. (together, RA Capital) is a holder of 5% or more of our capital stock.

(5) Biotechnology Value Fund, L.P., Biotechnology Value Fund II, L.P., and Biotechnology Value Trading Fund OS, L.P. (together, Biotechnology Value Fund) is a holder of 5% or more of our capital stock.

Employment Agreements and Stock Option Grants to Directors and Executive Officers

We have entered into employment agreements with certain of our named executive officers, and granted stock options to our named executive officers and certain of our directors, as more fully described in the sections titled "Executive Compensation" and "Management—Non-Employee Director Compensation."

Investors' Rights Agreement

In March 2021, we entered into an Amended and Restated Investors' Rights Agreement (the Rights Agreement) with certain holders of more than 5% of our outstanding capital stock, including Adjuvant, MGC, Anacor, Brii Biosciences, RA Capital, and Biotechnology Value Fund, and certain affiliates of our directors.

The Rights Agreement grants to the holders of our outstanding redeemable convertible preferred stock certain rights, including certain registration rights with respect to the registrable securities held by them. See the section titled "Description of Capital Stock—Registration Rights" for additional information. In addition, the Rights Agreement imposes certain affirmative obligations on us, including our obligation to, among other things, (i) grant each holder who holds at least 350,000 shares of our

redeemable convertible preferred stock a right of first offer with respect to future sales of our equity, excluding the shares to be offered and sold in this offering, and grant certain information and inspection rights to such Major Investors. Each of these obligations will terminate in connection with the closing of this offering.

Voting Agreement

In March 2021, we entered into an Amended and Restated Voting Agreement, which was subsequently amended in April 2021 and January 2022, or the Voting Agreement, with certain holders of more than 5% of our outstanding capital stock, including Adjuvant, MGC, Anacor, Brii Biosciences, RA Capital, and Biotechnology Value Fund, and certain affiliates of our directors.

Pursuant to the Voting Agreement, as amended, Adjuvant and MGC, collectively, have the right to designate two members to be elected to our board of directors. See the section titled “Management—Composition of Our Board of Directors.” The Voting Agreement will terminate by its terms in connection with the closing of this offering and none of our stockholders will have any continuing rights regarding the election or designation of members of our board of directors following this offering.

Right of First Refusal and Co-Sale Agreement

In March 2021, we entered into an Amended and Restated Right of First Refusal and Co-Sale Agreement, or the Co-Sale Agreement, with certain holders of more than 5% of our outstanding capital stock, including Adjuvant, MGC, Anacor, Brii Biosciences, RA Capital, and Biotechnology Value Fund, and certain affiliates of our directors.

Pursuant to the Co-Sale Agreement, we have a right of first refusal in respect of certain sales of securities by certain holders of our common stock and redeemable convertible preferred stock. To the extent we do not exercise such right in full, the Major Investors are granted certain rights of first refusal and co-sale in respect of such sale. The Co-Sale Agreement will terminate in connection with the closing of this offering.

Limitations on Liability and Indemnification Agreements

Our amended and restated certificate of incorporation will contain provisions limiting the liability of directors, and our amended and restated bylaws will provide that we will indemnify each of our directors and officers to the fullest extent permitted under Delaware law. Our amended and restated certificate of incorporation and amended and restated bylaws will also provide our board of directors with discretion to indemnify our employees and other agents when determined appropriate by the board. In addition, we have entered into or intend to enter into an indemnification agreement with each of our directors and executive officers, which will require us to indemnify them. For more information regarding these agreements, see the section titled “Executive Compensation—Limitations on Liability and Indemnification.”

Policies and Procedures for Transactions with Related Persons

Prior to closing of this offering, we intend to adopt a written policy that our executive officers, directors, nominees for election as a director, beneficial owners of more than 5% of any class of our common stock, and any members of the immediate family of any of the foregoing persons are not permitted to enter into a related person transaction with us without the approval or ratification of our board of directors or our audit committee. Any request for us to enter into a transaction with an executive officer, director, nominee for election as a director, beneficial owner of more than 5% of any class of our common stock, or any member of the immediate family of any of the foregoing persons, in which the amount involved exceeds $120,000 (or, if less, 1% of the average of our total assets in a fiscal year) and such person would have a direct or indirect interest, must be presented to our board of directors or our audit committee for review, consideration and approval. In approving or rejecting any

such proposal, our board of directors or our audit committee is to consider the material facts of the transaction, including whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the related person's interest in the transaction.

PRINCIPAL STOCKHOLDERS

The following table sets forth information regarding beneficial ownership of our capital stock as of February 15, 2022 by:

- each person, or group of affiliated persons, known by us to beneficially own more than 5% of our common stock;
- each of our directors;
- each our of named executive officers; and
- all of our current executive officers and directors as a group.

We have determined beneficial ownership in accordance with the rules and regulations of the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. Except as indicated by the footnotes below, we believe, based on information furnished to us, that the persons and entities named in the table below have sole voting and sole investment power with respect to all shares that they beneficially own, subject to applicable community property laws.

Applicable percentage ownership before the offering is based on 5,997,917 shares of our common stock outstanding as of February 15, 2022, after giving effect to the automatic conversion of all 4,849,064 outstanding shares of our redeemable convertible preferred stock as of December 31, 2021 into an equivalent number of shares of our common stock in connection with the closing of this offering.

Applicable percentage ownership after the offering is based on shares of common stock outstanding immediately after the closing of this offering, after giving effect to the automatic conversion of all 4,849,064 shares of our outstanding redeemable convertible preferred stock as of December 31, 2021 into an equivalent number of shares of our common stock in connection with the closing of this offering. In computing the number of shares beneficially owned by a person and the percentage ownership of such person, we deemed to be outstanding all shares subject to options held by the person that are currently exercisable, or exercisable within 60 days of February 15, 2022. However, except as described above, we did not deem such shares outstanding for the purpose of computing the percentage ownership of any other person.

Unless otherwise indicated, the address for each beneficial owner listed in the table below is c/o AN2 Therapeutics, Inc., 1800 El Camino Real, Suite D, Menlo Park, California 94027.

Name of Beneficial Owner	Number of Shares Beneficially Owned (#)	Percentage of Shares Beneficially Owned	
		Before Offering (%)	After Offering (%)
Greater than 5% Holders:			
Entities affiliated with Adjuvant Global Health Technology Fund(1)	1,033,057	17.2%	
Entities affiliated with RA Capital Healthcare Fund(2)	850,001	14.2	
Anacor Pharmaceuticals, Inc.(3)	579,064	9.7	
Brii Biosciences Limited(4)	500,834	8.4	
Entities affiliated with Biotechnology Value Fund(5)	389,584	6.5	
Entities affiliated with MGC Venture Partners(6)	319,441	5.3	
Directors and Named Executive Officers:			
Eric Easom(7)	576,434	9.6%	
Paul Eckburg, M.D.(8)	9,651	*	
Lucy Day(9)	22,793	*	
Kabeer Aziz(10)	1,033,057	17.2	
Gilbert Lynn Marks, M.D.(11)	11,088	*	
Patricia Martin(12)	3,246	*	
Rob Readnour, Ph.D.(13)	319,441	5.3	
Melvin Spigelman, M.D.(14)	400	*	
Stephanie Wong(15)	3,246	*	
Joseph Zakrzewski(16)	269,721	4.5	
All directors and executive officers as a group (12 persons)(17)	2,302,192	37.6%	

* Represents beneficial ownership of less than 1%.

(1) Consists of (i) 701,947 shares of common stock issuable upon conversion of Series A redeemable convertible preferred stock and 166,785 shares of common stock issuable upon conversion of Series B redeemable convertible preferred stock held by Adjuvant Global Health Technology Fund L.P. and (ii) 132,777 shares of common stock issuable upon conversion of Series A redeemable convertible preferred stock and 31,548 shares of common stock issuable upon conversion of Series B redeemable convertible preferred stock held by Adjuvant Global Health Technology Fund DE, L.P. Adjuvant Capital GP, L.P. has shared voting and shared dispositive power over the shares held by Adjuvant Global Health Technology Fund L.P. and Adjuvant Global Health Technology Fund DE L.P. Kabeer Aziz is a limited partner of Adjuvant Capital GP, L.P. and shares voting and dispositive power over the shares held by Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P. Mr. Aziz, however, disclaims beneficial ownership of such shares of common stock, except to the extent of any pecuniary interest therein. The address of the persons and entities listed above is 501 Fifth Avenue, Room 1404, New York, New York 10017.

(2) Consists of (i) 722,501 shares of common stock issuable upon conversion of Series B redeemable convertible preferred stock held by RA Capital Healthcare Fund, L.P. (RA Healthcare) and (ii) 127,500 shares of common stock issuable upon conversion of Series B redeemable convertible preferred stock held by RA Capital Nexus Fund II, L.P. (RA Nexus Fund). RA Capital Management, L.P. (RACM) is the investment manager for RA Healthcare and RA Nexus Fund. The general partner of RACM is RA Capital Management GP, LLC. The general partner of RA Healthcare is RA Capital Healthcare Fund GP, LLC. The general partner of RA Nexus Fund is RA Capital Nexus Fund II GP, LLC. Peter Kolchinsky and Rajeev Shah are the managing members of RA Capital Management GP, LLC, RA Capital Healthcare Fund GP, LLC, and RA Capital Nexus Fund II GP, LLC and have the power to vote or dispose of the shares held by RA Healthcare and Nexus Fund II. The address of the persons and entities listed above is 200 Berkeley Street, 18th Floor, Boston, Massachusetts 02116.

(3) Consists of shares of common stock issuable upon conversion of Series A redeemable convertible preferred stock. The principal business address for Anacor Pharmaceuticals, Inc. is c/o Pfizer Inc. 235 East 42nd Street, New York, New York 10017.

(4) Consists of shares of common stock issuable upon conversion of Series A redeemable convertible preferred stock. The principal business address for Brii Biosciences Limited is WeWork One Center, Unit 05-130, 110 Corcoran Street, Durham, North Carolina 27701.

(5) Consists of (i) 209,764 shares of common stock issuable upon conversion of Series B redeemable convertible preferred stock held by Biotechnology Value Fund, L.P. (BVF), (ii) 154,627 shares of common stock issuable upon conversion of Series B redeemable convertible preferred stock held by Biotechnology Value Fund II, L.P. (BVF2), and (iii) 25,193 shares of common stock issuable upon conversion of Series B redeemable convertible preferred stock held by Biotechnology Value Trading Fund OS, L.P. (Trading Fund). BVF I GP LLC (BVF GP) is the general partner of BVF and disclaims beneficial ownership of shares of common stock held by BVF. BVF II GP LLC (BVF2 GP) is the general partner of BVF2 and disclaims beneficial ownership of shares of common stock held by BVF2. BVF GP Holdings LLC (BVF GPH) is the sole member of each of BVF GP and BVF2 GP and disclaims beneficial ownership of the shares of common stock held in aggregate by BVF and BVF2. BVF Partners OS, Ltd. (Partners OS) is the general partner of the Trading Fund and disclaims beneficial ownership of the shares of common stock held by Trading Fund. BVF Partners L.P. is the investment manager of BVF and disclaims beneficial ownership of the shares of common stock held by BVF, BVF2, and Trading Fund. BVF Inc. is the general partner of, BVF Partners L.P., OS Partners and disclaims beneficial ownership of the shares of common stock held by BVF, BVF2, and Trading Fund. Mark Lampert is a director and officer of BVF Inc. and disclaims beneficial ownership of the shares of common stock held by BVF, BVF2, and Trading Fund. The business address of BVF, BVF GP, BVF2, BVF2 GP, BVF GPH, BVF Partners L.P., OS Partners, BVF Inc., and Mr. Lampert is 44 Montgomery St., 40th Floor, San Francisco, California 94104. The business address of Trading Fund and Partners OS is PO Box 309 Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

(6) Consists of (i) 141,583 shares of common stock issuable upon conversion of Series A redeemable convertible preferred stock and 30,532 shares of common stock issuable upon conversion of Series B redeemable convertible preferred stock held by MGC Venture Partners QP 2018 LP (MGC 2018 QP) and (ii) 121,192 shares of common stock issuable upon conversion of Series A redeemable convertible preferred stock and 26,134 shares of common stock issuable upon conversion of Series B redeemable convertible preferred stock held by MGC Venture Partners 2018, LP. (MGC 2018 LP). MGC Venture Partners 2018 GP, LLC (MGC 2018 GP) is the general partner of MGC 2018 LP and MGC 2018 QP. MGC 2018 GP has shared voting and shared dispositive power over the shares held by MGC 2018 LP and MGC 2018 QP. Dr. Readnour is a member of MGC 2018 QP and MGC 2018 LP and a managing partner of MGC 2018 GP and has shared voting power and shared dispositive power over the shares of common stock held by MGC 2018 LP and MGC 2018 QP. Mr. Readnour, however, disclaims beneficial ownership of such shares of common stock, except to the extent of any pecuniary interest therein. The address of each of the foregoing entities and Dr. Readnour is 3835 Cleghorn Avenue, Suite 300 Nashville, Tennessee 37215.

(7) Consists of (i) 467,500 shares of common stock held by the Easom Living Trust dated August 21, 2019 of which Mr. Easom is a trustee, (ii) 41,250 shares of common stock held by the C. Easom Irrevocable Trust dated October 8, 2021 of which Mr. Easom is a trustee, (iii) 41,250 shares of common stock held by the Jude Easom Irrevocable Trust dated October 8, 2021 of which Mr. Easom is a trustee, (iv) 2,086 shares of common stock held by Mr. Easom issuable upon conversion of Series A redeemable convertible preferred stock, and (v) 24,348 shares of common stock that may be acquired by Mr. Easom pursuant to the exercise of stock options within 60 days of February 15, 2022.

(8) Consists of (i) 7,773 shares of common stock and (ii) 1,878 shares of common stock that may be acquired by Dr. Eckburg pursuant to the exercise of stock options within 60 days of February 15, 2022.

(9) Consists of 22,793 shares of common stock that may be acquired by Ms. Day pursuant to the exercise of stock options within 60 days of February 15, 2022.

(10) Consists of the shares described in footnote (1) above. Mr. Aziz disclaims beneficial ownership of all such shares except to the extent of his pecuniary interests therein.

(11) Consists of (i) 9,703 shares of common stock, 4,529 of which shares will be vested within 60 days of February 15, 2022, and 5,174 of which shares will continue to be subject to our repurchase right and (ii) 1,385 shares of common stock that may be acquired by Dr. Marks pursuant to the exercise of stock options within 60 days of February 15, 2022.

(12) Consists of 3,246 shares of common stock that may be acquired by Ms. Martin pursuant to the exercise of stock options within 60 days of February 15, 2022.

(13) Consists of the shares described above in footnote (6). Dr. Readnour disclaims beneficial ownership of all such shares except to the extent of his pecuniary interests therein.

(14) Consists of 400 shares of common stock that may be acquired by Dr. Spigelman pursuant to the exercise of stock options within 60 days of February 15, 2022.

(15) Consists of 3,246 shares of common stock that may be acquired by Ms. Wong pursuant to the exercise of stock options within 60 days of February 15, 2022.

(16) Consists of (i) 215,000 shares of common stock held by Z3 Trust, of which Mr. Zakrzewski is an affiliate, (ii) 41,735 shares of common stock issuable upon conversion of Series A redeemable convertible preferred stock held by Z Investments, LLC, of which Mr. Zakrzewski is an affiliate, and (iii) 12,986 shares of common stock that may be acquired by Mr. Zakrzewski pursuant to the exercise of stock options within 60 days of February 15, 2022.

(17) See footnotes (7) through (16) above; also includes Kevin Krause and Sanjay Chanda, Ph.D., who are executive officers but not named executive officers.

DESCRIPTION OF CAPITAL STOCK

General

The following description of our capital stock and certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws are summaries and are qualified by reference to the amended and restated certificate of incorporation, which will become effective immediately after the closing of this offering, and the amended and restated bylaws, which will become effective upon the closing of this offering. Copies of these documents have been filed with the SEC as exhibits to our registration statement, of which this prospectus forms a part. The descriptions of the common stock and preferred stock reflect changes to our capital structure that will be in effect on the closing of this offering.

Upon filing of our amended and restated certificate of incorporation and the closing of this offering, our authorized capital stock will consist of shares of common stock, par value $0.00001 per share and shares of preferred stock, par value $0.00001 per share. All of our authorized shares of preferred stock will be undesignated.

As of February 15, 2022, after giving effect to the automatic conversion of all 4,849,064 shares of our outstanding redeemable convertible preferred stock as of December 31, 2021 into an equivalent number of shares of our common stock upon the closing of this offering, there were 5,997,917 shares of common stock outstanding and held of record by 69 stockholders.

Common Stock

Voting Rights

The common stock is entitled to one vote per share on any matter that is submitted to a vote of our stockholders. Our amended and restated certificate of incorporation does not provide for cumulative voting for the election of directors. Our amended and restated certificate of incorporation establishes a classified board of directors that is divided into three classes with staggered three-year terms. Only the directors in one class will be subject to election by a plurality of the votes cast at each annual meeting of our stockholders, with the directors in the other classes continuing for the remainder of their respective three-year terms. The affirmative vote of holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of capital stock, voting as a single class, will be required to amend certain provisions of our amended and restated certificate of incorporation, including provisions relating to amending our amended and restated bylaws, the classified structure of our board of directors, the size of our board of directors, removal of directors, director liability, vacancies on our board of directors, special meetings, stockholder notices, actions by written consent, and exclusive jurisdiction.

Economic Rights

Except as otherwise expressly provided in our amended and restated certificate of incorporation or required by applicable law, all shares of our common stock will have the same rights and privileges and rank equally, share ratably and be identical in all respects for all matters, including those described below.

***Dividends*.** Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of our common stock are entitled to receive dividends out of funds legally available if our board of directors, in its discretion, determines to issue dividends and then only at the times and in the amounts that our board of directors may determine. See the section titled “Dividend Policy” for further information.

***Liquidation Rights*.** On our liquidation, dissolution, or winding-up, the holders of our stock will be entitled to share equally, identically, and ratably in all assets remaining after the payment of any

liabilities, liquidation preferences, and accrued or declared but unpaid dividends, if any, with respect to any outstanding preferred stock, unless a different treatment is approved by the affirmative vote of the holders of a majority of the outstanding shares of such affected class, voting separately as a class.

No Preemptive or Similar Rights

The holders of shares of our common stock are not entitled to preemptive rights, and are not subject to conversion, redemption, or sinking fund provisions.

Fully Paid and Non-Assessable

In connection with this offering, our legal counsel will opine that the shares of our common stock to be issued under this offering will be fully paid and non-assessable.

Preferred Stock

Upon the closing of this offering, all of our currently outstanding shares of redeemable convertible preferred stock will convert into common stock and we will not have any redeemable convertible preferred stock outstanding. Immediately after the closing of this offering, our certificate of incorporation will be amended and restated to delete all references to such shares of redeemable convertible preferred stock. Under the amended and restated certificate of incorporation, our board of directors will have the authority, without further action by the stockholders, to issue up to shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the rights, preferences and privileges of the shares of each wholly unissued series and any qualifications, limitations or restrictions thereon and to increase or decrease the number of shares of any such series, but not below the number of shares of such series then outstanding.

Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of the common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in our control that may otherwise benefit holders of our common stock and may adversely affect the market price of the common stock and the voting and other rights of the holders of our common stock. We have no current plans to issue any shares of preferred stock.

Stock Options

As of December 31, 2021, 675,386 shares of common stock were issuable upon the exercise of outstanding stock options, at a weighted-average exercise price of $14.00 per share. Subsequent to December 31, 2021 and through February 15, 2022, we granted an additional 16,150 shares of common stock with a weighted-average exercise price of $21.90 per share. Following completion of this offering, shares of our common stock will be reserved for future issuance under the 2022 Plan, which will become effective once the registration statement of which this prospectus forms a part is declared effective, as well as any future automatic annual increases in the number of shares of common stock reserved for issuance under the 2022 Plan and any shares underlying outstanding stock awards granted under the 2017 Plan, that expire or are repurchased, forfeited, cancelled, or withheld. For additional information regarding terms of our equity incentive plans, see the section titled “Executive Compensation—Equity Benefit Plans.”

Registration Rights

Upon the closing of this offering and subject to the lock-up agreements entered into in connection with this offering and federal securities laws, certain holders of shares of our common stock, including those shares of our common stock that will be issued upon the conversion of our redeemable

convertible preferred stock in connection with this offering, will initially be entitled to certain rights with respect to registration of such shares under the Securities Act. These shares are referred to as registrable securities. The holders of these registrable securities possess registration rights pursuant to the terms of our amended and restated investors' rights agreement and are described in additional detail below. The registration of shares of our common stock pursuant to the exercise of the registration rights described below would enable the holders to trade these shares without restriction under the Securities Act when the applicable registration statement is declared effective. We will pay the registration expenses, other than underwriting discounts, selling commissions and stock transfer taxes, of the shares registered pursuant to the demand, piggyback, and Form S-3 registrations described below.

Generally, in an underwritten offering, the managing underwriter, if any, has the right, subject to specified conditions and limitations, to limit the number of shares the holders may include. The demand, piggyback, and Form S-3 registration rights described below will expire no later than three years after the closing of this offering.

Demand Registration Rights

Upon the closing of this offering, holders of an aggregate of shares of our common stock will be entitled to certain demand registration rights. At any time beginning 180 days after the closing of this offering, the holders of % of these shares may request that we register all or a portion of their shares. We are not required to effect more than registration statements which are declared or ordered effective. Such request for registration must cover shares with an anticipated aggregate offering price of at least $ million. With certain exceptions, we are not required to effect the filing of a registration statement during the period starting with the date of the filing of, and ending on a date 180 days following the effective date of the registration statement for this offering.

Piggyback Registration Rights

In connection with this offering, the holders of an aggregate of shares of our common stock were entitled to, and the necessary percentage of holders waived, their rights to notice of this offering and to include their shares of registrable securities in this offering. After this offering, in the event that we propose to register any of our securities under the Securities Act, either for our own account or for the account of other security holders, the holders of these shares will be entitled to certain piggyback registration rights allowing the holder to include their shares in such registration, subject to certain marketing and other limitations.

Form S-3 Registration Rights

Upon the closing of this offering, holders of an aggregate of shares of common stock will be entitled to certain Form S-3 registration rights. Holders of % of these shares can make a request that we register their shares on Form S-3 if we are qualified to file a registration statement on Form S-3 and if the reasonably anticipated aggregate net proceeds of the shares offered would equal or exceed $ million. We will not be required to effect more than registrations on Form S-3 within any 12-month period.

Anti-Takeover Provisions

The provisions of Delaware law, our amended and restated certificate of incorporation, and our amended and restated bylaws, which are summarized below, may have the effect of delaying, deferring, or discouraging another person from acquiring control of our company. They are also designed, in part, to encourage persons seeking to acquire control of us to negotiate first with our board of directors. We believe that the benefits of increased protection of our potential ability to negotiate with an unfriendly or unsolicited acquirer outweigh the disadvantages of discouraging a proposal to acquire us because negotiation of these proposals could result in an improvement of their terms.

Certificate of Incorporation and Bylaws to be in Effect in Connection with this Offering

Because our stockholders do not have cumulative voting rights, stockholders holding a majority of the voting power of our shares of common stock will be able to elect all of our directors. Our amended and restated certificate of incorporation, to be effective immediately after the closing of this offering, and our amended and restated bylaws, to be effective on the closing of this offering, will provide for stockholder actions at a duly called meeting of stockholders or, before the date on which all shares of common stock convert into a single class, by written consent. A special meeting of stockholders may be called by a majority of our board of directors, the chair of our board of directors, or our chief executive officer or president. Our amended and restated bylaws will establish an advance notice procedure for stockholder proposals to be brought before an annual meeting of our stockholders, including proposed nominations of persons for election to our board of directors.

As described above in "Management—Composition of Our Board of Directors," in accordance with our amended and restated certificate of incorporation to be filed in connection with this offering, immediately after this offering, our board of directors will be divided into three classes with staggered three-year terms.

The foregoing provisions will make it more difficult for another party to obtain control of us by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change our control.

These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal and to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and may have the effect of deterring hostile takeovers or delaying changes in our control or management. As a consequence, these provisions may also inhibit fluctuations in the market price of our stock that could result from actual or rumored takeover attempts.

Section 203 of the Delaware General Corporation Law

When we have a class of voting stock that is either listed on a national securities exchange or held of record by more than 2,000 stockholders, we will be subject to Section 203 of the DGCL which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, subject to certain exceptions.

Choice of Forum

Our amended and restated certificate of incorporation to be effective immediately after the closing of this offering will provide that the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) and any appellate court therefrom is the sole and exclusive forum for the following claims or causes of action under the Delaware statutory or common law: (i) any derivative claim or cause of action brought on our behalf; (ii) any claim or cause of action for a breach of fiduciary duty owed by any of our current or former directors, officers, other employees to us or our stockholders; (iii) any claim or cause of action against us or any of our directors, officers, employees, or agents arising out of or pursuant to any provision of the DGCL, our amended and restated certificate of incorporation, or our bylaws (as each may be amended from time to time); (iv) any claim or cause of action seeking to interpret, apply, enforce or determine the validity of our

amended and restated certificate of incorporation or our amended and restated bylaws (as each may be amended from time to time, including any right, obligation, or remedy thereunder); (v) any claim or cause of action as to which the DGCL confers jurisdiction to the Court of Chancery of the State of Delaware; and (vi) any claim or cause of action against us or any of our directors, officers, employees, or agents governed by the internal-affairs doctrine, in all cases to the fullest extent permitted by law and subject to the court's having personal jurisdiction over the indispensable parties named as defendants. Our amended and restated certificate of incorporation to be effective on the closing of this offering will further provide that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause or causes of action arising under the Securities Act, including all causes of action asserted against a defendant to such complaint. The choice of forum provisions would not apply to claims or causes of action brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction.

For the avoidance of doubt, these provisions are intended to benefit and may be enforced by us, our officers and directors, the underwriters to any offering giving rise to such complaint, and any other professional entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering. While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions, and there can be no assurance that such provisions will be enforced by a court in those other jurisdictions. We note that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

Additionally, our amended and restated certificate of incorporation to be effective immediately after the closing of this offering will provide that any person or entity holding, owning or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to these provisions.

Limitations on Liability and Indemnification

See the section titled "Executive Compensation—Limitations on Liability and Indemnification."

Exchange Listing

Our common stock is currently not listed on any securities exchange. We have applied to have our common stock approved for listing on The Nasdaq Global Market under the symbol "ANTX."

Transfer Agent and Registrar

On the closing of this offering, the transfer agent and registrar for our common stock will be American Stock Transfer & Trust Company, LLC. The transfer agent's address is 48 Wall Street, 22nd Floor, New York, New York 10005.

SHARES ELIGIBLE FOR FUTURE SALE

Before the closing of this offering, there has been no public market for our common stock. Future sales of substantial amounts of our common stock, including shares issued on the exercise of outstanding options, in the public market after this offering, or the possibility of these sales or issuances occurring, could adversely affect the prevailing market price for our common stock or impair our ability to raise equity capital.

Based on our shares outstanding as of December 31, 2021, upon the closing of this offering, a total of shares of common stock will be outstanding, assuming the automatic conversion of all 4,849,064 shares of our outstanding redeemable convertible preferred stock as of December 31, 2021 into an equivalent number of shares of our common stock in connection with the closing of this offering. Of these shares, all of the common stock sold in this offering by us, plus any shares sold by us on exercise of the underwriters' option to purchase additional common stock, will be freely tradable in the public market without restriction or further registration under the Securities Act, unless these shares are held by "affiliates," as that term is defined in Rule 144 under the Securities Act, or Rule 144.

The remaining shares of common stock, as well as, upon issuance, the shares of common stock subject to stock options, will be "restricted securities," as that term is defined in Rule 144. These restricted securities are eligible for public sale only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rules 144 or 701 under the Securities Act, which are summarized below.

Subject to the lock-up agreements described below and the provisions of Rule 144 or Rule 701 under the Securities Act, as well as our insider trading policy, these restricted securities will be available for sale in the public market after the date of this prospectus.

Rule 144

In general, under Rule 144 as currently in effect, once we have been subject to public company reporting requirements of Section 13 or Section 15(d) of the Exchange Act for at least 90 days, an eligible stockholder is entitled to sell such shares without complying with the manner of sale, volume limitation, or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. To be an eligible stockholder under Rule 144, such stockholder must not be deemed to have been one of our affiliates for purposes of the Securities Act at any time during the 90 days preceding a sale and must have beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than our affiliates. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then such person is entitled to sell such shares without complying with any of the requirements of Rule 144, subject to the expiration of the lock-up agreements described below.

In general, under Rule 144, as currently in effect, our affiliates, or persons selling shares on behalf of our affiliates are entitled to sell shares on expiration of the lock-up agreements described below. Beginning 90 days after the date of this prospectus, within any three-month period, such stockholders may sell a number of shares that does not exceed the greater of:

- 1% of the number of shares of common stock then outstanding, which will equal approximately shares immediately after this offering, assuming no exercise of the underwriters' option to purchase additional shares of common stock from us; or

- the average weekly trading volume of our common stock on The Nasdaq Global Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us.

Rule 701

Rule 701 of the Securities Act (Rule 701) generally allows a stockholder who was issued shares under a written compensatory plan or contract and who is not deemed to have been an affiliate of our company during the immediately preceding 90 days, to sell these shares in reliance on Rule 144, but without being required to comply with the public information, holding period, volume limitation, or notice provisions of Rule 144. Rule 701 also permits affiliates of our company to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required by that rule to wait until 90 days after the date of this prospectus before selling those shares under Rule 701, subject to the expiration of the lock-up agreements described below.

Form S-8 Registration Statements

We intend to file one or more registration statements on Form S-8 under the Securities Act with the SEC to register the offer and sale of shares of our common stock that are issuable under our 2017 Plan, 2022 Plan and ESPP. These registration statements will become effective immediately on filing. Shares covered by these registration statements will then be eligible for sale in the public markets, subject to vesting restrictions, any applicable lock-up agreements described below, and Rule 144 limitations applicable to affiliates.

Lock-up Arrangements

We, and all of our directors, executive officers, and the holders of substantially all of our common stock and securities exercisable for or convertible into our common stock outstanding immediately on the closing of this offering, have agreed with the underwriters that, until 180 days after the date of the underwriting agreement related to this offering, we and they will not (and will not cause or direct any affiliate to), without the prior written consent of the representatives of the underwriters, subject to certain exceptions, directly or indirectly, offer, pledge, sell, contract to sell, assign, transfer, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right, or warrant to purchase, lend or otherwise transfer or dispose of, or announce the intention to otherwise dispose of, any of our shares of common stock, or any securities convertible into or exercisable or exchangeable for shares of our common stock, or enter into, or announce the intention to enter into, any hedging, swap, or similar agreement or arrangement that transfers, is designed to transfer or reasonably could be expected to transfer, in whole or in part, directly or indirectly, the economic consequence of ownership of the securities, whether any such swap or transaction is to be settled by delivery of our common stock or other securities, in cash or otherwise. These agreements are described in “Underwriting.” The representatives of the underwriters may, in their sole discretion, release any of the securities subject to these lock-up agreements at any time.

In addition to the restrictions contained in the lock-up agreements described above, we have entered into agreements with certain security holders, including the amended and restated investors’ rights agreement, our standard form of option agreement and our standard form of restricted stock agreement, that contain market stand-off provisions or incorporate market stand-off provisions from our equity incentive plan imposing restrictions on the ability of such security holders to offer, sell, or transfer our equity securities for a period of 180 days following the date of this prospectus.

Registration Rights

Upon the closing of this offering, pursuant to our amended and restated investors' rights agreement, the holders of shares of our common stock, or their transferees, will be entitled to certain rights with respect to the registration of the offer and sale of their shares under the Securities Act, subject to the terms of the lock-up agreements described under the section titled "—Lock-up Arrangements" above. Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act immediately on the effectiveness of the registration. Any sales of securities by these stockholders could have a material adverse effect on the trading price of our common stock. See the section titled "Description of Capital Stock—Registration Rights" for additional information.

CERTAIN MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following is a summary of certain material U.S. federal income tax consequences to non-U.S. holders (as defined below) of the purchase, ownership and disposition of our common stock issued pursuant to this offering. This discussion is not a complete analysis of all potential U.S. federal income tax consequences relating thereto, does not address the potential application of the Medicare contribution tax on net investment income, and does not address any estate or gift tax consequences or any tax consequences arising under any state, local, or foreign tax laws, or any other U.S. federal tax laws. This discussion is based on the Code, Treasury Regulations promulgated thereunder, judicial decisions and published rulings and administrative pronouncements of the IRS, all as in effect on the date of this prospectus. These authorities are subject to differing interpretations and may change, possibly retroactively, resulting in U.S. federal income tax consequences different from those discussed below. We have not requested a ruling from the IRS with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS or a court will agree with such statements and conclusions.

This discussion is limited to non-U.S. holders who purchase our common stock pursuant to this offering and who hold our common stock as a "capital asset" within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all of the U.S. federal income tax consequences that may be relevant to a non-U.S. holder in light of such non-U.S. holder's particular circumstances. This discussion also does not consider any specific facts or circumstances that may be relevant to non-U.S. holders subject to special rules under the U.S. federal income tax laws, including:

- certain former citizens or long-term residents of the United States;
- partnerships or other pass-through entities (and investors therein);
- "controlled foreign corporations";
- "passive foreign investment companies";
- corporations that accumulate earnings to avoid U.S. federal income tax;
- banks, financial institutions, investment funds, insurance companies, brokers, dealers, or traders in securities;
- tax-exempt organizations and governmental organizations;
- tax-qualified retirement plans;
- persons who acquire our common stock through the exercise of an option or otherwise as compensation;
- qualified foreign pension funds as defined in Section 897(l)(2) of the Code and entities all of the interests of which are held by qualified foreign pension funds;
- persons subject to the alternative minimum tax;
- persons subject to special tax accounting rules under Section 451(b) of the Code;
- persons that own or have owned, actually or constructively, more than 5% of our common stock;
- persons who have elected to mark securities to market; and
- persons holding our common stock as part of a hedging or conversion transaction or straddle, or a constructive sale, or other risk reduction strategy or integrated investment.

If an entity or arrangement that is classified as a partnership for U.S. federal income tax purposes holds our common stock, the U.S. federal income tax treatment of a partner in the partnership will generally depend on the status of the partner, the activities of the partnership and certain determinations made at the partner level. Partnerships holding our common stock and the partners in such partnerships are urged to consult their tax advisors about the particular U.S. federal income tax consequences to them of holding and disposing of our common stock.

THIS DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE PARTICULAR U.S. FEDERAL INCOME TAX CONSEQUENCES TO THEM OF ACQUIRING, OWNING AND DISPOSING OF OUR COMMON STOCK, AS WELL AS ANY TAX CONSEQUENCES ARISING UNDER ANY STATE, LOCAL OR FOREIGN TAX LAWS AND ANY OTHER U.S. FEDERAL TAX LAWS.

Definition of Non-U.S. Holder

For purposes of this discussion, a non-U.S. holder is any beneficial owner of our common stock that is not a "U.S. person" or a partnership (including any entity or arrangement treated as a partnership) for U.S. federal income tax purposes. A U.S. person is any person that, for U.S. federal income tax purposes, is or is treated as any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation created or organized under the laws of the United States, any state thereof or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust (i) whose administration is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust, or (ii) that has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

Distributions on Our Common Stock

As described in the section titled "Dividend Policy," we do not anticipate declaring or paying, in the foreseeable future, any cash dividends on our capital stock. However, if we distribute cash or other property on our common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and will first be applied against and reduce a holder's tax basis in our common stock, but not below zero. Any excess will be treated as gain realized on the sale or other disposition of our common stock and will be treated as described under "—Gain on Disposition of Our Common Stock" below.

Subject to the discussion below regarding effectively connected income, backup withholding and FATCA (as defined below), dividends paid to a non-U.S. holder of our common stock generally will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends or such lower rate specified by an applicable income tax treaty. To receive the benefit of a reduced treaty rate, a non-U.S. holder must furnish us or our withholding agent with a valid IRS Form W-8BEN (in the case of individuals) or IRS Form W-8BEN-E (in the case of entities), or other appropriate form, certifying such holder's qualification for the reduced rate. This certification must be provided to us or our withholding agent before the payment of dividends and must be updated periodically. In the case of a non-U.S. holder that is an entity, Treasury Regulations and the relevant tax treaty provide rules to determine whether, for purposes of determining the applicability of the tax treaty, dividends will be treated as paid to the entity or to those holding an interest in the entity. If the non-U.S. holder holds our common stock through a financial institution or other agent acting on the non-U.S. holder's behalf, the non-U.S. holder will be required to provide appropriate documentation to the agent, which then will be required to provide certification to us or our withholding agent, either directly or through other intermediaries.

If a non-U.S. holder holds our common stock in connection with the conduct of a trade or business in the United States, and dividends paid on our common stock are effectively connected with such

holder's U.S. trade or business (and are attributable to such holder's permanent establishment or fixed base in the United States if required by an applicable tax treaty), the non-U.S. holder will be exempt from U.S. federal withholding tax. To claim the exemption, the non-U.S. holder must generally furnish a valid IRS Form W-8ECI (or applicable successor form) to the applicable withholding agent.

However, any such effectively connected dividends paid on our common stock generally will be subject to U.S. federal income tax on a net income basis at the regular U.S. federal income tax rates in the same manner as if such holder were a resident of the United States. A non-U.S. holder that is a foreign corporation also may be subject to an additional branch profits tax equal to 30% (or such lower rate specified by an applicable income tax treaty) of its effectively connected earnings and profits for the taxable year, as adjusted for certain items.

Non-U.S. holders that do not provide the required certification on a timely basis, but that qualify for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. holders should consult their tax advisors regarding any applicable income tax treaties that may provide for different rules.

Gain on Disposition of Our Common Stock

Subject to the discussion below regarding backup withholding and FATCA (as defined below), a non-U.S. holder generally will not be subject to U.S. federal income tax on any gain realized on the sale or other disposition of our common stock, unless:

- the gain is effectively connected with the non-U.S. holder's conduct of a trade or business in the United States and, if required by an applicable income tax treaty, is attributable to a permanent establishment or fixed base maintained by the non-U.S. holder in the United States;
- the non-U.S. holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition, and certain other requirements are met; or
- we are or become a United States real property holding corporation, or a USRPHC, for U.S. federal income tax purposes at any time within the shorter of the five-year period preceding the disposition or the non-U.S. holder's holding period for our common stock, and our common stock is not regularly traded on an established securities market during the calendar year in which the sale or other disposition occurs.

Determining whether we are a USRPHC depends on the fair market value of our U.S. real property interests relative to the fair market value of our other trade or business assets and our foreign real property interests. We believe that we are not currently and we do not anticipate becoming a USRPHC for U.S. federal income tax purposes, although there can be no assurance we will not in the future become a USRPHC.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular U.S. federal income tax rates in the same manner as if such holder were a resident of the United States. A non-U.S. holder that is a foreign corporation also may be subject to an additional branch profits tax equal to 30% (or such lower rate specified by an applicable income tax treaty) of its effectively connected earnings and profits for the taxable year, as adjusted for certain items. A non-U.S. holder described in the second bullet point above will be subject to U.S. federal income tax at a flat 30% rate (or such lower rate specified by an applicable income tax treaty), on gain realized upon the sale or other taxable disposition of our common stock which may be offset by certain U.S.-source capital losses (even though the individual is not considered a resident of the United States), provided that the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses. If we are or become a United States real property holding corporation during the period described in the third bullet point above and our common stock is not regularly traded for purposes of

the relevant rules, gain arising from the sale or other taxable disposition of our common stock by a non-U.S. holder will generally be subject to U.S. federal income tax in the same manner as gain that is effectively connected with the conduct of a U.S. trade or business, except that the branch profits tax generally will not apply.

Non-U.S. holders should consult their tax advisors regarding any applicable income tax treaties that may provide for different rules.

Information Reporting and Backup Withholding

Annual reports are required to be filed with the IRS and provided to each non-U.S. holder indicating the amount of distributions on our common stock paid to such holder and the amount of any tax withheld with respect to those distributions. These information reporting requirements apply even if no withholding was required because the distributions were effectively connected with the holder's conduct of a U.S. trade or business, or withholding was reduced or eliminated by an applicable income tax treaty. This information also may be made available under a specific treaty or agreement with the tax authorities in the country in which the non-U.S. holder resides or is established. Backup withholding, generally will not apply to payments to a non-U.S. holder of dividends on or the gross proceeds of a disposition of our common stock provided the non-U.S. holder furnishes the required certification for its non-U.S. status, such as by providing a valid IRS Form W-8BEN, IRS Form W-8BEN-E, or IRS Form W-8ECI, or certain other requirements are met, and if the payor does not have actual knowledge, or reason to know, that the holder is a U.S. person who is not an exempt recipient.

Backup withholding is not an additional tax. If any amount is withheld under the backup withholding rules, the non-U.S. holder should consult with a U.S. tax advisor regarding the possibility of and procedure for obtaining a refund or a credit against the non-U.S. holder's U.S. federal income tax liability, if any.

Withholding on Payment to Certain Foreign Accounts or Entities

Sections 1471 through 1474 of the Code (commonly referred to as FATCA), impose a U.S. federal withholding tax of 30% on certain payments made to a "foreign financial institution" (as specially defined under these rules) unless such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding certain U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners) or an exemption applies. FATCA also generally will impose a U.S. federal withholding tax of 30% on certain payments made to a non-financial foreign entity unless such entity provides the withholding agent a certification identifying certain direct and indirect U.S. owners of the entity or an exemption applies. An intergovernmental agreement between the United States and an applicable foreign country may modify these requirements. Under certain circumstances, a non-U.S. holder might be eligible for refunds or credits of such taxes. FATCA currently applies to dividends paid on our common stock and would have applied also to payments of gross proceeds from the sale or other disposition of our common stock. The U.S. Treasury Department has released proposed regulations under FATCA providing for the elimination of the federal withholding tax of 30% applicable to gross proceeds of a sale or other disposition of our common stock. Under these proposed Treasury Regulations (which may be relied upon by taxpayers prior to finalization), FATCA will not apply to gross proceeds from sales or other dispositions of our common stock.

Prospective investors are encouraged to consult with their own tax advisors regarding the possible implications of FATCA on their investment in our common stock.

UNDERWRITING

We and the underwriters for the offering named below have entered into an underwriting agreement with respect to the common stock being offered. Subject to the terms and conditions of the underwriting agreement, each underwriter has severally agreed to purchase from us the number of shares of our common stock set forth opposite its name below. Cowen and Company, LLC, SVB Securities LLC, and Evercore Group L.L.C. are the representatives of the underwriters.

Underwriter	Number of Shares
Cowen and Company, LLC	
SVB Securities LLC	
Evercore Group L.L.C.	
Oppenheimer & Co. Inc.	
Total	

The underwriting agreement provides that the obligations of the underwriters are subject to certain conditions precedent and that the underwriters have agreed, severally and not jointly, to purchase all of the shares sold under the underwriting agreement if any of these shares are purchased, other than those shares covered by the overallotment option described below. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the non-defaulting underwriters may be increased or the underwriting agreement may be terminated.

We have agreed to indemnify the underwriters against specified liabilities, including liabilities under the Securities Act, and to contribute to payments the underwriters may be required to make in respect thereof.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel and other conditions specified in the underwriting agreement. The underwriters reserve the right to withdraw, cancel, or modify offers to the public and to reject orders in whole or in part.

Overallotment Option to Purchase Additional Shares. We have granted to the underwriters an option to purchase up to additional shares of common stock at the public offering price, less the underwriting discount. This option is exercisable for a period of 30 days. The underwriters may exercise this option solely for the purpose of covering overallotments, if any, made in connection with the sale of common stock offered hereby. To the extent that the underwriters exercise this option, the underwriters will purchase additional shares from us in approximately the same proportion as shown in the table above.

Discounts and Commissions. The following table shows the public offering price, underwriting discount and proceeds, before expenses, to us. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase additional shares.

We estimate that the total expenses of the offering, excluding underwriting discounts, will be approximately $ and are payable by us. We have also agreed to reimburse the underwriters for expenses of up to $ related to the clearance of this offering with the Financial Industry Regulatory Authority, Inc.

	Per Share	Total Without Over allotment	Total With Over allotment
Initial public offering price			
Underwriting discounts and commissions			
Proceeds before expenses, to us			

The underwriters propose to offer the shares of common stock to the public at the public offering price set forth on the cover of this prospectus. The underwriters may offer the shares of common stock to securities dealers at the public offering price less a concession not in excess of $ per share. If all of the shares are not sold at the public offering price, the underwriters may change the offering price and other selling terms.

Discretionary Accounts. The underwriters do not intend to confirm sales of the shares to any accounts over which they have discretionary authority.

Market Information. Prior to this offering, there has been no public market for shares of our common stock. The initial public offering price will be determined by negotiations between us and the representatives of the underwriters. In addition to prevailing market conditions, the factors to be considered in these negotiations will include:

- the history of, and prospects for, our company and the industry in which we compete;
- our past and present financial information;
- an assessment of our management;
- our past and present operations, and the prospects for, and timing of, our future revenues;
- the present state of our development; and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price.

We have applied for the quotation of our common stock on The Nasdaq Global Market under the symbol “ANTX.”

Stabilization. In connection with this offering, the underwriters may engage in stabilizing transactions, overallotment transactions, syndicate covering transactions, penalty bids, and purchases to cover positions created by short sales.

- Stabilizing transactions permit bids to purchase shares of common stock so long as the stabilizing bids do not exceed a specified maximum, and are engaged in for the purpose of preventing or retarding a decline in the market price of the common stock while the offering is in progress.
- Overallotment transactions involve sales by the underwriters of shares of common stock in excess of the number of shares the underwriters are obligated to purchase. This creates a syndicate short position which may be either a covered short position or a naked short position. In a covered short position, the number of shares overallotted by the underwriters is not greater than the number of shares that they may purchase in the overallotment option. In a naked short position, the number of shares involved is greater than the number of shares in the overallotment option. The underwriters may close out any short position by exercising their overallotment option or purchasing shares in the open market.

- Syndicate covering transactions involve purchases of common stock in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of shares to close out the short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared with the price at which they may purchase shares through exercise of the overallotment option. If the underwriters sell more shares than could be covered by exercise of the overallotment option and, therefore, have a naked short position, the position can be closed out only by buying shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that after pricing there could be downward pressure on the price of the shares in the open market that could adversely affect investors who purchase in the offering.
- Penalty bids permit the representatives to reclaim a selling concession from a syndicate member when the common stock originally sold by that syndicate member is purchased in stabilizing or syndicate covering transactions to cover syndicate short positions.

These stabilizing transactions, syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock in the open market may be higher than it would otherwise be in the absence of these transactions. Neither we nor the underwriters make any representation or prediction as to the effect that the transactions described above may have on the price of our common stock. These transactions may be effected on The Nasdaq Global Market, in the over-the-counter market, or otherwise and, if commenced, may be discontinued at any time.

***Lock-Up Agreements*.** Pursuant to certain “lock-up” agreements, we and our executive officers, directors, and substantially all of our other stockholders, have agreed, subject to certain exceptions, not to (and to not cause or direct any affiliate to) offer, sell, assign, transfer, pledge, contract to sell, lend, or otherwise dispose of or announce the intention to otherwise dispose of, or enter into, or announce the intention to enter into, any swap, hedge or similar agreement or arrangement that transfers, is designed to transfer or reasonably could be expected to transfer, in whole or in part, directly or indirectly, the economic consequence of ownership of, or make any demand or request or exercise any right with respect to the registration of, or file with the SEC a registration statement under the Securities Act relating to, any common stock or securities convertible into or exchangeable or exercisable for any common stock without the prior written consent of the representatives for a period of 180 days after the date of the pricing of the offering.

This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for common stock. It also applies to common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition. The exceptions permit us, among other things and subject to restrictions, to: (a) issue common stock or options pursuant to employee benefit plans, (b) issue common stock upon exercise of outstanding options or warrants, or (c) file registration statements on Form S-8.

The exceptions permit our executive officers, directors, and shareholders, as parties to the “lock-up” agreements, among other things and subject to restrictions, to: (a) allow the conversion of our outstanding convertible preferred stock into shares of common stock in connection with the consummation of this offering, (b) make certain gifts, not involving a disposition of value, (c) make transfers to certain trusts, not involving a disposition of value, (d) make transfers by will or intestate succession, not involving a disposition of value, (e) make transfers by operation of law pursuant to order of a court, in connection with a negotiated divorce settlement or pursuant to a qualified domestic relations order, not involving a disposition of value, (f) if the party is a corporation, partnership, limited liability company or other business entity, make transfers to any stockholders, partners, members or

managers of, or owners of similar equity interests in, the party, or to an affiliate of the party or to an investment fund or other entity that controls or manages, is controlled by, or is under common control with the party, if such transfer is not for value, (g) if the party is a corporation, partnership, limited liability company or other business entity, make transfers in connection with the sale or transfer of all or substantially all of the party's capital stock, partnership interests, membership interests or other similar equity interests, as the case may be, or all or substantially all of the party's assets, in any such case not undertaken for the purpose of avoiding the restrictions imposed by the "lock-up" agreement, or to another corporation, partnership, limited liability company or other business entity provided the transferee is an affiliate of the party and such transfer is not for value, (h) make transfers pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction, (i) if the party is a trust, make distributions to its beneficiaries in a transaction not involving a disposition of value, provided that no public announcement or filing is made regarding such transaction during the 180-day lock-up period, (j) make transfers or dispositions to us pursuant to any contractual arrangement that provides for the repurchase of the party's common stock or other securities or in connection with the termination of the party's employment or other service relationship with us, (k) enter into transactions relating to shares of common stock or other securities convertible into or exercisable or exchangeable for common stock acquired in this offering or in open market transactions after completion of this offering, provided that no public announcement or filing is made regarding such transaction during the 180-day lock-up period, (l) enter into a 10b5-1 trading plan, provided that such plan does not permit the sale of any common stock during the 180-day lock-up period and no public announcement or filing is made regarding such plan during the 180-day lock-up period, and (m) make transfers to us to satisfy tax withholding obligations pursuant to our equity incentive plans disclosed in this prospectus.

The representatives, in their sole discretion, may release our common stock and other securities subject to the lock-up agreements described above in whole or in part at any time. When determining whether or not to release our common stock and other securities from lock-up agreements, the representatives will consider, among other factors, the holder's reasons for requesting the release, the number of shares for which the release is being requested and market conditions at the time of the request. In the event of such a release or waiver for one of our directors or officers, the representatives shall provide us with notice of the impending release or waiver at least three business days before the effective date of such release or waiver and we will announce the impending release or waiver by issuing a press release at least two business days before the effective date of the release or waiver.

Electronic Offer, Sale, and Distribution of Shares. A prospectus in electronic format may be made available on the websites maintained by one or more of the underwriters or selling group members, if any, participating in this offering and one or more of the underwriters participating in this offering may distribute prospectuses electronically. The representatives may agree to allocate a number of shares to underwriters and selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the underwriters and selling group members that will make internet distributions on the same basis as other allocations. Other than the prospectus in electronic format, the information on these websites is not part of this prospectus or the registration statement of which this prospectus forms a part, has not been approved or endorsed by us or any underwriter in its capacity as underwriter, and should not be relied upon by investors.

Other Relationships. Certain of the underwriters and their affiliates have provided, and may in the future provide, various investment banking, commercial banking, and other financial services for us and our affiliates for which they have received, and may in the future receive, customary fees.

Selling Restrictions

Canada. The common stock may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 *Prospectus Exemptions* or subsection 73.3(1) of the *Securities Act* (Ontario), and are permitted clients,

as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Any resale of the common stock must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 *Underwriting Conflicts* (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

***European Economic Area*.** In relation to each Member State of the European Economic Area (each, a Relevant State), no shares of common stock have been offered or will be offered pursuant to the offering to the public in that Relevant State prior to the publication of a prospectus in relation to the shares of common stock which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation, except that offers of shares of common stock may be made to the public in that Relevant State at any time under the following exemptions under the Prospectus Regulation:

- to any legal entity which is a qualified investor as defined under Article 2 of the Prospectus Regulation;
- to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the Prospectus Regulation), subject to obtaining the prior consent of the representatives of the underwriters for any such offer; or
- in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of shares of common stock shall require our company or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation and each person who initially acquires any shares of common stock or to whom any offer is made will be deemed to have represented, acknowledged, and agreed to and with each of the underwriters and our company that it is a "qualified investor" within the meaning of Article 2(e) of the Prospectus Regulation. In the case of any shares of common stock being offered to a financial intermediary as that term is used in the Prospectus Regulation, each such financial intermediary will be deemed to have represented, acknowledged, and agreed that the shares of common stock acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer of any shares of common stock to the public other than their offer or resale in a Relevant State to qualified investors as so defined or in circumstances in which the prior consent of the underwriters has been obtained to each such proposed offer or resale.

For the purposes of this provision, the expression an "offer to the public" in relation to the shares of common stock in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares of common stock to be offered so as to enable an investor to decide to purchase or subscribe for any shares of common stock, and the expression "Prospectus Regulation" means Regulation (EU) 2017/1129.

***United Kingdom*.** No shares of common stock have been offered or will be offered pursuant to the offering to the public in the United Kingdom prior to the publication of a prospectus in relation to the shares of common stock which has been approved by the Financial Conduct Authority, except that the shares of common stock may be offered to the public in the United Kingdom at any time:

- to any legal entity which is a qualified investor as defined under Article 2 of the U.K. Prospectus Regulation;
- to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the U.K. Prospectus Regulation), subject to obtaining the prior consent of the representatives of the underwriters for any such offer; or
- in any other circumstances falling within Section 86 of the FSMA,

provided that no such offer of the shares of common stock shall require our company or any underwriter to publish a prospectus pursuant to Section 85 of the FSMA or supplement a prospectus pursuant to Article 23 of the U.K. Prospectus Regulation. For the purposes of this provision, the expression an "offer to the public" in relation to the shares of common stock in the United Kingdom means the communication in any form and by any means of sufficient information on the terms of the offer and any shares of common stock to be offered so as to enable an investor to decide to purchase or subscribe for any shares of common stock and the expression "U.K. Prospectus Regulation" means Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018. In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are "qualified investors" (as defined in the U.K. Prospectus Regulation) (i) who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended, or the "Order," and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as relevant persons). In the United Kingdom, any investment or investment activity to which this document relates is only available to, and will be engaged in with, relevant persons. Any person in the United Kingdom who is not a relevant person must not act on or rely upon this document or any of its contents.

***Switzerland*.** The securities will not be offered, directly or indirectly, to the public in Switzerland and this prospectus does not constitute a public offering prospectus as that term is understood pursuant to article 652a or 1156 of the Swiss Federal Code of Obligations.

***Israel*.** In the State of Israel this prospectus shall not be regarded as an offer to the public to purchase shares of common stock under the Israeli Securities Law, 5728 – 1968, which requires a prospectus to be published and authorized by the Israel Securities Authority, if it complies with certain provisions of Section 15 of the Israeli Securities Law, 5728–1968, including, inter alia, if: (i) the offer is made, distributed, or directed to not more than 35 investors, subject to certain conditions (Addressed Investors); or (ii) the offer is made, distributed, or directed to certain qualified investors defined in the First Addendum of the Israeli Securities Law, 5728—1968, subject to certain conditions (Qualified Investors). The Qualified Investors shall not be taken into account in the count of the Addressed Investors and may be offered to purchase securities in addition to the 35 Addressed Investors. Our company has not and will not take any action that would require it to publish a prospectus in accordance with and subject to the Israeli Securities Law, 5728—1968. We have not and will not distribute this prospectus or make, distribute, or direct an offer to subscribe for our common stock to any person within the State of Israel, other than to Qualified Investors and up to 35 Addressed Investors.

Qualified Investors may have to submit written evidence that they meet the definitions set out in of the First Addendum to the Israeli Securities Law, 5728—1968. In particular, we may request, as a condition to be offered common stock, that Qualified Investors will each represent, warrant and certify

to us and/or to anyone acting on our behalf: (i) that it is an investor falling within one of the categories listed in the First Addendum to the Israeli Securities Law, 5728—1968; (ii) which of the categories listed in the First Addendum to the Israeli Securities Law, 5728—1968 regarding Qualified Investors is applicable to it; (iii) that it will abide by all provisions set forth in the Israeli Securities Law, 5728—1968 and the regulations promulgated thereunder in connection with the offer to be issued common stock; (iv) that the shares of common stock that it will be issued are, subject to exemptions available under the Israeli Securities Law, 5728—1968: (a) for its own account; (b) for investment purposes only; and (c) not issued with a view to resale within the State of Israel, other than in accordance with the provisions of the Israeli Securities Law, 5728—1968; and (v) that it is willing to provide further evidence of its Qualified Investor status. Addressed Investors may have to submit written evidence in respect of their identity and may have to sign and submit a declaration containing, inter alia, the Addressed Investor's name, address and passport number or Israeli identification number.

We have not authorized and do not authorize the making of any offer of securities through any financial intermediary on our behalf, other than offers made by the underwriters and their respective affiliates, with a view to the final placement of the securities as contemplated in this document. Accordingly, no purchaser of the shares, other than the underwriters, is authorized to make any further offer of shares on our behalf or on behalf of the underwriters.

LEGAL MATTERS

The validity of the shares of our common stock being offered in this prospectus will be passed upon for us by Cooley LLP, Palo Alto, California. Certain legal matters in connection with this offering will be passed upon for the underwriters by Davis Polk & Wardwell LLP, Menlo Park, California.

EXPERTS

The financial statements as of December 31, 2020 and 2021 and for each of the years in the period ended December 31, 2021 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all the information set forth in the registration statement, some of which is contained in exhibits to the registration statement as permitted by the rules and regulations of the SEC. For further information with respect to us and our common stock, we refer you to the registration statement, including the exhibits filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document are not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, please see the copy of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. The SEC also maintains an internet website that contains reports and other information about issuers, like us, that file electronically with the SEC. The address of that website is www.sec.gov.

On the closing of this offering, we will be subject to the information reporting requirements of the Exchange Act, and we will file reports, proxy statements, and other information with the SEC. These reports, proxy statements, and other information will be available for inspection and copying at the public reference room and website of the SEC referred to above.

We also maintain a website at www.an2therapeutics.com. Information contained in, or accessible through, our website is not a part of this prospectus, and the inclusion of our website address in this prospectus is only as an inactive textual reference.

AN2 THERAPEUTICS, INC.

INDEX TO FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of AN2 Therapeutics, Inc.

Opinion on the Financial Statements

We have audited the accompanying balance sheets of AN2 Therapeutics, Inc. (the “Company”) as of December 31, 2021 and 2020, and the related statements of operations and comprehensive loss, of redeemable convertible preferred stock and stockholders’ deficit and of cash flows for the years then ended, including the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits of these financial statements in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP
San Jose, California
March 4, 2022

We have served as the Company’s auditor since 2021.

AN2 Therapeutics, Inc.

Balance Sheets
(in thousands, except share amounts)

	As of December 31,	
	2020	2021
Assets:		
Current assets:		
Cash and cash equivalents	$ 4,070	$ 12,097
Short-term investments	–	46,458
Prepaid expenses and other current assets	164	1,551
Total current assets	4,234	60,106
Deferred offering costs	–	1,724
Long-term investments	–	3,486
Total assets	$ 4,234	$ 65,316
Liabilities, redeemable convertible preferred stock and stockholders' deficit:		
Current liabilities:		
Accounts payable	$ 132	$ 1,063
Accrued compensation	426	916
Accrued liabilities	887	1,399
Options subject to repurchase, short-term	14	17
Total current liabilities	1,459	3,395
Options subject to repurchase, long-term	24	13
Total liabilities	1,483	3,408
Commitments and contingencies (Note 6)		
Redeemable convertible preferred stock, $0.00001 par value; 2,590,000 and 4,849,064 shares authorized at December 31, 2020 and 2021, respectively; 2,582,403 and 4,849,064 shares issued and outstanding at December 31, 2020 and 2021, respectively; aggregate liquidation preference of $16,549 and $103,064 at December 31, 2020 and 2021, respectively	23,070	109,319
Stockholders' deficit:		
Common stock, $0.00001 par value; 5,000,000 and 7,295,839 shares authorized at December 31, 2020 and 2021, respectively; 1,150,679 and 1,160,382 shares issued and outstanding at December 31, 2020 and 2021, respectively	–	–
Accumulated other comprehensive loss	–	(27)
Accumulated deficit	(20,319)	(47,384)
Total stockholders' deficit	(20,319)	(47,411)
Total liabilities, redeemable convertible preferred stock and stockholders' deficit	$ 4,234	$ 65,316

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

AN2 Therapeutics, Inc.

Statements of Operations and Comprehensive Loss
(in thousands, except share and per share amounts)

	Years Ended December 31,	
	2020	2021
Operating expenses:		
Research and development	$ 5,366	$ 16,156
Research and development—related party	653	750
General and administrative	1,265	4,668
Total operating expenses	7,284	21,574
Loss from operations	(7,284)	(21,574)
Interest income	3	69
Other expense	(6,322)	(38)
Net loss	(13,603)	(21,543)
Accretion to redemption value and cumulative dividends on preferred stock	(981)	(6,515)
Net loss attributable to common stockholders	$ (14,584)	$ (28,058)
Net loss per share attributable to common stockholders, basic and diluted	$ (13.36)	$ (25.02)
Weighted-average number of shares used in computing net loss per share, basic and diluted	1,091,678	1,121,238
Other comprehensive loss:		
Unrealized loss on investments	–	(27)
Comprehensive loss	$ (13,603)	$ (21,570)

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

AN2 Therapeutics, Inc.

Statements of Redeemable Convertible Preferred Stock and Stockholders' Deficit
(in thousands, except share amounts)

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount				
Balances at December 31, 2019	1,838,331	$ 10,614	1,085,000	–	–	–	$ (5,801)	$ (5,801)
Issuance of Series A redeemable convertible preferred stock at $5.99 per share for cash, net of issuance costs of $10	631,384	3,772	–	–	–	–	–	–
Issuance of Series A redeemable convertible preferred stock at a fair value of $5.79 per share in conjunction with vesting of equity instruments granted in the Anacor License	112,688	653						
Settlement of redeemable convertible preferred stock tranche liability	–	7,050	–	–	–	–	–	–
Issuance of common stock upon exercise of stock options	–	–	65,679	–	–	–	–	–
Vesting of early exercised stock options	–	–	–	–	26	–	–	26
Stock-based compensation	–	–	–	–	40	–	–	40
Accretion to redemption value and cumulative dividends on preferred stock	–	981	–	–	(66)	–	(915)	(981)
Net loss	–	–	–	–	–	–	(13,603)	(13,603)
Balances at December 31, 2020	2,582,403	23,070	1,150,679	–	–	–	(20,319)	(20,319)
Issuance of Series B redeemable convertible preferred stock at $35.29 per share for cash, net of issuance costs of $266	2,266,661	79,734	–	–	–	–	–	–
Issuance of common stock upon exercise of stock options	–	–	9,703	–	–	–	–	–
Vesting of early exercised stock options	–	–	–	–	19	–	–	19
Stock-based compensation	–	–	–	–	974	–	–	974
Accretion to redemption value and cumulative dividends on preferred stock	–	6,515	–	–	(993)	–	(5,522)	(6,515)
Unrealized loss on available-for-sale investments						(27)		(27)
Net loss	–	–	–	–	–		(21,543)	(21,543)
Balances at December 31, 2021	4,849,064	$109,319	1,160,382	$ –	$ –	(27)	$ (47,384)	$ (47,411)

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

AN2 Therapeutics, Inc.

Statements of Cash Flows
(in thousands)

	Years Ended December 31,	
	2020	2021
Cash flows from operating activities:		
Net loss	$(13,603)	$(21,543)
Adjustments to reconcile net loss to net cash used in operating activities:		
Non-cash research and development expense in connection with a license agreement	653	–
Stock-based compensation expense	40	974
Amortization of net investment premium	–	53
Change in fair value of redeemable convertible preferred stock tranche liability	6,322	–
Changes in operating assets and liabilities:		
Increase in prepaid expenses and other assets	(62)	(1,387)
Increase in accounts payable	81	417
Increase in accrued compensation	426	490
Increase in accrued liabilities	779	512
Net cash used in operating activities	(5,364)	(20,484)
Cash flows from investing activities:		
Purchases of investments	–	(77,274)
Maturities of investments	–	27,250
Net cash used in investing activities	–	(50,024)
Cash flows from financing activities:		
Proceeds from issuance of redeemable convertible preferred stock, net of issuance costs	3,772	79,734
Deferred offering costs	–	(1,210)
Proceeds from exercise of stock options	64	11
Net cash provided by financing activities	3,836	78,535
Net increase (decrease) in cash	(1,528)	8,027
Cash at beginning of period	5,598	4,070
Cash at end of period	$ 4,070	$ 12,097
Supplemental disclosure of noncash financing items:		
Issuance of redeemable convertible preferred stock in connection with a license agreement	$ 653	$ –
Accretion to redemption value and cumulative dividends on preferred stock	981	6,515
Deferred offering costs included in accounts payable and accrued liabilities	–	514

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

AN2 Therapeutics, Inc.

Notes to Financial Statements

1. The Company

Description of Business

AN2 Therapeutics, Inc. (the "Company") is a biopharmaceutical company focused on developing novel medicines for patients with rare infectious diseases that represent significant unmet needs, specifically its initial product candidate, epetraborole, an antibiotic under development as a once-daily, oral treatment for patients with chronic non-tuberculous mycobacterial lung disease. The Company was incorporated in the state of Delaware in February 2017, began operations in November 2019, and is based in Menlo Park, California.

Since launching operations in November 2019, the Company has devoted substantially all of its resources to performing research and development activities, including with respect to its initial product candidate, epetraborole, business planning, hiring personnel, raising capital and providing general and administrative support for these operations.

The Company is subject to risks and uncertainties common to early-stage companies in the biotechnology industry, including, but not limited to, development by competitors of new technological innovations, protection of proprietary technology, dependence on key personnel, use of contract manufacturing and contract research organizations, compliance with government regulations and the need to obtain additional financing to fund operations. The Company's initial product candidate currently under development will require significant additional research and development efforts, including additional clinical trials and regulatory approval, prior to commercialization. These efforts require significant amounts of additional capital, adequate personnel infrastructure and extensive compliance and reporting.

The Company's initial product candidate is in development. There can be no assurance that the Company's research and development will be successfully completed, that adequate protection for the Company's in-licensed intellectual property will be obtained or maintained, that any products developed will obtain necessary government regulatory approval or that any approved products will be commercially viable. Even if the Company's product development efforts are successful, it is uncertain when, if ever, the Company will generate significant revenue from product sales. The Company operates in an environment of rapid change in technology and substantial competition from other pharmaceutical and biotechnology companies. In addition, the Company is dependent upon the services of its employees, consultants and other third parties.

Liquidity

The Company's operations have historically been financed through the issuance of redeemable convertible preferred stock. Since inception, the Company has incurred significant losses and negative net cash flows from operations. During the year ended December 31, 2021, the Company incurred a net loss of $21.5 million and had negative net cash flows from operating activities of $20.5 million. The Company has an accumulated deficit as of December 31, 2021 of $47.4 million and will require substantial additional capital for research and development activities. The Company anticipates incurring additional losses until such time, if ever, that it can generate significant sales of its product candidate currently in development.

As of December 31, 2021, the Company had cash, cash equivalents and investments of $62.0 million. Management believes that its cash, cash equivalents and investments are sufficient to continue operating activities for at least 12 months following the issuance date of these financial statements. Future capital requirements will depend on many factors, including the timing and extent of

spending on research and development, including costs for preclinical and nonclinical studies, clinical trials and clinical trial material manufacturing. There can be no assurance that, in the event the Company requires additional financing, such financing will be available at terms acceptable to the Company if at all. Failure to generate sufficient cash flows from operations, raise additional capital, and reduce discretionary spending should additional capital not become available could have a material adverse effect on the Company's ability to achieve its intended business objectives.

Other Risks and Uncertainties

The Company is subject to a number of risks similar to those of other clinical-stage biopharmaceutical companies, including, but not limited to: dependence on key individuals, the need to develop commercially viable therapeutics, competition from other companies, many of which are larger and better capitalized, protection of intellectual property rights, litigation or claims against the Company based on intellectual property rights, regulatory clearance, market acceptance of the Company's products and the need to obtain adequate additional financing to fund the development of its products.

In March 2020, the World Health Organization declared the global novel coronavirus disease ("COVID-19") outbreak a pandemic. To date, the Company's business has not been materially impacted by the COVID-19 pandemic. However, the Company has experienced certain slowing of its preclinical and clinical trials and cannot at this time predict the specific extent, duration, or full impact that the COVID-19 pandemic will have on its financial condition and operations, including ongoing and planned preclinical and nonclinical studies, clinical trials and clinical trial material manufacturing. The impact of the COVID-19 pandemic on the financial performance of the Company will depend on future developments, including the duration and spread of the outbreak and related governmental advisories and restrictions. These developments and the impact of COVID-19 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, the Company's results may be adversely affected.

2. Summary of Significant Accounting Policies

Basis of Presentation

The Company's financial statements have been prepared in accordance with United States generally accepted accounting principles ("U.S. GAAP").

Segments

The Company operates and manages its business as one reportable and operating segment. The Company's chief executive officer, who is the chief operating decision maker, reviews financial information on a company-wide basis for purposes of allocating resources and assessing financial performance.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities as of the date of the financial statements and the reported amounts of expenses during the reporting period. On an ongoing basis, management evaluates its estimates, including those related to research and development accruals, fair value of assets and liabilities, and the fair value of common stock and stock-based compensation. Management bases its estimates on historical experience and on various other market-specific and relevant assumptions that management believes to be reasonable under the circumstances. Actual results could differ from those estimates.

Deferred Offering Costs

The Company capitalizes certain legal, accounting and other third-party fees that are directly related to the Company's in-process equity financings, including its planned initial public offering, until such financings are consummated. After consummation of the equity financing, these costs are recorded as a reduction of the proceeds received as a result of the offering. Should a planned equity financing be abandoned, terminated or significantly delayed, the deferred offering costs are immediately written off to operating expenses.

Research and Development Expenses

All research and development costs, including work performed by third parties, are expensed as incurred. Research and development costs consist of salaries and other personnel-related expenses, including associated stock-based compensation, consulting fees, and facility costs, as well as fees paid to other entities that conduct certain research and development activities on behalf of the Company. Payments made prior to the receipt of goods or services to be used in research and development are capitalized until the goods are received or services are rendered.

As part of the process of preparing its financial statements, the Company estimates its accrued expenses. This process involves reviewing quotations and contracts, identifying services that have been performed on the Company's behalf and estimating the level of services performed and the associated cost incurred for services for which the Company has not yet been invoiced or otherwise notified of the actual cost. The majority of the Company's service providers invoice monthly in arrears for services performed or when contractual milestones are met. The Company makes estimates of its accrued expenses at the end of each reporting period based on the facts and circumstances known to the Company at that time. The significant estimates in the Company's accrued research and development expenses relate to expenses incurred with respect to contract manufacturing and research organizations, academic research centers and other vendors in connection with research and development activities for which the Company has not yet been invoiced.

Redeemable Convertible Preferred Stock

The Company records the redeemable convertible preferred stock at fair value on the dates of issuance, net of issuance costs. Upon the occurrence of certain events that are outside the Company's control, including a deemed liquidation event, holders of the redeemable convertible preferred stock can cause redemption for cash. Therefore, the redeemable convertible preferred stock is classified outside of stockholders' deficit on the balance sheet.

The carrying value of the redeemable convertible preferred stock will be adjusted to its redemption value if and when it becomes probable that such a redemption event will occur. Since the holders of the redeemable convertible preferred stock have the right to request the Company to redeem their shares of the redeemable convertible preferred stock after seven years of the issuance, it is probable that the redeemable convertible preferred stock becomes redeemable at the current reporting date. Therefore, the carrying value of the redeemable convertible stock has been accreted to its redemption value.

Redeemable Convertible Preferred Stock Tranche Liability

The redeemable convertible preferred stock issued in November 2019 contained an embedded feature that provides the investors the ability to participate in a second close of the Series A at the same price upon the attainment of a specific milestone. The obligation to issue additional shares of Series A redeemable convertible preferred stock at a future date was determined to be a freestanding instrument that should be accounted for as a liability. At initial recognition, the Company recorded the redeemable convertible preferred stock tranche liability on the balance sheets at its estimated fair

value. The redeemable convertible preferred stock tranche liability is subject to remeasurement at each subsequent reporting date, with changes in fair value recognized as a component of other expense. Immediately prior to the settlement of the redeemable convertible preferred stock tranche financing occurring in October 2020, the Company remeasured the redeemable convertible preferred stock tranche liability, with the change in fair value recognized as a component of other expense. The redeemable convertible preferred stock tranche liability was then reclassified to the redeemable convertible preferred stock.

Stock-Based Compensation

The Company measures and recognizes compensation expense for equity-classified stock-based awards made to employees, directors and non-employees based on the grant date estimated fair value of each award. Compensation expense for employee and director awards is recognized on a straight-line basis over the requisite service period which is generally the vesting period for the entire award. Expense is adjusted for forfeitures as they occur. Compensation expense for non-employee awards is recognized in the same period and manner as if the Company had paid cash for the goods or services provided.

The valuation model used for calculating the fair value of stock options for stock compensation expense is the Black-Scholes option-pricing model (the Black-Scholes model). The Black-Scholes model requires management to make assumptions and judgments about the variables used in the calculation, including the expected term, the expected volatility of common stock, an assumed risk-free interest rate, and expected dividends the Company may pay. Management elected to apply the practical expedient for private companies and used the simplified method to determine the awards' expected term. Volatility is based on an average of the historical volatilities of the common stock of entities with characteristics similar to the Company's. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant for periods corresponding with the expected life of the option. The Company uses an assumed dividend yield of zero as the Company has never paid dividends and has no current plans to pay any dividends on its common stock.

For awards that contain performance conditions, compensation cost is recognized in the period in which it becomes probable that the performance condition will be satisfied. The grant date fair value of these awards is equal to the fair value of the underlying shares as determined by the price other investors paid for such shares in recent transactions. For awards that vest upon a liquidity event or a change in control, the performance condition is not probable of being achieved until the event occurs. As a result, no compensation expense would be recognized until the performance-based vesting condition is achieved.

Fair Value of Common Stock

The absence of an active market for the Company's common stock requires the Company's board of directors to determine the fair value of its common stock for purposes of granting stock options. The fair value of the Company's common stock is determined by the Company's board of directors with assistance from management and an independent third-party valuation firm. Management's approach to estimating the fair value of the Company's common stock is consistent with the methods outlined in the American Institute of Certified Public Accountants' Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation.* Determining the best estimated fair value of the Company's common stock requires significant judgement and management considers several factors, including the Company's stage of development, equity market conditions affecting comparable public companies, significant milestones and progress in research and development efforts.

Cash and Cash Equivalents

The Company considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. Cash equivalents, which consist of money market funds, corporate debt securities and corporate commercial paper, are stated at fair value. As of December 31, 2021, the

Company had cash equivalents of $8.1 million. The Company had no cash equivalents at December 31, 2020.

Investments

Investments consist of U.S. Treasuries, asset-backed securities, corporate debt securities and corporate commercial paper. All of the Company's investments are classified as available-for-sale and are carried at estimated fair values and reported in cash equivalents, short-term investments or long-term investments. Management determines the appropriate classification of the investments at the time they are acquired and evaluates the appropriateness of such classifications at each balance sheet date. Investments with contractual maturities greater than 12 months are considered long-term investments.

Unrealized gains and losses on available-for-sale investments are reported in accumulated other comprehensive gain (loss) as a separate component of stockholders' deficit. Investments are regularly reviewed for other-than-temporary declines in fair value. The review includes consideration of the cause of impairment, including the creditworthiness of the security issuers, the number of investments in an unrealized loss position, the severity and duration of the unrealized losses, and whether it is more likely than not that the Company will be required to sell the investments before the recovery of their amortized cost basis. The cost of investments sold, if any, is based on the specific identification method. To date, the Company has not recorded any impairment charges on its investments related to other-than-temporary declines in market value. The Company had no investments at December 31, 2020.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist of cash, cash equivalents and investments. The Company's cash is invested through financial institutions in the United States. The Company's investments consist of debt securities, issued by highly rated corporate entities or the U.S. government, and asset-backed securities. The Company's exposure to any individual corporate entity is limited by our investment policy. Deposits may at times, exceed federally insured limits, but minimal credit risk exists. The Company invests its cash equivalents in highly rated money market funds. The Company has not experienced any credit losses in such accounts and does not believe it is exposed to any significant credit risk on these funds.

The Company is exposed to credit risk in the event of a default by the financial institution holding its cash to the extent recorded on the balance sheets. Through December 31, 2021, the Company has no off-balance sheet concentrations of credit risk.

Income Taxes

The Company accounts for income taxes under the liability method. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates that will be in effect when the differences are expected to reverse. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

The Company recognizes and measures uncertain tax positions using a two-step approach set forth in authoritative guidance. The first step is to evaluate the tax position taken or expected to be taken by determining whether the weight of available evidence indicates that it is more likely than not that the tax position will be sustained in an audit, including resolution of any related appeals or litigation processes. The second step is to measure the tax benefit as the largest amount that is more than 50% likely to be realized upon ultimate settlement. Significant judgment is required to evaluate uncertain tax positions. The Company evaluates uncertain tax positions on a regular basis. The evaluations are based on a number of factors, including changes in facts and circumstances, changes in tax law, correspondence with tax authorities during the course of the audit, and effective settlement of audit issues. The provision for income taxes includes the effects of any accruals that the Company believes

are appropriate. It is the Company's policy to recognize interest and penalties related to income tax matters in income tax expense. Through December 31, 2021, the Company had not accrued interest or penalties related to uncertain tax positions.

On March 18, 2020, the Families First Coronavirus Response Act ("FFCR Act"), and on March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") were each enacted in response to the COVID-19 pandemic. The FFCR Act and the CARES Act contain numerous income tax provisions relating to refundable payroll tax credits, deferment of employer side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to tax depreciation methods for qualified improvement property.

On June 29, 2020, Assembly Bill 85 ("A.B. 85") was signed into California law. A.B. 85 provides for a three-year suspension of the use of net operating losses for medium and large businesses and a three-year cap on the use of business incentive tax credits to offset no more than $5.0 million of tax per year. A.B. 85 suspends the use of net operating losses for taxable years 2020, 2021 and 2022 for certain taxpayers with taxable income of $1.0 million or more. The carryover period for any net operating losses that are suspended under this provision will be extended. A.B. 85 also requires that business incentive tax credits including carryovers may not reduce the applicable tax by more than $5.0 million for taxable years 2020, 2021 and 2022.

The FFCR Act, CARES Act and A.B. 85 did not have a material impact on the Company's financial statements as of December 31, 2021; however, the Company continues to examine the impacts the FFCR Act, CARES Act and A.B. 85 may have on its business, results of operations, financial condition, liquidity and related disclosures.

Comprehensive Loss

Comprehensive loss includes net loss and certain changes in stockholders' deficit that are excluded from net loss. The Company's other comprehensive loss consists of net changes in unrealized gains and losses on its available-for-sale investments. The Company had no items of comprehensive income or loss for the year ended December 31, 2020.

Net Loss Per Share

Basic net loss per share attributable to common stockholders is calculated by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period, without consideration for potentially dilutive securities. Diluted net loss per share attributable to common stockholders is computed by dividing the net loss attributable to common stockholders by the weighted-average number of common stock and potentially dilutive securities outstanding for the period. For purposes of the diluted net loss per share calculation, redeemable convertible preferred stock, stock options, common stock subject to repurchase related to unvested early exercise of stock options are considered to be potentially dilutive securities. Basic and diluted net loss attributable to common stockholders per share is presented in conformity with the two-class method required for participating securities as the redeemable convertible preferred stock is considered a participating security because it participates in dividends with common stock. The Company also considers the shares issued upon the early exercise of stock options subject to repurchase to be participating securities because holders of such shares have non-forfeitable dividend rights in the event a dividend is paid on common stock. The holders of all series of redeemable convertible preferred stock and the holders of early exercised shares subject to repurchase do not have a contractual obligation to share in the Company's losses. As such, the net loss was attributed entirely to common stockholders. Because the Company has reported a net loss for all periods presented, diluted net loss per share is the same as basic net loss per share for those periods because the impact of potentially dilutive securities would be anti-dilutive.

Recent Accounting Pronouncements Not Yet Adopted

In July 2018, the FASB issued ASU No. 2018-11, Leases (Topic 842): Targeted Improvements ("ASU 2018-11"). ASU 2018-11 provided an alternative method in addition to the modified retrospective transition method for ASU No. 2016-02, Leases: Amendments to the FASB Accounting Standards Codification ("ASU 2016-02"), issued in February 2016. Under ASU 2018-11, an entity may elect to initially apply the new lease standard at the adoption date and recognize a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. Under ASU 2016-02, a lease is required to recognize assets and liabilities with lease terms of more than twelve months. ASU 2016-02 is effective for nonpublic business entities and public entities eligible to be Smaller Reporting Companies for fiscal years beginning after December 15, 2021. While the Company is currently evaluating the impact of the adoption of ASU 2016-02 on its financial statements, the Company anticipates the effect will be immaterial.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments—Credit Losses (Topic 326) Measurement of Credit Losses on Financial Instruments ("ASU 2016-13"), which requires an entity to utilize a new impairment model known as the current expected credit loss ("CECL") model to estimate its lifetime "expected credit loss" and record an allowance that, when deducted from the amortized cost basis of the financial assets and certain other instruments, including but not limited to available-for-sale debt securities. Credit losses relating to available-for-sale debt securities will be recorded through an allowance for credit losses rather than as a direct write-down to the security. ASU 2016-13 requires a cumulative effect adjustment to the balance sheet as of the beginning of the first reporting period in which the guidance is effective. In November 2019, the FASB issued ASU 2019-10, Financial Instruments—Credit Losses (Topic 326), Derivatives and Hedging (Topic 815) and Leases (Topic 842): Effective Dates, which defers the effective date of ASU 2016-13 to fiscal years beginning after December 15, 2022 for all entities except SEC reporting companies that are not smaller reporting companies. The Company is currently evaluating the impact of the adoption of ASU 2016-13 on its financial statements.

3. Fair Value Measurements

The Company records its financial assets and liabilities at fair value. The accounting guidance for fair value provides a framework for measuring fair value, clarifies the definition of fair value, and expands disclosures regarding fair value measurements. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the reporting date. The accounting guidance establishes a three-tiered hierarchy, which prioritizes the inputs used in the valuation methodologies in measuring fair value as follows:

- Level 1: Inputs which include quoted prices in active markets for identical assets and liabilities.
- Level 2: Inputs other than Level I that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3: Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The Company's primary financial instruments as of December 31, 2020 include cash, prepaid expenses, accounts payable and accrued liabilities. The carrying amounts of the Company's financial instruments for the year ended December 31, 2020, other than the redeemable convertible preferred stock tranche liability, approximate fair value due to their relatively short maturities. During the year ended December 31, 2020, the Company's had no financial assets or liabilities outside of Level 3 liabilities, which consist entirely of the redeemable convertible preferred stock tranche liability. The

Company's fair value measurement of its redeemable convertible preferred stock tranche liability as of December 31, 2019 was $0.7 million and was settled in October 2020 for $7.1 million. The determination of the fair value of the redeemable convertible preferred stock tranche liability is discussed in Note 9.

The following table sets forth the changes in the fair value of Level 3 liabilities (in thousands):

	Redeemable Convertible Preferred Stock Tranche Liability
Fair value at December 31, 2019	728
Change in fair value	6,322
Settlement of redeemable convertible preferred stock tranche liability	(7,050)
Fair value at December 31, 2020	$ –

The Company's primary financial instruments as of December 31, 2021 include cash, cash equivalents, short- and long-term investments, prepaid expenses, accounts payable, and accrued liabilities. The carrying amounts of the Company's financial instruments as of December 31, 2021, other than cash equivalents, short- and long-term investments, approximate fair value due to their relatively short maturities.

The following table presents the Company's financial assets, which consist of cash equivalents and investments classified as available-for-sale investments, that are measured at fair value on a recurring basis, as of December 31, 2021 (in thousands):

	Level	Amortized Cost	Unrealized Gain	Unrealized Loss	Estimated Fair Value
Cash equivalents:					
Money market funds	Level 1	$ 3,567	$ –	$ –	$ 3,567
Commercial paper	Level 2	2,999	–	–	2,999
Corporate debt securities	Level 2	1,501	–	–	1,501
Short-term investments:					
U.S. treasury securities	Level 1	4,500	–	(11)	4,489
Commercial paper	Level 2	33,716	4	(5)	33,715
Asset-backed securities	Level 2	8,261	–	(7)	8,254
Long-term investments:					
U.S. treasury securities	Level 1	3,494	–	(8)	3,486
Total		$ 58,038	$ 4	$ (31)	$ 58,011

For the year ended December 31, 2021, there were no other-than-temporary impairment charges recognized in accumulated other comprehensive income.

The Company classifies its money market funds and U.S. treasury securities, which are valued based on quoted market prices in active markets with no valuation adjustment, as Level 1 assets within the fair value hierarchy.

The Company classifies its investments in commercial paper, corporate debt securities and asset-backed-securities as Level 2 within the fair value hierarchy. The fair values of these investments are estimated by taking into consideration valuations obtained from third-party pricing services. The pricing services utilize industry standard valuation models, including both income- and market-based

approaches, for which all significant inputs are observable, either directly or indirectly, to estimate fair value. These inputs include reported trades of and broker/dealer quotes on the same or similar securities, issuer credit spreads, benchmark securities, prepayment/default projections based on historical data and other observable inputs. There were no transfers of financial instruments between valuation levels during the year ended December 31, 2021.

As of December 31, 2021, none of the Company's available-for-sale investments that were in an unrealized loss position had been in an unrealized loss position for more than 12 months. During the year ended December 31, 2021, the Company did not sell any available-for-sale investments.

The Company's short-term investments had maturities of less than one year from the balance sheet date. The Company's long-term investments had maturities of between one and two years from the balance sheet date.

4. Collaboration and License Agreements

Anacor Licensing Agreement

In November 2019, the Company entered into an exclusive worldwide license agreement with Anacor Pharmaceuticals, Inc. ("Anacor") for certain compounds and other intellectual property controlled by Anacor for the treatment, diagnosis, or prevention of all human diseases (the "Anacor License"). The Anacor License will expire upon expiration of the last to expire royalty term. Either party may terminate the Anacor License for the other party's material breach following a cure period or immediately upon certain insolvency events relating to the other party. The Company has the right to terminate the agreement at its convenience upon 90-day written notice until the first regulatory approval or one-year notice thereafter. Furthermore, upon termination of the Anacor License for any of the foregoing reasons, the rights and licenses within will terminate.

In exchange for the worldwide, sublicensable, exclusive right and licenses to develop, manufacture, and commercialize the specified compounds, the Company paid Anacor a non-refundable $2.0 million upfront payment and granted Anacor an aggregate 579,064 shares of Series A redeemable convertible preferred stock. For financial reporting purposes the fair value of the shares was $5.79 per share for a total of $3.4 million. The fair value of the shares granted is based on the $5.99 per share price paid by other investors for issued shares in the Series A financing.

The Series A redeemable convertible preferred stock granted to Anacor is accounted for as non-employee awards and is recognized upon the transfer of the license and upon the Company meeting certain operational milestones as included in the Series A Stock Purchase Agreement. For the years ended December 31, 2019 and 2020, 466,376 and 112,688 shares of Series A redeemable convertible preferred stock with a fair value of $2.7 million and $0.7 million, respectively, vested as the related performance and service conditions were satisfied.

The Company recorded the transaction as an asset acquisition as substantially all of the fair value of the gross assets acquired were concentrated in one of the compounds. The assets acquired in the transaction were measured based on the upfront payment and the fair value of the Series A redeemable convertible preferred stock shares issued to Anacor, as the fair value of the consideration given, $5.4 million, was more readily determinable than the fair value of the assets received. As the in-process research and development assets have not yet received regulatory approval and have no alternative future use, the fair value of the assets was recorded as research and development expense—related party. The total amounts recorded in the statements of operations for the years ended December 31, 2020 and 2021 were $0.7 million and $0.8 million, respectively.

The Company agreed to make further payments to Anacor upon achievement of various development milestones for an aggregate maximum of $2.0 million, upon achievement of various

commercial and sales threshold milestones for an aggregate maximum payment of $125.0 million, and up to 50% of royalties received under certain sublicensing arrangements. Royalties are subject to certain customary reductions, including lack of patent coverage and generic product entry. The Company also agreed to pay Anacor non-refundable, non-creditable sales royalties on a tiered marginal royalty rate based on the country's status as a developing or developed country as defined in the license agreement. Sales royalties are a percentage of net sales, as specified in the Anacor License, and range from mid-single digits for developing countries (as classified by the World Bank) and single to mid-teens for all other countries or the China, Hong Kong, Taiwan and Macau territories, upon reaching a minimum of net sales in the low-teen millions. The sales royalties are required to be paid on a product-by-product and country-by-country basis, until the latest to occur of 15 years following the date of first commercial sale of a product, the expiration of all regulatory or data exclusivity, or the date upon of the expiration of the last to expire valid claim of a licensed patent covering such product in such country. Currently, the date of the expiration of the last to expire valid claim of a licensed patent covering epetraborole in the licensed territory is June 2028. In addition, Anacor is entitled to certain milestone payments upon a change of control of our Company.

In December 2021, the Company entered into an amendment to the Anacor License for certain compounds and other intellectual property controlled by Anacor for the treatment, diagnosis, or prevention of all human diseases (the "Anacor License Amendment"). The Anacor License Amendment has no impact on the Anacor License financial terms.

None of the future development, regulatory, commercial or sales milestones or royalty payments were recognized during the year ended December 31, 2020. During the year ended December 31, 2021, the Company recorded $0.8 million in research and development expense—related party due to Anacor upon the achievement of milestones.

Brii Biosciences Agreement

In November 2019, the Company entered into a license agreement granting Brii Biosciences Limited the exclusive development and commercialization rights of certain compounds in China, Hong Kong, Taiwan, and Macau for the treatment of human diseases. The Company did not receive an upfront payment but is eligible to receive up to $15.0 million in the aggregate for development and regulatory milestones and up to $150 million in commercial milestones upon achieving sales thresholds. The Company is also entitled to tiered mid-single digits to high-first decile percentage sales-based royalties. The sales royalties are required to be paid on a product-by-product and region-by-region basis, until the latest to occur of 15 years following the date of first commercial sale of a product, the expiration of all regulatory or data exclusivity, or the date upon the expiration of the last to expire claim of a licensed patent covering the composition of matter or approved use of such product in such region. The last to expire valid claim of a licensed patent covering the composition of matter or approved use of such product in the licensed territory is June 2028. Future milestone payments and royalties will be accounted for under ASC 606.

5. Balance Sheet Components

Accrued Liabilities

Accrued liabilities consist of the following (in thousands):

	December 31,	
	2020	2021
Accrued research and development-related expenses	$887	$ 495
Accrued research and development-related expenses—related party	–	500
Accrued offering costs	–	313
Other	–	91
Total accrued liabilities	$887	$1,399

6. Commitments and Contingencies

Guarantees and Indemnifications

The Company, as permitted under Delaware law and in accordance with its certification of incorporation, as amended, and bylaws, and pursuant to indemnification agreements with certain of its officers and directors, indemnifies its officers and directors for certain events or occurrences, subject to certain limits, which the officer or director is or was serving at the Company's request in such capacity. The term of the indemnification period lasts as long as an officer or director may be subject to any proceeding arising out of acts or omissions of such officer or director in such capacity. The maximum amount of potential future indemnification is unlimited; however, the Company currently holds director and officer liability insurance. This insurance limits the Company's exposure and may enable it to recover a portion of any future amounts paid. The Company believes that the fair value of these indemnification obligations is minimal. Accordingly, the Company has not recognized any liabilities relating to these obligations for any period presented.

Adjuvant Global Health Agreement

In conjunction with Adjuvant Global Health Technology Fund L.P.'s ("Adjuvant") investment in the Company's Series A redeemable convertible preferred stock financing in November 2019, the Company entered into a Global Health Agreement with Adjuvant, pursuant to which the Company agreed to support the creation of innovative and affordable drugs to treat disease, through public health programs and private purchasers in Low and Low-Middle-Income Countries (as such terms are defined by the World Bank and in the agreement). Adjuvant purchased a total of 834,724 shares of the Company's Series A redeemable convertible preferred stock in 2019 and 2020 for a total investment of $5.0 million.

Adjuvant's investment supports the development of the Company's product candidate, epetraborole, for use in melioidosis-endemic and melioidosis-at-risk countries as defined in the agreement. These global access commitments became effective as of the Series A redeemable convertible preferred stock financing closing date and will remain in effect until the latter that Adjuvant ceases to be a shareholder of the Company or, ten years following epetraborole approval for melioidosis by a regulatory authority.

The Global Health Agreement contains various affirmative and negative covenants agreed to by the Company, including its use of reasonably diligent endeavors to develop the agreed-upon products using non-dilutive funding and make accessible to people in need in the target countries so long as the Company does not sell products at a loss. Other covenants include prohibition of use of investment for propaganda, attempt to influence legislation, influence of any public election or voter registration drive or promotion of terrorist activities, as well as compliance with certain environmental, social and

governance requirements and anti-corruption requirements. If the Company does not maintain compliance with these non-financial covenants, Adjuvant may be entitled to repayment for any portion of its investment that is not used for the purposes outlined in the Global Health Agreement. As of December 31, 2020, the $5.0 million aggregate proceeds from Adjuvant's Series A investment have been fully utilized to support the epetraborole development program, which overlaps with the melioidosis development activities for the global health programs.

In conjunction with Adjuvant's investment in the Company's Series B redeemable convertible preferred stock financing in March 2021, the Company entered into an Amended and Restated Global Health Agreement (the "Adjuvant Amendment"). The Adjuvant Amendment expands Adjuvant's investment support to include the development of the Company's product candidate, epetraborole, for use in tuberculosis-endemic and tuberculosis-at-risk countries as defined in the agreement. Adjuvant purchased 198,333 shares of the Company's Series B redeemable convertible preferred stock in 2021 for a total investment of $7.0 million, which is subject to Adjuvant's right of repayment should the Company not utilize the proceeds from Adjuvant's investment towards the agreed-upon purpose. As of December 31, 2021, the $7.0 million proceeds from Adjuvant's Series B investment have been fully utilized to support the epetraborole development program, which overlaps with the melioidosis and other global health development programs. The Company has complied with all applicable covenants as of December 31, 2021.

7. Common Stock

The Company's certificate of incorporation, as amended, authorizes the Company to issue 7,295,839 shares of $0.00001 par value common stock. Holders of common stock are entitled to one vote per share on all matters to be voted upon by the stockholders of the Company.

Subject to the preferences that may be applicable to any outstanding shares of preferred stock, the holders of common stock are entitled to receive ratably such dividends, if any, as may be declared by the Board of Directors. No dividends have been declared to date.

Common shares reserved for future issuance, on an as-if-converted basis, as of December 31, 2020 and 2021, consists of the following:

	December 31,	
	2020	2021
Series A redeemable convertible preferred stock	2,582,403	2,582,403
Series B redeemable convertible preferred stock	–	2,266,661
Stock options, issued and outstanding	127,343	675,386
Stock options, authorized for future issuance	–	398,506
Total	2,709,746	5,922,956

8. Redeemable Convertible Preferred Stock

The Company's Certificate of Incorporation, as amended, authorizes the Company to issue 4,849,064 shares of redeemable convertible preferred stock with a par value of $0.00001 per share.

Series A Equity Financing

From November 2019 through October 2020, the Company issued a total of 2,003,339 shares of Series A redeemable convertible preferred stock ("Series A") at $5.99 per share for gross proceeds of $12.0 million, and issued 579,064 shares of Series A redeemable convertible preferred stock pursuant to the license agreement between the Company and Anacor, as follows:

The Company entered into a Series A preferred stock purchase agreement (Series A Preferred Stock Purchase Agreement) with certain investors on November 20, 2019 and upon approval by the

Company's Board of Directors, the Company completed the first tranche of a Series A redeemable convertible preferred stock financing (Series A—First Tranche) at a price per share of $5.99 for cash. The Company also entered into a license agreement arrangement to license certain compounds and obtain rights to develop, manufacture and commercialize assets acquired under the agreement. An additional 466,376 shares of Series A redeemable convertible preferred stock were issued to Anacor under that certain license agreement (see Note 4). The net cash proceeds from this first tranche of financing totaled $8.1 million and 1,371,955 shares of Series A redeemable convertible preferred stock were issued. Issuance costs totaled $0.1 million and were recorded as a reduction of the proceeds.

On October 2, 2020, upon achievement of certain research and development milestones outlined in the Series A Preferred Stock Purchase Agreement and upon approval by the Company's Board of Directors, the Company completed a second tranche of the Series A redeemable convertible preferred stock financing (Series A—Second Tranche) at a price per share of $5.99 for cash. The net cash proceeds from this second tranche of financing totaled $3.8 million, and 631,384 shares of Series A redeemable convertible preferred stock were issued. An additional 112,688 shares of Series A redeemable convertible preferred stock were issued to Anacor under that certain license agreement (see Note 4). Issuance costs total $0.01 million and were recorded as a reduction of the proceeds.

Series B Equity Financing

In March 2021, the Company issued a total of 2,266,661 shares of Series B redeemable convertible preferred stock ("Series B") at $35.29 per share for an aggregate purchase price of $80.0 million. The Company entered into a Series B preferred stock purchase agreement with certain investors on March 5, 2021 and upon approval by the Company's Board of Directors, the Company completed the Series B redeemable convertible preferred stock financing at a price per share of $35.29 for cash. The net cash proceeds from the Series B financing totaled $79.7 million. Issuance costs totaled $0.3 million and were recorded as a reduction of the proceeds.

Series A and B Redeemable Convertible Preferred Stock

At December 31, 2020, redeemable convertible preferred stock consisted of the following (in thousands, except share and per share amounts):

	Shares Authorized	Shares Issued and Outstanding	Issuance Price Per Share	Carrying Value	Liquidation Preference
Series A	2,590,000	2,582,403	$ 5.99	$23,070	$ 16,549

At December 31, 2021, redeemable convertible preferred stock consisted of the following (in thousands, except share and per share amounts):

	Shares Authorized	Shares Issued and Outstanding	Issuance Price Per Share	Carrying Value	Liquidation Preference
Series A	2,582,403	2,582,403	$ 5.99	$ 24,308	$ 17,787
Series B	2,266,661	2,266,661	$ 35.29	85,011	85,277
	4,849,064	4,849,064		$ 109,319	$ 103,064

The rights, preferences, and privileges of the redeemable convertible preferred stock are as follows:

Redemption Rights

Upon the occurrence of certain liquidation events, as well as upon a written request by at least two-thirds of the holders of the then-outstanding Series A and Series B redeemable convertible

preferred stock on or after the seventh anniversary of the Series B original issue date, Series A and Series B redeemable convertible preferred stock must be redeemed by the Company at a price of $5.99 per share and $35.29 per share, respectively, plus any accrued dividends (whether or not declared) in three annual installments. During the years ended December 31, 2020 and 2021, the Company accreted $1.0 million and $6.5 million, respectively, to the redemption value of the redeemable convertible preferred stock representing cumulative dividends.

Dividends Rights

Cumulative dividends of $0.4792 and $2.82352 per share per annum for each Series A and Series B redeemable convertible preferred stock, respectively, are payable when and as declared by the Company's Board of Directors, or upon the occurrence of a liquidation event or in connection with a redemption of the shares of redeemable convertible preferred stock, if requested by the holders of at least two-thirds of the then-outstanding redeemable preferred stock on or after the seventh anniversary of the Series B original issue date, as described above. The Series A and Series B original issue price is $5.99 and $35.29 per share, respectively. The original issue price is subject to adjustment in the event of any share dividend, share split, combination, consolidation or other recapitalization. The dividends shall accrue from day to day from the issue date of the Series A and B redeemable convertible preferred stock whether or not declared and shall be cumulative. In addition, the Series A and B redeemable convertible preferred stock participates on an as-converted basis in any dividends payable to ordinary shareholders. Cumulative dividends for the years ended December 31, 2020 and 2021 were $1.1 million and $7.6 million, respectively. No dividends have been declared or paid since the initial issuance of redeemable convertible preferred shares through December 31, 2021.

Liquidation Rights

In the event of liquidation, dissolution or winding up of the Company, merger or a reduction of capital through the sale or lease of all or a substantial part of the business of the Company, before any distribution or payment shall be made to the holders of ordinary shares, the holders of preferred shares shall be entitled to be paid an amount in cash equal to the original issue price (subject to adjustment in the event of any share dividend, share split, combination, or other recapitalization) plus all dividends accumulated and unpaid thereon. First, the holders of the preferred shares are paid in full the amounts as specified on a pro-rata basis; then, after holders of the preferred shares are satisfied, any remaining amounts shall be distributed on a pro-rata basis to the holders of the common shares.

Voting Rights

Except as otherwise required by law, the holders of common and Series A and B redeemable convertible preferred stock vote together as a single class. The holders of the redeemable convertible preferred stock are entitled to the number of votes equal to the number of shares of common stock into which the redeemable convertible preferred stock could be converted on the record date for the vote, or upon the written consent of the stockholders.

The holders of the Series A redeemable convertible preferred stock are entitled to elect two directors of the Company and the holders of common stock shall be entitled to elect one director of the Company.

Optional Conversion

Each share of redeemable convertible preferred stock shall be convertible, at the option of the holder, into such number of fully paid shares of common stock as is determined by dividing the original issue price by the conversion price in effect at the time of conversion. As of December 31, 2020 and 2021, the initial conversion price per share of redeemable convertible preferred stock is equivalent to the original issue price and as such converts on a one-for-one basis prior to any adjustments.

The respective applicable conversion price is subject to adjustment upon any future stock splits or stock combinations, reclassifications or exchanges of similar stock, upon a reorganization, merger or consolidation of the Company, or upon the issuance or sale by the Company of common stock for consideration less than the applicable conversion price.

Mandatory Conversion

Each share of Series A and B redeemable convertible preferred stock automatically converts into the number of shares of common stock determined in accordance with the conversion rate upon the earlier of (a) the closing of an initial public offering in at a price per share of common stock at least equal to $52.94 (as may be adjusted for stock splits, reverse splits, stock dividends, combinations, and other recapitalizations) resulting in at least $50 million of net proceeds to the Company after deducting underwriters commissions and expenses or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least two-thirds of the outstanding shares of Series A and B redeemable convertible preferred stock, then (i) all outstanding shares of redeemable convertible preferred stock shall automatically be converted into shares of Common Stock at the then effective conversion rate and (ii) such shares may not be reissued by the Company. Through December 31, 2021, the Company has sufficient authorized and unissued common shares available to settle any conversion event.

9. Redeemable Convertible Preferred Stock Tranche Liability

The Company's obligation to issue additional shares of its redeemable convertible preferred stock represents a freestanding financial instrument (see Note 2 and Note 3). The freestanding redeemable convertible preferred stock tranche liability is initially recorded at fair value, with fair value changes recognized as increases or reductions in other expense in the statements of operations. The Company continued to adjust the liability for changes in the estimated fair value until the settlement of the redeemable convertible preferred stock tranche liability. At such time, any remaining value of the redeemable convertible preferred stock tranche liability was reclassified to redeemable convertible preferred stock with no further remeasurement required. The Company had recorded a redeemable convertible preferred stock tranche liability in November 2019 of $0.3 million related to the Series A redeemable convertible preferred stock financing.

The Company estimated the fair value of the redeemable convertible preferred stock tranche liability using a Black-Scholes option pricing model using the following:

- ***Expected term—***The expected term represents the period for which the redeemable convertible preferred stock tranche liabilities are expected to be outstanding, which is estimated to be the remaining contractual term.
- ***Expected volatility—***The volatility data was estimated based on a study of publicly traded industry peer companies, as there is no trading history for the Company's redeemable convertible preferred stock. For purposes of identifying these comparable peer companies, the Company considered the industry, stage of development, size and financial leverage. The Company has measured historical volatility over a period equivalent to the expected term and believes that historical volatility provides a reasonable estimate of future expected volatility.
- ***Expected dividends—***The Black-Scholes option pricing model calls for a single expected dividend yield as an input. The Company currently has no history or expectation of paying cash dividends on its preferred stock.
- ***Risk-free interest rate—***The risk-free interest rate is based on the yield available on U.S. Treasury zero-coupon issues similar in duration to the expected term of the redeemable convertible preferred stock tranche liability.

The redeemable convertible preferred stock tranche liability was settled in October 2020 at the time of the tranche closing of the Series A redeemable convertible preferred stock and the remeasured liability balance of $7.1 million was reclassified to redeemable convertible preferred stock. The final closing fair value was remeasured with the following assumptions: estimated equity value was $63.0 million, a term of 4.1 years, a risk-free rate of 0.23%, a volatility of 112.3% and a dividend yield of 0.0%. The Company recorded the change in fair value of $6.3 million in other expense in the statements of operations and comprehensive loss for the year ended December 31, 2020.

10. Equity Incentive Plan and Stock-Based Compensation

2017 Equity Incentive Plan

In February 2017, the Board of Directors approved the 2017 Equity Incentive Plan (the “Plan”). Under the Plan, 1,249,274 shares of common stock have been reserved for the issuance of ISOs, NSOs, and rights to acquire restricted stock to employees, officers, directors, and consultants of the Company as of December 31, 2021. The Plan allows for the issuance of non-statutory and incentive stock options (ISOs) to employees and non-statutory stock options (NSOs) to non-employees. ISOs and NSOs may be granted with exercise prices at no less than 100% of the fair value of the common stock on the date of grant. Options granted to a 10% stockholder shall be at no less than 110% of the fair value, and ISO stock option grants to such 10% stockholders expire five years from the date of grant.

The Company permits early exercise of certain stock options prior to vesting to certain directors, officers, and employees. Any shares issued pursuant to unvested options are restricted and subject to repurchase by the Company until the conditions for vesting are met. The amounts paid for shares purchased under an early exercise of stock options and subject to repurchase by the Company are reported as options subject to repurchase, short and long-term on the balance sheet and is reclassified to common stock and additional paid-in capital as such shares vest. Upon termination of employment of an option holder, the Company has the right to repurchase, at the original purchase price, any unvested options. The shares issued pursuant to unvested options have been included in shares issued and outstanding on the balance sheet and statement of stockholders’ equity as such shares are not considered outstanding for accounting purposes.

ISOs granted under the Plan generally vest 25% after the completion of 12 months of service, and the balance vests in equal monthly installments over the next 36 months of service and expire ten years from the grant date, unless subject to provisions regarding 10% stockholders. NSOs vest in accordance with the terms of the specific agreement under which the options were provided and expire ten years from the date of grant.

Valuation of Stock Options

The Company estimated the fair value of stock options using the Black-Scholes option pricing model. The fair value of employee and non-employee stock options is being amortized on the straight-line basis over the requisite service period of the awards.

The Black-Scholes option pricing model requires the use of highly subjective assumptions which determine the fair value of stock-based awards. These assumptions include:

- ***Risk-free interest rate***—The risk-free interest rate is based on the U.S. Treasury zero-coupon issues in effect at the time of grant for periods corresponding with the expected term of option.
- ***Expected volatility***—Since the Company is privately-held and does not have any trading history for its common stock, the expected volatility was estimated based on the average volatility for comparable publicly traded biotechnology companies over a period equal to the expected term of the stock option grants. The comparable companies were chosen based on their similar size, stage in the life cycle and area of specialty.

- ***Expected term***—The expected term represents the period that stock-based awards are expected to be outstanding. The expected term for option grants is determined using the simplified method. The simplified method deems the term to be the average of the time-to-vesting and the contractual term of the stock-based awards.
- ***Expected dividends***—The Company has never paid dividends on its common stock and has no plans to pay dividends on its common stock. Therefore, the Company used an expected dividend yield of zero.

For options granted to non-employee consultants, the fair value of these options is also remeasured using the Black-Scholes option pricing model reflecting the same assumptions as applied to employee options in each of the reported periods, other than the expected term, which is assumed to be the remaining contractual term of the option.

The fair value of stock options granted to employees, directors and non-employees was estimated using the following weighted-average assumptions:

	Year Ended December 31,	
	2020	2021
Expected dividend yield	–	–
Expected term	5.82 years	5.99 years
Risk-free interest rate	1.29%	1.08%
Expected volatility	79.1%	85.8%

Management's calculations are based on a grant date valuation approach. Using the Black-Scholes model, the weighted-average grant-date fair value per share for options granted during the year ended December 31, 2020 and 2021 was $0.67 and $11.94, respectively.

Stock Option Plan Activity

A summary of the stock plan activity is as follows:

	Options Available for Grant	Outstanding Options	Weighted Average Exercise Price
Balances at December 31, 2020	–	127,343	$ 0.99
Reserved	956,252	–	–
Granted	(557,746)	557,746	16.74
Exercised(1)	–	(9,703)	0.99
Balances at December 31, 2021	398,506	675,386	$ 14.00

(1) As of December 31, 2021, 30,322 shares underlying options exercised were subject to repurchase.

For the year ended December 31, 2021, the total intrinsic value of stock option awards exercised was immaterial, determined at the date of option exercise, and the total cash received upon exercise of stock options was $0.01 million. The aggregate intrinsic value was calculated as the difference between the exercise prices of the underlying stock option awards and the estimated fair value of the common stock on the date of exercise.

Additional information related to the status of options at December 31, 2021, is as follows:

	Options	Weighted Average Exercise Price per Share	Weighted-Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding	675,386	$ 14.00	9.27	$ 5,482
Exercisable	170,829	5.51	8.59	2,799
Vested and expected to vest	705,707	13.44	9.23	6,116
Vested and unexercised	115,796	7.66	8.71	1,648

As of December 31, 2021, there was unrecognized share-based compensation expense of $5.8 million related to unvested share options which the Company expects to recognize over a weighted-average period of 3.15 years. The total fair value of shares vested during the year ended December 31, 2021 was $0.6 million.

Stock-Based Compensation Expense

Total stock-based compensation for all options granted to employees, directors and non-employees, before taxes is as follows (in thousands):

	Year Ended December 31,	
	2020	2021
Research and development expenses	$ 31	$ 429
General and administrative expenses	9	545
Total	$ 40	$ 974

Liability for Early Exercise of Stock Options

As of December 31, 2021, there were 30,322 unvested common shares outstanding that were issued upon the early exercise of stock options prior to the vesting of the underlying shares which are subject to repurchase by the Company at the original issuance price upon termination of the stockholders' services. The right to repurchase these shares generally lapses with respect to 25% of the shares underlying the option after one year of service to the Company and 1/48 of the shares underlying the original grant per month for 36 months thereafter. The shares purchased by the optionholders pursuant to the early exercise of stock options are not deemed, for accounting purposes, to be issued until those shares vest. As of December 31, 2021, the Company recorded $0.03 million as short- term and long-term liabilities associated with the cash received for shares issued subject to repurchase rights.

11. Income Taxes

The Company is liable for income taxes in the United States. For the years ended December 31, 2020 and 2021, the Company did not have any income for income tax purposes and therefore, no tax liability or expense has been recorded in these financial statements.

The provision for income taxes differs from the tax expense that would result by applying the statutory federal income tax rate to loss before taxes due to the following (in thousands):

	December 31, 2020	December 31, 2021
Federal tax (benefit) at statutory rate	$(2,856)	$(4,524)
State tax (benefit) at statutory rate, net of federal tax benefit	(589)	(1,377)
Change in valuation allowance	2,066	5,942
Change in fair value of redeemable convertible preferred stock tranche liability	1,328	–
Other	51	(41)
Provision for income taxes	$ –	$ –

Recognition of deferred tax assets is appropriate when realization of such assets is more likely than not. Based upon the weight of available positive and negative evidence, which includes the Company's historical operating performance and the U.S. cumulative net losses in all prior periods, the Company has provided a valuation allowance against its U.S. deferred tax assets. The valuation allowance increased by $5.9 million from December 31, 2020 to December 31, 2021 due to generation of current year net operating losses and research and development credits claimed.

Deferred income taxes reflect the net tax effects of loss and credit carryforwards and temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Components of the Company's deferred tax assets are as follow (in thousands):

	December 31, 2020	December 31, 2021
Deferred tax assets		
Net operating loss carryforwards	$ 3,428	$ 8,811
Tax credit carryforwards	91	561
Other	14	52
Gross deferred tax assets	3,533	9,424
Valuation allowance	(3,533)	(9,424)
Net deferred tax assets	$ –	$ –

As of December 31, 2021, the Company had $32.1 million of federal and $29.7 million of state net operating loss available to offset future taxable income. The federal net operating loss carryforwards do not expire. The state net operating loss carryforwards begin to expire in 2037. The Company also has federal and California state research and development credits of $0.4 million and $0.3 million, respectively. The federal tax credit carryforwards will expire in 2041 if not utilized. The state tax credit carryforwards do not expire.

Utilization of the net operating loss carryforwards is subject to an annual limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986, as amended, and similar state provisions.

A Section 382 ownership change generally occurs if one or more stockholders or groups of stockholders who own at least 5% of our stock increase their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. Similar rules may apply under state tax laws. The Company is not currently in a taxable position and no net operating loss carryforwards or credits have been used to date.

As of December 31, 2020 and 2021, the Company has unrecognized tax benefits of $0 and $0.4 million, respectively. As of December 31, 2021, the total amount of unrecognized tax benefits would affect income tax expense, if recognized, before consideration of any valuation allowance. The Company does not expect the unrecognized tax benefits to change significantly over the next 12 months. A reconciliation of the beginning and ending amount of unrecognized tax benefits for the years ended December 31, 2020 and 2021 was as follows (in thousands):

	Year Ended December 31,	
	2020	2021
Balance at beginning of year	$ –	$ –
Additions related to prior year positions	–	314
Additions related to current year positions	–	131
Balance at end of year	$ –	$ 445

The Company recognizes interest and penalties related to unrecognized tax benefits within the income tax expense line in the statements of operations. Accrued interest and penalties are included within the related tax liability line in the balance sheet. No accrued interest and penalties have been recorded through December 31, 2021.

The Company files income tax returns in the U.S federal jurisdiction and California state jurisdiction. The Company is not currently under audit by the Internal Revenue Service or other similar state or local authorities. All tax years of the Company remain open to examination by major taxing jurisdictions to which the Company is subject.

12. Net Loss Per Share

The following table sets forth the computation of the basic and diluted net loss per share (in thousands, except for per share amounts):

	Year Ended December 31,	
	2020	2021
Numerator:		
Net loss	$ (13,603)	$ (21,543)
Add: accretion to redemption value and cumulative dividends on preferred stock	(981)	(6,515)
Net loss attributable to common stockholders	$ (14,584)	$ (28,058)
Denominator:		
Weighted-average common shares outstanding used to calculate net loss per share attributable to common stockholders, basic and diluted	1,091,678	1,121,238
Net loss per share attributable to common stockholders, basic and diluted	$ (13.36)	$ (25.02)

Since the Company was in a loss position for all periods presented, basic net loss per share is the same as diluted net loss per share for all periods as the inclusion of all potential common shares outstanding would have been anti-dilutive. Potentially dilutive securities that were not included in the diluted per share calculations because they would be anti-dilutive were as follows:

	December 31,	
	2020	2021
Series A redeemable convertible preferred stock	2,582,403	2,582,403
Series B redeemable convertible preferred stock	–	2,266,661
Options issued and outstanding	127,343	675,386
Early exercised common stock subject to future vesting	38,976	30,322
Total	2,748,722	5,554,772

13. Related Party Transactions

During the year ended December 31, 2020, the Company recorded research and development expense – related party of $0.7 million related to the issuance of the second tranche of Series A redeemable convertible preferred stock in conjunction with the Anacor License. During the year ended December 31, 2021, the Company recorded research and development expense – related party of $0.8 million related to the achievement of development milestones due to Anacor. See Note 4 for further discussion.

14. Defined Contribution Plan

The Company began sponsoring a 401(k) Plan in 2019 that stipulates that eligible employees can elect to contribute to the 401(k) Plan, subject to certain limitations, on a pretax basis. During 2020 and 2021, the Company did not make a matching contribution.

15. Subsequent Events

The Company evaluated events occurring between the end of the most recent fiscal year and March 4, 2022, the date the financial statements were available to be issued.

Table of Contents

Shares

Common Stock

PROSPECTUS

Cowen **SVB Leerink** **Evercore ISI**

Oppenheimer & Co.

Through and including , 2022 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Unless otherwise indicated, all references to "AN2," the "company," "we," "our," "us," or similar terms refer to AN2 Therapeutics, Inc.

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth all expenses to be paid by us, other than underwriting discounts and commissions, in connection with this offering. All amounts shown are estimates except for the Securities and Exchange Commission, or the SEC, registration fee, the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee, and The Nasdaq Global Market, or Nasdaq, listing fee.

	Amount Paid or to Be Paid
SEC registration fee	$ 6,953
FINRA filing fee	11,750
Nasdaq listing fee	25,000
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Custodian transfer agent and registrar fees	*
Miscellaneous expenses	*
Total	$ *

* To be provided by amendment.

Item 14. Indemnification of Directors and Executive Officers.

Section 145 of the DGCL authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and executive officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act of 1933, as amended, or the Securities Act. Our amended and restated certificate of incorporation that will be in effect immediately after the closing of this offering permits indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the DGCL, and our amended and restated bylaws that will be in effect on the closing of this offering provide that we will indemnify our directors and executive officers and permit us to indemnify our employees and other agents, in each case to the maximum extent permitted by the DGCL.

We have entered into indemnification agreements with our directors and executive officers, whereby we have agreed to indemnify our directors and executive officers to the fullest extent permitted by law, including indemnification against expenses and liabilities incurred in legal proceedings to which the director or executive officer was, or is threatened to be made, a party by reason of the fact that such director or executive officer is or was a director, executive officer, employee, or agent of AN2, provided that such director or executive officer acted in good faith and in a manner that the director or executive officer reasonably believed to be in, or not opposed to, the best interest of AN2.

At present, there is no pending litigation or proceeding involving a director or executive officer of AN2 regarding which indemnification is sought, nor is the registrant aware of any threatened litigation that may result in claims for indemnification.

We maintain insurance policies that indemnify our directors and officers against various liabilities arising under the Securities Act and the Securities Exchange Act of 1934, as amended, that might be incurred by any director or officer in his capacity as such.

The underwriters are obligated, under certain circumstances, under the underwriting agreement to be filed as Exhibit 1.1 to this Registration Statement, to indemnify us and our officers and directors against liabilities under the Securities Act.

Item 15. Recent Sales of Unregistered Securities.

Set forth below is information regarding unregistered securities issued by us.

(a) Equity Plan-Related Issuances

1. From January 1, 2019 through February 15, 2022, we granted certain of our directors, executive officers, employees, and consultants options to purchase 766,918 shares of our common stock under our 2017 Equity Incentive Plan with per share exercise prices ranging between $0.99 and $23.61 per share.
2. From January 1, 2019 through February 15, 2022, we issued and sold an aggregate of 75,382 shares of common stock upon the exercise of options under our 2017 Equity Incentive Plan at a per share exercise price of $0.99, for an aggregate exercise price of $74,628.18.

(b) Other Issuances of Capital Stock

3. In multiple closings held between February 2017 and May 2018, we granted certain of our directors, executive officers, and consultants 1,773,000 shares of restricted common stock with a per share price of $0.00001, for an aggregate purchase price of $17.73.
4. In November 2019, we issued and sold 1,371,955 shares of Series A redeemable convertible preferred stock at a price per share of $5.99, for an aggregate purchase price of approximately $8.2 million.
5. In November 2019, we issued 466,376 shares of Series A redeemable convertible preferred stock to Anacor Pharmaceuticals, Inc., or Anacor, as consideration in connection with entering into a license agreement with Anacor.
6. In January and March 2020, we issued and sold 30,383 shares of Series A redeemable convertible preferred stock at a price per share of $5.99, for an aggregate purchase price of approximately $0.2 million.
7. In October 2020, we issued and sold 601,001 shares of Series A redeemable convertible preferred stock at a price per share of $5.99, for an aggregate purchase price of approximately $3.6 million.
8. In October 2020, we issued 112,688 shares of Series A redeemable convertible preferred stock to Anacor as consideration in connection with a license agreement with Anacor.
9. In March 2021, we issued and sold 2,266,661 shares of Series B redeemable convertible preferred stock at a price per share of $35.29, for an aggregate purchase price of approximately $80.0 million.

The offers, sales, and issuances of the securities described in paragraphs (1) and (2) were deemed to be exempt from registration under Rule 701 promulgated under the Securities Act as transactions under compensatory benefit plans and contracts relating to compensation, or under Section 4(a)(2) of the Securities Act as a transaction by an issuer not involving a public offering. The recipients of such securities were our directors, employees, or bona fide consultants and received the securities under our equity incentive plans. Appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions had adequate access, through employment, business, or other relationships, to information about us.

The offers, sales, and issuances of the securities described in paragraphs (3) through (8) were deemed to be exempt under Section 4(a)(2) of the Securities Act or Rule 506 of Regulation D under the Securities Act as a transaction by an issuer not involving a public offering. The recipients of securities in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions was an accredited investor within the meaning of Rule 501 of Regulation D under the Securities Act and had adequate access, through employment, business, or other relationships, to information about us. No underwriters were involved in these transactions.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits.

Exhibit Number	Description
1.1+	Form of Underwriting Agreement.
3.1	Amended and Restated Certificate of Incorporation, as currently in effect.
3.2	Form of Amended and Restated Certificate of Incorporation, to be in effect immediately after the closing of the offering.
3.3	Amended and Restated Bylaws, as currently in effect.
3.4	Form of Amended and Restated Bylaws, to be in effect immediately after the closing of the offering.
4.1+	Form of Common Stock Certificate.
4.2	Amended and Restated Investors' Rights Agreement, by and among the Registrant and certain of its stockholders, dated March 5, 2020.
5.1+	Opinion of Cooley LLP.
10.1#	AN2 Therapeutics, Inc. 2017 Equity Incentive Plan, as amended.
10.2#	Forms of Stock Option Grant Notice, Stock Option Agreement and Notice of Exercise and Early Exercise Stock Purchase Agreement under the AN2 Therapeutics, Inc. 2017 Equity Incentive Plan.
10.3#	AN2 Therapeutics, Inc. 2022 Equity Incentive Plan.
10.4#	Forms of Stock Option Grant Notice, Stock Option Agreement and Notice of Exercise under the AN2 Therapeutics, Inc. 2022 Equity Incentive Plan.
10.5#	Forms of Restricted Stock Unit Grant Notice and Award Agreement under the AN2 Therapeutics, Inc. 2022 Equity Incentive Plan.
10.6#	AN2 Therapeutics, Inc. 2022 Employee Stock Purchase Plan.
10.7#	AN2 Therapeutics, Inc. 2022 Non-Employee Director Compensation Policy.
10.8#	AN2 Therapeutics, Inc. Officer Severance Plan.
10.9#	Form of Indemnity Agreement by and between the Registrant and its directors and executive officers.
10.10#	Offer Letter by and between the Registrant and Eric Easom, dated November 19, 2019.
10.11#	Offer Letter by and between the Registrant and Lucy Day, dated November 19, 2019.

10.12#	Offer Letter by and between the Registrant and Sanjay Chanda, dated November 19, 2019.
10.13*	License Agreement by and between the Registrant and Anacor Pharmaceuticals, Inc., dated November 20, 2019, as amended on December 3, 2021.
10.14*	License Agreement by and between the Registrant and Brii Biosciences Limited, dated November 20, 2019.
10.15	Amended and Restated Global Health Agreement by and among the Registrant, Adjuvant Global Health Technology Fund L.P., and Adjuvant Global Health Technology Fund DE L.P., dated March 5, 2021.
23.1	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.
23.2+	Consent of Cooley LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included on signature page).
107	Filing Fee Table.

+ To be filed by amendment.

# Indicates management contract or compensatory plan.

* Portions of this exhibit (indicated by [*]) have been omitted because the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

(b) Financial Statement Schedules.

All financial statement schedules are omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or the notes thereto.

Item 17. Undertakings.

(a) The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

(b) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant under the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(c) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance on Rule 430A and contained in a form of prospectus filed by the registrant under Rule 424(b)(1) or (4) or 497(h) under the Securities Act will be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, as amended, each post-effective amendment that contains a form of prospectus will be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Menlo Park, State of California on March 4, 2022.

AN2 THERAPEUTICS, INC.

By: /s/ Eric Easom
Name: Eric Easom
Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Eric Easom, Lucy Day, and Michael A. Nazak and each one of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in their name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to sign any registration statement for the same offering covered by this registration statement that is to be effective on filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Eric Easom Eric Easom	Chief Executive Officer and Director (Principal Executive Officer)	March 4, 2022
/s/ Lucy O. Day Lucy O. Day	Chief Financial Officer (Principal Financial Officer)	March 4, 2022
/s/ Michael A. Nazak Michael A. Nazak	Vice President and Controller (Principal Accounting Officer)	March 4, 2022
/s/ Joseph Zakrzewski Joseph Zakrzewski	Chair and Director	March 4, 2022
/s/ Kabeer Aziz Kabeer Aziz	Director	March 4, 2022

Signature	Title	Date
/s/ Gilbert L. Marks Gilbert L. Marks	Director	March 4, 2022
/s/ Patricia Martin Patricia (Patty) Martin	Director	March 4, 2022
/s/ Rob Readnour Rob Readnour	Director	March 4, 2022
/s/ Melvin Spigelman Melvin Spigelman	Director	March 4, 2022
/s/ Stephanie Wong Stephanie Wong	Director	March 4, 2022

THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AN2 THERAPEUTICS, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

AN2 Therapeutics, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY:

1. That the name of this corporation is AN2 Therapeutics, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on February 24, 2017 under the name AN2 Therapeutics, Inc.

2. That the board of directors of this corporation (the "Board of Directors") duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

FIRST: The name of this corporation is AN2 Therapeutics, Inc. (the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 850 New Burton Road, Suite 201, in the City of Dover, County of Kent 19904. The name of its registered agent at such address is Cogency Global Inc.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 7,295,839 shares of Common Stock, $0.00001 par value per share ("Common Stock") and (ii) 4,849,064 shares of Preferred Stock, $0.00001 par value per share ("Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Third Amended and Restated Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Third Amended and Restated Certificate of Incorporation or pursuant to the General Corporation Law. There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Third Amended and Restated Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. PREFERRED STOCK

2,582,403 shares of the authorized Preferred Stock of the Corporation are hereby designated "Series A Preferred Stock" and 2,266,661 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "Series B Preferred Stock" with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. Unless otherwise indicated, references to "sections" or "subsections" in this Part B of this Article Fourth refer to sections and subsections of Part B of this Article Fourth. References to "Preferred Stock" mean, collectively, the Series A Preferred Stock and Series B Preferred Stock.

1. Dividends. From and after the date of the issuance of any shares of Preferred Stock, dividends at the rate per annum of $0.4792 per share with respect to the Series A Preferred Stock and $2.82352 per shares with respect to the Series B Preferred Stock shall accrue on such shares of Preferred Stock, as applicable (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Preferred Stock) (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided, however, that except as set forth in the following sentence of this Section 1 or in Subsection 2.1 and Section 6, such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Accruing Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in this Third Amended and Restated Certificate of Incorporation) the holders of the Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Preferred Stock in an amount

at least equal to the greater of (i) the amount of the aggregate Accruing Dividends then accrued on such share of Preferred Stock and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the applicable Original Issue Price (as defined below); provided that if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Preferred Stock dividend. The "Original Issue Price" shall mean, as to the Series A Preferred Stock, $5.99 per share, and as to the Series B Preferred Stock, $35.29404 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the applicable Preferred Stock.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

2.1 Preferential Payments to Holders of Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, and in the event of a Deemed Liquidation Event (as defined below), the holders of shares of Preferred Stock then outstanding shall be entitled to be paid out of the consideration payable to the stockholders in a Deemed Liquidation Event or out of the Available Proceeds (as defined below), as applicable, before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the applicable Original Issue Price, plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the "Preferred Liquidation Amount"). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment in full of all Preferred Liquidation Amounts required to be paid to the holders of shares of Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders or, in the case of a Deemed Liquidation Event, the consideration not payable to the holders of shares of Preferred Stock pursuant to Subsection 2.1 or the remaining Available Proceeds, as the case may be, shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

2.3 Deemed Liquidation Events.

2.3.1 Definition. Each of the following events shall be considered a "Deemed Liquidation Event" unless the holders of at least 67% of the outstanding shares of Preferred Stock, voting together as a single class (the "Requisite Holders") elect otherwise by written notice sent to the Corporation at least ten (10) days prior to the effective date of any such event:

(a) a merger or consolidation in which

(i) the Corporation is a constituent party or

(ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) (i) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or (ii) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

2.3.2 Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the "Merger Agreement") provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2.

(b) In the event of a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause; (ii) to require the redemption of such shares of Preferred Stock, and (iii) if the Requisite Holders so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the "Available Proceeds"), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to redeem all outstanding shares of Preferred Stock at a price per share equal to the Preferred Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, the Corporation shall redeem a pro rata portion of each holder's shares of Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. The provisions of Section 6 shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Preferred Stock pursuant to this Subsection 2.3.2(b). Prior to the distribution or redemption provided for in this Subsection 2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

2.3.3 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities to be paid or distributed to such holders pursuant to such Deemed Liquidation Event. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation including the approval of at least one Series A Director (as defined herein).

2.3.4 Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Subsection 2.3.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "Additional Consideration"), the Merger Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 2.3.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of this Third Amended and Restated Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class and on an as-converted to Common Stock basis.

3.2 Election of Directors. The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect two directors of the Corporation (the "Series A Directors") and the holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect two directors of the Corporation. Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Series A Preferred Stock or Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first sentence of this Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Series A Preferred Stock or Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the Delaware General Corporation Law, any newly created directorships resulting from any increase in the authorized number of directors or amendment of this Third Amended and Restated Certificate of Incorporation may be filled by a majority of the

directors then in office, though less than a quorum, or by a sole director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; provided, however, that where such newly created directorship is in relation to the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board of Directors' action to fill such newly created directorship as provided for herein. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3.2.

3.3 Preferred Stock Protective Provisions. At any time when at least 485,000 shares of Preferred Stock (subjected to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Third Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the Requisite Holders, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.3.1 liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or consent to any of the foregoing;

3.3.2 amend, alter or repeal any provision of this Third Amended and Restated Certificate of Incorporation or Bylaws of the Corporation in a manner that adversely affects the powers, preferences or rights of the Preferred Stock;

3.3.3 increase or decrease the authorized number of shares of Preferred Stock or Common Stock;

3.3.4 create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock unless the same ranks junior to all series of Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or increase the authorized number of shares of any series of Preferred Stock or increase the authorized number of shares of any additional class or series of capital stock unless the same ranks junior to all series of Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption;

3.3.5 (i) reclassify, alter or amend any existing security of the Corporation that is pari passu with any series of Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to any series of Preferred Stock in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to any series of Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or pari passu with any series of Preferred Stock in respect of any such right, preference or privilege;

3.3.6 purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof;

3.3.7 create, or authorize the creation of, or issue, or authorize the issuance of any debt security or create any lien or security interest (except for purchase money liens or statutory liens of landlords, mechanics, materialmen, workmen, warehousemen and other similar persons arising or incurred in the ordinary course of business), or incur other indebtedness for borrowed money, or permit any subsidiary to take any such action with respect to any debt security lien, security interest or incur other indebtedness for borrowed money, if the aggregate indebtedness of the Corporation and its subsidiaries for borrowed money following such action would exceed $100,000 other than equipment leases or bank lines of credit unless such debt security has received the prior approval of the Board of Directors, including the approval of at least one of the Series A Directors;

3.3.8 create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or permit any subsidiary to create, or authorize the creation of, or issue or obligate itself to issue, any shares of any class or series of capital stock, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary;

3.3.9 approve any spin off or similar sale outside the ordinary course of business of any of the Corporation’s assets or business operations;

3.3.10 hire, fire, or change the compensation of the executive officers, including approving any option grants, except as approved by the Board of Directors, including the approval of a majority of the Series A Directors;

3.3.11 increase or decrease the authorized number of directors constituting the Board of Directors; or

3.3.12 agree to do or pursue any of the foregoing.

4. Optional Conversion.

The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

4.1 Right to Convert.

4.1.1 Conversion Ratio. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Original Issue Price by the Conversion Price (as defined below) in effect at the time of conversion; provided that such holder may waive such option to convert upon written notice to the Corporation. The "Conversion Price" of a series of Preferred Stock shall initially be equal to the Original Issue Price for such series. Such initial Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.2 Termination of Conversion Rights. In the event of a notice of redemption of any shares of Preferred Stock pursuant to Section 6, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for any shares not yet redeemed shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock; provided that the foregoing termination of Conversion Rights shall not affect the amount(s) otherwise paid or payable in accordance with Subsection 2.1 to holders of Preferred Stock pursuant to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall (a) provide written notice to the Corporation's transfer agent at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) that such holder elects to convert all or any number of such holder's shares

of Preferred Stock and, if applicable, any event on which such conversion is contingent and (b), if such holder's shares are certificated, surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Such notice shall state such holder's name or the names of the nominees in which such holder wishes the shares of Common Stock to be issued. If required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Third Amended and Restated Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Conversion Price.

4.3.3 Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon

such conversion as provided in Subsection 4.2 and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

4.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

4.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4.4 Adjustments to Conversion Price for Diluting Issues.

4.4.1 Special Definitions. For purposes of this Article Fourth, the following definitions shall apply:

(a) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(b) "Original Issue Date" shall mean the date on which the first share of each series of Preferred Stock was issued.

(c) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(d) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Original Issue Date, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, "Exempted Securities"):

(i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Preferred Stock;

(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4.5, 4.6, 4.7 or 4.8;

(iii) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation, including at least one of the Series A Directors;

(iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation, including the approval of at least one of the Series A Directors;

(vi) shares of Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors of the Corporation, including the approval of at least one of the Series A Directors;

(vii) shares of Common Stock, Options or Convertible Securities issued as acquisition consideration pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided that such issuances are approved by the Board of Directors of the Corporation, including the approval of at least one of the Series A Directors; or

(viii) shares of Common Stock, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors of the Corporation, including the approval of at least one of the Series A Directors.

4.4.2 No Adjustment of Conversion Price. No adjustment in the Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the Requisite Holders agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the

foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price pursuant to the terms of Subsection 4.4.4 (either because the consideration per share (determined pursuant to Subsection 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4.4.3(a)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Subsection 4.4.4, the Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Subsection 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 4.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Subsection 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

4.4.4 Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance or deemed issuance, then the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(a) "CP_2" shall mean the Conversion Price in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock

(b) "CP_1" shall mean the Conversion Price in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock;

(c) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(d) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued or deemed issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP_1); and

(e) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

4.4.5 Determination of Consideration. For purposes of this Subsection 4.4, the consideration received by the Corporation for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property: Such consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

(iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

(i) The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Subsection 4.4.4, and such issuance dates occur within a period of no more than ninety (90) days from the first such issuance to the final such issuance, then, upon the final such issuance, the Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, the Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of

Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Stock.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Preferred Stock.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1 Trigger Events. Upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least $52.94 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $50 million of gross proceeds, net of the underwriting discount and commissions, to the Corporation and in connection with such offering the Common Stock is listed for trading on the Nasdaq Stock Market's National Market, the New York Stock Exchange or another exchange or marketplace approved by the Board of Directors or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the Requisite Holders (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "Mandatory Conversion Time"), then (i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate as calculated pursuant to Subsection 4.1.1. and (ii) such shares may not be reissued by the Corporation.

5.2 Procedural Requirements. All holders of record of shares of Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Preferred Stock in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Subsection 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.2. As soon as practicable after the Mandatory Conversion Time and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall (a) issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and (b) pay cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Preferred Stock converted. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. Redemption.

6.1 General. Unless prohibited by Delaware law governing distributions to stockholders, shares of Preferred Stock shall be redeemed by the Corporation at a price equal to the Original Issue Price per share, plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon (the "Redemption Price"), in three (3) annual installments commencing not more than sixty (60) days after receipt by the Corporation at any time on or after seven (7) years from the date of this Certificate of Incorporation, from the Requisite Holders, of written notice requesting redemption of all shares of Preferred Stock (the "Redemption Request"). Upon receipt of a Redemption Request, the Corporation shall apply all of its assets to any such redemption, and to no other corporate purpose, except to the extent prohibited by Delaware law governing distributions to stockholders. The date of each such installment shall be referred to as a "Redemption Date". On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Preferred Stock owned by each holder, that number of outstanding shares of Preferred Stock determined by dividing (i) the total number of shares of Preferred Stock outstanding immediately prior to such Redemption Date by (ii) the number of remaining

Redemption Dates (including the Redemption Date to which such calculation applies); provided, however, that Excluded Shares (as such term is defined in Subsection 6.2) shall not be redeemed and shall be excluded from the calculations set forth in this sentence. If on any Redemption Date Delaware law governing distributions to stockholders prevents the Corporation from redeeming all shares of Preferred Stock to be redeemed, the Corporation shall ratably redeem the maximum number of shares that it may redeem consistent with such law, and shall redeem the remaining shares as soon as it may lawfully do so under such law.

6.2 Redemption Notice. The Corporation shall send written notice of the mandatory redemption (the "Redemption Notice") to each holder of record of Preferred Stock not less than forty (40) days prior to each Redemption Date. Each Redemption Notice shall state:

(a) the number of shares of Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(b) the Redemption Date and the Redemption Price;

(c) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Subsection 4.1); and

(d) for holders of shares in certificated form, that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Preferred Stock to be redeemed.

If the Corporation receives, on or prior to the twentieth (20th) day after the date of delivery of the Redemption Notice to a holder of Preferred Stock, written notice from such holder that such holder elects to be excluded from the redemption provided in this Section 6, then the shares of Preferred Stock registered on the books of the Corporation in the name of such holder at the time of the Corporation's receipt of such notice shall thereafter be "Excluded Shares." Excluded Shares shall not be redeemed or redeemable pursuant to this Section 6, whether on such Redemption Date or thereafter.

6.3 Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 4, shall, if a holder of shares in certificated form, surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Preferred Stock represented by a certificate are redeemed, a new certificate, instrument, or book entry representing the unredeemed shares of Preferred Stock shall promptly be issued to such holder.

6.4 Interest. If any shares of Preferred Stock are not redeemed for any reason on any Redemption Date, all such unredeemed shares shall remain outstanding and entitled to all the rights and preferences provided herein, and the Corporation shall pay interest on the Redemption Price applicable to such unredeemed shares at an aggregate per annum rate equal to twelve percent (12% (increased by one percent (1%) each month following the Redemption Date until the Redemption Price, and any interest thereon, is paid in full), with such interest to accrue daily in arrears and be compounded annually; provided, however, that in no event shall such interest exceed the maximum permitted rate of interest under applicable law (the "**Maximum Permitted Rate**"), provided, however, that the Corporation shall take all such actions as may be necessary, including without limitation, making any applicable governmental filings, to cause the Maximum Permitted Rate to be the highest possible rate. In the event any provision hereof would result in the rate of interest payable hereunder being in excess of the Maximum Permitted Rate, the amount of interest required to be paid hereunder shall automatically be reduced to eliminate such excess; provided, however, that any subsequent increase in the Maximum Permitted Rate shall be retroactively effective to the applicable Redemption Date to the extent permitted by law.

6.5 Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that any certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of any such certificate or certificates therefor.

7. Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock following redemption.

8. Waiver. Except as otherwise set forth herein, (a) any of the rights, powers, preferences and other terms of the Preferred Stock set forth herein may be waived on behalf of all holders of Preferred Stock by the affirmative written consent or vote of the holders of the Requisite Holders, and (b) at any time more than one (1) series of Preferred Stock is issued and outstanding, any of the rights, powers, preferences and other terms of any series of Preferred Stock set forth herein may be waived on behalf of all holders of such series of Preferred Stock by the affirmative written consent or vote of the holders of at least 67% of the shares of such series of Preferred Stock then outstanding.

9. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

FIFTH: Subject to any additional vote required by this Third Amended and Restated Certificate of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

SIXTH: Subject to any additional vote required by this Third Amended and Restated Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

SEVENTH: Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

EIGHTH: Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

NINTH: To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Ninth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

TENTH: The following indemnification provisions shall apply to the persons enumerated below.

1. Right to Indemnification of Directors and Officers. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "Indemnified Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnified Person in such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article Tenth the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board of Directors.

2. Prepayment of Expenses of Directors and Officers. The Corporation shall pay the expenses (including attorneys' fees) incurred by an Indemnified Person in defending any Proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this Article Tenth or otherwise.

3. Claims by Directors and Officers. If a claim for indemnification or advancement of expenses under this Article Tenth is not paid in full within thirty (30) days after a written claim therefor by the Indemnified Person has been received by the Corporation, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

4.Indemnification of Employees and Agents. The Corporation may indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom such person is the legal representative, is or was an employee or agent of the Corporation or, while an employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of persons who are non-director or officer employees or agents shall be made in such manner as is determined by the Board of Directors in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to indemnify a person in connection with a Proceeding initiated by such person if the Proceeding was not authorized in advance by the Board of Directors.

5. Advancement of Expenses of Employees and Agents. The Corporation may pay the expenses (including attorneys' fees) incurred by an employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board of Directors.

6. Non-Exclusivity of Rights. The rights conferred on any person by this Article Tenth shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of this Third Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation, or any agreement, or pursuant to any vote of stockholders or disinterested directors or otherwise.

7. Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer or employee of another Corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise shall be reduced by any amount such person may collect as indemnification from such other Corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise.

8. Insurance. The Board of Directors may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation's expense insurance: (a) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers and employees under the provisions of this Article Tenth; and (b) to indemnify or insure directors, officers and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article Tenth.

9. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article Tenth shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification. The rights provided hereunder shall inure to the benefit of any Indemnified Person and such person's heirs, executors and administrators.

ELEVENTH: The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee, affiliate or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation while such Covered Person is performing services in such capacity. Any repeal or modification of this Article Eleventh will only be prospective and will not affect the rights under this Article Eleventh in effect at the time of the occurrence of any actions or omissions to act giving rise to liability. Notwithstanding anything to the contrary contained elsewhere in this Third Amended and Restated Certificate of Incorporation, the affirmative vote of the Requisite Holders will be required to amend or repeal, or to adopt any provisions inconsistent with this Article Eleventh.

TWELFTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's certificate of incorporation or bylaws or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction

of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article Twelfth shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Twelfth (including, without limitation, each portion of any sentence of this Article Twelfth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

THIRTEENTH: For purposes of Section 500 of the California Corporations Code (to the extent applicable), in connection with any repurchase of shares of Common Stock permitted under this Third Amended and Restated Certificate of Incorporation from employees, officers, directors or consultants of the Corporation in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board of Directors (in addition to any other consent required under this Third Amended and Restated Certificate of Incorporation), such repurchase may be made without regard to any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined therein) shall be deemed to be zero (0).

* * *

3. That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the General Corporation Law.

4. That this Third Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this Corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Third Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 4th day of March, 2021.

By: /s/ Eric Easom
Eric Easom
Chief Executive Officer

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF AN2 THERAPEUTICS, INC.

Eric Easom hereby certifies that:

ONE: The original name of this corporation is AN2 Therapeutics, Inc. and the date of filing the original Certificate of Incorporation of this corporation with the Secretary of State of the State of Delaware was February 24, 2017.

TWO: He is the duly elected and acting Chief Executive Officer of AN2 Therapeutics, Inc., a Delaware corporation.

THREE: The Certificate of Incorporation of this corporation is hereby amended and restated to read as follows:

I.

The name of this corporation is AN2 Therapeutics, Inc. (the "***Company***").

II.

The address of the registered office of the Company is 850 New Burton Road, Suite 201, City of Dover, County of Kent, 19904 and the name of the registered agent of the Company at such address is Cogency Global Inc.

III.

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware ("***DGCL***").

IV.

A. This Company is authorized to issue two classes of stock to be designated, respectively, "***Common Stock***" and "***Preferred Stock***." The total number of shares which the Company is authorized to issue is 510,000,000 shares. 500,000,000 shares of which shall be Common Stock, having a par value per share of $0.00001. 10,000,000 shares of which shall be Preferred Stock, having a par value per share of $0.00001.

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Company (the "***Board of Directors***") is hereby expressly authorized to provide for the issue of all or any of the shares of the Preferred Stock in one or more series, and to fix the number of shares for each such series and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the DGCL. The Board of Directors is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding and not by more than the number of remaining authorized but undesignated shares of Preferred Stock. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of

such series. The number of authorized shares of Preferred Stock or any series thereof may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the stock of the Company entitled to vote thereon, without a separate vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of Preferred Stock.

C. Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Company for their vote; *provided*, *however*, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock).

V.

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. MANAGEMENT OF BUSINESS. The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors. The number of directors which shall constitute the Board of Directors shall be fixed exclusively by resolutions adopted by a majority of the authorized number of directors constituting the Board of Directors.

B. BOARD OF DIRECTORS. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, upon the filing of this Amended and Restated Certificate of Incorporation, the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time the classification becomes effective. At the first annual meeting of stockholders following the initial classification of the Board of Directors, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following such initial classification, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following such initial classification, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

Notwithstanding the foregoing provisions of this section, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

C. REMOVAL OF DIRECTORS.

1. Subject to the rights of any series of Preferred Stock to elect additional directors under specified circumstances or remove such directors elected by the holders of such series of Preferred Stock, neither the Board of Directors nor any individual director may be removed without cause.

2. Subject to any limitation imposed by applicable law and the rights of any series of Preferred Stock to remove directors elected by the holders of such series of Preferred Stock, any individual director or directors may be removed with cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all then-outstanding shares of capital stock of the Company entitled to vote generally at an election of directors.

D. VACANCIES. Subject to any limitations imposed by applicable law and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders and except as otherwise provided by applicable law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors or by the sole remaining director, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified or until such director's earlier death, resignation or removal.

E. BYLAW AMENDMENTS.

1. The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. Any adoption, amendment or repeal of the Bylaws of the Company by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Company; *provided, however,* that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Amended and Restated Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class.

2. The directors of the Company need not be elected by written ballot unless the Bylaws so provide.

3. No action shall be taken by the stockholders of the Company except at an annual or special meeting of stockholders called in accordance with the Bylaws, and no action shall be taken by the stockholders by written consent or electronic transmission.

4. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Company shall be given in the manner provided in the Bylaws of the Company.

5. In the event that a member of the Board of Directors of the Company who is not an employee of the Company, or any partner, member, director, stockholder, employee or agent of such member, other than someone who is an employee of the Company (collectively, the "***Covered Persons***"), acquires knowledge of any business opportunity matter, potential transaction, interest or other matter, unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in connection with such individual's service as a member of the Board of Directors of the Company (a "***Corporate Opportunity***"), then the Company, pursuant to Section 122(17) of the DGCL and to the maximum extent permitted from time to time under Delaware law, (i) renounces any expectancy that such Covered Person offer an opportunity to participate in such Corporate Opportunity to the Company and (ii) to the fullest extent permitted by law, waives any claim that such opportunity constituted a Corporate Opportunity that should

have been presented by such Covered Person to the Company or any of its affiliates. No amendment or repeal of this paragraph shall apply to or have any effect on the liability or alleged liability of any officer, director or stockholder of the Company for or with respect to any opportunities of which such officer, director or stockholder becomes aware prior to such amendment or repeal.

VI.

A. The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law.

B. To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which applicable law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise in excess of the indemnification and advancement otherwise permitted by such applicable law. If applicable law is amended after approval by the stockholders of this Article VI to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director to the Company shall be eliminated or limited to the fullest extent permitted by applicable law as so amended.

C. Any repeal or modification of this Article VI shall only be prospective and shall not affect the rights or protections or increase the liability of any director under this Article VI in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

VII.

A. Unless the Company consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) and any appellate court therefrom shall be the sole and exclusive forum for the following claims or causes of action under the Delaware statutory or common law: (A) any derivative claim or cause of action brought on behalf of the Company; (B) any claim or cause of action for breach of a fiduciary duty owed by any current or former director, officer or other employee of the Company, to the Company or the Company's stockholders; (C) any claim or cause of action against the Company or any current or former director, officer or other employee of the Company , arising out of or pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation or the Bylaws of the Company (as each may be amended from time to time); (D) any claim or cause of action seeking to interpret, apply, enforce or determine the validity of this Amended and Restated Certificate of Incorporation or the Bylaws of the Company (as each may be amended from time to time, including any right, obligation, or remedy thereunder); (E) any claim or cause of action as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; and (F) any claim or cause of action against the Company or any current or former director, officer or other employee of the Company , governed by the internal-affairs doctrine, in all cases to the fullest extent permitted by law and subject to the court having personal jurisdiction over the indispensable parties named as defendants. This Section A of Article VII shall not apply to claims or causes of action brought to enforce a duty or liability created by the Securities Act of 1933, as amended (the "***1933 Act***"), or the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction.

B. Unless the Company consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the 1933 Act.

C. Any person or entity holding, owning or otherwise acquiring any interest in any security of the Company shall be deemed to have notice of and consented to the provisions of this Amended and Restated Certificate of Incorporation.

VIII.

A. The Company reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in paragraph B. of this Article VIII, and all rights conferred upon the stockholders herein are granted subject to this reservation.

B. Notwithstanding any other provisions of this Amended and Restated Certificate of Incorporation or any provision of applicable law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock of the Company required by law or by this Amended and Restated Certificate of Incorporation or any certificate of designation filed with respect to a series of Preferred Stock, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles V, VI, VII and VIII.

* * * *

FOUR: This Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Company.

FIVE: This Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of the Company in accordance with Section 228 of the DGCL. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of the Company.

IN WITNESS WHEREOF, AN2 Therapeutics, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this [ ] day of [ ], 2022.

AN2 THERAPEUTICS, INC.

By: /s/ Eric Easom
Eric Easom
Chief Executive Officer

AMENDED AND RESTATED BYLAWS

OF

AN2 THERAPEUTICS, INC.

(A DELAWARE CORPORATION)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware is 850 New Burton Road, Suite 201, City of Dover, County of Kent, 19904 or in such other location as the Board of Directors of the corporation (the "***Board of Directors***") may from time to time determine or the business of the corporation may require.

Section 2. Other Offices. The corporation will also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

CORPORATE SEAL

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 4. Place of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting will not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law (the "***DGCL***").

Section 5. Annual Meeting.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, will be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders; (ii) by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving of notice provided for in the following paragraph, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section.

(b) At an annual meeting of the stockholders, only such business will be conducted as has been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a) of this Section, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, (ii) such other business must be a proper matter for stockholder action under the DGCL and applicable law, (iii) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in this paragraph), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to

holders of at least the percentage of the corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice, and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this Section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section. To be timely, a stockholder's notice will be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 30 days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made. In no event will the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice will set forth: (A) as to each person whom the stockholder proposed to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "***1934 Act***"), and Rule 14a-4(d) thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class and number of shares of the corporation that are owned beneficially and of record by such stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "***Solicitation Notice***").

(c) Notwithstanding anything in the second sentence of paragraph (b) of this Section to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section will also be considered timely, but only with respect to nominees for any new positions created by such increase, if it is delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the corporation.

(d) Only such persons who are nominated in accordance with the procedures set forth in this Section (or elected or appointed pursuant to Article IV of these Amended and Restated Bylaws (the "***Bylaws***")) will be eligible to serve as directors and only such business will be conducted at a meeting of stockholders as has been brought before the meeting in accordance with the procedures set

forth in this Section. Except as otherwise provided by law, the Chairman of the meeting will have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination will not be presented for stockholder action at the meeting and will be disregarded.

(e) Notwithstanding the foregoing provisions of this Section, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Nothing in these Bylaws is deemed to affect any rights of stockholders to request inclusion of proposals in the corporation proxy statement pursuant to Rule 14a-8 under the 1934 Act.

(f) For purposes of this Section, "public announcement" means disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission (the "***SEC***") pursuant to Section 13, 14 or 15(d) of the 1934 Act.

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer,

(iii) the Board of Directors pursuant to a resolution adopted by directors representing a quorum of the directors then serving on the Board of Directors or (iv) by the holders of shares entitled to cast not less than 20% of the votes at the meeting, and will be held at such place, on such date, and at such time as the Board of Directors will fix.

(b) If a special meeting is properly called by any person or persons other than the Board of Directors, the request will be in writing, specifying the general nature of the business proposed to be transacted, and will be delivered personally or sent by certified or registered mail, return receipt requested, or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors will determine the time and place of such special meeting, which will be held not less than 35 nor more than 120 days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request will cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. Nothing contained in this paragraph (b) is to be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

Section 7. Notice of Meetings. Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders will be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his or her attendance thereat in person, by remote communication, if

applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting will be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum. At all meetings of stockholders, except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote will constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business will be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of a majority of shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the subject matter will be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors will be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, will constitute a quorum entitled to take action with respect to that vote on that matter. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting will be the act of such class or classes or series.

Section 9. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting pursuant to the Certificate of Incorporation, these Bylaws or applicable law. If the adjournment is for more than 30 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting will be given to each stockholder of record entitled to vote at the meeting.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, will be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents will have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy will be voted after three years from its date of creation unless the proxy provides for a longer period.

Section 11. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship where it is so provided, their acts with respect to voting (including giving consent pursuant to Section 13) will have the following effect: (a) if only one votes, his or her act binds all; (b) if more than one votes and the vote is not evenly split, the act of the majority so voting binds all; (c) if more than one votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) will be a majority or even-split in interest.

Section 12. List of Stockholders. The Secretary will prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list will be open to the examination of any stockholder, for any purpose germane to the meeting, on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list will be open to examination of any stockholder during the time of the meeting as provided by law.

Section 13. Action Without Meeting.

(a) Unless otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of the stockholders, or any action that may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, or by electronic transmission setting forth the action so taken, will be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

(b) Every written consent or electronic transmission will bear the date of signature of each stockholder who signs the consent, and no written consent or electronic transmission will be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered to the corporation in the manner herein required, written consents or electronic transmissions signed by a sufficient number of stockholders to take action are delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation’s registered office will be by hand or by certified or registered mail, return receipt requested.

(c) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent will be given to those stockholders who have not consented in writing or by electronic transmission and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take action were delivered to the corporation as provided in Section 228(c) of the DGCL. If the action to which the stockholders consented is such as would have required the filing of a certificate under any section of the DGCL if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section must state, in lieu of any statement required by such section concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

(d) An electronic mail, facsimile or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, will be deemed to be written, signed and dated for the purposes of this Section, provided that any such electronic mail, facsimile or other electronic transmission sets forth or is delivered with information from which the corporation can determine (i) that the electronic mail, facsimile or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such electronic mail, facsimile or electronic transmission. The date on which such electronic mail, facsimile or electronic transmission is transmitted will be deemed to be the date on which such consent was signed. No consent given by electronic mail, facsimile or other electronic transmission will be deemed to have been delivered until such consent is reproduced in paper form and until such paper form is delivered to the corporation by delivery to its registered office in the state of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office will be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by electronic mail, facsimile or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the Board of Directors. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing.

Section 14. Organization.

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the Chief Executive Officer, or, if the Chief Executive Officer is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, will act as chairman. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the Chief Executive Officer, will act as secretary of the meeting.

(b) The Board of Directors is entitled to make such rules or regulations for the conduct of meetings of stockholders as it deems necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting has the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman permits, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters that are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting will be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders will not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV

DIRECTORS

Section 15. Number and Term of Office. The authorized number of directors of the corporation will be fixed by the Board of Directors from time to time. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors have not been elected at an annual meeting, they may be elected as soon thereafter as convenient.

Section 16. Powers. The business and affairs of the corporation will be managed by or under the direction of the Board of Directors, except as otherwise provided by statute or by the Certificate of Incorporation.

Section 17. Term of Directors.

(a) Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, directors will be elected at each annual meeting of stockholders to serve until his or her successor is duly elected and qualified or until his or her death, resignation or removal. No decrease in the number of directors constituting the Board of Directors will shorten the term of any incumbent director.

Section 18. Vacancies.

(a) Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors will, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships will be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director; *provided*, *however*, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series will, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships must be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Any director elected in accordance with the preceding sentence will hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor has been elected and qualified. A vacancy in the Board of Directors will be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.

Section 19. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it will be deemed effective at the pleasure of the Board of Directors. When one or more directors resigns from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, will have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations become effective, and each director so chosen will hold office for the unexpired portion of the term of the director whose place is vacated and until his or her successor has been duly elected and qualified.

Section 20. Removal.

(a) Subject to any limitations imposed by applicable law, the Board of Directors or any director may be removed from office at any time (i) with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors or (ii) without cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation, entitled to elect such director.

Section 21. Meetings

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware that has been designated by the Board of Directors and publicized among all directors, either orally or in writing, including a voice-messaging system or other system designated to record and communicate messages, facsimile, or by electronic mail or other electronic means. No further notice will be required for a regular meeting of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board of Directors, the Chief Executive Officer (if a director), the President (if a director) or any director.

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means constitutes presence in person at such meeting.

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors will be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least 24 hours before the date and time of the meeting. If notice is sent by US mail, it will be sent by first class mail, postage prepaid at least three days before the date of the meeting. Notice of any meeting may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(e) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, will be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice signs a written waiver of notice or waives notice by electronic transmission. All such waivers will be filed with the corporate records or made a part of the minutes of the meeting.

Section 22. Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors will consist of a majority of the total number of directors then serving; *provided*, *however*, that such number will never be less than 1/3 of the total number of directors authorized except that when one director is authorized, then one director will constitute a quorum. At any meeting, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting. If the Certificate of Incorporation provides that one or more directors will have more or less than one vote per director on any matter, every reference in this Section to a majority or other proportion of the directors will refer to a majority or other proportion of the votes of the directors.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business will be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

Section 23. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing will be in paper form if the minutes are maintained in paper form and will be in electronic form if the minutes are maintained in electronic form.

Section 24. Fees and Compensation. Directors will be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained is to be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

Section 25. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors, will have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee will have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors will consist of one or more members of the Board of Directors and will have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event will any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of paragraphs (a) or (b) of this Section may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member will terminate on the date of his or her death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any

committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section will be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place that has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee will constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present will be the act of such committee.

Section 26. Duties of Chairman of the Board of Directors. The Chairman of the Board of Directors, when present, will preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors will perform other duties commonly incident to the office and will also perform such other duties and have such other powers as the Board of Directors designates from time to time. If there is no Chief Executive Officer and no President, then the Chairman of the Board of Directors will also serve as the Chief Executive Officer of the corporation and will have the powers and duties prescribed in Section 29(b).

Section 27. Organization. At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the Chief Executive Officer (if a director), or if the Chief Executive Officer is not a director or is absent, the President (if a director), or if the President is not a director or is absent, the most senior Vice President (if a director) or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, will preside over the meeting. The Secretary, or in his or her absence, any Assistant Secretary directed to do so by the Chief Executive Officer or President, will act as secretary of the meeting.

ARTICLE V

OFFICERS

Section 28. Officers Designated. The officers of the corporation will include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Treasurer and the Controller, all of whom will be elected or appointed from time to time by the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it deems necessary. The Board of Directors may assign such additional titles to one or more of the officers as it deems appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation will be fixed by or in the manner designated by the Board of Directors.

Section 29. Tenure and Duties of Officers.

(a) General. All officers will hold office at the pleasure of the Board of Directors and until their successors have been duly elected or appointed and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors, or by the Chief Executive Officer or other officer if so authorized by the Board of Directors.

(b) Duties of Chief Executive Officer. The Chief Executive Officer will preside at all meetings of the stockholders and (if a director) at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. The Chief Executive Officer will be the chief executive officer of the corporation and will, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The Chief Executive Officer will perform other duties commonly incident to the office and will also perform such other duties and have such other powers as the Board of Directors designates from time to time.

(c) Duties of President. In the absence or disability of the Chief Executive Officer or if the office of Chief Executive Officer is vacant, the President will preside at all meetings of the stockholders and (if a director) at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. If the office of Chief Executive Officer is vacant, the President will be the chief executive officer of the corporation (including for purposes of any reference to Chief Executive Officer in these Bylaws) and will, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President will perform other duties commonly incident to the office and will also perform such other duties and have such other powers as the Board of Directors designates from time to time.

(d) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents will perform other duties commonly incident to their office and will also perform such other duties and have such other powers as the Board of Directors or the President designates from time to time.

(e) Duties of Secretary. The Secretary will attend all meetings of the stockholders and of the Board of Directors and will record all acts and proceedings thereof in the minute book of the corporation. The Secretary will give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary will perform all other duties provided for in these Bylaws and other duties commonly incident to the office and will also perform such other duties and have such other powers as the Board of Directors will designate from time to time. The Chief Executive Officer may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary will perform other duties commonly incident to the office and will also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer designates from time to time.

(f) Duties of Chief Financial Officer. The Chief Financial Officer will keep or cause to be kept the books of account of the corporation in a thorough and proper manner and will render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer. The Chief Financial Officer, subject to the order of the Board of Directors, will have the custody of all funds and securities of the corporation. The Chief Financial Officer will perform other duties commonly incident to his or her office and will also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer designate from time to time. The Chief Executive Officer may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller will perform other duties commonly incident to the office and will also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer designates from time to time.

Section 30. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 31. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission notice to the Board of Directors or to the Chief Executive Officer or to the President or to the Secretary. Any such resignation will be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation will become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation will not be necessary to make it effective. Any resignation will be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 32. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written or electronic consent of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 33. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name, or to enter into contracts on behalf of the corporation, except as otherwise provided by law or these Bylaws, and such execution or signature will be binding upon the corporation. All checks and drafts drawn on banks or other depositaries of funds to the credit of the corporation or on special accounts of the corporation will be signed by such person or persons as the Board of Directors authorizes so to do. Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee will have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 34. Voting of Securities Owned by the Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, will be voted, and all proxies with respect thereto will be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII

SHARES OF STOCK

Section 35. Form and Execution of Certificates. The shares of the corporation will be represented by certificates, or will be uncertificated. Certificates for the shares of stock, if any, of the corporation will be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of shares of stock in the corporation represented by certificate will be entitled to have a certificate signed by or in the name of the corporation by any two authorized officers of the corporation, including but not limited to the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him or her in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he or she were such officer, transfer agent, or registrar at the date of issue.

Section 36. Lost Certificates. A new certificate or certificates will be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it requires or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

Section 37. Restrictions on Transfer.

(a) No holder of any of the shares of stock of the corporation may sell, transfer, assign, pledge, or otherwise dispose of or encumber any of the shares of stock of the corporation or any right or interest therein, whether voluntarily or by operation of law, or by gift or otherwise (each, a "***Transfer***") without the prior written consent of the corporation, upon duly authorized action of its Board of Directors. The corporation may withhold consent for any legitimate corporate purpose, as determined by the Board of Directors. Examples of the basis for the corporation to withhold its consent include, without limitation, (i) if such Transfer to individuals, companies or any other form of entity identified by the corporation as a potential competitor or considered by the corporation to be unfriendly; or (ii) if such Transfer increases the risk of the corporation having a class of security held of record by 2,000 or more persons, or 500 or more persons who are not accredited investors (as such term is defined by the SEC), as described in Section 12(g) of the 1934 Act and any related regulations, or otherwise requiring the corporation to register any class of securities under the 1934 Act; or (iii) if such Transfer would result in the loss of any federal or state securities law exemption relied upon by the corporation in connection with the initial issuance of such shares or the issuance of any other securities; or (iv) if such Transfer is facilitated in any manner by any public posting, message board, trading portal, internet site, or similar method of communication, including without limitation any trading portal or internet site intended to facilitate secondary transfers of securities; or (v) if such Transfer is to be effected in a brokered transaction; or (vi) if such Transfer represents a Transfer of less than all of the shares then held by the stockholder and its affiliates or is to be made to more than a single transferee.

(b) If a stockholder desires to Transfer any shares, then the stockholder will first give written notice to the corporation. The notice must name the proposed transferee and state the number of shares to be transferred, the proposed consideration, and all other terms and conditions of the proposed transfer. Any shares proposed to be transferred to which Transfer the corporation has consented pursuant to paragraph (a) of this Section will first be subject to the corporation's right of first refusal located in Section 38 of these Bylaws.

(c) At the option of the corporation, the stockholder will be obligated to pay to the corporation a reasonable transfer fee related to the costs and time of the corporation and its legal and other advisors related to any proposed Transfer.

(d) Any Transfer, or purported Transfer, of shares not made in strict compliance with this Section will be null and void, will not be recorded on the books of the corporation and will not be recognized by the corporation. Transfers of record of shares of stock of the corporation will be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(e) The restriction on Transfer set forth in Section 37(a) will not apply to the Transfer of shares of Preferred Stock or to the Transfer of any shares of Common Stock issued upon the conversion of any shares of Preferred Stock.

(f) The restriction on Transfer set forth in Section 37(a) will terminate upon the date securities of the corporation are first offered to the public pursuant to a registration statement filed with, and declared effective by, the SEC under the Securities Act of 1933, as amended (the "***1933 Act***").

(g) The certificates representing shares of Common Stock of the corporation will bear on their face the following legend so long as the foregoing Transfer restrictions are in effect:

> "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A TRANSFER RESTRICTION, AS PROVIDED IN THE BYLAWS OF THE CORPORATION."

Section 38. Right of First Refusal. No stockholder will Transfer any of the shares of stock of the corporation, except by a Transfer that meets the requirements set forth in this Section 38, in addition to any other restrictions or requirements set forth under applicable law or these Bylaws:

(a) If the stockholder desires to Transfer any of his or her shares of stock, then the stockholder must first give written notice thereof to the corporation. The notice must name the proposed transferee and state the number of shares to be transferred, the proposed consideration, and all other terms and conditions of the proposed transfer.

(b) For 30 days following receipt of such notice, the corporation has the option to purchase up to all the shares specified in the notice at the price and upon the terms set forth in such notice; *provided, however,* that, with the consent of the stockholder, the corporation has the option to purchase a lesser portion of the shares specified in said notice at the price and upon the terms set forth therein. In the event of a gift, property settlement or other Transfer in which the proposed transferee is not paying the full price for the shares, and that is not otherwise exempted from the provisions of this Section, the price will be deemed to be the fair market value of the stock at such time as determined in good faith by the Board of Directors. In the event the corporation elects to purchase all of the shares or, with consent of the stockholder, a lesser portion of the shares, it will give written notice to the transferring stockholder of its election and settlement for said shares will be made as provided below in paragraph (d) of this Section.

(c) The corporation may assign its rights hereunder.

(d) In the event the corporation and/or its assignee(s) elect to acquire any of the shares of the transferring stockholder as specified in said transferring stockholder's notice, the Secretary of the corporation will so notify the transferring stockholder and settlement thereof will be made in cash within 30 days after the Secretary of the corporation receives said transferring stockholder's notice; provided that if the terms of payment set forth in said transferring stockholder's notice were other than cash against delivery, the corporation and/or its assignee(s) will pay for said shares on the same terms and conditions set forth in said transferring stockholder's notice.

(e) In the event the corporation and/or its assignees(s) do not elect to acquire all of the shares specified in the transferring stockholder's notice, said transferring stockholder may, subject to the corporation's approval and all other restrictions on Transfer located in Section 37 of these Bylaws, within the 60-day period following the expiration or waiver of the option rights granted to the corporation and/or its assignees(s) herein, Transfer the shares specified in said transferring stockholder's notice that were not acquired by the corporation and/or its assignees(s) as specified in said transferring stockholder's notice. All shares so sold by said transferring stockholder will continue to be subject to the provisions of this Bylaw in the same manner as before said Transfer.

(f) Anything to the contrary contained herein notwithstanding, the following transactions are exempt from the right of first refusal in paragraph (a) of this Section:

(1) A stockholder's Transfer of any or all shares held either during such stockholder's lifetime or on death by will or intestacy to such stockholder's immediate family or to any custodian or trustee for the account of such stockholder or such stockholder's immediate family or to any limited partnership or limited liability company of which the stockholder, members of such stockholder's immediate family or any trust for the account of such stockholder or such stockholder's immediate family will be the general or limited partner(s) of such partnership or the controlling member(s) of such limited liability company. "Immediate family" as used herein means spouse, lineal descendant, father, mother, brother, or sister of the stockholder making such Transfer;

(2) A stockholder's bona fide pledge or mortgage of any shares with a commercial lending institution, provided that any subsequent Transfer of said shares by said institution will be conducted in the manner set forth in this Bylaw;

(3) A stockholder's Transfer of any or all of such stockholder's shares to the corporation or to any other stockholder of the corporation;

(4) A stockholder's Transfer of any or all of such stockholder's shares to a person who, at the time of such Transfer, is an officer or director of the corporation;

(5) A corporate stockholder's Transfer of any or all of its shares pursuant to and in accordance with the terms of any merger, consolidation, reclassification of shares or capital reorganization of the corporate stockholder, or pursuant to a sale of all or substantially all of the stock or assets of a corporate stockholder;

(6) A stockholder's Transfer of shares of Preferred Stock of the corporation (or any shares of Common Stock issued upon conversion thereof);

(7) A corporate stockholder's Transfer of any or all of its shares to any or all of its stockholders; or

(8) A Transfer by a stockholder that is a limited or general partnership to any or all of its partners or former partners in accordance with partnership interests.

In any such case, the transferee, assignee, or other recipient will receive and hold such stock subject to the provisions of this Section and any other restrictions set forth in these Bylaws, and there will be no further Transfer of such stock except in accord with this Section and the other provisions of these Bylaws.

(g) The provisions of this Bylaw may be waived with respect to any Transfer either by the corporation, upon duly authorized action of its Board of Directors, or by the stockholders, upon the express written consent of the owners of a majority of the voting power of the corporation (excluding the votes represented by those shares to be transferred by the transferring stockholder). This Bylaw may be amended or repealed either by a duly authorized action of the Board of Directors or by the stockholders, upon the express written consent of the owners of a majority of the voting power of the corporation.

(h) Any Transfer, or purported Transfer, of securities of the corporation will be null and void unless the terms, conditions, and provisions of this Bylaw are strictly observed and followed.

(i) The foregoing right of first refusal will terminate upon the date securities of the corporation are first offered to the public pursuant to a registration statement filed with, and declared effective by, the SEC under the Securities Act of 1933, as amended.

(j) The certificates representing shares of Common Stock of the corporation that are subject to the right of first refusal in paragraph (a) of this Section will bear on their face the following legend so long as the foregoing right of first refusal remains in effect:

> "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION AND/OR ITS ASSIGNEE(S), AS PROVIDED IN THE BYLAWS OF THE CORPORATION."

(k) To the extent this Section conflicts with any written agreements between the corporation and the stockholder attempting to Transfer shares, such agreement will control.

Section 39. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date will not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date will, subject to applicable law, not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders will be at the close of business on the day immediately preceding the day on which notice is given, or if notice is waived, at the close of business on the day immediately preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders will apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date will not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date will not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent will, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors will promptly, but in all events within 10 days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within 10 days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, will be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office will be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting will be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date will not precede the date upon which the resolution fixing the record date is adopted, and which record date will be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose will be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 40. Registered Stockholders. The corporation is entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and is not bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it has express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 41. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 35 of these Bylaws), may be signed by the Chairman of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however,* that where any such bond, debenture or other corporate security is authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security is issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or

other corporate security, authenticated by a trustee as aforesaid, will be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who has signed or attested any bond, debenture or other corporate security, or whose facsimile signature appears thereon or on any such interest coupon, has ceased to be such officer before the bond, debenture or other corporate security so signed or attested has been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature has been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 42. Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 43. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors thinks conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

FISCAL YEAR

Section 44. Fiscal Year. The fiscal year of the corporation will be fixed by resolution of the Board of Directors.

ARTICLE XI

INDEMNIFICATION

Section 45. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.

(a) Directors and Executive Officers. The corporation will indemnify its directors and executive officers (for the purposes of this Article, “executive officers” has the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the fullest extent not prohibited by the DGCL or any other applicable law; *provided, however,* that the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, *provided, further,* that the corporation will not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under paragraph (d) of this Section.

(b) Other Officers, Employees and Other Agents. The corporation will have power to indemnify its other officers, employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors will have the power to delegate the determination of whether indemnification will be given to any such person except executive officers to such officers or other persons as the Board of Directors determines.

(c) Expenses. The corporation will advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or executive officer of the corporation, or is or was serving at the request of the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding, *provided*, *however*, that, if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) will be made only upon delivery to the corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it is ultimately determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Section, no advance will be made by the corporation to an executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation, in which event this paragraph will not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of a quorum consisting of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Section will be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this Section to a director or executive officer will be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within 90 days of request therefor. The claimant in such enforcement action, if successful in whole or in part, will be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation will be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an executive officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such executive officer is or was a director of the corporation) for advances, the corporation will be entitled to raise as a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not

opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his or her conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, will be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Section are not exclusive of any other right that such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL or any other applicable law.

(f) Survival of Rights. The rights conferred on any person by this Section will continue as to a person who has ceased to be a director or executive officer and will inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL, or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Section.

(h) Amendments. Any repeal or modification of this Section is only prospective and does not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) Saving Clause. If this Section or any portion hereof is invalidated on any ground by any court of competent jurisdiction, then the corporation will nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this Bylaw that has not been invalidated, or by any other applicable law. If this Section is invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation will indemnify each director and executive officer to the full extent under applicable law.

(j) Certain Definitions. For the purposes of this Section, the following definitions apply:

(1) The term “proceeding” is to be broadly construed and includes, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(2) The term “expenses” is to be broadly construed and includes, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(3) The term the "corporation" includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger that, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, stands in the same position under the provisions of this Section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(4) References to a "director," "executive officer," "officer," "employee," or "agent" of the corporation include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(5) References to "other enterprises" include employee benefit plans; references to "fines" include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" include any service as a director, officer, employee or agent of the corporation that imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan is deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Section.

ARTICLE XII

NOTICES

Section 46. Notices.

(a) Notice to Stockholders. Written notice to stockholders of stockholder meetings will be given as provided in Section 7 of these Bylaws. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by United States mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in paragraph (a) of this Section, or as provided for in Section 21 of these Bylaws. If such notice is not delivered personally, it will be sent to such address as such director has filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, will in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) Methods of Notice. It is not necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice to Person with Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person is not required and there is no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that is taken or held without notice to any such person with whom communication is unlawful has the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate will state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) Notice to Stockholders Sharing an Address. Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or the Bylaws will be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent is deemed to have been given if such stockholder fails to object in writing to the corporation within 60 days of having been given notice by the corporation of its intention to send the single notice. Any consent is revocable by the stockholder by written notice to the corporation.

ARTICLE XIII

AMENDMENTS

Section 47. Amendments. The Board of Directors is expressly empowered to adopt, amend or repeal Bylaws of the corporation. The stockholders also have power to adopt, amend or repeal the Bylaws of the corporation; *provided*, *however*, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders requires the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV

LOANS TO OFFICERS

Section 48. Loans to Officers. Except as otherwise prohibited under applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors approves, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws is deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

ARTICLE XV

MISCELLANEOUS

Section 49. Annual Report.

(a) Subject to the provisions of paragraph (b) of this Section, the Board of Directors will cause an annual report to be sent to each stockholder of the corporation not later than 120 days after the close of the corporation's fiscal year. Such report will include a balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year, accompanied by any report thereon of independent accountants or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation. When there are more than 100 stockholders of record of the corporation's shares, as determined by Section 605 of the CGCL, additional information as required by Section 1501(b) of the CGCL will also be contained in such report, provided that if the corporation has a class of securities registered under Section 12 of the 1934 Act, the 1934 Act will take precedence. Such report will be sent to stockholders at least 15 days prior to the next annual meeting of stockholders after the end of the fiscal year to which it relates.

(b) If and so long as there are fewer than 100 holders of record of the corporation's shares, the requirement of sending of an annual report to the stockholders of the corporation is hereby expressly waived.

Section 50. Forum. Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware is the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation; (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's stockholders; (iii) any action asserting a claim against the corporation or any director or officer or other employee of the corporation arising pursuant to any provision of the DGCL, the certificate of incorporation or the Bylaws of the corporation; or (iv) any action asserting a claim against the corporation or any director or officer or other employee of the corporation governed by the internal affairs doctrine.

Exhibit 3.4

AMENDED AND RESTATED BYLAWS

OF

AN2 THERAPEUTICS, INC.
(A DELAWARE CORPORATION)

BYLAWS

OF

AN2 THERAPEUTICS, INC.
(A DELAWARE CORPORATION)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be as set forth in the Amended and Restated Certificate of Incorporation of the corporation, as the same may be amended or restated from time to time (the "***Certificate of Incorporation***").

Section 2. Other Offices. The corporation may also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors of the corporation (the "***Board of Directors***"), and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

CORPORATE SEAL

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. If adopted, the corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 4. Place of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the General Corporation Law of the State of Delaware ("***DGCL***").

Section 5. Annual Meetings.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held

on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders (with respect to business other than nominations); (ii) brought specifically by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in Section 5(b) below, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the corporation's notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "***1934 Act***")) before an annual meeting of stockholders.

(b) At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law, the Certificate of Incorporation and these Bylaws and as shall have been properly brought before the meeting.

(i) For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii) and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee, (2) the principal occupation or employment of such nominee, (3) the class or series and number of shares of each class of capital stock of the corporation which are owned of record and beneficially by such nominee, (4) the date or dates on which such shares were acquired and the investment intent of such acquisition, (5) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed pursuant to Section 14 of the 1934 Act (including such person's written consent to being named as a nominee and to serving as a director if elected); and (B) the information required by Section 5(b)(iv). The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee. The number of nominees a stockholder may nominate for election at the annual meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting.

(ii) Other than proposals sought to be included in the corporation's proxy materials pursuant to Rule 14a-8 under the 1934 Act, for business other than nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a), the stockholder must deliver written notice to

the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii), and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership of the corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Section 5(b)(iv).

(iii) To be timely, the written notice required by Section 5(b)(i) or 5(b)(ii) must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; *provided, however,* that, subject to the last sentence of this Section 5(b)(iii), in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so received not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall an adjournment or a postponement of an annual meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder's notice as described above.

(iv) The written notice required by Section 5(b)(i) or 5(b)(ii) shall also set forth, as of the date of the notice and as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a "***Proponent***" and collectively, the "***Proponents***"): (A) the name and address of each Proponent, as they appear on the corporation's books; (B) the class, series and number of shares of the corporation that are owned beneficially and of record by each Proponent; (C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing; (D) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares of the corporation entitled to vote at the meeting and intend to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 5(b)(i)) or to propose the business that is specified in the notice (with respect to a notice under Section 5(b)(ii)); (E) a representation as to whether the Proponents intend to deliver a proxy statement and form of proxy to holders of a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (with respect to a notice under Section 5(b)(i)) or to carry such proposal (with respect to a notice under Section 5(b)(ii)); (F) to the extent known by any Proponent, the name and address of any other stockholder supporting the proposal on the date of such stockholder's notice; and (G) a description of all Derivative Transactions (as defined below) by each Proponent during the previous twelve (12) month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions.

(c) A stockholder providing written notice required by Section 5(b)(i) or (ii) shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is five (5) business days prior to the meeting and, in the event of any adjournment or postponement thereof, five (5) business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than five (5) business days after the record date for the meeting. In the case of an update and supplement pursuant to clause (ii) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than two (2) business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two (2) business days prior to such adjourned or postponed meeting.

(d) Notwithstanding anything in Section 5(b)(iii) to the contrary, in the event that the number of directors in an Expiring Class (as defined below) is increased and there is no public announcement of the appointment of a director to such class, or, if no appointment was made, of the vacancy in such class, made by the corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with Section 5(b)(iii), a stockholder's notice required by this Section 5 and which complies with the requirements in Section 5(b)(i), other than the timing requirements in Section 5(b)(iii), shall also be considered timely, but only with respect to nominees for any new positions in such Expiring Class created by such increase, if it shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation. For purposes of this section, an "***Expiring Class***" shall mean a class of directors whose term shall expire at the next annual meeting of stockholders.

(e) A person shall not be eligible for election or re-election as a director, unless the person is nominated in accordance with either clause (ii) or (iii) of Section 5(a). Except as otherwise required by applicable law, the chairperson of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations in Sections 5(b)(iv)(D) and 5(b)(iv)(E), to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nominations or such business may have been solicited or received.

(f) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act. Nothing in these Bylaws shall be deemed to affect any rights of

stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however,* that any references in these Bylaws to the 1934 Act are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 5(a)(iii) of these Bylaws.

(g) For purposes of Sections 5 and 6,

(i) "***Derivative Transaction***" means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial:

w. the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the corporation,

x. which otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the corporation,

y. the effect or intent of which is to mitigate loss, manage risk or benefit of security value or price changes, or

z. which provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities of the corporation,

which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member.

(ii) "***public announcement***" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act; and

(iii) "***affiliates***" and "***associates***" shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the "***1933 Act***").

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (i) the Chairperson of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).

(b) The Board of Directors shall determine the time and place, if any, of such special meeting. Upon determination of the time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7. No business may be transacted at such special meeting otherwise than specified in the notice of meeting.

(c) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors or a duly authorized committee thereof or (ii) by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph, who shall be entitled to vote at the meeting and who delivers written notice to the Secretary of the corporation setting forth the information required by Section 5(b)(i). The number of nominees a stockholder may nominate for election at the special meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the special meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such special meeting. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder of record may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if written notice setting forth the information required by Section 5(b)(i) of these Bylaws shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the later of the ninetieth (90th) day prior to such meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The stockholder shall also update and supplement such information as required under Section 5(c). In no event shall an adjournment or a postponement of a special meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder's notice as described above.

(d) Notwithstanding the foregoing provisions of this Section 6, a stockholder must also comply with all applicable requirements of the 1934 Act with respect to matters set forth in this Section 6. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided*, *however,* that any references in these Bylaws to the 1934 Act are not intended to and shall not limit the requirements applicable to nominations for the election to the Board of Directors to be considered pursuant to Section 6(c) of these Bylaws.

Section 7. Notice of Meetings. Except as otherwise provided by applicable law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and

the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. If sent via electronic transmission, notice is given when directed to such stockholder's electronic mail address appearing in the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his or her attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the voting power of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairperson of the meeting or by vote of the holders of a majority of the voting power of the shares represented thereat and entitled to vote thereon, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws or any applicable stock exchange rules, a majority of the voting power of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of the voting power of the shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

Section 9. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairperson of the meeting or by the vote of a majority of the voting power of the

shares present in person, by remote communication, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof and the means of remote communication, if any, by which stockholders and proxyholders may be deemed present in person and may vote at such meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

Section 11. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his or her act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

Section 12. List of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

Section 13. Action Without Meeting.

No action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent or by electronic transmission.

Section 14. Remote Communication(a) . For the purposes of the Bylaws, if authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders may, by means of remote communication:

(a) participate in a meeting of stockholders; and

(b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

Section 15. Organization.

(a) At every meeting of stockholders, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the President, or, if the President is absent, a chairperson of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairperson. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairperson of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, with consultation by the Lead Independent Director (as defined below), rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairperson shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter

upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV

DIRECTORS

Section 16. Number and Term of Office. The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws. Each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 17. Powers. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 18. Classes of Directors. The directors shall be divided into classes as and to the extent provided in the Certificate of Incorporation, except as otherwise required by applicable law.

Section 19. Vacancies. Vacancies on the Board of Directors shall be filled as provided in the Certificate of Incorporation, except as otherwise required by applicable law.

Section 20. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time. If no such specification is made, it shall be deemed effective at the time of delivery to the Secretary. Acceptance of such resignation shall not be necessary to make it effective. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his or her successor shall have been duly elected and qualified or until his or her earlier death, resignation or removal.

Section 21. Removal. Subject to the rights of holders of any series of Preferred Stock to elect additional directors under specified circumstances the Board of Directors or any individual director may be removed only in the manner specified in the Certificate of Incorporation, except as otherwise required by applicable law.

Section 22. Meetings.

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairperson of the Board, the Chief Executive Officer or a majority of the authorized number of directors.

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be transmitted orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, charges prepaid, at least three (3) days before the date of the meeting.

(e) Waiver of Notice. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though it had been transacted at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 23. Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Section 45 for which a quorum shall be one-third of the exact number of directors fixed from time to time, a quorum of the Board of Directors shall consist of a majority of the total number of directors then serving on

the Board of Directors or, if greater, one-third of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided*, *however*, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

Section 24. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 25. Fees and Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses incurred, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors as well as reimbursement for other reasonable expenses incurred with respect to duties as a member of the Board of Directors or any committee thereof. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

Section 26. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any Bylaw of the corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Section 26, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his or her death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 26 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 27. Duties of the Chairperson of the Board of Directors or the Lead Independent Director. The Chairperson of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairperson of the Board of Directors shall perform such other duties customarily associated with the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The Chairperson of the Board of Directors, or if the Chairperson is not an independent director, one of the independent directors, may be designated by the Board of Directors as lead independent director to serve until replaced by the Board of Directors ("***Lead Independent Director***"). The Lead Independent Director will: serve as chairperson of Board of Directors meetings in the absence of the Chairperson of the

Board of Directors; establish the agenda for meetings of the independent directors; coordinate with the committee chairs regarding meeting agendas and informational requirements; preside over meetings of the independent directors; preside over any portions of meetings of the Board of Directors at which the evaluation or compensation of the Chief Executive Officer is presented or discussed; preside over any portions of meetings of the Board of Directors at which the performance of the Board of Directors is presented or discussed; and coordinate the activities of the other independent directors and perform such other duties as may be established or delegated by the Chairperson of the Board of Directors**.**

Section 28. Organization. At every meeting of the directors, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the Lead Independent Director, or if the Lead Independent Director is absent**,** the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairperson of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his or her absence, any Assistant Secretary or other officer or director or other person directed to do so by the Chairperson of the Board, the Lead Independent Director or the President, shall act as secretary of the meeting.

ARTICLE V

OFFICERS

Section 29. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by applicable law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors or by a committee thereof to which the Board of Directors has delegated such responsibility.

Section 30. Tenure and Duties of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors or by a committee thereof to which the Board of Directors has delegated such responsibility or, if so authorized by the Board of Directors, by the Chief Executive Officer or another officer of the corporation.

(b) Duties of Chief Executive Officer. The Chief Executive Officer shall preside at all meetings of the stockholders (subject to Section 15) and at all meetings of the

Board of Directors, unless the Chairperson of the Board of Directors or the Lead Independent Director has been appointed and is present. Unless an officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(c) Duties of President. The President shall preside at all meetings of the stockholders (subject to Section 15) and at all meeting of the Board of Directors**,** unless the Chairperson of the Board of Directors, the Lead Independent Director, or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(d) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant (unless the duties of the President are being filled by the Chief Executive Officer). The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

(e) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute books of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors, the Chief Executive Officer or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all

funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the President shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(g) Duties of Treasurer. Unless another officer has been appointed Chief Financial Officer of the corporation, the Treasurer shall be the chief financial officer of the corporation and shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President, and, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

Section 31. Delegation Of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 32. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors, the Chief Executive Officer, the President or the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 33. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee thereof or by the Chief Executive Officer or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 34. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 35. Voting of Securities Owned by the Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairperson of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII

SHARES OF STOCK

Section 36. Form and Execution of Certificates. The shares of the corporation shall be represented by certificates, or shall be uncertificated. Certificates for the shares of stock, if any, of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by certificate in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairperson of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by such holder in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 37. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

Section 38. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes or series of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes or series owned by such stockholders in any manner not prohibited by the DGCL.

Section 39. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day immediately preceding the day on which notice is given, or if notice is waived, at the close of business on the day immediately preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 40. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 41. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 36), may be signed by the Chairperson of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however,* that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 42. Declaration Of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 43. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a

reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

FISCAL YEAR

Section 44. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI

INDEMNIFICATION

Section 45. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.

(a) Directors and Executive Officers. The corporation shall indemnify its directors and executive officers (for the purposes of this Article XI, "executive officers" shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the extent not prohibited by the DGCL or any other applicable law; *provided, however,* that the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, *provided, further,* that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

(b) Other Officers, Employees and Other Agents. The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person to such officers or other persons as the Board of Directors shall determine.

(c) Expenses. The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or executive officer, of the corporation, or is or was serving at the request of the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding provided, however, that if the DGCL requires, an advancement of expenses incurred by a director or executive officer in his or her capacity as a director or

executive officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an "***undertaking***"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "***final adjudication***") that such indemnitee is not entitled to be indemnified for such expenses under this section or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this section, no advance shall be made by the corporation to an executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this section to a director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official

capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

(f) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, executive officer, or officer, employee or other agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase and maintain insurance on behalf of any person required or permitted to be indemnified pursuant to this section.

(h) Amendments. Any repeal or modification of this section shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) Saving Clause. If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this section that shall not have been invalidated, or by any other applicable law. If this section shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under any other applicable law.

(j) Certain Definitions. For the purposes of this Bylaw, the following definitions shall apply:

(i) The term "***proceeding***" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(ii) The term "***expenses***" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(iii) The term the "***corporation***" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in

the same position under the provisions of this section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a "***director***," "***executive officer***," "***officer***," "***employee***," or "***agent***" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(v) References to "***other enterprises***" shall include employee benefit plans; references to "***fines***" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

ARTICLE XII

NOTICES

Section 46. Notices.

(a) Notice to Stockholders. Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by US mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in subsection (a), as otherwise provided in these Bylaws, or by overnight delivery service, facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice to Person with Whom Communication is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) Notice to Stockholders Sharing an Address. Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within sixty (60) days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

ARTICLE XIII

AMENDMENTS

Section 47. Amendments. Subject to the limitations set forth in Section 45(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; *provided*, *however*, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV

LOANS TO OFFICERS

Section 48. Loans To Officers. Except as otherwise prohibited by applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise

assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

THIS AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT (this "**Agreement**"), is made as of the 5th day of March, 2021, by and among AN2 Therapeutics, Inc., a Delaware corporation (the "**Company**"), and each of the investors listed on Schedule A hereto, each of which is referred to in this Agreement as an "**Investor**."

RECITALS

WHEREAS, certain of the Investors (the "**Existing Investors**") hold shares of Series A Preferred Stock and/or shares of Common Stock issued upon conversion thereof and possess registration rights, information rights, rights of first offer, and other rights pursuant to that certain Investors' Rights Agreement dated as of November 19, 2019, by and among the Company and such Existing Investors (the "**Prior Agreement**"); and

WHEREAS, the Existing Investors are holders of at least two-thirds of the Registrable Securities (as defined in the Prior Agreement), and desire to amend and restate the Prior Agreement in its entirety and to accept the rights created pursuant to this Agreement in lieu of the rights granted to them under the Prior Agreement; and

WHEREAS, certain of the Investors are parties to that certain Series B Purchase Agreement of even date herewith by and among the Company and such Investors (the "**Purchase Agreement**"), under which certain of the Company's and such Investors' obligations are conditioned upon the execution and delivery of this Agreement by such Investors, Existing Investors holding at least two-thirds of the Registrable Securities, and the Company;

NOW, THEREFORE, the Existing Investors hereby agree that the Prior Agreement is hereby amended and restated in its entirety by this Agreement, and the parties to this Agreement further hereby agree as follows:

1. Definitions. For purposes of this Agreement:

1.1 "**Affiliate**" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, limited partners, managing member, officer or director of such Person, or any venture capital fund or other investment fund now or hereafter existing that is controlled by one or more general partners, managing members or investment adviser of, or shares the same management company or investment adviser with, such Person, or Immediate Family Members or their affiliated entities of such Person.

1.2 "**Board of Directors**" means the board of directors of the Company.

1.3 "**Certificate of Incorporation**" means the Company's Third Amended and Restated Certificate of Incorporation, as amended and/or restated from time to time.

1.4 "**Common Stock**" means shares of the Company's common stock, par value $0.00001 per share.

1.5 "**Competitor**" means a Person engaged, directly or indirectly (including through any partnership, limited liability company, corporation, joint venture or similar arrangement (whether now existing or formed hereafter)), in infectious disease pharmaceuticals, but shall not include any financial investment firm or collective investment vehicle that, together with its Affiliates, holds less than twenty percent (20)% of the outstanding equity of any Competitor and does not, nor do any of its Affiliates, have a right to designate any members of the board of directors of any Competitor. Notwithstanding the foregoing, Pfizer Inc. and its controlled Affiliates, including, without limitation, Anacor Pharmaceuticals, Inc. (together, "**Pfizer**") shall not be deemed a Competitor for the purposes of Section 4.1 herein and none of Adjuvant Global Health Technology Fund L.P. and its Affiliates ("**Adjuvant**"), Brii Biosciences Limited or its controlled Affiliates ("**Brii**"), MGC Venture Partners 2018, LP or its Affiliates ("**MGC**") or RA Capital (as defined below) shall be deemed a Competitor for the purposes hereof.

1.6 "**Damages**" means any loss, damage, claim or liability (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law, insofar as such loss, damage, claim or liability (or any action in respect thereof) arises out of or is based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state securities law.

1.7 "**Derivative Securities**" means any securities or rights convertible into, or exercisable or exchangeable for (in each case, directly or indirectly)**,** Common Stock, including options and warrants.

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

1.9 "**Excluded Registration**" means (i) a registration relating to the sale of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or (iv) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

1.10 "**FOIA Party**" means a Person that, in the determination of the Board of Directors, may be subject to, and thereby required to disclose non-public information furnished by or relating to the Company under, the Freedom of Information Act, 5 U.S.C. 552 ("**FOIA**"), any state public records access law, any state or other jurisdiction's laws similar in intent or effect to FOIA, or any other similar statutory or regulatory requirement.

1.11 "**Form S-1**" means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

1.12 "**Form S-3**" means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits incorporation of substantial information by reference to other documents filed by the Company with the SEC.

1.13 "**GAAP**" means generally accepted accounting principles in the United States.

1.14 "**Holder**" means any holder of Registrable Securities who is a party to this Agreement.

1.15 "**Immediate Family Member**" means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including, adoptive relationships, of a natural person referred to herein.

1.16 "**Initiating Holders**" means, collectively, Holders who properly initiate a registration request under this Agreement.

1.17 "**IPO**" means the Company's first underwritten public offering of its Common Stock under the Securities Act.

1.18 "**Key Employee**" means any executive-level employee (including, division director and vice president-level positions) as well as any employee who, either alone or in concert with others, develops, invents, programs, or designs any Company Intellectual Property (as defined in the Purchase Agreement).

1.19 "**Major Investor**" means any Investor that, individually or together with such Investor's Affiliates, holds at least 375,000 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof).

1.20 "**New Securities**" means, collectively, equity securities of the Company, whether or not currently authorized, as well as rights, options, or warrants to purchase or otherwise acquire such equity securities, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities.

1.21 "**Person**" means any individual, corporation, partnership, trust, limited liability company, association or other entity.

1.22 "**Preferred Stock**" means shares of the Company's Series A Preferred Stock and Series B Preferred Stock.

1.23 "**Qualified Investor**" means any Investor that, individually or together with such Investor's Affiliates, holds at least 350,000 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof).

1.24 "**RA Capital**" means RA Capital Management, L.P. and its Affiliates.

1.25 "**Registrable Securities**" means (i) the Common Stock issuable or issued upon conversion of th**e** Preferred Stock; and (ii) any Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right, or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares referenced in clause (i) above; excluding in all cases, however, any Registrable Securities sold by a Person in a transaction in which the applicable rights under this Agreement are not assigned pursuant to Subsection 6.1, and excluding for purposes of Section 2 any shares for which registration rights have terminated pursuant to Subsection 2.13 of this Agreement.

1.26 "**Registrable Securities then outstanding**" means the number of shares determined by adding the number of shares of outstanding Common Stock that are Registrable Securities and the number of shares of Common Stock issuable (directly or indirectly) pursuant to then exercisable and/or convertible securities that are Registrable Securities.

1.27 "**Restricted Securities**" means the securities of the Company required to be notated with the legend set forth in Subsection 2.12(b) hereof.

1.28 "**SEC**" means the Securities and Exchange Commission.

1.29 "**SEC Rule 144**" means Rule 144 promulgated by the SEC under the Securities Act.

1.30 "**SEC Rule 145**" means Rule 145 promulgated by the SEC under the Securities Act.

1.31 "**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

1.32 "**Selling Expenses**" means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for any Holder, except for the fees and disbursements of the Selling Holder Counsel borne and paid by the Company as provided in Subsection 2.6.

1.33 "**Series A Director**" means any director of the Company that the holders of record of the Series A Preferred Stock are entitled to elect pursuant to the Company's Certificate of Incorporation.

1.34 "**Series A Preferred Stock**" means shares of the Company's Series A Preferred Stock, par value $0.00001 per share.

1.35 "**Series B Preferred Stock**" means shares of the Company's Series B Preferred Stock, par value $0.00001 per share.

2. Registration Rights. The Company covenants and agrees as follows:

2.1 Demand Registration.

(a) Form S-1 Demand. If at any time after the earlier of (i) four years after the date of this Agreement or (ii) one hundred eighty (180) days after the effective date of the registration statement for the IPO, the Company receives a request from Holders of twenty five percent (25%) of the Registrable Securities then outstanding that the Company file a Form S-1 registration statement with respect to the Registrable Securities then outstanding, then the Company shall (x) within ten (10) days after the date such request is given, give notice thereof (the "**Demand Notice**") to all Holders other than the Initiating Holders; and (y) as soon as practicable, and in any event within sixty (60) days after the date such request is given by the Initiating Holders, file a Form S-1 registration statement under the Securities Act covering all Registrable Securities that the Initiating Holders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Subsections 2.1(c) and 2.3.

(b) Form S-3 Demand. If at any time when it is eligible to use a Form S-3 registration statement, the Company receives a request from Holders of at least twenty five percent (25%) of the Registrable Securities then outstanding that the Company file a Form S-3 registration statement with respect to outstanding Registrable Securities of such Holders having an anticipated aggregate offering price, net of Selling Expenses, of at least $1 million, then the Company shall (i) within ten (10) days after the date such request is given, give a Demand Notice to all Holders other than the Initiating Holders; and (ii) as soon as practicable, and in any event within forty-five (45) days after the date such request is given by the Initiating Holders, file a Form S-3 registration statement under the Securities Act covering all Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Subsections 2.1(c) and 2.3.

(c) Notwithstanding the foregoing obligations, if the Company furnishes to Holders requesting a registration pursuant to this Subsection 2.1 a certificate signed by the Company's chief executive officer stating that in the good faith judgment of the Board of Directors it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) materially interfere with a significant acquisition, corporate reorganization, or other similar transaction involving the Company; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act, then the Company shall have the right to defer taking action with respect to such filing for a period of not more than thirty (30) days after the request of the Initiating Holders is given; provided, however, that the Company may not invoke this right more than once in any twelve (12) month period.

(d) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Subsection 2.1(a), (i) during the period that is sixty (60) days before the Company's good faith estimate of the date of filing of, and ending on a date that is one hundred eighty (180) days after the effective date of, a Company-initiated registration, provided that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; (ii) after the Company has effected two registrations pursuant to Subsection 2.1(a); or (iii) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Subsection 2.1(b). The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Subsection 2.1(b) (i) during the period that is thirty (30) days before the Company's good faith estimate of the date of filing of, and ending on a date that is ninety (90) days after the effective date of, a Company-initiated registration, provided that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; or (ii) if the Company has effected two registrations pursuant to Subsection 2.1(b) within the twelve (12) month period immediately preceding the date of such request. A registration shall not be counted as "effected" for purposes of this Subsection 2.1(d) until such time as the applicable registration statement has been declared effective by the SEC, unless the Initiating Holders withdraw their request for such registration, elect not to pay the registration expenses therefor, and forfeit their right to one demand registration statement pursuant to Subsection 2.6, in which case such withdrawn registration statement shall be counted as "effected" for purposes of this Subsection 2.1(d); provided, that if such withdrawal is during a period the Company has deferred taking action pursuant to Section 2.1(c), then the Initiating Holders may withdraw their request for registration and such registration will not be counted as "effected" for purposes of this Section 2.1(d).

2.2 Company Registration. If the Company proposes to register (including, for this purpose, a registration effected by the Company for stockholders other than the Holders) any of its securities under the Securities Act in connection with the public offering of such securities solely for cash (other than in an Excluded Registration), the Company shall, at such time, promptly give each Holder notice of such registration. Upon the request of each Holder given within twenty (20) days after such notice is given by the Company, the Company shall, subject to the provisions of Subsection 2.3, cause to be registered all of the Registrable Securities that each such Holder has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Subsection 2.2 before the effective date of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. The expenses (other than Selling Expenses) of such withdrawn registration shall be borne by the Company in accordance with Subsection 2.6.

2.3 Underwriting Requirements.

(a) If, pursuant to Subsection 2.1, the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Subsection 2.1, and the Company shall include such information in the Demand Notice. The underwriter(s) will be selected by the Company and shall be reasonably acceptable to at least a majority in interest of the Initiating Holders. In such event, the right of any Holder to include such Holder's Registrable

Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Subsection 2.4(e)) enter into an underwriting agreement in customary form with the underwriter(s) selected for such underwriting; provided, however, that no Holder (or any of their assignees) shall be required to make any representations, warranties or indemnities except as they relate to such Holder's ownership of shares and authority to enter into the underwriting agreement and to such Holder's intended method of distribution, and the liability of such Holder shall be several and not joint, and limited to an amount equal to the net proceeds from the offering received by such Holder. Notwithstanding any other provision of this Subsection 2.3, if the managing underwriter(s) advise(s) the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities that otherwise would be underwritten pursuant hereto, and the number of Registrable Securities that may be included in the underwriting shall be allocated among such Holders of Registrable Securities, including the Initiating Holders, in proportion (as nearly as practicable) to the number of Registrable Securities owned by each Holder or in such other proportion as shall mutually be agreed to by all such selling Holders; provided, however, that the number of Registrable Securities held by the Holders to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest one hundred (100) shares.

(b) In connection with any offering involving an underwriting of shares of the Company's capital stock pursuant to Subsection 2.2, the Company shall not be required to include any of the Holders' Registrable Securities in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company. If the total number of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the number of securities to be sold (other than by the Company) that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be allocated among the selling Holders in proportion (as nearly as practicable to) the number of Registrable Securities owned by each selling Holder or in such other proportions as shall mutually be agreed to by all such selling Holders. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest one hundred (100) shares. Notwithstanding the foregoing, in no event shall (i) the number of Registrable Securities included in the offering be reduced unless all other securities (other than securities to be sold by the Company) are first entirely excluded from the offering, or (ii) the number of Registrable Securities included in the offering be reduced below thirty percent (30%) of the total number of securities included in such offering, unless such offering is the IPO, in which

case the selling Holders may be excluded further if the underwriters make the determination described above and no other stockholder's securities are included in such offering. For purposes of the provision in this Subsection 2.3(b) concerning apportionment, for any selling Holder that is a partnership, limited liability company, or corporation, the partners, members, retired partners, retired members, stockholders, and Affiliates of such Holder, or the estates and Immediate Family Members of any such partners, retired partners, members, and retired members and any trusts for the benefit of any of the foregoing Persons, shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such "selling Holder," as defined in this sentence.

(c) For purposes of Subsection 2.1, a registration shall not be counted as "effected" if, as a result of an exercise of the underwriter's cutback provisions in Subsection 2.3(a), fewer than fifty percent (50%) of the total number of Registrable Securities that Holders have requested to be included in such registration statement are actually included.

2.4 Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the registration statement has been completed; provided, however, that such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains, at the request of an underwriter of Common Stock (or other securities) of the Company, from selling any securities included in such registration;

(b) prepare and file with the SEC such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the Securities Act in order to enable the disposition of all securities covered by such registration statement;

(c) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act, and such other documents as the Holders may reasonably request in order to facilitate their disposition of their Registrable Securities;

(d) use its commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by the selling Holders; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering;

(f) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on a national securities exchange or trading system and each securities exchange and trading system (if any) on which similar securities issued by the Company are then listed;

(g) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) promptly make available for inspection by the selling Holders, any underwriter(s) participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the selling Holders, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company's officers, directors, employees, and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith;

(i) notify each selling Holder, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed; and

(j) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus.

In addition, the Company shall ensure that, at all times after any registration statement covering a public offering of securities of the Company under the Securities Act shall have become effective, its insider trading policy shall provide that the Company's directors may implement a trading program under Rule 10b5-1 of the Exchange Act.

2.5 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as is reasonably required to effect the registration of such Holder's Registrable Securities.

2.6 Expenses of Registration. All expenses (other than Selling Expenses) incurred in connection with registrations, filings, or qualifications pursuant to Section 2, including all registration, filing, and qualification fees; printers' and accounting fees; fees and disbursements of counsel for the Company; and the reasonable fees and disbursements, not to exceed $40,000, of

one counsel for the selling Holders ("**Selling Holder Counsel**"), shall be borne and paid by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Subsection 2.1 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all selling Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless the Holders a majority of the Registrable Securities agree to forfeit their right to one registration pursuant to Subsections 2.1(a) or 2.1(b), as the case may be; provided further that if, at the time of such withdrawal, the Holders shall have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness after learning of such information, then the Holders shall not be required to pay any of such expenses and shall not forfeit their right to one registration pursuant to Subsections 2.1(a) or 2.1(b). All Selling Expenses relating to Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

2.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration pursuant to this Agreement as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8 Indemnification. If any Registrable Securities are included in a registration statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, and the partners, members, officers, directors, and stockholders of each such Holder; legal counsel and accountants for each such Holder; any underwriter (as defined in the Securities Act) for each such Holder; and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any Damages, and the Company will pay to each such Holder, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any such Holder, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration except to the extent such information has been corrected in a subsequent writing prior to or concurrently with the sale of Registrable Securities to the Person asserting the claim.

(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, and each of its directors, each of its officers who has signed the registration statement, each Person (if any), who controls the Company within the meaning of the Securities Act, legal counsel and accountants for the Company, any underwriter (as defined in the Securities Act), any other Holder selling securities in such

registration statement, and any controlling Person of any such underwriter or other Holder, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Holder expressly for use in connection with such registration and has not been corrected in a subsequent writing prior to or concurrently with the sale of Registrable Securities to the Person asserting the claim; and each such selling Holder will pay to the Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(b) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; and provided further that in no event shall the aggregate amounts payable by any Holder by way of indemnity or contribution under Subsections 2.8(b) and 2.8(d) exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of fraud or willful misconduct by such Holder.

(c) Promptly after receipt by an indemnified party under this Subsection 2.8 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Subsection 2.8, give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action.

(d) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which either: (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this Subsection 2.8 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Subsection 2.8 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of any party hereto for which indemnification is provided under this Subsection 2.8, then, and in each such case, such parties will contribute to the aggregate losses, claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material

fact, or the omission or alleged omission of a material fact, relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; provided, however, that, in any such case (x) no Holder will be required to contribute any amount in excess of the public offering price of all such Registrable Securities offered and sold by such Holder pursuant to such registration statement, and (y) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; and provided further that in no event shall a Holder's liability pursuant to this Subsection 2.8(d), when combined with the amounts paid or payable by such Holder pursuant to Subsection 2.8(b), exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of willful misconduct or fraud by such Holder.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Company and Holders under this Subsection 2.8 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.9 Reports Under Exchange Act. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the registration statement filed by the Company for the IPO;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after the Company has become subject to such reporting requirements); and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the registration statement filed by the Company for the IPO), the Securities Act, and the Exchange Act (at any time after the Company has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company; and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration (at any time after the Company has become subject to the reporting requirements under the Exchange Act) or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

2.10 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of at least two-thirds of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that (i) would provide to such holder the right to include securities in any registration on other than either a pro rata basis with respect to the Registrable Securities or on a subordinate basis after all Holders have had the opportunity to include in the registration and offering all shares of Registrable Securities that they wish to so include or (ii) allow such holder or prospective holder to initiate a demand for registration of any securities held by such holder or prospective holder; provided that this limitation shall not apply to any additional Investor who becomes a party to this Agreement in accordance with Subsection 6.9.

2.11 "Market Stand-off" Agreement. Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the IPO and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days in the case of an IPO), (i) lend; offer; pledge; sell; contract to sell; sell any option or contract to purchase; purchase any option or contract to sell; grant any option, right, or warrant to purchase; or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Stock, held immediately before the effective date of the registration statement for such offering or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash, or otherwise. The foregoing provisions of this Subsection 2.11 shall apply only to the IPO, shall not apply to transactions (including, without limitation, any swap, hedge or similar agreement or arrangement) or announcements, in each case, relating to securities acquired in the IPO or securities acquired in open market or other transactions from and after the IPO or that otherwise do not involve or relate to securities of the Company owned by a Holder prior to the IPO, (b) the sale of any shares of Common Stock (x) purchased by Holder in connection with the IPO, whether or not pursuant to an underwriting agreement, a private placement that is concurrent with the IPO, or otherwise, or (y) acquired in the open market at any time after the IPO, (c) the sale of any shares to an underwriter pursuant to an underwriting agreement, or the transfer of any shares to any trust for the direct or indirect benefit of the Holder or the immediate family of the Holder, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and provided further that any such transfer shall not involve a disposition for value, and (d) the transfer of any shares to an Affiliate or current or former limited partner of a Holder; provided that the Affiliate or current or former limited partner of a Holder agrees to be bound in writing by the restrictions set forth herein, and shall be applicable to the Holders only if all officers, directors and stockholders individually, and together with their Affiliates, owning more than one percent (1%) of the Company's outstanding Common Stock (after giving effect to conversion into Common Stock of all outstanding Preferred Stock) are subject to the same restrictions. The underwriters in

connection with such registration are intended third-party beneficiaries of this Subsection 2.11 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Subsection 2.11 or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply pro rata to all Holders subject to such agreements, based on the number of shares subject to such agreements.

2.12 Restrictions on Transfer.

(a) The Preferred Stock and the Registrable Securities shall not be sold, pledged, or otherwise transferred, and the Company shall not recognize and shall issue stop-transfer instructions to its transfer agent with respect to any such sale, pledge, or transfer, except upon the conditions specified in this Agreement, which conditions are intended to ensure compliance with the provisions of the Securities Act. A transferring Holder will cause any proposed purchaser, pledgee, or transferee of the Preferred Stock and the Registrable Securities held by such Holder to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Agreement. Notwithstanding the foregoing, the Company shall not require any transferee of shares pursuant to an effective registration statement or, following the IPO, SEC Rule 144, in each case, to be bound by the terms of this Agreement.

(b) Each certificate, instrument, or book entry representing (i) the Preferred Stock, (ii) the Registrable Securities, and (iii) any other securities issued in respect of the securities referenced in clauses (i) and (ii), upon any stock split, stock dividend, recapitalization, merger, consolidation, or similar event, shall (unless otherwise permitted by the provisions of Subsection 2.12(c)) be notated with a legend substantially in the following form:

THE SECURITIES REPRESENTED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. SUCH SHARES MAY NOT BE SOLD, PLEDGED, OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR A VALID EXEMPTION FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT.

THE SECURITIES REPRESENTED HEREBY MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

The Holders consent to the Company making a notation in its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer set forth in this Subsection 2.12.

(c) The holder of such Restricted Securities, by acceptance of ownership thereof, agrees to comply in all respects with the provisions of this Section 2. Before any proposed sale, pledge, or transfer of any Restricted Securities, unless there is in effect a

registration statement under the Securities Act covering the proposed transaction or following the IPO, the transfer is made pursuant to SEC Rule 144, the Holder thereof shall give notice to the Company of such Holder's intention to effect such sale, pledge, or transfer, provided that no such notice shall be required in connection if the intended sale, pledge or transfer complies with SEC Rule 144. Each such notice shall describe the manner and circumstances of the proposed sale, pledge, or transfer in sufficient detail and, if reasonably requested by the Company, shall be accompanied at such Holder's expense by either (i) a written opinion of legal counsel who shall, and whose legal opinion shall, be reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transaction may be effected without registration under the Securities Act; (ii) a "no action" letter from the SEC to the effect that the proposed sale, pledge, or transfer of such Restricted Securities without registration will not result in a recommendation by the staff of the SEC that action be taken with respect thereto; or (iii) any other evidence reasonably satisfactory to counsel to the Company to the effect that the proposed sale, pledge, or transfer of the Restricted Securities may be effected without registration under the Securities Act, whereupon the Holder of such Restricted Securities shall be entitled to sell, pledge, or transfer such Restricted Securities in accordance with the terms of the notice given by the Holder to the Company. The Company will not require such a legal opinion or "no action" letter (x) in any transaction in compliance with SEC Rule 144; or (y) in any transaction in which such Holder distributes or transfers Restricted Securities to (i) an Affiliate of such Holder, (ii) solely where no consideration is paid to Holder at the time of such transfer in connection with such transfer, to a current or former limited partner of such Holder, or (iii) in any transactions in which a Holder exercises its co-sale rights under the Right of First Refusal and Co-Sale Agreement (as such term is defined in the Purchase Agreement); provided, in each case, that with respect to transfers under the foregoing clause (y), each transferee agrees in writing to be subject to the terms of this Subsection 2.12. Each certificate, instrument, or book entry representing the Restricted Securities transferred as above provided shall be notated with, except if such transfer is made pursuant to SEC Rule 144, the appropriate restrictive legend set forth in Subsection 2.12(b), except that such certificate instrument, or book entry shall not be notated with such restrictive legend if, in the opinion of counsel for such Holder and the Company, such legend is not required in order to establish compliance with any provisions of the Securities Act.

2.13 Termination of Registration Rights. The right of any Holder to request registration or inclusion of Registrable Securities in any registration pursuant to Subsections 2.1 or 2.2 shall terminate upon the earliest to occur of:

(a) such time after the IPO as Rule 144 or another similar exemption under the Securities Act is available for the sale of all of such Holder's shares without limitation during a three-month period without registration (and without the requirement for the Company to be in compliance with the current public information required under subsection (c)(1) of SEC Rule 144) and such Holder (together with its "affiliates" determined under SEC Rule 144) holds less than one percent (1%) of the outstanding capital stock of the Company; and

(b) the fifth anniversary of the IPO.

2.14 Transfer and Assignment of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Section 2 may be assigned by a Holder to a transferee or assignee of Registrable Securities (for so long as such shares remain Registrable

Securities) that (a) is a subsidiary, parent, general partner, limited partner, retired partner, member or retired member, of a Holder that is a corporation, partnership or limited liability company, (b) is a Holder's family member or trust for the benefit of an individual Holder, (c) acquires at least five percent of the then-outstanding Registrable Securities or (d) is an Affiliate of such Holder; provided, however, that (i) the transferor shall, within ten days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned and (ii) such transferee shall agree to be subject to all restrictions set forth in this Agreement.

3. Information Rights.

3.1 Delivery of Financial Statements. The Company shall deliver to each Major Investor, provided that the Board of Directors has not reasonably determined that such Major Investor is a Competitor of the Company:

(a) as soon as practicable, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Company beginning with fiscal year 2021 (i) a balance sheet as of the end of such year, (ii) statements of income and of cash flows for such year, and (iii) a statement of stockholders' equity as of the end of such year, all such financial statements audited and certified by independent public accountants of nationally recognized standing selected by the Company;

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, unaudited statements of income and cash flows for such fiscal quarter, and an unaudited balance sheet and a statement of stockholders' equity as of the end of such fiscal quarter, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments; and (ii) not contain all notes thereto that may be required in accordance with GAAP); and

(c) as soon as practicable, but in any event no later than forty-five (45) days after the start of each fiscal year, a budget for such fiscal year (collectively, the "**Budget**"), approved by the Board of Directors and prepared on a monthly basis, including balance sheets, income statements, and statements of cash flow for such months and, promptly after prepared, any other budgets or revised budgets prepared by the Company; and

(d) such other information relating to the financial condition, business, prospects, or corporate affairs of the Company as any Major Investor may from time to time reasonably request; provided, however, that the Company shall not be obligated under this Subsection 3.1(d) to provide information (i) that the Company reasonably determines in good faith to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in a form acceptable to the Company); or (ii) the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Notwithstanding anything else in this Subsection 3.1 to the contrary, the Company may cease providing the information set forth in this Subsection 3.1 during the period starting with the date thirty (30) days before the Company's good-faith estimate of the date of filing of a registration statement if it reasonably concludes it must do so to comply with the SEC rules applicable to such registration statement and related offering; provided that the Company's covenants under this Subsection 3.1 shall be reinstated at such time as the Company is no longer actively employing its commercially reasonable efforts to cause such registration statement to become effective.

3.2 Inspection. The Company shall permit each Major Investor (provided that the Board of Directors has not reasonably determined that such Major Investor is a Competitor of the Company), at such Major Investor's expense, to visit and inspect the Company's properties; examine its books of account and records; and discuss the Company's affairs, finances, and accounts with its officers, during normal business hours of the Company as may be reasonably requested by the Major Investor; provided, however, that the Company shall not be obligated pursuant to this Subsection 3.2 to provide access to any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

3.3 Observer Rights. As long as RA Capital owns not less than 425,000 shares of Series B Preferred Stock (or an equivalent amount of Common Stock issued upon conversion thereof), the Company shall invite a representative of RA Capital (the "**RA Board Observer**") to attend all meetings of the Board of Directors in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors at the same time and in the same manner as provided to such directors; provided, however, that such representative shall agree to hold in confidence all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest, or if such Investor or its representative is a Competitor. The Company shall reimburse the out-of-pocket travel expenses incurred by the RA Board Observer in connection with attending meetings of the Board or any of the committees of the Company.

3.4 Termination of Information and Observer Rights. The covenants set forth in Subsection 3.1, Subsection 3.2 and Subsection 3.3 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, or (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act.

3.5 Confidentiality. Confidentiality. Each Investor agrees that such Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any confidential information obtained from the Company pursuant to the terms of this Agreement (including notice of the Company's intention to file a registration statement), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Subsection 3.5 by such Investor), (b) is or has been independently developed or conceived by the Investor without use of the Company's confidential information, or (c) is or has been made known or disclosed to the Investor by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that an Investor may disclose confidential information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective purchaser of any Registrable Securities from such Investor, if such prospective purchaser agrees to be bound by the provisions of this Subsection 3.5; (iii) to any existing or prospective Affiliate, any former partner who retained an economic interest in such investor, partner, member, stockholder, limited partner or wholly owned subsidiary of such Investor in the ordinary course of business, provided that such Investor informs such Person that such information is confidential and directs such Person to maintain the confidentiality of such information; (iv) to the extent required in connection with any routine or periodic examination or similar process by any regulatory or self-regulatory body or authority not specifically directed at the Company or the confidential information obtained from the Company pursuant to the terms of the Agreement, including, without limitation, quarterly or annual reports, or (v) as may otherwise be required by law, regulation, rule, court order or subpoena, provided that, with respect to this clause (v), the Investor promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure.

4. Rights to Future Stock Issuances.

4.1 Right of First Offer. Subject to the terms and conditions of this Subsection 4.1 and applicable securities laws, if the Company proposes to offer or sell any New Securities, the Company shall first offer such New Securities to each Qualified Investor. A Qualified Investor shall be entitled to apportion the right of first offer hereby granted to it in such proportions as it deems appropriate, among (i) itself, (ii) its Affiliates and (iii) its beneficial interest holders, such as limited partners, members or any other Person having "beneficial ownership," as such term is defined in Rule 13d-3 promulgated under the Exchange Act, of such Qualified Investor ("**Investor Beneficial Owners**"); provided that each such Affiliate or Investor Beneficial Owner (x) is not a Competitor or FOIA Party, unless such party's purchase of New Securities is otherwise consented to by the Board of Directors, (y) agrees to enter into this Agreement and each of the Amended and Restated Voting Agreement and Amended and Restated Right of First Refusal and Co-Sale Agreement of even date herewith among the Company, the Investors and the other parties named therein, as an "**Investor**" under each such agreement (provided that any Competitor or FOIA Party shall not be entitled to any rights as a Major Investor under Subsections 3.1, 3.2 and as a Qualified Investor under Subsection 4.1 hereof), and (z) agrees to purchase at least such number of New Securities as are allocable hereunder to the Qualified Investor holding the fewest number of Preferred Stock and any other Derivative Securities.

(a) The Company shall give notice (the "**Offer Notice**") to each Qualified Investor, stating (i) its bona fide intention to offer such New Securities, (ii) the number of such New Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities.

(b) By notification to the Company within twenty (20) days after the Offer Notice is given, each Qualified Investor may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of such New Securities which equals the proportion that the Common Stock then held by such Qualified Investor (including all shares of Common Stock then issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Stock and any other Derivative Securities then held by such Qualified Investor) bears to the total Common Stock of the Company then outstanding (assuming full conversion and/or exercise, as applicable, of all Preferred Stock and other Derivative Securities) held by all the Qualified Investors (including all shares of Common Stock issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Stock and any other Derivative Securities then held by the Qualified Investors). At the expiration of such twenty (20) day period, the Company shall promptly notify each Qualified Investor that elects to purchase or acquire all the shares available to it (each, a "**Fully Exercising Investor**") of any other Qualified Investor's failure to do likewise. During the ten (10) day period commencing after the Company has given such notice, each Fully Exercising Investor may, by giving notice to the Company, elect to purchase or acquire, in addition to the number of shares specified above, up to that portion of the New Securities for which Qualified Investors were entitled to subscribe but that were not subscribed for by the Qualified Investors which is equal to the proportion that the Common Stock issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of Preferred Stock and any other Derivative Securities then held, by such Fully Exercising Investor bears to the Common Stock issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Stock and any other Derivative Securities then held, by all Fully Exercising Investors who wish to purchase such unsubscribed shares. The closing of any sale pursuant to this Subsection 4.1(b) shall occur within the later of ninety (90) days of the date that the Offer Notice is given and the date of initial sale of New Securities pursuant to Subsection 4.1(c).

(c) If all New Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in Subsection 4.1(b), the Company may, during the ninety (90) day period following the expiration of the periods provided in Subsection 4.1(b), offer and sell the remaining unsubscribed portion of such New Securities to any Person or Persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice. If the Company does not enter into an agreement for the sale of the New Securities within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Qualified Investors in accordance with this Subsection 4.1.

(d) The right of first offer in this Subsection 4.1 shall not be applicable to (i) Exempted Securities (as defined in the Company's Certificate of Incorporation) and (ii) shares of Common Stock issued in the IPO.

4.2 Termination. The covenants set forth in Subsection 4.1 shall terminate and be of no further force or effect upon the earliest of (i) immediately before the consummation of the IPO, or (ii) upon a Deemed Liquidation Event, as such term is defined in the Company's Certificate of Incorporation, provided that the consideration received pursuant to such Deemed Liquidation Event is in the form of cash and/or publicly traded securities, or if the Investors receive participation rights from the acquiring company or other successor to the Company reasonably comparable to those set forth in this Section 4 whichever event occurs first.

4.3 Transfer of Rights of First Offer. The rights of first offer of each Investor under this Section 4 may be assigned by a Holder to a transferee or assignee of Registrable Securities (for so long as such shares remain Registrable Securities) that (a) is a subsidiary, parent, general partner, limited partner, retired partner, member or retired member, of a Holder that is a corporation, partnership or limited liability company, (b) is a Holder's family member or trust for the benefit of an individual Holder, (c) acquires at least 5% of the then-outstanding Registrable Securities or (d) is an Affiliate of such Holder; provided, however, that (i) the transferor shall, within ten days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned, (ii) such transferee shall agree to be subject to all restrictions set forth in this Agreement, and (iii) any such transferee is not a Competitor.

5. Additional Covenants.

5.1 Insurance. The Company shall maintain its director and officer liability insurance coverage, so long as such insurance is commercially practicable given the Company's financial situation, upon such terms and conditions as may be approved by the Board of Directors.

5.2 Employee Agreements. The Company will cause (i) each person now or hereafter employed by it or by any subsidiary (or engaged by the Company or any subsidiary as a consultant/independent contractor) with access to confidential information and/or trade secrets to enter into a nondisclosure and proprietary rights assignment agreement; and (ii) each Key Employee to enter into a nonsolicitation agreement, substantially in the form approved by the Board of Directors. In addition, the Company shall not amend, modify, terminate, waive, or otherwise alter, in whole or in part, any of the above-referenced agreements or any restricted stock agreement between the Company and any employee, without the approval of the Board of Directors, including the approval of at least one Series A Director.

5.3 Employee Stock. Unless otherwise approved by the Board of Directors, including at least one Series A Director, all future employees and consultants of the Company who purchase, receive options to purchase, or receive awards of shares of the Company's capital stock after the date hereof shall be required to execute restricted stock or option agreements, as applicable, providing for (i) vesting of shares over a four (4) year period, with the first twenty-five percent (25%) of such shares vesting following twelve (12) months of continued employment or service, and the remaining shares vesting in equal monthly installments over the following thirty-six (36) months, and (ii) a market stand-off provision substantially similar to that in Subsection 2.11. In addition, unless otherwise approved by the Board of Directors, including at least one Series A Director, the Company shall retain a "right of first refusal" on employee transfers until the Company's IPO and shall have the right to repurchase unvested shares at cost upon termination of employment of a holder of restricted stock.

5.4 Qualified Small Business Stock. The Company shall use commercially reasonable efforts to cause the shares of Preferred Stock issued pursuant to the Purchase Agreement, as well as any shares into which such shares are converted, within the meaning of Section 1202(f) of the Internal Revenue Code (the "**Code**"), to constitute "qualified small business stock" as defined in Section 1202(c) of the Code; provided, however, that such requirement shall not be applicable if the Board of Directors of the Company determines, in its good-faith business judgment, that such qualification is inconsistent with the best interests of the Company. The Company shall submit to its stockholders (including the Investors) and to the Internal Revenue Service any reports that may be required under Section 1202(d)(1)(C) of the Code and the regulations promulgated thereunder. In addition, within twenty (20) business days after any Investor's written request therefor, the Company shall, at its option, either (i) deliver to such Investor a written statement indicating whether (and what portion of) such Investor's interest in the Company constitutes "qualified small business stock" as defined in Section 1202(c) of the Code or (ii) deliver to such Investor such factual information in the Company's possession as is reasonably necessary to enable such Investor to determine whether (and what portion of) such Investor's interest in the Company constitutes "qualified small business stock" as defined in Section 1202(c) of the Code.

5.5 Matters Requiring Preferred Director Approval. During such time or times as the holders of Series A Preferred Stock are entitled to elect a Series A Director and such seat is filled, the Company hereby covenants and agrees with each of the Investors that it shall not, without approval of the Board of Directors (including the approval of at least one Series A Director):

(a) hire, fire, or change the compensation of the executive officers, including approving any option grants; or

(b) increase or decrease the authorized number of directors constituting the Board of Directors.

5.6 Board Matters. Unless otherwise determined by the vote of a majority of the directors then in office, the Board of Directors shall meet at least quarterly in accordance with an agreed-upon schedule. The Company shall reimburse the nonemployee directors for all reasonable out-of-pocket travel expenses incurred (consistent with the Company's travel policy) in connection with attending meetings of the Board of Directors.

5.7 Successor Indemnification. If the Company or any of its successors or assignees consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger, then to the extent necessary, proper provision shall be made so that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately before such transaction, whether such obligations are contained in the Company's Bylaws, its Certificate of Incorporation, or elsewhere, as the case may be.

5.8 Indemnification Matters. The Company hereby acknowledges that one (1) or more of the directors nominated to serve on the Board of Directors by the Investors (each a "**Fund Director**") may have certain rights to indemnification, advancement of expenses and/or insurance provided by one or more of the Investors and certain of their affiliates (collectively, the "**Fund Indemnitors**"). The Company hereby agrees (a) that it is the indemnitor of first resort (*i.e.*, its obligations to any such Fund Director are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Fund Director are secondary), (b) that it shall be required to advance the full amount of expenses incurred by such Fund Director and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement by or on behalf of any such Fund Director to the extent legally permitted and as required by the Company's Certificate of Incorporation or Bylaws of the Company (or any agreement between the Company and such Fund Director), without regard to any rights such Fund Director may have against the Fund Indemnitors, and, (c) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of any such Fund Director with respect to any claim for which such Fund Director has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Fund Director against the Company.

5.9 Right to Conduct Activities. The Company hereby agrees and acknowledges that MGC, Adjuvant and RA Capital (together with their Affiliates) are professional investment funds, and these investment funds (as such), Pfizer and Brii (together with their respective Affiliates) may each make investments in or conduct business with (in the case of Brii and Pfizer) various companies, some of which may be deemed competitive with the Company's business (as currently conducted or as currently proposed to be conducted). The Company and each Investor hereby agree that, to the extent permitted under applicable law, MGC, Adjuvant, RA Capital, Pfizer and Brii shall not be liable to the Company or any such Investor for any claim arising out of, or based upon, (i) their respective investment in, or conduct of business with, any entity competitive with the Company, or (ii) actions taken by any partner, officer employee or other representative of MGC, Adjuvant, RA Capital, Pfizer or Brii to assist any such competitive company, whether or not such action was taken as a member of the board of directors of such competitive company or otherwise, and whether or not such action has a detrimental effect on the Company. The Company and each Investor that is a party to this Agreement, acknowledges and agrees that certain of the Investors or their Affiliates may presently have, or may engage in the future, in internal development programs, or may receive information from third parties that relates to, and may develop and commercialize products independently or in cooperation with such third parties, that are similar to or that are directly or indirectly competitive with, the Company's development programs, products or services. Nothing in this Agreement or any other agreement related to the transactions contemplated by this Agreement, shall in any way preclude or restrict such Investors or their Affiliates from conducting any development program, commercializing any product or service or otherwise engaging in any enterprise, whether or not such development program, product, service or enterprise, competes with those of the Company. Notwithstanding the foregoing, this Section 5.9 shall not relieve (x) any of the Investors from liability associated with the unauthorized disclosure or use of the Company's confidential information obtained pursuant to this Agreement, or (y) any director or officer of the Company from any liability associated with his or her fiduciary duties to the Company.

5.10 Compliance with Laws. The Company shall, and shall use its best efforts to cause any direct or indirect subsidiary, whether now in existence or formed in the future, to, comply in all material respects with all applicable laws.

5.11 FCPA. The Company agrees that it shall not (and shall not permit any of its subsidiaries or any of its or their respective directors, officers, managers, employees, independent contractors, representatives or agents to, while acting on behalf of the Company or subsidiary) promise, authorize or make any payment to, or otherwise contribute any item of value to, directly or indirectly, to any third party, including any foreign official (as such term is defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**")), in each case, in violation of the FCPA, the U.K. Bribery Act, or any other applicable anti-bribery or anti-corruption law. The Company further represents that it shall (and shall cause each of its subsidiaries and Affiliates to) cease all of its or their respective activities, as well as remediate any actions taken by the Company, its subsidiaries or affiliates, or any of their respective directors, officers, managers, employees, independent contractors, representatives or agents in violation of the FCPA, the U.K. Bribery Act, or any other applicable anti-bribery or anti-corruption law. The Company further represents that it shall (and shall cause each of its subsidiaries and Affiliates to) maintain systems of internal controls (including, but not limited to, accounting systems, purchasing systems and billing systems) to ensure compliance with the FCPA, the U.K. Bribery Act of 2010, or any other applicable anti-bribery or anti-corruption law. Upon request, the Company agrees to provide responsive information and/or certifications concerning its compliance with applicable anti-corruption laws, provided that the Company shall not be obligated to provide information that is covered by attorney-client privilege or considered by the Company to be confidential business proprietary data. The Company shall promptly notify each Investor if the Company becomes aware of any Enforcement Action (as defined in the Purchase Agreement). The Company shall, and shall cause any direct or indirect subsidiary or entity controlled by it, whether now in existence or formed in the future, to comply with the FCPA.

5.12 Compliance with Global Trade Control Laws. The Company shall (and shall cause its subsidiaries and affiliates, and its and their respective directors, officers, managers, employees, independent contractors, representatives or agents while acting on behalf of the Company or subsidiary to) comply with all applicable economic sanctions, import, and export control laws, regulations, and orders. The Company has not engaged, and covenants and agrees that is shall not engage, directly or indirectly, in any unauthorized business with, or use, directly or indirectly, any corporate funds to finance the activities of, any Restricted Party or in any Restricted Market. For purposes of this Section 5.12, "**Restricted Parties**" means any individual(s) or entity(ies) on any of the following Restricted Party Lists: the List of Specially Designated Nationals and Blocked Persons, the Foreign Sanctions Evaders List, and the Sectoral Sanctions Identifications List, which are maintained by the Office of Foreign Assets Control of the U.S. Treasury Department, the Entity List, Denied Persons List, or Unverified List, which are maintained by the Bureau of Industry and Security of the U.S. Commerce Department, the U.S. Government Suspension and Debarment List; the HHS OIG Excluded Parties List; the FDA Debarment Lists, or the Consolidated List of Persons, Groups and Entities Subject to E.U. Financial Sanctions; and "**Restricted Market**" means any of the Crimea Region of the Ukraine, Cuba, Iran, North Korea and Syria.

5.13 CFIUS. The Company hereby represents, warrants and covenants to the Investors that it has not taken and shall not take any of the following actions: the design, fabrication, development, testing, production or manufacture of "critical technologies" as defined by 31 C.F.R. § 801.204, as amended.

5.14 Side Letters. The Company agrees and covenants that it will promptly notify (and provide a copy to) RA Capital if it enters into any separate agreements or side letters with any other shareholder of the Company or an affiliate of any such shareholder (other than the Transaction Agreements (as defined in the Purchase Agreement) and employment related agreements in the ordinary course).

5.15 Termination of Covenants. The covenants set forth in this Section 5, except for Subsections 5.7 and 5.8, shall terminate and be of no further force or effect immediately before the consummation of the IPO.

6. Miscellaneous.

6.1 Successors and Assigns. The rights under this Agreement may be assigned (but only with all related obligations) by a Holder to a transferee of Registrable Securities that (i) is an Affiliate of a Holder; (ii) is a Holder's Immediate Family Member or trust for the benefit of an individual Holder or one or more of such Holder's Immediate Family Members; or (iii) after such transfer, holds at least 41,736 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations, and other recapitalizations); provided, however, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; and (y) such transferee agrees in a written instrument delivered to the Company to be bound by and subject to the terms and conditions of this Agreement, including the provisions of Subsection 2.11. For the purposes of determining the number of shares of Registrable Securities held by a transferee, the holdings of a transferee (1) that is an Affiliate or stockholder of a Holder; (2) who is a Holder's Immediate Family Member; or (3) that is a trust for the benefit of an individual Holder or such Holder's Immediate Family Member shall be aggregated together and with those of the transferring Holder; provided further that all transferees who would not qualify individually for assignment of rights shall have a single attorney-in-fact for the purpose of exercising any rights, receiving notices, or taking any action under this Agreement. The terms and conditions of this Agreement inure to the benefit of and are binding upon the respective successors and permitted assignees of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assignees any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

6.2 Governing Law. This Agreement shall be governed by the internal law of the State of Delaware, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware.

6.3 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes**.**

6.4 Titles and Subtitles. The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

6.5 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (i) personal delivery to the party to be notified; (ii) when sent, if sent by electronic mail or facsimile during the recipient's normal business hours, and if not sent during normal business hours, then on the recipient's next business day; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) business day after the business day of deposit with a nationally recognized overnight courier, freight prepaid, specifying next-day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their addresses as set forth on Schedule A hereto, or to the principal office of the Company and to the attention of the Chief Executive Officer, in the case of the Company, or to such email address, facsimile number, or address as subsequently modified by written notice given in accordance with this Subsection 6.5. If notice is given to the Company, a copy shall also be sent to Josh Seidenfeld, Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304-1130 and if notice is given to the Investors, a copy shall also be given to Robert Laird, Maynard Cooper & Gale, PC, 3835 Cleghorn Ave., Suite 250, Nashville, TN 37215, and Jennifer Fang, Wilson Sonsini Goodrich & Rosati, 28 State Street, 37th Floor, Boston, MA 02109-1700 and if notice is given to Adjuvant, a copy shall also be given to Deepa M. Rich, Goodwin Procter LLP, 601 Marshall Street, Redwood City, CA 94063.

6.6 Consent to Electronic Notice. Each Investor consents to the delivery of any stockholder notice pursuant to the Delaware General Corporation Law (the "**DGCL**"), as amended or superseded from time to time, by electronic transmission pursuant to Section 232 of the DGCL (or any successor thereto) at the electronic mail address or the facsimile number set forth below such Investor's name on the Schedules hereto, as updated from time to time by notice to the Company, or as on the books of the Company ("**Electronic Notice**"). To the extent that any notice given by means of electronic transmission is returned or undeliverable for any reason, the foregoing consent shall be deemed to have been revoked until a new or corrected electronic mail address has been provided, and such attempted Electronic Notice shall be ineffective and deemed to not have been given. Each Investor agrees to promptly notify the Company of any change in such stockholder's electronic mail address, and that failure to do so shall not affect the foregoing.

6.7 Amendments and Waivers. Any term of this Agreement may be amended, modified or terminated and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Company and the holders of at least 67% of the Registrable Securities then outstanding; provided that the Company may in its sole discretion waive compliance with Subsection 2.12(c) (and the Company's failure to object promptly in writing after notification of a proposed assignment allegedly in violation of Subsection 2.12(c) shall be deemed to be a waiver); and provided further that any provision hereof may be waived by any waiving party on such party's own behalf, without the consent of any other party. Notwithstanding the foregoing, (a) this

Agreement may not be amended, modified or terminated and the observance of any term hereof may not be waived with respect to any Investor without the written consent of such Investor, unless such amendment, modification, termination, or waiver applies to all Investors in the same fashion (it being agreed that a waiver of the provisions of Section 4 with respect to a particular transaction shall be deemed to apply to all Investors in the same fashion if such waiver does so by its terms, notwithstanding the fact that certain Investors may nonetheless, by agreement with the Company, purchase securities in such transaction), (b) Subsections 3.1 and 3.2, and any other section of this Agreement applicable to the Major Investors (including this clause (b) of this Subsection 6.7) may be amended, modified, terminated or waived with only the written consent of the Company and the holders of at least 67% of the Registrable Securities then outstanding and held by the Major Investors, (c) Section 4 and any other section of this Agreement applicable to the Qualified Investors (including this clause (c) of this Subsection 6.7) may be amended, modified, terminated or waived with only the written consent of the Company and the holders of at least 67% of the Registrable Securities then outstanding and held by the Qualified Investors, (d) Subsection 3.3 may not be amended, modified or terminated and the observance of any term hereof may not be waived without the approval of RA Capital, and (e) Subsection 5.5 may not be amended, modified or terminated and the observance of any term hereof may not be waived without the approval of the Board of Directors, including at least one of the Series A Directors. Further, this Agreement may not be amended, modified or terminated, and provisions hereof may not be waived, in each case, in any way that would adversely affect any Investor in a manner disproportionate to any adverse effect such amendment, modification, termination or waiver would have on other Investors holding the same class of stock as such Investor, hereunder, without the written consent of such adversely impacted Investor. Notwithstanding the foregoing, Schedule A hereto may be amended by the Company from time to time to add transferees of any Registrable Securities in compliance with the terms of this Agreement without the consent of the other parties; and Schedule A hereto may also be amended by the Company after the date of this Agreement without the consent of the other parties to add information regarding any additional Investor who becomes a party to this Agreement in accordance with Subsection 6.10. The Company shall give prompt notice of any amendment or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, termination, or waiver. Any amendment, termination, or waiver effected in accordance with this Subsection 6.6 shall be binding on all parties hereto, regardless of whether any such party has consented thereto. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision. Notwithstanding anything to the contrary herein, in the event that the rights of a Qualified Investor to purchase New Securities under Section 4 are waived with respect to a particular offering of New Securities without such Qualified Investor's prior written consent (a "**Waived Investor**") and any Qualified Investor that participated in waiving such rights actually purchases New Securities in such offering, then the Company shall grant, and hereby grants, each Waived Investor the right to purchase, in a subsequent closing of such issuance on substantially the same terms and conditions, the same percentage of its full pro rata share of such New Securities as the highest percentage of any such purchasing Qualified Investor.

6.8 Severability. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

6.9 Aggregation of Stock. All shares of Registrable Securities held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

6.10 Additional Investors. Notwithstanding anything to the contrary contained herein, if the Company issues additional shares of the Company's Preferred Stock after the date hereof pursuant to the Purchase Agreement, then any purchaser of such shares of Preferred Stock may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement, and thereafter shall be deemed an "Investor" for all purposes hereunder. No action or consent by the Investors shall be required for such joinder to this Agreement by such additional Investor, so long as such additional Investor has agreed in writing to be bound by all of the obligations as an "Investor" hereunder.

6.11 Entire Agreement. This Agreement (including any Schedules and Exhibits hereto) constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled. Upon the effectiveness of this Agreement, the Prior Agreement shall be deemed amended and restated and superseded and replaced in its entirety by this Agreement, and shall be of no further force or effect.

6.12 Dispute Resolution. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Delaware and to the jurisdiction of the United States District Court for the District of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Delaware and to the jurisdiction of the United States District Court for the District of Delaware, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT

BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

The prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

6.13 Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such nonbreaching or nondefaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

6.14 Acknowledgment. The Company acknowledges that the Investors are in the business of venture capital investing and therefore review the business plans and related proprietary information of many enterprises, including enterprises which may have products or services which compete directly or indirectly with those of the Company. Nothing in this Agreement shall preclude or in any way restrict the Investors from investing or participating in any particular enterprise whether or not such enterprise has products or services which compete with those of the Company.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

AN2 THERAPEUTICS, INC.

BY: /s/ Eric Easom
Eric Easom
Chief Executive Officer

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

DAVID SCHNELL TRUST 2000 U/L DTD 5/26/00

By: /s/ David Schnell

By: David Schnell, Trustee

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

CITADEL MULTI-STRATEGY EQUITIES MASTER FUND LTD.

BY: CITADEL ADVISORS LLC
ITS: PORTFOLIO MANAGER

By: /s/ Shellane Mulcahy

Name: Shellane Mulcahy
Title: Authorized Signatory

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

RA CAPITAL HEALTHCARE FUND, L.P.
BY: RA CAPITAL HEALTHCARE FUND GP, LLC
ITS: GENERAL PARTNER

By: /s/ Rajeev Shah
Name: Rajeev Shah
Title: Manager

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

RA CAPITAL NEXUS FUND II, L.P.
BY: RA CAPITAL NEXUS FUND GP, LLC
ITS: GENERAL PARTNER

By: /s/ Rajeev Shah
Name: Rajeev Shah
Title: Manager

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

NEAL R. BRAUWEILER

By: /s/ Neal R. Brauweiler

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

John C. Lechleiter Revocable Trust

By: /s/ John C. Lechleiter
Name: John C. Lechleiter
Title: Trustee

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

HATTERAS VENTURE PARTNERS VI, LP

By: Hatteras Venture Advisors VI, LLC,
Its General Partner

By: /s/ Clay B. Thorp
Name: Clay B. Thorp
Title: Manager

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

GEORGE T. VOSNOS

By: /s/ George T. Vosnos

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

CHRIS MCGUIRE

By: /s/ Chris McGuire

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

BIOTECHNOLOGY VALUE TRADING FUND OS, L.P.

By: /s/ Mark Lampert
Name: Mark Lampert
Title: President BVF Inc., General Partner of BVF Partners L.P., itself sole member of BVF Partners OS Ltd., itself GP of Biotechnology Value Trading Fund OS, L.P

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

BIOTECHNOLOGY VALUE FUND, L.P.

By: /s/ Mark Lampert
Name: Mark Lampert
Title: Chief Executive Officer BVF I GP LLC, itself General Partner of Biotechnology Value Fund, L.P.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

BIOTECHNOLOGY VALUE FUND II, L.P.

By: /s/ Mark Lampert
Name: Mark Lampert
Title: Chief Executive Officer BVF II GP LLC, itself General Partner of Biotechnology Value Fund II, L.P.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

ABERDARE MANAGEMENT COMPANY, LLC

By: /s/ Paul H. Klingenstein
By: Paul H. Klingenstein, its manager

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

ADJUVANT GLOBAL HEALTH TECHNOLOGY FUND L.P.

BY: ADJUVANT CAPITAL GP, L.P.,
ITS GENERAL PARTNER
BY: ADJUVANT CAPITAL MANAGEMENT, LLC, ITS GENERAL PARTNER

By: /s/ Kabeer Aziz

Name: Kabeer Aziz
Title: Secretary

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

ADJUVANT GLOBAL HEALTH TECHNOLOGY FUND DE, L.P.

BY: ADJUVANT CAPITAL GP, L.P.,
ITS GENERAL PARTNER
BY: ADJUVANT CAPITAL MANAGEMENT, LLC, ITS GENERAL PARTNER

By: /s/ Kabeer Aziz
Name: Kabeer Aziz
Title: Secretary

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

AVIDITY CAPITAL FUND II LP

By: /s/ Michael Gregory
Name: Michael Gregory
Title: Director

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

AVIDITY MASTER FUND LP

By: /s/ Michael Gregory
Name: Michael Gregory
Title: Director

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

BETH SMITH

/s/ Beth Smith

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

BIOROCK VENTURES I, LP

By: BioRock Ventures GP I, LLC,
a Delaware limited liability company

By: /s/ Mary E. Wheeler
Name: Mary E. Wheeler
Title: Managing Member

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

BOB BUCH

By: /s/ Bob Buch

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

PTC CUST ROTH CONVERSION IRA FBO BRADLEY F. COUNTRYMAN ACCT: 49102816

By: /s/ Bradley Countryman
Name: Bradley Countryman
Title: Owner

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

MILLENNIUM TRUST CO. LLC CUSTODIAN FBO BRADLEY F COUNTRYMAN ROTH IRA XXXXW7316

By: /s/ Bradley Countryman
Name: Bradley Countryman
Title: Owner

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

BRADLEY F. COUNTRYMAN

By: /s/ Bradley Countryman

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

BRII BIOSCIENCES LIMITED

By: /s/ Zhi Hong, PhD
Name: Zhi Hong, PhD
Title: President and CEO

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

MOVING INNOVATIVE INVESTMENTS, LLC

By: /s/ Pamela E. Zipperer-Davis
Name: Pamela E. Zipperer-Davis
Title: Managing Director

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

DREW FRANCIS ORSINGER

By: /s/ Drew Francis Orsinger

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

DS LIQUID DIV RVA MON LLC

By: /s/ Jeff Muller
Name: Jeff Muller
Title: CCO

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

ELLEN EASOM STURGILL

By: /s/ Ellen Easom Sturgill

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

GAIL A. ORSINGER FAMILY TRUST

By: /s/ Gail Orsingerr
Name: Gail Orsinger
Title: Mrs.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

GARY L WOOD AND LESLIE K. WOOD REVOCABLE FAMILY TRUST

By: /s/ Gary Wood
Name: Gary Wood
Title: Trustee

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

GRANT BOWERS

By: /s/ Grant Bowers

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

H. STEWART PARKER LIVING TRUST

By: /s/ Stewart Parker
Name: Stewart Parker
Title: Trustee

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

JOE C. COOK, III.

By: /s/ Joe C. Cook, Jr.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

JOE C. COOK, JR.

By: /s/ Joe C. Cook, Jr.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

KATIE NEWTON EASOM

By: /s/ Katie Newton Easom

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

KENNETH LAKOWSKE

By: /s/ Kenneth Lakowske

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

LONGFELLOW VENTURE PARTNERS III, LLC
A DELAWARE LIMITED LIABILITY COMPANY

By: /s/ William S. Wilson
Name: William S. Wilson
Title: President

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

MARK LAKOWSKE

By: /s/ Mark Lakowske

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

MGC VENTURE PARTNERS QP 2018, LP
By: MGC VENTURE PARTNERS 2018, GP
ITS: GENERAL PARTNER
By: MGC VP 2018, SLP
ITS: SOLE MEMBER

By: /s/ Rob Readnour
Name: Rob Readnour
Title: Managing Partner

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

MGC VENTURE PARTNERS 2018, LP
By: MGC VENTURE PARTNERS 2018, GP
Its: GENERAL PARTNER
By: MGC VP 2018, SLP
ITS: SOLE MEMBER

By: /s/ Rob Readnour
Name: Rob Readnour
Title: Managing Partner

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

MICHAEL PENCE

By: /s/ Michael Pence

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

MICHAEL WYNE

By: /s/ Michael Wyne

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

MILLENNIUM TRUST COMPANY LLC FOR THE BENEFIT OF CHRISTOPHER S. MCGUIRE

By: /s/ Christopher S. McGuire
Name: Christopher S. McGuire
Title:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

MONASHEE SOLITARIO FUND LP

By: /s/ Jeff Muller
Name: Jeff Muller
Title: CCO

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

MOVING INNOVATIVE INVESTMENTS, LLC

By: /s/ Pamela E. Zipperer-Davis
Name: Pamela E. Zipperer-Davis
Title: President

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

NATE LIPSCOMB

By: /s/ Nate Lipscomb

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

SCOTT MAZUR

By: /s/ Scott Mazur

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

DESOTO INVESTMENTS, LLC

By: /s/ Steven D. Singleton
Name: Steven D. Singleton
Title: President

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

STEVEN WASTIE

By: /s/ Steven Wastie

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

THE JOHN AND SUSAN SHAY LIVING TRUST

By: /s/ Susan Shay
Name: Susan Shay
Title: Trustee

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

THE SEARS TRUST

By: /s/ Lowell Sears
Name: Lowell Sears
Title: Trustee

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

TONY MCGUIRE

By: /s/ Tony McGuire

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

Vaughn D. Bryson

By: /s/ Vaughn D. Bryson

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVESTORS:

Z INVESTMENTS

By: /s/ Joe Zakrzewski
Name: Joe Zakrzewski
Title:

AN2 THERAPEUTICS, INC.

AMENDED AND RESTATED 2017 EQUITY INCENTIVE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: February 24, 2017
APPROVED BY THE STOCKHOLDERS: February 24, 2017
AMENDED BY THE BOARD OF DIRECTORS: February 15, 2018
AMENDMENT APPROVED BY THE STOCKHOLDERS: February 15, 2018
AMENDED BY THE BOARD OF DIRECTORS: November 14, 2019
AMENDMENT APPROVED BY THE STOCKHOLDERS: November 14, 2019
AMENDED BY THE BOARD OF DIRECTORS: March 4, 2021
AMENDMENT APPROVED BY THE STOCKHOLDERS: March 4, 2021
TERMINATION DATE: February 23, 2027

1. GENERAL.

(a) Eligible Stock Award Recipients. Employees, Directors and Consultants are eligible to receive Stock Awards.

(b) Available Stock Awards. The Plan provides for the grant of the following types of Stock Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Stock Appreciation Rights, (iv) Restricted Stock Awards, (v) Restricted Stock Unit Awards and (vi) Other Stock Awards.

(c) Purpose. The Plan, through the grant of Stock Awards, is intended to help the Company secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and provide a means by which the eligible recipients may benefit from increases in value of the Common Stock.

2. ADMINISTRATION.

(a) Administration by the Board. The Board will administer the Plan. The Board may delegate administration of the Plan to a Committee or Committees, as provided in Section 2(c).

(b) Powers of the Board. The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine (A) who will be granted Stock Awards; (B) when and how each Stock Award will be granted; (C) what type of Stock Award will be granted; (D) the provisions of each Stock Award (which need not be identical), including when a person will be permitted to exercise or otherwise receive cash or Common Stock under the Stock Award; (E) the number of shares of Common Stock subject to, or the cash value of, a Stock Award; and (F) the Fair Market Value applicable to a Stock Award.

(ii) To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for administration of the Plan and Stock Awards. The Board, in the exercise of these powers, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it will deem necessary or expedient to make the Plan or Stock Award fully effective.

(iii) To settle all controversies regarding the Plan and Stock Awards granted under it.

(iv) To accelerate, in whole or in part, the time at which a Stock Award may be exercised or vest (or the time at which cash or shares of Common Stock may be issued in settlement thereof).

(v) To suspend or terminate the Plan at any time. Except as otherwise provided in the Plan or a Stock Award Agreement, suspension or termination of the Plan will not impair a Participant's rights under the Participant's then-outstanding Stock Award without the Participant's written consent except as provided in subsection (viii) below.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or bringing the Plan or Stock Awards granted under the Plan into compliance with the requirements for Incentive Stock Options or ensuring that they are exempt from, or compliant with, the requirements for nonqualified deferred compensation under Section 409A of the Code, subject to the limitations, if any, of applicable law. If required by applicable law or listing requirements, and except as provided in Section 9(a) relating to Capitalization Adjustments, the Company will seek stockholder approval of any amendment of the Plan that (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Stock Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan, (D) materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (E) materially extends the term of the Plan, or (F) materially expands the types of Stock Awards available for issuance under the Plan. Except as otherwise provided in the Plan or a Stock Award Agreement, no amendment of the Plan will materially impair a Participant's rights under an outstanding Stock Award without the Participant's written consent.

(vii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 422 of the Code regarding Incentive Stock Options.

(viii) To approve forms of Stock Award Agreements for use under the Plan and to amend the terms of any one or more Stock Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Stock Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided however,* that a Participant's rights under any Stock Award will not be impaired by any such amendment unless (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing. Notwithstanding the foregoing, (1) a Participant's rights will not be deemed to have been impaired by any such amendment if the Board, in its sole discretion, determines that the amendment, taken as a whole, does not materially impair the Participant's rights, and (2) subject to the limitations of applicable law, if any, the Board may amend the terms of any one or more Stock Awards without the affected Participant's consent (A) to maintain the qualified status of the Stock Award as an Incentive Stock Option under Section 422 of the Code; (B) to change the terms of an Incentive Stock Option, if such change results in impairment of the Stock Award solely because it impairs the qualified status of the Stock Award as an Incentive Stock Option under Section 422 of the Code; (C) to clarify the manner of exemption from, or to bring the Stock Award into compliance with, Section 409A of the Code; or (D) to comply with other applicable laws.

(ix) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Stock Awards.

(x) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States (provided that Board approval will not be necessary for immaterial modifications to the Plan or any Stock Award Agreement that are required for compliance with the laws of the relevant foreign jurisdiction).

(xi) To effect, with the consent of any adversely affected Participant, (A) the reduction of the exercise, purchase or strike price of any outstanding Stock Award; (B) the cancellation of any outstanding Stock Award and the grant in substitution therefor of a new (1) Option or SAR, (2) Restricted Stock Award, (3) Restricted Stock Unit Award, (4) Other Stock Award, (5) cash and/or (6) other valuable consideration determined by the Board, in its sole discretion, with any such substituted award (x) covering the same or a different number of shares of Common Stock as the cancelled Stock Award and (y) granted under the Plan or another equity or compensatory plan of the Company; or (C) any other action that is treated as a repricing under generally accepted accounting principles.

(c) Delegation to Committee. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee, as applicable). Any delegation of administrative powers will be reflected in resolutions, not inconsistent with the provisions of the Plan, adopted from time to time by the Board or Committee (as applicable). The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(d) Delegation to an Officer. The Board may delegate to one or more Officers the authority to do one or both of the following: (i) designate Employees who are not Officers to be recipients of Options and SARs (and, to the extent permitted by applicable law, other Stock Awards) and, to the extent permitted by applicable law, the terms of such Stock Awards, and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Employees; *provided*, *however*, that the Board resolutions regarding such delegation will specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Any such Stock Awards will be granted on the form of Stock Award Agreement most recently approved for use by the Committee or the Board, unless otherwise provided in the resolutions approving the delegation authority. The Board may not delegate authority to an Officer who is acting solely in the capacity of an Officer (and not also as a Director) to determine the Fair Market Value pursuant to Section 13(t) below.

(e) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

3. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve.

(i) Subject to Section 9(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards from and after the Effective Date will not exceed 1,249,274 shares (the ***"Share Reserve"***).

(ii) For clarity, the Share Reserve in this Section 3(a) is a limitation on the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this Section 3(a) does not limit the granting of Stock Awards except as provided in Section 7(a).

(b) Reversion of Shares to the Share Reserve. If a Stock Award or any portion thereof (i) expires or otherwise terminates without all of the shares covered by such Stock Award having been issued or (ii) is settled in cash (*i.e.*, the Participant receives cash rather than stock), such expiration, termination or settlement will not reduce (or otherwise offset) the number of shares of Common Stock that may be available for issuance under the Plan. If any shares of Common Stock issued pursuant to a Stock Award are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required to vest such shares in the Participant, then the shares that are forfeited or repurchased will revert to and again become available for issuance under the Plan. Any shares reacquired by the Company in satisfaction of tax withholding obligations on a Stock Award or as consideration for the exercise or purchase price of a Stock Award will again become available for issuance under the Plan.

(c) Incentive Stock Option Limit. Subject to the Share Reserve and Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options will be a number of shares of Common Stock equal to three multiplied by the Share Reserve.

(d) Source of Shares. The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

4. ELIGIBILITY.

(a) Eligibility for Specific Stock Awards. Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and 424(f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants; *provided, however*, that Stock Awards may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any "parent" of the Company, as such term is defined in Rule 405, unless (i) the stock underlying such Stock Awards is treated as "service recipient stock" under Section 409A of the Code (for example, because the Stock Awards are granted pursuant to a corporate transaction such as a spin off transaction), (ii) the Company, in consultation with its legal counsel, has determined that such Stock Awards are otherwise exempt from Section 409A of the Code, or (iii) the Company, in consultation with its legal counsel, has determined that such Stock Awards comply with the distribution requirements of Section 409A of the Code.

(b) Ten Percent Stockholders. A Ten Percent Stockholder will not be granted an Incentive Stock Option unless the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five years from the date of grant.

(c) Consultants. A Consultant will not be eligible for the grant of a Stock Award if, at the time of grant, either the offer or sale of the Company's securities to such Consultant is not exempt under Rule 701 because of the nature of the services that the Consultant is providing to the Company, because the Consultant is not a natural person, or because of any other provision of Rule 701, unless the Company determines that such grant need not comply with the requirements of Rule 701 and will satisfy another exemption under the Securities Act as well as comply with the securities laws of all other relevant jurisdictions.

5. PROVISIONS RELATING TO OPTIONS AND STOCK APPRECIATION RIGHTS.

Each Option or SAR will be in such form and will contain such terms and conditions as the Board deems appropriate. All Options will be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, or if an Option is designated as an Incentive Stock Option but some portion or all of the Option fails to qualify as an Incentive Stock Option under the applicable rules, then the Option (or portion thereof) will be a Nonstatutory Stock Option. The provisions of separate Options or SARs need not be identical; *provided, however*, that each Stock Award Agreement will conform to (through incorporation of provisions hereof by reference in the applicable Stock Award Agreement or otherwise) the substance of each of the following provisions:

(a) Term. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of 10 years from the date of its grant or such shorter period specified in the Stock Award Agreement.

(b) Exercise Price. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will be not less than 100% of the Fair Market Value of the Common Stock subject to the Option or SAR on the date the Stock Award is granted. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than 100% of the Fair Market Value of the Common Stock subject to the Stock Award if such Stock Award is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Section 409A of the Code and, if applicable, Section 424(a) of the Code. Each SAR will be denominated in shares of Common Stock equivalents.

(c) Purchase Price for Options. The purchase price of Common Stock acquired pursuant to the exercise of an Option may be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board will have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to use a particular method of payment. The permitted methods of payment are as follows:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(iv) if an Option is a Nonstatutory Stock Option, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however*, that the Company will accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued. Shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are used to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations;

(v) according to a deferred payment or similar arrangement with the Optionholder; *provided, however*, that interest will compound at least annually and will be charged at the minimum rate of interest necessary to avoid (A) the imputation of interest income to the Company and compensation income to the Optionholder under any applicable provisions of the Code, and (B) the classification of the Option as a liability for financial accounting purposes; or

(vi) in any other form of legal consideration that may be acceptable to the Board and specified in the applicable Stock Award Agreement.

(d) Exercise and Payment of a SAR. To exercise any outstanding SAR, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such SAR. The appreciation distribution payable on the exercise of a SAR will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the SAR) of a number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such SAR, and with respect to which the Participant is exercising the SAR on such date, over (B) the aggregate strike price of the number of Common Stock equivalents with respect to which the Participant is exercising the SAR on such date. The appreciation distribution may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Stock Award Agreement evidencing such SAR.

(e) Transferability of Options and SARs. The Board may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Board will determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options and SARs will apply:

(i) Restrictions on Transfer. An Option or SAR will not be transferable except by will or by the laws of descent and distribution (or pursuant to subsections (ii) and (iii) below), and will be exercisable during the lifetime of the Participant only by the Participant. The Board may permit transfer of the Option or SAR in a manner that is not prohibited by applicable tax and securities laws. Except as explicitly provided in the Plan, neither an Option nor a SAR may be transferred for consideration.

(ii) Domestic Relations Orders. Subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to the terms of a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulation 1.421-1(b)(2). If an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) Beneficiary Designation. Subject to the approval of the Board or a duly authorized Officer, a Participant may, by delivering written notice to the Company, in a form approved by the Company (or the designated broker), designate a third party who, upon the death of the Participant, will thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, upon the death of the Participant, the executor or administrator of the Participant's estate will be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. However, the Company may prohibit designation of a beneficiary at any time, including due to any conclusion by the Company that such designation would be inconsistent with the provisions of applicable laws.

(f) Vesting Generally. The total number of shares of Common Stock subject to an Option or SAR may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of performance goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 5(f) are subject to any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

(g) Termination of Continuous Service. Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates (other than for Cause and other than upon the Participant's death or Disability), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Stock Award as of the date of termination of Continuous Service) within the period of time ending on the earlier of (i) the date three months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the applicable Stock Award Agreement, which period will not be less than 30 days if necessary to comply with applicable laws unless such termination is for Cause) and (ii) the expiration of the term of the Option or SAR as set forth in the Stock Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR (as applicable) within the applicable time frame, the Option or SAR will terminate.

(h) Extension of Termination Date. If the exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause and other than upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR will terminate on the earlier of (i) the expiration of a total period of time (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements, and (ii) the expiration of the term of the Option or SAR as set forth in the applicable Stock Award Agreement. In addition, unless otherwise provided in a Participant's Stock Award Agreement, if the sale of any Common Stock received upon exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, then the Option or SAR will terminate on the earlier of (i) the expiration of the period of time (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the sale of the Common Stock received upon exercise of the Option or SAR would not be in violation of the Company's insider trading policy, and (ii) the expiration of the term of the Option or SAR as set forth in the applicable Stock Award Agreement.

(i) Disability of Participant. Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date 12 months following such termination of Continuous Service (or such longer or shorter period specified in the Stock Award Agreement, which period will not be less than six months if necessary to comply with applicable laws unless such termination is for Cause), and (ii) the expiration of the term of the Option or SAR as set forth in the Stock Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the applicable time frame, the Option or SAR (as applicable) will terminate.

(j) Death of Participant. Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Stock Award Agreement for exercisability after the termination of the Participant's Continuous Service (for a reason other than death), then the Option or SAR may be exercised (to the extent the Participant was entitled to exercise such Option or SAR as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option or SAR by bequest or inheritance or by a person designated to exercise the Option or SAR upon the Participant's death, but only within the period ending on the earlier of (i) the date 18 months following the date of death (or such longer or shorter period specified in the Stock Award Agreement, which period will not be less than six months if necessary to comply with applicable laws unless such termination is for Cause), and (ii) the expiration of the term of such Option or SAR as set forth in the Stock Award Agreement. If, after the Participant's death, the Option or SAR is not exercised within the applicable time frame, the Option or SAR (as applicable) will terminate.

(k) Termination for Cause. Except as explicitly provided otherwise in a Participant's Stock Award Agreement or other individual written agreement between the Company or any Affiliate and the Participant, if a Participant's Continuous Service is terminated for Cause, the Option or SAR will terminate immediately upon such Participant's termination of Continuous Service, and the Participant will be prohibited from exercising his or her Option or SAR from and after the date of such termination of Continuous Service.

(l) Non-Exempt Employees. If an Option or SAR is granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, the Option or SAR will not be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option or SAR (although the Stock Award may vest prior to such date). Consistent with the provisions of the Worker Economic Opportunity Act, (i) if such non-exempt Employee dies or suffers a Disability, (ii) upon a Corporate Transaction in which such Option or SAR is not assumed, continued, or substituted, (iii) upon a Change in Control, or (iv) upon the Participant's retirement (as such term may be defined in the Participant's Stock Award Agreement, in another agreement between the Participant and the Company, or, if no such definition, in accordance with the Company's then current employment policies and guidelines), the vested portion of any Options and SARs may be exercised earlier than six months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay. To the extent permitted and/or required for compliance with the Worker Economic Opportunity Act to ensure that any income derived by a non-exempt employee in connection with the exercise, vesting or issuance of any shares under any other Stock Award will be exempt from the employee's regular rate of pay, the provisions of this Section 5(l) will apply to all Stock Awards and are hereby incorporated by reference into such Stock Award Agreements.

(m) Early Exercise of Options. An Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder's Continuous Service terminates to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to the full vesting of the Option. Subject to the "Repurchase Limitation" in Section 8(l), any unvested shares of Common Stock so purchased may be subject to a repurchase right in favor of the Company or to any other restriction the Board determines to be appropriate. Provided that the "Repurchase Limitation" in Section 8(l) is not violated, the Company will not be required to exercise its repurchase right until at least six months (or such longer or shorter period of time required to avoid classification of the Option as a liability for financial accounting purposes) have elapsed following exercise of the Option unless the Board otherwise specifically provides in the Option Agreement.

(n) Right of Repurchase. Subject to the "Repurchase Limitation" in Section 8(l), the Option or SAR may include a provision whereby the Company may elect to repurchase all or any part of the vested shares of Common Stock acquired by the Participant pursuant to the exercise of the Option or SAR.

(o) Right of First Refusal. The Option or SAR may include a provision whereby the Company may elect to exercise a right of first refusal following receipt of notice from the Participant of the intent to transfer all or any part of the shares of Common Stock received upon the exercise of the Option or SAR. Such right of first refusal will be subject to the "Repurchase Limitation" in Section 8(l). Except as expressly provided in this Section 5(o) or in the Stock Award Agreement, such right of first refusal will otherwise comply with any applicable provisions of the bylaws of the Company.

6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS AND SARS.

(a) Restricted Stock Awards. Each Restricted Stock Award Agreement will be in such form and will contain such terms and conditions as the Board will deem appropriate. To the extent consistent with the Company's bylaws, at the Board's election, shares of Common Stock underlying a Restricted Stock Award may be (i) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (ii) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical. Each Restricted Stock Award Agreement will conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. A Restricted Stock Award may be awarded in consideration for (A) cash, check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate, or (C) any other form of legal consideration (including future services) that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(ii) Vesting. Subject to the "Repurchase Limitation" in Section 8(l), shares of Common Stock awarded under the Restricted Stock Award Agreement may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

(iii) Termination of Participant's Continuous Service. If a Participant's Continuous Service terminates, the Company may receive through a forfeiture condition or a repurchase right, any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

(iv) Transferability. Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement will be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board will determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

(v) Dividends. A Restricted Stock Award Agreement may provide that any dividends paid on Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Restricted Stock Award to which they relate.

(b) Restricted Stock Unit Awards. Each Restricted Stock Unit Award Agreement will be in such form and will contain such terms and conditions as the will Board deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical. Each Restricted Stock Unit Award Agreement will conform to (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(ii) Vesting. At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions on or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

(iii) Payment. A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

(iv) Additional Restrictions. At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

(v) Dividend Equivalents. Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

(vi) Termination of Participant's Continuous Service. Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

(vii) Compliance with Section 409A of the Code. Notwithstanding anything to the contrary set forth herein, any Restricted Stock Unit Award granted under the Plan that is not exempt from the requirements of Section 409A of the Code shall contain such provisions so that such Restricted Stock Unit Award will comply with the requirements of Section 409A of the Code. Such restrictions, if any, shall be determined by the Board and contained in the Restricted Stock Unit Award Agreement evidencing such Restricted Stock Unit Award. For example, such restrictions may include, without limitation, a requirement that any Common Stock that is to be issued in a year following the year in which the Restricted Stock Unit Award vests must be issued in accordance with a fixed pre-determined schedule.

(c) Other Stock Awards. Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than 100% of the Fair Market Value of the Common Stock at the time of grant) may be granted either alone or in addition to Stock Awards provided for under Section 5 and the preceding provisions of this Section 6. Subject to the provisions of the Plan, the Board will have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

7. COVENANTS OF THE COMPANY.

(a) Availability of Shares. The Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy then-outstanding Stock Awards.

(b) Securities Law Compliance. The Company will seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; *provided, however,* that this undertaking will not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained. A Participant will not be eligible for the grant of a Stock Award or the subsequent issuance of cash or Common Stock pursuant to the Stock Award if such grant or issuance would be in violation of any applicable securities law.

(c) No Obligation to Notify or Minimize Taxes. The Company will have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company will have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of a Stock Award or a possible period in which the Stock Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of a Stock Award to the holder of such Stock Award.

8. MISCELLANEOUS.

(a) Use of Proceeds from Sales of Common Stock. Proceeds from the sale of shares of Common Stock pursuant to Stock Awards will constitute general funds of the Company.

(b) Corporate Action Constituting Grant of Stock Awards. Corporate action constituting a grant by the Company of a Stock Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Stock Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Stock Award Agreement or related grant documents as a result of a clerical error in the papering of the Stock Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Stock Award Agreement or related grant documents.

(c) Stockholder Rights. No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to a Stock Award unless and until (i) such Participant has satisfied all requirements for exercise of, or the issuance of shares of Common Stock under, the Stock Award pursuant to its terms, and (ii) the issuance of the Common Stock subject to the Stock Award has been entered into the books and records of the Company.

(d) No Employment or Other Service Rights. Nothing in the Plan, any Stock Award Agreement or any other instrument executed thereunder or in connection with any Stock Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or will affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(e) Change in Time Commitment. In the event a Participant's regular level of time commitment in the performance of his or her services for the Company and any Affiliates is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee or takes an extended leave of absence) after the date of grant of any Stock Award to the Participant, the Board has the right in its sole discretion to (x) make a corresponding reduction in the number of shares subject to any portion of such Stock Award that is scheduled to vest or become payable after the date of such change in time commitment, and (y) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Stock Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Stock Award that is so reduced or extended.

(f) Incentive Stock Option Limitations. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds $100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(g) Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that the Participant is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, will be inoperative if (A) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(h) Withholding Obligations. Unless prohibited by the terms of a Stock Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to a Stock Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Stock Award; *provided, however*, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lesser amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding cash from a Stock Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Stock Award Agreement.

(i) Electronic Delivery. Any reference herein to a "written" agreement or document will include any agreement or document delivered electronically or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access).

(j) Deferrals. To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Stock Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Stock Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

(k) Compliance with Section 409A of the Code. To the extent that the Board determines that any Stock Award granted hereunder is subject to Section 409A of the Code, the Stock Award Agreement evidencing such Stock Award shall incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code. To the extent applicable, the Plan and Stock Award Agreements shall be interpreted in accordance with Section 409A of the Code. Notwithstanding anything to the contrary in the Plan (and unless the Stock Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding a Stock Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code, no distribution or payment of any amount that is due because of a "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) will be issued or paid before the date that is six months following the date of such Participant's "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) or, if earlier, the date of the Participant's death, unless such distribution or payment can be made in a manner that complies with Section 409A of the Code, and any amounts so deferred will be paid in a lump sum on the day after such six month period elapses, with the balance paid thereafter on the original schedule.

(l) Repurchase Limitation. The terms of any repurchase right will be specified in the Stock Award Agreement. The repurchase price for vested shares of Common Stock will be the Fair Market Value of the shares of Common Stock on the date of repurchase. The repurchase price for unvested shares of Common Stock will be the lower of (i) the Fair Market Value of the shares of Common Stock on the date of repurchase or (ii) their original purchase price. However, the Company will not exercise its repurchase right until at least six months (or such longer or shorter period of time necessary to avoid classification of the Stock Award as a liability for financial accounting purposes) have elapsed following delivery of shares of Common Stock subject to the Stock Award, unless otherwise specifically provided by the Board.

9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) Capitalization Adjustments. In the event of a Capitalization Adjustment, the Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c), and (iii) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board will make such adjustments, and its determination will be final, binding and conclusive.

(b) Dissolution or Liquidation. Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service, *provided, however,* that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(c) Corporate Transaction. The following provisions will apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of a Stock Award. In the event of a Corporate Transaction, then, notwithstanding any other provision of the Plan, the Board may take one or more of the following actions with respect to Stock Awards, contingent upon the closing or completion of the Corporate Transaction:

(i) arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction);

(ii) arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

(iii) accelerate the vesting, in whole or in part, of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of such Corporate Transaction as the Board determines (or, if the Board does not determine such a date, to the date that is five days prior to the effective date of the Corporate Transaction), with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction; *provided*, *however*, that the Board may require Participants to complete and deliver to the Company a notice of exercise before the effective date of a Corporate Transaction, which exercise is contingent upon the effectiveness of such Corporate Transaction;

(iv) arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by the Company with respect to the Stock Award;

(v) cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Corporate Transaction, in exchange for such cash consideration (including no consideration) as the Board, in its sole discretion, may consider appropriate; and

(vi) make a payment, in such form as may be determined by the Board equal to the excess, if any, of (A) the value of the property the Participant would have received upon the exercise of the Stock Award immediately prior to the effective time of the Corporate Transaction, over (B) any exercise price payable by such holder in connection with such exercise. For clarity, this payment may be zero ($0) if the value of the property is equal to or less than the exercise price. Payments under this provision may be delayed to the same extent that payment of consideration to the holders of the Company's Common Stock in connection with the Corporate Transaction is delayed as a result of escrows, earn outs, holdbacks or any other contingencies.

The Board need not take the same action or actions with respect to all Stock Awards or portions thereof or with respect to all Participants. The Board may take different actions with respect to the vested and unvested portions of a Stock Award.

(d) Change in Control. A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration will occur.

10. PLAN TERM; EARLIER TERMINATION OR SUSPENSION OF THE PLAN.

(a) Plan Term. The Board may suspend or terminate the Plan at any time. Unless terminated sooner by the Board, the Plan will automatically terminate on the day before the 10th anniversary of the earlier of (i) the date the Plan is adopted by the Board, or (ii) the date the Plan is approved by the stockholders of the Company. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) No Impairment of Rights. Suspension or termination of the Plan will not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant or as otherwise permitted in the Plan.

11. EFFECTIVE DATE OF PLAN.

This Plan will become effective on the Effective Date.

12. CHOICE OF LAW.

The laws of the State of Delaware will govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

13. DEFINITIONS. As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

(a) "***Affiliate***" means, at the time of determination, any "parent" or "majority-owned subsidiary" of the Company, as such terms are defined in Rule 405. The Board will have the authority to determine the time or times at which "parent" or "majority-owned subsidiary" status is determined within the foregoing definition.

(b) "***Board***" means the Board of Directors of the Company.

(c) "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Effective Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure, or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(d) "***Cause***" will have the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term means, with respect to a Participant, the occurrence of any of the following events: (i) such Participant's commission of any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (ii) such Participant's attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (iii) such Participant's intentional, material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iv) such Participant's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) such Participant's gross misconduct. The determination that a termination of the

Participant's Continuous Service is either for Cause or without Cause will be made by the Company, in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Stock Awards held by such Participant will have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

(e) "***Change in Control***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control will not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities or (C) solely because the level of Ownership held by any Exchange Act Person (the "***Subject Person***") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control will be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction; or

(iii) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than 50% of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition.

Notwithstanding the foregoing definition or any other provision of this Plan, (A) the term Change in Control will not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant will supersede the foregoing definition with respect to Stock Awards subject to such agreement; *provided*, *however*, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition will apply.

(f) "***Code***" means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(g) "***Committee***" means a committee of one or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

(h) "***Common Stock***" means the common stock of the Company.

(i) "***Company***" means AN2 Therapeutics, Inc., a Delaware corporation.

(j) "***Consultant***" means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a "Consultant" for purposes of the Plan.

(k) "***Continuous Service***" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Director or Consultant or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, will not terminate a Participant's Continuous Service; *provided*, *however*, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board in its sole discretion, such Participant's Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate or to a Director will not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

(l) "***Corporate Transaction***" means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of more than 50% of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(m) "***Director***" means a member of the Board.

(n) "***Disability***" means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(o) "***Effective Date***" means the effective date of this Plan, which is the earlier of (i) the date that this Plan is first approved by the Company's stockholders, and (ii) the date this Plan is adopted by the Board.

(p) "***Employee***" means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an "Employee" for purposes of the Plan.

(q) "***Entity***" means a corporation, partnership, limited liability company or other entity.

(r) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(s) "***Exchange Act Person***" means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities.

(t) "***Fair Market Value***" means, as of any date, the value of the Common Stock determined by the Board in compliance with Section 409A of the Code or, in the case of an Incentive Stock Option, in compliance with Section 422 of the Code.

(u) "***Incentive Stock Option***" means an option granted pursuant to Section 5 of the Plan that is intended to be, and that qualifies as, an "incentive stock option" within the meaning of Section 422 of the Code.

(v) "***Nonstatutory Stock Option***" means an option granted pursuant to Section 5 of the Plan that does not qualify as an Incentive Stock Option.

(w) "***Officer***" means any person designated by the Company as an officer.

(x) "***Option***" means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(y) "***Option Agreement***" means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement will be subject to the terms and conditions of the Plan.

(z) "***Optionholder***" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(aa) "***Other Stock Award***" means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 6(c).

(bb) "***Other Stock Award Agreement***" means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement will be subject to the terms and conditions of the Plan.

(cc) "***Own***," "***Owned***," "***Owner***," "***Ownership***" A person or Entity will be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(dd) "***Participant***" means a person to whom a Stock Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(ee) "***Plan***" means this 2017 Equity Incentive Plan.

(ff) "***Restricted Stock Award***" means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

(gg) "***Restricted Stock Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

(hh) "***Restricted Stock Unit Award***" means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

(ii) "***Restricted Stock Unit Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement will be subject to the terms and conditions of the Plan.

(jj) "***Rule 405***" means Rule 405 promulgated under the Securities Act.

(kk) "***Rule 701***" means Rule 701 promulgated under the Securities Act.

(ll) "***Securities Act***" means the Securities Act of 1933, as amended.

(mm) "***Stock Appreciation Right***" or "***SAR***" means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 5.

(nn) "***Stock Appreciation Right Agreement***" means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement will be subject to the terms and conditions of the Plan.

(oo) "***Stock Award***" means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, a Stock Appreciation Right or any Other Stock Award.

(pp) "***Stock Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement will be subject to the terms and conditions of the Plan.

(qq) "***Subsidiary***" means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

(rr) "***Ten Percent Stockholder***" means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

AN2 THERAPEUTICS, INC.

STOCK OPTION GRANT NOTICE
(AMENDED AND RESTATED 2017 EQUITY INCENTIVE PLAN)

AN2 THERAPEUTICS, INC. (the "***Company***"), pursuant to its Amended and Restated 2017 Equity Incentive Plan (the "***Plan***"), hereby grants to Optionholder an option to purchase the number of shares of the Company's Common Stock set forth below. This option is subject to all of the terms and conditions as set forth in this notice, in the Option Agreement, the Plan and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Option Agreement will have the same definitions as in the Plan or the Option Agreement. If there is any conflict between the terms in this notice and the Plan, the terms of the Plan will control.

Optionholder:
Date of Grant:
Vesting Commencement Date:
Number of Shares Subject to Option:
Exercise Price (Per Share):
Total Exercise Price:
Expiration Date:

Type of Grant: ☐ Incentive Stock Option[1] ☐ Nonstatutory Stock Option

Exercise Schedule: ☐ Same as Vesting Schedule ☐ Early Exercise Permitted

Vesting Schedule:

Payment: By one or a combination of the following items (described in the Option Agreement):

☐ By cash, check, bank draft or money order payable to the Company

☐ Pursuant to a Regulation T Program if the shares are publicly traded

☐ By delivery of already-owned shares if the shares are publicly traded

☐ If and only to the extent this option is a Nonstatutory Stock Option, and subject to the Company's consent at the time of exercise, by a "net exercise" arrangement

---

1 If this is an Incentive Stock Option, it (plus other outstanding Incentive Stock Options) cannot be first *exercisable* for more than $100,000 in value (measured by exercise price) in any calendar year. Any excess over $100,000 is a Nonstatutory Stock Option.

Additional Terms/Acknowledgements: Optionholder acknowledges receipt of, and understands and agrees to, this Stock Option Grant Notice, the Option Agreement and the Plan. Optionholder acknowledges and agrees that this Stock Option Grant Notice and the Option Agreement may not be modified, amended or revised except as provided in the Plan. Optionholder further acknowledges that as of the Date of Grant, this Stock Option Grant Notice, the Option Agreement, and the Plan set forth the entire understanding between Optionholder and the Company regarding this option award and supersede all prior oral and written agreements, promises and/or representations on that subject with the exception of (i) options previously granted and delivered to Optionholder, and (ii) the following agreements only. This Stock Option Grant Notice and any notices, agreements or other documents related thereto (the "***Option Documents***") may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. The Option Documents may also be executed and delivered by facsimile signature, PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com).

OTHER AGREEMENTS: _____

_____

_____

By accepting this option, you consent to receive such documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

AN2 THERAPEUTICS, INC.

By: _____
Signature

Title: _____

Date: _____

OPTIONHOLDER:

_____
Signature

Date: _____

ATTACHMENTS: Option Agreement, Amended and Restated 2017 Equity Incentive Plan and Notice of Exercise

ATTACHMENT I

OPTION AGREEMENT

AN2 THERAPEUTICS, INC.

AMENDED AND RESTATED 2017 EQUITY INCENTIVE PLAN

OPTION AGREEMENT
(INCENTIVE STOCK OPTION OR NONSTATUTORY STOCK OPTION)

Pursuant to your Stock Option Grant Notice ("***Grant Notice***") and this Option Agreement, **AN2 THERAPEUTICS, INC.** (the "***Company***") has granted you an option under its Amended and Restated 2017 Equity Incentive Plan (the "***Plan***") to purchase the number of shares of the Company's Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. The option is granted to you effective as of the date of grant set forth in the Grant Notice (the "***Date of Grant***"). If there is any conflict between the terms in this Option Agreement and the Plan, the terms of the Plan will control. Capitalized terms not explicitly defined in this Option Agreement or in the Grant Notice but defined in the Plan will have the same definitions as in the Plan.

The details of your option, in addition to those set forth in the Grant Notice and the Plan, are as follows:

1. VESTING. Your option will vest as provided in your Grant Notice. Vesting will cease upon the termination of your Continuous Service.

2. NUMBER OF SHARES AND EXERCISE PRICE. The number of shares of Common Stock subject to your option and your exercise price per share in your Grant Notice will be adjusted for Capitalization Adjustments.

3. EXERCISE RESTRICTION FOR NON-EXEMPT EMPLOYEES. If you are an Employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended (that is, a "***Non-Exempt Employee***"), and except as otherwise provided in the Plan, you may not exercise your option until you have completed at least six months of Continuous Service measured from the Date of Grant, even if you have already been an employee for more than six months. Consistent with the provisions of the Worker Economic Opportunity Act, you may exercise your option as to any vested portion prior to such six month anniversary in the case of (i) your death or disability, (ii) a Corporate Transaction in which your option is not assumed, continued or substituted, (iii) a Change in Control or (iv) your termination of Continuous Service on your "retirement" (as defined in the Company's benefit plans).

4. EXERCISE PRIOR TO VESTING ("EARLY EXERCISE"). If permitted in your Grant Notice (*i.e.*, the "Exercise Schedule" indicates "Early Exercise Permitted") and subject to the provisions of your option, you may elect at any time that is both (i) during the period of your Continuous Service and (ii) during the term of your option, to exercise all or part of your option, including the unvested portion of your option; *provided, however,* that:

(a) a partial exercise of your option will be deemed to cover first vested shares of Common Stock and then the earliest vesting installment of unvested shares of Common Stock;

(b) any shares of Common Stock so purchased from installments that have not vested as of the date of exercise will be subject to the purchase option in favor of the Company as described in the Company's form of Early Exercise Stock Purchase Agreement;

(c) you will enter into the Company's form of Early Exercise Stock Purchase Agreement with a vesting schedule that will result in the same vesting as if no early exercise had occurred; and

(d) if your option is an Incentive Stock Option, then, to the extent that the aggregate Fair Market Value (determined at the Date of Grant) of the shares of Common Stock with respect to which your option plus all other Incentive Stock Options you hold are exercisable for the first time by you during any calendar year (under all plans of the Company and its Affiliates) exceeds $100,000, your option(s) or portions thereof that exceed such limit (according to the order in which they were granted) will be treated as Nonstatutory Stock Options.

5. METHOD OF PAYMENT. You must pay the full amount of the exercise price for the shares you wish to exercise. You may pay the exercise price in cash or by check, bank draft or money order payable to the Company or in any other manner ***permitted by your Grant Notice,*** which may include one or more of the following:

(a) Provided that at the time of exercise the Common Stock is publicly traded, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds. This manner of payment is also known as a "broker-assisted exercise", "same day sale", or "sell to cover".

(b) Provided that at the time of exercise the Common Stock is publicly traded, by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. "Delivery" for these purposes, in the sole discretion of the Company at the time you exercise your option, will include delivery to the Company of your attestation of ownership of such shares of Common Stock in a form approved by the Company. You may not exercise your option by delivery to the Company of Common Stock if doing so would violate the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

(c) If this option is a Nonstatutory Stock Option, subject to the consent of the Company at the time of exercise, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise of your option by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price. You must pay any remaining balance of the aggregate exercise price not satisfied by the "net exercise" in cash or other permitted form of payment. Shares of Common Stock will no longer be outstanding under your option and will not be exercisable thereafter if those shares (i) are used to pay the exercise price pursuant to the "net exercise," (ii) are delivered to you as a result of such exercise, and (iii) are withheld to satisfy your tax withholding obligations.

6. WHOLE SHARES. You may exercise your option only for whole shares of Common Stock.

7. SECURITIES LAW COMPLIANCE. In no event may you exercise your option unless the shares of Common Stock issuable upon exercise are then registered under the Securities Act or, if not registered, the Company has determined that your exercise and the issuance of the shares would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with all other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations (including any restrictions on exercise required for compliance with Treas. Reg. 1.401(k)-1(d)(3), if applicable).

8. TERM. You may not exercise your option before the Date of Grant or after the expiration of the option's term. The term of your option expires, subject to the provisions of Section 5(h) of the Plan, upon the earliest of the following:

(a) immediately upon the termination of your Continuous Service for Cause;

(b) three months after the termination of your Continuous Service for any reason other than Cause, your Disability or your death (except as otherwise provided in Section 8(d) below); *provided, however,* that if during any part of such three month period your option is not exercisable solely because of the condition set forth in the section above relating to "Securities Law Compliance," your option will not expire until the earlier of the Expiration Date or until it has been exercisable for an aggregate period of three months after the termination of your Continuous Service; *provided further,* that if (i) you are a Non-Exempt Employee, (ii) your Continuous Service terminates within six months after the Date of Grant, and (iii) you have vested in a portion of your option at the time of your termination of Continuous Service, your option will not expire until the earlier of (x) the later of (A) the date that is seven months after the Date of Grant, and (B) the date that is three months after the termination of your Continuous Service, and (y) the Expiration Date;

(c) 12 months after the termination of your Continuous Service due to your Disability (except as otherwise provided in Section 8(d)) below;

(d) 18 months after your death if you die either during your Continuous Service or within three (3) months after your Continuous Service terminates for any reason other than Cause;

(e) the Expiration Date indicated in your Grant Notice; or

(f) the day before the 10th anniversary of the Date of Grant.

If your option is an Incentive Stock Option, note that to obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the Date of Grant and ending on the day three months before the date of your option's exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or Disability. The Company has provided for extended exercisability of your option under certain circumstances for your benefit but cannot guarantee that your option will necessarily be treated as an Incentive Stock Option if you continue to provide services to the Company or an Affiliate as a Consultant or Director after your employment terminates or if you otherwise exercise your option more than three months after the date your employment with the Company or an Affiliate terminates.

9. EXERCISE.

(a) You may exercise the vested portion of your option (and the unvested portion of your option if your Grant Notice so permits) during its term by (i) delivering a Notice of Exercise (in a form designated by the Company) or completing such other documents and/or procedures designated by the Company for exercise and (ii) paying the exercise price and any applicable withholding taxes to the Company's Secretary, stock plan administrator, or such other person as the Company may designate, together with such additional documents as the Company may then require.

(b) By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (i) the exercise of your option, (ii) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (iii) the disposition of shares of Common Stock acquired upon such exercise.

(c) If your option is an Incentive Stock Option, by exercising your option you agree that you will notify the Company in writing within 15 days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two years after the Date of Grant or within one year after such shares of Common Stock are transferred upon exercise of your option.

(d) By exercising your option you agree that you will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company held by you, for a period of 180 days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as the underwriters or the Company will request to facilitate compliance with FINRA Rule 2711 or NYSE Member Rule 472 or any successor or similar rules or regulation (the "***Lock-Up Period***"); *provided, however*, that nothing contained in this section will prevent the exercise of a repurchase option, if any, in favor of the Company during the Lock-Up Period. You further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to your shares of Common Stock until the end of such period. You also agree that any transferee of any shares of Common Stock (or other securities) of the Company held by you will be bound by this Section 9(d). The underwriters of the Company's stock are intended third party beneficiaries of this Section 9(d) and will have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

10. TRANSFERABILITY. Except as otherwise provided in this Section 10, your option is not transferable, except by will or by the laws of descent and distribution, and is exercisable during your life only by you.

(a) Certain Trusts. Upon receiving written permission from the Board or its duly authorized designee, you may transfer your option to a trust if you are considered to be the sole beneficial owner (determined under Section 671 of the Code and applicable state law) while the option is held in the trust. You and the trustee must enter into transfer and other agreements required by the Company.

(b) Domestic Relations Orders. Upon receiving written permission from the Board or its duly authorized designee, and provided that you and the designated transferee enter into transfer and other agreements required by the Company, you may transfer your option pursuant to the terms of a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulation 1.421-1(b)(2) that contains the information required by the Company to effectuate the transfer. You are encouraged to discuss the proposed terms of any division of this option with the Company prior to finalizing the domestic relations order or marital settlement agreement to help ensure the required information is contained within the domestic relations order or marital settlement agreement. If this option is an Incentive Stock Option, this option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(c) Beneficiary Designation. Upon receiving written permission from the Board or its duly authorized designee, you may, by delivering written notice to the Company, in a form approved by the Company and any broker designated by the Company to handle option exercises, designate a third party

who, on your death, will thereafter be entitled to exercise this option and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, your executor or administrator of your estate will be entitled to exercise this option and receive, on behalf of your estate, the Common Stock or other consideration resulting from such exercise.

11. OPTION NOT A SERVICE CONTRACT. Your option is not an employment or service contract, and nothing in your option will be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option will obligate the Company or an Affiliate, their respective stockholders, boards of directors, officers or employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

12. WITHHOLDING OBLIGATIONS.

(a) At the time you exercise your option, in whole or in part, and at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "same day sale" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise of your option.

(b) If this option is a Nonstatutory Stock Option, then upon your request and subject to approval by the Company, and compliance with any applicable legal conditions or restrictions, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes). If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

(c) You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company will have no obligation to issue a certificate for such shares of Common Stock or release such shares of Common Stock from any escrow provided for herein, if applicable, unless such obligations are satisfied.

13. TAX CONSEQUENCES. You hereby agree that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes your tax liabilities. You will not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from your option or your other compensation. In particular, you acknowledge that this option is exempt from Section 409A of the Code only if the exercise price per share specified in the Grant Notice is at least equal to the "fair market value" per share of the Common Stock on the Date of

Grant and there is no other impermissible deferral of compensation associated with the option. Because the Common Stock is not traded on an established securities market, the Fair Market Value is determined by the Board, perhaps in consultation with an independent valuation firm retained by the Company. You acknowledge that there is no guarantee that the Internal Revenue Service will agree with the valuation as determined by the Board, and you will not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the Internal Revenue Service asserts that the valuation determined by the Board is less than the "fair market value" as subsequently determined by the Internal Revenue Service.

14. NOTICES. Any notices provided for in your option or the Plan will be given in writing (including electronically) and will be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company. The Company may, in its sole discretion, decide to deliver any documents related to participation in the Plan and this option by electronic means or to request your consent to participate in the Plan by electronic means. By accepting this option, you consent to receive such documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

15. GOVERNING PLAN DOCUMENT. Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. If there is any conflict between the provisions of your option and those of the Plan, the provisions of the Plan will control.

ATTACHMENT II

AMENDED AND RESTATED 2017 EQUITY INCENTIVE PLAN

AN2 THERAPEUTICS, INC.

EARLY EXERCISE STOCK PURCHASE AGREEMENT
UNDER THE 2017 EQUITY INCENTIVE PLAN

THIS AGREEMENT is made by and between **AN2 THERAPEUTICS, INC.**, a Delaware corporation (the "***Company***"), and the individual designated on the signature page hereto as a Purchaser ("***Purchaser***").

RECITALS:

A. Purchaser holds a stock option dated _____ to purchase shares of common stock ("***Common Stock***") of the Company (the "***Option***") pursuant to the Company's 2017 Equity Incentive Plan (the "***Plan***").

B. The Option consists of a Stock Option Grant Notice and a Stock Option Agreement.

C. Purchaser desires to exercise the Option on the terms and conditions contained herein.

D. Purchaser wishes to take advantage of the early exercise provision of Purchaser's Option and therefore to enter into this Agreement.

The parties agree as follows:

1. INCORPORATION OF PLAN AND OPTION BY REFERENCE. This Agreement is subject to all of the terms and conditions as set forth in the Plan and the Option. If there is a conflict between the terms of this Agreement and/or the Option and the terms of the Plan, the terms of the Plan shall control. If there is a conflict between the terms of this Agreement and the terms of the Option, the terms of the Option shall control. Defined terms not explicitly defined in this Agreement but defined in the Plan shall have the same definitions as in the Plan. Defined terms not explicitly defined in this Agreement or the Plan but defined in the Option shall have the same definitions as in the Option.

2. PURCHASE AND SALE OF COMMON STOCK.

(a) Agreement to purchase and sell Common Stock. Purchaser hereby agrees to purchase from the Company, and the Company hereby agrees to sell to Purchaser, shares of the Common Stock of the Company in accordance with the Notice of Exercise duly executed by Purchaser and attached hereto as Exhibit A.

(b) Closing. The closing hereunder, including payment for and delivery of the Common Stock, shall occur at the offices of the Company immediately following the execution of this Agreement, or at such other time and place as the parties may mutually agree; *provided, however,* that if stockholder approval of the Plan is required before the Option may be exercised, then the Option may not be exercised, and the closing shall be delayed, until such stockholder approval is obtained. If such stockholder approval is not obtained within the time limit specified in the Plan, then this Agreement shall be null and void.

3. UNVESTED SHARE REPURCHASE OPTION.

(a) Repurchase Option. In the event Purchaser's Continuous Service terminates, then the Company shall have an irrevocable option (the "***Repurchase Option***") for a period of six months after said termination (or in the case of shares issued upon exercise of the Option after such date of termination, within six months after the date of the exercise), or such longer period as may be agreed to by the Company and Purchaser (the "***Repurchase Period***"), to repurchase from Purchaser or Purchaser's personal representative, as the case may be, those shares that Purchaser received pursuant to the exercise of the Option that have not as yet vested as of such termination date in accordance with the Vesting Schedule indicated on Purchaser's Stock Option Grant Notice (the "***Unvested Shares***").

(b) Share Repurchase Price. The Company may repurchase all or any of the Unvested Shares at the lower of (i) the Fair Market Value of the such shares (as determined under the Plan) on the date of repurchase, or (ii) the price equal to Purchaser's Exercise Price for such shares as indicated on Purchaser's Stock Option Grant Notice.

4. EXERCISE OF REPURCHASE OPTION. The Repurchase Option shall be exercised by written notice signed by such person as designated by the Company, and delivered or mailed as provided herein. Such notice shall identify the number of shares of Common Stock to be purchased and shall notify Purchaser of the time, place and date for settlement of such purchase, which shall be scheduled by the Company within the term of the Repurchase Option set forth above. In addition, the Company shall be deemed to have exercised the Repurchase Option as of the last day of the Repurchase Period, unless an officer of the Company notifies the holder of the Unvested Shares during the Repurchase Period in writing (delivered or mailed as provided herein) that the Company expressly declines to exercise its Repurchase Option for some or all of the Unvested Shares. The Company shall be entitled to pay for any shares of Common Stock purchased pursuant to its Repurchase Option at the Company's option in cash or by offset against any indebtedness owing to the Company by Purchaser (including without limitation any Promissory Note given in payment for the Common Stock), or by a combination of both. Upon exercise of the Repurchase Option and payment of the purchase price in any of the ways described above, the Company shall become the legal and beneficial owner of the Common Stock being repurchased and all rights and interest therein or related thereto, and the Company shall have the right to transfer to its own name the Common Stock being repurchased by the Company, without further action by Purchaser.

5. CAPITALIZATION ADJUSTMENTS TO COMMON STOCK. In the event of a Capitalization Adjustment, then any and all new, substituted or additional securities or other property to which Purchaser is entitled by reason of Purchaser's ownership of Common Stock shall be immediately subject to the Repurchase Option and be included in the word "Common Stock" for all purposes of the Repurchase Option with the same force and effect as the shares of the Common Stock presently subject to the Repurchase Option, but only to the extent the Common Stock is, at the time, covered by such Repurchase Option. While the total Option Price shall remain the same after each such event, the Option Price per share of Common Stock upon exercise of the Repurchase Option shall be appropriately adjusted.

6. CORPORATE TRANSACTIONS. In the event of a Corporate Transaction, then the Repurchase Option may be assigned by the Company to the successor of the Company (or such successor's parent company), if any, in connection with such Corporate Transaction. To the extent the Repurchase Option remains in effect following such Corporate Transaction, it shall apply to the new capital stock or other property received in exchange for the Common Stock in consummation of the Corporate Transaction, but only to the extent the Common Stock was at the time covered by such right. Appropriate adjustments shall be made to the price per share payable upon exercise of the Repurchase Option to reflect the Corporate Transaction upon the Company's capital structure; *provided, however,* that the aggregate price payable upon exercise of the Repurchase Option shall remain the same.

7. ESCROW OF UNVESTED COMMON STOCK. As security for Purchaser's faithful performance of the terms of this Agreement and to insure the availability for delivery of Purchaser's Common Stock upon exercise of the Repurchase Option herein provided for, Purchaser agrees, at the closing hereunder, to deliver to and deposit with the Secretary of the Company or the Secretary's designee ("***Escrow Agent***"), as Escrow Agent in this transaction, three stock assignments duly endorsed (with date and number of shares blank) in the form attached hereto as Exhibit B, together with a certificate or certificates evidencing all of the Common Stock subject to the Repurchase Option; said documents are to be held by the Escrow Agent and delivered by said Escrow Agent pursuant to the Joint Escrow Instructions of the Company and Purchaser set forth in Exhibit C, attached hereto and incorporated by this reference, which instructions also shall be delivered to the Escrow Agent at the closing hereunder.

8. RIGHTS OF PURCHASER. Subject to the provisions of the Option, Purchaser shall exercise all rights and privileges of a stockholder of the Company with respect to the shares deposited in escrow. Purchaser shall be deemed to be the holder of the shares for purposes of receiving any dividends that may be paid with respect to such shares and for purposes of exercising any voting rights relating to such shares, even if some or all of such shares have not yet vested and been released from the Company's Repurchase Option.

9. LIMITATIONS ON TRANSFER. In addition to any other limitation on transfer created by applicable securities laws, Purchaser shall not sell, assign, hypothecate, donate, encumber or otherwise dispose of any interest in the Common Stock while the Common Stock is subject to the Repurchase Option. After any Common Stock has been released from the Repurchase Option, Purchaser shall not sell, assign, hypothecate, donate, encumber or otherwise dispose of any interest in the Common Stock except in compliance with the provisions herein and applicable securities laws. Furthermore, the Common Stock shall be subject to any right of first refusal in favor of the Company or its assignees or other transfer restrictions that may be contained in the Company's Bylaws.

10. RESTRICTIVE LEGENDS. All certificates representing the Common Stock shall have endorsed thereon legends in substantially the following forms (in addition to any other legend which may be required by other agreements between the parties hereto):

(a) "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AN OPTION SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE REGISTERED HOLDER, OR SUCH HOLDER'S PREDECESSOR IN INTEREST, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THIS COMPANY. ANY TRANSFER OR ATTEMPTED TRANSFER OF ANY SHARES SUBJECT TO SUCH OPTION IS VOID WITHOUT THE PRIOR EXPRESS WRITTEN CONSENT OF THE COMPANY."

(b) "THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED."

(c) "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE COMPANY AND/OR ITS ASSIGNEE(S) AS PROVIDED IN THE BYLAWS OF THE COMPANY AND IN AN AGREEMENT WITH THE COMPANY."

(d) "THE SHARES REPRESENTED BY THIS CERTIFICATE WERE ISSUED PURSUANT TO THE EXERCISE OF A NONSTATUTORY STOCK OPTION."

(e) "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A TRANSFER RESTRICTION, AS PROVIDED IN THE BYLAWS OF THE COMPANY."

(f) Any legend required by appropriate blue sky officials.

11. INVESTMENT REPRESENTATIONS. In connection with the purchase of the Common Stock, Purchaser represents to the Company the following:

(a) Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Common Stock. Purchaser is acquiring the Common Stock for investment for Purchaser's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act.

(b) Purchaser understands that the Common Stock has not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser's investment intent as expressed herein.

(c) Purchaser further acknowledges and understands that the Common Stock must be held indefinitely unless the Common Stock is subsequently registered under the Securities Act or an exemption from such registration is available. Purchaser further acknowledges and understands that the Company is under no obligation to register the Common Stock. Purchaser understands that the certificate evidencing the Common Stock will be imprinted with a legend that prohibits the transfer of the Common Stock unless the Common Stock is registered or such registration is not required in the opinion of counsel for the Company.

(d) Purchaser is familiar with the provisions of Rules 144 and 701, under the Securities Act, as in effect from time to time, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of issuance of the securities, such issuance will be exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the securities exempt under Rule 701 may be sold by Purchaser 90 days thereafter, subject to the satisfaction of certain of the conditions specified by Rule 144 and the market stand-off provision described in Purchaser's Stock Option Agreement.

(e) In the event that the sale of the Common Stock does not qualify under Rule 701 at the time of purchase, then the Common Stock may be resold by Purchaser in certain limited circumstances subject to the provisions of Rule 144, which requires, among other things: (i) the availability of certain public information about the Company, and (ii) the resale occurring following the required holding period under Rule 144 after Purchaser has purchased, and made full payment of (within the meaning of Rule 144), the securities to be sold.

(f) Purchaser further understands that at the time Purchaser wishes to sell the Common Stock there may be no public market upon which to make such a sale, and that, even if such a public market then exists, the Company may not be satisfying the current public current information requirements of Rule 144 or 701, and that, in such event, Purchaser would be precluded from selling the Common Stock under Rule 144 or 701 even if the minimum holding period requirement had been satisfied.

(g) Purchaser further warrants and represents that Purchaser has either (i) preexisting personal or business relationships, with the Company or any of its officers, directors or controlling persons, or (ii) the capacity to protect his own interests in connection with the purchase of the Common Stock by virtue of the business or financial expertise of Purchaser or of professional advisors to Purchaser who are unaffiliated with and who are not compensated by the Company or any of its affiliates, directly or indirectly. Purchaser further warrants and represents that Purchaser's purchase the Common Stock was not accomplished by the publication of any advertisement.

12. SECTION 83(b) ELECTION. Purchaser understands that Section 83(a) of the Code taxes as ordinary income the difference between the amount paid for the Common Stock and the fair market value of the Common Stock as of the date any restrictions on the Common Stock lapse. In this context, "restriction" includes the right of the Company to buy back the Common Stock pursuant to the Repurchase Option set forth above. Purchaser understands that Purchaser may elect to be taxed at the time the Common Stock is purchased, rather than when and as the Repurchase Option expires, by filing an election under Section 83(b) (an "***83(b) Election***") of the Code with the Internal Revenue Service within 30 days of the date of purchase, a copy of which is included as Exhibit D. Even if the fair market value of the Common Stock at the time of the execution of this Agreement equals the amount paid for the Common Stock, the 83(b) Election must be made to avoid income under Section 83(a) in the future. Purchaser understands that failure to file such an 83(b) Election in a timely manner may result in adverse tax consequences for Purchaser. Purchaser further understands that Purchaser must file an additional copy of such 83(b) Election with his or her federal income tax return for the calendar year in which the date of this Agreement falls. Purchaser acknowledges that the foregoing is only a summary of the effect of United States federal income taxation with respect to purchase of the Common Stock hereunder, and does not purport to be complete. Purchaser further acknowledges that the Company has directed Purchaser to seek independent advice regarding the applicable provisions of the Code, the income tax laws of any municipality, state or foreign country in which Purchaser may reside, and the tax consequences of Purchaser's death. Purchaser assumes all responsibility for filing an 83(b) Election and paying all taxes resulting from such election or the lapse of the restrictions on the Common Stock.

13. REFUSAL TO TRANSFER. The Company shall not be required (a) to transfer on its books any shares of Common Stock of the Company which shall have been transferred in violation of any of the provisions set forth in this Agreement, or (b) to treat as owner of such shares or to accord the right to vote as such owner or to pay dividends to any transferee to whom such shares shall have been so transferred.

14. NO EMPLOYMENT RIGHTS. This Agreement is not an employment contract and nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company or its Affiliates to terminate Purchaser's employment for any reason at any time, with or without cause and with or without notice.

15. MISCELLANEOUS.

(a) Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, and if not during normal business hours of the recipient, then on the next business day, (iii) five calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the other party hereto at such party's address hereinafter set forth on the signature page hereof, or at such other address as such party may designate by 10 days advance written notice to the other party hereto.

(b) Successors and Assigns. This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer herein set forth, be binding upon Purchaser, Purchaser's successors, and assigns. The Company may assign the Repurchase Option hereunder at any time or from time to time, in whole or in part.

(c) Attorneys' Fees; Specific Performance. Purchaser shall reimburse the Company for all costs incurred by the Company in enforcing the performance of, or protecting its rights under, any part of this Agreement, including reasonable costs of investigation and attorneys' fees. It is the intention of the parties that the Company, upon exercise of the Repurchase Option and payment for the shares repurchased, pursuant to the terms of this Agreement, shall be entitled to receive the Common Stock, *in specie*, in order to have such Common Stock available for future issuance without dilution of the holdings of other stockholders. Furthermore, it is expressly agreed between the parties that money damages are inadequate to compensate the Company for the Common Stock and that the Company shall, upon proper exercise of the Repurchase Option, be entitled to specific enforcement of its rights to purchase and receive said Common Stock.

(d) Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. The parties agree that any action brought by either party to interpret or enforce any provision of this Agreement shall be brought in, and each party agrees to, and does hereby, submit to the jurisdiction and venue of, the appropriate state or federal court for the district encompassing the Company's principal place of business.

(e) Further Execution. The parties agree to take all such further action(s) as may reasonably be necessary to carry out and consummate this Agreement as soon as practicable, and to take whatever steps may be necessary to obtain any governmental approval in connection with or otherwise qualify the issuance of the securities that are the subject of this Agreement.

(f) Independent Counsel. Purchaser acknowledges that this Agreement has been prepared on behalf of the Company by Cooley LLP, counsel to the Company and that Cooley LLP does not represent, and is not acting on behalf of, Purchaser. Purchaser has been provided with an opportunity to consult with Purchaser's own counsel with respect to this Agreement.

(g) Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and merges all prior agreements or understandings, whether written or oral. This Agreement may not be amended, modified or revoked, in whole or in part, except by an agreement in writing signed by each of the parties hereto.

(h) Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(i) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. This Agreement may also be executed and delivered by facsimile signature, PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com).

The parties hereto have executed this Agreement as of _____, 2017.

COMPANY:

AN2 THERAPEUTICS, INC.

By: _____

Name: _____

Title: _____

PURCHASER:

_____

(Signature)

_____

Name (Please Print)

ATTACHMENTS:

Exhibit A Notice of Exercise
Exhibit B Assignment Separate from Certificate
Exhibit C Joint Escrow Instructions
Exhibit D Form of 83(b) Election

[SIGNATURE PAGE TO EARLY EXERCISE STOCK PURCHASE AGREEMENT]

EXHIBIT A

NOTICE OF EXERCISE

NOTICE OF EXERCISE

AN2 Therapeutics, Inc.
PO Box 418
Menlo Park, California 94026

Date of Exercise: _____

This constitutes notice to **AN2 THERAPEUTICS, INC.** (the "***Company***") under my stock option that I elect to purchase the below number of shares of Common Stock of the Company (the "***Shares***") for the price set forth below.

Type of option (check one):	**Incentive** ☐	**Nonstatutory** ☐
Stock option dated:	_____	_____
Number of Shares as to which option is exercised:	_____	_____
Certificates to be issued in name of:	_____	_____
Total exercise price:	$_____	$_____
Cash payment delivered herewith:	$_____	$_____
Regulation T Program (cashless exercise[1])	$_____	$_____
Value of _____ Shares delivered herewith[2]:	$_____	$_____

By this exercise, I agree (i) to provide such additional documents as you may require pursuant to the terms of the 2017 Equity Incentive Plan, (ii) to provide for the payment by me to you (in the manner designated by you) of your withholding obligation, if any, relating to the exercise of this option, and (iii) if this exercise relates to an incentive stock option, to notify you in writing within fifteen (15) days after the date of any disposition of any of the Shares issued upon exercise of this option that occurs within two (2) years after the date of grant of this option or within one (1) year after such Shares are issued upon exercise of this option.

1 Shares must meet the public trading requirements set forth in the option agreement.

2 Shares must meet the public trading requirements set forth in the option. Shares must be valued in accordance with the terms of the option being exercised, and must be owned free and clear of any liens, claims, encumbrances or security interests. Certificates must be endorsed or accompanied by an executed assignment separate from certificate.

I further acknowledge and agree that, except for such information as required to be delivered to me by the Company pursuant to the option or the Plan (if any), I will have no right to receive any information from the Company by virtue of the grant of the option or the purchase of shares of Common Stock through exercise of the option, ownership of such shares of Common Stock, or as a result of my being a holder of record of stock of the Company. Without limiting the foregoing, to the fullest extent permitted by law, I hereby waive all inspection rights under Section 220 of the Delaware General Corporation Law and all such similar information and/or inspection rights that may be provided under the law of any jurisdiction, or any federal, state or foreign regulation, that are, or may become, applicable to the Company or the Company's capital stock (the "***Inspection Rights***"). I hereby covenant and agree never to directly or indirectly commence, voluntarily aid in any way, prosecute, assign, transfer, or cause to be commenced any claim, action, cause of action, or other proceeding to pursue or exercise the Inspection Rights.

I further agree that, if required by the Company (or a representative of the underwriters) in connection with the first underwritten registration of the offering of any securities of the Company under the Securities Act, I will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company for a period of one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act (or such longer period as the underwriters or the Company shall request to facilitate compliance with FINRA Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation) (the "***Lock-Up Period***"). I further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to securities subject to the foregoing restrictions until the end of such period.

Very truly yours,

_____

(Signature)

_____

Name (Please Print)

Address of Record: _____

_____

_____

EXHIBIT B

STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto **AN2 THERAPEUTICS, INC.**, a Delaware corporation (the "***Company***"), pursuant to the Repurchase Option under that certain Early Exercise Stock Purchase Agreement, dated [_____], by and between the undersigned and the Company (the "***Agreement***") _____ shares of Common Stock of the Company standing in the undersigned's name on the books of the Company represented by Certificate No[s] _____ and does hereby irrevocably constitute and appoint both the Company's Secretary and the Company's attorney, or either of them, to transfer said stock on the books of the Company with full power of substitution in the premises. This Assignment may be used only in accordance with and subject to the terms and conditions of the Agreement, in connection with the repurchase of shares of Common Stock issued to the undersigned pursuant to the Agreement, and only to the extent that such shares remain subject to the Company's Repurchase Option under the Agreement.

Dated: _____
(leave blank)

_____
(Signature)

_____
Name (Please Print)

INSTRUCTION: ***Please do not fill in any blanks other than the signature line. Do not fill in the date line***. The purpose of this Assignment is to enable the Company to exercise its Repurchase Option set forth in the Agreement without requiring additional signatures on the part of Purchaser.

EXHIBIT C

JOINT ESCROW INSTRUCTIONS

JOINT ESCROW INSTRUCTIONS

_____, 20__

Secretary
AN2 Therapeutics, Inc.
PO Box 418
Menlo Park, California 94026

Ladies and Gentlemen:

As Escrow Agent for both **AN2 Therapeutics, Inc.**, a Delaware corporation ("***Company***") and the purchaser listed on the signature page hereto ("***Purchaser***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Early Exercise Stock Purchase Agreement dated as of _____ ("***Agreement***"), to which a copy of these Joint Escrow Instructions is attached as an Exhibit, in accordance with the following instructions:

1. In the event Company or an assignee shall elect to exercise the Repurchase Option set forth in the Agreement, the Company or its assignee will give to Purchaser and you a written notice specifying the number of shares of stock to be acquired and the time for a closing thereunder at the principal office of the Company. Purchaser and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company.

3. Purchaser irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares as specified in the Agreement. Purchaser does hereby irrevocably constitute and appoint you as his attorney-in-fact and agent for the term of this escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and complete any transaction herein contemplated, including but not limited to any appropriate filing with state or government officials or bank officials. Subject to the provisions of this paragraph 3, Purchaser shall exercise all rights and privileges of a stockholder of the Company while the stock is held by you.

4. This escrow shall terminate and the shares of stock held hereunder shall be released in full upon the exercise or expiration in full of the Repurchase Option, whichever occurs first.

5. If at the time of termination of this escrow under Section 4 herein you should have in your possession any documents, securities, or other property belonging to Purchaser, you shall deliver all of the same to Purchaser and shall be discharged of all further obligations hereunder; provided, however, that if at the time of termination of this escrow you are advised by the Company that any property subject to this escrow is the subject of a pledge or other security agreement, you shall deliver all such property to the pledgeholder or other person designated by the Company.

6. Except as otherwise provided in these Joint Escrow Instructions, your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Purchaser while acting in good faith and in the exercise of your own good judgment, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or entity, excepting only orders or process of courts of law, and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree of any court, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver these Joint Escrow Instructions documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under any statute of limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be Secretary of the Company or if you shall resign by written notice to the Company. In the event of any such termination, the Secretary of the Company shall automatically become the successor Escrow Agent unless the Company shall appoint another successor Escrow Agent, and Purchaser hereby confirms the appointment of such successor as Purchaser’s attorney-in-fact and agent to the full extent of your appointment.

12. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

13. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such dispute shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

14. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, and if not during normal business hours of the recipient, then on the next business day, (c) five (5) calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the other party hereto at such party’s address set forth below, or at such other address as such party may designate by ten (10) days advance written notice to the other party hereto.

Company:	AN2 Therapeutics, Inc. PO Box 418 Menlo Park, California 94026 Attn: Chief Executive Officer
Purchaser:	_____ _____ _____
Escrow Agent:	AN2 Therapeutics, Inc. PO Box 418 Menlo Park, California 94026 Attn: Secretary

15. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

16. You shall be entitled to employ such legal counsel and other experts (including, without limitation, the firm of Cooley LLP) as you may dseem necessary properly to advise you in connection with your obligations hereunder. You may rely upon the advice of such counsel, and you may pay such counsel reasonable compensation therefor. The Company shall be responsible for all fees generated by such legal counsel in connection with your obligations hereunder.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. It is understood and agreed that references to “you” and “your” herein refer to the original Escrow Agents and to any and all successor Escrow Agents. It is understood and agreed that the Company may at any time or from time to time assign its rights under the Agreement and these Joint Escrow Instructions in whole or in part.

[Remainder of page intentionally left blank]

18. These Joint Escrow Instructions shall be governed by and interpreted and determined in accordance with the laws of the State of Delaware. The parties hereby expressly consent to the personal jurisdiction of the state and federal courts located in the county in which the Company has its principal offices for any lawsuit arising from or related to this Agreement.

Very truly yours,

COMPANY:

AN2 THERAPEUTICS, INC.

By: _____

Name: _____
Title: _____

PURCHASER:

_____
(Signature)

_____
Name (Please Print)

ESCROW AGENT:

_____
LUCY O. DAY, SECRETARY

[SIGNATURE PAGE TO JOINT ESCROW INSTRUCTIONS]

EXHIBIT D

83(B) ELECTION

[THIS FORM IS DESIGNED FOR INDIVIDUAL PURCHASERS. CORPORATE OR TRUST PURCHASERS SHOULD CONTACT THEIR TAX PROFESSIONAL TO REVIEW BEFORE SUBMITTING.]

INSTRUCTIONS FOR FILING SECTION 83(b) ELECTION

Attached is a form of election under Section 83(b) of the Internal Revenue Code and an accompanying IRS cover letter. Please fill in your [social security number][taxpayer identification number] and sign the election and cover letter, then proceed as follows:

(a) Make **five** copies of the original completed Section 83(b) election form.

(b) Send the original completed election form, one copy of the completed election form, the cover letter, and a self-addressed stamped return envelope to the Internal Revenue Service Center where you would otherwise file your tax return[3]. Even if an address for an Internal Revenue Service Center is already included in the forms below, it is your obligation to verify such address. This can be done by searching for the term "where to file" on www.irs.gov or by calling 1 (800) 829-1040. Sending the election via certified mail, requesting a return receipt, is also recommended.

(c) Deliver one copy of the completed election form to the Company.

(d) Attach one copy of the completed election form to your federal personal income tax return (Form 1040) when you file it for the year.

(e) Attach one copy of the completed election form to your state personal income tax return when you file it for the year (assuming you file a state income tax return).

(f) Retain one copy of the completed election form for your personal permanent records.

Please note that the election must be filed with the IRS within 30 days of the date of your restricted stock grant. Failure to file within that time will render the election void and you may recognize ordinary taxable income as your vesting restrictions lapse. The Company and its counsel cannot assume responsibility for failure to file the election in a timely manner under any circumstances.

---

3 Per Treasury Regulation § 1.83-2(c), the Section 83(b) election must be filed with the IRS office where the person otherwise files his or her tax return. As of September 2015, if you live in a foreign country or are a dual status alien (foreigners that will have lived both in their home country and the United States during the year in which they make the election) you should send the 83(b) election to Austin, TX 73301-0215. You can verify this is still the correct address at: http://www.irs.gov/uac/Where-to-File-Addresses-for--Taxpayers-and--Tax-Professionals-Filing-Form-1040 .

SECTION 83(b) ELECTION

_____, 201_

Department of the Treasury
Internal Revenue Service
[City, State Zip][4][Austin, TX 73301-0215
USA][5]

Re: Election Under Section 83(b)

Ladies and Gentlemen:

The undersigned taxpayer hereby elects, pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the shares described below over the amount paid for those shares. The following information is supplied in accordance with Treasury Regulation § 1.83-2:

1. The name, [social security number][taxpayer identification number], address of the undersigned, and the taxable year for which this election is being made are:

Name: _____
[Social Security Number][Tax Identification Number]: _____ [6]
Address: _____
_____

Taxable year: Calendar year 201_.[7]

2. The property that is the subject of this election: [#] shares of common stock of [Company], a [State] corporation (the "***Company***").

---

4 Per Treasury Regulation § 1.83-2(c), the Section 83(b) election must be filed with the IRS office where the person otherwise files his or her tax return. Assuming these are individual taxpayers who would file a Form 1040, see http://www.irs.gov/uac/Where-to-File-Addresses-for--Taxpayers-and--Tax-Professionals-Filing-Form-1040 . Use the address in the row which includes the state in which the service provider lives and in the column entitled "And you ARE NOT enclosing a payment".

5 Per Treasury Regulation § 1.83-2(c), the Section 83(b) election must be filed with the IRS office where the person otherwise files his or her tax return. As of September 2015, if you live in a foreign country or are a dual status alien (foreigners that will have lived both in their home country and the United States during the year in which they make the election) you should send the 83(b) election to Austin, TX 73301-0215. You can verify this is still the correct address at: http://www.irs.gov/uac/Where-to-File-Addresses-for--Taxpayers-and--Tax-Professionals-Filing-Form-1040 .

6 If you do not have a taxpayer ID number (TIN), put "None –non-US taxpayer" and include in the cover letter to the IRS a statement explaining that the Section 83(b) election is being filed because the individual may become a US taxpayer before the stock vests. If the individual is applying for a TIN, instead include "applied for" and enclose a copy of the W-7 application. Note that there may be important factors to consider before applying for a TIN, including immigration status, etc.

7 If an entity is the service provider, instead use "Fiscal year ending ___."

3. **The property was transferred on:** [•], 201_.

4. **The property is subject to the following restrictions:** [Some or all of the shares are subject to forfeiture or repurchase at less than their fair market value if the undersigned does not continue to provide services for the Company for a designated period of time. The risk of forfeiture or repurchase lapses over a specified vesting period. Vesting accelerates upon certain events, including certain events resulting in the undersigned's termination of employment, and certain changes in control of the Company.][8]

5. **The fair market value of the property at the time of transfer (determined without regard to any restriction other than a nonlapse restriction as defined in Treasury Regulation § 1.83-3(h)):** $[•] per share x [#] shares = $[•].

6. **For the property transferred, the undersigned paid:** $[•] per share x [#] shares = $[•].

7. **The amount to include in gross income is:** $[•].[9]

The undersigned taxpayer will file this election with the Internal Revenue Service office with which taxpayer files his or her annual income tax return not later than 30 days after the date of transfer of the property. A copy of the election also will be furnished to the person for whom the services were performed and the transferee of the property, if any. Additionally, the undersigned will include a copy of the election with his or her income tax return for the taxable year in which the property is transferred. The undersigned is the person performing the services in connection with which the property was transferred.

Very truly yours,

_____

[Name]

8 Conform to award. E.g., does award accelerate upon a termination of employment and/or a change in control?

9 This should equal the amount in Item 5 minus the amount in Item 6, and in many cases will be $0.00.

RETURN SERVICE REQUESTED

Department of the Treasury
Internal Revenue Service
[City, State, ZIP**][**Austin, TX 73301-0215
USA]

Re: **Election Under Section 83(b) of the Internal Revenue Code**

Dear Sir or Madam:

Enclosed please find an executed form of election under Section 83(b) of the Internal Revenue Code of 1986, as amended, filed with respect to an interest in AN2 Therapeutics, Inc.

[Please note, the undersigned does not currently have a Tax Identification Number because the undersigned is not a U.S. taxpayer, but may become a U.S. resident before the stock vests.]

Also enclosed is a copy of the signed form of election under Section 83(b). Please acknowledge receipt of these materials by marking the copy when received and returning it in the enclosed stamped, self-addressed envelope.

Thank you very much for your assistance.

Very truly yours,

_____
[Name]

Enclosures

ATTACHMENT III

NOTICE OF EXERCISE

AN2 THERAPEUTICS, INC.
NOTICE OF EXERCISE

AN2 Therapeutics, Inc.
PO Box 418
Menlo Park, California 94026

Date of Exercise: _____

This constitutes notice to **AN2 THERAPEUTICS, INC.** (the "***Company***") under my stock option that I elect to purchase the below number of shares of Common Stock of the Company (the "***Shares***") for the price set forth below.

Type of option (check one):	Incentive ☐	Nonstatutory ☐
Stock option dated:	_____	_____
Number of Shares as to which option is exercised:	_____	_____
Certificates to be issued in name of:	_____	_____
Total exercise price:	$_____	$_____
Cash payment delivered herewith:	$_____	$_____
Regulation T Program (cashless exercise[1])	$_____	$_____
Value of _____ Shares delivered herewith[2]:	$_____	$_____

By this exercise, I agree (i) to provide such additional documents as you may require pursuant to the terms of the 2017 Equity Incentive Plan, (ii) to provide for the payment by me to you (in the manner designated by you) of your withholding obligation, if any, relating to the exercise of this option, and (iii) if this exercise relates to an incentive stock option, to notify you in writing within 15 days after the date of any disposition of any of the Shares issued upon exercise of this option that occurs within two years after the date of grant of this option or within one year after such Shares are issued upon exercise of this option. I further agree that this Notice of Exercise may be executed and delivered by facsimile signature, PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com).

1 Shares must meet the public trading requirements set forth in the option agreement.

2 Shares must meet the public trading requirements set forth in the option. Shares must be valued in accordance with the terms of the option being exercised, and must be owned free and clear of any liens, claims, encumbrances or security interests. Certificates must be endorsed or accompanied by an executed assignment separate from certificate.

I hereby make the following certifications and representations with respect to the number of Shares listed above, which are being acquired by me for my own account upon exercise of the option as set forth above:

I acknowledge that the Shares have not been registered under the Securities Act of 1933, as amended (the "***Securities Act***"), and are deemed to constitute "restricted securities" under Rule 701 and Rule 144 promulgated under the Securities Act. I warrant and represent to the Company that I have no present intention of distributing or selling said Shares, except as permitted under the Securities Act and any applicable state securities laws.

I further acknowledge and agree that, except for such information as required to be delivered to me by the Company pursuant to the option or the Plan (if any), I will have no right to receive any information from the Company by virtue of the grant of the option or the purchase of shares of Common Stock through exercise of the option, ownership of such shares of Common Stock, or as a result of my being a holder of record of stock of the Company. Without limiting the foregoing, to the fullest extent permitted by law, I hereby waive all inspection rights under Section 220 of the Delaware General Corporation Law and all such similar information and/or inspection rights that may be provided under the law of any jurisdiction, or any federal, state or foreign regulation, that are, or may become, applicable to the Company or the Company's capital stock (the "***Inspection Rights***"). I hereby covenant and agree never to directly or indirectly commence, voluntarily aid in any way, prosecute, assign, transfer, or cause to be commenced any claim, action, cause of action, or other proceeding to pursue or exercise the Inspection Rights.

I further acknowledge that I will not be able to resell the Shares for at least 90 days after the stock of the Company becomes publicly traded (*i.e.*, subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934) under Rule 701 and that more restrictive conditions apply to affiliates of the Company under Rule 144.

I further acknowledge that all certificates representing any of the Shares subject to the provisions of the option shall have endorsed thereon appropriate legends reflecting the foregoing limitations, as well as any legends reflecting restrictions pursuant to the Company's Certificate of Incorporation, Bylaws and/or applicable securities laws.

I further agree that, if required by the Company (or a representative of the underwriters) in connection with the first underwritten registration of the offering of any securities of the Company under the Securities Act, I will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company for a period of 180 days following the effective date of a registration statement of the Company filed under the Securities Act (or such longer period as the underwriters or the Company shall request to facilitate compliance with FINRA Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation) (the "***Lock-Up Period***"). I further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to securities subject to the foregoing restrictions until the end of such period.

Very truly yours,

_____
(Signature)

_____
Name (Please Print)

Address of Record: _____

_____

_____

AN2 THERAPEUTICS, INC.
2022 EQUITY INCENTIVE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: , 2022
APPROVED BY THE STOCKHOLDERS: , 2022

1. GENERAL.

(a) Successor to and Continuation of Prior Plan. The Plan is the successor to and continuation of the Prior Plan. As of the Effective Date, (i) no additional awards may be granted under the Prior Plan; (ii) the Prior Plan's Available Reserve (plus any Returning Shares) will become available for issuance pursuant to Awards granted under this Plan; and (iii) all outstanding awards granted under the Prior Plan will remain subject to the terms of the Prior Plan (except to the extent such outstanding awards result in Returning Shares that become available for issuance pursuant to Awards granted under this Plan). All Awards granted under this Plan will be subject to the terms of this Plan.

(b) Plan Purpose. The Company, by means of the Plan, seeks to secure and retain the services of Employees, Directors and Consultants, to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and to provide a means by which such persons may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Awards.

(c) Available Awards. The Plan provides for the grant of the following Awards: (i) Incentive Stock Options; (ii) Nonstatutory Stock Options; (iii) SARs; (iv) Restricted Stock Awards; (v) RSU Awards; (vi) Performance Awards; and (vii) Other Awards.

(d) Adoption Date; Effective Date. The Plan will come into existence on the Adoption Date, but no Award may be granted prior to the Effective Date.

2. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve. Subject to adjustment in accordance with Section 2(c) and any adjustments as necessary to implement any Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Awards will not exceed a number of shares of Common Stock equal to 10% of the outstanding shares of the Company following the closing of the initial public offering, which number is the sum of: (i) a number of new shares of Common Stock to be determined following the closing of the initial public offering, plus (ii) a number of shares of Common Stock equal to the Prior Plan's Available Reserve, plus (iii) a number of shares of Common Stock equal to the number of Returning Shares, if any, as such shares become available from time to time (the "***Initial Reserve***"). In addition, subject to any adjustments as necessary to implement any Capitalization Adjustments, such aggregate number of shares of Common Stock will automatically increase on January 1 of each year for a period of ten years commencing on January 1, 2023 and ending on (and including) January 1, 2032, in an amount equal to 4% of the total number of shares of Capital Stock outstanding on the prior December 31; provided, however, that the Board may act prior to January 1st of a given year to provide that the increase for such year will be a lesser number of shares of Common Stock.

(b) Aggregate Incentive Stock Option Limit. Notwithstanding anything to the contrary in Section 2(a) and subject to any adjustments as necessary to implement any Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options is a number of shares equal to 300% of the Initial Reserve.

(c) Share Reserve Operation.

(i) Limit Applies to Common Stock Issued Pursuant to Awards. For clarity, the Share Reserve is a limit on the number of shares of Common Stock that may be issued pursuant to Awards and does not limit the granting of Awards, except that the Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy its obligations to issue shares pursuant to such Awards. Shares may be issued in connection with a merger or acquisition as permitted by, as applicable, Nasdaq Listing Rule 5635(c), NYSE Listed Company Manual Section 303A.08, NYSE American Company Guide Section 711 or other applicable rule, and such issuance will not reduce the number of shares available for issuance under the Plan.

(ii) Actions that Do Not Constitute Issuance of Common Stock and Do Not Reduce Share Reserve. The following actions do not result in an issuance of shares under the Plan and accordingly do not reduce the number of shares subject to the Share Reserve and available for issuance under the Plan: (1) the expiration or termination of any portion of an Award without the shares covered by such portion of the Award having been issued, (2) the settlement of any portion of an Award in cash (i.e., the Participant receives cash rather than Common Stock), (3) the withholding of shares that would otherwise be issued by the Company to satisfy the exercise, strike or purchase price of an Award; or (4) the withholding of shares that would otherwise be issued by the Company to satisfy a tax withholding obligation in connection with an Award.

(iii) Reversion of Previously Issued Shares of Common Stock to Share Reserve. The following shares of Common Stock previously issued pursuant to an Award and accordingly initially deducted from the Share Reserve will be added back to the Share Reserve and again become available for issuance under the Plan: (1) any shares that are forfeited back to or repurchased by the Company because of a failure to meet a contingency or condition required for the vesting of such shares; (2) any shares that are reacquired by the Company to satisfy the exercise, strike or purchase price of an Award; and (3) any shares that are reacquired by the Company to satisfy a tax withholding obligation in connection with an Award.

3. ELIGIBILITY AND LIMITATIONS.

(a) Eligible Award Recipients. Subject to the terms of the Plan, Employees, Directors and Consultants are eligible to receive Awards.

(b) Specific Award Limitations.

(i) Limitations on Incentive Stock Option Recipients. Incentive Stock Options may be granted only to Employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and (f) of the Code).

(ii) Incentive Stock Option $100,000 Limitation. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds $100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(iii) Limitations on Incentive Stock Options Granted to Ten Percent Stockholders. A Ten Percent Stockholder may not be granted an Incentive Stock Option unless (i) the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant of such Option and (ii) the Option is not exercisable after the expiration of five years from the date of grant of such Option.

(c) Aggregate Incentive Stock Option Limit. The aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options is the number of shares specified in Section 2(b).

(d) Non-Employee Director Compensation Limit. The aggregate value of all compensation granted or paid, as applicable, to any individual for service as a Non-Employee Director with respect to any fiscal year following the year in which the IPO Date occurs, including Awards granted and cash fees paid by the Company to such Non-Employee Director, will not exceed (i) $750,000 in total value or (ii) in the event such Non-Employee Director is first appointed or elected to the Board during such fiscal year, $1,000,000 in total value, in each case calculating the value of any equity awards based on the grant date fair value of such equity awards for financial reporting purposes. For avoidance of doubt, compensation will count towards this limit for the fiscal year in which it was granted or earned, and not later when distributed, in the event it is deferred.

4. OPTIONS AND STOCK APPRECIATION RIGHTS.

Each Option and SAR will have such terms and conditions as determined by the Board. Each Option will be designated in writing as an Incentive Stock Option or Nonstatutory Stock Option at the time of grant; provided, however, that if an Option is not so designated, then such Option will be a Nonstatutory Stock Option, and the shares purchased upon exercise of each type of Option will be separately accounted for. Each SAR will be denominated in shares of Common Stock equivalents. The terms and conditions of separate Options and SARs need not be identical; provided, however, that each Option Agreement and SAR Agreement will conform (through incorporation of provisions hereof by reference in the Award Agreement or otherwise) to the substance of each of the following provisions:

(a) Term. Subject to Section 3(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of ten years from the date of grant of such Award or such shorter period specified in the Award Agreement.

(b) Exercise or Strike Price. Subject to Section 3(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will not be less than 100% of the Fair Market Value on the date of grant of such Award. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than 100% of the Fair Market Value on the date of grant of such Award if such Award is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Sections 409A and, if applicable, 424(a) of the Code.

(c) Exercise Procedure and Payment of Exercise Price for Options. In order to exercise an Option, the Participant must provide notice of exercise to the Plan Administrator in accordance with the procedures specified in the Option Agreement or otherwise provided by the Company. The Board has the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. The exercise price of an Option may be paid, to the extent permitted by Applicable Law and as determined by the Board, by one or more of the following methods of payment to the extent set forth in the Option Agreement:

(i) by cash or check, bank draft or money order payable to the Company;

(ii) pursuant to a "cashless exercise" program developed under Regulation T as promulgated by the U.S. Federal Reserve Board that, prior to the issuance of the Common Stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock that are already owned by the Participant free and clear of any liens, claims, encumbrances or security interests, with a Fair Market Value on the date of exercise that does not exceed the exercise price, provided that (1) at the time of exercise the Common Stock is publicly traded, (2) any remaining balance of the exercise price not satisfied by such delivery is paid by the Participant in cash or other permitted form of payment, (3) such delivery would not violate any Applicable Law or agreement restricting the redemption of the Common Stock, (4) any certificated shares are endorsed or accompanied by an executed assignment separate from certificate, and (5) such shares have been held by the Participant for any minimum period necessary to avoid adverse accounting treatment as a result of such delivery;

(iv) if the Option is a Nonstatutory Stock Option, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value on the date of exercise that does not exceed the exercise price, provided that (1) such shares used to pay the exercise price will not be exercisable thereafter and (2) any remaining balance of the exercise price not satisfied by such net exercise is paid by the Participant in cash or other permitted form of payment; or

(v) in any other form of consideration that may be acceptable to the Board and permissible under Applicable Law.

(d) Exercise Procedure and Payment of Appreciation Distribution for SARs. In order to exercise any SAR, the Participant must provide notice of exercise to the Plan Administrator in accordance with the SAR Agreement. The appreciation distribution payable to a Participant upon the exercise of a SAR will not be greater than an amount equal to the excess of (i) the aggregate Fair Market Value on the date of exercise of a number of shares of Common Stock equal to the number of Common Stock equivalents that are vested and being exercised under such SAR, over (ii) the strike price of such SAR. Such appreciation distribution may be paid to the Participant in the form of Common Stock or cash (or any combination of Common Stock and cash) or in any other form of payment, as determined by the Board and specified in the SAR Agreement.

(e) Transferability. Options and SARs may not be transferred to third party financial institutions for value. The Board may impose such additional limitations on the transferability of an Option or SAR as it determines. In the absence of any such determination by the Board, the following restrictions on the transferability of Options and SARs will apply, provided that except as explicitly provided herein, neither an Option nor a SAR may be transferred for consideration and provided, further, that if an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer:

(f) Restrictions on Transfer. An Option or SAR will not be transferable, except by will or by the laws of descent and distribution, and will be exercisable during the lifetime of the Participant only by the Participant; provided, however, that the Board may permit transfer of an Option or SAR in a manner that is not prohibited by applicable tax and securities laws upon the Participant's request, including to a trust if the Participant is considered to be the sole beneficial owner of such trust (as determined under Section 671 of the Code and applicable U.S. state law) while such Option or SAR is held in such trust, provided that the Participant and the trustee enter into a transfer and other agreements required by the Company.

(g) Domestic Relations Orders. Notwithstanding the foregoing, subject to the execution of transfer documentation in a format acceptable to the Company and subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to a domestic relations order.

(h) Vesting. The Board may impose such restrictions on or conditions to the vesting and/or exercisability of an Option or SAR as determined by the Board. Except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company, vesting of Options and SARs will cease upon termination of the Participant's Continuous Service.

(i) Termination of Continuous Service for Cause. Except as explicitly otherwise provided in the Award Agreement or other written agreement between a Participant and the Company, if a Participant's Continuous Service is terminated for Cause, the Participant's Options and SARs will terminate and be forfeited immediately upon such termination of Continuous Service, and the Participant will be prohibited from exercising any portion (including any vested portion) of such Awards on and after the date of such termination of Continuous Service and the Participant will have no further right, title or interest in such forfeited Award, the shares of Common Stock subject to the forfeited Award, or any consideration in respect of the forfeited Award.

(j) Post-Termination Exercise Period Following Termination of Continuous Service for Reasons Other than Cause. Subject to Section 4(i), if a Participant's Continuous Service terminates for any reason other than for Cause, the Participant may exercise his or her Option or SAR to the extent vested, but only within the following period of time or, if applicable, such other period of time provided in the Award Agreement or other written agreement between a Participant and the Company; provided, however, that in no event may such Award be exercised after the expiration of its maximum term (as set forth in Section 4(a)):

(i) three months following the date of such termination if such termination is a termination without Cause (other than any termination due to the Participant's Disability or death);

(ii) 12 months following the date of such termination if such termination is due to the Participant's Disability;

(iii) 18 months following the date of such termination if such termination is due to the Participant's death; or

(iv) 18 months following the date of the Participant's death if such death occurs following the date of such termination but during the period such Award is otherwise exercisable (as provided in (i) or (ii) above).

Following the date of such termination, to the extent the Participant does not exercise such Award within the applicable Post-Termination Exercise Period (or, if earlier, prior to the expiration of the maximum term of such Award), such unexercised portion of the Award will terminate, and the Participant will have no further right, title or interest in terminated Award, the shares of Common Stock subject to the terminated Award, or any consideration in respect of the terminated Award.

(k) Restrictions on Exercise; Extension of Exercisability. A Participant may not exercise an Option or SAR at any time that the issuance of shares of Common Stock upon such exercise would violate Applicable Law. Except as otherwise provided in the Award Agreement or other written agreement

between a Participant and the Company, if a Participant's Continuous Service terminates for any reason other than for Cause and, at any time during the last thirty days of the applicable Post-Termination Exercise Period: (i) the exercise of the Participant's Option or SAR would be prohibited solely because the issuance of shares of Common Stock upon such exercise would violate Applicable Law, or (ii) the immediate sale of any shares of Common Stock issued upon such exercise would violate the Company's Trading Policy, then the applicable Post-Termination Exercise Period will be extended to the last day of the calendar month that commences following the date the Award would otherwise expire, with an additional extension of the exercise period to the last day of the next calendar month to apply if any of the foregoing restrictions apply at any time during such extended exercise period, generally without limitation as to the maximum permitted number of extensions); provided, however, that in no event may such Award be exercised after the expiration of its maximum term (as set forth in Section 4(a)).

(l) Non-Exempt Employees. No Option or SAR, whether or not vested, granted to an Employee who is a non-exempt employee for purposes of the U.S. Fair Labor Standards Act of 1938, as amended, will be first exercisable for any shares of Common Stock until at least six months following the date of grant of such Award. Notwithstanding the foregoing, in accordance with the provisions of the U.S. Worker Economic Opportunity Act, any vested portion of such Award may be exercised earlier than six months following the date of grant of such Award in the event of (i) such Participant's death or Disability, (ii) a Corporate Transaction in which such Award is not assumed, continued or substituted, (iii) a Change in Control, or (iv) such Participant's retirement (as such term may be defined in the Award Agreement or another applicable agreement or, in the absence of any such definition, in accordance with the Company's then current employment policies and guidelines). This Section 4(l) is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay.

(m) Whole Shares. Options and SARs may be exercised only with respect to whole shares of Common Stock or their equivalents.

5. AWARDS OTHER THAN OPTIONS AND STOCK APPRECIATION RIGHTS.

(a) Restricted Stock Awards and RSU Awards. Each Restricted Stock Award and RSU Award will have such terms and conditions as determined by the Board; provided, however, that each Restricted Stock Award Agreement and RSU Award Agreement will conform (through incorporation of the provisions hereof by reference in the Award Agreement or otherwise) to the substance of each of the following provisions:

(i) Form of Award.

(1) To the extent consistent with the Company's Amended and Restated Bylaws (as the same may be amended or restated from time to time, the "***Bylaws***"), at the Board's election, shares of Common Stock subject to a Restricted Stock Award may be (i) held in book entry form subject to the Company's instructions until such shares become vested or any other restrictions lapse, or (ii) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. Unless otherwise determined by the Board, a Participant will have voting and other rights as a stockholder of the Company with respect to any shares subject to a Restricted Stock Award.

(2) RSUs: A RSU Award represents a Participant's right to be issued on a future date the number of shares of Common Stock that is equal to the number of restricted stock units subject to the RSU Award. As a holder of a RSU Award, a Participant is an unsecured creditor of the Company with respect to the Company's unfunded obligation, if any, to issue shares of Common Stock in settlement of such Award and nothing contained in the Plan or any RSU Agreement, and no action taken

pursuant to its provisions, will create or be construed to create a trust of any kind or a fiduciary relationship between a Participant and the Company or an Affiliate or any other person. A Participant will not have voting or any other rights as a stockholder of the Company with respect to any RSU Award (unless and until shares are actually issued in settlement of a vested RSU Award).

(ii) Consideration. The Board shall determine the consideration, if any, payable by a Participant for Restricted Stock Awards and RSU Awards. Such consideration may include, but is not limited to, cash or check, bank draft or money order payable to the Company.

(iii) Vesting. The Board may impose such restrictions on or conditions to the vesting of a Restricted Stock Award or RSU Award as determined by the Board. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company, vesting of Restricted Stock Awards and RSU Awards will cease upon termination of the Participant's Continuous Service.

(iv) Termination of Continuous Service. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company, if a Participant's Continuous Service terminates for any reason, (i) the Company may receive through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant under his or her Restricted Stock Award that have not vested as of the date of such termination as set forth in the Restricted Stock Award Agreement and (ii) any portion of his or her RSU Award that has not vested will be forfeited upon such termination and the Participant will have no further right, title or interest in the RSU Award, the shares of Common Stock issuable pursuant to the RSU Award, or any consideration in respect of the RSU Award.

(v) Dividends and Dividend Equivalents. Dividends or dividend equivalents may be paid or credited, as applicable, with respect to any shares of Common Stock subject to a Restricted Stock Award or RSU Award, as determined by the Board and specified in the Award Agreement.

(vi) Settlement of RSU Awards. A RSU Award may be settled by the issuance of shares of Common Stock or cash (or any combination thereof) or in any other form of payment, as determined by the Board and specified in the RSU Award Agreement. At the time of grant, the Board may determine to impose such restrictions or conditions that delay such delivery to a date following the vesting of the RSU Award.

(b) Performance Awards. With respect to any Performance Award, the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, the other terms and conditions of such Award, and the measure of whether and to what degree such Performance Goals have been attained will be determined by the Board.

(c) Other Awards. Other Awards may be granted either alone or in addition to Awards provided for under Section 4 and the preceding provisions of this Section 5. Subject to the provisions of the Plan, the Board will have sole and complete discretion to determine the persons to whom and the time or times at which such Other Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Awards and all other terms and conditions of such Other Awards.

6. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) Capitalization Adjustments. In the event of a Capitalization Adjustment, the Board shall appropriately and proportionately adjust: (i) the class(es) and maximum number of shares of Common Stock subject to the Plan and the maximum number of shares by which the Share Reserve may annually increase pursuant to Section 2(a), (ii) the class(es) and maximum number of shares that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 2(b), and (iii) the class(es) and number of securities and exercise price, strike price or purchase price of Common Stock subject to outstanding Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. Notwithstanding the foregoing, no fractional shares or rights for fractional shares of Common Stock shall be created in order to implement any Capitalization Adjustment. The Board shall determine an equivalent benefit for any fractional shares or fractional shares that might be created by the adjustments referred to in the preceding provisions of this Section.

(b) Dissolution or Liquidation. Except as otherwise provided in the Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Awards (other than Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Award is providing Continuous Service, provided, however, that the Board may determine to cause some or all Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(c) Corporate Transaction. The following provisions will apply to Awards in the event of a Corporate Transaction except as set forth in Section 11, and unless otherwise provided in the instrument evidencing the Award or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of an Award.

(i) Awards May Be Assumed. In the event of a Corporate Transaction, any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue any or all Awards outstanding under the Plan or may substitute similar awards for Awards outstanding under the Plan (including but not limited to, awards to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction), and any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to Awards may be assigned by the Company to the successor of the Company (or the successor's parent company, if any), in connection with such Corporate Transaction. A surviving corporation or acquiring corporation (or its parent) may choose to assume or continue only a portion of an Award or substitute a similar award for only a portion of an Award, or may choose to assume or continue the Awards held by some, but not all Participants. The terms of any assumption, continuation or substitution will be set by the Board.

(ii) Awards Held by Current Participants. In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Awards or substitute similar awards for such outstanding Awards, then with respect to Awards that have not been assumed, continued or substituted and that are held by Participants whose Continuous Service has not terminated prior to the effective time of the Corporate Transaction (referred to as the "***Current Participants***"), the vesting of such Awards (and, with respect to Options and Stock Appreciation Rights, the time when such Awards may be exercised) will be accelerated in full to a date prior to the effective time of such Corporate Transaction (contingent upon the effectiveness of the Corporate Transaction) as the Board determines (or, if the Board does not determine such a date, to the date that is five days prior to the effective time of the Corporate Transaction), and such Awards will

terminate if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction, and any reacquisition or repurchase rights held by the Company with respect to such Awards will lapse (contingent upon the effectiveness of the Corporate Transaction). With respect to the vesting of Performance Awards that will accelerate upon the occurrence of a Corporate Transaction pursuant to this subsection (ii) and that have multiple vesting levels depending on the level of performance, unless otherwise provided in the Award Agreement, the vesting of such Performance Awards will accelerate at 100% of the target level upon the occurrence of the Corporate Transaction. With respect to the vesting of Awards that will accelerate upon the occurrence of a Corporate Transaction pursuant to this subsection (ii) and are settled in the form of a cash payment, such cash payment will be made no later than 30 days following the occurrence of the Corporate Transaction.

(iii) Awards Held by Persons other than Current Participants. In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Awards or substitute similar awards for such outstanding Awards, then with respect to Awards that have not been assumed, continued or substituted and that are held by persons other than Current Participants, such Awards will terminate if not exercised (if applicable) prior to the occurrence of the Corporate Transaction; provided, however, that any reacquisition or repurchase rights held by the Company with respect to such Awards will not terminate and may continue to be exercised notwithstanding the Corporate Transaction.

(iv) Payment for Awards in Lieu of Exercise. Notwithstanding the foregoing, in the event an Award will terminate if not exercised prior to the effective time of a Corporate Transaction, the Board may provide, in its sole discretion, that the holder of such Award may not exercise such Award but will receive a payment, in such form as may be determined by the Board, equal in value, at the effective time, to the excess, if any, of (1) the value of the property the Participant would have received upon the exercise of the Award (including, at the discretion of the Board, any unvested portion of such Award), over (2) any exercise price payable by such holder in connection with such exercise.

(d) Appointment of Stockholder Representative. As a condition to the receipt of an Award under this Plan, a Participant will be deemed to have agreed that the Award will be subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on the Participant's behalf with respect to any escrow, indemnities and any contingent consideration.

(e) No Restriction on Right to Undertake Transactions. The grant of any Award under the Plan and the issuance of shares pursuant to any Award does not affect or restrict in any way the right or power of the Company, the Board or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any Change in Control, any Corporate Transaction, any merger or consolidation of the Company, any issue of stock or of options, rights or options to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

7. ADMINISTRATION.

(a) Administration by Board. The Board will administer the Plan unless and until the Board delegates administration of the Plan to a Committee or Committees, as provided in subsection (c) below.

(b) Powers of Board. The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time: (1) which of the persons eligible under the Plan will be granted Awards; (2) when and how each Award will be granted; (3) what type or combination of types of Award will be granted; (4) the provisions of each Award granted (which need not be identical), including the time or times when a person will be permitted to receive an issuance of Common Stock or other payment pursuant to an Award; (5) the number of shares of Common Stock or cash equivalent with respect to which an Award will be granted to each such person; (6) the Fair Market Value applicable to an Award; and (7) the terms of any Performance Award that is not valued in whole or in part by reference to, or otherwise based on, the Common Stock, including the amount of cash payment or other property that may be earned and the timing of payment.

(ii) To construe and interpret the Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Award Agreement, in a manner and to the extent it deems necessary or expedient to make the Plan or Award fully effective.

(iii) To settle all controversies regarding the Plan and Awards granted under it.

(iv) To accelerate the time at which an Award may first be exercised or the time during which an Award or any part thereof will vest, notwithstanding the provisions in the Award Agreement stating the time at which it may first be exercised or the time during which it will vest.

(v) To prohibit the exercise of any Option, SAR or other exercisable Award during a period of up to 30 days prior to the consummation of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of Common Stock or the share price of the Common Stock including any Corporate Transaction, for reasons of administrative convenience.

(vi) To suspend or terminate the Plan at any time. Suspension or termination of the Plan will not Materially Impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant.

(vii) To amend the Plan in any respect the Board deems necessary or advisable; provided, however, that stockholder approval will be required for any amendment to the extent required by Applicable Law. Except as provided above, rights under any Award granted before amendment of the Plan will not be Materially Impaired by any amendment of the Plan unless (1) the Company requests the consent of the affected Participant, and (2) such Participant consents in writing.

(viii) To submit any amendment to the Plan for stockholder approval.

(ix) To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; provided however, that, a Participant’s rights under any Award will not be Materially Impaired by any such amendment unless (1) the Company requests the consent of the affected Participant, and (2) such Participant consents in writing.

(x) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

(xi) To adopt such procedures and sub-plans as are necessary or appropriate to permit and facilitate participation in the Plan by, or take advantage of specific tax treatment for Awards granted to, Employees, Directors or Consultants who are non-U.S. nationals or employed outside the United States (provided that Board approval will not be necessary for immaterial modifications to the Plan or any Award Agreement to ensure or facilitate compliance with the laws of the relevant non-U.S. jurisdiction).

(xii) To effect, at any time and from time to time, subject to the consent of any Participant whose Award is Materially Impaired by such action, (1) the reduction of the exercise price (or strike price) of any outstanding Option or SAR; (2) the cancellation of any outstanding Option or SAR and the grant in substitution therefor of (A) a new Option, SAR, Restricted Stock Award, RSU Award or Other Award, under the Plan or another equity plan of the Company, covering the same or a different number of shares of Common Stock, (B) cash and/or (C) other valuable consideration (as determined by the Board); or (3) any other action that is treated as a repricing under generally accepted accounting principles.

(c) Delegation to Committee.

(i) General. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to another Committee or a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. Each Committee may retain the authority to concurrently administer the Plan with Committee or subcommittee to which it has delegated its authority hereunder and may, at any time, revest in such Committee some or all of the powers previously delegated. The Board may retain the authority to concurrently administer the Plan with any Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(ii) Rule 16b-3 Compliance. To the extent an Award is intended to qualify for the exemption from Section 16(b) of the Exchange Act that is available under Rule 16b-3 of the Exchange Act, the Award will be granted by the Board or a Committee that consists solely of two or more Rule 16b-3 Directors, as determined under Rule 16b-3(b)(3) of the Exchange Act and thereafter any action establishing or modifying the terms of the Award will be approved by the Board or a Committee meeting such requirements to the extent necessary for such exemption to remain available.

(d) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board or any Committee in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

(e) Delegation to an Officer. The Board or any Committee may delegate to one or more Officers the authority to do one or both of the following: (i) designate Employees who are not Officers to be recipients of Awards, as well as designate the terms thereof, in each case to the extent permitted by Applicable Law, and (ii) determine the number of shares of Common Stock to be subject to such Awards granted to such Employees; provided, however, that the resolutions or charter adopted by the Board or any Committee evidencing such delegation will specify the total number of shares of Common Stock that may

be subject to the Awards granted by such Officer and that such Officer may not grant an Award to himself or herself. Any such Awards will be granted on the applicable form of Award Agreement most recently approved for use by the Board or the Committee, unless otherwise provided in the resolutions approving the delegation authority. Notwithstanding anything to the contrary herein, neither the Board nor any Committee may delegate to an Officer who is acting solely in the capacity of an Officer (and not also as a Director) the authority to determine the Fair Market Value.

8. TAX WITHHOLDING

(a) Withholding Authorization. As a condition to acceptance of any Award under the Plan, a Participant authorizes withholding from payroll and any other amounts payable to such Participant, and otherwise agree to make adequate provision for (including), any sums required to satisfy any U.S. and/or non-U.S. federal, state, or local tax or social insurance contribution withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise, vesting or settlement of such Award, as applicable. Accordingly, a Participant may not be able to exercise an Award even though the Award is vested, and the Company shall have no obligation to issue shares of Common Stock subject to an Award, unless and until such obligations are satisfied.

(b) Satisfaction of Withholding Obligation. To the extent permitted by the terms of an Award Agreement, the Company may, in its sole discretion, satisfy any U.S. and/or non-U.S. federal, state, local tax or social insurance withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; (v) by allowing a Participant to effectuate a "cashless exercise" pursuant to a program developed under Regulation T as promulgated by the U.S. Federal Reserve Board, or (vi) by such other method as may be set forth in the Award Agreement.

(c) No Obligation to Notify or Minimize Taxes; No Liability to Claims. Except as required by Applicable Law the Company has no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Award. Furthermore, the Company has no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an Award to the holder of such Award and will not be liable to any holder of an Award for any adverse tax consequences to such holder in connection with an Award. As a condition to accepting an Award under the Plan, each Participant (i) agrees to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from such Award or other Company compensation and (ii) acknowledges that such Participant was advised to consult with his or her own personal tax, financial and other legal advisors regarding the tax consequences of the Award and has either done so or knowingly and voluntarily declined to do so. Additionally, each Participant acknowledges any Option or SAR granted under the Plan is exempt from Section 409A only if the exercise or strike price is at least equal to the "fair market value" of the Common Stock on the date of grant as determined by the Internal Revenue Service and there is no other impermissible deferral of compensation associated with the Award. Additionally, as a condition to accepting an Option or SAR granted under the Plan, each Participant agrees not to make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the U.S. Internal Revenue Service asserts that such exercise price or strike price is less than the "fair market value" of the Common Stock on the date of grant as subsequently determined by the U.S. Internal Revenue Service.

(d) Withholding Indemnification. As a condition to accepting an Award under the Plan, in the event that the amount of the Company's and/or its Affiliate's withholding obligation in connection with

such Award was greater than the amount actually withheld by the Company and/or its Affiliates, each Participant agrees to indemnify and hold the Company and/or its Affiliates harmless from any failure by the Company and/or its Affiliates to withhold the proper amount.

9. MISCELLANEOUS.

(a) Source of Shares. The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

(b) Use of Proceeds from Sales of Common Stock. Proceeds from the sale of shares of Common Stock pursuant to Awards will constitute general funds of the Company.

(c) Corporate Action Constituting Grant of Awards. Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action approving the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement or related grant documents as a result of a clerical error in the Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement or related grant documents.

(d) Stockholder Rights. No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Award unless and until (i) such Participant has satisfied all requirements for exercise of the Award pursuant to its terms, if applicable, and (ii) the issuance of the Common Stock subject to such Award is reflected in the records of the Company.

(e) No Employment or Other Service Rights. Nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or affect the right of the Company or an Affiliate to terminate at will and without regard to any future vesting opportunity that a Participant may have with respect to any Award (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the Bylaws or an Affiliate, and any applicable provisions of the corporate law of the U.S. state or non-U.S. jurisdiction in which the Company or the Affiliate is incorporated, as the case may be. Further, nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award will constitute any promise or commitment by the Company or an Affiliate regarding the fact or nature of future positions, future work assignments, future compensation or any other term or condition of employment or service or confer any right or benefit under the Award or the Plan unless such right or benefit has specifically accrued under the terms of the Award Agreement and/or Plan.

(f) Change in Time Commitment. In the event a Participant's regular level of time commitment in the performance of his or her services for the Company and any Affiliates is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee or takes an extended leave of absence) after the date of grant of any Award to the Participant, the Board may determine, to the extent permitted by Applicable Law, to (i) make a corresponding reduction in the number of shares or cash amount subject to

any portion of such Award that is scheduled to vest or become payable after the date of such change in time commitment, and (ii) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Award that is so reduced or extended.

(g) Execution of Additional Documents. As a condition to accepting an Award under the Plan, the Participant agrees to execute any additional documents or instruments necessary or desirable, as determined in the Plan Administrator's sole discretion, to carry out the purposes or intent of the Award, or facilitate compliance with securities and/or other regulatory requirements, in each case at the Plan Administrator's request.

(h) Electronic Delivery and Participation. Any reference herein or in an Award Agreement to a "written" agreement or document will include any agreement or document delivered electronically, filed publicly at www.sec.gov (or any successor website thereto) or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access). By accepting any Award the Participant consents to receive documents by electronic delivery and to participate in the Plan through any on-line electronic system established and maintained by the Plan Administrator or another third party selected by the Plan Administrator. The form of delivery of any Common Stock (e.g., a stock certificate or electronic entry evidencing such shares) shall be determined by the Company.

(i) Clawback/Recovery. All Awards granted under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other Applicable Law and any clawback policy that the Company otherwise adopts, to the extent applicable and permissible under Applicable Law. In addition, the Board may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Board determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of Cause. No recovery of compensation under such a clawback policy will be an event giving rise to a Participant's right to voluntary terminate employment upon a "resignation for good reason," or for a "constructive termination" or any similar term under any plan of or agreement with the Company.

(j) Securities Law Compliance. A Participant will not be issued any shares in respect of an Award unless either (i) the shares are registered under the Securities Act; or (ii) the Company has determined that such issuance would be exempt from the registration requirements of the Securities Act. Each Award also must comply with other Applicable Law governing the Award, and a Participant will not receive such shares if the Company determines that such receipt would not be in material compliance with Applicable Law.

(k) Transfer or Assignment of Awards; Issued Shares. Except as expressly provided in the Plan or the form of Award Agreement, Awards granted under the Plan may not be transferred or assigned by the Participant. After the vested shares subject to an Award have been issued, or in the case of Restricted Stock and similar awards, after the issued shares have vested, the holder of such shares is free to assign, hypothecate, donate, encumber or otherwise dispose of any interest in such shares provided that any such actions are in compliance with the provisions herein, the terms of the Trading Policy and Applicable Law.

(l) Effect on Other Employee Benefit Plans. The value of any Award granted under the Plan, as determined upon grant, vesting or settlement, shall not be included as compensation, earnings, salaries, or other similar terms used when calculating any Participant's benefits under any employee benefit plan sponsored by the Company or any Affiliate, except as such plan otherwise expressly provides. The Company expressly reserves its rights to amend, modify, or terminate any of the Company's or any Affiliate's employee benefit plans.

(m) Deferrals. To the extent permitted by Applicable Law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may also establish programs and procedures for deferral elections to be made by Participants. Deferrals by will be made in accordance with the requirements of Section 409A.

(n) Section 409A. Unless otherwise expressly provided for in an Award Agreement, the Plan and Award Agreements will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A, and, to the extent not so exempt, in compliance with the requirements of Section 409A. If the Board determines that any Award granted hereunder is not exempt from and is therefore subject to Section 409A, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Agreement is silent on terms necessary for compliance, such terms are hereby incorporated by reference into the Award Agreement. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding an Award that constitutes "deferred compensation" under Section 409A is a "specified employee" for purposes of Section 409A, no distribution or payment of any amount that is due because of a "separation from service" (as defined in Section 409A without regard to alternative definitions thereunder) will be issued or paid before the date that is six months and one day following the date of such Participant's "separation from service" or, if earlier, the date of the Participant's death, unless such distribution or payment can be made in a manner that complies with Section 409A, and any amounts so deferred will be paid in a lump sum on the day after such six month period elapses, with the balance paid thereafter on the original schedule.

(o) Choice of Law. This Plan and any controversy arising out of or relating to this Plan shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to conflict of law principles that would result in any application of any law other than the law of the State of Delaware.

10. COVENANTS OF THE COMPANY.

(a) Compliance with Law. The Company will seek to obtain from each regulatory commission or agency, as may be deemed to be necessary, having jurisdiction over the Plan such authority as may be required to grant Awards and to issue and sell shares of Common Stock upon exercise or vesting of the Awards; provided, however, that this undertaking will not require the Company to register under the Securities Act the Plan, any Award or any Common Stock issued or issuable pursuant to any such Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary or advisable for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise or vesting of such Awards unless and until such authority is obtained. A Participant is not eligible for the grant of an Award or the subsequent issuance of Common Stock pursuant to the Award if such grant or issuance would be in violation of any Applicable Law.

11. ADDITIONAL RULES FOR AWARDS SUBJECT TO SECTION 409A.

(a) Application. Unless the provisions of this Section of the Plan are expressly superseded by the provisions in the form of Award Agreement, the provisions of this Section shall apply and shall supersede anything to the contrary set forth in the Award Agreement for a Non-Exempt Award.

(b) Non-Exempt Awards Subject to Non-Exempt Severance Arrangements. To the extent a Non-Exempt Award is subject to Section 409A due to application of a Non-Exempt Severance Arrangement, the following provisions of this subsection (b) apply.

(i) If the Non-Exempt Award vests in the ordinary course during the Participant's Continuous Service in accordance with the vesting schedule set forth in the Award Agreement, and does not accelerate vesting under the terms of a Non-Exempt Severance Arrangement, in no event will the shares be issued in respect of such Non-Exempt Award any later than the later of: (i) December 31st of the calendar year that includes the applicable vesting date, or (ii) the 60th day that follows the applicable vesting date.

(ii) If vesting of the Non-Exempt Award accelerates under the terms of a Non-Exempt Severance Arrangement in connection with the Participant's Separation from Service, and such vesting acceleration provisions were in effect as of the date of grant of the Non-Exempt Award and, therefore, are part of the terms of such Non-Exempt Award as of the date of grant, then the shares will be earlier issued in settlement of such Non-Exempt Award upon the Participant's Separation from Service in accordance with the terms of the Non-Exempt Severance Arrangement, but in no event later than the 60th day that follows the date of the Participant's Separation from Service. However, if at the time the shares would otherwise be issued the Participant is subject to the distribution limitations contained in Section 409A applicable to "specified employees," as defined in Section 409A(a)(2)(B)(i) of the Code, such shares shall not be issued before the date that is six months following the date of such Participant's Separation from Service, or, if earlier, the date of the Participant's death that occurs within such six-month period.

(iii) If vesting of a Non-Exempt Award accelerates under the terms of a Non-Exempt Severance Arrangement in connection with a Participant's Separation from Service, and such vesting acceleration provisions were not in effect as of the date of grant of the Non-Exempt Award and, therefore, are not a part of the terms of such Non-Exempt Award on the date of grant, then such acceleration of vesting of the Non-Exempt Award shall not accelerate the issuance date of the shares, but the shares shall instead be issued on the same schedule as set forth in the Grant Notice as if they had vested in the ordinary course during the Participant's Continuous Service, notwithstanding the vesting acceleration of the Non-Exempt Award. Such issuance schedule is intended to satisfy the requirements of payment on a specified date or pursuant to a fixed schedule, as provided under Treasury Regulations Section 1.409A-3(a)(4).

(c) Treatment of Non-Exempt Awards Upon a Corporate Transaction for Employees and Consultants. The provisions of this subsection (c) shall apply and shall supersede anything to the contrary set forth in the Plan with respect to the permitted treatment of any Non-Exempt Award in connection with a Corporate Transaction if the Participant was either an Employee or Consultant upon the applicable date of grant of the Non-Exempt Award.

(i) Vested Non-Exempt Awards. The following provisions shall apply to any Vested Non-Exempt Award in connection with a Corporate Transaction:

(1) If the Corporate Transaction is also a Section 409A Change in Control then the Acquiring Entity may not assume, continue or substitute the Vested Non-Exempt Award. Upon the Section 409A Change in Control the settlement of the Vested Non-Exempt Award will automatically

be accelerated and the shares will be immediately issued in respect of the Vested Non-Exempt Award. Alternatively, the Company may instead provide that the Participant will receive a cash settlement equal to the Fair Market Value of the shares that would otherwise be issued to the Participant upon the Section 409A Change in Control.

(2) If the Corporate Transaction is not also a Section 409A Change in Control, then the Acquiring Entity must either assume, continue or substitute each Vested Non-Exempt Award. The shares to be issued in respect of the Vested Non-Exempt Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of the Fair Market Value of the shares made on the date of the Corporate Transaction.

(ii) Unvested Non-Exempt Awards. The following provisions shall apply to any Unvested Non-Exempt Award unless otherwise determined by the Board pursuant to subsection (e) of this Section.

(1) In the event of a Corporate Transaction, the Acquiring Entity shall assume, continue or substitute any Unvested Non-Exempt Award. Unless otherwise determined by the Board, any Unvested Non-Exempt Award will remain subject to the same vesting and forfeiture restrictions that were applicable to the Award prior to the Corporate Transaction. The shares to be issued in respect of any Unvested Non-Exempt Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of Fair Market Value of the shares made on the date of the Corporate Transaction.

(2) If the Acquiring Entity will not assume, substitute or continue any Unvested Non-Exempt Award in connection with a Corporate Transaction, then such Award shall automatically terminate and be forfeited upon the Corporate Transaction with no consideration payable to any Participant in respect of such forfeited Unvested Non-Exempt Award. Notwithstanding the foregoing, to the extent permitted and in compliance with the requirements of Section 409A, the Board may in its discretion determine to elect to accelerate the vesting and settlement of the Unvested Non-Exempt Award upon the Corporate Transaction, or instead substitute a cash payment equal to the Fair Market Value of such shares that would otherwise be issued to the Participant, as further provided in subsection (e)(ii) below. In the absence of such discretionary election by the Board, any Unvested Non-Exempt Award shall be forfeited without payment of any consideration to the affected Participants if the Acquiring Entity will not assume, substitute or continue the Unvested Non-Exempt Awards in connection with the Corporate Transaction.

(3) The foregoing treatment shall apply with respect to all Unvested Non-Exempt Awards upon any Corporate Transaction, and regardless of whether or not such Corporate Transaction is also a Section 409A Change in Control.

(d) Treatment of Non-Exempt Awards Upon a Corporate Transaction for Non-Employee Directors. The following provisions of this subsection (d) shall apply and shall supersede anything to the contrary that may be set forth in the Plan with respect to the permitted treatment of a Non-Exempt Director Award in connection with a Corporate Transaction.

(i) If the Corporate Transaction is also a Section 409A Change in Control then the Acquiring Entity may not assume, continue or substitute the Non-Exempt Director Award. Upon the Section 409A Change in Control the vesting and settlement of any Non-Exempt Director Award will automatically be accelerated and the shares will be immediately issued to the Participant in respect of the Non-Exempt Director Award. Alternatively, the Company may provide that the Participant will instead receive a cash settlement equal to the Fair Market Value of the shares that would otherwise be issued to the Participant upon the Section 409A Change in Control pursuant to the preceding provision.

(ii) If the Corporate Transaction is not also a Section 409A Change in Control, then the Acquiring Entity must either assume, continue or substitute the Non-Exempt Director Award. Unless otherwise determined by the Board, the Non-Exempt Director Award will remain subject to the same vesting and forfeiture restrictions that were applicable to the Award prior to the Corporate Transaction. The shares to be issued in respect of the Non-Exempt Director Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of Fair Market Value made on the date of the Corporate Transaction.

(e) If the RSU Award is a Non-Exempt Award, then the provisions in this Section 11(e) shall apply and supersede anything to the contrary that may be set forth in the Plan or the Award Agreement with respect to the permitted treatment of such Non-Exempt Award:

(i) Any exercise by the Board of discretion to accelerate the vesting of a Non-Exempt Award shall not result in any acceleration of the scheduled issuance dates for the shares in respect of the Non-Exempt Award unless earlier issuance of the shares upon the applicable vesting dates would be in compliance with the requirements of Section 409A.

(ii) The Company explicitly reserves the right to earlier settle any Non-Exempt Award to the extent permitted and in compliance with the requirements of Section 409A, including pursuant to any of the exemptions available in Treasury Regulations Section 1.409A-3(j)(4)(ix).

(iii) To the extent the terms of any Non-Exempt Award provide that it will be settled upon a Change in Control or Corporate Transaction, to the extent it is required for compliance with the requirements of Section 409A, the Change in Control or Corporate Transaction event triggering settlement must also constitute a Section 409A Change in Control. To the extent the terms of a Non-Exempt Award provides that it will be settled upon a termination of employment or termination of Continuous Service, to the extent it is required for compliance with the requirements of Section 409A, the termination event triggering settlement must also constitute a Separation From Service. However, if at the time the shares would otherwise be issued to a Participant in connection with a "separation from service" such Participant is subject to the distribution limitations contained in Section 409A applicable to "specified employees," as defined in Section 409A(a)(2)(B)(i) of the Code, such shares shall not be issued before the date that is six months following the date of the Participant's Separation From Service, or, if earlier, the date of the Participant's death that occurs within such six month period.

(iv) The provisions in this subsection (e) for delivery of the shares in respect of the settlement of a RSU Award that is a Non-Exempt Award are intended to comply with the requirements of Section 409A so that the delivery of the shares to the Participant in respect of such Non-Exempt Award will not trigger the additional tax imposed under Section 409A, and any ambiguities herein will be so interpreted.

12. SEVERABILITY.

If all or any part of the Plan or any Award Agreement is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any portion of the Plan or such Award Agreement not declared to be unlawful or invalid. Any Section of the Plan or any Award Agreement (or part of such a Section) so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

13. TERMINATION OF THE PLAN.

The Board may suspend or terminate the Plan at any time. No Incentive Stock Options may be granted after the tenth anniversary of the earlier of: (i) the Adoption Date, or (ii) the date the Plan is approved by the Company's stockholders. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

14. DEFINITIONS.

As used in the Plan, the following definitions apply to the capitalized terms indicated below:

(a) "***Acquiring Entity***" means the surviving or acquiring corporation (or its parent company) in connection with a Corporate Transaction.

(b) "***Adoption Date***" means the date the Plan is first approved by the Board or Compensation Committee, as applicable.

(c) "***Affiliate***" means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 promulgated under the Securities Act. The Board may determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(d) "***Applicable Law***" means shall mean the Code, any applicable U.S. or non U.S. securities, federal, state, material local or municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, listing rule, regulation, judicial decision, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body (including under the authority of any applicable self-regulating organization such as the Nasdaq Stock Market, New York Stock Exchange, or the Financial Industry Regulatory Authority).

(e) "***Award***" means any right to receive Common Stock, cash or other property granted under the Plan (including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a RSU Award, a SAR, a Performance Award or any Other Award).

(f) "***Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award. The Award Agreement generally consists of the Grant Notice and the agreement containing the written summary of the general terms and conditions applicable to the Award and which is provided to a Participant along with the Grant Notice.

(g) "***Board***" means the board of directors of the Company (or its designee). Any decision or determination made by the Board shall be a decision or determination that is made in the sole discretion of the Board (or its designee), and such decision or determination shall be final and binding on all Participants.

(h) "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Award after the Effective Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(i) "***Capital Stock***" means each and every class of stock of the Company, regardless of the number of votes per share.

(j) "***Cause***" has the meaning ascribed to such term in any written agreement between the Participant and the Company, or any Company severance plan covering such Participant, in either case

defining such term, and, in the absence of such agreement, such term means, with respect to a Participant, (a) unauthorized use or disclosure of the Company's confidential information or trade secrets in violation of any covenants agreement or confidentiality agreement between Participant and the Company; (b) conviction of, or plea of "guilty" or "no contest" to, a felony under the laws of the United States or any state thereof; (c) Participant's gross negligence or willful misconduct relating to Participant's role and/or responsibilities to the Company; or (iv) a continued material breach by Participant of any agreement between Participant and the Company, a continued material failure by Participant to comply with the Company's written policies or rules, or a continued failure by Participant to perform assigned duties after receiving sixty (60) days written notification of such failure or breach from the Company and a reasonable opportunity to cure. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause will be made by the Board (or a committee thereof) with respect to Participants who are executive officers of the Company and by the Company's Chief Executive Officer or his delegate with respect to Participants who are not executive officers of the Company. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Awards held by such Participant will have no effect upon any determination of the rights or obligations of the Company or an Affiliate, as the case may be, or such Participant for any other purpose.

(k) "***Change in Control***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events; provided, however, to the extent necessary to avoid adverse personal income tax consequences to the Participant in connection with an Award, also constitutes a Section 409A Change in Control:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities, or (C) solely because the level of Ownership held by any Exchange Act Person (the "***Subject Person***") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur, except for a liquidation into a parent corporation;

(iv) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than 50% of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(v) individuals who, on the Adoption Date, are members of the Board (the "***Incumbent Board***") cease for any reason to constitute at least a majority of the members of the Board; provided, however, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Plan, be considered as a member of the Incumbent Board.

Notwithstanding the foregoing or any other provision of this Plan, (A) the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Awards subject to such agreement; provided, however, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

(l) "***Code***" means the U.S. Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(m) "***Committee***" means the Compensation Committee and any other committee of one or more Directors to whom authority has been delegated by the Board or Compensation Committee in accordance with the Plan.

(n) "***Common Stock***" means the common stock of the Company.

(o) "***Company***" means AN2 Therapeutics, Inc., a Delaware corporation, and any successor corporation thereto.

(p) "***Compensation Committee***" means the Compensation Committee of the Board.

(q) "***Consultant***" means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a "Consultant" for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company's securities to such person.

(r) "***Continuous Service***" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in

the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Director or Consultant or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, will not terminate a Participant's Continuous Service; provided, however, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, such Participant's Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate or to a Director will not constitute an interruption of Continuous Service. To the extent permitted by Applicable Law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Company, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in an Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by Applicable Law and, subject to Applicable Law, a leave of absence will be treated as Continuous Service for no longer than six months. In addition, to the extent required for exemption from or compliance with Section 409A, the determination of whether there has been a termination of Continuous Service will be made, and such term will be construed, in a manner that is consistent with the definition of "separation from service" as defined under U.S. Treasury Regulation Section 1.409A-1(h) (without regard to any alternative definition thereunder).

(s) "***Corporate Transaction***" means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of at least 50% of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Capital Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(t) "***Director***" means a member of the Board.

(u) "***determine***" or "***determined***" means as determined by the Board or the Committee (or its designee) in its sole discretion.

(v) "***Disability***" means, with respect to a Participant, such Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, as provided in Section 22(e)(3) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(w) "***Effective Date***" means the IPO Date, provided this Plan is approved by the Company's stockholders prior to the IPO Date.

(x) "***Employee***" means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an "***Employee***" for purposes of the Plan.

(y) "***Employer***" means the Company or the Affiliate that employs the Participant.

(z) "***Entity***" means a corporation, partnership, limited liability company or other entity.

(aa) "***Exchange Act***" means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(bb) "***Exchange Act Person***" means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities.

(cc) "***Fair Market Value***" means, as of any date, unless otherwise determined by the Board, the value of the Common Stock (as determined on a per share or aggregate basis, as applicable) determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value will be the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable.

(ii) If there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing selling price on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, or if otherwise determined by the Board, the Fair Market Value will be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(dd) "***Governmental Body***" means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) U.S. or non-U.S. federal, state, local, municipal, or other government; (c) governmental or regulatory body, or quasi-governmental body of any nature (including any governmental division, department, administrative agency or bureau, commission, authority, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or Entity and any court or other tribunal, and for the avoidance of doubt, any Tax authority) or other body exercising similar powers or authority; or (d) self-regulatory organization (including the Nasdaq Stock Market, New York Stock Exchange, and the Financial Industry Regulatory Authority).

(ee) "***Grant Notice***" means the notice provided to a Participant that he or she has been granted an Award under the Plan and which includes the name of the Participant, the type of Award, the date of grant of the Award, number of shares of Common Stock subject to the Award or potential cash payment right, (if any), the vesting schedule for the Award (if any) and other key terms applicable to the Award.

(ff) "***Incentive Stock Option***" means an option granted pursuant to Section 4 of the Plan that is intended to be, and qualifies as, an "incentive stock option" within the meaning of Section 422 of the Code.

(gg) "***IPO Date***" means the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

(hh) "***Materially Impair***" means any amendment to the terms of the Award that materially adversely affects the Participant's rights under the Award. A Participant's rights under an Award will not be deemed to have been Materially Impaired by any such amendment if the Board, in its sole discretion, determines that the amendment, taken as a whole, does not materially impair the Participant's rights. For example, the following types of amendments to the terms of an Award do not Materially Impair the Participant's rights under the Award: (i) imposition of reasonable restrictions on the minimum number of shares subject to an Option that may be exercised, (ii) to maintain the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (iii) to change the terms of an Incentive Stock Option in a manner that disqualifies, impairs or otherwise affects the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (iv) to clarify the manner of exemption from, or to bring the Award into compliance with or qualify it for an exemption from, Section 409A; or (v) to comply with other Applicable Laws.

(ii) "***Non-Employee Director***" means a Director who is not a current employee or officer of the Company or an Affiliate and does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act ("***Regulation S-K***")).

(jj) "***Non-Exempt Award***" means any Award that is subject to, and not exempt from, Section 409A, including as the result of (i) a deferral of the issuance of the shares subject to the Award which is elected by the Participant or imposed by the Company or (ii) the terms of any Non-Exempt Severance Agreement.

(kk) "***Non-Exempt Director Award***" means a Non-Exempt Award granted to a Participant who was a Director but not an Employee on the applicable grant date.

(ll) "***Non-Exempt Severance Arrangement***" means a severance arrangement or other agreement between the Participant and the Company that provides for acceleration of vesting of an Award and issuance of the shares in respect of such Award upon the Participant's termination of employment or separation from service (as such term is defined in Section 409A(a)(2)(A)(i) of the Code (and without regard to any alternative definition thereunder) ("***Separation from Service***") and such severance benefit does not satisfy the requirements for an exemption from application of Section 409A provided under Treasury Regulations Section 1.409A-1(b)(4), 1.409A-1(b)(9) or otherwise.

(mm) "***Nonstatutory Stock Option***" means any option granted pursuant to Section 4 of the Plan that does not qualify as an Incentive Stock Option.

(nn) "***Officer***" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(oo) "***Option***" means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(pp) "***Option Agreement***" means a written agreement between the Company and the Optionholder evidencing the terms and conditions of the Option grant. The Option Agreement includes the Grant Notice for the Option and the agreement containing the written summary of the general terms and conditions applicable to the Option and which is provided to a Participant along with the Grant Notice. Each Option Agreement will be subject to the terms and conditions of the Plan.

(qq) "***Optionholder***" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(rr) "***Other Award***" means an award valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than 100% of the Fair Market Value at the time of grant) that is not an Incentive Stock Options, Nonstatutory Stock Option, SAR, Restricted Stock Award, RSU Award or Performance Award.

(ss) "***Other Award Agreement***" means a written agreement between the Company and a holder of an Other Award evidencing the terms and conditions of an Other Award grant. Each Other Award Agreement will be subject to the terms and conditions of the Plan.

(tt) "***Own***," "***Owned***," "***Owner***," "***Ownership***" means that a person or Entity will be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(uu) "***Participant***" means an Employee, Director or Consultant to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Award.

(vv) "***Performance Award***" means an Award that may vest or may be exercised or a cash award that may vest or become earned and paid contingent upon the attainment during a Performance Period of certain Performance Goals and which is granted under the terms and conditions of Section 5(b) pursuant to such terms as are approved by the Board. In addition, to the extent permitted by Applicable Law and set forth in the applicable Award Agreement, the Board may determine that cash or other property may be used in payment of Performance Awards. Performance Awards that are settled in cash or other property are not required to be valued in whole or in part by reference to, or otherwise based on, the Common Stock.

(ww) "***Performance Criteria***" means the one or more criteria that the Board will select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that will be used to establish such Performance Goals may be based on any one of, or combination of, the following as determined by the Board: earnings (including earnings per share and net earnings); earnings before interest, taxes and depreciation; earnings before interest, taxes, depreciation and amortization; total stockholder return; return on equity or average stockholder's equity; return on assets, investment, or capital employed; stock price; margin (including gross margin); income (before or after taxes); operating income; operating income after taxes; pre-tax profit; operating cash flow; sales or revenue targets; increases in revenue or product revenue; expenses and cost reduction goals; improvement in or attainment of working

capital levels; economic value added (or an equivalent metric); market share; cash flow; cash flow per share; share price performance; debt reduction; customer satisfaction; stockholders' equity; capital expenditures; debt levels; operating profit or net operating profit; workforce diversity; growth of net income or operating income; billings; pre-clinical development related compound goals; financing; regulatory milestones, including approval of a compound; stockholder liquidity; corporate governance and compliance; product commercialization; intellectual property; personnel matters; progress of internal research or clinical programs; progress of partnered programs; partner satisfaction; budget management; clinical achievements; completing phases of a clinical study (including the treatment phase); announcing or presenting preliminary or final data from clinical studies; in each case, whether on particular timelines or generally; timely completion of clinical trials; submission of INDs and NDAs and other regulatory achievements; partner or collaborator achievements; internal controls, including those related to the Sarbanes-Oxley Act of 2002; research progress, including the development of programs; investor relations, analysts and communication; manufacturing achievements (including obtaining particular yields from manufacturing runs and other measurable objectives related to process development activities); strategic partnerships or transactions (including in-licensing and out-licensing of intellectual property; establishing relationships with commercial entities with respect to the marketing, distribution and sale of the Company's products (including with group purchasing organizations, distributors and other vendors); supply chain achievements (including establishing relationships with manufacturers or suppliers of active pharmaceutical ingredients and other component materials and manufacturers of the Company's products); co-development, co-marketing, profit sharing, joint venture or other similar arrangements; individual performance goals; corporate development and planning goals; and other measures of performance selected by the Board or Committee.

(xx) "***Performance Goals***" means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the Board (i) in the Award Agreement at the time the Award is granted or (ii) in such other document setting forth the Performance Goals at the time the Performance Goals are established, the Board will appropriately make adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects; (3) to exclude the effects of changes to generally accepted accounting principles; (4) to exclude the effects of any statutory adjustments to corporate tax rates; (5) to exclude the effects of items that are "unusual" in nature or occur "infrequently" as determined under generally accepted accounting principles; (6) to exclude the dilutive effects of acquisitions or joint ventures; (7) to assume that any business divested by the Company achieved performance objectives at targeted levels during the balance of a Performance Period following such divestiture; (8) to exclude the effect of any change in the outstanding shares of Capital Stock of the Company by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (9) to exclude the effects of stock based compensation and the award of bonuses under the Company's bonus plans; (10) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to expensed under generally accepted accounting principles; and (11) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under generally accepted accounting principles. In addition, the Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for such Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Award Agreement or the written terms of a Performance Cash Award.

(yy) "***Performance Period***" means the period of time selected by the Board over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to vesting or exercise of an Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board.

(zz) "***Plan***" means this AN2 Therapeutics, Inc. 2022 Equity Incentive Plan.

(aaa) "***Plan Administrator***" means the person, persons, and/or third-party administrator designated by the Company to administer the day-to-day operations of the Plan and the Company's other equity incentive programs.

(bbb) "***Post-Termination Exercise Period***" means the period following termination of a Participant's Continuous Service within which an Option or SAR is exercisable, as specified in Section 4(j).

(ccc) "***Prior Plan's Available Reserve***" means the number of shares available for the grant of new awards under the Prior Plan as of immediately prior to the Effective Date.

(ddd) "***Prior Plan***" means the AN2 Therapeutics, Inc. 2017 Equity Incentive Plan, as amended.

(eee) "***Prospectus***" means the document containing the Plan information specified in Section 10(a) of the Securities Act.

(fff) "***Restricted Stock Award***" or "***RSA***" means an Award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 5(a).

(ggg) "***Restricted Stock Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. The Restricted Stock Award Agreement includes the Grant Notice for the Restricted Stock Award and the agreement containing the written summary of the general terms and conditions applicable to the Restricted Stock Award and which is provided to a Participant along with the Grant Notice. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

(hhh) "***Returning Shares***" means shares subject to outstanding stock awards granted under the Prior Plan and that following the Effective Date: (A) are not issued because such stock award or any portion thereof expires or otherwise terminates without all of the shares covered by such stock award having been issued; (B) are not issued because such stock award or any portion thereof is settled in cash; (C) are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required for the vesting of such shares; (D) are withheld or reacquired to satisfy the exercise, strike or purchase price; or (E) are withheld or reacquired to satisfy a tax withholding obligation.

(iii) "***RSU Award***" or "***RSU***" means an Award of restricted stock units representing the right to receive an issuance of shares of Common Stock which is granted pursuant to the terms and conditions of Section 5(a).

(jjj) "***RSU Award Agreement***" means a written agreement between the Company and a holder of a RSU Award evidencing the terms and conditions of a RSU Award. The RSU Award Agreement includes the Grant Notice for the RSU Award and the agreement containing the written summary of the general terms and conditions applicable to the RSU Award and which is provided to a Participant along with the Grant Notice. Each RSU Award Agreement will be subject to the terms and conditions of the Plan.

(kkk) "***Rule 16b-3***" means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(lll) "***Rule 16b-3 Director***" means a Non-Employee Director who either (i) does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a "non-employee director" for purposes of Rule 16b-3.

(mmm) "***Rule 405***" means Rule 405 promulgated under the Securities Act.

(nnn) "***Section 409A***" means Section 409A of the Code and the regulations and other guidance thereunder.

(ooo) "***Section 409A Change in Control***" means a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the Company's assets, as provided in Section 409A(a)(2)(A)(v) of the Code and Treasury Regulations Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder).

(ppp) "***Securities Act***" means the U.S. Securities Act of 1933, as amended.

(qqq) "***Share Reserve***" means the number of shares available for issuance under the Plan as set forth in Section 2(a).

(rrr) "***Stock Appreciation Right***" or "***SAR***" means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 4.

(sss) "***SAR Agreement***" means a written agreement between the Company and a holder of a SAR evidencing the terms and conditions of a SAR grant. The SAR Agreement includes the Grant Notice for the SAR and the agreement containing the written summary of the general terms and conditions applicable to the SAR and which is provided to a Participant along with the Grant Notice. Each SAR Agreement will be subject to the terms and conditions of the Plan.

(ttt) "***Subsidiary***" means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

(uuu) "***Ten Percent Stockholder***" means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

(vvv) "***Trading Policy***" means the Company's policy permitting certain individuals to sell Company shares only during certain "window" periods and/or otherwise restricts the ability of certain individuals to transfer or encumber Company shares, as in effect from time to time.

(www) "***Unvested Non-Exempt Award***" means the portion of any Non-Exempt Award that had not vested in accordance with its terms upon or prior to the date of any Corporate Transaction.

(xxx) "***Vested Non-Exempt Award***" means the portion of any Non-Exempt Award that had vested in accordance with its terms upon or prior to the date of a Corporate Transaction.

Exhibit 10.4

Standard Stock Option Grant Package

AN2 THERAPEUTICS, INC.
STOCK OPTION GRANT NOTICE
(2022 EQUITY INCENTIVE PLAN)

AN2 Therapeutics, Inc. (the "***Company***"), pursuant to its 2022 Equity Incentive Plan (the "***Plan***"), has granted to you ("***Optionholder***") an option to purchase the number of shares of the Common Stock set forth below (the "***Option***"). Your Option is subject to all of the terms and conditions as set forth in this Stock Option Grant Notice (the "***Grant Notice***") and in the Plan, the Stock Option Agreement and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Stock Option Agreement shall have the meanings set forth in the Plan or the Stock Option Agreement, as applicable.

Optionholder:	_____
Date of Grant:	_____
Vesting Commencement Date:	_____
Number of Shares of Common Stock Subject to Option:	_____
Exercise Price (Per Share):	_____
Total Exercise Price:	_____
Expiration Date:	_____

Type of Grant: [Incentive Stock Option] OR [Nonstatutory Stock Option]

Exercise and Vesting Schedule: Subject to the Optionholder's Continuous Service through each applicable vesting date, the Option will vest as follows:

Optionholder Acknowledgements: By your signature below or by electronic acceptance or authentication in a form authorized by the Company, you understand and agree that:

- The Option is governed by the Grant Notice, and the provisions of the Plan, the Stock Option Agreement and the Notice of Exercise, all of which are made a part of this document. Unless otherwise provided in the Plan, this Grant Notice and the Stock Option Agreement (together, the "***Option Agreement***") may not be modified, amended or revised except in a writing signed by you and a duly authorized officer of the Company.
- If the Option is designated an Incentive Stock Option, it (plus other outstanding Incentive Stock Options granted to you) cannot be first exercisable for more than $100,000 in value (measured by exercise price) in any calendar year. Any excess over $100,000 is a Nonstatutory Stock Option.
- You consent to receive this Grant Notice, the Stock Option Agreement, the Plan and any other Plan-related documents (including the Prospectus) by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.
- You have read and are familiar with the provisions of the Plan, the Grant Notice, the Stock Option Agreement, the Notice of Exercise and the Prospectus. In the event of any conflict between the provisions in this Grant Notice, the Option Agreement, the Notice of Exercise, or the Prospectus and the terms of the Plan, the terms of the Plan shall control.
- The Option Agreement sets forth the entire understanding between you and the Company regarding the acquisition of Common Stock and supersedes all prior oral and written agreements, promises and/or representations on that subject with the exception of other equity awards previously granted to you and any written employment agreement, offer letter, severance agreement, written severance plan or policy, or other written agreement between the Company and you in each case that specifies the terms that should govern this Option.

- Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

AN2 THERAPEUTICS, INC.

By: _____
Signature

Title: _____

Date: _____

OPTIONHOLDER:

By: _____
Signature

Date: _____

ATTACHMENTS: Stock Option Agreement, 2022 Equity Incentive Plan, Notice of Exercise

ATTACHMENT I

STOCK OPTION AGREEMENT

AN2 THERAPEUTICS, INC.
2022 EQUITY INCENTIVE PLAN

STOCK OPTION AGREEMENT

As reflected by your Stock Option Grant Notice ("***Grant Notice***"), AN2 Therapeutics, Inc. (the "***Company***") has granted you an option under its 2022 Equity Incentive Plan (the "***Plan***") to purchase a number of shares of Common Stock at the exercise price indicated in your Grant Notice (the "***Option***"). Capitalized terms not explicitly defined in this Agreement but defined in the Grant Notice or the Plan shall have the meanings set forth in the Grant Notice or Plan, as applicable. The terms of your Option as specified in the Grant Notice and this Stock Option Agreement constitute your Option Agreement.

The general terms and conditions applicable to your Option are as follows:

1. GOVERNING PLAN DOCUMENT. Your Option is subject to all the provisions of the Plan, including but not limited to the provisions in:

(a) Section 6 regarding the impact of a Capitalization Adjustment, dissolution, liquidation, or Corporate Transaction on your Option;

(b) Section 9(e) regarding the Company's retained rights to terminate your Continuous Service notwithstanding the grant of the Option; and

(c) Section 8(c) regarding the tax consequences of your Option.

Your Option is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the Option Agreement and the provisions of the Plan, the provisions of the Plan shall control.

2. EXERCISE.

(a) You may generally exercise the vested portion of your Option for whole shares of Common Stock at any time during its term by delivery of payment of the exercise price and applicable withholding taxes and other required documentation to the Plan Administrator in accordance with the exercise procedures established by the Plan Administrator, which may include an electronic submission. Please review Sections 4(i), 4(j) and 7(b)(v) of the Plan, which may restrict or prohibit your ability to exercise your Option during certain periods.

(b) To the extent permitted by Applicable Law, you may pay your Option exercise price as follows:

(i) cash, check, bank draft or money order;

(ii) subject to Company and/or Committee consent at the time of exercise, pursuant to a "cashless exercise" program as further described in Section 4(c)(ii) of the Plan if at the time of exercise the Common Stock is publicly traded;

(iii) subject to Company and/or Committee consent at the time of exercise, by delivery of previously owned shares of Common Stock as further described in Section 4(c)(iii) of the Plan; or

(iv) subject to Company and/or Committee consent at the time of exercise, if the Option is a Nonstatutory Stock Option, by a "net exercise" arrangement as further described in Section 4(c)(iv) of the Plan.

(c) By accepting your Option, you agree that you will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company held by you, for a period of one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as the underwriters or the Company will request to facilitate compliance with FINRA Rule 2241 or any successor or similar rules or regulation (the "***Lock-Up Period***"); *provided*, *however*, that nothing contained in this section will prevent the exercise of a repurchase option, if any, in favor of the Company during the Lock-Up Period. You further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to your shares of Common Stock until the end of such period. You also agree that any transferee of any shares of Common Stock (or other securities) of the Company held by you will be bound by this Section 2(c). The underwriters of the Company's stock are intended third party beneficiaries of this Section 2(c) and will have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

3. **TERM**. You may not exercise your Option before the commencement of its term or after its term expires. The term of your Option commences on the Date of Grant and expires upon the earliest of the following:

(a) immediately upon the termination of your Continuous Service for Cause;

(b) three months after the termination of your Continuous Service for any reason other than Cause, Disability or death;

(c) 12 months after the termination of your Continuous Service due to your Disability;

(d) 18 months after your death if you die during your Continuous Service;

(e) immediately upon a Corporate Transaction if the Board has determined that the Option will terminate in connection with a Corporate Transaction;

(f) the Expiration Date indicated in your Grant Notice; or

(g) the day before the 10th anniversary of the Date of Grant.

Notwithstanding the foregoing, if you die during the period provided in Section 3(b) or 3(c) above, the term of your Option shall not expire until the earlier of (i) 18 months after your death, (ii) upon any termination of the Option in connection with a Corporate Transaction, (iii) the Expiration Date indicated in your Grant Notice, or (iv) the day before the tenth anniversary of the Date of Grant. Additionally, the Post-Termination Exercise Period of your Option may be extended as provided in Section 4(i) of the Plan.

To obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the date of grant of your Option and ending on the day three months before the date of your Option's exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or Disability. If the Company provides for the extended exercisability of your Option under certain circumstances for your benefit, your Option will not necessarily be treated as an Incentive Stock Option if you exercise your Option more than three months after the date your employment terminates.

4. WITHHOLDING OBLIGATIONS. As further provided in Section 8 of the Plan: (a) you may not exercise your Option unless the applicable tax withholding obligations are satisfied, and (b) at the time you exercise your Option, in whole or in part, or at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "cashless exercise" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations, if any, which arise in connection with the exercise of your Option in accordance with the withholding procedures established by the Company. Accordingly, you may not be able to exercise your Option even though the Option is vested, and the Company shall have no obligation to issue shares of Common Stock subject to your Option, unless and until such obligations are satisfied. In the event that the amount of the Company's withholding obligation in connection with your Option was greater than the amount actually withheld by the Company, you agree to indemnify and hold the Company harmless from any failure by the Company to withhold the proper amount.

5. INCENTIVE STOCK OPTION DISPOSITION REQUIREMENT. If your Option is an Incentive Stock Option, you must notify the Company in writing within 15 days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your Option that occurs within two years after the date of your Option grant or within one year after such shares of Common Stock are transferred upon exercise of your Option. The Company may require that such shares of Common Stock be retained with a particular broker or agent for a designated period of time and/or may establish other procedures to permit tracking of qualifying and disqualifying dispositions of such shares of Common Stock

6. TRANSFERABILITY. Except as otherwise provided in Section 4(e) of the Plan, your Option is not transferable, except by will or by the applicable laws of descent and distribution, and is exercisable during your life only by you.

7. CORPORATE TRANSACTION. Your Option is subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on your behalf with respect to any escrow, indemnities and any contingent consideration.

8. NO LIABILITY FOR TAXES. As a condition to accepting the Option, you hereby (a) agree to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from the Option or other Company compensation and (b) acknowledge that you were advised to consult with your own personal tax, financial and other legal advisors regarding the tax consequences of the Option and have either done so or knowingly and voluntarily declined to do so. Additionally, you acknowledge that the Option is exempt from Section 409A only if the exercise price is at least equal to the "fair market value" of the Common Stock on the date of grant as determined by the Internal Revenue Service and there is no other impermissible deferral of compensation associated with the Option. Additionally, as a condition to accepting the Option, you agree not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the Internal Revenue Service asserts that such exercise is less than the "fair market value" of the Common Stock on the date of grant as subsequently determined by the Internal Revenue Service.

9. SEVERABILITY. If any part of this Option Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Option Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Option Agreement (or part of such a Section) so declared to be unlawful or invalid will, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid

10. OTHER DOCUMENTS. You hereby acknowledge receipt of or the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the Securities Act, which includes the Prospectus. In addition, you acknowledge and agree to be subject to the Company's Trading Policy, which such Trading Policy has been or will be made available to you.

11. QUESTIONS. If you have questions regarding these or any other terms and conditions applicable to your Option, including a summary of the applicable federal income tax consequences please see the Prospectus.

* * * *

ATTACHMENT II

2022 EQUITY INCENTIVE PLAN

ATTACHMENT III

NOTICE OF EXERCISE

AN2 THERAPEUTICS, INC.

(2022 EQUITY INCENTIVE PLAN)

NOTICE OF EXERCISE

AN2 THERAPEUTICS, INC.
1800 EL CAMINO REAL, SUITE D
MENLO PARK, CA 94027

Date of Exercise:

This constitutes notice to AN2 Therapeutics, Inc. (the "***Company***") that I elect to purchase the below number of shares of Common Stock of the Company (the "***Shares***") by exercising my Option for the price set forth below. Capitalized terms not explicitly defined in this Notice of Exercise but defined in the Grant Notice, Option Agreement or 2022 Equity Incentive Plan (the "***Plan***") shall have the meanings set forth therein, as applicable. Use of certain payment methods is subject to Company and/or Committee consent and certain additional requirements set forth in the Option Agreement and the Plan.

Type of option (check one):	Incentive ☐	Nonstatutory ☐
Date of Grant:		
Number of Shares as to which Option is exercised:		
Certificates to be issued in name of:		
Total exercise price:	$_____	
Cash, check, bank draft or money order delivered herewith:	$_____	
Value of Shares delivered herewith:	$_____	
Regulation T Program (cashless exercise)	$_____	
Value of Shares pursuant to net exercise:	$_____	

By this exercise, I agree (i) to provide such additional documents as the Company may require pursuant to the terms of the Plan, (ii) to satisfy the tax withholding obligations, if any, relating to the exercise of this Option as set forth in the Option Agreement, and (iii) if this exercise relates to an incentive stock option, to notify the Company in writing within 15 days after the date of any disposition of any of the Shares issued upon exercise of this Option that occurs within two years after the Date of Grant or within one year after such Shares are issued upon exercise of this Option.

I further agree that, if required by the Company (or a representative of the underwriters) in connection with the first underwritten registration of the offering of any securities of the Company under the Securities Act, I will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company for a period of one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act (or such longer period as the underwriters or the Company shall request to facilitate compliance with FINRA Rule 2241 or any successor or similar rule or regulation) (the "***Lock-Up Period***"). I further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to securities subject to the foregoing restrictions until the end of such period.

Very truly yours,

_____

Exhibit 10.5

AN2 THERAPEUTICS, INC.
RSU AWARD GRANT NOTICE
(2022 EQUITY INCENTIVE PLAN)

AN2 Therapeutics, Inc. (the "***Company***"), pursuant to its 2022 Equity Incentive Plan (the "***Plan***") has awarded to you (the "***Participant***") the number of restricted stock units specified, and on the terms set forth, below (the "***RSU Award***"). Your RSU Award is subject to all of the terms and conditions set forth herein and in the Plan and the Award Agreement (the "***Agreement***"), both of which are attached hereto and incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Agreement shall have the meanings set forth in the Plan or the Agreement.

Participant:	_____
Date of Grant:	_____
Vesting Commencement Date:	_____
Number of Restricted Stock Units:	_____
Vesting Schedule:	[_____]. Notwithstanding the foregoing, vesting shall terminate upon Participant's termination of Continuous Service.
Issuance Schedule:	One share of Common Stock will be issued for each restricted stock unit which vests at the time set forth in Section 5 of the Agreement.

Participant Acknowledgements: By your signature below or by electronic acceptance or authentication in a form authorized by the Company, you understand and agree that:

- The RSU Award is governed by this RSU Award Grant Notice (the "***Grant Notice***"), and the provisions of the Plan and the Agreement, all of which are made a part of this document. Unless otherwise provided in the Plan, this Grant Notice and the Agreement (together, the "***RSU Award Agreement***") may not be modified, amended or revised except in a writing signed by you and a duly authorized officer of the Company.
- You have read and are familiar with the provisions of the Plan, the RSU Award Agreement and the Prospectus. In the event of any conflict between the provisions in the RSU Award Agreement, or the Prospectus and the terms of the Plan, the terms of the Plan shall control.
- The RSU Award Agreement sets forth the entire understanding between you and the Company regarding the acquisition of Common Stock and supersedes all prior oral and written agreements, promises and/or representations on that subject with the exception of (i) other equity awards previously granted to you, and (ii) any written employment agreement, offer letter, severance agreement, written severance plan or policy, or other written agreement between the Company and you in each case that specifies the terms that should govern this RSU Award.

AN2 THERAPEUTICS, INC.	**PARTICIPANT:**
By: _____	By: _____
Signature	Signature
Title: _____	Date: _____
Date: _____	

ATTACHMENTS: RSU Award Agreement, 2022 Equity Incentive Plan

ATTACHMENT I

AWARD AGREEMENT

1.

AN2 THERAPEUTICS, INC.
2022 EQUITY INCENTIVE PLAN

RSU AWARD AGREEMENT

As reflected by your Restricted Stock Unit Grant Notice ("***Grant Notice***"), AN2 Therapeutics, Inc. (the "***Company***") has granted you a RSU Award under its 2022 Equity Incentive Plan (the "***Plan***") for the number of restricted stock units indicated in your Grant Notice (the "***RSU Award***"). The terms of your RSU Award as specified in this Award Agreement for your RSU Award (the "***Agreement***") and the Grant Notice constitute your "***RSU Award Agreement***". Defined terms not explicitly defined in this Agreement but defined in the Grant Notice or the Plan shall have the same definitions as in the Grant Notice or Plan, as applicable.

The general terms applicable to your RSU Award are as follows:

1. GOVERNING PLAN DOCUMENT. Your RSU Award is subject to all the provisions of the Plan, including but not limited to the provisions in:

(a) Section 6 of the Plan regarding the impact of a Capitalization Adjustment, dissolution, liquidation, or Corporate Transaction on your RSU Award;

(b) Section 9(e) of the Plan regarding the Company's retained rights to terminate your Continuous Service notwithstanding the grant of the RSU Award; and

(c) Section 8 of the Plan regarding the tax consequences of your RSU Award.

Your RSU Award is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the RSU Award Agreement and the provisions of the Plan, the provisions of the Plan shall control.

2. GRANT OF THE RSU AWARD. This RSU Award represents your right to be issued on a future date the number of shares of the Company's Common Stock that is equal to the number of restricted stock units indicated in the Grant Notice as modified to reflect any Capitalization Adjustment and subject to your satisfaction of the vesting conditions set forth therein (the "***Restricted Stock Units***"). Any additional Restricted Stock Units that become subject to the RSU Award pursuant to Capitalization Adjustments as set forth in the Plan and the provisions of Section 3 below, if any, shall be subject, in a manner determined by the Board, to the same forfeiture restrictions, restrictions on transferability, and time and manner of delivery as applicable to the other Restricted Stock Units covered by your RSU Award.

3. DIVIDENDS. You shall receive no benefit or adjustment to your RSU Award with respect to any cash dividend, stock dividend or other distribution that does not result from a Capitalization Adjustment as provided in the Plan; provided, however, that this sentence shall not apply with respect to any shares of Common Stock that are delivered to you in connection with your RSU Award after such shares have been delivered to you.

4. WITHHOLDING OBLIGATIONS. As further provided in Section 8 of the Plan, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for, any sums required to satisfy the federal, state, local and foreign tax withholding obligations, if any, which arise in connection with your RSU Award (the "***Withholding Obligation***") in accordance with the withholding procedures established by the Company. Unless the Withholding Obligation is satisfied, the Company shall have no obligation to deliver to you any Common Stock in respect of the RSU Award. In the event the Withholding Obligation of the Company arises prior to the delivery to you of Common Stock or it is determined after the delivery of Common Stock to you that the amount of the Withholding Obligation was greater than the amount withheld by the Company, you agree to indemnify and hold the Company harmless from any failure by the Company to withhold the proper amount.

5. DATE OF ISSUANCE.

(a) The issuance of shares in respect of the Restricted Stock Units is intended to comply with Treasury Regulations Section 1.409A-1(b)(4) and will be construed and administered in such a manner. Subject to the satisfaction of the Withholding Obligation, if any, in the event one or more Restricted Stock Units vests, the Company shall issue to you one (1) share of Common Stock for each Restricted Stock Unit that vests on the applicable vesting date(s) (subject to any adjustment under Section 3 above, and subject to any different provisions in the Grant Notice). Each issuance date determined by this paragraph is referred to as an "***Original Issuance Date***."

(b) If the Original Issuance Date falls on a date that is not a business day, delivery shall instead occur on the next following business day.

In addition, if:

(i) the Original Issuance Date does not occur (1) during an "open window period" applicable to you, as determined by the Company in accordance with the Company's then-effective policy on trading in Company securities, or (2) on a date when you are otherwise permitted to sell shares of Common Stock on an established stock exchange or stock market (including but not limited to under a previously established written trading plan that meets the requirements of Rule 10b5-1 under the Exchange Act and was entered into in compliance with the Company's policies (a "***10b5-1 Arrangement***")), *and*

(ii) either (1) a Withholding Obligation does not apply, or (2) the Company decides, prior to the Original Issuance Date, (A) not to satisfy the Withholding Obligation by withholding shares of Common Stock from the shares otherwise due, on the Original Issuance Date, to you under this Award, and (B) not to permit you to enter into a "same day sale" commitment with a broker-dealer (including but not limited to a commitment under a 10b5-1 Arrangement) and (C) not to permit you to pay your Withholding Obligation in cash,

(iii) then the shares that would otherwise be issued to you on the Original Issuance Date will not be delivered on such Original Issuance Date and will instead be delivered on the first business day when you are not prohibited from selling shares of the Company's Common Stock in the open public market, but in no event later than December 31 of the calendar

year in which the Original Issuance Date occurs (that is, the last day of your taxable year in which the Original Issuance Date occurs), or, if and only if permitted in a manner that complies with Treasury Regulations Section 1.409A-1(b)(4), no later than the date that is the 15th day of the third calendar month of the applicable year following the year in which the shares of Common Stock under this Award are no longer subject to a "substantial risk of forfeiture" within the meaning of Treasury Regulations Section 1.409A-1(d).

(c) In addition and notwithstanding the foregoing, no shares of Common Stock issuable to you under this Section 5 as a result of the vesting of one or more Restricted Stock Units will be delivered to you until any filings that may be required pursuant to the Hart-Scott-Rodino ("***HSR***") Act in connection with the issuance of such shares have been filed and any required waiting period under the HSR Act has expired or been terminated (any such filings and/or waiting period required pursuant to HSR, the "***HSR Requirements***"). If the HSR Requirements apply to the issuance of any shares of Common Stock issuable to you under this Section 5 upon vesting of one or more Restricted Stock Units, such shares of Common Stock will not be issued on the Original Issuance Date and will instead be issued on the first business day on or following the date when all such HSR Requirements are satisfied and when you are permitted to sell shares of Common Stock on an established stock exchange or stock market, as determined by the Company in accordance with the Company's then-effective policy on trading in Company securities. Notwithstanding the foregoing, the issuance date for any shares of Common Stock delayed under this Section 5(c) shall in no event be later than December 31 of the calendar year in which the Original Issuance Date occurs (that is, the last day of your taxable year in which the Original Issuance Date occurs), unless a later issuance date is permitted without incurring adverse tax consequences under Section 409A of the Code or other Applicable Law.

(d) To the extent the RSU Award is a Non-Exempt RSU Award, the provisions of Section 11 of the Plan shall apply.

6. TRANSFERABILITY. Except as otherwise provided in the Plan, your RSU Award is not transferable, except by will or by the applicable laws of descent and distribution.

7. CORPORATE TRANSACTION. Your RSU Award is subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on your behalf with respect to any escrow, indemnities and any contingent consideration.

8. NO LIABILITY FOR TAXES. As a condition to accepting the RSU Award, you hereby (a) agree to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from the RSU Award or other Company compensation and (b) acknowledge that you were advised to consult with your own personal tax, financial and other legal advisors regarding the tax consequences of the RSU Award and have either done so or knowingly and voluntarily declined to do so.

9. SEVERABILITY. If any part of this Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Agreement (or part of such a Section) so declared to be unlawful or invalid will, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

10. OTHER DOCUMENTS. You hereby acknowledge receipt of or the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the Securities Act, which includes the Prospectus. In addition, you acknowledge and agree to be subject to the Company's Trading Policy, which such Trading Policy has been or will be made available to you.

11. QUESTIONS. If you have questions regarding these or any other terms and conditions applicable to your RSU Award, including a summary of the applicable federal income tax consequences please see the Prospectus.

6.

AN2 THERAPEUTICS, INC.

2022 EMPLOYEE STOCK PURCHASE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: , 2022
APPROVED BY THE STOCKHOLDERS: , 2022
IPO DATE: , 2022

1. GENERAL; PURPOSE.

(a) The Plan provides a means by which Eligible Employees of the Company and certain Eligible Employees of designated Related Corporations may be given an opportunity to purchase shares of Common Stock. The Plan permits the Company to grant a series of Purchase Rights to Eligible Employees under an Employee Stock Purchase Plan. In addition, the Plan permits the Company to grant a series of Purchase Rights to Eligible Employees that do not meet the requirements of an Employee Stock Purchase Plan.

(b) The Plan includes two components: a 423 Component and a Non-423 Component. The Company intends (but makes no undertaking or representation to maintain) the 423 Component to qualify as an Employee Stock Purchase Plan. The provisions of the 423 Component, accordingly, will be construed in a manner that is consistent with the requirements of Section 423 of the Code. Except as otherwise provided in the Plan or determined by the Board, the Non-423 Component will operate and be administered in the same manner as the 423 Component.

(c) The Company, by means of the Plan, seeks to retain the services of such Employees, to secure and retain the services of new Employees, and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Related Corporations.

2. ADMINISTRATION.

(a) The Board or the Committee will administer the Plan. References herein to the Board shall be deemed to refer to the Committee except where context dictates otherwise.

(b) The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine how and when Purchase Rights will be granted and the provisions of each Offering (which need not be identical).

(ii) To designate from time to time (A) which Related Corporations will be eligible to participate in the Plan as Designated 423 Corporations, (B) which Related Corporations or Affiliates will be eligible to participate in the Plan as Designated Non-423 Corporations, and (C) which Designated Companies will participate in separate Offerings (to the extent that the Company makes separate Offerings).

(iii) To construe and interpret the Plan and Purchase Rights, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, in a manner and to the extent it deems necessary or expedient to make the Plan fully effective.

(iv) To settle all controversies regarding the Plan and Purchase Rights granted under the Plan.

(v) To suspend or terminate the Plan at any time as provided in Section 12.

(vi) To amend the Plan at any time as provided in Section 12.

(vii) Generally, to exercise such powers and to perform such acts as it deems necessary or expedient to promote the best interests of the Company, its Related Corporations and Affiliates, and to carry out the intent that the Plan be treated as an Employee Stock Purchase Plan with respect to the 423 Component.

(viii) To adopt such rules, procedures and sub-plans as are necessary or appropriate to permit or facilitate participation in the Plan by Employees who are non-U.S. nationals or employed or located outside the United States. Without limiting the generality of, and consistent with, the foregoing, the Board specifically is authorized to adopt rules, procedures, and sub-plans regarding, without limitation, eligibility to participate in the Plan, the definition of eligible "earnings," handling and making of Contributions, establishment of bank or trust accounts to hold Contributions, payment of interest, conversion of local currency, obligations to pay payroll tax, determination of beneficiary designation requirements, withholding procedures and handling of share issuances, any of which may vary according to applicable requirements, and which, if applicable to a Designated Non-423 Corporation, do not have to comply with the requirements of Section 423 of the Code.

(c) The Board may delegate some or all of the administration of the Plan to the Committee or such other Committees as it deems fit. If administration is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. Further, to the extent not prohibited by Applicable Law, the Board or Committee may, from time to time, delegate any of the administrative powers the Board or Committee is authorized to exercise to a subcommittee or to one or more officers of the Company or other persons or groups of persons as it deems necessary, appropriate or advisable under conditions or limitations that it may set at or after the time of the delegation. The Board may retain the authority to concurrently administer the Plan with the Committee (or its delegate) and may, at any time, revest in the Board some or all of the powers previously delegated. Whether or not the Board has delegated administration of the Plan to a Committee (or a delegate of the Committee), the Board will have the final power to determine all questions of policy and expediency that may arise in the administration of the Plan.

(d) All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

3. SHARES OF COMMON STOCK SUBJECT TO THE PLAN.

(a) Subject to the provisions of Section 11(a) relating to Capitalization Adjustments, the maximum number of shares of Common Stock that may be issued under the Plan will not exceed a number of shares of Common Stock equal to 1% of the outstanding shares of the Company following the closing of the initial public offering (the "***Initial Reserve***"), plus the number of shares of Common Stock that are automatically added on January 1st of each year for a period of up to ten years, commencing on January 1, 2023 and ending on (and including) January 1, 2032, in an amount equal to the lesser of (i) 1% of the total number of shares of Capital Stock outstanding on the prior December 31st, and (ii) 3% of the Initial Reserve. Notwithstanding the foregoing, the Board may act prior to January 1st of a given year to provide that there

will be no January 1st increase in the share reserve for such calendar year or that the increase in the share reserve for such calendar year will be a lesser number of shares of Common Stock than would otherwise occur pursuant to the preceding sentence. For the avoidance of doubt, up to the maximum number of shares of Common Stock reserved under this Section 3(a) may be used to satisfy purchases of Common Stock under the 423 Component and any remaining portion of such maximum number of shares may be used to satisfy purchases of Common Stock under the Non-423 Component.

(b) If any Purchase Right granted under the Plan terminates without having been exercised in full, the shares of Common Stock not purchased under such Purchase Right will again become available for issuance under the Plan.

(c) The stock purchasable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market.

4. GRANT OF PURCHASE RIGHTS; OFFERING.

(a) The Board may from time to time grant or provide for the grant of Purchase Rights to Eligible Employees under an Offering (consisting of one or more Purchase Periods) on an Offering Date or Offering Dates selected by the Board. Each Offering will be in such form and will contain such terms and conditions as the Board will deem appropriate, and, with respect to the 423 Component, will comply with the requirement of Section 423(b)(5) of the Code that all Employees granted Purchase Rights will have the same rights and privileges. The terms and conditions of an Offering shall be incorporated by reference into the Plan and treated as part of the Plan. The provisions of separate Offerings need not be identical, but each Offering will include (through incorporation of the provisions of this Plan by reference in the document comprising the Offering or otherwise) the period during which the Offering will be effective, which period will not exceed 27 months beginning with the Offering Date, and the substance of the provisions contained in Sections 5 through 8, inclusive.

(b) If a Participant has more than one Purchase Right outstanding under the Plan, unless he or she otherwise indicates in forms delivered to the Company or a third party designated by the Company (each, a "***Company Designee***"): (i) each form will apply to all of his or her Purchase Rights under the Plan, and (ii) a Purchase Right with a lower exercise price (or an earlier-granted Purchase Right, if different Purchase Rights have identical exercise prices) will be exercised to the fullest possible extent before a Purchase Right with a higher exercise price (or a later-granted Purchase Right if different Purchase Rights have identical exercise prices) will be exercised.

(c) The Board will have the discretion to structure an Offering so that if the Fair Market Value of a share of Common Stock on the first Trading Day of a new Purchase Period within that Offering is less than or equal to the Fair Market Value of a share of Common Stock on the Offering Date for that Offering, then (i) that Offering will terminate immediately as of that first Trading Day, and (ii) the Participants in such terminated Offering will be automatically enrolled in a new Offering beginning on the first Trading Day of such new Purchase Period.

5. ELIGIBILITY.

(a) Purchase Rights may be granted only to Employees of the Company or, as the Board may designate in accordance with Section 2(b), to Employees of a Related Corporation or an Affiliate. Except as provided in Section 5(b) or as required by Applicable Law, an Employee will not be eligible to be granted Purchase Rights unless, on the Offering Date, the Employee has been in the employ of the Company or the Related Corporation or an Affiliate, as the case may be, for such continuous period preceding such Offering Date as the Board may require, but in no event will the required period of continuous employment be equal

to or greater than two years. In addition, the Board may (unless prohibited by Applicable Law) provide that no Employee will be eligible to be granted Purchase Rights under the Plan unless, on the Offering Date, such Employee's customary employment with the Company, the Related Corporation or the Affiliate, as the case may be, is more than 20 hours per week and more than five months per calendar year or such other criteria as the Board may determine consistent with Section 423 of the Code with respect to the 423 Component. The Board may also exclude from participation in the Plan or any Offering Employees who are "highly compensated employees" (within the meaning of Section 423(b)(4)(D) of the Code) of the Company, a Related Corporation or an Affiliate, or a subset of such highly compensated employees.

(b) The Board may provide that each person who, during the course of an Offering, first becomes an Eligible Employee will, on a date or dates specified in the Offering which coincides with the day on which such person becomes an Eligible Employee or which occurs thereafter, receive a Purchase Right under that Offering, which Purchase Right will thereafter be deemed to be a part of that Offering. Such Purchase Right will have the same characteristics as any Purchase Rights originally granted under that Offering, as described herein, except that:

(i) the date on which such Purchase Right is granted will be the "Offering Date" of such Purchase Right for all purposes, including determination of the exercise price of such Purchase Right;

(ii) the period of the Offering with respect to such Purchase Right will begin on its Offering Date and end coincident with the end of such Offering; and

(iii) the Board may provide that if such person first becomes an Eligible Employee within a specified period of time before the end of the Offering, he or she will not receive any Purchase Right under that Offering.

(c) No Employee will be eligible for the grant of any Purchase Rights if, immediately after any such Purchase Rights are granted, such Employee owns stock possessing five percent or more of the total combined voting power or value of all classes of stock of the Company or of any Related Corporation. For purposes of this Section 5(c), the rules of Section 424(d) of the Code will apply in determining the stock ownership of any Employee, and stock which such Employee may purchase under all outstanding Purchase Rights and options will be treated as stock owned by such Employee.

(d) As specified by Section 423(b)(8) of the Code, an Eligible Employee participating in the 423 Component may be granted Purchase Rights only if such Purchase Rights, together with any other rights granted under all Employee Stock Purchase Plans of the Company and any Related Corporations, do not permit such Eligible Employee's rights to purchase stock of the Company or any Related Corporation to accrue at a rate which, when aggregated, exceeds US $25,000 of Fair Market Value of such stock (determined at the time such rights are granted, and which, with respect to the Plan, will be determined as of their respective Offering Dates) for each calendar year in which such rights are outstanding at any time.

(e) Officers of the Company and any Designated Company, if they are otherwise Eligible Employees, will be eligible to participate in Offerings under the Plan.

(f) Notwithstanding anything in this Section 5 or the remaining provisions of the Plan to the contrary, in the case of an Offering under the Non-423 Component, the Board may provide that Consultants of a Designated Non-423 Corporation are eligible to participate in the Plan, provided the Consultants otherwise meet the eligibility criteria set forth in this Section 5, as determined by the Board (unless prohibited by Applicable Law). Any references in this Plan to Employees and Eligible Employees shall encompass references to Consultants, as appropriate, and any reference to employment shall encompass references to services as a Consultant, as appropriate.

(g) Notwithstanding anything in this Section 5 to the contrary, in the case of an Offering under the Non-423 Component, an Eligible Employee (or group of Eligible Employees) may be excluded from participation in the Plan or an Offering if the Board has determined, in its sole discretion, that participation of such Eligible Employee(s) is not advisable or practical for any reason (unless prohibited by Applicable Law).

6. PURCHASE RIGHTS; PURCHASE PRICE.

(a) On each Offering Date, each Eligible Employee, pursuant to an Offering made under the Plan, will be granted a Purchase Right to purchase up to that number of shares of Common Stock purchasable either with a percentage of such Employee's earnings (as defined by the Board in each Offering) or with a maximum dollar amount, as designated by the Board, during the period that begins on the Offering Date (or such later date as the Board determines for a particular Offering) and ends on the date stated in the Offering, which date will be no later than the end of the Offering.

(b) The Board will establish one or more Purchase Dates during an Offering on which Purchase Rights granted for that Offering will be exercised and shares of Common Stock will be purchased in accordance with such Offering.

(c) In connection with each Offering made under the Plan, the Board may specify (i) a maximum number of shares of Common Stock that may be purchased by any Participant on any Purchase Date during such Offering, (ii) a maximum aggregate number of shares of Common Stock that may be purchased by all Participants pursuant to such Offering, and/or (iii) a maximum aggregate number of shares of Common Stock that may be purchased by all Participants on any Purchase Date under the Offering. If the aggregate purchase of shares of Common Stock issuable upon exercise of Purchase Rights granted under the Offering would exceed any such maximum aggregate number, then, in the absence of any Board action otherwise, a pro rata (based on each Participant's accumulated Contributions) allocation of the shares of Common Stock (rounded down to the nearest whole share) available will be made in as nearly a uniform manner as will be practicable and equitable.

(d) The purchase price of shares of Common Stock acquired pursuant to Purchase Rights will be not less than the lesser of:

(i) an amount equal to 85% of the Fair Market Value of the shares of Common Stock on the Offering Date; or

(ii) an amount equal to 85% of the Fair Market Value of the shares of Common Stock on the applicable Purchase Date.

7. PARTICIPATION; WITHDRAWAL; TERMINATION.

(a) An Eligible Employee may elect to participate in an Offering and authorize payroll deductions as the means of making Contributions by completing and delivering to the Company or a Company Designee, within the time specified in the Offering, an enrollment form provided by the Company or a Company Designee. The enrollment form will specify the amount of Contributions not to exceed the maximum amount specified by the Board. Each Participant's Contributions will be credited to a bookkeeping account for such Participant under the Plan and will be deposited with the general funds of the Company except where Applicable Law requires that Contributions be held separately or deposited with a third party. If permitted in the Offering, a Participant may begin such Contributions with the first payroll occurring on or after the Offering Date (or, in the case of a payroll date that occurs after the end of the prior Offering but before the Offering Date of the next new Offering, Contributions from such payroll will be

included in the new Offering). If permitted in the Offering, a Participant may thereafter reduce (including to zero) or increase his or her Contributions. If payroll deductions are not permissible or problematic under Applicable Law or if specifically provided in the Offering, in addition to or instead of making Contributions by payroll deductions, a Participant may make Contributions through the payment by cash, check or wire transfer prior to a Purchase Date.

(b) During an Offering, a Participant may cease making Contributions and withdraw from the Offering by delivering to the Company or a Company Designee a withdrawal form provided by the Company or a Company Designee. The Company may impose a deadline before a Purchase Date for withdrawing. Upon such withdrawal, such Participant's Purchase Right in that Offering will immediately terminate and the Company will distribute as soon as practicable to such Participant all of his or her accumulated but unused Contributions, without interest, and such Participant's Purchase Right in that Offering shall thereupon terminate. A Participant's withdrawal from that Offering will have no effect upon his or her eligibility to participate in any other Offerings under the Plan, but such Participant will be required to deliver a new enrollment form to participate in subsequent Offerings.

(c) Purchase Rights granted pursuant to any Offering under the Plan will terminate immediately if the Participant either (i) is no longer an Employee for any reason or for no reason or (ii) is otherwise no longer eligible to participate. The Company will distribute as soon as practicable to such individual all of his or her accumulated but unused Contributions, without interest.

(d) Unless otherwise determined by the Board, a Participant whose employment transfers or whose employment who is terminated and rehired with no break in service (as determined by the Board) by or between the Company and a Designated Company or between Designated Companies will not be treated as having terminated employment for purposes of participating in the Plan or an Offering; however, if a Participant transfers from an Offering under the 423 Component to an Offering under the Non-423 Component, the exercise of the Participant's Purchase Right will be qualified under the 423 Component only to the extent such exercise complies with Section 423 of the Code. If a Participant transfers from an Offering under the Non-423 Component to an Offering under the 423 Component, the exercise of the Purchase Right will remain non-qualified under the Non-423 Component for the remainder of the Offering. The Board may establish different and additional rules governing transfers between separate Offerings within the 423 Component and between Offerings under the 423 Component and Offerings under the Non-423 Component.

(e) During a Participant's lifetime, Purchase Rights will be exercisable only by such Participant. Purchase Rights are not transferable by a Participant, except by will, by the laws of descent and distribution, or, if permitted by the Company, by a beneficiary designation as described in Section 10.

(f) Unless otherwise specified in the Offering or as required by Applicable Law, the Company will have no obligation to pay interest on Contributions.

8. EXERCISE OF PURCHASE RIGHTS.

(a) On each Purchase Date, each Participant's accumulated Contributions will be applied to the purchase of shares of Common Stock, up to the maximum number of shares of Common Stock permitted by the Plan and the applicable Offering, at the purchase price specified in the Offering. No fractional shares will be issued unless specifically provided for in the Offering.

(b) Unless otherwise provided in the Offering, if any amount of accumulated Contributions remains in a Participant's account after the purchase of shares of Common Stock on the final Purchase Date of an Offering, then such remaining amount will not roll over to the next Offering and will instead be distributed in full to such Participant after the final Purchase Date of such Offering as soon as practicable without interest (unless otherwise required by Applicable Law).

(c) No Purchase Rights may be exercised to any extent unless the shares of Common Stock to be issued upon such exercise under the Plan are covered by an effective registration statement pursuant to the Securities Act and the Plan is in material compliance with all applicable U.S. and non-U.S. federal, state and other securities, exchange control and other laws applicable to the Plan. If on a Purchase Date the shares of Common Stock are not so registered or the Plan is not in such compliance, no Purchase Rights will be exercised on such Purchase Date, and the Purchase Date will be delayed until the shares of Common Stock are subject to such an effective registration statement and the Plan is in material compliance, except that the Purchase Date will in no event be more than 27 months from the Offering Date. If, on the Purchase Date, as delayed to the maximum extent permissible, the shares of Common Stock are not registered and the Plan is not in material compliance with all Applicable Laws, as determined by the Company in its sole discretion, no Purchase Rights will be exercised and all accumulated but unused Contributions will be distributed to the Participants without interest (unless the payment of interest is otherwise required by Applicable Law).

9. COVENANTS OF THE COMPANY.

The Company will seek to obtain from each U.S. and non-U.S. federal, state or other regulatory commission, agency or other Governmental Body having jurisdiction over the Plan such authority as may be required to grant Purchase Rights and issue and sell shares of Common Stock thereunder unless the Company determines, in its sole discretion, that doing so is not practical or would cause the Company to incur costs that are unreasonable. If, after commercially reasonable efforts, the Company is unable to obtain the authority that counsel for the Company deems necessary for the grant of Purchase Rights or the lawful issuance and sale of Common Stock under the Plan, and at a commercially reasonable cost, the Company will be relieved from any liability for failure to grant Purchase Rights and/or to issue and sell Common Stock upon exercise of such Purchase Rights.

10. DESIGNATION OF BENEFICIARY.

(a) The Company may, but is not obligated to, permit a Participant to submit a form designating a beneficiary who will receive any shares of Common Stock and/or Contributions from the Participant's account under the Plan if the Participant dies before such shares and/or Contributions are delivered to the Participant. The Company may, but is not obligated to, permit the Participant to change such designation of beneficiary. Any such designation and/or change must be on a form approved by the Company.

(b) If a Participant dies, and in the absence of a valid beneficiary designation, the Company will deliver any shares of Common Stock and/or Contributions to the executor or administrator of the estate of the Participant. If no executor or administrator has been appointed (to the knowledge of the Company), the Company, in its sole discretion, may deliver such shares of Common Stock and/or Contributions, without interest (unless the payment of interest is otherwise required by Applicable Law), to the Participant's spouse, dependents or relatives, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

11. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; CORPORATE TRANSACTIONS.

(a) In the event of a Capitalization Adjustment, the Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities by which the share reserve is to increase

automatically each year pursuant to Section 3(a), (iii) the class(es) and number of securities subject to, and the purchase price applicable to outstanding Offerings and Purchase Rights, and (iv) the class(es) and number of securities that are the subject of the purchase limits under each ongoing Offering. The Board will make these adjustments, and its determination will be final, binding and conclusive.

(b) In the event of a Corporate Transaction, then: (i) any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue outstanding Purchase Rights or may substitute similar rights (including a right to acquire the same consideration paid to the stockholders in the Corporate Transaction) for outstanding Purchase Rights, or (ii) if any surviving or acquiring corporation (or its parent company) does not assume or continue such Purchase Rights or does not substitute similar rights for such Purchase Rights, then the Participants' accumulated Contributions will be used to purchase shares of Common Stock (rounded down to the nearest whole share) within ten business days (or such other period specified by the Board) prior to the Corporate Transaction under the outstanding Purchase Rights, and the Purchase Rights will terminate immediately after such purchase.

12. AMENDMENT, TERMINATION OR SUSPENSION OF THE PLAN.

(a) The Board may amend the Plan at any time in any respect the Board deems necessary or advisable. However, except as provided in Section 11(a) relating to Capitalization Adjustments, stockholder approval will be required for any amendment of the Plan for which stockholder approval is required by Applicable Law.

(b) The Board may suspend or terminate the Plan at any time. No Purchase Rights may be granted under the Plan while the Plan is suspended or after it is terminated.

(c) Any benefits, privileges, entitlements and obligations under any outstanding Purchase Rights granted before an amendment, suspension or termination of the Plan will not be materially impaired by any such amendment, suspension or termination except (i) with the consent of the person to whom such Purchase Rights were granted, (ii) as necessary to facilitate compliance with any laws, listing requirements, or governmental regulations (including, without limitation, the provisions of Section 423 of the Code and the regulations and other interpretive guidance issued thereunder relating to Employee Stock Purchase Plans) including without limitation any such regulations or other guidance that may be issued or amended after the date the Plan is adopted by the Board, or (iii) as necessary to obtain or maintain favorable tax, listing, or regulatory treatment. To be clear, the Board may amend outstanding Purchase Rights without a Participant's consent if such amendment is necessary to ensure that the Purchase Right and/or the Plan complies with the requirements of Section 423 of the Code with respect to the 423 Component or with respect to other Applicable Laws. Notwithstanding anything in the Plan or any Offering Document to the contrary, the Board will be entitled to: (i) establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars; (ii) permit Contributions in excess of the amount designated by a Participant in order to adjust for mistakes in the Company's processing of properly completed Contribution elections; (iii) establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Participant properly correspond with amounts withheld from the Participant's Contributions; (iv) amend any outstanding Purchase Rights or clarify any ambiguities regarding the terms of any Offering to enable the Purchase Rights to qualify under and/or comply with Section 423 of the Code with respect to the 423 Component; and (v) establish other limitations or procedures as the Board determines in its sole discretion advisable that are consistent with the Plan. The actions of the Board pursuant to this paragraph will not be considered to alter or impair any Purchase Rights granted under an Offering as they are part of the initial terms of each Offering and the Purchase Rights granted under each Offering.

13. TAX QUALIFICATION; TAX WITHHOLDING.

(a) Although the Company may endeavor to (i) qualify a Purchase Right for special tax treatment under the laws of the United States or jurisdictions outside of the United States or (ii) avoid adverse tax treatment, the Company makes no representation to that effect and expressly disavows any covenant to maintain special or to avoid unfavorable tax treatment, notwithstanding anything to the contrary in this Plan. The Company will be unconstrained in its corporate activities without regard to the potential negative tax impact on Participants.

(b) Each Participant will make arrangements, satisfactory to the Company and any applicable Related Corporation or Affiliate, to enable the Company, the Related Corporation or the Affiliate to fulfill any withholding obligation for Tax-Related Items. Without limitation to the foregoing, in the Company's sole discretion and subject to Applicable Law, such withholding obligation may be satisfied in whole or in part by (i) withholding from the Participant's salary or any other cash payment due to the Participant from the Company, a Related Corporation or an Affiliate; (ii) withholding from the proceeds of the sale of shares of Common Stock acquired under the Plan, either through a voluntary sale or a mandatory sale arranged by the Company; or (iii) any other method deemed acceptable by the Board. The Company shall not be required to issue any shares of Common Stock under the Plan until such obligations are satisfied.

14. EFFECTIVE DATE OF PLAN.

The Plan will become effective immediately prior to and contingent upon the IPO Date. No Purchase Rights will be exercised unless and until the Plan has been approved by the stockholders of the Company, which approval must be within 12 months before or after the date the Plan is adopted (or if required under Section 12(a) above, materially amended) by the Board.

15. MISCELLANEOUS PROVISIONS.

(a) Proceeds from the sale of shares of Common Stock pursuant to Purchase Rights will constitute general funds of the Company.

(b) A Participant will not be deemed to be the holder of, or to have any of the rights of a holder with respect to, shares of Common Stock subject to Purchase Rights unless and until the Participant's shares of Common Stock acquired upon exercise of Purchase Rights are recorded in the books of the Company (or its transfer agent) and all tax withholding obligations have been satisfied.

(c) The Plan and Offering do not constitute an employment contract. Nothing in the Plan or in the Offering will in any way alter the at-will nature of a Participant's employment or amend a Participant's employment contract, if applicable, or be deemed to create in any way whatsoever any obligation on the part of any Participant to continue in the employ of the Company, a Related Corporation or an Affiliate, or on the part of the Company, a Related Corporation or an Affiliate to continue the employment of a Participant.

(d) The provisions of the Plan will be governed by the laws of the State of Delaware without resort to that state's conflicts of laws rules.

(e) If any particular provision of the Plan is found to be invalid or otherwise unenforceable, such provision will not affect the other provisions of the Plan, but the Plan will be construed in all respects as if such invalid provision were omitted.

(f) If any provision of the Plan does not comply with Applicable Law, such provision shall be construed in such a manner as to comply with Applicable Law.

16. DEFINITIONS.

As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

(a) "***423 Component***" means the part of the Plan, which excludes the Non-423 Component, pursuant to which Purchase Rights that satisfy the requirements for an Employee Stock Purchase Plan may be granted to Eligible Employees.

(b) ***"Affiliate"*** means any entity, other than a Related Corporation, whether now or subsequently established, which is at the time of determination, a "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 promulgated under the Securities Act. The Board may determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(c) "***Applicable Law***" means shall mean the Code and any applicable U.S. and non-U.S. securities, federal, state, material local or municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, listing rule, regulation, judicial decision, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body (or under the authority of the NASDAQ Stock Market or the Financial Industry Regulatory Authority).

(d) "***Board***" means the board of directors of the Company.

(e) "***Capital Stock***" means the common stock of the Company.

(f) "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Purchase Right after the date the Plan is adopted by the Board without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other similar equity restructuring transaction, as that term is used in Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(g) "***Code***" means the U.S. Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(h) "***Committee***" means a committee of one or more members of the Board to whom authority has been delegated by the Board in accordance with Section 2(c). For purposes of this Plan, Committee shall initially mean the Compensation Committee of the Board unless and until the Board delegates authority to an alternative committee of the Board in accordance with Section 2(c).

(i) "***Common Stock***" means the common stock of the Company.

(j) "***Company***" means AN2 Therapeutics, Inc., a Delaware corporation.

(k) "***Consultant***" means any person, including an advisor, who is (i) engaged by a Related Corporation or an Affiliate to render consulting or advisory services or to otherwise act as a service provider

and is compensated for such services, or (ii) serving as a member of the board of directors of a Related Corporation or an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a "Consultant" for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company's securities to such person.

(l) ***"Contributions***" means the payroll deductions, contributions made by Participants in case payroll deductions are not permissible or problematic under Applicable Law and other additional payments specifically provided for in the Offering that a Participant contributes to fund the exercise of a Purchase Right. A Participant may make additional payments into his or her account if specifically provided for in the Offering, and then only if the Participant has not already had the maximum permitted amount withheld during the Offering through payroll deductions or other contributions.

(m) "***Corporate Transaction***" means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its subsidiaries;

(ii) a sale or other disposition of more than 50% of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Capital Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(n) ***"Designated 423 Corporation"*** means any Related Corporation selected by the Board to participate in the 423 Component.

(o) ***"Designated Company"*** means any Designated Non-423 Corporation or Designated 423 Corporation, provided, however, that at any given time a Related Corporation participating in the 423 Component shall not be a Related Corporation participating in the Non-423 Component.

(p) ***"Designated Non-423 Corporation"*** means any Related Corporation or Affiliate selected by the Board to participate in the Non-423 Component.

(q) "***Director***" means a member of the Board.

(r) "***Eligible Employee***" means an Employee who meets the requirements set forth in the document(s) governing the Offering for eligibility to participate in the Offering, provided that such Employee also meets the requirements for eligibility to participate set forth in the Plan.

(s) "***Employee***" means any person, including an Officer or Director, who is "employed" for purposes of Section 423(b)(4) of the Code by the Company or a Related Corporation, or solely with respect to the Non-423 Component, an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an "Employee" for purposes of the Plan.

(t) "***Employee Stock Purchase Plan***" means a plan that grants Purchase Rights intended to be options issued under an "employee stock purchase plan," as that term is defined in Section 423(b) of the Code.

(u) "***Exchange Act***" means the U.S. Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder.

(v) "***Fair Market Value***" means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock will be the immediately preceding five-day volume-weighted average price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in such source as the Board deems reliable.

(ii) In the absence of such markets for the Common Stock, the Fair Market Value will be determined by the Board in good faith in compliance with Applicable Laws and regulations and, to the extent applicable as determined in the sole discretion of the Board, in a manner that complies with Sections 409A of the Code

(iii) Notwithstanding the foregoing, for any Offering that commences on the IPO Date, the Fair Market Value of the shares of Common Stock on the Offering Date will be the price per share at which shares are first sold to the public in the Company's initial public offering as specified in the final prospectus for that initial public offering.

(w) "***Governmental Body***" means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) U.S. or non-U.S. federal, state, local, municipal or other government; (c) governmental or regulatory body, or quasi-governmental body of any nature (including any governmental division, department, administrative agency or bureau, commission, authority, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or entity and any court or other tribunal, and for the avoidance of doubt, any tax authority) or other body exercising similar powers or authority; or (d) self-regulatory organization (including the NASDAQ Stock Market and the Financial Industry Regulatory Authority).

(x) "***IPO Date***" means the date of the underwriting agreement between the Company and the underwriters managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

(y) "***Non-423 Component***" means the part of the Plan, which excludes the 423 Component, pursuant to which Purchase Rights that are not intended to satisfy the requirements for an Employee Stock Purchase Plan may be granted to Eligible Employees.

(z) "***Offering***" means the grant to Eligible Employees of Purchase Rights, with the exercise of those Purchase Rights automatically occurring at the end of one or more Purchase Periods. The terms and conditions of an Offering will generally be set forth in the "***Offering Document***" approved by the Board for that Offering.

(aa) "***Offering Date***" means a date selected by the Board for an Offering to commence.

(bb) "***Officer***" means a person who is an officer of the Company or a Related Corporation within the meaning of Section 16 of the Exchange Act.

(cc) "***Participant***" means an Eligible Employee who holds an outstanding Purchase Right.

(dd) "***Plan***" means this AN2 Therapeutics, Inc. 2022 Employee Stock Purchase Plan, as amended from time to time, including both the 423 Component and the Non-423 Component.

(ee) "***Purchase Date***" means one or more dates during an Offering selected by the Board on which Purchase Rights will be exercised and on which purchases of shares of Common Stock will be carried out in accordance with such Offering.

(ff) "***Purchase Period***" means a period of time specified within an Offering, generally beginning on the Offering Date or on the first Trading Day following a Purchase Date, and ending on a Purchase Date. An Offering may consist of one or more Purchase Periods.

(gg) "***Purchase Right***" means an option to purchase shares of Common Stock granted pursuant to the Plan.

(hh) "***Related Corporation***" means any "parent corporation" or "subsidiary corporation" of the Company whether now or subsequently established, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.

(ii) "***Securities Act***" means the U.S. Securities Act of 1933, as amended.

(jj) "***Tax-Related Items***" means any income tax, social insurance, payroll tax, fringe benefit tax, payment on account or other tax-related items arising out of or in relation to a Participant's participation in the Plan, including, but not limited to, the exercise of a Purchase Right and the receipt of shares of Common Stock or the sale or other disposition of shares of Common Stock acquired under the Plan.

(kk) "***Trading Day***" means any day on which the exchange(s) or market(s) on which shares of Common Stock are listed, including but not limited to the NYSE, Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or any successors thereto, is open for trading.

AN2 THERAPEUTICS, INC.

NON-EMPLOYEE DIRECTOR COMPENSATION POLICY

Each member of the Board of Directors (the "***Board***") who is not also serving as an employee of or consultant to AN2 Therapeutics, Inc. (the "***Company***") or any of its subsidiaries (each such member, an "***Eligible Director***") will receive the compensation described in this Non-Employee Director Compensation Policy for Board service upon and following the date of the underwriting agreement between the Company and the underwriters managing the initial public offering of the Company's common stock (the "***Common Stock***"), pursuant to which the Common Stock is priced in such initial public offering (the "***Effective Date***"). An Eligible Director may decline all or any portion of their compensation by giving notice to the Company prior to the date cash may be paid or equity awards are to be granted, as the case may be. This policy is effective as of the Effective Date and may be amended at any time in the sole discretion of the Board or the Compensation Committee of the Board.

Annual Cash Compensation

The annual cash compensation amount set forth below is payable to Eligible Directors in equal quarterly installments, payable in arrears on the last day of each fiscal quarter in which the service occurred. If an Eligible Director joins the Board or a committee of the Board at a time other than effective as of the first day of a fiscal quarter, each annual retainer set forth below will be pro-rated based on days served in the applicable fiscal year, with the pro-rated amount paid for the first fiscal quarter in which the Eligible Director provides the service and regular full quarterly payments thereafter. All annual cash fees are vested upon payment.

1. Annual Board Service Retainer:
    a. All Eligible Directors: $35,000
    b. Non-Employee Chair of the Board: $30,000 (in addition to (a) above)
2. Annual Committee Chair Service Retainer:
    a. Chair of the Audit Committee: $15,000
    b. Chair of the Compensation Committee: $15,000
    c. Chair of the Nominating and Corporate Governance Committee: $8,000
3. Annual Committee Member Service Retainer (not applicable to Committee Chairs):
    a. Member of the Audit Committee: $7,500
    b. Member of the Compensation Committee: $7,500
    c. Member of the Nominating and Corporate Governance Committee: $4,000

Equity Compensation

The equity compensation set forth below will be granted under the Company's 2022 Equity Incentive Plan (the "***Plan***"), subject to the approval of the Plan by the Company's stockholders.

1. Initial Grant: For each Eligible Director who is first elected or appointed to the Board following the Effective Date, on the date of such Eligible Director's initial election or appointment to the Board (or, if such date is not a market trading day, the first market trading day thereafter), the Eligible Director will be automatically, and without further action by the Board or the Compensation Committee of the Board, granted a number of stock options ("***Options***") with a grant-date value of $209,093 (the "***Initial Grant***"). The Initial Grant Options will vest in substantially equal monthly installments through the first three years following the date of grant, subject to the Eligible Director's Continuous Service (as defined in the Plan) through such vesting date.

2. Annual Grants: On the date of each annual stockholder meeting of the Company held after the Effective Date, each Eligible Director who (x) has completed at least three months of Continuous Service as an Eligible Director as of the date of such annual stockholder meeting and (y) continues to serve as a non-employee member of the Board following such stockholder meeting will be automatically, and without further action by the Board or the Compensation Committee of the Board, granted Options with a grant-date value of $104,546 (the "***Annual Grant***"); provided, however, that with respect to an Eligible Director who received an Initial Grant at least three, but less than six, months prior to the annual stockholder meeting date, such Eligible Director will be granted Options with a grant-date value of $52,273. The Annual Grant Options will vest in full on the earlier of (x) the one-year anniversary of the date of grant or (y) the day prior to the date of the Company's next annual stockholder meeting, subject to the Eligible Director's Continuous Service through such vesting date.

3. Accelerated Vesting. Notwithstanding the foregoing, each Initial Grant and each Annual Grant will vest in full upon a Change in Control (as defined in the Plan) prior to termination of such Eligible Director's Continuous Service.

Expenses

The Company will reimburse Eligible Directors for ordinary, necessary and reasonable out-of-pocket travel expenses to cover in-person attendance at and participation in Board and committee meetings; provided, that the Eligible Director timely submit to the Company appropriate documentation substantiating such expenses in accordance with the Company's travel and expense policy, as in effect from time to time.

AN2 THERAPEUTICS, INC.
SEVERANCE AND CHANGE IN CONTROL PLAN
AND SUMMARY PLAN DESCRIPTION

(Adopted by the Board of Directors on , 2022)

1. Introduction. The purpose of this AN2 Therapeutics, Inc. Severance and Change in Control Plan (the "Plan") is to provide assurances of specified severance benefits to eligible employees of the Company whose employment is involuntarily terminated other than for Cause or who resign for Good Reason under the circumstances described in the Plan. The Plan is an "employee welfare benefit plan," as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended. This document constitutes both the written instrument under which the Plan is maintained and the required summary plan description for the Plan.

2. Important Terms. To help you understand how the Plan works, it is important to know the following terms:

2.1 "Administrator" means the Compensation Committee of the Board or another duly constituted committee of members of the Board, or officers of the Company as delegated by the Board, or any person to whom the Administrator has delegated any authority or responsibility pursuant to terms of the Plan, but only to the extent of such delegation.

2.2 "Affiliate" means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 promulgated under the Securities Act.

2.3 "Board" means the Board of Directors of AN2 Therapeutics, Inc.

2.4 "Cause" shall have the meaning ascribed to such term in any written agreement between the Covered Employee and the Company, and, in the absence of such agreement, such term means, with respect to a Covered Employee, (i) unauthorized use or disclosure of the Company's confidential information or trade secrets in violation of any covenants agreement or confidentiality agreement between the Covered Employee and the Company; (b) conviction of, or plea of "guilty" or "no contest" to, a felony under the laws of the United States or any state thereof; (c) the Covered Employee's gross negligence or willful misconduct relating to the Covered Employee's role and/or responsibilities to the Company; or (iv) a continued material breach by the Covered Employee of any agreement between the Covered Employee and the Company, a continued material failure by the Covered Employee to comply with the Company's written policies or rules, or a continued failure by the Covered Employee to perform assigned duties after receiving sixty (60) days written notification of such failure or breach from the Company and a reasonable opportunity to cure.

2.5 "Change in Control" has the meaning set forth in the AN2 Therapeutics, Inc. 2022 Equity Incentive Plan, or any successor plan thereto.

2.6 "Change in Control Determination Period" means the time period beginning with the date three months prior to the date on which a Change in Control occurs and ending twelve months following the Change in Control.

2.7 "Company" means AN2 Therapeutics, Inc., a Delaware corporation.

2.8 "Covered Employee" means a Tier I Covered Employee, Tier II Covered Employee or Tier III Covered Employee.

2.9 "Disability" means total and permanent disability as defined in Section 22(e)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

2.10 "Effective Date" means the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Company's Class A common stock.

2.11 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

2.12 "Good Reason" means the Covered Employee's voluntary resignation following (i) a change in the Covered Employee's position with the Company (or the parent or subsidiary entity, or successor to the Company employing the Covered Employee) that materially reduces the Covered Employee's level of authority or responsibility; provided that, except in the case of the Company's Chief Executive Officer and Chief Financial Officer, neither a mere change in title alone nor reassignment following a Change in Control to a position that is substantially similar to the position the Covered Employee held prior to the transaction shall constitute a material reduction in level of authority or responsibility (and, in the case of the Company's Chief Executive Officer and Chief Financial Officer, a change in position that results in such individual becoming the Chief Executive Officer or Chief Financial Officer, respectively (or any comparable or lesser title) of any subsidiary or business unit of an acquiring company shall be deemed to constitute a material reduction in level of authority and responsibility)], (ii) a reduction in the Covered Employee's base salary by more than 10% (other than as part of an across-the-board, proportional salary reduction applicable to all employees), or (iii) receipt of notice that the Covered Employee's principal workplace will be relocated more than 30 miles from his or her then primary employment location; provided that the Covered Employee shall provide written notice to the Company of the occurrence of any one of the events set forth in subclauses (i), (ii) or (iii) within 30 days following the initial existence of such condition and the Company shall have 30 days to remedy such situation.

2.13 "Involuntary Termination" means a termination of employment of a Covered Employee under the circumstances described in Section 4.1 or 4.2.

2.14 "Severance Benefits" means the compensation and other benefits the Covered Employee is eligible to receive pursuant to Section 4, subject to the terms and conditions of the Plan.

2.15 "Tier I Covered Employee" means the Chief Executive Officer of the Company.

2.16 "Tier II Covered Employee" means an employee of the Company who is designated as a "Tier II Covered Employee" by the Board. Such designation may be by name or corporate level.

2.17 "Tier III Covered Employee" means an employee of the Company who is designated as a "Tier III Covered Employee" by the Board. Such designation may be by name or corporate level.

3. Eligibility for Severance Benefits. An individual is eligible for Severance Benefits under the Plan, in the amount set forth in Section 4, only if he or she is a Covered Employee on the date he or she experiences an Involuntary Termination.

4. Severance Benefits. Upon the termination of a Covered Employee's employment for any reason, the Covered Employee shall be entitled to receive (a) any earned but unpaid base salary, and (b) any vested employee benefits in accordance with the terms of the applicable employee benefit plan or program. In addition, the Covered Employee may be eligible to receive additional payments and benefits, as set forth in more detail below.

4.1 Involuntary Termination in Connection with a Change in Control. If, at any time within the Change in Control Determination Period, the Company or any Affiliate terminates such Covered Employee's employment other than for Cause (and, for the sake of clarity, other than due to death or

Disability), or such Covered Employee resigns for Good Reason, then, subject to the Covered Employee's compliance with Section 5, the Covered Employee shall receive the following Severance Benefits from the Company at the time set forth in Section 6 below:

4.1.1 Cash Severance Benefits.

(a) The Covered Employee shall receive a cash lump sum payment equal to the product of (i) the sum of such Covered Employee's annual base salary rate and annual target bonus as in effect on the date of the Involuntary Termination (disregarding for this purpose any decrease in annual base salary constituting Good Reason), and (ii) the relevant factor below:

Tier I: 1.5x

Tier II: 1x

Tier III: 0.75x

(b) The Covered Employee shall receive an additional cash lump sum equal to any earned but unpaid annual bonus for any performance years that were completed as of the date of termination.

4.1.2 Payment in Respect of Benefits If the Covered Employee timely elects continued group health plan continuation coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), the Company shall pay the Covered Employee's premiums on behalf of the Covered Employee for the Covered Employee's continued coverage under the Company's group health plans, including coverage for the Covered Employee's eligible dependents, for (a) in the case of a Tier I Covered Employee, 18 months; (b) in the case of a Tier II Covered Employee, 12 months; and (c) in the case of a Tier III Covered Employee, nine months, or, in any such case, until such earlier date on which the Covered Employee becomes eligible for health coverage from another employer (the "COBRA CIC Payment Period"). Upon the conclusion of such period of insurance premium payments made by the Company, the Covered Employee will be responsible for the entire payment of premiums (or payment for the cost of coverage) required under COBRA for the duration of the Covered Employee's eligible COBRA coverage period. Notwithstanding the foregoing, if the Covered Employee timely elects continued group health plan continuation coverage under COBRA and at any time thereafter the Company determines, in its sole discretion, that it cannot provide the COBRA premium benefits without potentially incurring financial costs or penalties under applicable law, then in lieu of paying the COBRA premiums on the Covered Employee's behalf, the Company will instead pay the Covered Employee on the last day of each remaining month of the COBRA CIC Payment Period a fully taxable cash payment equal to the COBRA premium for that month, subject to applicable tax withholding (such amount, the "Special CIC Severance Payments"). Such Special CIC Severance Payments shall end upon expiration of the COBRA CIC Payment Period.

4.1.3 Equity Vesting. Each of the Covered Employee's then outstanding equity awards shall accelerate and become vested and exercisable as to 100% of the unvested shares subject to the equity award, including awards that would otherwise vest only upon the satisfaction of performance criteria (which percentage of the performance-based awards shall vest at the target (100%) level of performance), with the exception of any award granted after the Effective Date that explicitly overrides this provision in writing. Subject to Section 5, the accelerated vesting described in this paragraph shall be effective as of the date of the Involuntary Termination.

4.2 Involuntary Termination Not in Connection with a Change in Control. If, at any time other than during the Change in Control Determination Period, the Company or any Affiliate terminates such Covered Employee's employment other than for Cause (and, for the sake of clarity, other than due to death or Disability), or such Covered Employee resigns for Good Reason, then, subject to the

Covered Employee's compliance with Section 5, the Covered Employee shall receive the following Severance Benefits from the Company at the time set forth in Section 6 below:

4.2.1 Cash Severance Benefits.

(a) The Covered Employee shall receive a cash lump sum payment equal to the product of (i) such Covered Employee's annual base salary rate as in effect on the date of the Involuntary Termination (disregarding for this purpose any decrease in annual base salary constituting Good Reason) and (ii) the relevant factor below:

Tier I: 1x

Tier II: 0.75x

Tier III: 0.5x

(b) The Covered Employee shall receive an additional cash lump sum equal to any unpaid annual bonus for any performance years that were completed as of the date of termination.

4.2.2 Payment in Respect of Benefits. If the Covered Employee timely elects continued group health plan continuation coverage under COBRA, the Company shall pay the Covered Employee's premiums on behalf of the Covered Employee for the Covered Employee's continued coverage under the Company's group health plans, including coverage for the Covered Employee's eligible dependents, for (a) in the case of a Tier I Covered Employee, twelve months; (b) in the case of a Tier II Covered Employee, nine months; and (c) in the case of a Tier III Covered Employee, six months or, in any such case, until such earlier date on which the Covered Employee becomes eligible for health coverage from another employer (the "COBRA Payment Period"). Upon the conclusion of such period of insurance premium payments made by the Company, the Covered Employee will be responsible for the entire payment of premiums (or payment for the cost of coverage) required under COBRA for the duration of the Covered Employee's eligible COBRA coverage period. Notwithstanding the foregoing, if the Covered Employee timely elects continued group health plan continuation coverage under COBRA and at any time thereafter the Company determines, in its sole discretion, that it cannot provide the COBRA premium benefits without potentially incurring financial costs or penalties under applicable law, then in lieu of paying the employer portion of the COBRA premiums on the Covered Employee's behalf, the Company will instead pay the Covered Employee on the last day of each remaining month of the COBRA Payment Period a fully taxable cash payment equal to the COBRA premium for that month, subject to applicable tax withholding (such amount, the "Special Severance Payments"). Such Special Severance Payments shall end upon expiration of the COBRA Payment Period.

5. Conditions to Receipt of Severance.

5.1 Release Agreement. As a condition to receiving Severance Benefits under the Plan, each Covered Employee will be required to sign a customary and standard waiver and release of all claims arising out of his or her Involuntary Termination and employment with the Company and its Affiliates (the "Release") in such form as may be provided by the Company and, in the case of Tier I Covered Employees, is reasonably acceptable to such Tier I Covered Employee. The Release will include specific information regarding the amount of time the Covered Employee will have to consider the terms of the Release and return the signed agreement to the Company, which period of time, in all cases, will comply with the requirements of the jurisdiction in which such Covered Employee resides. In no event will the period to return the Release be longer than 55 days, inclusive of any revocation period set forth in the Release, following the Covered Employee's Involuntary Termination (the "Release Period").

5.2 Prior Agreements; Certain Reductions. The Administrator will reduce a Covered Employee's benefits under the Plan by any other statutory severance obligations or contractual severance benefits, obligations for pay in lieu of notice, and any other similar benefits payable to the Covered Employee by the Company (or any successor thereto) that are due in connection with the Covered Employee's termination and that are in the same form as the benefits provided under the Plan (e.g., equity award vesting credit). Without limitation, this reduction includes a reduction for any benefits required

pursuant to (i) any applicable legal requirement, including, without limitation, the Worker Adjustment and Retraining Notification Act of 1988 and any similar state or local laws (collectively, the "WARN Act"), (ii) a written employment, severance or equity award agreement with the Company, (iii) any Company policy or practice providing for the Covered Employee to remain on the payroll for a limited period of time after being given notice of the termination of the Covered Employee's employment, and (iv) any required salary continuation, notice pay, statutory severance payment, or other payments either required by local law, or owed pursuant to a collective labor agreement, as a result of the termination of the Covered Employee's employment. The benefits provided under the Plan are intended to satisfy, to the greatest extent possible, and not to provide benefits duplicative of, any and all statutory, contractual and collective agreement obligations of the Company in respect of the form of benefits provided under the Plan that may arise out of a termination, and the Administrator will so construe and implement the terms of the Plan. Reductions may be applied on a retroactive basis, with benefits previously provided being recharacterized as benefits pursuant to the Company's statutory or other contractual obligations. The payments pursuant to the Plan are in addition to, and not in lieu of, any unpaid salary, bonuses or employee welfare benefits to which a Covered Employee may be entitled for the period ending with the Covered Employee's termination.

5.3 Other Requirements. A Covered Employee's receipt of severance payments pursuant to Section 4.1 will be subject to the Covered Employee continuing to comply with the provisions of this Section 5 and the terms of any confidential information agreement, proprietary information and inventions agreement, any covenants agreement, any other similar agreement to the foregoing and such other appropriate agreement between the Covered Employee and the Company. Benefits under the Plan shall terminate immediately for a Covered Employee if such Covered Employee, at any time, materially breaches any such agreement or the provisions of this Section 5.

5.4 Section 280G. Any provision of the Plan to the contrary notwithstanding, if any payment or benefit a Covered Employee would receive from the Company and its Affiliates or an acquiror pursuant to the Plan or otherwise (a "Payment") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then such Payment will be equal to the Higher Amount (defined below). The "Higher Amount" will be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax, or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in Covered Employee's receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Higher Amount, reduction will occur in the manner that results in the greatest economic benefit for a Covered Employee. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata. In no event will the Company, any Affiliate or any stockholder be liable to any Covered Employee for any amounts not paid as a result of the operation of this Section 5.4.

6. Timing of Benefits. Subject to any delay required by Section 7 below, cash Severance Benefits will be paid within 30 days of the Release becoming effective and irrevocable; provided, however, that if the Release revocation period crosses two calendar years, the Severance Benefits will be paid in the second of the two years if necessary to avoid taxation under Section 409A (as defined in Section 7).

7. Section 409A. Notwithstanding anything to the contrary in the Plan, no severance payments or benefits will become payable until the Covered Employee has a "separation from service" within the meaning of Section 409A of the Code and the final regulations and any guidance promulgated thereunder ("Section 409A") if such payments or benefits would constitute deferred compensation for purposes of Section 409A ("Deferred Compensation Severance Benefits"). Further, if the Covered

Employee is subject to Section 409A and is a "specified employee" within the meaning of Section 409A at the time of the Covered Employee's separation from service (other than due to death), then any Deferred Compensation Separation Benefits otherwise due to the Covered Employee on or within the six-month period following his or her separation from service will accrue during such six-month period and will become payable in a lump sum payment (less applicable withholding taxes) on the date six months and one day following the date of the Covered Employee's separation from service if necessary to avoid adverse taxation under Section 409A. All subsequent payments of Deferred Compensation Separation Benefits, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if the Covered Employee dies following his or her separation from service but prior to the six-month anniversary of his or her date of separation, then any payments delayed in accordance with this paragraph will be payable in a lump sum (less applicable withholding taxes) to the Covered Employee's estate as soon as administratively practicable after the date of his or her death and all other Deferred Compensation Separation Benefits will be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment and benefit payable under the Plan is intended to constitute a separate payment for purposes of Section 409A. It is the intent of the Plan to be exempt from (or if not exempt from, to comply with) the requirements of Section 409A, so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to so comply.

8. Withholding. The Company will withhold from any Severance Benefits all federal, state, local and other taxes required to be withheld therefrom and any other required payroll deductions.

9. Administration. The Plan will be administered and interpreted by the Administrator (in their, his or her sole discretion). The Administrator is the "named fiduciary" of the Plan for purposes of ERISA and will be subject to the fiduciary standards of ERISA when acting in such capacity. Any decision made or other action taken by the Administrator prior to a Change in Control with respect to the Plan, and any interpretation by the Administrator prior to a Change in Control of any term or condition of the Plan, or any related document, will be conclusive and binding on all persons and be given the maximum possible deference allowed by law. Following a Change in Control, any decision made or other action taken by the Administrator with respect to the Plan, and any interpretation by the Administrator of any term or condition of the Plan, or any related document that (i) does not affect the benefits payable under the Plan shall not be subject to review unless found to be arbitrary and capricious, or (ii) does affect the benefits payable under the Plan shall not be subject to review unless found to be unreasonable or not to have been made in good faith. In accordance with Section 2.1, the Administrator may, in its sole discretion and on such terms and conditions as it may provide, delegate in writing to one or more officers of the Company all or any portion of its authority or responsibility with respect to the Plan; provided, however, that any Plan amendment or termination or any other action that could reasonably be expected to increase significantly the cost of the Plan must be approved by the Board or the Compensation Committee of the Board.

10. Eligibility to Participate. To the extent that the Administrator has delegated administrative authority or responsibility to one or more officers of the Company in accordance with Section 2.1 and Section 9, each such officer will not be excluded from participating in the Plan if otherwise eligible, but he or she is not entitled to act or pass upon any matters pertaining specifically to his or her own benefit or eligibility under the Plan. The Administrator will act upon any matters pertaining specifically to the benefit or eligibility of each such officer under the Plan.

11. Amendment or Termination. The Company, by action of the Administrator, reserves the right to amend or terminate the Plan at any time, without advance notice to any Covered Employee and without regard to the effect of the amendment or termination on any Covered Employee or on any other individual. Any amendment or termination of the Plan will be in writing. Notwithstanding the preceding, once the Change in Control Determination Period has begun, the Company may not, without a Covered

Employee's written consent, amend or terminate the Plan in any way, nor take any other action, that (a) prevents that Covered Employee from becoming eligible for Severance Benefits under the Plan or (b) reduces or alters to the detriment of the Covered Employee the Severance Benefits payable, or potentially payable, to a Covered Employee under the Plan (including, without limitation, imposing additional conditions or modifying the timing of payment). Any action of the Company in amending or terminating the Plan will be taken in a non-fiduciary capacity. For the avoidance of doubt, in the event a Change in Control occurs during the term of the Plan, the Plan shall not terminate until the Change in Control Determination Period has expired and any benefits payable have been paid.

12. Claims Procedure. Claims for benefits under the Plan shall be administered in accordance with Section 503 of ERISA and the Department of Labor Regulations thereunder. Any employee or other person who believes he or she is entitled to any payment under the Plan (a "claimant") may submit a claim in writing to the Administrator within 90 days of the earlier of (i) the date the claimant learned the amount of their Severance Benefits under the Plan, or (ii) the date the claimant learned that he or she will not be entitled to any benefits under the Plan. In determining claims for benefits, the Administrator or its delegate has the authority to interpret the Plan, to resolve ambiguities, to make factual determinations, and to resolve questions relating to eligibility for and amount of benefits. If the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Plan on which the denial is based. The notice will also describe any additional information or material that the Administrator needs to complete the review and an explanation of why such information or material is necessary and the Plan's procedures for appealing the denial (including a statement of the applicant's right to bring a civil action under Section 502(a) of ERISA following a denial on review of the claim, as described below). The denial notice will be provided within 90 days after the claim is received. If special circumstances require an extension of time (up to 90 days), written notice of the extension will be given to the claimant (or representative) within the initial 90-day period. This notice of extension will indicate the special circumstances requiring the extension of time and the date by which the Administrator expects to render its decision on the claim. If the extension is provided due to a claimant's failure to provide sufficient information, the time frame for rendering the decision is tolled from the date the notification is sent to the claimant about the failure to the date on which the claimant responds to the request for additional information. The Administrator has delegated the claims review responsibility to the Company's General Counselor such other individual designated by the Administrator, except in the case of a claim filed by or on behalf of the Company's General Counsel or such other individual designated by the Administrator, in which case, the claim will be reviewed by the Company's Chief Executive Officer.

13. Appeal Procedure. If the claimant's claim is denied, the claimant (or his or her authorized representative) may apply in writing to an appeals official appointed by the Administrator (which may be a person, committee or other entity) for a review of the decision denying the claim. Review must be requested within 60 days following the date the claimant received the written notice of their claim denial or else the claimant loses the right to review. A request for review must set forth all of the grounds on which it is based, all facts in support of the request, and any other matters that the claimant feels are pertinent. In connection with the request for review, the claimant (or representative) has the right to review and obtain copies of all documents and other information relevant to the claim, upon request and at no charge, and to submit written comments, documents, records and other information relating to his or her claim. The review shall take into account all comments, documents, records and other information submitted by the claimant (or representative) relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. The appeals official will provide written notice of its decision on review within 60 days after it receives a review request. If special circumstances require an extension of time (up to 60 days), written notice of the extension will be given to the claimant (or representative) within the initial 60-day period. This notice of extension will indicate the special circumstances requiring the extension of time and the date by which the appeals official expects to render its decision. If the extension is provided due to a claimant's failure to provide sufficient information, the

time frame for rendering the decision on review is tolled from the date the notification is sent to the claimant about the failure to the date on which the claimant responds to the request for additional information. If the claim is denied (in full or in part) upon review, the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Plan on which the denial is based. The notice shall also include a statement that the claimant will be provided, upon request and free of charge, reasonable access to, and copies of, all documents and other information relevant to the claim and a statement regarding the claimant's right to bring an action under Section 502(a) of ERISA. The Administrator has delegated the appeals review responsibility to the Company's General Counsel, except in the case of an appeal filed by or on behalf of the Company's General Counsel, in which case, the appeal will be reviewed by the Company's Chief Executive Officer.

14. Judicial Proceedings. No judicial proceeding shall be brought to recover benefits under the Plan until the claims procedures described in Sections 12 and 13 have been exhausted and the Plan benefits requested have been denied in whole or in part. If any judicial proceeding is undertaken to further appeal the denial of a claim or bring any other action under ERISA (other than a breach of fiduciary duty claim), the evidence presented shall be strictly limited to the evidence timely presented to the Administrator or its delegate, unless any new evidence has since been uncovered following completion of the claims procedures described in Sections 12 and 13. In addition, any such judicial proceeding must be filed within one year after the claimant's receipt of notification that his or her appeal was denied.

15. Source of Payments. All Severance Benefits will be paid in cash from the general funds of the Company; no separate fund will be established under the Plan, and the Plan will have no assets. No right of any person to receive any payment under the Plan will be any greater than the right of any other general unsecured creditor of the Company.

16. Inalienability. In no event may any current or former employee of the Company or any of its Affiliates sell, transfer, anticipate, assign or otherwise dispose of any right or interest under the Plan. At no time will any such right or interest be subject to the claims of creditors nor liable to attachment, execution or other legal process.

17. No Enlargement of Employment Rights. Neither the establishment nor maintenance of the Plan, any amendment of the Plan, nor the making of any benefit payment hereunder, will be construed to confer upon any individual any right to be continued as an employee of the Company. The Company expressly reserves the right to discharge any of its employees at any time, with or without cause. However, as described in the Plan, a Covered Employee may be entitled to benefits under the Plan depending upon the circumstances of his or her termination of employment.

18. Successors. Any successor to the Company of all or substantially all of the Company's business and/or assets (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) will assume the obligations under the Plan and agree expressly to perform the obligations under the Plan in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under the Plan, the term "Company" will include any successor to the Company's business and/or assets which become bound by the terms of the Plan by operation of law, or otherwise.

19. Applicable Law. The provisions of the Plan will be construed, administered and enforced in accordance with ERISA. To the extent ERISA is not applicable, the provisions of the Plan will be governed by the internal substantive laws of the State of Delaware, and construed accordingly, without giving effect to principles of conflicts of laws.

20. Severability. If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability will not affect any other provision of the Plan, and the Plan will be construed and enforced as if such provision had not been included.

21. Headings. Headings in the Plan document are for purposes of reference only and will not limit or otherwise affect the meaning hereof.

22. Indemnification. The Company hereby agrees to indemnify and hold harmless the officers and employees of the Company, and the members of its boards of directors, from all losses, claims, costs or other liabilities arising from their acts or omissions in connection with the administration, amendment or termination of the Plan, to the maximum extent permitted by applicable law. This indemnity will cover all such liabilities, including judgments, settlements and costs of defense. The Company will provide this indemnity from its own funds to the extent that insurance does not cover such liabilities. This indemnity is in addition to and not in lieu of any other indemnity provided to such person by the Company.

23. Additional Information.

Plan Name:	AN2 Therapeutics, Inc. Severance and Change in Control Plan
Plan Sponsor:	AN2 Therapeutics, Inc. 1800 El Camino Real, Suite D Menlo Park, CA 94027 (650) 331-9090
Identification Numbers:	EIN: 82-0606654 PLAN NUMBER: [ ]
Plan Year:	Company's Fiscal Year ending December 31
Plan Administrator:	AN2 Therapeutics, Inc. 1800 El Camino Real, Suite D Menlo Park, CA 94027 (650) 331-9090
Agent for Service of Legal Process:	AN2 Therapeutics, Inc. General Counsel 1800 El Camino Real, Suite D Menlo Park, CA 94027 (650) 331-9090 Service of process may also be made upon the Administrator.
Type of Plan:	Severance Plan/Employee Welfare Benefit Plan
Plan Costs:	The cost of the Plan is paid by the Employer.

24. Statement of Covered Employee ERISA Rights.

As a Covered Employee under the Plan, you have certain rights and protections under ERISA:

(a) You may examine (without charge) all Plan documents, including any amendments and copies of all documents filed with the U.S. Department of Labor. These documents are available for your review in the Company's People Department.

(b) You may obtain copies of all Plan documents and other Plan information upon written request to the Administrator at no charge.

In addition to creating rights for Covered Employees, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate the Plan (called "fiduciaries") have a duty to do so prudently and in the interests of you and the other Covered Employees. No one, including the Company or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit under the Plan or exercising your rights under ERISA. If your claim for a severance benefit is denied, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules. (The claim review procedure is explained in Section 13 and Section 14 above.)

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents and do not receive them within thirty days, you may file suit in a federal court. In such a case, the court may require the Administrator to provide the materials and to pay you up to $110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator. If you have a claim which is denied or ignored, in whole or in part, you may file suit in a federal court. If it should happen that you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

If you have any questions regarding the Plan, please contact the Administrator or the Company's General Counsel. If you have any questions about this statement or about your rights under ERISA, you may contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration at 1-866-444-3272.

Exhibit 10.9

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this "***Agreement***") dated as of , is made by and between **AN2 THERAPEUTICS, INC.,** a Delaware corporation (the "***Company***"), and ("***Indemnitee***").

RECITALS

A. The Company desires to attract and retain the services of highly qualified individuals as directors, officers, employees and agents.

B. The Company's amended and restated bylaws (the "***Bylaws***") require that the Company indemnify its directors and officers, and empowers the Company to indemnify its employees and agents, as authorized by the Delaware General Corporation Law, as amended (the "***Code***"), under which the Company is organized and such Bylaws expressly provide that the indemnification provided therein is not exclusive and contemplates that the Company may enter into separate agreements with its directors, officers and other persons to set forth specific indemnification provisions.

C. Indemnitee does not regard the protection currently provided by applicable law, the Bylaws, the Company's other governing documents, and available insurance as adequate under the present circumstances, and the Company has determined that Indemnitee and other directors, officers, employees and agents of the Company may not be willing to serve or continue to serve in such capacities without additional protection.

D. The Company desires and has requested Indemnitee to serve or continue to serve as a director, officer, employee or agent of the Company, as the case may be, and has proffered this Agreement to Indemnitee as an additional inducement to serve in such capacity.

E. Indemnitee is willing to serve, or to continue to serve, as a director, officer, employee or agent of the Company, as the case may be, if Indemnitee is furnished the indemnity provided for herein by the Company.

F. This Agreement is a supplement to and in furtherance of the indemnification provided in the Company's certificate of incorporation and bylaws, and any resolutions adopted pursuant thereto, and this Agreement shall not be deemed a substitute therefor, nor shall this Agreement be deemed to limit, diminish or abrogate any rights of Indemnitee thereunder.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions.

(a) Agent. For purposes of this Agreement, the term "***Agent***" of the Company means any person who: (i) is or was a director, officer, employee, agent, or other fiduciary of the

Company or a subsidiary of the Company; or (ii) is or was serving at the request or for the convenience of, or representing the interests of, the Company or a subsidiary of the Company, as a director, officer, employee, agent, or other fiduciary of a foreign or domestic corporation, partnership, joint venture, trust or other enterprise.

(b) Change in Control. For purposes of this Agreement, a "***Change in Control***" shall be deemed to have occurred if (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, is or becomes the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company's then outstanding Voting Securities, (ii) individuals who on the date of this Agreement are members of the Company's Board of Directors (the "***Incumbent Board***") cease for any reason to constitute at least a majority of the members of the Company's Board of Directors (the "***Board***") (*provided, however,* that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall be considered as a member of the Incumbent Board), or (iii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the Voting Securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving entity) more than 50% of the total voting power represented by the Voting Securities of the Company or such surviving entity outstanding immediately after such merger or consolidation and with the power to elect a majority of the board of directors or other governing body of such surviving entity, or the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of transactions) all or substantially all of the Company's assets.

(c) Expenses. For purposes of this Agreement, the term "***Expenses***" shall be broadly construed and shall include, without limitation, all direct and indirect costs of any type or nature whatsoever (including, without limitation, all attorneys', witness, or other professional fees and related disbursements, and other out-of-pocket costs of whatever nature) actually and reasonably incurred by Indemnitee in connection with the investigation, defense or appeal of a proceeding or establishing or enforcing a right to indemnification under this Agreement, the Code or otherwise.

(d) Enterprise. For purposes of this Agreement, the term "***Enterprise***" means any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other entity for which Indemnitee is or was serving at the request of the Company as a director, officer, employee, or Agent

(e) Independent Counsel. For purposes of this Agreement, the term "***Independent Counsel***" means a law firm, or a partner (or, if applicable, member) of such a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter

material to either such party (other than as Independent Counsel with respect to matters concerning Indemnitee under this Agreement, or other indemnitees under similar indemnification agreements), or (ii) any other party to the proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company will pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(f) Liabilities. For purposes of this Agreement, the term "***Liabilities***" shall be broadly construed and shall include, without limitation, judgments, damages, deficiencies, liabilities, losses, penalties, excise taxes, fines, assessments and amounts paid in settlement, including any interest and any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payment under this Agreement.

(g) Proceedings. For purposes of this Agreement, the term "proceeding" shall be broadly construed and shall include, without limitation, any threatened, pending, or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing, or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, and whether formal or informal in any case, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness, or otherwise by reason of: (i) the fact that Indemnitee is or was a director or officer of the Company; (ii) the fact that any action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or failure to act) on Indemnitee's part while acting as an Agent; or (iii) the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, and in any such case described above, whether or not serving in any such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses may be provided under this Agreement. If the Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a proceeding, this shall be considered a proceeding under this paragraph.

(h) Subsidiary. For purposes of this Agreement, the term "subsidiary" means any corporation, limited liability company, or other entity, of which more than 50% of the outstanding voting securities or equity interests are owned, directly or indirectly, by the Company and one or more of its subsidiaries, and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as an Agent.

(i) Voting Securities. For purposes of this Agreement, "***Voting Securities***" shall mean any securities of the Company that vote generally in the election of directors.

2. Agreement to Serve. Indemnitee will serve, or continue to serve, as the case may be, as an Agent, faithfully and to the best of his or her ability, at the will of such entity

designated by the Company and at the request of the Company (or under separate agreement, if such agreement exists), in the capacity Indemnitee currently serves such entity, so long as Indemnitee is duly appointed or elected and qualified in accordance with the applicable provisions of the governance documents of such entity, or until such time as Indemnitee tenders his or her resignation in writing; provided, however, that nothing contained in this Agreement is intended as an employment agreement between Indemnitee and the Company or any of its subsidiaries or to create any right to continued employment of Indemnitee with the Company or any of its subsidiaries in any capacity.

The Company acknowledges that it has entered into this Agreement and assumes the obligations imposed on it hereby, in addition to and separate from its obligations to Indemnitee under the Bylaws, to induce Indemnitee to serve, or continue to serve, as an Agent, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an Agent.

3. Indemnification.

(a) Indemnification in Third Party Proceedings. Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, to the fullest extent of the law, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding, other than a proceeding by or in the right of the Company to procure a judgment in its favor, for any and all Expenses and Liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses and Liabilities) incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such proceeding, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal proceeding had no reasonable cause to believe that Indemnitee's conduct was unlawful. The parties hereto intend that this Agreement shall provide to the fullest extent permitted by law for indemnification in excess of that expressly permitted by statute, including, without limitation, any indemnification provided by the Certificate of Incorporation of the Company, the Bylaws, vote of its stockholders or disinterested directors, or applicable law.

(b) Indemnification in Derivative Actions and Direct Actions by the Company. Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, fullest extent permitted by applicable law, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding by or in the right of the Company to procure a judgment in its favor, against any and all Expenses actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement, or appeal of such proceedings, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 3(b) in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court competent jurisdiction to be liable to the Company, unless and only to the extent that the

Chancery Court of the State of Delaware or any court in which the proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

4. Indemnification of Expenses of Successful Party. To the fullest extent permitted by law, the Company shall indemnify Indemnitee against all Expenses in connection with a proceeding to the extent that Indemnitee has been successful on the merits or otherwise in defense of any proceeding or in defense of any claim, issue or matter therein, in whole or part, including the dismissal of any action without prejudice. If Indemnitee is not wholly successful in such proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such proceeding, the Company shall indemnify Indemnitee against all Expenses incurred by Indemnitee or on Indemnitee's behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law.

5. Partial Indemnification; Witness Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of any Expenses and Liabilities incurred by Indemnitee in the investigation, defense, settlement or appeal of a proceeding, but is precluded by applicable law or the specific terms of this Agreement to indemnification for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee's acting as an Agent, a witness or otherwise asked to participate in any proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

6. Advancement of Expenses. To the extent not prohibited by law, the Company shall advance the Expenses incurred by Indemnitee in connection with any proceeding, and such advancement shall be made within thirty (30) days after the receipt by the Company of a statement or statements requesting such advances (which shall include invoices received by Indemnitee in connection with such Expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditures made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice). Advances shall be unsecured, interest free and without regard to Indemnitee's ability to repay the Expenses. Advances shall include any and all Expenses incurred by Indemnitee pursuing an action to enforce Indemnitee's right to indemnification under this Agreement or otherwise and this right of advancement, including expenses incurred preparing and forwarding statements to the Company to support the advances claimed. Indemnitee acknowledges that the execution and delivery of this Agreement shall constitute an undertaking providing that Indemnitee shall, to the fullest extent required by law, repay the advance (without interest) if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. The right to advances under this Section shall continue until final disposition of any proceeding, including any appeal therein. This Section 6 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 10(b).

7. Notice and Other Indemnification Procedures.

(a) Notification of Proceeding. Indemnitee will notify the Company in writing promptly upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The written notification to the Company shall include a description of the nature of the proceeding and the facts underlying the proceeding. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Company will be entitled to participate in the proceeding at its own expense.

(b) Request for Indemnification Payments. To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification under the terms of this Agreement, and shall request payment thereof by the Company.

(c) Determination of Right to Indemnification Payments. Upon written request by Indemnitee for indemnification pursuant to the Section 7(b) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board: (1) by a majority vote of the disinterested directors, even though less than a quorum, (2) by a committee of disinterested directors designated by a majority vote of the disinterested directors, even though less than a quorum, (3) if there are no disinterested directors or if the disinterested directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee, or (4) if so directed by the Board, by the stockholders of the Company; *provided*, *however*, that if there has been a Change in Control, then such determination shall be made by Independent Counsel selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld). For purposes hereof, disinterested directors are those members of the Board who are not parties to the action, suit or proceeding in respect of which indemnification is sought by Indemnitee. Indemnification payments requested by Indemnitee under Section 3 hereof shall be made by the Company within sixty (60) days after the later of (1) receipt of the written request of Indemnitee and (2) the final disposition of the Proceeding for which Indemnification is sought. Claims for advancement of Expenses shall be made under the provisions of Section 6 herein.

(d) Application for Enforcement. In the event the Company fails to make timely payments as set forth in Sections 6 or 7(c) above, Indemnitee shall have the right to apply to the Chancery Court of the State of Delaware for the purpose of enforcing Indemnitee's right to indemnification or advancement of Expenses pursuant to this Agreement. In such an enforcement hearing or proceeding, the burden of proof shall be on the Company to prove that indemnification or advancement of Expenses to Indemnitee is not required under this Agreement or permitted by applicable law. Any determination by the Company (including its Board, a committee thereof or Independent Counsel) or stockholders**,** that Indemnitee is not entitled to indemnification hereunder, shall not be a defense by the Company to the action nor create any presumption that Indemnitee is not entitled to indemnification or advancement of Expenses hereunder.

(e) Indemnification of Certain Expenses. The Company shall indemnify Indemnitee against all Expenses incurred in connection with any hearing or proceeding under this Section 7 unless the Company prevails in such hearing or proceeding on the merits in all material respects.

8. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination will, to the fullest extent not prohibited by law, presume Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 7 of this Agreement, and the Company will, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, will be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the determination of the Indemnitee's entitlement to indemnification has not made pursuant to Section 7 within sixty (60) days after the later of (i) receipt by the Company of Indemnitee's request for indemnification pursuant to Section 7 and (ii) the final disposition of the Proceeding for which Indemnitee requested Indemnification (the "***Determination Period***"), the requisite determination of entitlement to indemnification will, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee will be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law. The Determination Period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, the Determination Period may be extended an additional fifteen (15) days if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 7(c) of this Agreement.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, will not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee will be deemed to have acted in good faith if Indemnitee acted based on the records or books of account of the Company, its subsidiaries, or an Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Company, its subsidiaries, or an Enterprise in the course of their duties, or on the advice of legal counsel for the Company, its subsidiaries, or an Enterprise or on information or records given or reports made to the Company or an Enterprise by an independent certified public accountant or by an appraiser, financial advisor or other expert selected with reasonable care by or on behalf of the Company, its subsidiaries, or an Enterprise. Further, Indemnitee will be deemed to have acted in a manner "not opposed to the best interests of the Company," as referred to in this Agreement if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan. The provisions of this Section 8(d) is not exclusive and does not limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Enterprise may not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

9. Insurance. To the extent that the Company maintains an insurance policy or policies providing liability insurance for Agents or for agents of any other Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such Agent or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect or otherwise potentially available, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

10. Exceptions.

(a) Certain Matters. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee on account of any proceeding with respect to: (i) remuneration paid to Indemnitee if it is determined by final judgment or other final adjudication that such remuneration was in violation of law (and, in this respect, both the Company and Indemnitee have been advised that the Securities and Exchange Commission believes that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication, as indicated in Section 10(d) below); (ii) a final judgment rendered against Indemnitee for an accounting, disgorgement or repayment of profits made from the purchase or sale by Indemnitee

of securities of the Company against Indemnitee pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended, or other provisions of any federal, state or local statute or rules and regulations thereunder; (iii) a final judgment rendered against Indemnitee for reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement arrangements) or (iv) a final judgment or other final adjudication that Indemnitee's conduct was in bad faith, knowingly fraudulent or deliberately dishonest or constituted willful misconduct (but only to the extent of such specific determination); or (v) on account of conduct that is established by a final judgment as constituting a breach of Indemnitee's duty of loyalty to the Company or resulting in any personal profit or advantage to which Indemnitee is not legally entitled. For purposes of the foregoing sentence, a final judgment or other adjudication may be reached in either the underlying proceeding or action in connection with which indemnification is sought or a separate proceeding or action to establish rights and liabilities under this Agreement.

(b) Claims Initiated by Indemnitee. Any provision herein to the contrary notwithstanding, the Company shall not be obligated to indemnify or advance Expenses to Indemnitee with respect to proceedings or claims initiated or brought by Indemnitee against the Company or its Agents and not by way of defense, except (i) with respect to proceedings brought to establish or enforce a right to indemnification or advancement under this Agreement or under any other agreement, provision in the Bylaws or Certificate of Incorporation or applicable law, or (ii) with respect to any other proceeding initiated by Indemnitee that is either approved by the Board or Indemnitee's participation is required by applicable law. However, indemnification or advancement of Expenses may be provided by the Company in specific cases if the Board determines it to be appropriate.

(c) Unauthorized Settlements. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee under this Agreement for any amounts paid in settlement of a proceeding effected without the Company's written consent. Neither the Company nor Indemnitee shall unreasonably withhold consent to any proposed settlement; provided, however, that the Company may in any event decline to consent to (or to otherwise admit or agree to any liability for indemnification hereunder in respect of) any proposed settlement if the Company is also a party in such proceeding and determines in good faith that such settlement is not in the best interests of the Company and its stockholders.

(d) Securities Act Liabilities. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee or otherwise act in violation of any undertaking appearing in and required by the rules and regulations promulgated under the Securities Act of 1933, as amended (the "***Act***"), or in any registration statement filed with the SEC under the Act. Indemnitee acknowledges that paragraph (h) of Item 512 of Regulation S-K currently generally requires the

Company to undertake in connection with any registration statement filed under the Act to submit the issue of the enforceability of Indemnitee's rights under this Agreement in connection with any liability under the Act on public policy grounds to a court of appropriate jurisdiction and to be governed by any final adjudication of such issue. Indemnitee specifically agrees that any such undertaking shall supersede the provisions of this Agreement and to be bound by any such undertaking.

(e) Prior Payments. The Company shall not be obligated pursuant to the terms of this Agreement to indemnify or advance Expenses to Indemnitee under this Agreement for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except to the extent made by Indemnitee's Affiliate Director (as defined below), if applicable, as provided in Section 13 and except with respect to any excess beyond the amount paid under any insurance policy or indemnity policy.

11. Nonexclusivity and Survival of Rights. The provisions for indemnification and advancement of Expenses set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may at any time be entitled under any provision of applicable law, the Company's Certificate of Incorporation, Bylaws or other agreements, both as to action in Indemnitee's official capacity and Indemnitee's action as an Agent, in any court in which a proceeding is brought, and Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting as an Agent and shall inure to the benefit of the heirs, executors, administrators and assigns of Indemnitee. The obligations and duties of the Company to Indemnitee under this Agreement shall be binding on the Company and its successors and assigns until terminated in accordance with its terms. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her corporate status prior to such amendment, alteration or repeal. To the extent that a change in the Code, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Company's Certificate of Incorporation, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, by Indemnitee shall not prevent the concurrent assertion or employment of any other right or remedy by Indemnitee.

12. Term. This Agreement shall continue until and terminate upon the later of: (a) ten (10) years after the date that Indemnitee shall have ceased to serve as an Agent; or (b) one (1) year after the final termination of any proceeding, including any appeal then pending, in respect to which Indemnitee was granted rights of indemnification or advancement of Expenses hereunder.

13. Other Rights to Indemnification or Advancement; Subrogation.

(a) The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by one or more other Persons, other than an Enterprise, with whom or which Indemnitee may be associated (including, without limitation, an individual currently serving as a director on the Board (an "***Affiliate Director***")). The relationship between the Company and such other Persons with respect to the Indemnitee's rights to indemnification, advancement of Expenses, and insurance is described by this subsection, subject to the provisions of subsection (b) of this Section 13 with respect to a proceeding concerning Indemnitee's status with an Enterprise.

i. The Company hereby acknowledges and agrees:

1) the Company is the indemnitor of first resort with respect to any request for indemnification or advancement of Expenses made pursuant to this Agreement concerning any proceeding;

2) the Company is primarily liable for all indemnification and indemnification or advancement of Expenses obligations for any Proceeding, whether created by law, organizational or constituent documents, contract (including this Agreement) or otherwise;

3) any obligation of any other Persons with whom or which Indemnitee may be associated (including, without limitation, an Affiliate Director) to indemnify Indemnitee and/or advance Expenses to Indemnitee in respect of any proceeding are secondary to the obligations of the Company's obligations;

4) the Company will indemnify Indemnitee and advance Expenses to Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated (including, an Affiliate Director) or insurer of any such Person; and

ii. the Company irrevocably waives, relinquishes and releases (A) any other Person with whom or which Indemnitee may be associated (including, without limitation, an Affiliate Director) from any claim of contribution, subrogation, reimbursement, exoneration or indemnification, or any other recovery of any kind in respect of amounts paid by the Company to Indemnitee pursuant to this Agreement and (B) any right to participate in any claim or remedy of Indemnitee against any Person (including, without limitation, an Affiliate Director), whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Person (including, without limitation, an Affiliate Director), directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right.

iii. In the event any other Person with whom or which Indemnitee may be associated (including, without limitation, an Affiliate Director) or their insurers advances or extinguishes any liability or loss for Indemnitee, the payor has a right of subrogation against the

Company or its insurers for all amounts so paid which would otherwise be payable by the Company or its insurers under this Agreement. In no event will payment by any other Person with whom or which Indemnitee may be associated (including, without limitation, an Affiliate Director) or their insurers affect the obligations of the Company hereunder or shift primary liability for the Company's obligation to indemnify or advance of Expenses to any other Person with whom or which Indemnitee may be associated (including, without limitation, an Affiliate Director).

iv. Any indemnification or advancement of Expenses provided by any other Person with whom or which Indemnitee may be associated (including, without limitation, an Affiliate Director) is specifically in excess over the Company's obligation to indemnify and advance Expenses or any valid and collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Company.

(b) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee for any proceeding concerning Indemnitee's status with an Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise. The Company and Indemnitee intend that any such Enterprise (and its insurers) be the indemnitor of first resort with respect to indemnification and advancement of Expenses for any proceeding related to or arising from Indemnitee's status with such Enterprise. The Company's obligation to indemnify and advance Expenses to Indemnitee is secondary to the obligations the Enterprise or its insurers owe to Indemnitee. Indemnitee agrees to take all reasonably necessary and desirable action to obtain from an Enterprise indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's corporate status with such Enterprise.

(c) In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee from any insurance carrier or Enterprise. Indemnitee shall, at the request and expense of the Company, execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

14. Interpretation of Agreement. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification and advancement of Expenses to Indemnitee to the fullest extent now or hereafter permitted by law.

15. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of the Agreement (including without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable and to give effect to Section 14 hereof.

16. Amendment and Waiver. No supplement, modification, amendment, or cancellation of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

17. Notice. Except as otherwise provided herein, any notice or demand which, by the provisions hereof, is required or which may be given to or served upon the parties hereto shall be in writing and, if by electronic transmission, shall be deemed to have been validly served, given or delivered when sent, if by overnight delivery, courier or personal delivery, shall be deemed to have been validly served, given or delivered upon actual delivery and, if mailed, shall be deemed to have been validly served, given or delivered three (3) business days after deposit in the United States mail, as registered or certified mail, with proper postage prepaid and addressed to the party or parties to be notified at the addresses set forth on the signature page of this Agreement (or such other address(es) as a party may designate for itself by like notice). If to the Company, notices and demands shall be delivered to the attention of the Secretary of the Company.

18. Governing Law. This Agreement shall be governed exclusively by and construed according to the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute but one and the same Agreement. Only one such counterpart need be produced to evidence the existence of this Agreement.

20. Headings. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

21. Entire Agreement. Subject to Section 11 hereof, this Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, written and oral, between the parties with respect to the subject matter of this Agreement; provided, however, that this Agreement is a supplement to and in furtherance of the Company's Certificate of Incorporation, Bylaws, the Code and any other applicable law, and shall not be deemed a substitute therefor, and does not diminish or abrogate any rights of Indemnitee thereunder.

22. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such proceeding; and/or (ii) the relative fault of the Company and Indemnitee in connection with such event(s) and/or transaction(s).

23. Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "***Delaware Court***"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) agree to appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, an agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the date first above written.

AN2 Therapeutics, INC.

By: /s/ ERIC EASOM
ERIC EASOM
Chief Executive Officer

INDEMNITEE

Signature of Indemnitee

Print or Type Name of Indemnitee

[Signature Page to Indemnity Agreement]

Exhibit 10.10

November 19, 2019

Eric Easom

Re: Employment Terms

Dear Eric:

AN2 THERAPEUTICS, INC. (the ***"Company"***) is pleased to offer you employment beginning on or around November 20, 2019, subject to the initial closing of the Company's Series A Preferred Stock Financing (the ***"Start Date"***).

Position

Your initial position will be President and Chief Executive Officer, responsible for performing such duties as are assigned to you from time to time, reporting to the Company's Board of Directors. You will work at our office located in the Bay Area, as well as from home from time to time as may be agreed upon between you and the Company. Of course, the Company may change your position, duties, and work location from time to time in its discretion.

Compensation and Benefits

Your initial base salary will be paid at the rate of $340,000 per year, less payroll deductions and withholdings, paid on the Company's normal payroll schedule.

You will also be eligible to earn an annual discretionary bonus. The amount of this bonus will be determined in the sole discretion of the Company and based, in part, on your performance and the performance of the Company during the calendar year, as well as any other criteria the Company deems relevant. The Company will pay you this bonus, if any, no later than March 15th of the following calendar year. The bonus is not earned until paid and no pro-rated amount will be paid if your employment terminates for any reason prior to the payment date. For 2020 and thereafter, you will be eligible to earn an annual bonus of up to 40% of your base salary.

During your employment, you will be eligible to participate in the benefits plans offered to similarly situated employees by the Company from time to time, subject to plan terms and generally applicable Company policies. Currently, exempt employees do not accrue vacation. Supervisors will approve paid vacation requests based on the employee's progress on work goals or milestones, status of projects, fairness to the working team, and productivity and efficiency of the employee. Since vacation is not allotted or accrued, there is no "unused" vacation time to be carried over from one year to the next nor paid out upon termination. A full description of current benefits will be made available for your review. The Company may change compensation and benefits from time to time in its discretion.

By signing this offer letter, you acknowledge and agree that the Company has fulfilled any and all obligations of the Company to you for compensation of any kind earned prior to the date hereof, including, without limitation, bonuses, wages, overtime wages, salary, and commissions or any other expectation of remuneration or benefit on your part.

Confidential Information and Company Policies

As a Company employee, you will be expected to abide by Company rules and policies. As a condition of employment, you must sign and comply with the attached Employee Confidential Information and Inventions Assignment Agreement which prohibits unauthorized use or disclosure of the Company's proprietary information, among other obligations.

By signing this letter you are representing that you have full authority to accept this position and perform the duties of the position without conflict with any other obligations and that you are not involved in any situation that might create, or appear to create, a conflict of interest with respect to your loyalty or duties to the Company. You specifically warrant that you are not subject to an employment agreement or restrictive covenant preventing full performance of your duties to the Company. You agree not to bring to the Company or use in the performance of your responsibilities at the Company any materials or documents of a former employer that are not generally available to the public, unless you have obtained express written authorization from the former employer for their possession and use. You also agree to honor all obligations to former employers during your employment with the Company.

At-Will Employment and Exempt Status

Your employment with the Company will be "at-will." You may terminate your employment with the Company at any time and for any reason whatsoever simply by notifying the Company. Likewise, the Company may terminate your employment at any time, with or without cause or advance notice. Your employment at-will status can only be modified in a written agreement signed by you and by an officer of the Company.

As an exempt salaried employee, you will be expected to work the Company's normal business hours as well as additional hours as required by the nature of your work assignments, and you will not be eligible for overtime compensation.

Conditions, Dispute Resolution, and Complete Agreement

This offer is contingent upon a satisfactory reference check and satisfactory proof of your right to work in the United States. If the Company informs you that you are required to complete a background check, this offer is contingent upon satisfactory clearance of such background check. You agree to assist as needed and to complete any documentation at the Company's request to meet these conditions.

To ensure the rapid and economical resolution of disputes that may arise in connection with your employment with the Company, you and the Company agree that any and all disputes, claims, or causes of action, in law or equity, including but not limited to statutory claims, arising from or relating to the enforcement, breach, performance, or interpretation of this Agreement, your employment with the Company, or the termination of your employment, shall be resolved pursuant to the Federal Arbitration Act, 9 U.S.C. § 1-16, to the fullest extent permitted by law, by final, binding and confidential arbitration conducted by JAMS or its successor, under JAMS' then applicable rules and procedures for employment disputes before a single arbitrator (available upon request and also currently available at http://www.jamsadr.com/rules-employment-arbitration/). **You acknowledge that by agreeing to this arbitration procedure, both you and the Company waive the right to resolve any such dispute through a trial by jury or judge or administrative proceeding.** In addition, all claims, disputes, or causes of action under this section, whether by you or the Company, must be brought in an individual capacity, and shall not be brought as a plaintiff (or claimant) or class member in any purported class or representative proceeding, nor joined or consolidated with the claims of any other person or entity. The arbitrator may not consolidate the claims of more than one person or entity, and may not preside over any

form of representative or class proceeding. To the extent that the preceding sentences regarding class claims or proceedings are found to violate applicable law or are otherwise found unenforceable, any claim(s) alleged or brought on behalf of a class shall proceed in a court of law rather than by arbitration. This paragraph shall not apply to any action or claim that cannot be subject to mandatory arbitration as a matter of law, including, without limitation, claims brought pursuant to the California Private Attorneys General Act of 2004, as amended, to the extent such claims are not permitted by applicable law to be submitted to mandatory arbitration (collectively, the *"**Excluded Claims**").* In the event you intend to bring multiple claims, including one of the Excluded Claims listed above, the Excluded Claims may be publicly filed with a court, while any other claims will remain subject to mandatory arbitration. You will have the right to be represented by legal counsel at any arbitration proceeding. Questions of whether a claim is subject to arbitration under this agreement shall be decided by the arbitrator. Likewise, procedural questions which grow out of the dispute and bear on the final disposition are also matters for the arbitrator. The arbitrator shall: (a) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by Jaw; and (b) issue a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim, the reasons for the award, and the arbitrator's essential findings and conclusions on which the award is based. The arbitrator shall be authorized to award all relief that you or the Company would be entitled to seek in a court of Jaw. The Company shall pay all JAMS arbitration fees in excess of the administrative fees that you would be required to pay if the dispute were decided in a court of law. Nothing in this letter agreement is intended to prevent either you or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Any awards or orders in such arbitrations may be entered and enforced as judgments in the federal and state courts of any competent jurisdiction.

This letter, together with your Employee Confidential Information and Inventions Assignment Agreement, forms the complete and exclusive statement of your employment agreement with the Company. It supersedes any other agreements or promises made to you by anyone, whether oral or written. Changes in your employment terms, other than those changes expressly reserved to the Company's discretion in this letter, require a written modification signed by an officer of the Company. If any provision of this offer letter agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any other provision of this offer letter agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible under applicable law. This letter may be delivered and executed via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and shall be deemed to have been duly and validly delivered and executed and be valid and effective for all purposes.

* * *

Please sign and date this letter, and the enclosed Employee Confidential Information and Inventions Assignment Agreement and return them to me by November 22, 2019 if you wish to accept employment at the Company under the terms described above.

We look forward to your favorable reply and to a productive and enjoyable work relationship.

Sincerely,

Understood and Accepted:

/s/ Eric Easom	11.19. 2019
Eric Easom	Date

Attachment: Employee Confidential Information and Inventions Assignment Agreement

AN2 THERAPEUTICS, INC.

EMPLOYEE CONFIDENTIAL INFORMATION AND INVENTION ASSIGNMENT AGREEMENT

In consideration of my employment or continued employment by **AN2 THERAPEUTICS, INC.**, its subsidiaries, parents, affiliates, successors and assigns (together "***Company***"), and the compensation paid to me now and during my employment with Company, I hereby enter into this Employee Confidential Information and Invention Assignment Agreement (the "***Agreement***") and agree as follows:

1. CONFIDENTIAL INFORMATION PROTECTIONS.

1.1 Recognition of Company's Rights; Nondisclosure. I understand and acknowledge that my employment by Company creates a relationship of confidence and trust with respect to Company's Confidential Information (as defined below) and that Company has a protectable interest therein. At all times during and after my employment, I will hold in confidence and will not disclose, use, lecture upon, or publish any of Company's Confidential Information, except as such disclosure, use or publication may be required in connection with my work for Company, or unless an officer of Company expressly authorizes such disclosure. I will obtain Company's written approval before publishing or submitting for publication any material (written, oral, or otherwise) that discloses and/or incorporates any Confidential Information. I hereby assign to Company any rights I may have or acquire in such Confidential Information and recognize that all Confidential Information shall be the sole and exclusive property of Company and its assigns. I will take all reasonable precautions to prevent the inadvertent accidental disclosure of Confidential Information. Notwithstanding the foregoing, pursuant to 18 U.S.C. Section 1833(b), I shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (1) is made in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

1.2 Confidential Information. The term "***Confidential Information***" shall mean any and all confidential knowledge, data or information of Company. By way of illustration but not limitation, "***Confidential Information***" includes (a) trade secrets, inventions, mask works, ideas, processes, formulas, software in source or object code, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques and any other proprietary technology and all Intellectual Property Rights (as defined below) therein (collectively, "***Inventions***"); (b) information regarding research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, margins, discounts, credit terms, pricing and billing policies, quoting procedures, methods of obtaining business, forecasts, future plans and potential strategies, financial projections and business strategies, operational plans, financing and capital-raising plans, activities and agreements, internal services and operational manuals, methods of conducting Company business, suppliers and supplier information, and purchasing; (c) information regarding customers and potential customers of Company, including customer lists, names, representatives, their needs or desires with respect to the types of products or services offered by Company, proposals, bids, contracts and their contents and parties, the type and quantity of products and services provided or sought to be provided to customers and potential customers of Company and other non-public information relating to customers and potential customers; (d) information regarding any of Company's business partners and their services, including names, representatives, proposals, bids, contracts and their contents and parties, the type and quantity of products and services received by Company, and other non-public information relating to business partners; (e) information regarding personnel, employee lists, compensation, and employee skills; and (f) any other non-public information which a competitor of Company could use to the competitive disadvantage of Company. Notwithstanding the foregoing, it is understood that, at all such times, I am free to use information which was known to me prior to my employment with Company or which is generally known in the trade or industry through no breach of this Agreement or other act or omission by me, and I am free to discuss the terms and conditions of my employment with others to the extent expressly permitted by Section 7 of the National Labor Relations Act.

1.3 Third Party Information. I understand, in addition, that Company has received and in the future will receive from third parties their confidential and/or proprietary knowledge, data or information (**"*Third Party Information*"**) subject to a duty on Company's part to

maintain the confidentiality of such information and to use it only for certain limited purposes. During the term of my employment and thereafter, I will hold Third Party Information in confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for Company) or use, except in connection with my work for Company, Third Party Information or unless expressly authorized by an officer of Company in writing.

1.4 Term of Nondisclosure Restrictions. I understand that Confidential Information and Third Party Information is never to be used or disclosed by me, as provided in this Section 1. If a temporal limitation on my obligation not to use or disclose such information is required under applicable law, and the Agreement or its restriction(s) cannot otherwise be enforced, I agree and Company agrees that the two year period after the date my employment ends will be the temporal limitation relevant to the contested restriction; ***provided, however,*** that this sentence will not apply to trade secrets protected without temporal limitation under applicable law.

1.5 No Improper Use of Information of Prior Employers and Others. During my employment by Company, I will not improperly use or disclose confidential information or trade secrets, if any, of any former employer or any other person to whom I have an obligation of confidentiality, and I will not bring onto the premises of Company any unpublished documents or any property belonging to any former employer or any other person to whom I have an obligation of confidentiality unless consented to in writing by that former employer or person.

2. ASSIGNMENTS OF INVENTIONS.

2.1 Definitions. As used in this Agreement, the term ***"Intellectual Property Rights"*** means all trade secrets, Copyrights, trademarks, mask work rights, patents and other intellectual property rights recognized by the laws of any jurisdiction or country; the term "***Copyright***" means the exclusive legal right to reproduce, perform, display, distribute and make derivative works of a work of authorship (as a literary, musical, or artistic work) recognized by the laws of any jurisdiction or country; and the term "***Moral Rights***" means all paternity, integrity, disclosure, withdrawal, special and any other similar rights recognized by the laws of any jurisdiction or country.

2.2 Excluded Inventions and Other Inventions. Attached hereto as **Exhibit A** is a list describing all existing Inventions, if any, (a) that are owned by me or in which I have an interest and were made or acquired by me prior to my date of first employment by Company, (b) that may relate to Company's business or actual or demonstrably anticipated research or development, and (c) that are not to be assigned to Company ("***Excluded Inventions***"). If no such list is attached, I represent and agree that it is because I have no Excluded Inventions. For purposes of this Agreement, "***Other Inventions***" means Inventions in which I have or may have an interest, as of the commencement of my employment or thereafter, other than Company Inventions (as defined below) and Excluded Inventions. I acknowledge and agree that if I use any Excluded Inventions or any Other Inventions in the scope of my employment, or if I include any Excluded Inventions or Other Inventions in any product or service of Company, or if my rights in any Excluded Inventions or Other Inventions may block or interfere with, or may otherwise be required for, the exercise by Company of any rights assigned to Company under this Agreement, I will immediately so notify Company in writing. Unless Company and I agree otherwise in writing as to particular Excluded Inventions or Other Inventions, I hereby grant to Company, in such circumstances (whether or not I give Company notice as required above), a non-exclusive, perpetual, transferable, fully-paid and royalty-free, irrevocable and worldwide license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make derivative works of, distribute, publicly perform, and publicly display in any form or medium, whether now known or later developed, make, have made, use, sell, import, offer for sale, and exercise any and all present or future rights in, such Excluded Inventions and Other Inventions. To the extent that any third parties have rights in any such Other Inventions, I hereby represent and warrant that such third party or parties have validly and irrevocably granted to me the right to grant the license stated above.

2.3 Assignment of Company Inventions. Inventions assigned to Company or to a third party as directed by Company pursuant to Section 2.6 are referred to in this Agreement as "***Company Inventions***." Subject to Section 2.4 and except for Excluded Inventions set forth in **Exhibit A** and Other Inventions, I hereby assign to Company all my right, title, and interest in and to any and all Inventions (and all Intellectual Property Rights with respect thereto) made, conceived, reduced to practice, or learned by me, either alone or with others, during the period of my employment by Company. To the extent required by applicable Copyright laws, I agree to assign in the future (when any copyrightable Inventions are first fixed in a tangible medium of

expression) my Copyright rights in and to such Inventions. Any assignment of Company Inventions (and all Intellectual Property Rights with respect thereto) hereunder includes an assignment of all Moral Rights. To the extent such Moral Rights cannot be assigned to Company and to the extent the following is allowed by the laws in any country where Moral Rights exist, I hereby unconditionally and irrevocably waive the enforcement of such Moral Rights, and all claims and causes of action of any kind against Company or related to Company's customers, with respect to such rights. I further acknowledge and agree that neither my successors-in-interest nor legal heirs retain any Moral Rights in any Company Inventions (and any Intellectual Property Rights with respect thereto).

2.4 Unassigned or Nonassignable Inventions. I recognize that this Agreement will not be deemed to require assignment of any Invention that is covered under California Labor Code section 2870(a) (the "***Specific Inventions Law***") except for those Inventions that are covered by a contract between Company and the United States or any of its agencies that require full title to such patent or Invention to be in the United States.

2.5 Obligation to Keep Company Informed. During the period of my employment, I will promptly and fully disclose to Company in writing all Inventions authored, conceived, or reduced to practice by me, either alone or jointly with others. At the time of each such disclosure, I will advise Company in writing of any Inventions that I believe fully qualify for protection under the provisions of the Specific Inventions Law; and I will at that time provide to Company in writing all evidence necessary to substantiate that belief. Company will keep in confidence and will not use for any purpose or disclose to third parties without my consent any confidential information disclosed in writing to Company pursuant to this Agreement relating to Inventions that qualify fully for protection under the Specific Inventions Law. I will preserve the confidentiality of any Invention that does not fully qualify for protection under the Specific Inventions Law.

2.6 Government or Third Party. I agree that, as directed by Company, I will assign to a third party, including without limitation the United States, all my right, title, and interest in and to any particular Company Invention.

2.7 Ownership of Work Product. I agree that Company will exclusively own all work product that is made by me (solely or jointly with others) within the scope of my employment, and I hereby irrevocably and unconditionally assign to Company all right, title and interest worldwide in and to such work product. I acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of my employment and which are protectable by Copyright are "works made for hire," pursuant to United States Copyright Act (17 U.S.C., Section 101). I understand and agree that I have no right to publish on, submit for publishing, or use for any publication any work product protected by this Section, except as necessary to perform services for Company.

2.8 Enforcement of Intellectual Property Rights and Assistance. I will assist Company in every proper way to obtain, and from time to time enforce, United States and foreign Intellectual Property Rights and Moral Rights relating to Company Inventions in any and all countries. To that end I will execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such Intellectual Property Rights and the assignment thereof. In addition, I will execute, verify and deliver assignments of such Intellectual Property Rights to Company or its designee, including the United States or any third party designated by Company. My obligation to assist Company with respect to Intellectual Property Rights relating to such Company Inventions in any and all countries will continue beyond the termination of my employment, but Company will compensate me at a reasonable rate after my termination for the time actually spent by me at Company's request on such assistance. In the event Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions specified in the preceding paragraph, I hereby irrevocably designate and appoint Company and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act for and on my behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph with the same legal force and effect as if executed by me. I hereby waive and quitclaim to Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any Intellectual Property Rights assigned under this Agreement to Company.

2.9 Incorporation of Software Code. I agree that I will not incorporate into any Company software or otherwise deliver to Company any software code licensed

under the GNU General Public License or Lesser General Public License or any other license that, by its terms, requires or conditions the use or distribution of such code on the disclosure, licensing, or distribution of any source code owned or licensed by Company **except** in strict compliance with Company's policies regarding the use of such software.

3. RECORDS. I agree to keep and maintain adequate and current records (in the form of notes, sketches, drawings and in any other form that is required by Company) of all Confidential Information developed by me and all Company Inventions made by me during the period of my employment at Company, which records will be available to and remain the sole property of Company at all times.

4. DUTY OF LOYALTY DURING EMPLOYMENT. I agree that during the period of my employment by Company, I will not, without Company's express written consent, directly or indirectly engage in any employment or business activity which is directly or indirectly competitive with, or would otherwise conflict with, my employment by Company.

5. NO SOLICITATION OF EMPLOYEES, CONSULTANTS OR CONTRACTORS. I agree that during the period of my employment and for the one year period after the date my employment ends for any reason, including but not limited to voluntary termination by me or involuntary termination by Company, I will not, as an officer, director, employee, consultant, owner, partner, or in any other capacity, either directly or through others, except on behalf of Company, solicit, induce, encourage, or participate in soliciting, inducing or encouraging any person known to me to be an employee, consultant, or independent contractor of Company to terminate his or her relationship with Company, even if I did not initiate the discussion or seek out the contact.

6. REASONABLENESS OF RESTRICTIONS.

6.1 I agree that I have read this entire Agreement and understand it. I agree that this Agreement does not prevent me from earning a living or pursuing my career. I agree that the restrictions contained in this Agreement are reasonable, proper, and necessitated by Company's legitimate business interests. I represent and agree that I am entering into this Agreement freely and with knowledge of its contents with the intent to be bound by the Agreement and the restrictions contained in it.

6.2 In the event that a court finds this Agreement, or any of its restrictions, to be ambiguous, unenforceable, or invalid, I and Company agree that the court will read the Agreement as a whole and interpret the restriction(s) at issue to be enforceable and valid to the maximum extent allowed by law.

6.3 If the court declines to enforce this Agreement in the manner provided in subsection 6.2, Company and I agree that this Agreement will be automatically modified to provide Company with the maximum protection of its business interests allowed by law and I agree to be bound by this Agreement as modified.

7. NO CONFLICTING AGREEMENT OR OBLIGATION. I represent that my performance of all the terms of this Agreement and as an employee of Company does not and will not breach any agreement to keep in confidence information acquired by me in confidence or in trust prior to my employment by Company. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict with this Agreement.

8. RETURN OF COMPANY PROPERTY. When I leave the employ of Company, I will deliver to Company any and all drawings, notes, memoranda, specifications, devices, formulas and documents, together with all copies thereof, and any other material containing or disclosing any Company Inventions, Third Party Information or Confidential Information of Company. I agree that I will not copy, delete, or alter any information contained upon my Company computer or Company equipment before I return it to Company. In addition, if I have used any personal computer, server, or e-mail system to receive, store, review, prepare or transmit any Company information, including but not limited to, Confidential Information, I agree to provide Company with a computer-useable copy of all such Confidential Information and then permanently delete and expunge such Confidential Information from those systems; and I agree to provide Company access to my system as reasonably requested to verify that the necessary copying and/or deletion is completed. I further agree that any property situated on Company's premises and owned by Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company's personnel at any time with or without notice. Prior to leaving, I will cooperate with Company in attending an exit interview and completing and signing Company's termination statement if required to do so by Company.

9. LEGAL AND EQUITABLE REMEDIES.

9.1 I agree that it may be impossible to assess the damages caused by my violation of this Agreement or any of its terms. I agree that any threatened or actual violation of this Agreement or any of its terms will constitute immediate and irreparable injury to Company, and Company will have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that Company may have for a breach or threatened breach of this Agreement.

9.2 In the event Company enforces this Agreement through a court order, I agree that the restrictions of Section 5 will remain in effect for a period of 12 months from the effective date of the Order enforcing the Agreement.

10. NOTICES. Any notices required or permitted under this Agreement will be given to Company at its headquarters location at the time notice is given, labeled "Attention Chief Executive Officer," and to me at my address as listed on Company payroll, or at such other address as Company or I may designate by written notice to the other. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, notice will be considered to have been given five business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, notice will be considered to have been given on the delivery date reflected by the courier or express mail service receipt.

11. PUBLICATION OF THIS AGREEMENT TO SUBSEQUENT EMPLOYER OR BUSINESS ASSOCIATES OF EMPLOYEE.

11.1 If I am offered employment or the opportunity to enter into any business venture as owner, partner, consultant or other capacity while the restrictions described in Section 5 of this Agreement are in effect I agree to inform my potential employer, partner, co-owner and/or others involved in managing the business with which I have an opportunity to be associated of my obligations under this Agreement and also agree to provide such person or persons with a copy of this Agreement.

11.2 I agree to inform Company of all employment and business ventures which I enter into while the restrictions described in Section 5 of this Agreement are in effect and I also authorize Company to provide copies of this Agreement to my employer, partner, co-owner and/or others involved in managing the business with which I am employed or associated and to make such persons aware of my obligations under this Agreement.

12. GENERAL PROVISIONS.

12.1 Governing Law; Consent to Personal Jurisdiction. This Agreement will be governed by and construed according to the laws of the State of California as such laws are applied to agreements entered into and to be performed entirely within California between residents of California. I hereby expressly consent to the personal jurisdiction and venue of the state and federal courts located in California for any lawsuit filed there against me by Company arising from or related to this Agreement.

12.2 Severability. In case any one or more of the provisions, subsections, or sentences contained in this Agreement will, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement. If moreover, any one or more of the provisions contained in this Agreement will for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it will be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it will then appear.

12.3 Successors and Assigns. This Agreement is for my benefit and the benefit of Company, its successors, assigns, parent corporations, subsidiaries, affiliates, and purchasers, and will be binding upon my heirs, executors, administrators and other legal representatives.

12.4 Survival. This Agreement shall survive the termination of my employment, regardless of the reason, and the assignment of this Agreement by Company to any successor in interest or other assignee.

12.5 Employment At-Will. I agree and understand that nothing in this Agreement will change my at-will employment status or confer any right with respect to continuation of employment by Company, nor will it interfere in any way with my right or Company's right to terminate my employment at any time, with or without cause or advance notice.

12.6 Waiver. No waiver by Company of any breach of this Agreement will be a waiver of any preceding or

succeeding breach. No waiver by Company of any right under this Agreement will be construed as a waiver of any other right. Company will not be required to give notice to enforce strict adherence to all terms of this Agreement.

12.7 Export. I agree not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Company or any products utilizing such data, in violation of the United States export laws or regulations.

12.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. This Agreement may also be executed and delivered by facsimile signature, PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com).

12.9 Advice of Counsel. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT WILL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION OF THIS AGREEMENT.

12.10 Entire Agreement. The obligations pursuant to Sections 1 and 2 (except Subsection 2.4 and the second sentence of Subsection 2.7) of this Agreement will apply to any time during which I was previously engaged, or am in the future engaged, by Company as a consultant if no other agreement governs nondisclosure and assignment of inventions during such period. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter of this Agreement and supersedes and merges all prior discussions between us. No modification of or amendment to this Agreement will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

[signatures to follow on next page]

This Agreement will be effective as of February 24, 2017.

EMPLOYEE:

I HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ITS TERMS. I HAVE COMPLETELY FILLED OUT EXHIBIT A TO THIS AGREEMENT.

/s/ Eric Easom
(Signature)

Eric Easom
Name

2/24/2017
Date

COMPANY:

ACCEPTED AND AGREED

AN2 THERAPEUTICS, INC.

By: /s/ Eric Easom
Name: Eric Easom
Title: Chief Executive Officer

EXHIBIT A

EXCLUDED INVENTIONS

TO: **AN2 Therapeutics, Inc.**

FROM: **Eric Easom**

DATE: 2/24/2017

1. Excluded Inventions Disclosure. Except as listed in Section 2 below, the following is a complete list of all Excluded Inventions:

☒ No Excluded Inventions.

☐ See below:

N/A

N/A

N/A

☐ Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to the Excluded Inventions generally listed below, the intellectual property rights and duty of confidentiality with respect to which I owe to the following party(ies):

	Excluded Invention	Party(ies)	Relationship
1.	N/A	N/A	N/A
2.			
3.			

☐ Additional sheets attached.

3. Limited Exclusion Notification.

This is to notify you in accordance with Section 2872 of the California Labor Code that the foregoing Agreement between you and Company does not require you to assign or offer to assign to Company any Invention that you develop entirely on your own time without using Company's equipment, supplies, facilities or trade secret information, except for those Inventions that either:

a. Relate at the time of conception or reduction to practice to Company's business, or actual or demonstrably anticipated research or development; or

b. Result from any work performed by you for Company.

To the extent a provision in the foregoing Agreement purports to require you to assign an Invention otherwise excluded from the preceding paragraph, the provision is against the public policy of this state and is unenforceable.

This limited exclusion does not apply to any patent or Invention covered by a contract between Company and the United States or any of its agencies requiring full title to such patent or Invention to be in the United States.

Exhibit 10.11

November 19, 2019

Lucy O. Day

Re: Employment Terms

Dear Lucy:

AN2 THERAPEUTICS, INC. (the ***"Company")*** is pleased to offer you employment beginning on or around November 20, 2019, subject to the initial closing of the Company's Series A Preferred Stock Financing (the ***"Start Date"***).

Position

Your initial position will be Chief Financial Officer, responsible for performing such duties as are assigned to you from time to time, reporting to the Company's Chief Executive Officer. You will work at our office located in the Bay Area, as well as from home from time to time as may be agreed upon between you and the Company. Of course, the Company may change your position, duties, and work location from time to time in its discretion.

Compensation and Benefits

Your initial base salary will be paid at the rate of $67,000 per year, less payroll deductions and withholdings, paid on the Company's normal payroll schedule. It is our expectation that you will initially dedicate at least 25% of your working time to the Company, increasing up to 100% effort as the Company grows.

You will also be eligible to earn an annual discretionary bonus. The amount of this bonus will be determined in the sole discretion of the Company and based, in part, on your performance and the performance of the Company during the calendar year, as well as any other criteria the Company deems relevant. The Company will pay you this bonus, if any, no later than March 15th of the following calendar year. The bonus is not earned until paid and no pro-rated amount will be paid if your employment terminates for any reason prior to the payment date. For 2020 and thereafter, you will be eligible to earn an annual bonus of up to 20% of your base salary.

During your employment, you will be eligible to participate in the benefits plans offered to similarly situated employees by the Company from time to time, subject to plan terms and generally applicable Company policies. Currently, exempt employees do not accrue vacation. Supervisors will approve paid vacation requests based on the employee's progress on work goals or milestones, status of projects, fairness to the working team, and productivity and efficiency of the employee. Since vacation is not allotted or accrued, there is no "unused" vacation time to be carried over from one year to the next nor paid out upon termination. A full description of current benefits will be made available for your review. The Company may change compensation and benefits from time to time in its discretion.

By signing this offer letter, you acknowledge and agree that the Company has fulfilled any and all obligations of the Company to you for compensation of any kind earned prior to the date hereof, including, without limitation, bonuses, wages, overtime wages, salary, and commissions or any other expectation of remuneration or benefit on your part.

Equity

Subject to approval by the Company's Board of Directors (the ***"Board")***, the Company anticipates granting you (i) an option to purchase 15,546 shares of the Company's common stock (the ***"First Option")*** and (ii) an option to purchase 3,756 shares of the Company's common stock (the ***"Second Option")***, each at the fair market value as determined by the Board as of the date of grant.. The anticipated First Option and Second Option will be governed by the terms and conditions of the Company's 2017 Equity Incentive Plan (the ***"Plan")*** and your grant agreements, and will include the following vesting schedules: For the First Option, 12/48ths of the total shares will vest on the one year anniversary of the Vesting Commencement Date (e.g., your Start Date), and 1/48th of the total shares will vest each month thereafter on the same day of the month as the vesting commencement date (or if there is no corresponding day, on the last day of the month (the ***"Time-Based Vesting Schedule")*** and for the Second Option, shares shall vest on the Time-Based Vesting Schedule, but also contingent upon the closing of the second tranche of the Company's Series A Preferred Stock Financing. In the event that the second tranche of the Company's Series A Preferred Stock Financing does not occur, the Second Option shall expire. The vesting of both the First Option and the Second Option are subject to your Continuous Service (as defined in the Plan) as of each such date.

Confidential Information and Company Policies

As a Company employee, you will be expected to abide by Company rules and policies. As a condition of employment, you must sign and comply with the attached Employee Confidential Information and Inventions Assignment Agreement which prohibits unauthorized use or disclosure of the Company's proprietary information, among other obligations.

By signing this letter you are representing that you have full authority to accept this position and perform the duties of the position without conflict with any other obligations and that you are not involved in any situation that might create, or appear to create, a conflict of interest with respect to your loyalty or duties to the Company. You specifically warrant that you are not subject to an employment agreement or restrictive covenant preventing full performance of your duties to the Company. You agree not to bring to the Company or use in the performance of your responsibilities at the Company any materials or documents of a former employer that are not generally available to the public, unless you have obtained express written authorization from the former employer for their possession and use. You also agree to honor all obligations to former employers during your employment with the Company.

At-Will Employment and Exempt Status

Your employment with the Company will be "at-will." You may terminate your employment with the Company at any time and for any reason whatsoever simply by notifying the Company. Likewise, the Company may terminate your employment at any time, with or without cause or advance notice. Your employment at-will status can only be modified in a written agreement signed by you and by an officer of the Company.

As an exempt salaried employee, you will be expected to work the Company's normal business hours as well as additional hours as required by the nature of your work assignments, and you will not be eligible for overtime compensation.

Conditions, Dispute Resolution, and Complete Agreement

This offer is contingent upon a satisfactory reference check and satisfactory proof of your right to work in the United States. If the Company informs you that you are required to complete a background check, this offer is contingent upon satisfactory clearance of such background check. You agree to assist as needed and to complete any documentation at the Company's request to meet these conditions.

To ensure the rapid and economical resolution of disputes that may arise in connection with your employment with the Company, you and the Company agree that any and all disputes, claims, or causes of action, in law or equity, including but not limited to statutory claims, arising from or relating to the enforcement, breach, performance, or interpretation of this Agreement, your employment with the Company, or the termination of your employment, shall be resolved pursuant to the Federal Arbitration Act, 9 U.S.C. § 1-16, to the fullest extent permitted by law, by final, binding and confidential arbitration conducted by JAMS or its successor, under JAMS' then applicable rules and procedures for employment disputes before a single arbitrator (available upon request and also currently available at http://www.jamsadr.com/rules-employment-arbitration/). **You acknowledge that by agreeing to this arbitration procedure, both you and the Company waive the right to resolve any such dispute through a trial by jury or judge or administrative proceeding.** In addition, all claims, disputes, or causes of action under this section, whether by you or the Company, must be brought in an individual capacity, and shall not be brought as a plaintiff (or claimant) or class member in any purported class or representative proceeding, nor joined or consolidated with the claims of any other person or entity. The arbitrator may not consolidate the claims of more than one person or entity, and may not preside over any form of representative or class proceeding. To the extent that the preceding sentences regarding class claims or proceedings are found to violate applicable Jaw or are otherwise found unenforceable, any claim(s) alleged or brought on behalf of a class shall proceed in a court of law rather than by arbitration. This paragraph shall not apply to any action or claim that cannot be subject to mandatory arbitration as a matter of Jaw, including, without limitation, claims brought pursuant to the California Private Attorneys General Act of 2004, as amended, to the extent such claims are not permitted by applicable law to be submitted to mandatory arbitration (collectively, the ***"Excluded Claims"***). In the event you intend to bring multiple claims, including one of the Excluded Claims listed above, the Excluded Claims may be publicly filed with a court, while any other claims will remain subject to mandatory arbitration. You will have the right to be represented by legal counsel at any arbitration proceeding. Questions of whether a claim is subject to arbitration under this agreement shall be decided by the arbitrator. Likewise, procedural questions which grow out of the dispute and bear on the final disposition are also matters for the arbitrator. The arbitrator shall: (a) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; and (b) issue a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim, the reasons for the award, and the arbitrator's essential findings and conclusions on which the award is based. The arbitrator shall be authorized to award all relief that you or the Company would be entitled to seek in a court of law. The Company shall pay all JAMS arbitration fees in excess of the administrative fees that you would be required to pay if the dispute were decided in a court of law. Nothing in this letter agreement is intended to prevent either you or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Any awards or orders in such arbitrations may be entered and enforced as judgments in the federal and state courts of any competent jurisdiction.

This letter, together with your Employee Confidential Information and Inventions Assignment Agreement, forms the complete and exclusive statement of your employment agreement with the Company. It supersedes any other agreements or promises made to you by anyone, whether oral or written. Changes in your employment terms, other than those changes expressly reserved to the Company's discretion in this letter, require a written modification signed by an officer of the Company. If any provision of this offer letter agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall

not affect any other provision of this offer letter agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible under applicable law. This letter may be delivered and executed via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and shall be deemed to have been duly and validly delivered and executed and be valid and effective for all purposes.

* * *

Please sign and date this letter, and the enclosed Employee Confidential Information and Inventions Assignment Agreement and return them to me by November 22, 2019 if you wish to accept employment at the Company under the terms described above.

We look forward to your favorable reply and to a productive and enjoyable work relationship.

Sincerely,

/s/ Eric Easom
Eric Easom, Chief Executive Officer

Understood and Accepted:

/s/ Lucy O. Day	11/19/19
Lucy O. Day	Date

Attachment: Employee Confidential Information and Inventions Assignment Agreement

AN2 THERAPEUTICS, INC.

EMPLOYEE CONFIDENTIAL INFORMATION AND INVENTION ASSIGNMENT AGREEMENT

In consideration of my employment or continued employment by **AN2 THERAPEUTICS, INC.**, its subsidiaries, parents, affiliates, successors and assigns (together ***"Company"),*** and the compensation paid to me now and during my employment with Company, I hereby enter into this Employee Confidential Information and Invention Assignment Agreement (the "***Agreement***") and agree as follows:

1. Confidential Information Protections.

1.1 Recognition of Company's Rights; Nondisclosure. I understand and acknowledge that my employment by Company creates a relationship of confidence and trust with respect to Company's Confidential Information (as defined below) and that Company has a protectable interest therein. At all times during and after my employment, I will hold in confidence and will not disclose, use, lecture upon, or publish any of Company's Confidential Information, except as such disclosure, use or publication may be required in connection with my work for Company, or unless an officer of Company expressly authorizes such disclosure. I will obtain Company's written approval before publishing or submitting for publication any material (written, oral, or otherwise) that discloses and/or incorporates any Confidential Information. I hereby assign to Company any rights I may have or acquire in such Confidential Information and recognize that all Confidential Information will be the sole and exclusive property of Company and its assigns. I will take all reasonable precautions to prevent the inadvertent accidental disclosure of Confidential Information. Notwithstanding the foregoing, pursuant to 18 U.S.C. Section 1833(b), I will not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (1) is made in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

1.2 Confidential Information. The term ***"Confidential Information"*** means any and all confidential knowledge, data or information of Company. By way of illustration but not limitation, ***"Confidential Information"*** includes (a) trade secrets, inventions, mask works, ideas, processes, formulas, software in source or object code, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques and any other proprietary technology and all Intellectual Property Rights (as defined below) therein (collectively, ***"Inventions");*** (b) information regarding research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, margins, discounts, credit terms, pricing and billing policies, quoting procedures, methods of obtaining business, forecasts, future plans and potential strategies, financial projections and business strategies, operational plans, financing and capital-raising plans, activities and agreements, internal services and operational manuals, methods of conducting Company business, suppliers and supplier information, and purchasing; (c) information regarding customers and potential customers of Company, including customer lists, names, representatives, their needs or desires with respect to the types of products or services offered by Company, proposals, bids, contracts and their contents and parties, the type and quantity of products and services provided or sought to be provided to customers and potential customers of Company and other non-public information relating to customers and potential customers; (d) information regarding any of Company's business partners and their services, including names, representatives, proposals, bids, contracts and their contents and parties, the type and quantity of products and services received by Company, and other non-public information relating to business partners; (e) information regarding personnel, employee lists, compensation, and employee skills; and (f) any other non-public information which a competitor of Company could use to the competitive disadvantage of Company. Notwithstanding the foregoing, it is understood that, at all such times, I am free to use information which was known to me prior to my employment with Company or which is generally known in the trade or industry through no breach of this Agreement or other act or omission by me. Notwithstanding the foregoing or anything to the contrary in this Agreement or any other agreement between the Company and me, nothing in this Agreement will limit my right to discuss my employment or report possible violations of law or regulation with the Equal Employment Opportunity Commission, United States Department of Labor, the National Labor Relations Board, the Securities and Exchange Commission, or other federal government agency or similar state or local agency or to discuss the terms and conditions of my employment with others to the extent expressly permitted by Section 7 of the National

Labor Relations Act or to the extent that such disclosure is protected under the applicable provisions of law or regulation, including but not limited to "whistleblower" statutes or other similar provisions that protect such disclosure.

1.3 Third Party Information. I understand, in addition, that Company has received and in the future will receive from third parties their confidential and/or proprietary knowledge, data or information (***"Third Party Information"***) subject to a duty on Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. During the term of my employment and thereafter, I will hold Third Party Information in confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for Company) or use, except in connection with my work for Company, Third Party Information or unless expressly authorized by an officer of Company in writing.

1.4 Term of Nondisclosure Restrictions. I understand that Confidential Information and Third Party Information is never to be used or disclosed by me, as provided in this Section I. If a temporal limitation on my obligation not to use or disclose such information is required under applicable law, and the Agreement or its restriction(s) cannot otherwise be enforced, I agree and Company agrees that the two year period after the date my employment ends will be the temporal limitation relevant to the contested restriction; ***provided, however***, that this sentence will not apply to trade secrets protected without temporal limitation under applicable law.

1.5 No Improper Use of Information of Prior Employers and Others. During my employment by Company, I will not improperly use or disclose confidential information or trade secrets, if any, of any former employer or any other person to whom I have an obligation of confidentiality, and I will not bring onto the premises of Company any unpublished documents or any property belonging to any former employer or any other person to whom I have an obligation of confidentiality unless consented to in writing by that former employer or person.

2. Assignments of Inventions.

2.1 Definitions. As used in this Agreement, the term ***"Intellectual Property Rights"*** means all trade secrets, Copyrights, trademarks, mask work rights, patents and other intellectual property rights recognized by the laws of any jurisdiction or country; the term ***"Copyright"*** means the exclusive legal right to reproduce, perform, display, distribute and make derivative works of a work of authorship (as a literary, musical, or artistic work) recognized by the laws of any jurisdiction or country; and the term ***"Moral Rights"*** means all paternity, integrity, disclosure, withdrawal, special and any other similar rights recognized by the laws of any jurisdiction or country.

2.2 Excluded Inventions and Other Inventions. Attached hereto as **Exhibit A** is a list describing all existing Inventions, if any, (a) that are owned by me or in which I have an interest and were made or acquired by me prior to my date of first employment by Company, (b) that may relate to Company's business or actual or demonstrably anticipated research or development, and (c) that are not to be assigned to Company ***("Excluded Inventions")***. If no such list is attached, I represent and agree that it is because I have no Excluded Inventions. For purposes of this Agreement, ***"Other Inventions"*** means Inventions in which I have or may have an interest, as of the commencement of my employment or thereafter, other than Company Inventions (as defined below) and Excluded Inventions. I acknowledge and agree that if I use any Excluded Inventions or any Other Inventions in the scope of my employment, or if! include any Excluded Inventions or Other Inventions in any product or service of Company, or if my rights in any Excluded Inventions or Other Inventions may block or interfere with, or may otherwise be required for, the exercise by Company of any rights assigned to Company under this Agreement, I will immediately so notify Company in writing. Unless Company and I agree otherwise in writing as to particular Excluded Inventions or Other Inventions, I hereby grant to Company, in such circumstances (whether or not I give Company notice as required above), a non-exclusive, perpetual, transferable, fully-paid and royalty-free, irrevocable and worldwide license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make derivative works of, distribute, publicly perform, and publicly display in any form or medium, whether now known or later developed, make, have made, use, sell, import, offer for sale, and exercise any and all present or future rights in, such Excluded Inventions and Other Inventions. To the extent that any third parties have rights in any such Other Inventions, I hereby represent and warrant that such third party or parties have validly and irrevocably granted to me the right to grant the license stated above.

2.3 Assignment of Company Inventions. Inventions assigned to Company or to a third party as directed by Company pursuant to Section 2.6 are referred to in this Agreement as ***"Company Inventions."*** Subject to Section 2.4 and except for Excluded Inventions set forth in **Exhibit A** and Other Inventions, I hereby assign to Company all my right, title, and interest in and to any and

all Inventions (and all Intellectual Property Rights with respect thereto) made, conceived, reduced to practice, or learned by me, either alone or with others, during the period of my employment by Company. To the extent required by applicable Copyright laws, I agree to assign in the future (when any copyrightable Inventions are first fixed in a tangible medium of expression) my Copyright rights in and to such Inventions. Any assignment of Company Inventions (and all Intellectual Property Rights with respect thereto) hereunder includes an assignment of all Moral Rights. To the extent such Moral Rights cannot be assigned to Company and to the extent the following is allowed by the laws in any country where Moral Rights exist, I hereby unconditionally and irrevocably waive the enforcement of such Moral Rights, and all claims and causes of action of any kind against Company or related to Company's customers, with respect to such rights. I further acknowledge and agree that neither my successors-in-interest nor legal heirs retain any Moral Rights in any Company Inventions (and any Intellectual Property Rights with respect thereto).

2.4 Unassigned or Nonassignable Inventions. I recognize that this Agreement will not be deemed to require assignment of any Invention that is covered under California Labor Code section 2870(a) (the ***"Specific Inventions Law")*** except for those Inventions that are covered by a contract between Company and the United States or any of its agencies that require full title to such patent or Invention to be in the United States.

2.5 Obligation to Keep Company Informed. During the period of my employment, I will promptly and fully disclose to Company in writing all Inventions authored, conceived, or reduced to practice by me, either alone or jointly with others. At the time of each such disclosure, I will advise Company in writing of any Inventions that I believe fully qualify for protection under the provisions of the Specific Inventions Law; and I will at that time provide to Company in writing all evidence necessary to substantiate that belief. Company will keep in confidence and will not use for any purpose or disclose to third parties without my consent any confidential information disclosed in writing to Company pursuant to this Agreement relating to Inventions that qualify fully for protection under the Specific Inventions Law. I will preserve the confidentiality of any Invention that does not fully qualify for protection under the Specific Inventions Law.

2.6 Government or Third Party. I agree that, as directed by Company, I will assign to a third party, including without limitation the United States, all my right, title, and interest in and to any particular Company Invention.

2.7 Ownership of Work Product.

(a) I acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of my employment and which are protectable by Copyright are "works made for hire," pursuant to United States Copyright Act (17 U.S.C., Section 101).

(b) I agree that Company will exclusively own all work product that is made by me (solely or jointly with others) within the scope of my employment, and I hereby irrevocably and unconditionally assign to Company all right, title, and interest worldwide in and to such work product. I understand and agree that I have no right to publish on, submit for publishing, or use for any publication any work product protected by this Section, except as necessary to perform services for Company.

2.8 Enforcement of Intellectual Property Rights and Assistance. I will assist Company in every proper way to obtain, and from time to time enforce, United States and foreign Intellectual Property Rights and Moral Rights relating to Company Inventions in any and all countries. To that end I will execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such Intellectual Property Rights and the assignment thereof. In addition, I will execute, verify and deliver assignments of such Intellectual Property Rights to Company or its designee, including the United States or any third party designated by Company. My obligation to assist Company with respect to Intellectual Property Rights relating to such Company Inventions in any and all countries will continue beyond the termination of my employment, but Company will compensate me at a reasonable rate after my termination for the time actually spent by me at Company's request on such assistance. In the event Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions specified in this paragraph, I hereby irrevocably designate and appoint Company and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act for and on my behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph with the same legal force and effect as if executed by me. I hereby waive and

quitclaim to Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any Intellectual Property Rights assigned under this Agreement to Company.

2.9 Incorporation of Software Code. I agree that I will not incorporate into any Company software or otherwise deliver to Company any software code licensed under the GNU General Public License or Lesser General Public License or any other license that, by its terms, requires or conditions the use or distribution of such code on the disclosure, licensing, or distribution of any source code owned or licensed by Company except in strict compliance with Company's policies regarding the use of such software.

3. Records. I agree to keep and maintain adequate and current records (in the form of notes, sketches, drawings and in any other form that is required by Company) of all Confidential Information developed by me and all Company Inventions made by me during the period of my employment at Company, which records will be available to and remain the sole property of Company at all times.

4. Duty of Loyalty During Employment. I agree that during the period of my employment by Company, I will not, without Company's express written consent, directly or indirectly engage in any employment or business activity which is directly or indirectly competitive with, or would otherwise conflict with, my employment by Company.

5. No Solicitation of Employees, Consultants or Contractors. I agree that during the period of my employment and for the one year period after the date my employment ends for any reason, including but not limited to voluntary termination by me or involuntary termination by Company, I will not, as an officer, director, employee, consultant, owner, partner, or in any other capacity, either directly or through others, except on behalf of Company, solicit, induce, encourage, or participate in soliciting, inducing or encouraging any person known to me to be an employee, consultant, or independent contractor of Company to terminate his or her relationship with Company, even if I did not initiate the discussion or seek out the contact.

6. Reasonableness of Restrictions.

6.1 I agree that I have read this entire Agreement and understand it. I agree that this Agreement does not prevent me from earning a living or pursuing my career. I agree that the restrictions contained in this Agreement are reasonable, proper, and necessitated by Company's legitimate business interests. I represent and agree that I am entering into this Agreement freely and with knowledge of its contents with the intent to be bound by the Agreement and the restrictions contained in it.

6.2 In the event that a court finds this Agreement, or any of its restrictions, to be ambiguous, unenforceable, or invalid, I and Company agree that the court will read the Agreement as a whole and interpret the restriction(s) at issue to be enforceable and valid to the maximum extent allowed by law.

6.3 If the court declines to enforce this Agreement in the manner provided in subsection 6.2, Company and I agree that this Agreement will be automatically modified to provide Company with the maximum protection of its business interests allowed by law and I agree to be bound by this Agreement as modified.

7. No Conflicting Agreement or Obligation. I represent that my performance of all the terms of this Agreement and as an employee of Company does not and will not breach any agreement to keep in confidence information acquired by me in confidence or in trust prior to my employment by Company. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict with this Agreement.

8. Return of Company Property. When I leave the employ of Company, I will deliver to Company any and all drawings, notes, memoranda, specifications, devices, formulas and documents, together with all copies thereof, and any other material containing or disclosing any Company Inventions, Third Party Information or Confidential Information of Company. I agree that I will not copy, delete, or alter any information contained upon my Company computer or Company equipment before I return it to Company. In addition, if I have used any personal computer, server, or e-mail system to receive, store, review, prepare or transmit any Company information, including but not limited to, Confidential Information, I agree to provide Company with a computer-useable copy of all such Confidential Information and then permanently delete and expunge such Confidential Information from those systems; and I agree to provide Company access to my system as reasonably requested to verify that the necessary copying and/or deletion is completed. I further agree that any property situated on Company's premises and owned by Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company's personnel at any time with or without notice. Prior to leaving, I will cooperate with Company in attending an exit interview and completing and signing Company's termination statement if required to do so by Company.

9. Legal and Equitable Remedies.

9.1 I agree that it may be impossible to assess the damages caused by my violation of this Agreement or any of its terms. I agree that any threatened or actual violation of this Agreement or any of its terms will constitute immediate and irreparable injury to Company, and Company will have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that Company may have for a breach or threatened breach of this Agreement.

9.2 In the event Company enforces this Agreement through a court order, I agree that the restrictions of Section 5 will remain in effect for a period of 12 months from the effective date of the Order enforcing the Agreement.

10. Notices. Any notices required or permitted under this Agreement will be given to Company at its headquarters location at the time notice is given, labeled "Attention Chief Executive Officer," and to me at my address as listed on Company payroll, or at such other address as Company or I may designate by written notice to the other. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, notice will be considered to have been given five business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, notice will be considered to have been given on the delivery date reflected by the courier or express mail service receipt.

11. Publication of This Agreement to Subsequent Employer or Business Associates of Employee.

11.1 If I am offered employment or the opportunity to enter into any business venture as owner, partner, consultant or other capacity while the restrictions described in Section 5 of this Agreement are in effect I agree to inform my potential employer, partner, co-owner and/or others involved in managing the business with which I have an opportunity to be associated of my obligations under this Agreement and also agree to provide such person or persons with a copy of this Agreement.

11.2 I agree to inform Company of all employment and business ventures which I enter into while the restrictions described in Section 5 of this Agreement are in effect and I also authorize Company to provide copies of this Agreement to my employer, partner, co-owner and/or others involved in managing the business with which I am employed or associated and to make such persons aware of my obligations under this Agreement.

12. General Provisions.

12.1 Governing Law; Consent to Personal Jurisdiction. This Agreement will be governed by and construed according to the laws of the State of California as such laws are applied to agreements entered into and to be performed entirely within California between residents of California. I hereby expressly consent to the personal jurisdiction and venue of the state and federal courts located in California for any lawsuit filed there against me by Company arising from or related to this Agreement.

12.2 Severability. In case any one or more of the provisions, subsections, or sentences contained in this Agreement will, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement. If moreover, any one or more of the provisions contained in this Agreement will for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it will be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it will then appear.

12.3 Successors and Assigns. This Agreement is for my benefit and the benefit of Company, its successors, assigns, parent corporations, subsidiaries, affiliates, and purchasers, and will be binding upon my heirs, executors, administrators and other legal representatives.

12.4 Survival. This Agreement will survive the termination of my employment, regardless of the reason, and the assignment of this Agreement by Company to any successor in interest or other assignee.

12.5 Employment At-Will. I agree and understand that nothing in this Agreement will change my at-will employment status or confer any right with respect to continuation of employment by Company, nor will it interfere in any way with my right or Company's right to terminate my employment at any time, with or without cause or advance notice.

12.6 Waiver. No waiver by Company of any breach of this Agreement will be a waiver of any preceding or succeeding breach. No waiver by Company of any right under this Agreement will be construed as a waiver of any other right. Company will not be required to give notice to enforce strict adherence to all terms of this Agreement.

12.7 Export. I agree not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Company or any products utilizing such data, in violation of the United States export laws or regulations.

12.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

12.9 Advice of Counsel. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT WILL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION OF THIS AGREEMENT.

12.10 Entire Agreement. The obligations pursuant to Sections I and 2 (except Subsection 2.4 and Subsection 2.7(a)) of this Agreement will apply to any time during which I was previously engaged, or am in the future engaged, by Company as a consultant if no other agreement governs nondisclosure and assignment of inventions during such period. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter of this Agreement and supersedes and merges all prior discussions between us. No modification of or amendment to this Agreement will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

[signatures to follow on next page]

This Agreement will be effective as of **November 20, 2019**.

EMPLOYEE:

I have read this agreement carefully and understand its terms.
I have completely filled out Exhibit A to this Agreement.

/s/ Lucy O. Day
(Signature)

Lucy O. Day
Name

11/19/19
Date

COMPANY:

Accepted and agreed

AN2 Therapeutics, Inc.

By: /s/ Eric Easom
Name: Eric Easom
Title: CEO

EXHIBIT A

EXCLUDED INVENTIONS

TO: **AN2 Therapeutics, Inc.**

FROM: **Lucy O. Day**

DATE: **11/19/19**

1. Excluded Inventions Disclosure. Except as listed in Section 2 below, the following is a complete list of all Excluded Inventions:

☒ No Excluded Inventions.

☐ See below:

☐ Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section I above with respect to the Excluded Inventions generally listed below, the intellectual property rights and duty of confidentiality with respect to which I owe to the following party(ies):

	Excluded Invention	Party(ies)	Relationship
1.			
2.			
3.			

☐ Additional sheets attached.

3. Limited Exclusion Notification.

This is to notify you in accordance with Section 2872 of the California Labor Code that the foregoing Agreement between you and Company does not require you to assign or offer to assign to Company any Invention that you develop entirely on your own time without using Company's equipment, supplies, facilities or trade secret information, except for those Inventions that either:

a. Relate at the time of conception or reduction to practice to Company's business, or actual or demonstrably anticipated research or development; or

b. Result from any work performed by you for Company.

To the extent a provision in the foregoing Agreement purports to require you to assign an Invention otherwise excluded from the preceding paragraph, the provision is against the public policy of this state and is unenforceable.

This limited exclusion does not apply to any patent or Invention covered by a contract between Company and the United States or any of its agencies requiring full title to such patent or Invention to be in the United States.

Exhibit 10.12

November 19, 2019

Sanjay Chanda, Ph.D.

Re: Employment Terms

Dear Sanjay:

AN2 THERAPEUTICS, INC. (the "***Company***") is pleased to offer you employment beginning on or around November 20, 2019, subject to the initial closing of the Company's Series A Preferred Stock Financing (the "***Start Date***").

Position

Your initial position will be Chief Development Officer, responsible for performing such duties as are assigned to you from time to time, reporting to the Company's Chief Executive Officer. You will work at our office located in the Bay Area, as well as from home from time to time as may be agreed upon between you and the Company. Of course, the Company may change your position, duties, and work location from time to time in its discretion.

Compensation and Benefits

Your initial base salary will be paid at the rate of $310,000 per year, less payroll deductions and withholdings, paid on the Company's normal payroll schedule.

You will also be eligible to earn an annual discretionary bonus. The amount of this bonus will be determined in the sole discretion of the Company and based, in part, on your performance and the performance of the Company during the calendar year, as well as any other criteria the Company deems relevant. The Company will pay you this bonus, if any, no later than March 15th of the following calendar year. The bonus is not earned until paid and no pro-rated amount will be paid if your employment terminates for any reason prior to the payment date. For 2020 and thereafter, you will be eligible to earn an annual bonus of up to 30% of your base salary.

During your employment, you will be eligible to participate in the benefits plans offered to similarly situated employees by the Company from time to time, subject to plan terms and generally applicable Company policies. Currently, exempt employees do not accrue vacation. Supervisors will approve paid vacation requests based on the employee's progress on work goals or milestones, status of projects, fairness to the working team, and productivity and efficiency of the employee. Since vacation is not allotted or accrued, there is no "unused" vacation time to be carried over from one year to the next nor paid out upon termination. A full description of current benefits will be made available for your review. The Company may change compensation and benefits from time to time in its discretion.

By signing this offer letter, you acknowledge and agree that the Company has fulfilled any and all obligations of the Company to you for compensation of any kind earned prior to the date hereof, including, without limitation, bonuses, wages, overtime wages, salary, and commissions or any other expectation of remuneration or benefit on your part.

Equity

Subject to approval by the Company's Board of Directors (the ***"Board"***), the Company anticipates granting you (i) an option to purchase 34,201 shares of the Company's common stock (the ***"First Option"***) and (ii) an option to purchase 8,264 shares of the Company's common stock (the ***"Second Option"***), each at the fair market value as determined by the Board as of the date of grant.. The anticipated First Option and Second Option will be governed by the terms and conditions of the Company's 2017 Equity Incentive Plan (the ***"Plan"***) and your grant agreements, and will include the following vesting schedules: For the First Option, 12/48ths of the total shares will vest on the one year anniversary of the Vesting Commencement Date (e.g., your Start Date), and l/48th of the total shares will vest each month thereafter on the same day of the month as the vesting commencement date (or if there is no corresponding day, on the last day of the month (the ***"Time-Based Vesting Schedule"***) and for the Second Option, shares shall vest on the Time-Based Vesting Schedule, contingent upon the closing of the second tranche of the Company's Series A Preferred Stock Financing. In the event that the second tranche of the Company's Series A Preferred Stock Financing does not occur, the Second Option shall expire. The vesting of both the First Option and the Second Option are subject to your Continuous Service (as defined in the Plan) as of each such date.

Confidential Information and Company Policies

As a Company employee, you will be expected to abide by Company rules and policies. As a condition of employment, you must sign and comply with the attached Employee Confidential Information and Inventions Assignment Agreement which prohibits unauthorized use or disclosure of the Company's proprietary information, among other obligations.

By signing this letter you are representing that you have full authority to accept this position and perform the duties of the position without conflict with any other obligations and that you are not involved in any situation that might create, or appear to create, a conflict of interest with respect to your loyalty or duties to the Company. You specifically warrant that you are not subject to an employment agreement or restrictive covenant preventing full performance of your duties to the Company. You agree not to bring to the Company or use in the performance of your responsibilities at the Company any materials or documents of a former employer that are not generally available to the public, unless you have obtained express written authorization from the former employer for their possession and use. You also agree to honor all obligations to former employers during your employment with the Company.

At-Will Employment and Exempt Status

Your employment with the Company will be "at-will." You may terminate your employment with the Company at any time and for any reason whatsoever simply by notifying the Company. Likewise, the Company may terminate your employment at any time, with or without cause or advance notice. Your employment at-will status can only be modified in a written agreement signed by you and by an officer of the Company.

As an exempt salaried employee, you will be expected to work the Company's normal business hours as well as additional hours as required by the nature of your work assignments, and you will not be eligible for overtime compensation.

Conditions, Dispute Resolution, and Complete Agreement

This offer is contingent upon a satisfactory reference check and satisfactory proof of your right to work in the United States. If the Company informs you that you are required to complete a background check, this offer is contingent upon satisfactory clearance of such background check. You agree to assist as needed and to complete any documentation at the Company's request to meet these conditions.

To ensure the rapid and economical resolution of disputes that may arise in connection with your employment with the Company, you and the Company agree that any and all disputes, claims, or causes of action, in law or equity, including but not limited to statutory claims, arising from or relating to the enforcement, breach. performance, or interpretation of this Agreement, your employment with the Company, or the termination of your employment, shall be resolved pursuant to the Federal Arbitration Act, 9 U.S.C. § 1-16, to the fullest extent permitted by law, by final, binding and confidential arbitration conducted by JAMS or its successor, under JAMS' then applicable rules and procedures for employment disputes before a single arbitrator (available upon request and also currently available at http://www.jamsadr.com/rules-employment-arbitration/). **You acknowledge that by agreeing to this arbitration procedure, both you and the Company waive the right to resolve any such dispute through a trial by jury or judge or administrative proceeding.** In addition, all claims, disputes, or causes of action under this section, whether by you or the Company, must be brought in an individual capacity, and shall not be brought as a plaintiff (or claimant) or class member in any purported class or representative proceeding, nor joined or consolidated with the claims of any other person or entity. The arbitrator may not consolidate the claims of more than one person or entity, and may not preside over any form of representative or class proceeding. To the extent that the preceding sentences regarding class claims or proceedings are found to violate applicable law or are otherwise found unenforceable, any claim(s) alleged or brought on behalf of a class shall proceed in a court of law rather than by arbitration. This paragraph shall not apply to any action or claim that cannot be subject to mandatory arbitration as a matter of law, including, without limitation, claims brought pursuant to the California Private Attorneys General Act of 2004, as amended, to the extent such claims are not permitted by applicable law to be submitted to mandatory arbitration (collectively, the "***Excluded Claims***"). In the event you intend to bring multiple claims, including one of the Excluded Claims listed above, the Excluded Claims may be publicly filed with a court, while any other claims will remain subject to mandatory arbitration. You will have the right to be represented by legal counsel at any arbitration proceeding. Questions of whether a claim is subject to arbitration under this agreement shall be decided by the arbitrator. Likewise, procedural questions which grow out of the dispute and bear on the final disposition are also matters for the arbitrator. The arbitrator shall: (a) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; and (b) issue a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim, the reasons for the award, and the arbitrator's essential findings and conclusions on which the award is based. The arbitrator shall be authorized to award all relief that you or the Company would be entitled to seek in a court of Jaw. The Company shall pay all JAMS arbitration fees in excess of the administrative fees that you would be required to pay if the dispute were decided in a court of law. Nothing in this letter agreement is intended to prevent either you or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Any awards or orders in such arbitrations may be entered and enforced as judgments in the federal and state courts of any competent jurisdiction.

This letter, together with your Employee Confidential Information and Inventions Assignment Agreement, forms the complete and exclusive statement of your employment agreement with the Company. It supersedes any other agreements or promises made to you by anyone, whether oral or written. Changes in your employment terms, other than those changes expressly reserved to the Company's discretion in this letter, require a written modification signed by an officer of the Company. If any provision of this offer letter agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall

not affect any other provision of this offer letter agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible under applicable law. This letter may be delivered and executed via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and shall be deemed to have been duly and validly delivered and executed and be valid and effective for all purposes.

* * *

Please sign and date this letter, and the enclosed Employee Confidential Information and Inventions Assignment Agreement and return them to me by November 22, 2019 if you wish to accept employment at the Company under the terms described above.

We look forward to your favorable reply and to a productive and enjoyable work relationship.

Sincerely,

/s/ Eric Easom
Eric Easom, Chief Executive Officer

Understood and Accepted:

/s/ Sanjay Chanda	20 Nov., 2019
Sanjay Chanda	Date

Attachment: Employee Confidential Information and Inventions Assignment Agreement

AN2 THERAPEUTICS, INC.

EMPLOYEE CONFIDENTIAL INFORMATION AND INVENTION ASSIGNMENT AGREEMENT

In consideration of my employment or continued employment by **AN2 THERAPEUTICS, INC. ,** its subsidiaries, parents, affiliates, successors and assigns (together ***"Company"*),** and the compensation paid to me now and during my employment with Company, I hereby enter into this Employee Confidential Information and Invention Assignment Agreement (the ***"Agreement"***) and agree as follows:

1. Confidential Information Protections.

1.1 Recognition of Company's Rights; Nondisclosure. I understand and acknowledge that my employment by Company creates a relationship of confidence and trust with respect to Company's Confidential Information (as defined below) and that Company has a protectable interest therein. At all times during and after my employment, I will hold in confidence and will not disclose, use, lecture upon, or publish any of Company's Confidential Information, except as such disclosure, use or publication may be required in connection with my work for Company, or unless an officer of Company expressly authorizes such disclosure. I will obtain Company's written approval before publishing or submitting for publication any material (written, oral, or otherwise) that discloses and/or incorporates any Confidential Information. I hereby assign to Company any rights I may have or acquire in such Confidential Information and recognize that all Confidential Information will be the sole and exclusive property of Company and its assigns. I will take all reasonable precautions to prevent the inadvertent accidental disclosure of Confidential Information. Notwithstanding the foregoing, pursuant to 18 U.S.C. Section 1833(b), I will not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (1) is made in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

1.2 Confidential Information. The term ***"Confidential Information"*** means any and all confidential knowledge, data or information of Company. By way of illustration but not limitation, ***"Confidential Information"*** includes (a) trade secrets, inventions, mask works, ideas, processes, formulas, software in source or object code, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques and any other proprietary technology and all Intellectual Property Rights (as defined below) therein (collectively, ***"Inventions"***); (b) information regarding research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, margins, discounts, credit terms, pricing and billing policies, quoting procedures, methods of obtaining business, forecasts, future plans and potential strategies, financial projections and business strategies, operational plans, financing and capital-raising plans, activities and agreements, internal services and operational manuals, methods of conducting Company business, suppliers and supplier information, and purchasing; (c) information regarding customers and potential customers of Company, including customer lists, names, representatives, their needs or desires with respect to the types of products or services offered by Company, proposals, bids, contracts and their contents and parties, the type and quantity of products and services provided or sought to be provided to customers and potential customers of Company and other non-public information relating to customers and potential customers; (d) information regarding any of Company's business partners and their services, including names, representatives, proposals, bids, contracts and their contents and parties, the type and quantity of products and services received by Company, and other non-public information relating to business partners; (e) information regarding personnel, employee lists, compensation, and employee skills; and (f) any other non-public information which a competitor of Company could use to the competitive disadvantage of Company. Notwithstanding the foregoing, it is understood that, at all such times, I am free to use information which was known to me prior to my employment with Company or which is generally known in the trade or industry through no breach of this Agreement or other act or omission by me. Notwithstanding the foregoing or anything to the contrary in this Agreement or any other agreement between the Company and me, nothing in this Agreement will limit my right to discuss my employment or report possible violations of law or regulation with the Equal Employment Opportunity Commission, United States Department of Labor, the National Labor Relations Board, the Securities and Exchange Commission, or other federal government agency or similar state or local agency or to discuss the terms and conditions of my employment with others to the extent expressly permitted by Section 7 of the National

Labor Relations Act or to the extent that such disclosure is protected under the applicable provisions of law or regulation, including but not limited to "whistleblower" statutes or other similar provisions that protect such disclosure.

1.3 Third Party Information. I understand, in addition, that Company has received and in the future will receive from third parties their confidential and/or proprietary knowledge, data or information **(*"Third Party Information"*)** subject to a duty on Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. During the term of my employment and thereafter, I will hold Third Party Information in confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for Company) or use, except in connection with my work for Company, Third Party Information or unless expressly authorized by an officer of Company in writing.

1.4 Term of Nondisclosure Restrictions. I understand that Confidential Information and Third Party Information is never to be used or disclosed by me, as provided in this Section 1. If a temporal limitation on my obligation not to use or disclose such information is required under applicable law, and the Agreement or its restriction(s) cannot otherwise be enforced, I agree and Company agrees that the two year period after the date my employment ends will be the temporal limitation relevant to the contested restriction; ***provided, however***, that this sentence will not apply to trade secrets protected without temporal limitation under applicable law.

1.5 No Improper Use of Information of Prior Employers and Others. During my employment by Company, I will not improperly use or disclose confidential information or trade secrets, if any, of any former employer or any other person to whom I have an obligation of confidentiality, and I will not bring onto the premises of Company any unpublished documents or any property belonging to any former employer or any other person to whom I have an obligation of confidentiality unless consented to in writing by that former employer or person.

2. Assignments of Inventions.

2.1 Definitions. As used in this Agreement, the term ***"Intellectual Property Rights"*** means all trade secrets, Copyrights, trademarks, mask work rights, patents and other intellectual property rights recognized by the laws of any jurisdiction or country; the term ***"Copyright"*** means the exclusive legal right to reproduce, perform, display, distribute and make derivative works of a work of authorship (as a literary, musical, or artistic work) recognized by the laws of any jurisdiction or country; and the term ***"Moral Rights"*** means all paternity, integrity, disclosure, withdrawal, special and any other similar rights recognized by the laws of any jurisdiction or country.

2.2 Excluded Inventions and Other Inventions. Attached hereto as **Exhibit A** is a list describing all existing Inventions, if any, (a) that are owned by me or in which I have an interest and were made or acquired by me prior to my date of first employment by Company, (b) that may relate to Company's business or actual or demonstrably anticipated research or development, and (c) that are not to be assigned to Company (***"Excluded Inventions"***). If no such list is attached, I represent and agree that it is because I have no Excluded inventions. For purposes of this Agreement, ***"Other Inventions"*** means Inventions in which I have or may have an interest, as of the commencement of my employment or thereafter, other than Company Inventions (as defined below) and Excluded Inventions. I acknowledge and agree that if I use any Excluded Inventions or any Other Inventions in the scope of my employment, or if I include any Excluded Inventions or Other Inventions in any product or service of Company, or if my rights in any Excluded Inventions or Other Inventions may block or interfere with, or may otherwise be required for, the exercise by Company of any rights assigned to Company under this Agreement, I will immediately so notify Company in writing. Unless Company and I agree otherwise in writing as to particular Excluded Inventions or Other Inventions, I hereby grant to Company, in such circumstances (whether or not I give Company notice as required above), a non-exclusive, Perpetual, transferable, fully-paid and royalty-free, irrevocable and worldwide license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make derivative works of, distribute, publicly perform, and publicly display in any form or medium, whether now known or later developed, make, have made, use, sell, import, offer for sale, and exercise any and all present or future rights in, such Excluded Inventions and Other Inventions. To the extent that any third parties have rights in any such Other Inventions, I hereby represent and warrant that such third party or parties have validly and irrevocably granted to me the right to grant the license stated above.

2.3 Assignment of Company Inventions. Inventions assigned to Company or to a third party as directed by Company pursuant to Section 2.6 are referred to in this Agreement as ***"Company Inventions."*** Subject to Section 2.4 and except for Excluded Inventions set forth in **Exhibit A** and Other Inventions, I hereby assign to Company all my right, title, and interest in and to any and

all Inventions (and all Intellectual Property Rights with respect thereto) made, conceived, reduced to practice, or learned by me, either alone or with others, during the period of my employment by Company. To the extent required by applicable Copyright laws, I agree to assign in the future (when any copyrightable Inventions are first fixed in a tangible medium of expression) my Copyright rights in and to such Inventions. Any assignment of Company Inventions (and all Intellectual Property Rights with respect thereto) hereunder includes an assignment of all Moral Rights. To the extent such Moral Rights cannot be assigned to Company and to the extent the following is allowed by the laws in any country where Moral Rights exist, I hereby unconditionally and irrevocably waive the enforcement of such Moral Rights, and all claims and causes of action of any kind against Company or related to Company's customers, with respect to such rights. I further acknowledge and agree that neither my successors-in-interest nor legal heirs retain any Moral Rights in any Company Inventions (and any Intellectual Property Rights with respect thereto).

2.4 Unassigned or Nonassignable Inventions. I recognize that this Agreement will not be deemed to require assignment of any Invention that is covered under California Labor Code section 2870(a) (the ***"Specific Inventions Law"***) except for those Inventions that are covered by a contract between Company and the United States or any of its agencies that require full title to such patent or Invention to be in the United States.

2.5 Obligation to Keep Company Informed. During the period of my employment, I will promptly and fully disclose to Company in writing all Inventions authored, conceived, or reduced to practice by me, either alone or jointly with others. At the time of each such disclosure, I will advise Company in writing of any Inventions that I believe fully qualify for protection under the provisions of the Specific Inventions Law; and I will at that time provide to Company in writing all evidence necessary to substantiate that belief. Company will keep in confidence and will not use for any purpose or disclose to third parties without my consent any confidential information disclosed in writing to Company pursuant to this Agreement relating to Inventions that qualify fully for protection under the Specific Inventions Law. I will preserve the confidentiality of any Invention that does not fully qualify for protection under the Specific Inventions Law.

2.6 Government or Third Party. I agree that, as directed by Company, I will assign to a third party, including without limitation the United States, all my right, title, and interest in and to any particular Company Invention.

2.7 Ownership of Work Product.

(a) I acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of my employment and which are protectable by Copyright are "works made for hire," pursuant to United States Copyright Act (17 U.S.C., Section 101).

(b) I agree that Company will exclusively own all work product that is made by me (solely or jointly with others) within the scope of my employment, and I hereby irrevocably and unconditionally assign to Company all right, title, and interest worldwide in and to such work product. I understand and agree that I have no right to publish on, submit for publishing, or use for any publication any work product protected by this Section, except as necessary to perform services for Company.

2.8 Enforcement of Intellectual Property Rights and Assistance. I will assist Company in every proper way to obtain, and from time to time enforce, United States and foreign Intellectual Property Rights and Moral Rights relating to Company Inventions in any and all countries. To that end I will execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such Intellectual Property Rights and the assignment thereof. In addition, I will execute, verify and deliver assignments of such Intellectual Property Rights to Company or its designee, including the United States or any third party designated by Company. My obligation to assist Company with respect to Intellectual Property Rights relating to such Company Inventions in any and all countries will continue beyond the termination of my employment, but Company will compensate me at a reasonable rate after my termination for the time actually spent by me at Company's request on such assistance. In the event Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions specified in this paragraph, I hereby irrevocably designate and appoint Company and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act for and on my behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph with the same legal force and effect as if executed by me. I hereby waive and

quitclaim to Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any Intellectual Property Rights assigned under this Agreement to Company.

2.9 Incorporation of Software Code. I agree that I will not incorporate into any Company software or otherwise deliver to Company any software code licensed under the GNU General Public License or Lesser General Public License or any other license that, by its terms, requires or conditions the use or distribution of such code on the disclosure, licensing, or distribution of any source code owned or licensed by Company **except** in strict compliance with Company's policies regarding the use of such software.

3. Records. I agree to keep and maintain adequate and current records (in the form of notes, sketches, drawings and in any other form that is required by Company) of all Confidential Information developed by me and all Company Inventions made by me during the period of my employment at Company, which records will be available to and remain the sole property of Company at all times.

4. Duty of Loyalty During Employment. I agree that during the period of my employment by Company, I will not, without Company's express written consent, directly or indirectly engage in any employment or business activity which is directly or indirectly competitive with, or would otherwise conflict with, my employment by Company.

5. No Solicitation of Employees, Consultants or Contractors. I agree that during the period of my employment and for the one year period after the date my employment ends for any reason, including but not limited to voluntary termination by me or involuntary termination by Company, I will not, as an officer, director, employee, consultant, owner, partner, or in any other capacity, either directly or through others, except on behalf of Company, solicit, induce, encourage, or participate in soliciting, inducing or encouraging any person known to me to be an employee, consultant, or independent contractor of Company to terminate his or her relationship with Company, even if I did not initiate the discussion or seek out the contact.

6. Reasonableness of Restrictions.

6.1 I agree that I have read this entire Agreement and understand it I agree that this Agreement does not prevent me from earning a living or pursuing my career. I agree that the restrictions contained in this Agreement are reasonable, proper, and necessitated by Company's legitimate business interests. I represent and agree that I am entering into this Agreement freely and with knowledge of its contents with the intent to be bound by the Agreement and the restrictions contained in it.

6.2 In the event that a court finds this Agreement, or any of its restrictions, to be ambiguous, unenforceable, or invalid, I and Company agree that the court will read the Agreement as a whole and interpret the restriction(s) at issue to be enforceable and valid to the maximum extent allowed by law.

6.3 If the court declines to enforce this Agreement in the manner provided in subsection 6.2, Company and I agree that this Agreement will be automatically modified to provide Company with the maximum protection of its business interests allowed by law and I agree to be bound by this Agreement as modified.

7. No Conflicting Agreement or Obligation. I represent that my performance of all the terms of this Agreement and as an employee of Company does not and will not breach any agreement to keep in confidence information acquired by me in confidence or in trust prior to my employment by Company. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict with this Agreement.

8. Return of Company Property. When I leave the employ of Company, I will deliver to Company any and all drawings, notes, memoranda, specifications, devices, formulas and documents, together with all copies thereof, and any other material containing or disclosing any Company Inventions, Third Party Information or Confidential Information of Company. I agree that I will not copy, delete, or alter any information contained upon my Company computer or Company equipment before I return it to Company. In addition, if I have used any personal computer, server, or e-mail system to receive, store, review, prepare or transmit any Company information, including but not limited to, Confidential Information, I agree to provide Company with a computer-useable copy of all such Confidential Information and then permanently delete and expunge such Confidential Information from those systems; and I agree to provide Company access to my system as reasonably requested to verify that the necessary copying and/or deletion is completed. I further agree that any property situated on Company's premises and owned by Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company's personnel at any time with or without notice. Prior to leaving, I will cooperate with Company in attending an exit interview and completing and signing Company's termination statement if required to do so by Company.

9. Legal and Equitable Remedies.

9.1 I agree that it may be impossible to assess the damages caused by my violation of this Agreement or any of its terms. I agree that any threatened or actual violation of this Agreement or any of its terms will constitute immediate and irreparable injury to Company, and Company will have the right to enforce this Agreement and any of *its* provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that Company may have for a breach or threatened breach of this Agreement.

9.2 In the event Company enforces this Agreement through a court order, I agree that the restrictions of Section *5* will remain in effect for a period of 12 months from the effective date of the Order enforcing . the Agreement.

10. Notices. Any notices required or permitted under this Agreement will be given to Company at its headquarters location at the time notice is given, labeled "Attention Chief Executive Officer," and to me at my address as listed on Company payroll, or at such other address as Company or I may designate by written notice to the other. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, notice will be considered to have been given five business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, notice will be considered to have been given on the delivery date reflected by the courier or express mail service receipt.

11. Publication of This Agreement to Subsequent Employer or Business Associates of Employee.

11.1 If I am offered employment or the opportunity to enter into any business venture as owner, partner, consultant or other capacity while the restrictions described in Section *5* of this Agreement are in effect I agree to inform my potential employer, partner, co-owner and/or others involved in managing the business with which I have an opportunity to be associated of my obligations under this Agreement and also agree to provide such person or persons with a copy of this Agreement.

11.2 I agree to inform Company of all employment and business ventures which I enter into while the restrictions described in Section 5 of this Agreement are in effect and I also authorize Company to provide copies of this Agreement to my employer, partner, co-owner and/or others involved in managing the business with which I am employed or associated and to make such persons aware of my obligations under this Agreement.

12. General Provisions.

12.1 Governing Law; Consent to Personal Jurisdiction. This Agreement will be governed by and construed according to the laws of the State of California as such laws are applied to agreements entered into and to be performed entirely within California between residents of California. I hereby expressly consent to the personal jurisdiction and venue of the state and federal courts located in California for any lawsuit filed there against me by Company arising from or related to this Agreement.

12.2 Severability. In case any one or more of the provisions, subsections, or sentences contained in this Agreement will, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement. If moreover, any one or more of the provisions contained in this Agreement will for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it will be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it will then appear.

12.3 Successors and Assigns. This Agreement is for my benefit and the benefit of Company, its successors, assigns, parent corporations, subsidiaries, affiliates, ·and purchasers, and will be binding upon my heirs, executors, administrators and other legal representatives.

12.4 Survival. This Agreement will survive the termination of my employment, regardless of the reason, and the assignment of this Agreement by Company to any successor in interest or other assignee.

12.5 Employment At-Will. I agree and understand that nothing in this Agreement will change my at-will employment status or confer any right with respect to continuation of employment by Company, nor will it interfere in any way with my right or Company's right to terminate my employment at any time, with or without cause or advance notice.

12.6 Waiver. No waiver by Company of any breach of this Agreement will be a waiver of any preceding or succeeding breach. No waiver by Company of any right under this Agreement will be construed as a waiver of any other right. Company will not be required to give notice to enforce strict adherence to all terms of this Agreement.

12.7 Export. I agree not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Company or any products utilizing such data, in violation of the United States export laws or regulations.

12.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes. ·

12.9 Advice of Counsel. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT WILL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION OF THIS AGREEMENT.

12.10 Entire Agreement. The obligations pursuant to Sections 1 and 2 (except Subsection 2.4 and Subsection 2.7(a)) of this Agreement will apply to any time during which I was previously engaged, or am in the future engaged, by Company as a consultant if no other agreement governs nondisclosure and assignment of inventions during such period. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter of this Agreement and supersedes and merges all prior discussions between us. No modification of or amendment to this Agreement will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

[signatures to follow on next page]

This Agreement will be effective as of **November 20, 2019.**

EMPLOYEE:

I have read this agreement carefully and understand its terms.
I have completely filled out Exhibit A to this Agreement.

/s/ Sanjay Chanda
(Signature)

Sanjay Chanda, Ph.D.
Name

20 Nov., 2019
Date

COMPANY:

Accepted and agreed

AN2 Therapeutics, Inc.

By: /s/ Eric Easom
Name: Eric Easom
Title: CEO

EXHIBIT A

EXCLUDED INVENTIONS

TO: **AN2 Therapeutics, Inc.**

FROM: **Sanjay Chanda, Ph.D.**

DATE: **20 Nov., 2019**

1. Excluded Inventions Disclosure. Except as listed in Section 2 below, the following is a complete list of all Excluded Inventions:

☒ No Excluded Inventions.

☐ See below:

☐ Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to the Excluded Inventions generally listed below, the intellectual property rights and duty of confidentiality with respect to which I owe to the following party(ies):

	Excluded Invention	Party(ies)	Relationship
1.			
2.			
3.			

☐ Additional sheets attached.

3. Limited Exclusion Notification.

This is to notify you in accordance with Section 2872 of the California Labor Code that the foregoing Agreement between you and Company does not require you to assign or offer to assign to Company any Invention that you develop entirely on your own time without using Company's equipment, supplies, facilities or trade secret information, except for those Inventions that either:

a. Relate at the time of conception or reduction to practice to Company's business, or actual or demonstrably anticipated research or development; or

b. Result from any work performed by you for Company.

To the extent a provision in the foregoing Agreement purports to require you to assign an Invention otherwise excluded from the preceding paragraph, the provision is against the public policy of this state and is unenforceable.

This limited exclusion does not apply to any patent or Invention covered by a contract between Company and the United States or any of its agencies requiring full title to such patent or Invention to be in the United States.

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

Confidential Execution Version

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("**Agreement**") is made effective as of the 20th day of November, 2019 (the "**Effective Date**"), by and between AN2 Therapeutics, Inc., a corporation organized and existing under the laws of Delaware with offices at [***] ("**Licensee**") and Anacor Pharmaceuticals, Inc., a corporation organized and existing under the laws of Delaware with offices at [***] ("**Anacor**"). Licensee and Anacor may, from time-to-time, be individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

RECITALS

WHEREAS, Anacor owns or otherwise Controls the Licensed Technology (hereinafter defined); and

WHEREAS, Licensee wishes to obtain, and Anacor wishes to grant, certain licenses under the Licensed Technology on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties, intending to be legally bound hereby, agree to the foregoing and as follows:

1. DEFINITIONS.

1.1. "**Affiliate**" means, as of any point in time and for so long as such relationship continues to exist with respect to a Party, any Person that controls, is controlled by, or is under common control with that Party. A Person shall be regarded as in control of another Person if it (a) owns or controls at least fifty percent (50%) of the equity securities of the subject Person entitled to vote in the election of directors or (b) possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of any such Person (whether through ownership of securities or other ownership interests, by contract or otherwise); provided, however, that where an entity owns a majority of the voting power necessary to elect a majority of the board of directors or other governing board of another entity, but is restricted from electing such majority by contract or otherwise, such entity will not be considered to be in control of such other entity until such time as such restrictions are no longer in effect.

1.2. "**Agreement**" has the meaning set forth in the preamble to this Agreement.

1.3. "**Anacor Indemnitees**" has the meaning set forth in Section 11.1.

1.4. "[*******]" has the meaning set forth in Section 5.9.1.

1.5. "**Applicable Law**" means any applicable law, statute, rule, regulation, order, judgment, or ordinance of any Governmental Authority.

1.6. "**Bankruptcy Code**" has the meaning set forth in Section 13.3.

1.7. "**Bankruptcy Event**" has the meaning set forth in Section 13.3.

1.8. "**Business Day**" means any day other than a Saturday, a Sunday, or a day on which commercial banks located in New York, New York are authorized or required by Applicable Law to remain closed.

1.9. "**Calendar Quarter**" means the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30, and December 31.

1.10. "**Calendar Year**" means each calendar year.

1.11. "**Cap**" has the meaning set forth in Section 12.2.

1.12. "**CDA**" has the meaning set forth in Section 17.11.1.

1.13. "**Change of Control**" means, with respect to a Party, whether effected in a single transaction or a series of related transactions, (a) except in connection with a Financing Transaction, the acquisition of beneficial ownership, directly or indirectly, by any Person (other than such Party or an Affiliate of such Party) of securities or other voting interest of such Party representing a majority or more of the combined voting power of such Party's then-outstanding securities or other voting interests; (b) any merger, reorganization, consolidation, share exchange, business combination or similar transaction involving such Party (i) pursuant to which [***] or more of the outstanding voting securities of such Party (or, if applicable, the ultimate parent of such Party) would be converted into cash or securities of any other Person or (ii) that results in the holders of beneficial ownership of the voting securities or other voting interests of such Party (or, if applicable, the ultimate parent of such Party) immediately prior to such merger, reorganization, consolidation or business combination ceasing to hold beneficial ownership of at least [***] of the combined voting power of the surviving entity immediately after such merger, reorganization, consolidation, share exchange, business combination or similar transaction; (c) any sale, lease, exchange, contribution or other transfer of all or substantially all of the assets of such Party and its subsidiaries taken as a whole, other than the sale or disposition of such assets to an Affiliate of such Party; (d) any sale, lease, exchange, contribution or other transfer of the assets to which this Agreement relates; or (e) the approval of any plan or proposal for the liquidation or dissolution of such Party.

1.14. "**Change of Control Payment**" has the meaning set forth in Section 5.6.1.

1.15. "**Chiral Synthesis Intellectual Property**" means Anacor's rights in US patent applications identified as [***].

1.16. "**Claims**" has the meaning set forth in Section 11.1.

1.17. "**CMO**" means a contract manufacturing organization.

1.18. "**Combination Product**" means a product: (a) formulated with one or more Compounds and one or more Other Active Ingredients; or (b) a product containing one or more Compounds that is packaged with another pharmaceutical product containing one or more Other Active Ingredients, where such products are sold together as a single product and invoiced as one product.

1.19. "**Commercialize**" or "**Commercialization**" means to market, promote, distribute, offer for sale, sell, have sold, import, have imported, export, have exported, or otherwise commercialize a Compound or Product. When used as a noun, "Commercialization" means any and all activities involved in Commercializing.

1.20. "**Commercially Reasonable Efforts**" means, with respect to the Development or Commercialization of a Compound or Product, [***].

1.21. "**Compliance Laws**" has the meaning set forth in Section 10.4.

1.22. "**Compounds**" means Anacor's compounds identified as [***], as further defined in Schedule 1.22, together with all and any [***].

1.23. "**Confidential Information**" has the meaning set forth in Section 9.1.

1.24. "**Control**" or "**Controlled**" means, with respect to any Intellectual Property Rights or other rights to provide data or other information, the legal authority or right (whether by ownership, license or otherwise) of a Party to grant a license or a sublicense of or under such Intellectual Property Rights to the other Party or provide such data or other information to such other Party without breaching the terms of any agreement with a Third Party.

1.25. "**CRO**" means a contract research organization.

1.26. "**Develop**" or "**Development**" means to conduct any and all research and development activities necessary to obtain Regulatory Approval.

1.27. "**Developed Country**" means any country that is not a Developing Country.

1.28. "**Developed IP**" means any Intellectual Property Rights that are both: (a) related to the Product, and (b) conceived or reduced to practice by Licensee, its Affiliates, or sublicensees alone or together with one or more Third Parties during the Term.

1.29. "**Developing Country**" means (a) those countries that, at the time of First Commercial Sale of a Product in such country, are classified as lower income or lower middle income countries by the World Bank on its list of World Bank Country and Lending Groups calculated using the World Bank Atlas method, and (b) Greater China; provided that prior to six (6) months following the Effective Date, AN2 shall enter into a binding obligation to grant a Greater China Sublicense.

1.30. "**Development Plan**" has the meaning set forth in Section 4.7.

1.31. "**Development Milestone**" has the meaning set forth in Section 5.3.

1.32. "**Development Milestone Payment**" is defined in Section 5.3.

1.33. "**Disputes**" has the meaning set forth in Section 16.1.

1.34. "**Effective Date**" has the meaning set for in the preamble to this Agreement.

1.35. "**Election Notice**" has the meaning set forth in Section 7.2.4.

1.36. "**FDA**" means the United States Food and Drug Administration, or a successor federal agency thereto.

1.37. "**FD&C Act**" has the meaning set forth in Section 8.1.

1.38. "**Fees**" has the meaning set forth in Section 12.2.

1.39. "**Field**" means the treatment, diagnosis, or prevention of disease in humans and animals.

1.40. "**Financing Transaction**" means a bona fide capital raising transaction, or series of related transactions, in which a Party issues or sells its securities or other voting interest to unaffiliated Third Parties.

1.41. "**First Commercial Sale**" means the first sale of the Product by Licensee or Licensee's Affiliate or sublicensee to a Third Party in a country in the Territory following receipt of Regulatory Approval for such Product in such country.

1.42. "**Force Majeure Event**" has the meaning set forth in Section 17.4.

1.43. "**GAAP**" means United States generally accepted accounting principles or an alternative international generally accepted standard of accounting principles used by Licensee, including International Reporting Financial Standards, in each case consistently applied.

1.44. "**Generic Product**" means any pharmaceutical product that (a) is sold by a Third Party that is not an Affiliate or sublicensee of Licensee under a marketing authorization granted by a Regulatory Authority to a Third Party, (b) contains the same Compound as a Product (c) for purposes of the United States, is approved in reliance on a prior Regulatory Approval of a Product granted to Anacor or an Anacor Affiliate or sublicensee by the FDA or, for purposes of a country outside the United States, is approved in reliance on a prior Regulatory Approval of a Product granted to Licensee or a Licensee Affiliate or sublicensee by any applicable Regulatory Authority, and (d) is determined by a Regulatory Authority to be therapeutically equivalent to and substitutable for a Product.

1.45. "**Greater China**" means, individually and collectively, mainland China, Hong Kong, Taiwan and Macau.

1.46. "**Greater China Sublicense**" means a sublicense between Licensee and a Third Party under which Licensee grants a sublicense to the license rights it receives under Section 2.1, pursuant to Section 2.2, to Develop, Manufacture and Commercialize Compounds and Products in the Field solely in Greater China.

1.47. "**Governmental Authority**" means any court, agency, department, authority or other instrumentality of any national, state, county, city or other political subdivision.

1.48. "**IND**" means: (a) an investigational new drug application filed with the FDA for authorization for the investigation of the Product, and (b) any of its foreign equivalents as filed with the applicable Regulatory Authorities in other countries or regulatory jurisdictions in the Territory, as applicable.

1.49. "[*******]" has the meaning set forth in Section 5.9.1.

1.50. "**Intellectual Property Rights**" means all trade secrets, copyrights, Patent Rights, trademarks, moral rights, Know-How, and any and all other intellectual property or proprietary rights now known or hereafter recognized in any jurisdiction.

1.51. "[*******]" has the meaning set forth in Section 5.9.1.

1.52. "**Know-How**" means any proprietary invention, discovery, development, data, information, process, method, technique, material, technology, result, cell line, compound, probe or other know-how, whether or not patentable, and any physical embodiments of any of the foregoing.

1.53. "**Knowledge**" means actual knowledge of the individuals listed on Schedule 1.53 and is not meant to require or imply that any particular inquiry or investigation has been undertaken, including, without limitation, obtaining any type of search (independent of that performed by the actual governmental authority during the normal course of patent prosecution, as applicable, in a jurisdiction) or opinion of counsel.

1.54. "**Licensed Know-How**" means all Know-How Controlled by Anacor as of the Effective Date that is listed and identified in Exhibit 1 of Schedule 3.

1.55. "**Licensed Patent Rights**" means all Patent Rights listed on Schedule 1.55, which specifically excludes Chiral Synthesis Intellectual Property.

1.56. "**Licensed Technology**" means, collectively, the Licensed Patent Rights, the Chiral Synthesis Intellectual Property, and Licensed Know-How.

1.57. "**Major Market**" means any of [***].

1.58. "**Manufacture**" or "**Manufacturing**" means to make, produce, manufacture, process, fill, finish, package, label, perform quality assurance testing, release, ship or store a compound or product or any component thereof. When used as a noun, "**Manufacture**" or "**Manufacturing**" means any and all activities involved in Manufacturing a compound or product or any component thereof.

1.59. "**Marginal Royalty Rates**" has the meaning set forth in Section 5.5.1.

1.60. "**Milestone Payments**" means, collectively, the Development Milestone Payments and Sales Milestone Payments.

1.61. "**NDA**" means, with respect to a pharmaceutical product, a New Drug Application submitted to the FDA in accordance with the United States Federal Food, Drug and Cosmetic Act, as amended, and the rules and regulations promulgated thereunder, or any analogous application or submission with any Regulatory Authority outside of the United States.

1.62. "[*******]" has the meaning set forth in Section 2.6.3.

1.63. "**Net Sales**" means, with respect to all Products distributed or sold in the Territory to Third Parties by Licensee, its Affiliates and sublicensees, gross receipts from sales of such Products in the Territory, less [***].

Net Sales for a Combination Product shall be calculated as follows:

(i) If the Product and Other Product(s) each are sold separately in such country, Net Sales will be calculated by [***];

(ii) If the Product is sold independently of the Other Product(s) in such country, but the average net selling price of the Other Product(s) cannot be determined, Net Sales will be calculated by [***];

(iii) If the Other Product(s) are sold independently of the Product in such country, but the average net selling price of the Product cannot be determined, Net Sales will be calculated by [***]; and

(iv) If neither the Product nor the Other Product(s) is sold independently, then the Net Sales of the Combination Product in such country will be calculated by [***].

1.64. "[*******]" has the meaning set forth in Section 5.9.1.

1.65. "**Other Active Ingredient**" means a therapeutically active ingredient, other than a Compound.

1.66. "**Other Product**" means a product containing an Other Active Ingredient.

1.67. "**Party**" and "**Parties**" has the meaning set forth in the preamble to this Agreement.

1.68. "**Patent Rights**" means any and all (a) issued patents, (b) pending patent applications, including all provisional applications, divisions, continuations, substitutions, and renewals, and all patents granted thereon, (c) patents-of-addition, re-examinations, reissues and extensions or restorations by existing or future extension or restoration mechanisms, including patent term adjustments, patent term extensions, supplementary protection certificates or the equivalent thereof, (d) inventor's certificates, (e) other forms of government-issued rights substantially similar to any of the foregoing and (f) United States and foreign counterparts of any of the foregoing.

1.69. "**Patent Term Extension**" has the meaning set forth in Section 7.2.3.

1.70. "**Person**" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, governmental authority, or any other form of entity not specifically listed herein.

1.71. "**Phase I Clinical Trial**" means a clinical trial that generally provides for the first introduction into humans of a pharmaceutical product with the primary purpose of determining safety, metabolism and pharmacokinetic properties and clinical pharmacology of such product, in a manner that is generally consistent with 21 CFR § 312.21(a), as amended (or its successor regulation).

1.72. "**Phase II Clinical Trial**" means a clinical trial, the principal purpose of which is to make a preliminary determination as to whether a pharmaceutical product is safe for its intended use and to obtain sufficient information about such product's efficacy, in a manner that is generally consistent with 21 CFR § 312.21(b), as amended (or its successor regulation), to permit the design of further clinical trials.

1.73. **"Priority Review Voucher**" or "**PRV**" means a voucher issued by a Regulatory Authority to the sponsor of a first product application that entitles the holder of such voucher to priority review of a human health drug application after the date of approval of the first product application.

1.74. "[*******]" has the meaning set forth in Section 5.9.2.

1.75. "**Product**" means a product that includes or incorporates one or more Compounds, alone or in combination with one or more other active agents. For clarity, multiple formulations (or combinations) that contain the same Compounds would be deemed one Product for purposes of any royalty calculation.

1.76. "**PRV ROFR**" has the meaning set forth in Section 5.7.

1.77. "[*******]" has the meaning set forth in Section 5.9.1.

1.78. "**Recipients**" has the meaning set forth in Section 9.2.

1.79. "**Regulatory Approval**" means, with respect to the Product in any country or jurisdiction, any approval, registration, license or authorization that is required by the applicable Regulatory Authority to market and sell the Product in such country or jurisdiction.

1.80. "**Regulatory Authority**" means any governmental agency or authority responsible for granting Regulatory Approvals for the Product in the Territory.

1.81. "**Regulatory Filings**" means, with respect to the Product, any submission to a Regulatory Authority of any appropriate regulatory application, including, without limitation, any IND, NDA, any submission to a regulatory advisory board, any marketing authorization application, and any supplement or amendment thereto.

1.82. "**Relevant Records**" has the meaning set forth in Section 6.1.

1.83. "**Residuals**" has the meaning set forth in Section 2.4.

1.84. "**Review Period**" has the meaning set forth in Section 14.3.

1.85. "[*******]" has the meaning set forth in Section 2.6.2.

1.86. "[*******]" has the meaning set forth in Section 2.6.2.

1.87. "**ROFR**" has the meaning set forth in Section 5.7.

1.88. "**Royalties**" has the meaning set forth in Section 5.5.

1.89. "**Royalty Term**" means, with respect to each Product in each country in the Territory, the period commencing on [***] and expiring upon the later of: [***].

1.90. "**Sales Milestone**" has the meaning set forth in Section 5.4.

1.91. "**Sales Milestone Payment**" has the meaning set forth in Section 5.4.

1.92. "**Series A Investment**" means the financing of Licensee, whereby Licensee obtains at least twelve million U.S. Dollars (US$12,000,000) in gross proceeds from the sale and issuance of Licensee's Series A Preferred Shares in one or more closings pursuant to the Series A Preferred Share Purchase Agreement.

1.93. "**Series A Preferred Share Purchase Agreement**" means that certain Series A Preferred Share Purchase Agreement to be executed and delivered by Anacor and certain other investors simultaneously with this Agreement.

1.94. "**Shares**" has the meaning set forth in Section 5.1.

1.95. "**Significant Transaction**" means [***]. For the avoidance of doubt, a research or Development license without commercial rights (including rights granted to a CRO conducting Product-related research or Development services), and the granting of license(s) to Manufacture any Product, a non-exclusive distribution arrangement, or any other activity with an entity other than a Third Party, shall not be considered a Significant Transaction.

1.96. "[*******]" has the meaning set forth in Section 2.6.1.

1.97. "**Tax Action**" has the meaning set forth in Section 5.14.2.

1.98. "**Term**" has the meaning set forth in Section 13.1.

1.99. "**Territory**" means worldwide.

1.100. "**Third Party**" means any Person other than a Party or an Affiliate of a Party.

1.101. "**Third Party Infringement**" has the meaning set forth in Section 8.1.

1.102. "**Third Party IP**" has the meaning set forth in Section 5.5.2.

1.103. "**Third Party Payment**" has the meaning set forth in Section 5.5.2.

1.104. "**TPB**" has the meaning set forth in Section 5.7.

1.105. "**Upfront Payment**" has the meaning set forth in Section 5.2.

1.106. "**Valid Claim**" means with respect to a particular country and Product, a claim of a Patent Right within the Licensed Patent Rights that (a) with respect to an issued and unexpired patent, (i) has not been held permanently revoked, unenforceable or invalid by a decision of a court or other governmental authority of competent jurisdiction, which decision is unappealed or unappealable within the time allowed for appeal and (ii) has not expired or been cancelled, withdrawn, abandoned, disclaimed or admitted to be invalid or unenforceable through reissue, disclaimer or otherwise and (b) with respect to a bona fide claim in a pending patent application, has not been (i) cancelled, withdrawn or abandoned without being refiled in another application in the applicable jurisdiction or (ii) finally rejected or disallowed by an administrative agency action, which action is appealable or unappealed within the time allowed for appeal, provided that any claim in any patent application pending for more than ten (10) years from the earliest date on which such patent application claims priority shall not be considered a Valid Claim for purposes of the Agreement from and after such ten (10) year date unless and until a patent containing such claim issues from such patent application while another Valid Claim covers the relevant Product in the relevant country and such issued claim meets the requirements of clause (a) or refiling of such application.

1.107. "**VAT**" has the meaning set forth in Section 5.14.1.

1.108. **Interpretation**. Except where the context expressly requires otherwise, (a) the use of any gender herein shall be deemed to encompass references to either or both genders, and the use of the singular shall be deemed to include the plural (and vice versa), (b) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation", (c) the word "will" shall be construed to have the same meaning and effect as the word "shall", (d) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (e) any reference herein to any Person shall be construed to include the Person's successors and assigns, (f) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (g) all references herein to Sections, Exhibits or Schedules shall be construed to refer to Sections, Exhibits or Schedules of this Agreement, and references to this Agreement include all Exhibits and Schedules hereto, (h) the word "notice" means notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other written communications contemplated under this Agreement, (i) provisions that require that a Party, the Parties or any committee hereunder "agree," "consent" or "approve" or the like shall require that such agreement, consent or approval be specific and in writing, whether by written agreement, letter, approved minutes or otherwise (but excluding e-mail and instant messaging), (j) references to any specific law, rule or regulation, or article, section or other division thereof, shall be deemed to include the then-current amendments thereto or any replacement or successor law, rule or regulation thereof, and (k) the term "or" shall be interpreted in the inclusive sense commonly associated with the term "and/or."

2. LICENSE GRANT.

2.1. License Grants.

2.1.1. **Licensed Patent Rights.** Subject to the terms and conditions of this Agreement, including, without limitation, those set forth in Sections 2.3 and 2.4, Anacor hereby grants to Licensee an exclusive, even as to Anacor, sublicensable (subject to Section 2.2), royalty-bearing right and license under the Licensed Patent Rights to use, have used, Develop, have Developed, Manufacture, have Manufactured, Commercialize, have Commercialized and otherwise exploit Compounds and Products in the Field within the Territory.

2.1.2. **Chiral Synthesis Intellectual Property.** Subject to the terms and conditions of this Agreement, Anacor hereby grants to Licensee a non-exclusive, sublicensable (subject to Section 2.2), royalty-bearing right and license to use the Chiral Synthesis Intellectual Property for the sole purpose of Manufacturing Compounds and Products in the Field within the Territory.

2.1.3. **Licensed Know How.** Subject to the terms and conditions of this Agreement, Anacor hereby grants to Licensee a non-exclusive, sublicensable (subject to Section 2.2), royalty-bearing right and license to use the Licensed Know-How for the sole purpose of the Development, Commercialization, and Manufacture of Compounds and Products in the Field within the Territory.

2.1.4. **Affiliates.** To the extent any of the Licensed Technology is Controlled by an Affiliate of Anacor, then promptly following the Effective Date, Anacor shall cause such Affiliate to take all necessary actions to give effect to the licenses granted under this Section 2.1.

2.1.5. **Licensee Intellectual Property.** Licensee hereby grants to Anacor and its Affiliates a non-exclusive, sublicensable license to make and use all Developed IP in connection with the Development, Manufacture, or use of Compounds or Products for all research, development, and regulatory purposes. For clarity, Anacor shall not have any rights to sell any Compounds or Products pursuant to the license granted thereto under this Section 2.1.5.

2.2. **Sublicense Rights.** Licensee may sublicense the rights granted to it by Anacor under this Agreement, through multiple tiers, (a) to any of its Affiliates, without Anacor's approval, (b) to any Third Party other than in connection with a Significant Transaction, without Anacor's approval; and (c) to any Third Party in connection with a Significant Transaction, other than a Significant Transaction that is compelled by the U.S. Federal Government under 35 USC 302, upon Anacor's prior written approval, which approval shall not be unreasonably withheld or delayed, but which is subject to the provisions of Section 2.6. Any and all sublicenses shall be subject to the following requirements:

2.2.1. All sublicenses shall be subject to and consistent with the terms and conditions of this Agreement and shall: (a) preclude the assignment of such sublicense without the prior written approval of Anacor (except for assignments under the Greater China Sublicense, which shall not require such approval), (b) include Anacor as a third party beneficiary under the sublicense with the right to enforce the terms of such sublicense, and (c) preclude the granting of further sublicenses in contravention with the terms and conditions of this Agreement. In no event shall any sublicense relieve Licensee of any of its obligations under this Agreement.

2.2.2. Licensee shall furnish to Anacor a true and complete copy of each sublicense agreement and each amendment thereto, within thirty (30) days after the sublicense or amendment has been executed.

2.3. **Retained Rights.** Licensee acknowledges and agrees that Anacor retains the right and is free to (a) make, have made, use and import the Compound and Product for all internal research, development, and regulatory purposes, (b) use the Licensed Patent Rights, the Chiral Synthesis Intellectual Property, and Licensed Know-How for purposes other than those exclusively licensed to Licensee under this Agreement, and (c) grant rights, which may have been or may be provided by Anacor, to (i) a reagent supplier, such as Sigma Aldrich Co., to make or sell the Compound or (ii) a non-commercial entity to use the Compound, in each case in the form of non-GMP samples of the Compound in mg quantities solely as a research reagent.

2.4. **Residuals.** Anacor may use for any purpose the Residuals resulting from access to or work with the Product and Licensed Know-How. As used herein, "**Residuals**" means information in non-tangible form which may be retained by persons who have had access to the Product or Licensed Know-How, including ideas, concepts, know-how or techniques contained therein.

2.5. **No Additional Rights.** Nothing in this Agreement shall be construed to confer any rights upon a Party by implication, estoppel, or otherwise as to any technology or Intellectual Property Rights of either Party or its Affiliates other than the rights in Licensed Technology expressly granted herein, regardless of whether such technology or Intellectual Property Rights shall be dominant or subordinate to any Licensed Technology.

2.6. **[***]

3. **TRANSFER ACTIVITIES.** Schedule 3 sets forth the documentation that Anacor will transfer to Licensee and related activities to be performed by the Parties.

4. **DEVELOPMENT; COMMERCIALIZATION; MANUFACTURING.**

4.1. **General**. Licensee shall have sole responsibility for the cost and expense of, and the sole authority over and control of, the Development, Manufacture, Regulatory Approval and Commercialization of Compounds and Products in the Field.

4.2. **Diligence**.

4.2.1. **Development.** Licensee shall itself, or through its Affiliates or sublicensees, use Commercially Reasonable Efforts to Develop and seek Regulatory Approval for the Product in the Developing Countries and at least one Developed Country.

4.2.2. **Commercialization.** Licensee shall itself, or through its Affiliates or sublicensees, use Commercially Reasonable Efforts to Commercialize a given Product in the Developing Countries and the Developed Countries where Licensee or its designated Affiliates or sublicensees receive Regulatory Approval for such Product.

4.3. **Regulatory Filings.** In connection with its efforts to Develop the Product, Licensee shall bear all responsibility and expense for submitting Regulatory Filings and obtaining Regulatory Approval for the Product. Licensee will undertake such activities at its sole expense.

4.4. **Progress Reporting.** At least [***] prior to the start of each [***], Licensee shall provide to Anacor a report including [***]. Licensee would make available on a [***] for a reasonable period of time, knowledgeable personnel to respond to questions from Anacor or its Affiliates pertaining to the development and commercialization of the Product in order to assist Anacor or its Affiliates with fulfilling any of Anacor's or its Affiliates revenue recognition procedures as they pertain to payments owed or potentially owed to Anacor under this Agreement.

4.5. **U.S. Manufacturing.** Licensee agrees that, to the extent required, it shall comply with the applicable requirements of 35 U.S.C. § 204 in connection with Manufacturing the Product.

4.6. **CROs and CMOs**. Licensee may contract with Third Party CROs or CMOs to handle any or all clinical Development or Manufacture activities, in Licensee's reasonable discretion, consistent with the then-current Development Plan. As between the Parties, all costs of CROs or CMOs will be borne solely by Licensee. For clarity, Licensee shall not be required to obtain Anacor's consent of a sublicense to a CRO or CMO if the applicable contract is (a) in the case of a CRO, limited to a license for such CRO to perform research or Development with regard to a Product on behalf of Licensee or (b) in the case of a CMO, limited to a license for such CMO to Manufacture Product on behalf of Licensee.

4.7. **Development Plan**. All Development and Commercialization activities to be conducted in connection with any Compound or Product will be performed by Licensee consistent with the terms and conditions set forth in this Section 4.7 and the development plan as set forth in Schedule 4.7 (the "**Development Plan**"). [***], Licensee will provide Anacor with a detailed update on all activities undertaken to accomplish the activities set out in the Development Plan. The foregoing obligation shall expire upon a [***].

5. PAYMENT TERMS.

5.1. **Equity.** In consideration of the licenses and rights granted to Licensee hereunder, Licensee will issue and grant to Anacor such number of shares of the Licensee's Series A Preferred Shares (the "**Shares**") equivalent on an aggregate basis to fifteen

percent (15%) of all shares of Licensee's capital shares on a fully-diluted basis immediately following the closing of Licensee's Series A Investment, and in any event pursuant to that certain Series A Preferred Share Purchase Agreement, to be executed and delivered by Anacor and certain other investors simultaneously with this Agreement. Anacor, as the owner of Shares, shall have rights and obligations on parity with, and with the same terms and conditions as, other investors purchasing shares of Series A Preferred Shares.

5.2. **Upfront Payment.** In consideration of the licenses and rights granted to Licensee hereunder, Licensee shall pay to Anacor a one-time, upfront, non-refundable, and non-creditable payment of two million dollars (US$2,000,000) on the Effective Date ("**Upfront Payment**").

5.3. **Development Milestone Payments.** In consideration of the licenses and rights granted to Licensee hereunder, Licensee shall pay to Anacor the amounts set forth below within [***] following the first occurrence of each event described below (each event, a "**Development Milestone**" and each payment, a "**Development Milestone Payment**").

DEVELOPMENT MILESTONE	DEVELOPMENT MILESTONE PAYMENT
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]

For the avoidance of doubt: (i) each Development Milestone Payment shall be payable [***]; and (ii) satisfaction of a Development Milestone by a sublicensee or assignee of, or Third Party retained by, Licensee or its Affiliates shall be deemed to have been satisfied by Licensee for purposes of this Section 5.3. In the event the Development changes such that [***] described in Development Milestones (1), (2) and (3) above are not [***], respectively, then the then current applicable [***].

5.4. **Sales Milestone Payments.** In consideration of the licenses and rights granted to Licensee hereunder, Licensee shall pay to Anacor the following [***] payments when cumulative Net Sales of Products in the Territory first reach the respective thresholds indicated below (each event, a "**Sales Milestone**" and each payment, a "**Sales Milestone Payment**").

SALES MILESTONE	SALES MILESTONE PAYMENT
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	
[***]	

Licensee shall make any Sales Milestone Payment payable within [***] after the [***] in which cumulative Net Sales reach the applicable threshold, and such payment shall be accompanied by a report identifying the amount payable to Anacor under this Section 5.4.

5.5. Royalty Payments.

5.5.1. In consideration of the licenses and rights granted to Licensee hereunder, Licensee shall pay to Anacor non-refundable, non-creditable royalties on a [***] basis as set forth below (the "**Marginal Royalty Rates**") on the aggregate Net Sales resulting from the sale of Products, on a Product-by-Product basis, in the Territory during each [***] (collectively, "**Royalties**").

NET SALES IN DEVELOPING COUNTRIES	MARGINAL ROYALTY RATE
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]

NET SALES IN DEVELOPED COUNTRIES	MARGINAL ROYALTY RATE
[***]	[***]
[***]	[***]

In the event that the aggregate, annual Net Sales in Greater China [***], then all countries comprising Greater China shall be [***] for the [***] in which annual Net Sales in Greater China [***] and for each [***] and the Marginal Royalty Rates set forth in the table above shall be applied to the Net Sale of Products in Greater China. If and when royalties on Net Sales made in each country comprising Greater China are determined based on the Marginal Royalty Rate set forth in the table above for Net Sales in [***], such Royalties on Net Sales in Greater China payable to Anacor shall not exceed fifty percent (50%) of all amounts received by Licensee under any Greater China Sublicense in such [***], including, without limitation sales milestone payments, profit sharing payments or any other compensation payable to Licensee if such Net Sales of Products in Greater China are made by a Sublicensee.

Each Marginal Royalty Rate set forth in the table above shall apply only to that portion of the Net Sales of each Product in the Territory during a given [***] that falls within the indicated range. Licensee shall pay to Anacor the applicable Royalties within [***] following the expiration of each [***] after the date of the First Commercial Sale. Royalties will be payable on a Product-by-Product and country-by-country basis during the Royalty Term for such Product in each country until the expiration of the Royalty Term for such Product in each country. All Royalty payments shall be accompanied by a report that includes reasonably detailed information regarding a total [***] sales calculation of Net Sales of Product (including all deductions) and all Royalties payable to Anacor for the applicable [***] (including any foreign exchange rates employed).

5.5.2. **Third Party Licenses.** In the event that Licensee cannot Commercialize the Product without infringing a Third Party's Intellectual Property Rights ("**Third Party IP**"), and if Licensee pays a royalty to a Third Party for the right to use such Third Party IP (the "**Third Party Payment**"), then Licensee may credit [***] of such Third Party Payment against the Royalties owed and payable on the Net Sales for the corresponding Product, as determined on a country-by-country and Product-by-Product basis. Notwithstanding the foregoing, in no event shall such credits reduce the Royalties payable to Anacor to more than [***] of the Royalties owed for such Net Sales and in no case shall Royalties payable to Anacor be less than [***].

5.5.3. **Generic Entry**. For Net Sales based on sales of a Licensed Product in a country in the Territory, any payments owed with respect to such Licensed Product pursuant to this Section 5.5 shall be reduced by [***], if at any time a Generic Product is available in such country and such

Generic Product(s) have, in the aggregate, achieved more than [***] of the market share in such country by unit volume of combined unit sales of all Products and all Generic Products and for as long as the Generic Product(s) in such country maintain at least a [***] market share and provided however, that royalty rate used to determine Royalties payable to Anacor in such country in no case will be [***].

5.5.4. **Expiration of Valid Claims and Exclusivity.** If, on a country-by-country and Product-by-Product basis, clause (b) and (c) of the definition of "Royalty Term" is no longer applicable to such Product in such country (i.e., the Manufacture, use, sale, offer for sale or importation of such Product in such country would no longer infringe, but for the license granted herein, a Valid Claim of a Licensed Patent Right), then the Marginal Royalty Rates used to calculate Royalties with respect to such Product in such country shall be reduced by [***].

5.6. Change of control Payment.

5.6.1. Licensee shall pay to Anacor a non-refundable and non-creditable payment of the lesser of (a) [***] or (b) [***] received by Licensee as a result of a Change of Control, sublicense, or divestiture, upon the earlier to occur of either of the following: (i) Licensee completes its first Change of Control and (ii) a transaction to sublicense or divest to a third party any of its Product related rights in a Major Market (other than a third party contract research and/or manufacturing organization conducting Product related research and/or manufacturing services) the "**Change of Control Payment**"); provided that [***].

5.6.2. The Change of Control Payment shall be accompanied by a report that includes a copy of any relevant documents to allow Anacor to confirm the accuracy of such payment.

5.6.3. For a Change of Control Payment due under clause (a) of Section 5.6.1, Licensee or its Affiliate shall make such Change of Control Payment within [***] following (i) the closing of Licensee's first Change of Control, or (ii) the effective date of the transaction to a third party, as applicable.

5.7. **Priority Review Voucher Right of First Refusal**. If a Priority Review Voucher is issued for a Product and Licensee desires to sell such PRV, Anacor or its Affiliates shall have the right of first refusal ("**ROFR**") to purchase such PRV for a period of [***] from Licensee providing to Anacor (a) notice of the issuance of a PRV for a particular Product, *and* (b) a copy of a near final negotiated agreement between Licensee and the potential third party buyer ("**TPB**") with such TPB's identity and potential use redacted) (**"PRV RORL"**). Anacor (or its Affiliates) may exercise the PRV ROFR on the same terms as set forth in the agreement between Licensee and TPB. Upon a change of control, any PRV issued thereafter is automatically transferred to Anacor (or its Affiliates).

5.8. **Greater China Sublicense Payment.** In the event that Licensee enters into a Greater China Sublicense and such sublicense provides for Licensee to receive:

(i) A royalty in excess of [***] on sales of one or more Products; and

(ii) [***] in addition to a royalty on sales of one or more Products

Then, in addition to the Royalties, Licensee shall pay Anacor the following:

(i) Fifty percent (50%) of all royalties received under the Greater China Sublicense that are [***] on sales of one or more Products; and

(ii) Fifty percent (50%) of all amounts received under the Greater China Sublicense that are in addition to the royalties received on sales of one or more Products; such amounts shall include, without limitation, [***]; provided that such amounts shall not include [***].

5.9. **[***]**

5.10. **Other Payments**. Licensee shall pay to Anacor any other amounts due under this Agreement within [***] following receipt of invoice.

5.11. **Late Payments**. Any amount required to be paid by a Party hereunder which is not paid on the date due shall bear interest, to the extent permitted by law, at [***] above the thirty (30) day U.S. Dollar Prime rate effective for the date such payment was due, as reported in the Wall Street Journal. Such interest shall be computed on the basis of a year of three hundred sixty (360) days for the actual number of days payment is delinquent.

5.12. **Currency.** Any payments under this Section 5 that are recorded in currencies other than the U.S. Dollar shall be converted into U.S. Dollars at the average of the daily foreign exchange rates published in the Wall Street Journal (or any other qualified source that is acceptable to both Parties) for the Calendar Quarter in which such payments or expenses occurred, or for periods less than a Calendar Quarter, the average of the daily rates published in the Wall Street Journal for such period.

5.13. **Method of Payment**. All payments from Licensee to Anacor shall be made by wire transfer via immediately available funds in U.S. dollars to credit the bank account set forth below or such other bank account as designated by Anacor in writing to Licensee at least [***] before payment is due. Any payment which falls due on a date which is not a Business Day may be made on the next succeeding Business Day.

Bank Name:	[***]
Bank Address:	[***]
Bank Account Number:	[***]
Account Name:	[***]
ABA Number:	[***]
Routing Number:	[***]
Swift:	[***]

5.14. Taxes.

5.14.1. **General**. It is understood and agreed between the Parties that any payments made under this Agreement are exclusive of any value added or similar tax ("**VAT**"), which shall be added thereon as applicable. In the event any payments made by Licensee to Anacor pursuant to this Agreement become subject to withholding taxes under the laws or regulation of any jurisdiction, Licensee shall deduct and withhold the amount of such taxes for the account of Anacor to the extent required by Applicable Law and such amounts payable to Anacor shall be reduced by the amount of taxes deducted and withheld, which shall be treated as paid to Anacor in accordance with this Agreement. To the extent that Licensee is required to deduct and withhold taxes on any payments under this Agreement, Licensee shall pay the amounts of such taxes to the proper governmental authority in a timely manner and promptly transmit to the payee an official tax certificate or other evidence of such withholding sufficient to enable Anacor to claim such payments of taxes. Anacor shall provide any tax forms to Licensee that may be reasonably necessary in order for Licensee not to withhold tax or to withhold tax at a reduced rate under an applicable bilateral income tax treaty. Each Party shall provide the other with reasonable assistance to enable the recovery, as permitted by Applicable Law, of withholding taxes, VAT, or similar obligations resulting from payments made under this Agreement, such recovery to be for the benefit of the Party bearing such withholding tax or VAT.

5.14.2. **Tax Actions**. Notwithstanding anything in this Agreement to the contrary, if an action, including but not limited to any assignment or sublicense of its rights or obligations under this Agreement, or any failure to comply with Applicable Laws or filing or record retention requirements (a "**Tax Action**") by a Party leads to the imposition of withholding tax liability or VAT on the other Party that would not have been imposed in the absence of a Tax Action or in an increase in such liability above the liability that would have been imposed in the absence of such Tax Action, then (i) the sum payable by the Party that caused

the Tax Action (in respect of which such deduction or withholding is required to be made) shall be increased to the extent necessary to ensure that the other Party receives a sum equal to the sum which it would have received had no Tax Action occurred and (ii) the sum payable by the Party that caused a Tax Action (in respect of which such deduction or withholding is required to be made) shall be made to the other Party after deduction of the amount required to be so deducted or withheld, which deducted or withheld amount shall be remitted in accordance with Applicable Law. For the avoidance of doubt, a Party shall only be liable for increased payments pursuant to this Section 5.14.2 to the extent such Party engaged in a Tax Action that created or increased a withholding tax or VAT on the other Party.

5.14.3. **Cooperation**. The Parties agree to cooperate and produce on a timely basis any tax forms or reports, including an IRS Form W-8BEN, reasonably requested by the other Party in connection with any payment made by Licensee to Anacor under this Agreement.

6. RECORDS; AUDIT RIGHTS.

6.1. **Relevant Records.** Licensee shall maintain accurate financial books and records pertaining to sale of the Product by Licensee, its Affiliates or sublicensees, including any and all calculations of the applicable Fees (collectively, "**Relevant Records**"). Licensee shall maintain the Relevant Records for the longer of: (a) the period of time required by Applicable Law, or (b) [***] following expiration or termination of this Agreement.

6.2. **Audit Request.** Anacor shall have the right during the term of this Agreement and for [***] thereafter to engage, at its own expense, an independent auditor reasonably acceptable to Licensee to examine the Relevant Records from time-to-time, but no more frequently than [***] every [***], as may be necessary to verify compliance with the terms of this Agreement. Such audit shall be requested in writing at least [***] in advance, and shall be conducted during Licensee's normal business hours and otherwise in a manner that minimizes any interference to Licensee's business operations.

6.3. **Audit Fees and Expenses.** Anacor shall bear any and all fees and expenses it may incur in connection with any such audit of the Relevant Records; *provided*, *however*, in the event an audit reveals an underpayment by Licensee of more than [***] as to the period subject to the audit, Licensee shall reimburse Anacor for any reasonable and documented out-of-pocket costs and expenses of the audit within [***] after receiving invoices thereof, and notwithstanding the provisions of Section 6.2, Anacor shall have the right to examine the Relevant Records of Licensee up to [***] every [***] for the [***] period following the audit revealing such underpayment.

6.4. **Payment of Deficiency.** If any audit establishes that Licensee underpaid any amounts due to Anacor under this Agreement, then Licensee shall pay Anacor any such deficiency within [***] after receipt of written notice thereof. For the avoidance of doubt, such payment will be considered a late payment, subject to Section 5.11.

7. INTELLECTUAL PROPERTY RIGHTS.

7.1. **Pre-existing IP.** Subject only to the rights expressly granted to the other Party under this Agreement, each Party shall retain all rights, title, and interests in and to any Intellectual Property Rights that are owned, licensed, or sublicensed by such Party prior to or independent of this Agreement.

7.2. **Patent Prosecution.**

7.2.1. **Patent Prosecution and Maintenance.** Subject to Anacor's rights set forth in Section 7.2.4 below, and immediately upon Anacor's transfer of the documentation related to the Licensed Patent Rights in accordance with Schedule 3, Licensee will be responsible for filing, prosecuting (including in connection with any reexaminations, revocation proceedings, *inter parties* reviews, oppositions and the like), and maintaining the Licensed Patent Rights in the Territory and in Anacor's name at [***] own cost and expense using, as of the Effective Date, [***] as its lead patent counsel in the U.S., Europe and Japan, respectively, and [***] as its annuity service provider to prepare, file, prosecute, and maintain the Licensed Patent Rights. Licensee will select additional qualified patent counsel and foreign agents as necessary, in each case reasonably acceptable to Anacor, within [***] after the Effective Date. During the Term, Licensee will provide notice of any substitution of such counsel, foreign agents or annuity service within [***] after such substitution. Before each submission is filed, Licensee will provide Anacor a reasonable opportunity to review and comment on proposed submissions to any patent office and [***] any comments provided by Anacor to Licensee. Licensee will keep Anacor reasonably informed of the status of the Licensed Patent Rights by timely providing Anacor copies of significant communications relating to such Licensed Patent Rights that are received from any patent office or patent counsel of record or foreign associate.

7.2.2. **Assistance.** As reasonably requested by Licensee in writing, Anacor shall cooperate, [***], in obtaining patent term restoration (under, but not limited to, the Drug Price Competition and Patent Term Restoration Act), supplementary protection certificates or their equivalents, and patent term extensions with respect to the Licensed Patent Rights in the United States and Europe.

7.2.3. **Patent Term Extensions.** Licensee shall provide Anacor with notice of each market application and approval within [***] of such application and approval. Licensee shall have the first right with respect to making decisions regarding patent term extensions, including supplementary protection certificates, patent linkages and any other extensions that are now or in the future become available, wherever applicable (each, a "**Patent Term Extension**"), for Licensed Patent Rights in any country or other jurisdiction in connection with the Products. Prior to selecting any such Patent Rights for a Patent Term Extension, Licensee shall notify Anacor of any such selection and, at Anacor's request, discuss in good faith any issues or comments Anacor may have with respect to the selection of such Patent Rights and Licensee shall take into consideration Anacor's reasonable comments. Licensee shall have the responsibility of applying for any Patent Term Extension with respect to such Patent Rights and the Products in the Territory. Licensee shall consult with Anacor and keep Anacor reasonably informed of its efforts to obtain such Patent Term Extension. As reasonably requested by Licensee in writing, Anacor shall cooperate, at Licensee's expense, in obtaining such Patent Term Extension. Licensee agrees to execute and deliver such further authorizations and instruments in advance of submission to provide Anacor with reasonable comment rights and Licensee agrees to take into consideration such further actions as may be reasonably requested by Anacor to implement the foregoing. If Licensee does not exercise its rights to file Patent Term Extensions on any Licensed Patent Right in the Territory, Anacor shall have the right, on a country-by-country basis to file a Patent Term Extension for such Licensed Patent Rights at Anacor's sole expense.

7.2.4. **Failure to Prosecute or Maintain.** In the event Licensee elects to forgo filing, prosecution, or maintenance of the Licensed Patent Rights, Licensee shall notify Anacor of such election at least [***] prior to any filing or payment due date, or any other due date that requires action ("**Election Notice**"). Upon receipt of an Election Notice, Anacor shall be entitled, upon written notice to Licensee, at its sole discretion and expense, to file or to continue the prosecution or maintenance of such Patent Right in such country in Anacor's name using counsel of its own choice and at its own expense, in which case, as of the date Licensee provides Anacor such Election Notice, the license granted in Section 2.1.1 with respect to such patent rights shall become non-exclusive and non-sublicensable (to the extent Licensee has not sublicensed such Patent Right prior to providing such Election Notice), and Licensee will have no further rights in respect of the filing, maintenance, or enforcement of such Patent Right.

7.2.5. **Listing in Orange Book**. Licensee shall have the right, in its sole discretion, to make all filings with Regulatory Authorities in the

Territory for each Product in the FDA's Orange Book, and under any similar or equivalent laws in other countries or jurisdictions; *provided*, *however*, that the Parties shall collaborate in good faith to determine whether any Licensed Patent Rights are required to be included in any such intended filings. Prior to making such filing, Licensee shall notify Anacor of any such filing and, at Anacor's request, discuss in good faith any issues or comments Anacor may have with respect to such filing and Licensee shall take into consideration Anacor's reasonable comments.

8. INFRINGEMENT; MISAPPROPRIATION.

8.1. **Notification.** Each Party will promptly notify the other Party in writing of any actual or threatened infringement, misappropriation or other violation by a Third Party of any Licensed Technology in the Field and in the Territory of which it becomes aware, including, but not limited to (i) the filing of an ANDA under Section 505(j) of the United States Federal Food, Drug and Cosmetic Act "**FD&C Act**", or an application under Section 505(b)(2) of the FD&C Act naming a Product as a reference listed drug and including a certification under Section 505(j)(2)(A)(vii)(IV) or 505(b)(2)(A)(IV), respectively or (ii) declaratory judgment action against any Licensed Patent Right in the Territory in connection with any infringement described in clause (i) (any of (i) or (ii) constituting a ("**Third Party Infringement**").

8.2. **Infringement Action.**

8.2.1. **Right of First Enforcement.**

(a) Licensee shall have the first right (but not the obligation), at its own expense, to control enforcement of the exclusively licensed Licensed Technology against any Third Party Infringement within the scope of its exclusive license and may name Anacor as a party for standing purposes. Prior to commencing any such action, Licensee shall consult with Anacor and shall give due consideration to Anacor's recommendations regarding the proposed action. Licensee shall give Anacor timely notice of any proposed settlement of any such action instituted by Licensee and shall not, without the prior written consent of Anacor, enter into any settlement that would: (i) adversely affect the validity, enforceability or scope of any of the Licensed Patent Rights, (ii) give rise to liability of Anacor or its Affiliates, (iii) admit non-infringement of any Licensed Patent Rights, or (iv) otherwise impair Anacor's rights in any Licensed Technology or this Agreement.

(b) If Licensee does not, with respect to its first right of enforcement under Section 8.2.1(a), obtain agreement from the alleged infringer to desist or fails or refuses to initiate an infringement action by the earlier of [***], then Anacor shall have the right, at its sole discretion, to control such enforcement of the Licensed Technology at its sole expense.

8.2.2. **Recoveries.** Any recoveries resulting from an action relating to a claim of Third Party Infringement shall first be applied to reimburse each Party's costs and expenses incurred in connection therewith. Any remaining recoveries shall be retained by (or if received by Anacor, paid to) Licensee; *provided*, *however*, [***]. If Licensee fails to institute an action or proceeding and Anacor exercises its right to prosecute such infringement pursuant to Section 8.2.1(b), any remaining recoveries shall be retained by Anacor.

9. CONFIDENTIALITY.

9.1. **Definition.** "**Confidential Information**" of a Party means the existence, terms and provisions of this Agreement and all other proprietary information and data of a financial, commercial or technical nature that the disclosing Party or any of its Affiliates has supplied or otherwise made available to the other Party or its Affiliates, which are disclosed in writing or, if disclosed orally or visually, summarized in writing and provided to the receiving Party after disclosure. All Licensed Know-How shall be considered Anacor's Confidential Information. Confidential Information shall not include information that: (a) is, at the time of disclosure or becomes, after the time of disclosure, known to the public or part of the public domain through no breach of this Agreement by the receiving Party or any Recipients to whom it disclosed such information; (b) was known to, or was otherwise in the possession of, the receiving Party prior to the time of disclosure by the disclosing Party; (c) is disclosed to the receiving Party on a non-confidential basis by a Third Party who is entitled to disclose it without breaching any confidentiality obligation to the disclosing Party; or (d) is independently developed by or on behalf of the receiving Party or any of its Affiliates, as evidenced by its written records, without use or access to the Confidential Information.

9.2. **Obligations.** The receiving Party will protect all Confidential Information against unauthorized disclosure to Third Parties with the same degree of care as the receiving Party uses for its own similar information, but in no event less than a reasonable degree of care. The receiving Party may disclose the Confidential Information to its Affiliates, and their respective directors, officers, employees, subcontractors, current and prospective sublicensees, consultants, attorneys, accountants, banks and investors (collectively, "**Recipients**") who have a need to know such information for purposes related to this Agreement, *provided* that the receiving Party shall hold such Recipients to written obligations of confidentiality with terms and conditions at least as restrictive as those set forth in this Agreement. All obligations of confidentiality under this Agreement shall survive expiration or termination of this Agreement for a period of [***].

9.3. Exceptions.

9.3.1. Disclosure Required by Law. The restrictions set forth in this Section 9 shall not apply to any Confidential Information that the receiving Party is required to disclose under Applicable Laws or a court order or other governmental order, *provided* that the receiving Party: (a) provides the disclosing Party with prompt notice of such disclosure requirement if legally permitted, (b) affords the disclosing Party an opportunity to oppose, limit or secure confidential treatment for such required disclosure and (c) if the disclosing Party is unsuccessful in its efforts pursuant to subsection (b), discloses only that portion of the Confidential Information that the receiving Party is legally required to disclose as advised by the receiving Party's legal counsel.

9.3.2. Disclosure to Assignee of Payments. In the event that Anacor wishes to assign, pledge or otherwise transfer its rights to receive some or all of the Milestone Payments, Royalties, and Change of Control Payment payable hereunder to one or more Third Parties, Anacor may disclose to such Third Party(ies) Confidential Information of Licensee in connection with any such proposed assignment, provided that Anacor shall hold such Third Parties to written obligations of confidentiality and non-use with terms and conditions at least as restrictive as those set forth in this Agreement.

9.4. Right to Injunctive Relief. Each Party agrees that breaches of this Section 9 may cause irreparable harm to the other Party and shall entitle the aggrieved Party, in addition to any other remedies available to it (subject to the terms of this Agreement), the right to seek injunctive relief enjoining such action.

9.5. Ongoing Obligation for Confidentiality. Upon expiration or termination of this Agreement, the receiving Party shall, and shall cause its Recipients to, destroy or return (as requested by the disclosing Party) any Confidential Information of the disclosing Party, except that the receiving Party (a) may retain a single copy of Confidential Information for the sole purpose of ascertaining its rights and responsibilities in respect of such information and (b) shall not be required to destroy any computer files stored securely by the receiving Party that are created by automatic system back up.

10. REPRESENTATIONS, WARRANTIES AND COVENANTS.

10.1. Representations and Warranties by Each Party. Each Party represents and warrants to the other Party as of the Effective Date that:

10.1.1. it is a corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation;

10.1.2. it has full corporate power and authority to execute, deliver, and perform under this Agreement, and has taken all corporate action required by Applicable Law and its organizational documents to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement;

10.1.3. this Agreement constitutes a valid and binding agreement enforceable against it in accordance with its terms;

10.1.4. all consents, approvals and authorizations from all governmental authorities or other Third Parties required to be obtained by such Party in connection with this Agreement have been obtained; and

10.1.5. the execution and delivery of this Agreement and all other instruments and documents required to be executed pursuant to this Agreement, and the consummation of the transactions contemplated hereby do not and shall not: (i) conflict with or result in a breach of any provision of its organizational documents, (ii) result in a breach of any agreement to which it is a party that would impair the performance of its obligations hereunder; or (iii) violate any Applicable Law.

10.2. Representations and Warranties by Anacor. Anacor represents and warrants to Licensee as of the Effective Date that:

10.2.1. to its Knowledge, Anacor has the right to grant right, title and interest in the licenses and other rights granted to Licensee under this Agreement;

10.2.2. to Anacor's Knowledge, there is no ongoing or threatened litigation involving the Licensed Patent Rights.

10.3. Representations, Warranties and Covenants by Licensee.

10.3.1. Licensee represents and warrants to Anacor that it has the financial and commercial capabilities to Develop the Product and perform its other obligations in accordance with this Agreement and in compliance with all Applicable Laws, and Licensee covenants that it shall use Commercially Reasonable Efforts to maintain such capabilities during the Term.

10.3.2. Licensee covenants that it will use Commercially Reasonable Efforts to timely obtain the financial and commercial capabilities to Commercialize the Product in accordance with its obligations hereunder.

10.3.3. Licensee covenants to Anacor that it shall comply with all Applicable Law with respect to the performance of its obligations hereunder.

10.3.4. Licensee covenants to Anacor that, in addition to the payments due under this Agreement, it shall be responsible for and pay any financial obligations due from any Third Party agreement related to the Compounds including, but not limited to any pre-existing agreements between Anacor and GlaxoSmithKline.

10.4. **Representations, Warranties and Covenants related to Compliance Laws.** Without limiting the generality of Section 10.3.2, Licensee shall comply with the U.S. Foreign Corrupt Practices Act and any other applicable anti-bribery or anti-corruption laws ("**Compliance Laws**"). Licensee represents and warrants that neither Licensee, nor its respective Affiliates, nor to Licensee's knowledge, any director, officer, employee, consultant, agent or representative or other person acting on its behalf has taken or will take any action, directly or indirectly, to pay, offer, promise or authorize the payment, or giving of anything of value to any Government Official, or to any person, and has not accepted and will not accept a payment for any item of value: (a) for the purpose of (i) influencing any act or decision of such Government Official(s) in their official capacity, including the failure to perform an official function, in order to assist Licensee or its Affiliates or any beneficiary of the Licensee in obtaining or retaining business, or directing business to any third party, (ii) securing an improper advantage, (iii) inducing such Government Official(s) to use their influence to affect or influence any act or decision of a government entity in order to assist Licensee, its Affiliates or any beneficiary of Licensee in obtaining or retaining business, or directing business to any third party, or (v) providing an unlawful personal gain or benefit, of financial or other value, to such Government Official(s); or (b) otherwise for the benefit of Licensee, or any of its Affiliates in violation of any federal, state, local, municipal, foreign, international, multinational or other administrative law. As used herein, "**Government Official**" means: (A) any elected or appointed government official (e.g., a member of a ministry of health), (B) any employee or person acting for or on behalf of a government official, agency, or enterprise performing a governmental function, (C) any political party officer, employee, or person acting for or on behalf of a political party or candidate for public office, (D) an employee or person acting for or on behalf of a public international organization, or (E) any person otherwise categorized as a government official under local law. "Government" is meant to include all levels and subdivisions of non-U.S. governments (i.e., local, regional, or national and administrative, legislative, or executive).

10.5. **No Action Required Which Would Violate Law**. In no event shall Anacor be obligated under this Agreement to take any action or omit to take any action that Anacor believes, in good faith, would cause Anacor to violate any Applicable Law, including without limitation the Compliance Laws.

10.6. **No Other Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS ARTICLE 10, NEITHER PARTY MAKES ANY REPRESENTATIONS OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, VALIDITY, ENFORCEABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY INFORMATION OR MATERIALS PROVIDED BY ANACOR OR ITS AFFILIATES IS MADE AVAILABLE ON AN "AS IS" BASIS WITHOUT WARRANTY WITH RESPECT TO COMPLETENESS, COMPLIANCE WITH REGULATORY STANDARDS OR REGULATIONS OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER KIND OF WARRANTY WHETHER EXPRESS OR IMPLIED.

11. INDEMNIFICATION.

11.1. **Indemnification by Licensee.** Licensee agrees to indemnify, hold harmless and defend Anacor and its Affiliates, and their respective officers, directors, employees, contractors, agents and assigns (collectively, "**Anacor Indemnitees**"), from and against any Third Party Claims arising or resulting from: (a) the Development of a Product by Licensee, its Affiliates, subcontractors or sublicensees, (b) the Commercialization of a Product by Licensee, its Affiliates, subcontractors or sublicensees, (c) the negligence, recklessness or wrongful intentional acts or omissions of Licensee, its Affiliates, subcontractors or sublicensees, (d) breach by Licensee of any representation, warranty or covenant as set forth in this Agreement, (e) any financial obligations or claims resulting from any third party agreement related to the Compounds including, but not limited to any pre-existing agreement between Anacor and GlaxoSmithKline or (f) breach by Licensee of the scope of the license set forth in Section 2.1. As used herein, "**Claims**" means collectively, any and all demands, claims, actions and proceedings (whether criminal or civil, in contract, tort or otherwise) for losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees).

11.2. **Indemnification Procedure.** In connection with any Claim for which Anacor seeks indemnification from Licensee pursuant to this Agreement, Anacor shall: (a) give Licensee prompt written notice of the Claim; *provided*, *however*, that failure to provide such notice shall not relieve Licensee from its liability or obligation hereunder, except to the extent of any material prejudice as a direct result of such failure; (b) cooperate with Licensee, at Licensee's 's expense, in connection with the defense and settlement of the Claim; and (c) permit Licensee to control the defense and settlement of the Claim; *provided*, *however*, that Licensee may not settle the Claim without Anacor's prior written consent, which shall not be unreasonably withheld or delayed, in the event that such settlement materially adversely impacts Anacor's rights or obligations. Further, Anacor shall have the right to participate (but not control) and be represented in any suit or action by advisory counsel of its selection and at its own expense.

12. LIMITATION OF LIABILITY.

12.1. Consequential Damages Waiver. EXCEPT FOR A BREACH OF SECTION 9 OR OBLIGATIONS ARISING UNDER SECTION 11, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS OR LOST REVENUES REGARDLESS OF WHETHER IT HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR THE TYPE OF CLAIM, CONTRACT OR TORT (INCLUDING NEGLIGENCE).

12.2. Liability Cap. IN NO EVENT SHALL ANACOR'S LIABILITY FOR DAMAGES IN CONNECTION WITH THIS AGREEMENT EXCEED THE CAP, REGARDLESS OF WHETHER ANACOR HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR THE TYPE OF CLAIM, CONTRACT OR TORT (INCLUDING NEGLIGENCE). "**Cap**" means the [***] immediately preceding the event giving rise to the claim. As used herein, [***].

13. TERM; TERMINATION.

13.1. Term. The term of this Agreement ("**Term**") shall commence as of the Effective Date and shall expire upon the last to expire Royalty Term.

13.2. Termination for Cause. Each Party shall have the right, without prejudice to any other remedies available to it at law or in equity, to terminate this Agreement in the event the other Party materially breaches any of its obligations hereunder and fails to cure such breach within [***] of receiving notice thereof; *provided*, *however*, if such breach is capable of being cured, but cannot be cured within such [***] period, and the breaching Party initiates actions to cure such breach within such period and thereafter diligently pursues such actions, the breaching Party shall have such additional period as is reasonable to cure such breach, but in no event will such additional period exceed [***]. Any termination by a Party under this Section 13.2 shall be without prejudice to any damages or other legal or equitable remedies to which it may be entitled from the other Party. For the avoidance of doubt, Licensee's failure to use Commercially Reasonable Efforts to Develop and Commercialize the Product or failure to make a Milestone Payment or Royalty payment shall constitute a material breach by Licensee under this Agreement. Without limiting the foregoing, Anacor may, at any time, terminate this Agreement [***] upon written notice in the event that [***] Licensee has breached any of the representations or warranties in Section 10.4 of this Agreement or otherwise failed to meet its obligations under Section 10.4 of this Agreement.

13.3. Termination for a Bankruptcy Event. Each Party shall have the right to terminate this Agreement in the event of a Bankruptcy Event with respect to the other Party. "**Bankruptcy Event**" means the occurrence of any of the following: (a) the

institution of any bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against a Party under any bankruptcy, insolvency, or other similar law now or hereinafter in effect, including any section or chapter of the United States Bankruptcy Code, as amended or under any similar laws or statutes of the United States or any state thereof (the "**Bankruptcy Code**"), where in the case of involuntary proceedings such proceedings have not been dismissed or discharged within [***] after they are instituted, (b) the insolvency or making of an assignment for the benefit of creditors or the admittance by a Party of any involuntary debts as they mature, (c) the institution of any reorganization, arrangement or other readjustment of debt plan of a Party not involving the Bankruptcy Code, (d) appointment of a receiver for all or substantially all of a Party's assets, or (e) any corporate action taken by the board of directors of a Party in furtherance of any of the foregoing actions.

13.4. **Termination for Convenience.** For the period from the [***] until the [***], Licensee shall have the right to terminate this Agreement for convenience upon [***] prior written notice to Anacor. Upon such receipt of the [***] and continuing through the end of the Term, Licensee shall have the right to terminate this Agreement for convenience upon [***] prior written notice to Anacor.

13.5. **Effects of Termination.**

13.5.1. **Termination by Licensee for Cause or Bankruptcy Event**. In the event that Licensee terminates this Agreement pursuant to Section 13.2 or Section 13.3, the following shall apply:

(a) **Rights and Obligations**. Except as otherwise provided herein, all rights and obligations of each Party hereunder shall cease, including, subject to Section 13.5.1(b), the licenses granted to Licensee pursuant to Section 2.1.

(b) **Licensee Inventory**. Licensee shall have the right to sell its remaining inventory of Product so long as Licensee has fully paid, and continues to pay when due, all Royalties, Milestone Payments, and Change of Control Payments owed to Anacor, and Licensee is otherwise not in material breach of this Agreement.

13.5.2. **Termination by Anacor for Cause, Bankruptcy Event; Termination by Licensee for Convenience**. In the event that Anacor terminates this Agreement pursuant to Section 13.2, Section 13.3, or Licensee terminates this Agreement pursuant to Section 13.4, the following shall apply:

(a) **Rights and Obligations**. Except as otherwise provided herein, all rights and obligations of each Party hereunder shall cease.

(b) **Licenses**. Anacor shall have a perpetual, irrevocable, worldwide, fully-paid up, royalty-free exclusive right and license, with the right to grant sublicenses, under the Developed IP, as it exists as of the effective date of termination, to use, Develop, Commercialize and Manufacture Compounds and Products.

(c) **Transition**. During the notice period provided in Section 13.2 or Section 13.4, as applicable to such termination, or as soon as practicable upon notice of termination pursuant to Section 13.3, at Anacor's sole option, Anacor shall prepare and the Parties shall negotiate a transition plan that will include, at a minimum, a plan for accomplishing the activities described in this Section 13.5.2(c).

(i) **Continued Development**. At Anacor's request and expense, Licensee shall continue on-going Development for a mutually agreed-upon period following terminating of this Agreement, which period shall not be less than [***] unless otherwise agreed to by the Parties. For avoidance of doubt, if Anacor chooses not to continue a clinical trial initiated by Licensee, [***], including compliance with any ethical or other requirements imposed by an applicable Regulatory Authority.

(ii) **Technology Transfer**. At Anacor's request, Licensee shall make available to Anacor all currently available records and data which exist and are Controlled by Licensee as of the effective date of termination and are necessary or useful for Anacor to continue using, Developing, Commercializing and Manufacturing the Product.

(iii) **Regulatory Matters**. At Anacor's request, Licensee shall transfer and assign to Anacor (or its designee) all Regulatory Approvals, pricing approvals and Regulatory Filings held by Licensee with respect to the Product, provided that if such transfer and assignment is not permitted by the applicable Regulatory Authority, Licensee shall permit Anacor to cross-reference and rely upon such Regulatory Approvals, pricing approvals and Regulatory Filings. Licensee shall make available to Anacor copies of all regulatory documentation and records related to the Product, including information contained in the regulatory and safety databases. The Parties shall cooperate to ensure the prompt transition of regulatory responsibilities for the Product from Licensee to Anacor.

(iv) **Trademarks**. Anacor shall have a fully paid-up, royalty-free, worldwide, transferable, sublicensable, perpetual and irrevocable license to use the trademarks associated with a Product solely for the purpose of using, Developing, Commercializing and Manufacturing the Product. Anacor shall have a transitional license to use Licensee's trademarks and promotional materials solely for the purpose of using, Developing, Commercializing and Manufacturing the Product.

(v) **Inventory and Supply**. At Anacor's request, Licensee shall transfer to Anacor (or its designee) all Product, components and in-process inventory produced or held by Licensee with respect to the Manufacture of Products. At Anacor's request, if Licensee has sublicensed to a CMO to Manufacture the Product, Licensee promptly assign such sublicense to Anacor, or if not, Licensee shall continue to Manufacture or have Manufactured the Product for a period of not less than [***], including, at Anacor's request, a reasonable stock build. Anacor shall pay to Licensee the actual cost of manufacturing associated with inventory and Product received by Anacor pursuant to this Section 13.5.2(c)(v).

(vi) **Third Party Agreements**. At Anacor's request, to the extent Licensee is able to do so, Licensee shall assign to Anacor (or its designee) any agreements with Third Parties with respect to the Development, Commercialization and Manufacture of the Product. With respect to Third Party agreements that Licensee is not able to assign to Anacor, Licensee shall cooperate to give Anacor the benefit of such contracts for a reasonable transitional period.

(d) **Licensee Inventory**. In the event that Licensee terminates this Agreement pursuant to Section 13.4 and Anacor elects not to initiate transition activities pursuant to Section 13.5.2(c), Licensee shall have the right to sell its remaining inventory of Product so long as Licensee has fully paid, and continues to pay when due, all Royalties, Milestone Payments, or Change of Control Payments owed to Anacor, and Licensee is otherwise not in material breach of this Agreement.

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

13.6. **Survival.** Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing hereunder prior to such expiration or termination. Without limiting the foregoing, the provisions of Sections 1, 6, 7.1, 9, 10.6, 11, 12, 13.5, 13.6, 15, 16, and 17 shall survive expiration or termination of this Agreement.

14. PUBLICITY; PUBLICATIONS.

14.1. **Use of Names.** Subject to Anacor's rights pursuant to Section 13.5.2(c)(iv), neither Party (nor any of its Affiliates or agents) shall use the registered or unregistered trademarks, service marks, trade dress, trade names, logos, insignia, domain names, symbols or designs of the other Party or its Affiliates in any press release, publication or other form of promotional disclosure without the prior written consent of the other Party in each instance.

14.2. **Press Releases**. The Parties acknowledge that one or both Parties, either singly or jointly, may desire to publish one or more press releases relating to this Agreement, the License, and developments made thereto. However, each Party agrees not to issue any press release or other public statement, whether written, electronic, oral or otherwise, disclosing the existence of this Agreement, the terms hereof or any information relating to this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Neither Party will be prevented from complying with any duty of disclosure it may have pursuant to Applicable Law or the rules of any recognized stock exchange so long as the disclosing Party provides the other Party at least [***] prior written notice to the extent practicable and only discloses information to the extent required by Applicable Law or the rules of any recognized stock exchange.

14.3. **Publications**. During the Term, Licensee shall submit to Anacor for review and approval any proposed academic, scientific or medical publication or public presentation that contains Anacor's Confidential Information. Such review and approval will be conducted for the purposes of preserving the value of the Licensed Technology and determining whether any portion of the proposed publication or presentation containing Anacor's Confidential Information should be modified or deleted. Written copies of such proposed publication or presentation required to be submitted hereunder shall be submitted to Anacor no later than [***] before submission for publication or presentation (the "**Review Period**"). Anacor shall provide its comments with respect to such publications and presentations within [***] of its receipt of such written copy. The Review Period may be extended for an additional [***] in the event Anacor can, within [***] of receipt of the written copy, demonstrate reasonable need for such extension including for the preparation and filing of patent applications. Licensee will comply with standard academic practice regarding authorship of scientific publications and recognition of contribution of other parties in any publication governed by this Section 14.3, including International Committee of Medical Journal Editors standards regarding authorship and contributions.

15. LICENSEE INSURANCE.

15.1. Insurance Requirements. Licensee will maintain during the Term and until the later of: (a) [***] after termination or expiration of this Agreement, or (b) the date that all statutes of limitation covering claims or suits that may be instituted for personal injury based on the sale or use of the Product have expired, commercial general liability insurance from a minimum [***] AM Best rated insurance company, including contractual liability and product liability or clinical trials, if applicable, with coverage limits of not less than [***]. Licensee has the right to provide the total limits required by any combination of primary and umbrella/excess coverage. The minimum level of insurance set forth herein shall not be construed to create a limit on Licensee's liability hereunder. Such policies shall name Anacor and its Affiliates as additional insured (usually for US, Canada and Puerto Rico exposures) or indemnify Anacor and its Affiliates, as principal (usually for rest of world exposures) and provide a waiver of subrogation in favor of Anacor and its Affiliates. Such insurance policies shall be primary and non-contributing with respect to any other similar insurance policies available to Anacor or its Affiliates. Any deductibles for such insurance shall be assumed by Licensee.

15.2. Policy Notification. Licensee shall provide Anacor with certified copies of such policies or original certificates of insurance evidencing such insurance: (a) prior to execution by both Parties of this Agreement, and (b) prior to expiration of any one coverage. Licensee shall provide that Anacor shall be given at least [***] written notice prior to cancellation, termination or any material change to restrict the coverage or reduce the limits afforded.

16. DISPUTE RESOLUTION.

16.1. Arbitration.

16.1.1. General. Any disputes, controversies or other claims arising out of this Agreement, its interpretation, validity, performance, enforceability, breach or termination ("**Disputes**") that are not settled amicably shall be referred by sending written notice of the Dispute to the other Party for final and binding arbitration with the office of the American Arbitration Association in New York County, New York in accordance with the then-prevailing commercial arbitration rules of the American Arbitration Association.

16.1.2. Number of Arbitrators. The arbitration shall be settled by one (1) arbitrator who is neutral to the Parties, and the Parties shall endeavor to jointly appoint the arbitrator. If the Parties fail to jointly appoint the arbitrator within (15) fifteen days of the arbitration being initiated, the appointment shall be made by the American Arbitration Association.

16.1.3. Powers of the Arbitrator.

(a) The arbitrator is authorized to award to the prevailing Party, if a prevailing party is determined by the arbitrator, such Party's costs and expenses, including attorneys' fees.

(b) The arbitrator may not award punitive, exemplary, or consequential damages, nor may the arbitrator apply any multiplier to any award of actual damages, except as may be required by statute.

(c) The arbitrator shall have the discretion to hear and determine at any stage of the arbitration any issue asserted by any Party to be dispositive of any claim or counterclaim, in whole or part, in accordance with such procedure as the arbitrator may deem appropriate, and the arbitrator may render an award on such issue.

(d) In addition to the authority conferred on the arbitrator by the rules designated in this Agreement, and without prejudice to any provisional measures that may be available from a court of competent jurisdiction, the arbitrator shall have the power to grant any provisional measures that the arbitrator deems appropriate, including but not limited to provisional injunctive relief, and any provisional measures ordered by the arbitrator may, to the extent permitted by Applicable Law, be deemed to be a final award on the subject matter of the measures and shall be enforceable as such.

16.1.4. Confidentiality. No information concerning an arbitration, beyond the names of the parties and the relief requested, may be unilaterally disclosed to a Third Party by any Party unless required by Applicable Law. Any documentary or other evidence given by a Party or witness in the arbitration shall be treated as confidential by any Party whose access to such evidence arises exclusively as a result of its participation in the arbitration, and shall not be disclosed to any Third Party (other than a witness or expert), except as may be required by Applicable Law.

16.2. No Trial By Jury. THE PARTIES EXPRESSLY WAIVE AND FOREGO ANY RIGHT TO TRIAL BY JURY.

17. GENERAL PROVISIONS.

17.1. Assignment. Neither Party may assign its rights and obligations under this Agreement without the other Party's prior written consent, except that: (a) Anacor may assign to a Third Party its rights to receive some or all of the payments payable hereunder, (b) each Party may assign its rights and obligations under this Agreement or any part hereof to one or more of its Affiliates without the consent

of the other Party; and (c) either Party may assign this Agreement in the event of a Change of Control of such Party. The assigning Party shall provide the other Party with prompt written notice of any such assignment. Any permitted assignee pursuant to clauses (b) and (c) above shall assume all obligations of its assignor under this Agreement, and no permitted assignment shall relieve the assignor of liability for its obligations hereunder. Any attempted assignment in contravention of the foregoing shall be void.

17.2. **Severability.** Should one or more of the provisions of this Agreement become void or unenforceable as a matter of law, then such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement, and the Parties agree to substitute a valid and enforceable provision therefor which, as nearly as possible, achieves the desired economic effect and mutual understanding of the Parties under this Agreement.

17.3. **Governing Law.** This Agreement shall be governed by and construed under the laws in effect in the State of Delaware, U.S. without giving effect to any conflicts of laws provision thereof or of any other jurisdiction that would produce a contrary result. Section 16 does not intend to deprive any Delaware court of competent jurisdiction with respect to its power to issue a pre-arbitral injunction, pre-arbitral attachment or other order in aid of arbitration proceedings or the enforcement of any judgement or award. In any such action , the courts of Delaware shall have exclusive jurisdiction over any action brought to enforce this Agreement, and each of the Parties hereto irrevocably: (a) submits to such exclusive jurisdiction for such purpose; (b) waives any objection which it may have at any time to the laying of venue of any proceedings brought in such courts; (c) waives any claim that such proceedings have been brought in an inconvenient forum, (d) further waives the right to object with respect to such proceedings that any such court does not have jurisdiction over such Party, and (e) consents to service of process in the manner provided by Section 17.8 or by first class certified mail, return receipt requested, postage prepaid.

17.4. **Force Majeure.** Except with respect to delays or nonperformance caused by the negligent or intentional act or omission of a Party, any delay or nonperformance by such Party (other than payment obligations under this Agreement) will not be considered a breach of this Agreement to the extent such delay or nonperformance is caused by acts of God, natural disasters, acts of the government or civil or military authority, fire, floods, epidemics, quarantine, energy crises, war or riots or other similar cause outside of the reasonable control of such Party (each, a "**Force Majeure Event**"), *provided* that the Party affected by such Force Majeure Event will promptly begin or resume performance as soon as reasonably practicable after the event has abated. If the Force Majeure Event prevents a Party from performing any of its obligations under this Agreement for one hundred eighty (180) days or more, then the other Party may terminate this Agreement immediately upon written notice to the non-performing Party.

17.5. **Waivers and Amendments.** The failure of any Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party. No waiver shall be effective unless it has been given in writing and signed by the Party giving such waiver. No provision of this Agreement may be amended or modified other than by a written document signed by authorized representatives of each Party.

17.6. **Relationship of the Parties.** Nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture, or legal entity of any type between Anacor and Licensee, or to constitute one Party as the agent of the other. Moreover, each Party agrees not to construe this Agreement, or any of the transactions contemplated hereby, as a partnership for any tax purposes. Each Party shall act solely as an independent contractor, and nothing in this Agreement shall be construed to give any Party the power or authority to act for, bind, or commit the other Party.

17.7. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

17.8. **Notices.** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when: (a) delivered by hand (with written confirmation of receipt), (b) sent by fax (with written confirmation of receipt), *provided* that a copy is sent by an internationally recognized overnight delivery service (receipt requested), or (c) when received by the addressee, if sent by an internationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and fax numbers set forth below (or to such other addresses and fax numbers as a Party may designate by written notice):

If to Anacor:
Anacor Inc.
[***]

If to Licensee:

AN2 Therapeutics, Inc.
[***]

and

Cooley LLP
[***]

17.9. **Further Assurances.** Licensee and Anacor hereby covenant and agree without the necessity of any further consideration, to execute, acknowledge and deliver any and all such other documents and take any such other action as may be reasonably necessary or appropriate to carry out the intent and purposes of this Agreement.

17.10. **No Third Party Beneficiary Rights.** This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

17.11. **Entire Agreement; Confidentiality Agreement.**

17.11.1. This Agreement, together with its Schedules, sets forth the entire agreement and understanding of the Parties as to the subject matter hereof and supersedes all proposals, oral or written, and all other prior communications between the Parties with respect to such subject matter, including, without limitation, that certain Confidentiality Agreement by and between the Parties, dated 18 March 2019 ("**CDA**"). The Parties acknowledge and agree that, as of the Effective Date, all Confidential Information (as defined in the CDA) disclosed by a Party or its Affiliates pursuant to the CDA shall be considered such Party's Confidential Information and subject to the terms set forth in this Agreement.

17.11.2. In the event of any conflict between a material provision of this Agreement and any Schedule hereto, the Agreement shall control.

17.12. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17.13. **Cumulative Remedies.** No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to in this Agreement or otherwise available under law.

17.14. **Waiver of Rule of Construction.** Each Party has had the opportunity to consult with counsel in connection with the review, drafting and negotiation of this Agreement. Accordingly, any rule of construction that any ambiguity in this Agreement shall be construed against the drafting Party shall not apply.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties intending to be bound have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

AN2 THERAPEUTICS, INC.

By: /s/ Eric Easom
Name: Eric Easom
Title: CEO

ANACOR PHARMACEUTICALS, INC.

By: /s/ Douglas Giordano
Name: Douglas Giordano
Title: President

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

SCHEDULE 1.22 COMPOUNDS

[***]

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

SCHEDULE 1.53: KNOWLEDGE

[***]

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

SCHEDULE 1.55: LICENSED PATENT RIGHTS

[***]

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

SCHEDULE 3:
TRANSFER ACTIVITIES

[***]

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

EXHIBIT 1
DOCUMENATION / KNOW-HOW
[***]

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

SCHEDULE 4.7 DEVELOPMENT PLAN

[***]

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

CONFIDENTIAL ***EXECUTION DRAFT***

LICENSE AGREEMENT

This **LICENSE AGREEMENT** (the "**Agreement**") is entered into as of November 20, 2019 (the "**Effective Date**") between **AN2 Therapeutics, Inc.**, a company organized under the laws of Delaware ("**AN2**") and having its registered office at [***], and **Brii Biosciences Limited**, an exempted company organized under the laws of the Cayman Islands ("**Brii Bio**"), having its registered office at [***].

RECITALS

A. **WHEREAS**, AN2 is a biotechnology company researching and developing boron-containing molecules, including epetraborole, a broad-spectrum, gram-negative antibacterial compound; and

B. **WHEREAS**, Brii Bio desires to obtain from AN2 exclusive rights and licenses to make, have made, use, sell, offer for sale and import Licensed Products (as defined below) in the Field (as defined below) in the Licensed Territory (as defined below), and AN2 is willing to grant to Brii Bio such rights and licenses on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AN2 and Brii Bio hereby agree as follows:

AGREEMENT

ARTICLE 1

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set out in this Article 1 unless the context clearly and unambiguously dictates otherwise.

1.1 "**Adjuvant**" shall mean [***].

1.2 "**Adjuvant Agreement**" shall means the Global Health Agreement between AN2 and Adjuvant dated as of November 20, 2019.

1.3 "**Adjuvant Rights**" shall mean the licenses and other rights granted by AN2 to Adjuvant under the Adjuvant Agreement with respect to any Licensed Technology.

1.4 "**Adverse Risk**" shall mean the risk of a serious safety issue in connection with Licensed Products in the AN2 Territory.

1.5 "**Affiliate**" of a Person shall mean any company, partnership or other entity that, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by or is under

common control with such Person, as the case may be. For the purposes of this definition, "control" shall mean (i) direct or indirect beneficial ownership of at least fifty percent (50%) of the voting share capital or other equity interest in such Person or (ii) the power to direct or cause the direction of the management and policies of such Person by contract or otherwise.

1.6 "**Agreement**" has the meaning set forth in the Preamble.

1.7 "**Alliance Manager**" has the meaning set forth in Section 5.2.

1.8 "**AN2**" shall have the meaning set forth in the Preamble.

1.9 "**AN2 Development Plan**" shall have the meaning set forth in Section 6.1(c).

1.10 "**AN2 Global Clinical Trial**" shall have the meaning set forth in Section 6.1(d).

1.11 "**AN2 Know-How**" shall mean all Know-How that is Controlled by AN2 as of the Effective Date or during the Term and that is necessary or reasonably useful to research, Develop, make, have made, distribute, use, sell, offer for sale, have sold, import, export and otherwise Commercialize any Licensed Products in the Field in the Licensed Territory.

1.12 "**AN2 Patents**" shall mean all Patents that are Controlled by AN2 as of the Effective Date or during the Term and that: (a) claim the composition of matter of or the method of making or using any Licensed Compounds or Licensed Products; or (b) are otherwise necessary or reasonably useful to research, Develop, make, have made, distribute, use, sell, offer for sale, have sold, import, export or otherwise Commercialize any Licensed Products in the Field in the Licensed Territory.

1.13 "**AN2 Targeted Indications**" shall mean Non-Tuberculosis Mycobacterium and Melioidosis.

1.14 "**AN2 Technology**" shall mean all AN2 Know-How and AN2 Patents.

1.15 "**AN2 Territory**" shall mean all countries outside of the Licensed Territory.

1.16 "**Anacor**" shall mean Anacor Pharmaceuticals, Inc., a wholly-owned subsidiary of Pfizer, Inc.

1.17 "**Anacor Agreement**" shall mean the license agreement between Anacor and AN2, dated November 20, 2019.

1.18 "**Anti-Corruption Laws**" shall mean: (a) the U.S. Foreign Corrupt Practices Act of 1977; (b) the U.K. Bribery Act 2010; (c) the Peoples Republic of China (PRC) Anti-Unfair Competition Law; and (d) the criminal code of each Region in the Licensed Territory.

1.19 "**Applicable Laws**" shall mean the applicable provisions of any and all national, state and local laws, statutes, rules, regulations, administrative codes, ordinances, judgments, decrees, directives, injunctions, orders or permits (including Marketing Approvals) of or from any court, Regulatory Authority or Governmental Authority having jurisdiction over or related to the subject matter.

1.20 "**Brii Bio**" shall have the meaning set forth in the Preamble.

1.21 "**Brii Bio Development Plan**" shall have the meaning set forth in Section 6.1(b).

1.22 "**Brii Bio Product Marks**" shall have the meaning set forth in Section 11.7.

1.23 "**Brii Bio Targeted Indication**" shall mean Tuberculosis.

1.24 "**Business Day**" shall mean a day other than a Saturday or Sunday or any public holiday in the United States or China. For the avoidance of doubt, references in this Agreement to "days" shall mean calendar days.

1.25 "**Calendar Quarter**" shall means the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30, and December 31, except that the first Calendar Quarter of the Term shall commence on the Effective Date and the last Calendar Quarter shall end on the last day of the Term.

1.26 "**Calendar Year**" shall mean a period of twelve (12) consecutive calendar months ending on December 31, except that the first Calendar Year of the Term shall commence on the Effective Date and the last Calendar Year of the Term shall and end on the last day of the Term.

1.27 "**Chairperson**" shall mean the chairperson of the Joint Steering Committee.

1.28 "**Change of Control**" shall mean, with respect to a Party: (a) the sale of all or substantially all of such Party's assets or business to which the subject matter of this Agreement relates; (b) a merger, reorganization or consolidation involving such Party in which the holders of the voting securities of such Party outstanding immediately prior thereto cease to beneficially own at least fifty percent (50%) of the combined voting power of the surviving entity, directly or indirectly, immediately after such merger, reorganization or consolidation; (c) a transaction or series of related transactions in which an entity (together with its Affiliates) or individual, or group of entities (and their affiliates) and/or individuals acting in concert, acquires more than fifty percent (50%) of the voting equity securities of such Party; or (d) the stockholders or equity holders of such Party approve a plan of complete liquidation of such Party or an agreement for the sale or disposition by such Party of all or a substantial portion of its assets, other than pursuant to the transaction as described above or to an Affiliate. Notwithstanding the foregoing, the sale or issuance of shares in exchange for cash for purposes of a *bona fide* financing (including as part of an initial public offering) will not constitute a Change of Control.

1.29 "**Clinical Trial**" shall mean a study in which human subjects or patients are dosed with a drug, whether approved or investigational, including any Phase I Clinical Trial, Phase II Clinical Trial, Phase III Clinical Trial or any study required to be conducted following Marketing Approval as a condition to maintaining such approval.

1.30 "**CMO**" shall have the meaning set forth in Section 7.2.

1.31 "**Combination Product**" shall mean: (a) a Licensed Product formulated with one or more Licensed Compounds and one or more Other Active Ingredients; or (b) a Licensed Product containing one or more Licensed Compounds that is packaged with another pharmaceutical product containing one or more Other Active Ingredients, where such products are sold together as a single product and invoiced as one product.

1.32 "**Commercialization**" or "**Commercialize**" shall mean activities directed to the marketing, promoting, advertising, exhibiting, distributing, detailing, selling (and offering for sale or contracting to sell) or otherwise commercially exploiting (including pricing and reimbursement activities) a Licensed Product (including importing and exporting activities in connection therewith).

1.33 "**Commercialization Plan**" shall have the meaning set forth in Section 6.3(b).

1.34 "**Commercially Reasonable Efforts**" shall mean, with respect to a Party and an obligation to conduct a particular activity pertaining to the research, Development, Manufacturing or Commercialization obligations hereunder, [***]. Notwithstanding the foregoing, if the performance of a Party's obligations hereunder is impaired by the other Party's failure to perform its obligations hereunder, the determination of whether such first Party has used Commercially Reasonable Efforts in performing a given obligation will be determined in the context of such other Party's failure. The Parties understand that the level of effort may change over time, reflecting changes in the status of a Licensed Product.

1.35 "**Competing Compound**" shall mean any molecule (including any pharmaceutical compound or biological product) other than the Licensed Compound that is directed to or modulates the Target as its primary mechanism of action. [***]

1.36 "**Competing Program**" shall have the meaning set forth in Section 4.6(a).

1.37 "**Confidential Information**" shall have the meaning set forth in Section 10.1.

1.38 "**Confidentiality Agreement**" shall mean that certain confidentiality agreement dated January 4, 2019 between AN2 and Brii Bio.

1.39 "**Control**" or "**Controlled**" shall mean, subject to Section 16.9, with respect to any Know-How, Patent or other intellectual property right, the legal authority or right (whether by ownership, license or otherwise but without taking into account any rights granted by one Party to the other Party under the terms of this Agreement) of a Party or its Affiliates to grant access, an option, a license or a sublicense of or under such Know-How, Patent or other intellectual property rights to another Party hereto on the terms and conditions set forth herein, or to otherwise disclose proprietary or trade secret information to such other Party on the terms and conditions set forth herein, without breaching the terms of any agreement with a Third Party, or misappropriating the proprietary or trade secret information of a Third Party.

1.40 "**Data**" shall mean all data, including CMC data, non-clinical data, preclinical data and clinical data, generated by or on behalf of a Party or its Affiliates, Sublicensees or licensees pursuant to activities conducted under this Agreement. For clarity, Data does not include any patentable inventions.

1.41 "**Develop**" or "**Development**" or "**Developing**" shall mean activities related to preclinical and clinical drug or biological development activities, including test method development, stability testing, toxicology, formulation, statistical analysis, preclinical and clinical studies and regulatory affairs, making Regulatory Submissions and seeking and obtaining Marketing Approval.

1.42 "**Disclosing Party**" shall have the meaning set forth in Section 10.1.

1.43 "**Distributor**" shall mean a Third Party, other than a Sublicensee, to whom Brii Bio has granted the right to market, detail, promote, advertise, sell and distribute (but not Develop or Manufacture) Licensed Products in the Licensed Territory.

1.44 "**Divestiture**" shall have the meaning set forth in Section 4.6(b).

1.45 "**Dollar**" or "**$**" shall mean the legal tender of the United States.

1.46 "**Effective Date**" shall have the meaning set forth in the Preamble hereto.

1.47 "**Enforcing Party**" shall have the meaning set forth in Section 11.3(d).

1.48 "**FDA**" shall mean the United States Food and Drug Administration or its successor.

1.49 "**Field**" shall mean the diagnosis, treatment and prevention of diseases in humans and non-humans, including the AN2 Targeted Indications or the Brii Bio Targeted Indication.

1.50 "**First Commercial Sale**" shall mean with respect to a Licensed Product in any Region in the Licensed Territory, the first sale for monetary value for distribution, use or consumption of such Licensed Product in such Region after Marketing Approval for such Licensed Product has been obtained in such Region. A First Commercial Sale will not include any Licensed Product that is supplied for use in clinical trials, for research or for other non-commercial uses, or at nominal cost as part of a compassionate use program (or other program for providing Licensed Product before it has received Marketing Approval in a Region).

1.51 "**Force Majeure Event**" shall have the meaning set forth in Section 16.1.

1.52 "**GAAP**" shall mean generally accepted accounting principles in the United States, or internationally, as appropriate, consistently applied and shall mean the international financial reporting standards ("**IFRS**") at such time as IFRS becomes the generally accepted accounting standard and Applicable Laws require that a Party use IFRS.

1.53 "**Generic Competition Percentage**" shall mean, with respect to any Licensed Product in a Region in the Licensed Territory, the percentage calculated by [***].

1.54 "**Generic Product**" shall mean, with respect to a Licensed Product in a particular Region in the Licensed Territory, any pharmaceutical product: (a) is sold by a Third Party that is not an Affiliate or Sublicensee of Licensee under a Marketing Approval granted by a Regulatory Authority to a Third Party; (b) contains the same Licensed Compound as a Licensed Product; (c) for purposes of the United States, is approved in reliance on a prior Regulatory Approval of a Licensed Product granted to Anacor, an Anacor Affiliate, or AN2 by the FDA or, for purposes of a country outside the United States, is approved in reliance on a prior Regulatory Approval of a Licensed Product granted to AN2, any AN2 Affiliate, Brii Bio, or any Brii Bio Affiliate by any applicable Regulatory Authority; and (d) is determined by a Regulatory Authority to be therapeutically equivalent to and substitutable for a Licensed Product.

1.55 "**Global Clinical Trial**" shall mean a Clinical Trial conducted by AN2 or Brii Bio in both the Licensed Territory and the AN2 Territory in accordance with the Global Development Plan with the intent of generating data to support an application for Marketing Approval in each of the Licensed Territory and the AN2 Territory.

1.56 "**Global Development Plan**" shall mean, for a Licensed Product for which Global Clinical Trials are contemplated, the plan setting forth: (a) the global Development activities for the Licensed Product, including the proposed pre-clinical studies and Global Clinical Trials and regulatory plans; (b) the timelines for such activities; (c) an outline of the key elements involved in obtaining Marketing Approval of such Licensed Product; and (d) the allocation of responsibilities between the Parties of the Development activities set forth under such Global Development Plan, as the same may be amended from time-to-time in accordance with Section 5.1(b).

1.57 "**Good Manufacturing Practices**" or "**GMP**" shall mean the then-current good manufacturing practices required by the FDA, as set forth in the United States Federal Food, Drug and Cosmetic Act, as amended, and the regulations promulgated thereunder, for the manufacture and testing of pharmaceutical materials, and comparable laws or regulations applicable to the manufacture and testing of pharmaceutical materials in jurisdictions outside the United States, as they may be updated from time to time. Good Manufacturing Practices shall include applicable quality guidelines promulgated under the ICH.

1.58 "**Governmental Authority**" shall mean any multinational, federal, national, state, provincial or local entity, office, commission, bureau, agency, political subdivision, instrumentality, branch, department, authority, board, court, arbitral or other tribunal, official or officer, exercising executive, judicial, legislative, police, regulatory, administrative or taxing authority or functions of any nature over any of the activities contemplated by this Agreement.

1.59 "**ICC Rules**" shall have the meaning set forth in Section 15.2(a).

1.60 "**ICH**" shall mean the International Conference on Harmonization (of Technical Requirements for Registration of Pharmaceuticals for Human Use).

1.61 "**IFRS**" shall have the meaning set forth in Section 1.52.

1.62 "**IND**" shall mean an Investigational New Drug Application (including any amendments thereto) filed with the FDA pursuant to 21 C.F.R. §312 before commencement of clinical trials of a pharmaceutical product, or any comparable filings with Regulatory Authorities in the Licensed Territory, including clinical trial applications.

1.63 "**Inventions**" shall mean any and all inventions, discoveries, improvements, processes and techniques discovered, patentable or otherwise, conceived or first reduced to practice as a result of a Party exercising its rights or carrying out its obligations under this Agreement, whether directly or via its Affiliates, Sublicensees, licensees, agents or contractors, including all rights, title and interest in and to the intellectual property rights therein.

1.64 "**Joint Inventions**" shall have the meaning set forth in Section 11.1(b)(i).

1.65 "**Joint Patents**" shall have the meaning set forth in Section 11.1(b)(i).

1.66 "**Joint Steering Committee**" or "**JSC**" shall have the meaning set forth in Section 5.1(a).

1.67 "**Know-How**" shall mean information including unpatented Inventions, methods, technologies, data, processes, procedures, techniques, designs, plans, research tools, reagents, formulations, assay techniques, clinical test design, protocols, product life cycle management strategies and operating conditions except to the extent that such information is publicly available or is otherwise protect by patent or trade secret law.

1.68 "**Licensed Compound**" shall mean: (a) epetraborole ([***]); (b) [***]; or (c) any [***].

1.69 "**Licensed Compound Infringement**" shall have the meaning set forth in Section 11.3(a).

1.70 "**Licensed Compound Marks**" shall have the meaning set forth in Section 11.7.

1.71 "**Licensed Product**" shall mean: (a) the Licensed Compound, or (b) any pharmaceutical composition or preparation containing or comprising the Licensed Compound as an active pharmaceutical ingredient ("**API**"), whether as its sole API or in combination with one or more other APIs, in final finished form.

1.72 "**Licensed Territory**" shall mean mainland China, Hong Kong, Taiwan and Macau (each, a "**Region**").

1.73 "**Manufacture**", "**Manufactured**" or "**Manufacturing**" shall mean all activities conducted in connection with the manufacture or production of pharmaceutical or biological products, including activities relating to the receipt of materials, labeling, quality control testing, release and storage of Licensed Compound or Licensed Product, as applicable, and all related controls.

1.74 "**Manufacturing Cost**" shall mean, with respect to any Licensed Product:

(a) if such Licensed Product (or any precursor or intermediate thereof) is Manufactured by a Third Party manufacturer, the amount paid by AN2 to such Third Party to acquire such Licensed Product; or

(b) if such Licensed Product (or any precursor or intermediate thereof) is Manufactured by AN2 or its Affiliates, the actual cost of such Manufacturing, including the cost of raw materials, direct labor and benefits, but excluding: [***]. Such manufacturing costs shall be as calculated in accordance with GAAP.

1.75 "**Manufacturing Technology**" shall mean any process, technology, information, data or documentation that is necessary or useful in the manufacture, formulation, vialing or release of the Licensed Product, including any assays or testing required to comply with GMP including process validation, product identity assays, in-process-control assays and any relevant standard operating procedures.

1.76 "**Manufacturing Technology Transfer**" shall mean the transfer of the Manufacturing Technology (and modifications and improvements thereto from time to time) from AN2 to Brii Bio (or Brii Bio's designee), as further provided for in this Agreement and in the Manufacturing Technology Transfer agreement, in each case, to include the provision of copies of the technical documentation, specifications, procedures and other Know-How related to the Manufacturing Technology (including all data, documentation and records describing or otherwise related to the Manufacturing Technology or any part thereof).

1.77 "**Market Entry Award**" shall mean, with respect to a given Licensed Product, a financial award made by a Governmental Authority or a not-for profit entity in the Licensed Territory for the Regulatory Approval of a novel antibiotic that meets a predefined target profile.

1.78 "**Marketing Approval**" shall mean, with respect to any particular country or Region, all approvals, licenses, registrations or authorizations of any Regulatory Authority necessary to commercially distribute, sell or market a Licensed Product in such country or Region, including, where applicable, (a) required pricing or reimbursement approval in such country or Region, (b) pre- and post-approval marketing authorizations (including any prerequisite manufacturing approval or authorization related thereto), (c) labeling approval and (d) technical, medical and scientific licenses.

1.79 "**NDA**" shall mean a New Drug Application filed pursuant to the requirements of the FDA to obtain Marketing Approval for a pharmaceutical product in the United States or the equivalent application or filing in another country (as applicable).

1.80 "**Net Sales**" shall mean, with respect to all Licensed Products distributed or sold in the Licensed Territory to Third Parties by Brii Bio, its Affiliates and Sublicensees, gross receipts from sales of such Licensed Products in the Licensed Territory, less [***].

All such amounts shall be determined in accordance with the books and records of Brii Bio, its Affiliates or Sublicensees (as applicable), maintained in accordance with GAAP.

Net Sales for a Licensed Product sold as a Combination Product in a Region within the Territory shall be calculated as follows, using pricing data in such Region from IQVIA (or any successor thereto or other data provider that is mutually agreeable to the Parties):

(i) If the Licensed Product and Other Product(s) each are sold separately in such Region, Net Sales will be calculated by [***];

(ii) If the Licensed Product is sold independently of the Other Product(s) in such Region, but the average net selling price of the Other Product(s) cannot be determined, Net Sales will be calculated by [***];

(iii) If the Other Product(s) are sold independently of the Licensed Product in such Region, but the average net selling price of the Licensed Product cannot be determined, Net Sales will be calculated by [***]; and

(iv) If neither the Licensed Product nor the Other Product(s) is sold independently, then the Net Sales of the Combination Product in such Region will be calculated by [***].

1.81 "**NMPA**" shall mean the National Medical Products Administration of the People's Republic of China (formerly the China Food and Drug Administration) and any successor agency(ies) or authority thereto having substantially the same function.

1.82 "**Non-Paying Party**" shall have the meaning set forth in Section 9.3(a).

1.83 "**Other Active Ingredient**" shall mean an API other than a Licensed Compound.

1.84 "**Other Product**" shall mean a product containing an Other Active Ingredient.

1.85 "**Party**" shall mean AN2 or Brii Bio individually, and "**Parties**" shall mean AN2 and Brii Bio collectively.

1.86 "**Patent(s)**" shall mean: (a) any and all issued patents and patent applications, including all provisional applications, substitutions, continuations, continuations-in-part, divisions and renewals and all patents granted thereon; (b) patents-of-addition, reissues, reexaminations and extensions or restorations by existing or future extension or restoration mechanisms, including patent term adjustments, patent term extensions, supplementary protection certificates or the equivalent thereof; (c) inventor's certificates; (d) other forms of government-issued rights substantially similar to any of the foregoing; and (e) foreign counterparts of any of the foregoing.

1.87 "**Paying Party**" shall have the meaning set forth in Section 9.3(a).

1.88 "**Person**" shall mean any individual, corporation, partnership, limited liability company, trust, Governmental Authority or other legal entity of any nature whatsoever.

1.89 "**Phase I Clinical Trial**" shall mean with respect to a Licensed Product, a first clinical trial in human beings of such Licensed Compound, as further defined in 21 C.F.R. 312.21(a) or the corresponding regulation in jurisdictions other than the United States.

1.90 "**Phase II Clinical Trial**" shall mean with respect to a Licensed Product, a clinical trial in human beings that is intended to explore the feasibility, safety, dose ranging or efficacy of such Licensed Compound that is prospectively designed to generate sufficient data (if successful) to commence a Phase III Clinical Trial (or foreign equivalent) of such Licensed Compound, as further defined in 21 C.F.R. 312.21(b) or the corresponding regulation in jurisdictions other than the United States.

1.91 "**Phase III Clinical Trial**" shall mean with respect to a Licensed Product, a clinical trial in human beings performed to gain evidence with statistical significance of the efficacy of such product in a target population and to obtain expanded evidence of safety for such Licensed Compound that is needed to evaluate the overall benefit-risk relationship of such product, to form the basis for approval of an NDA by a Regulatory Authority and to provide an adequate basis for physician labeling, as described in 21 C.F.R. 312.21(c), as amended from time to time, or the corresponding regulation in jurisdictions other than the United States.

1.92 "**PII**" shall have the meaning set forth in Section 6.1(g).

1.93 "**PoC**" or "**Proof of Concept**" shall mean, with respect to each Licensed Compound for a given indication, the achievement of the specific criteria agreed upon by the JSC in accordance with Section 5.1(b)(ii).

1.94 "**PoC Acceptance Date**" shall have the meaning set forth in Section 3.2.

1.95 "**PoC Acceptance Notice**" shall have the meaning set forth in Section 3.2.

1.96 "**PoC Data Package**" shall mean, with respect to data and other information from all Pre-PoC Development Activity for a given Licensed Compound through the achievement of Proof of Concept for a given indication, a package of materials comprising copies of: [***].

1.97 "**PoC Term**" shall mean the period of time beginning on the Effective Date and expiring on the [***] anniversary of the Effective Date, as such period may be extended pursuant to Section 3.1.

1.98 "**Pre-PoC Development Activity**" shall mean, with respect to a Licensed Compound and the period of time prior to the achievement of PoC for such Licensed Compound, all activities related to the Development of Licensed Compounds, including, as applicable, test method development and stability testing; formulation and process development; clinical trials (including Clinical Trials), statistical analyses and report writing and regulatory affairs with respect to the foregoing; requesting, applying for and obtaining Non-Dilutive Funding; and all other activities necessary or useful or otherwise requested or required by a Regulatory Authority as a condition or in support of obtaining or maintaining a Marketing Approval. As used herein, "**Non-Dilutive Funding**" shall mean a grant or similar funding from a non-profit or Governmental Authority for the Development of an antibiotic therapeutic.

1.99 "**Pre-PoC Development Period**" shall mean, for each Licensed Compound, the period beginning on the date that AN2 commences Pre-PoC Development Activities for such Licensed Compound and ending upon the earliest of: (a) the delivery by Brii Bio of a PoC

Acceptance Notice for such Licensed Compound; (b) the expiration of the PoC Term for such Licensed Compound without delivery by Brii Bio of a PoC Acceptance Notice; and (c) a decision by AN2 to cease Pre-PoC Development Activities for the applicable Licensed Compound.

1.100 "**PRI Requirements**" shall mean AN2's obligations described under the heading "PRI Requirements" in the Adjuvant Agreement.

1.101 "**Priority Review Voucher**" or "**PRV**" shall mean a voucher issued by a Regulatory Authority to the sponsor of a first product application that entitles the holder of such voucher to priority review of a human health drug application after the date of approval of the first product application.

1.102 "**Program**" shall mean a pre-clinical or clinical program of activities conducted internally by or on behalf of AN2, whether such pre-clinical or clinical program originated with AN2 or was acquired pursuant to a grant of all Development and Commercialization rights from a Third Party (and for clarity, such Third Party did not retain any Development or Commercialization rights with respect thereto that would conflict with a grant of rights to Brii Bio hereunder), which program is focused on the achievement of Proof of Concept for one or more Licensed Compounds directed to or modulating the Target.

1.103 "**Receiving Party**" shall have the meaning set forth in Section 10.1.

1.104 "**Region**" shall have the meaning set forth in Section 1.73.

1.105 "**Regulatory Authority**" shall mean any national, regional, state or local regulatory agency, department, bureau, commission, council or other Governmental Authority whose review and/or approval is necessary for the clinical research, Development, Manufacture, packaging, use, storage, import, export, distribution, promotion, marketing, offer for sale, selling, pricing or reimbursement (as applicable) of Licensed Products, including, for the avoidance of doubt, the NMPA and the FDA.

1.106 "**Regulatory Documentation**" shall mean (a) Regulatory Submissions, including, for the avoidance of doubt, INDs, NDAs, Drug Master Files, correspondence with regulatory agencies (registrations and licenses, regulatory drug lists, advertising and promotion documents), period safety update reports, adverse event files, complaint files and manufacturing records and, if applicable, any updates or supplements to any of the foregoing and (b) any minutes or contact logs with respect to any telephone conferences conducted with any Regulatory Authority relating to the subject matter described in clause (a) of this sentence.

1.107 "**Regulatory Submissions**" shall mean any filing, application or submission with any Regulatory Authority, including authorizations, approvals or clearances arising from the foregoing, including Marketing Approvals and any pricing or reimbursement approvals, as applicable, and all correspondence or communication with or from the relevant Regulatory Authority, as well as minutes of any material meetings, telephone conferences or discussions with the relevant Regulatory Authority, in each case, with respect to a Licensed Product.

1.108 "**Relevant Factors**" shall mean all relevant factors that may affect the research, Development, Marketing Approval or Commercialization of a Licensed Product, including (as applicable): actual and potential issues of safety, efficacy or stability; product profile (including product modality, category and mechanism of action); stage of Development or life cycle status; actual and projected Development, Marketing Approval, Manufacturing and Commercialization costs; any issues regarding the ability to manufacture or have manufactured a Licensed Product; the likelihood of obtaining Marketing Approvals (including satisfactory price approvals); the timing of such approvals; the current guidance and requirements for Marketing Approval for a Licensed Product and similar products and the current and projected regulatory status; labeling or anticipated labeling; the then-current competitive environment and the likely competitive environment at the time of projected entry into the market; past performance of the Licensed Product or similar products; present and future market potential; existing or projected pricing, sales, reimbursement and profitability; pricing or reimbursement changes in relevant countries; proprietary position, strength and duration of patent protection and anticipated exclusivity; and other relevant scientific, technical, operational and commercial factors (but not taking in account any payment owed to AN2 under this Agreement).

1.109 "**Remedial Action**" shall have the meaning set forth in Section 6.2(i).

1.110 "**Royalty Report**" shall have the meaning set forth in Section 8.6.

1.111 "**Royalty Term**" shall have the meaning set forth in Section 8.4(b).

1.112 "**SEC**" shall mean the U.S. Securities Exchange Commission.

1.113 "**Senior Executives**" shall mean, with respect to AN2, the Chief Executive Officer of AN2, and with respect to Brii Bio, the Chief Executive Officer of Brii Bio.

1.114 "**Sole Inventions**" shall have the meaning set forth in Section 11.1(b)(i).

1.115 "**Stock Purchase Agreement**" shall mean that certain Series A-1 Preferred Stock Purchase Agreement, dated November 20, 2019, between the Parties.

1.116 "**Sublicensee**" shall mean a Third Party or an Affiliate of Brii Bio to whom Brii Bio or an Affiliate of Brii Bio has granted a sublicense under the AN2 Technology to offer for sale and sell Licensed Product in the Field in any country in the Licensed Territory as contemplated by Section 4.4 of this Agreement. For clarity, the term "**Sublicensee**" shall not include any wholesalers or distributors, in each case that are not granted any sublicense under the AN2 Technology to offer for sale and sell Licensed Product in the Field in the Licensed Territory.

1.117 "**Target**" shall mean leucyl tRNA synthetase, in any species.

1.118 "**Term**" shall have the meaning set forth in Section 14.1.

1.119 "**Third Party**" shall mean any Person other than AN2, Brii Bio and their respective Affiliates.

1.120 "**Third Party Claims**" shall have the meaning set forth in Section 13.1.

1.121 "**Transfer Tax**" shall mean any transfer, stamp, value added (VAT), sales, use or similar indirect taxes (*e.g.*, goods and services) imposed on amounts payable by the Paying Party to the Non-Paying Party in connection with this Agreement.

1.122 "**Valid Claim**" shall mean: (a) a claim of an issued, unexpired patent within the AN2 Patents that: (i) has not been revoked, disclaimed, abandoned or held invalid or unenforceable by a court or other body of competent jurisdiction in an unappealed or unappealable decision and (ii) has not expired or been cancelled, withdrawn, abandoned, disclaimed or admitted to be invalid or unenforceable through reissue, disclaimer or otherwise; and (b) a bona fide claim of any patent application within an AN2 Patent that: (i) has not been cancelled, withdrawn or abandoned without being refiled in another application in the applicable jurisdiction, and (ii) has been pending ten (10) years or less from the date of filing of such patent application and (iii) has not been abandoned or finally disallowed without the possibility of appeal or re-filing of the application; provided that, if a patent application pending ten (10) years or more later issues and meets the requirements of clause (a), any claims issued therein shall be deemed a Valid Claim.

ARTICLE 2

PRE-POC RESEARCH AND DEVELOPMENT ACTIVITIES

2.1 Pre-PoC Development Activities in AN2 Targeted Indications.

(a) Subject to Section 2.1(b), during the Pre-PoC Development Period, AN2 shall be solely responsible in its discretion for the conduct of Pre-PoC Development Activities in connection with each Licensed Compound in the AN2 Targeted Indications at its sole cost and expense. AN2 shall have the right to elect to terminate and wind-down any such Pre-PoC Development Activities for any Licensed Compound prior to Brii Bio's exercise of the PoC for such Licensed Compound upon promptly notifying Brii Bio in writing if AN2 reasonably in good faith believes that continued Development of such Licensed Compound is not warranted. The Parties shall review and discuss the Development of the Licensed Compounds in the AN2 Targeted Indications, including planned Pre-PoC Development Activities and AN2's good faith estimate for the timing of such activities through the JSC (which estimates may be adjusted by AN2 upon notice to the JSC, but no more frequently than semi-annually). Within [***] of the Effective Date, AN2 shall provide the JSC with its proposed Proof of Concept criteria for such Licensed Compound in the AN2 Targeted Indications, and the JSC shall discuss and determine such criteria at the next JSC meeting; *provided that*, if the JSC cannot agree on such criteria within [***] following the conclusion of such meeting, then such dispute shall be resolved in accordance with Section 15.3.

(b) Brii Bio may request AN2 to perform specific Pre-PoC Development Activities in the AN2 Targeted Indications by so notifying AN2 in writing. At the next JSC meeting (including any ad hoc JSC meeting) following AN2's receipt of such notice, the JSC shall discuss such proposed specific Pre-PoC Development Activities in the AN2 Targeted Indications, and determine whether AN2 has the resources to perform any such Pre-PoC Development

Activities (in light of AN2's Development activities for Licensed Products in the AN2 Territory). If the JSC so determines that AN2 lacks the resources to perform any such Pre-PoC Development Activities, then AN2 shall not perform such Pre-PoC Development Activities. Otherwise, AN2 shall use Commercially Reasonable Efforts to perform such Pre-PoC Development Activities, and [***].

2.2 Pre-PoC Development Activities in Brii Bio Targeted Indication.

(a) If Brii Bio desires to, by itself or through an Affiliate or a Third Party, perform any Pre-PoC Development Activities in the Brii Bio Targeted Indication in the Licensed Territory, Brii Bio shall provide to AN2 written notice thereof. At the next JSC meeting (including any ad hoc JSC meeting) following AN2's receipt of such notice, the JSC shall discuss such proposed specific Pre-PoC Development Activities in the Brii Bio Targeted Indication in the Licensed Territory, and determine whether such Pre-PoC Development Activities will create an Adverse Risk. If the JSC so determines that such Pre-PoC Development Activities will create an Adverse Risk, then Brii Bio shall not perform such Pre-PoC Development Activities. Otherwise, Brii Bio may perform such Pre-PoC Development Activities, and Brii Bio [***].

(b) Brii Bio may request AN2 to perform specific Pre-PoC Development Activities in the Brii Bio Targeted Indication by so notifying AN2 in writing. At the next JSC meeting (including any ad hoc JSC meeting) following AN2's receipt of such notice, the JSC shall discuss such proposed specific Pre-PoC Development Activities in the Brii Bio Targeted Indication, and determine whether AN2 has the resources to perform any such Pre-PoC Development Activities (in light of AN2's Development activities for Licensed Products in the AN2 Territory). If the JSC so determines that AN2 lacks the resources to perform any such Pre-PoC Development Activities, then AN2 shall not perform such Pre-PoC Development Activities. Otherwise, AN2 shall use Commercially Reasonable Efforts to perform such Pre-PoC Development Activities, and Brii Bio [***].

2.3 Performance Standard. Each Party shall perform all Pre-PoC Development Activities in good scientific manner and in compliance with all Applicable Laws and shall use Commercially Reasonable Efforts to perform such Pre-PoC Development Activities within the estimated timeframes set forth in Section 2.1. Each Party shall prepare and maintain, or shall cause to be prepared and maintained, complete and accurate written records, accounts, notes and reports in good scientific manner and in sufficient detail for patent and regulatory purposes, which shall fully and properly reflect all work done, results achieved, information generated and Inventions made in whole or in part by such Party.

2.4 Use of Affiliates and Contractors. Each Party may perform any Pre-PoC Development Activities through an Affiliate or Third Party contract service provider; *provided that*: (a) none of Brii Bio's rights hereunder are diminished or otherwise adversely affected as a result of such subcontracting; (b) each such subcontractor undertakes in writing obligations of confidentiality and non-use regarding Confidential Information at least as stringent as those undertaken by the Parties pursuant to Article 10; (c) such subcontractor of such Party has signed a binding written agreement or instrument assigning, and agreeing to assign, to such Party all Inventions and other information resulting from the performance of any Pre-PoC Development Activity relating to the applicable Licensed Compound(s); and (d) each Party remains responsible for the performance of such obligations by such subcontractor.

2.5 Reports. During the PoC Term, each Party shall regularly (but no less than [***]) provide, through the JSC, high-level reports summarizing Pre-PoC Development Activities conducted by or on behalf of such Party and material data, results and other information generated in the performance of such Pre-PoC Development Activities for such Licensed Compound and shall timely respond to reasonable requests by the other Party for additional information related thereto. Each Party receiving such reports shall maintain such reports and the information contained therein in accordance with Article 10 hereof.

ARTICLE 3

POC DATA PACKAGE; POC ACCEPTANCE

3.1 PoC Data Package. Within [***] after achievement of PoC in a given indication for a Licensed Compound during the PoC Term, AN2 shall provide a PoC Data Package to Brii Bio. Within [***] following receipt of the PoC Data Package, Brii Bio may reasonably request from AN2 additional information and records related to the applicable Licensed Compound within the Control of AN2 or its Affiliates, and AN2 shall use Commercially Reasonable Efforts to provide such additional information and records within [***] thereof; *provided that* if [***]; *provided, further*, that if [***]. In addition, if AN2 (or any of its Affiliates) comes into possession of any additional data, information, reports or correspondence after the delivery of the PoC Data Package to Brii Bio that would have been included in the PoC Data Package had such data, information, reports or correspondence been in AN2's (or its Affiliate's) possession when the PoC Data Package was initially delivered to Brii Bio, then AN2 shall promptly, but in all cases within [***] after such data, information, report or correspondence comes into AN2's (or its Affiliate's) possession, provide such data, information, reports or correspondence to Brii Bio; *provided that*, [***]. Concurrent with the delivery of a PoC Data Package with respect to a Licensed Compound, AN2 shall provide Brii Bio with [***].

3.2 PoC Acceptance. During the PoC Term, at any time prior to the expiration of the PoC Term, Brii Bio (in its sole discretion) may begin Developing the Licensed Compound as a Licensed Product in the Field in the Licensed Territory by so notifying AN2 in writing (the "**PoC Acceptance Notice**"). For clarity, prior to Brii Bio's delivery to AN2 of the PoC Acceptance Notice, Brii Bio may not Develop any Licensed Compound as a Licensed Product in the Field in the Licensed Territory, except pursuant to Section 2.2. Upon AN2's receipt of such PoC Acceptance Notice (the "**PoC Acceptance Date**"), Brii Bio will be deemed to have accepted the PoC for the Licensed Product, and Brii Bio shall pay AN2 the milestone payment for such Licensed Compound pursuant to Section 8.2(a)(1). [***].

3.3 Ongoing Pre-PoC Development Activities. If Brii Bio delivers a PoC Acceptance Notice for a Licensed Compound and there are Pre-PoC Development Activities requested by Brii Bio under the Agreement then ongoing for such Licensed Compound, then AN2 shall use Commercially Reasonable Efforts to continue to conduct such activities at Brii Bio's sole cost and expense until the completion of all such activities. Notwithstanding the foregoing, Brii Bio may

elect in its sole discretion, by written notice to AN2, to assume responsibility for the conduct of such Pre-PoC Development Activities that are in the Licensed Territory after the PoC Acceptance Date for such Licensed Compound [***]. In such case, the Parties shall discuss through the JSC and agree upon a prompt transition of such activities to Brii Bio.

ARTICLE 4

GRANT OF LICENSES; EXCLUSIVITY

4.1 AN2 License to Brii Bio. Subject to the terms and conditions of this Agreement, AN2 and its Affiliates hereby grant to Brii Bio an exclusive (even as to AN2 and its Affiliates, except with respect to AN2's conduct of Pre-PoC Development Activities in accordance with Sections 2.1(a), 2.1(b) and 2.2(b), as applicable), perpetual, royalty-bearing license, with the right to grant sublicenses through multiple tiers solely in accordance with Section 4.4, under the AN2 Technology to research and Develop (including pursuant to any Brii Bio Development Plan or Global Development Plan), Manufacture and have Manufactured, use, sell, offer for sale, import, export and otherwise Commercialize Licensed Compound and Licensed Product in the Field in the Licensed Territory. For clarity, pursuant to the license grant under this Section 4.1, Brii Bio shall have the right to perform Pre-PoC Development Activities in Brii Bio Targeted Indications in the Licensed Territory to the extent approved by the JSC in accordance with Section 2.2(a).

4.2 Acknowledgement of Anacor Agreement. Brii Bio acknowledges and agrees that the licenses granted to Brii Bio or its Affiliates or Sublicensees under Section 4.1 is subject to the terms and conditions of the Anacor Agreement (as such terms apply to a sublicensee of AN2 under the Anacor Agreement). To the extent that any rights granted to Brii Bio under this Agreement are Controlled by AN2 pursuant to the Anacor Agreement, (a) such rights are subject to the terms and conditions of the Anacor Agreement, and (b) Brii Bio agrees to comply with such terms and conditions. Brii Bio acknowledges that Anacor is a third party beneficiary, entitled to enforce AN2's rights under this Agreement (as such rights apply to a sublicensee of AN2 under the Anacor Agreement).

4.3 Acknowledgement of Adjuvant Agreement. Brii Bio acknowledges that, pursuant to the Adjuvant Agreement, (a) Adjuvant has received certain Adjuvant Rights, and (b) AN2 is subject to further PRI Requirements. AN2 covenants to Brii Bio that AN2 shall not amend the Adjuvant Agreement to diminish the scope or exclusivity of the rights granted to Brii Bio under the AN2 Technology, including by granting any rights to Adjuvant regarding Licensed Products in the Licensed Territory.

4.4 Brii Bio Right to Sublicense. Brii Bio shall have the right to sublicense any or all rights granted to it under Section 4.1 in any Region in the Licensed Territory through multiple tiers to: (a) any of its Affiliates; or (b) Third Parties; *provided, that*, in each case of clauses (a) and (b), each sublicense shall be subject to the terms and conditions of this Agreement and the provisions of the Anacor Agreement and the Adjuvant Agreement. Brii Bio shall provide a copy of each sublicense agreement to AN2 within [***] after the grant of a sublicense, subject to Brii Bio's right to redact any confidential or proprietary information contained therein that is not necessary for AN2 to determine compliance with this Agreement. [***].

4.5 AN2 Retained Rights. Except for the rights and licenses expressly granted to Brii Bio in this Agreement, AN2 retains all rights under the AN2 Technology, including to conduct (a) Pre-PoC Development Activities that are requested by Brii Bio to be performed in the Licensed Territory pursuant to this Agreement; (b) Manufacturing activities, by itself or using a Third Party manufacturer, of Licensed Product (or intermediates thereof) in the Licensed Territory pursuant to Section 7.1; and (c) research and Development activities delegated to AN2 by the Parties pursuant to any Global Development Plan.

4.6 Exclusivity.

(a) **Competing Program**. During the Term, each Party shall not, either alone or with any Third Party, research, Develop, Manufacture, have Manufactured, use, sell, offer for sale, import or Commercialize any Competing Compound in the Licensed Territory (a "**Competing Program**").

(b) **Acquisition of Competing Program**. If a Third Party becomes an Affiliate of either Party after the Effective Date through merger, acquisition, consolidation or other similar transactions, and such Third Party has an active Competing Program at the time of such transaction, then:

(i) if such transaction occurs prior to the PoC Acceptance Date for such Program, then such Party and its new Affiliate will have [***]; or

(ii) if such transaction occurs after the PoC Acceptance Date for such Program, then such Party and its new Affiliate will have [***],

in each case of (i) and (ii), such new Affiliate's conduct of such Competing Program during such [***]; *provided that* such new Affiliate may conduct such Competing Program during such [***].

4.7 Insolvency Related Provisions.

(a) **Section 365(n) of the Bankruptcy Code**. The licenses granted pursuant to Section 4.1 are, for all purposes of Section 365(n) of Title 11 of the United States Code, as amended (the "**Bankruptcy Code**"), licenses of rights to "intellectual property" as defined in the Bankruptcy Code. Upon the occurrence of any Insolvency Event with respect to AN2, the Parties agree that Brii Bio, as licensee of such licenses under this Agreement, shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code with respect to such licenses. Without limiting the generality of the foregoing, AN2 and Brii Bio intend and agree that any sale of AN2's assets under Section 363 of the Bankruptcy Code shall be subject to Brii Bio's rights under Section 365(n) of the Bankruptcy Code, that Brii Bio cannot be compelled to accept a money satisfaction of its interests in the intellectual property licensed pursuant to this Agreement and that any such sale, therefore, may not be made to a purchaser "free and clear" of Brii Bio's rights under this Agreement and Section 365(n) of the Bankruptcy Code without the express, contemporaneous consent of Brii Bio. Further, each Party agrees and acknowledges that only the royalty payments by Brii Bio to AN2 under Section 8.4 constitute royalties within the meaning of Section 365(n) of the Bankruptcy Code or relate to licenses of intellectual property hereunder. AN2 shall, during the Term, create and maintain current copies or, if not amenable to copying, detailed descriptions

or other appropriate embodiments, to the extent feasible, of all intellectual property licensed pursuant to this Agreement. AN2 and Brii Bio acknowledge and agree that "embodiments" of intellectual property within the meaning of Section 365(n) include laboratory notebooks, cell lines, vectors, reagents, assays, product samples and inventory, research studies and data, Regulatory Documentation and Marketing Approvals. If a case under the Bankruptcy Code is commenced by or against AN2, this Agreement is rejected as provided in the Bankruptcy Code and Brii Bio elects to retain its rights hereunder as provided in Section 365(n) of the Bankruptcy Code, AN2 (in any capacity, including debtor-in-possession) and its successors and assigns (including a trustee) shall:

(i) provide to Brii Bio all such intellectual property (including all embodiments thereof) held by AN2 and such successors and assigns, or otherwise available to them, immediately upon Brii Bio's written request. Whenever AN2 or any of its successors or assigns provides to Brii Bio any of the intellectual property licensed hereunder (or any embodiment thereof) pursuant to this Section 4.7, Brii Bio shall have the right to perform AN2's obligations hereunder with respect to such intellectual property, but neither such provision nor such performance by Brii Bio shall release AN2 from liability resulting from rejection of the license or the failure to perform such obligations; and

(ii) not interfere with Brii Bio's rights under this Agreement, or any agreement supplemental hereto, to such intellectual property (including such embodiments), including any right to obtain such intellectual property (or such embodiments) from another entity, to the extent provided in Section 365(n) of the Bankruptcy Code.

(b) **Cumulative Remedies**. All rights, powers and remedies of Brii Bio provided herein are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including the Bankruptcy Code) in the event of the commencement of a case under the Bankruptcy Code with respect to AN2. The Parties agree that they intend the following rights to extend to the maximum extent permitted by law and to be enforceable under Bankruptcy Code Section 365(n): (i) the right of access to any intellectual property (including all embodiments thereof) of AN2 or any Third Party with whom AN2 contracts to perform an obligation of AN2 under this Agreement, and, in the case of the Third Party that is necessary for the manufacture, use, sale, import or export of Licensed Products; and (ii) right to contract directly with any Third Party to complete the contracted work.

ARTICLE 5

GOVERNANCE

5.1 Joint Steering Committee.

(a) **Establishment**. Within thirty (30) days following the Effective Date, AN2 and Brii Bio shall establish a joint steering committee ("**Joint Steering Committee**" or "**JSC**") to oversee, review and coordinate the Development activities of the Parties under this Agreement with regard to all Licensed Compounds for which Brii Bio has delivered a PoC Acceptance Notice.

(b) **Duties**. The Joint Steering Committee shall:

(i) [***];

(ii) [***];

(iii) [***];

(iv) [***];

(v) [***];

(vi) [***];

(vii) [***];

(viii) [***];

(ix) establish and oversee any additional subcommittees as deemed necessary or advisable to further the purpose of this Agreement and delegate responsibilities to such subcommittees;

(x) discuss disputes that may arise between the Parties in the course of the Development of a Licensed Compound with a view of facilitating a mutually satisfactory resolution; and

(xi) perform such other duties as are specifically assigned by the Parties to the Joint Steering Committee pursuant to this Agreement.

(c) **Membership**. The JSC shall be composed of [***]. The JSC shall have [***] Chairpersons, [***]. The meetings of the Joint Steering Committee shall be led, alternately, by one of the Chairpersons. Any member of the Joint Steering Committee may designate a substitute to attend and perform the functions of that member at any meeting of the Joint Steering Committee. Each Party may, with the consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed, invite non-member, non-voting representatives of such Party to attend meetings of the Joint Steering Committee, *provided that* such attendees are subject to non-disclosure agreements and obligations of confidentiality and non-use at least as restrictive as those set forth in Article 10. The Alliance Manager of each Party will attend each meeting of the JSC as a non-voting participant.

(d) **Meetings**. All Joint Steering Committee meetings shall be held as often as the members may determine, but in any event Joint Steering Committee meetings shall occur not less than [***] per Calendar Year. Such meetings may be held in person, or by any means of telecommunications or video conference, as the members deem necessary or appropriate; *provided*, *however*, that at least one Joint Steering Committee meeting per year shall be held in person and the location of such in-person meeting shall alternate between (a) AN2's office in Menlo Park, California or a suitable alternative in California or North Carolina (at AN2's election) and (b) Brii Bio's office in either Durham, North Carolina or Beijing, China (at Brii Bio's election). The first meeting shall be held at Brii Bio's offices in Durham. A quorum for Joint Steering Committee meetings shall be [***] members, with at least [***] from each Party.

(e) **Reports**. At each meeting of the JSC, AN2 shall provide to Brii Bio a high-level report summarizing Pre-PoC Development Activities conducted since the prior JSC meeting and a forward-looking high-level summary of planned Pre-PoC Development Activities for the [***] following such JSC meeting. In the event that the Parties elect to enter into a Global Development Plan for a Licensed Product, then the foregoing reporting obligation shall apply with respect to the Development activities of both Parties conducted under such Global Development Plan.

(f) **Decision-making of Joint Steering Committee**. Except as expressly provided in this Agreement, all decisions of the Joint Steering Committee shall be made by unanimous vote or written consent, with AN2 and Brii Bio each having, respectively, one (1) vote in all decisions. If, with respect to a matter that is subject to the Joint Steering Committee's duties, the Joint Steering Committee cannot reach consensus, then either Party may escalate the dispute for resolution to the Senior Executives. The Senior Executives shall use good faith efforts to resolve the matter referred to them within [***] of such referral (which shall become the decision of the Joint Steering Committee). If the Senior Executives fail to resolve such matter within [***] after the date on which the matter is referred to such Senior Executives (unless a longer period is agreed to by the Parties), then:

(i) except for disputes relating to: [***], AN2 shall have final decision-making authority; and

(ii) with respect to disputes relating to [***]: (A) Brii Bio shall have final decision-making authority with respect to matters in dispute relating to [***]; (B) AN2 shall have final decision-making authority with respect to matters in dispute relating solely to [***]; and (C) with respect to all other matters in dispute, such matters shall be settled by expert determination pursuant to Section 15.3.

(g) **Subcommittees**. From time to time, the Joint Steering Committee may establish subcommittees to oversee particular projects or activities within the scope of authority of the Joint Steering Committee, as it deems necessary or advisable. Each subcommittee shall consist of such number of representatives of each Party as the Joint Steering Committee determines is appropriate from time to time and shall meet with such frequency as the Joint Steering Committee shall determine. All decisions of each subcommittee shall be made by unanimous vote or written consent, with AN2 and Brii Bio each having, collectively, one (1) vote in all decisions. If, with respect to a matter that is subject to a subcommittee's decision-making authority, the subcommittee cannot reach unanimity, the matter shall be referred to the Joint Steering Committee, which shall resolve such matter in accordance with Section 5.1(f).

(h) **Dissolution**. The Joint Steering Committee shall dissolve and cease to exist on a Licensed Compound-by-Licensed Compound basis upon the conclusion of the PoC Term for each Licensed Compound; *provided that*, if the Parties elect to enter into a Global Development Plan in accordance with Section 6.1(d), then the Joint Steering Committee shall continue or be re-

constituted, as applicable, until the completion of all Development activities under the Global Development Plan. Following dissolution of the JSC, all disputes arising hereunder shall be resolved pursuant to Section 15.1.

5.2 Alliance Manager. Each of the Parties will appoint a single individual to manage Development obligations between the Parties (each, an "**Alliance Manager**"). The role of the Alliance Manager will be to act as a single point of contact between the Parties to ensure a successful relationship under this Agreement. The Alliance Managers will attend all JSC meetings as non-voting participants; *provided that*, an Alliance Manager may bring any matter to the attention of the JSC if such Alliance Manager reasonably believes that such matter warrants such attention. Each Party will designate its initial Alliance Manager promptly after the Effective Date, and each Party may change its designated Alliance Manager at any time upon written notice to the other Party. Any Alliance Manager may designate a substitute to temporarily perform the functions of that Alliance Manager by written notice to the other Party. Each Alliance Manager will also: (a) be the point of first referral in all matters of conflict resolution; (b) provide a single point of communication for seeking consensus between the Parties regarding key strategy and plan issues; (c) identify and bring disputes to the attention of the JSC in a timely manner; and (d) take responsibility for ensuring that governance activities, such as the conduct of required JSC meetings and production of meeting minutes, occur as set forth in this Agreement and that the relevant action items resulting from such meetings are appropriately carried out or otherwise addressed.

5.3 Minutes. Minutes for each of the Joint Steering Committee shall be prepared by an AN2 member or a Brii Bio member of the Joint Steering Committee alternately, with AN2's member preparing the minutes for the first meeting of the Joint Steering Committee. The draft minutes shall be sent to all members of the Joint Steering Committee for comment promptly after each such meeting (but in no event more than [***] after each such meeting). All actions noted in the minutes shall be reviewed and approved at subsequent meetings of the Joint Steering Committee, as applicable; *provided* that if the Parties cannot agree as to the content of the minutes by the time the Joint Steering Committee next meets, such minutes shall be finalized to reflect any areas of disagreement.

5.4 Expenses. Each Party shall bear its own costs, including expenses incurred by the members nominated by it in connection with their activities as members of the Joint Steering Committee.

5.5 Scope of Governance; Limitation of Authority. Notwithstanding the creation of the Joint Steering Committee or any subcommittee, each Party shall retain the rights, powers and discretion granted to it hereunder, and the Joint Steering Committee and any subcommittees shall not be delegated or vested with rights, powers or discretion unless such delegation or vesting is expressly provided herein or the Parties expressly so agree in writing. The Joint Steering Committee and any subcommittees shall have no power to: (a) amend or modify this Agreement; (b) waive either Party's obligation to comply with the terms and conditions of this Agreement; (c) require the other Party to breach any obligation or agreement that such other Party may have with or to a Third Party prior to the Effective Date; or (d) require the other Party to perform any activities that are materially different or greater in scope than those provided for under the Agreement. Furthermore, no decision of the Joint Steering Committee or any subcommittee shall

be in contravention of any terms and conditions of this Agreement. It is understood and agreed that issues to be decided by the Joint Steering Committee or any subcommittee, as applicable, are only those specific issues within such committee's duties.

ARTICLE 6

POST-POC DEVELOPMENT, MARKETING APPROVALS AND COMMERCIALIZATION

6.1 Development.

(a) **General**. With respect to all Licensed Products, following the PoC Acceptance Date for each such Licensed Product, Brii Bio shall [***]. Brii Bio will use Commercially Reasonable Efforts to Develop and seek Marketing Approval for at least one (1) Licensed Product in the Licensed Territory.

(b) **Brii Bio Development Plan**. Following the PoC Acceptance Date with respect to a Licensed Product, Brii Bio shall be responsible for all Development of and seeking Marketing Approval for such Licensed Product in the Field in the Licensed Territory. Brii Bio, its Affiliates or Sublicensees under this Agreement shall conduct all Development activities in accordance with a written development plan (the "**Brii Bio Development Plan**"), as such Brii Bio Development Plan may be revised from time to time in accordance with this Section 6.1(b). Within [***] after the applicable PoC Acceptance Date, Brii Bio will [***]. The Brii Bio Development Plan shall contain a written high level development plan that describes major Development activities for which Brii Bio, its Affiliates or sublicensees are conducting Development of or seeking Marketing Approval for such Licensed Products. Brii Bio shall prepare [***] updates or amendments (as applicable) to the Brii Bio Development Plan, and shall submit such amendments and updates to the JSC for review. Brii Bio shall be solely responsible for all decisions regarding the day-to-day conduct of Development for the Licensed Products within the Licensed Territory.

(c) **AN2 Development Plan.** With respect to all Licensed Products, following the PoC Acceptance Date for each such Licensed Product, AN2 shall submit to Brii Bio a written high level development plan that describes all indications for which AN2, its Affiliates or sublicensees are conducting Development of or seeking Marketing Approval for such Licensed Products (the "**AN2 Development Plan**"). AN2 shall provide Brii Bio with [***] updates or amendments (as applicable) to the AN2 Development Plan. For clarity, nothing in this Section 6.1(c) shall be construed to impose or otherwise imply any diligence obligations upon AN2 with respect to the Development of and seeking Marketing Approval for Licensed Product in the Licensed Territory or the AN2 Territory beyond what exists in the Anacor Agreement.

(d) **Global Development**. If, following Brii Bio's delivery of a PoC Acceptance Notice for a Licensed Product, AN2 intends to conduct a Global Clinical Trial for a Licensed Product, then AN2 shall notify Brii Bio of such intention within [***] of such determination and Brii Bio shall have [***] following receipt of such notice to determine whether it intends to participate in such Global Clinical Trial. In the event that Brii Bio notifies AN2 that it wishes to participate in such Global Clinical Trial, then the Parties shall, through the JSC, [***]. If Brii Bio elects not to participate in a Global Clinical Trial in accordance with this Section 6.1(d), then [***].

(e) **Cooperation**. AN2 shall provide such technical assistance and cooperation to Brii Bio as Brii Bio may reasonably request [***], as necessary or reasonably useful for Brii Bio to Develop or Commercialize Licensed Products in the Field in the Licensed Territory; provided that, AN2's obligation to provide such technical assistance and cooperation shall be limited to (i) [***] full-time equivalent ("**FTE**") hours in total during the first [***] following the Effective Date, and (ii) [***] FTE hours in total during any [***] thereafter, such that AN2 shall have no further obligations beyond such time limits.

(f) **Records**. Brii Bio shall create and maintain complete, current and accurate records regarding its Development activities in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes, including with respect to Clinical Trials relating to the Licensed Product, and drafting formal clinical study reports in compliance with Applicable Laws and ICH guidelines. AN2 shall have the right to review and copy such records at reasonable times and to obtain access to the original to the extent necessary or useful for regulatory or patent purposes.

(g) **Data Exchange**. In addition to each Party's adverse event and safety Data reporting obligations pursuant to Section 6.2(g), but subject to the remainder of this Section 6.1(g), each Party shall, at its sole cost and expense, promptly provide the other Party with copies of all Data from Clinical Trials of the Licensed Product generated by or on behalf of such Party or its Affiliates or sublicensees in the performance of Development activities of the Licensed Compound or Licensed Products in their respective territories; provided that neither Party shall be obligated to share any personally identifiable information ("**PII**") with the other Party, unless reasonably required for such other Party to Develop Licensed Products in its respective territory, in which case the Parties shall enter into a separate agreement to address such exchange of PII between the Parties, or any information related to any Other Products that may be in a Combination Product. The JSC may establish reasonable policies to effectuate such exchange of such Clinical Trial Data between the Parties.

(h) **Subcontractors**. Brii Bio shall have the right to engage subcontractors to conduct any activities necessary for Development of Licensed Products, including but not limited to non-clinical studies, clinical studies, CMC activities, and regulatory services for Licensed Products, under this Agreement, provided that such subcontractors are bound by written obligations of confidentiality and non-use consistent with this Agreement and have agreed in writing to assign to Brii Bio all Data, Inventions or other intellectual property generated by such subcontractor in the course of performing such subcontracted work. Brii Bio shall [***].

6.2 Regulatory Activities.

(a) **Regulatory Submissions**. Brii Bio (or its designated Affiliate or Sublicensee) shall be solely responsible and have the sole right to prepare and submit all Regulatory Documentation for Licensed Products in the Licensed Territory, including applications for Marketing Approval in the Licensed Territory, and Brii Bio (or its designated Affiliate or

Sublicensee) shall be the owner of such Regulatory Documentation (including all Marketing Approvals in the Licensed Territory for such Licensed Product). Promptly following the PoC Acceptance Date for each Licensed Product, AN2 shall transfer any and all existing Marketing Approvals for such Licensed Product in such Regions to Brii Bio, including the transferring of sponsorship of any ongoing Clinical Trials to Brii Bio, to the extent permitted under Applicable Law. Brii Bio shall [***].

(b) **Communications with Regulatory Authorities**. Each Party shall have the primary responsibility for and authority to communicate with Regulatory Authorities in its respective territory regarding Clinical Trials and Marketing Approvals for Licensed Products (i.e., Brii Bio in the Licensed Territory and AN2 in the AN2 Territory). Each Party shall keep the other Party reasonably informed of any material regulatory developments related to Licensed Products in the Field in its respective territory. At each regularly scheduled JSC meeting, each Party shall provide the other Party with a list and schedule of any in-person meeting or teleconference with the applicable Regulatory Authorities (or related advisory committees) in its respective territory planned for the next [***] that relates to any Licensed Product in the Field. In addition, each Party shall notify the other Party as soon as reasonably possible (but in no event later than [***] if possible) after such Party becomes aware of any additional such meetings or teleconferences that become scheduled for such [***]. Each Party shall provide all assistance and documentation reasonably requested by the other Party to prepare for any such meeting or teleconference, including making available competent personnel to attend any such meeting or teleconference. To the extent permitted by Applicable Laws and by the Regulatory Authorities (as reasonably determined by the Party meeting with such Regulatory Authorities), [***].

(c) **Regulatory Costs**. Unless otherwise provided in this Agreement, Brii Bio shall be responsible for the costs and expenses incurred in connection with the preparation and filing of any and all Regulatory Documentation and the maintenance of any and all Marketing Approvals for Licensed Products in the Field in the Licensed Territory.

(d) **AN2 Global Clinical Trials**. Subject to Section 6.1(d), AN2, its Affiliates and licensees shall have the right for each AN2 Global Clinical Trial, to the extent permitted by Applicable Law, to prepare and submit INDs outside the Licensed Territory and communicate with Regulatory Authorities outside the Licensed Territory relating to AN2 Global Clinical Trials conducted by AN2. AN2 shall bear all costs of such activities and any other expenses related to the conduct of each such AN2 Global Clinical Trial. Notwithstanding anything to the contrary, AN2 shall not have the right to conduct any AN2 Global Clinical Trial (or portion thereof) in the Licensed Territory.

(e) **AN2 Assistance**. AN2 shall, and shall cause its Affiliates to, provide assistance, facilitation and support, including providing all documents and data reasonably requested by Brii Bio in a timely manner and at Brii Bio's reasonable cost, to obtain and maintain Marketing Approvals and product importation licenses in the Licensed Territory. Such assistance shall include providing copies of any clinical study reports or clinical data regarding the Licensed Products in AN2's possession and providing comments on Regulatory Documentation to be filed by Brii Bio at Brii Bio's reasonable request.

(f) **Exchange of Information; Right of Reference**. Each of Brii Bio and AN2 shall promptly provide to the other copies of any Regulatory Documentation and any communications received from or sent to any Regulatory Authority for Licensed Products in the Licensed Territory or the AN2 Territory, as applicable, with respect to Clinical Trials and Marketing Approvals for Licensed Products. Each Party hereby grants to the other Party a right of reference to all Regulatory Submissions pertaining to Licensed Products in such Party's respective territory, and each Party shall bear its own costs and expenses associated with providing the other Party with the right of reference pursuant to this Section 6.2(f). Brii Bio may use such right of reference to AN2's Regulatory Submissions in the Field solely for the purpose of performing Brii Bio's obligations under this Agreement (including the performance of any Pre-PoC Development Activity) and for seeking, obtaining and maintaining Marketing Approval of Licensed Products in Field in the Licensed Territory. AN2 may use the right of reference to Brii Bio's Regulatory Submissions in the Field solely for the purpose of seeking, obtaining and maintaining Marketing Approval of Licensed Products (but not any Other Products) in the AN2 Territory.

(g) **Pharmacovigilance**. AN2 shall be responsible, at its own expenses, for the creation and maintenance of the global safety database for Licensed Products. AN2 shall be the sole owner of this global safety database. Brii Bio shall (at its reasonable cost and expense), and shall cause its Affiliates, Sublicensees and Distributors to, submit to AN2 all data relating to adverse events relating to Licensed Products in the Licensed Territory. AN2 shall (at its reasonable cost and expense), and shall cause its Affiliates, Sublicensees and Distributors to, notify Brii Bio in writing of all data relating to adverse events relating to Licensed Products outside the Licensed Territory. Within [***] after the Effective Date, the Parties shall enter into a pharmacovigilance agreement on terms no less stringent than those required by ICH guidelines, including: (i) providing detailed procedures regarding the maintenance of core safety information and the exchange of safety data relating to Licensed Products within appropriate timeframes and in an appropriate format to enable each Party to meet both expedited and periodic regulatory reporting requirements; and (ii) ensuring compliance with the reporting requirements of all applicable Regulatory Authorities for the reporting of safety data in accordance with standards stipulated in the ICH guidelines and all applicable regulatory and legal requirements regarding the management of safety data.

(h) **No Harmful Actions**. If either Party reasonably determines that the other Party is taking any action with respect to a Licensed Product (or Licensed Compound, as applicable) that will have an Adverse Risk in its respective territory, then such Party may bring the matter to the attention of the JSC (or directly to the other Party, following dissolution of the JSC) and the Parties shall discuss in good faith a potential resolution to such concern. Without limiting the foregoing, with respect to each Licensed Product, unless the Parties otherwise agree (or unless otherwise set forth in a Global Development Plan): (i) neither Party shall communicate with any Regulatory Authority having jurisdiction outside of its respective territory with respect to any Licensed Product, unless so ordered by such Regulatory Authority, in which case such Party shall immediately notify the other Party of such order; and (ii) neither Party shall submit any Regulatory Submissions (other than INDs) or seek Marketing Approvals for any Licensed Product in the other Party's respective territory.

(i) **Remedial Actions**. Each Party will notify the other Party immediately, and promptly confirm such notice in writing, if it obtains information indicating that any Licensed Product may be subject to any recall, corrective action or other regulatory action taken by virtue of Applicable Laws (a "**Remedial Action**"). The Parties will assist each other in gathering and evaluating such information as is necessary to determine the necessity of conducting a Remedial Action. Brii Bio shall, and shall ensure that its Affiliates and Sublicensees will, maintain adequate records to permit the Parties to trace the packaging, labeling, distribution, sale and use (to the extent possible) of the Licensed Product in the Licensed Territory. [***]. Each Party shall provide the other Party, at the other Party's expense, with such assistance in connection with a Remedial Action as may be reasonably requested by such other Party.

6.3 Commercialization.

(a) **Diligence**. **[*****] will be solely responsible, at its sole cost and expense, for all aspects of Commercialization of Licensed Products in the Licensed Territory, including planning and implementation, distribution, booking of sales, pricing and reimbursement. Following receipt of the applicable Marketing Approvals for a Licensed Product in the Licensed Territory, Brii Bio shall use Commercially Reasonable Efforts, at its reasonable expense, to Commercialize such Licensed Product.

(b) **Commercialization Plan; Commercialization Reports**. Within [***] prior to anticipated launch of a Licensed Product, Brii Bio shall [***].

(c) **Exchange of Marketing Materials**. AN2 shall provide to Brii Bio, upon Brii Bio's request, and no more than once each Calendar Quarter, at AN2's cost, copies of any materials prepared by or on behalf of AN2 that are necessary or reasonably useful in connection with Brii Bio's Commercialization of Licensed Products in the Field in the Licensed Territory (including relevant training materials, global brand and global market research, in each case, with respect to Licensed Products). Brii Bio shall provide to AN2, upon AN2's request, and no more than once each Calendar Quarter, at Brii Bio's cost, copies of any materials prepared by or on behalf of Brii Bio that are necessary or reasonably useful in connection with AN2's Commercialization of Licensed Products in the AN2 Targeted Indication in the AN2 Territory (including relevant training materials, global brand and global market research, in each case, with respect to Licensed Products).

(d) **Territory Compliance**. AN2 and its Affiliates: (i) shall not, directly or indirectly, Commercialize any Licensed Product in the Licensed Territory; (ii) shall not knowingly engage in any advertising or promotional activities relating to Licensed Products that are directed primarily to customers or other purchaser or users of Licensed Products located in the Licensed Territory; (iii) shall not actively solicit orders for Licensed Products from any prospective purchaser located in the Licensed Territory; and (iv) shall promptly cease selling or distributing any Licensed Product to any Third Party, or otherwise assisting any Third Party, who is Commercializing or attempting to Commercialize or distribute any Licensed Product in the Licensed Territory. Brii Bio and its Affiliates, Distributors and Sublicensees: (A) shall not, directly or indirectly, Commercialize the Licensed Product in the AN2 Territory; (B) shall not knowingly engage in any advertising or promotional activities relating to Licensed Products that

are directed primarily to customers or other purchaser or users of Licensed Products located in the AN2 Territory; (C) shall not actively solicit orders for Licensed Products from any prospective purchaser located in the AN2 Territory; and (D) shall promptly cease selling or distributing the Licensed Product to any Third Party, or otherwise assisting any Third Party, who is Commercializing or attempting to Commercialize or distribute the Licensed Product in the AN2 Territory. If a Party or its Affiliates or licensees or Sublicensees receive any order for Licensed Products for use from a prospective purchaser located in a country or jurisdiction in the other Party's territory, such Party shall immediately refer that order to such other Party and shall not accept any such orders.

ARTICLE 7

SUPPLY OBLIGATIONS; TECHNOLOGY TRANSFER

7.1 Clinical Supply Obligations. Prior to Brii Bio's delivery of a PoC Acceptance Notice for a Licensed Product, AN2 shall be responsible (either itself or through a Third Party CMO) for supplying Brii Bio's requirements for the Manufacture and clinical supply of such Licensed Product at AN2's Manufacturing Cost. Brii Bio shall submit orders for the clinical supply of Licensed Product to AN2 from time to time using purchase orders, and Brii Bio shall pay for such orders within [***] of Brii Bio's receipt and acceptance of each such order. Within [***] after the Effective Date, the Parties shall negotiate in good faith a clinical supply agreement. Within [***] after the Effective Date, the Parties shall enter into a separate quality agreement that governs quality assurance and quality control activities and requirements with respect to the clinical supply of Licensed Products in the Licensed Territory, along with procedures for determining GMP compliance and accepting Licensed Product, which agreement shall specify that AN2 is responsible for ensuring that Licensed Products are GMP compliant and meet all applicable specifications therefore. For clarity, Brii Bio shall not have the right to Manufacture or have Manufactured any Licensed Compound or Licensed Product for clinical use prior to the completion of the Manufacturing Technology Transfer.

7.2 Post-PoC Acceptance Supply Obligations; Technology Transfer. Following Brii Bio's delivery of a PoC Acceptance Notice for a Licensed Product, Brii Bio shall have the right to be responsible (either itself or through a Third Party CMO) for the Manufacture and supply of such Licensed Product. Brii Bio may exercise its right for any Licensed Product by so notifying AN2 in writing after Brii Bio's delivery of a PoC Acceptance Notice for such Licensed Product and prior to submission of Marketing Approval in the Territory for such Licensed Product. Within [***] after AN2's receipt of such notice, the Parties shall enter into an agreement governing a Manufacturing Technology Transfer to Brii Bio or a contract manufacturing organization ("**CMO**") of Brii Bio's choosing in the Licensed Territory to Manufacture clinical and commercial supply of Licensed Product, which agreement shall contain terms and conditions of such transfer on commercially reasonable terms, consistent with industry standards and the terms and conditions of this Agreement. Promptly following the execution of such Manufacturing Technology Transfer agreement, AN2 shall commence such Manufacturing Technology Transfer. [***]. As part of such transfer, AN2 shall provide to Brii Bio the Manufacturing Technology for the applicable Licensed Product and shall provide Brii Bio with copies or tangible embodiments of all data, information, materials and Know-How included within such Manufacturing Technology for such

Licensed Product. From time-to-time following the completion of such transfer, AN2 shall, upon Brii Bio's reasonable request, provide reasonable technical assistance [***] in connection with the Manufacture of the applicable Licensed Product.

ARTICLE 8

FINANCIAL TERMS

8.1 Equity; PRVs and Market Entry Awards.

(a) **Equity Investment**. The Parties acknowledge and agree that Brii Bio (i) has purchased 350,584 shares of AN2's Series A Preferred Stock (as defined in the Stock Purchase Agreement), and (ii) shall purchase 150,250 shares of AN2's Series A Preferred Stock upon the Second Closing (as defined in the Stock Purchase Agreement), pursuant to the terms and conditions set forth in the Stock Purchase Agreement for an aggregate purchase price of Three Million Dollars ($3,000,000).

(b) **PRV Sharing**. If AN2 obtains a PRV for a Licensed Product using any clinical Data generated by or on behalf of Brii Bio under this Agreement prior to any automatic transfer of such PRV to Anacor pursuant to Section 5.7 of the Anacor Agreement, [***]. The proceeds of such PRV will be determined as follows:

(i) If AN2 transfers to a Third Party or otherwise monetizes such PRV, [***];

(ii) If AN2 uses such PRV for a Licensed Product or any other product, [***]; and

(iii) If AN2 does not transfer, monetize or use such PRV for a Licensed Product or any other product prior to the automatic transfer of such PRV to Anacor pursuant to Section 5.7 of the Anacor Agreement, [***];

provided that, in the case of (ii) or (iii) above, the value of such PRV will be determined at the date of use or automatic transfer (as applicable): [***].

(c) **Market Entry Award**. If Brii Bio receives a Market Entry Award during the Term for the Licensed Product in the Brii Bio Targeted Indication in the Territory, then Brii Bio shall notify AN2 in writing, and the proceeds of such Market Entry Award will be allocated to each Party as follows, [***], and Brii Bio will pay AN2's share of such proceeds from such Market Entry Award within [***] of Brii Bio's receipt of such Market Entry Award. The Market Entry Award shall be payable [***] per Licensed Product (regardless of: the number of indications sought or approved for such Licensed Product; any new formulations, presentations, excipients, salts, or delivery methods of such Licensed Product; or any back-up or follow-on compounds of such Licensed Product). If Development or Commercialization of any Licensed Product ceases or is suspended, and Brii Bio Develops or Commercializes a back-up or follow-on compound that is also a Licensed Product, [***].

8.2 Development and Regulatory Milestones.

(a) In partial consideration of the rights granted by AN2 to Brii Bio hereunder and subject to the terms and conditions set forth in this Agreement, Brii Bio shall pay to AN2 the regulatory milestone payments set forth below for each Licensed Product.

	Milestone Event	Milestone Payment
1	[***]	[***]
2	[***]	[***]
3	[***]	[***]

(b) With respect to milestones 1–3 set forth in the chart above, Brii Bio shall promptly, but in any event no later than [***] following achievement of such milestone event by Brii Bio or any of its Affiliates or Sublicensees, inform AN2 of such achievement. Thereafter, AN2 shall promptly invoice Brii Bio for the milestone payment set forth above with respect to such regulatory milestone, and Brii Bio shall pay such invoice within [***] of receipt.

(c) The milestone payments set forth in Section 8.2(a) shall be payable [***] per Licensed Product (regardless of: the number of indications sought or approved for such Licensed Product; any new formulations, presentations, excipients, salts or delivery methods of such Licensed Product; or any back-up or follow-on compounds of such Licensed Product), and [***]. If Development or Commercialization of any Licensed Product ceases or is suspended and Brii Bio Develops or Commercializes a back-up or follow-on compound that is also a Licensed Product, then Brii Bio shall pay milestones [***]. Notwithstanding anything to the contrary in this Agreement, the maximum amount payable by Brii Bio under Section 8.2(a) for any Licensed Product (and all of its back-up and follow-on compounds) is Fifteen Million Dollars ($15,000,000).

8.3 Sales Milestones.

(a) In partial consideration of the rights granted by AN2 to Brii Bio hereunder and subject to the terms and conditions set forth in this Agreement, Brii Bio shall pay to AN2 the following sales milestones payments if the Net Sales of a Licensed Product in the Licensed Territory in a given Calendar Year meet or exceed the applicable annual Net Sales threshold described below for each Licensed Product in a Calendar Year in the Licensed Territory:

Annual Net Sales Threshold for a given Licensed Product in the Licensed Territory	Milestone Payment
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

The milestone payments set forth in this Section 8.3(a) shall be payable [***] per Licensed Product (regardless of: the number of indications sought or approved for such Licensed Product; any new formulations, presentations, excipients, salts or delivery methods of such Licensed Product; or any back-up or follow-on compounds of such Licensed Product), and [***]. If the annual Net Sales of a Licensed Product in a given Calendar Year exceed more than one applicable threshold in such Calendar Year, then [***]. If Development or Commercialization of any Licensed Product ceases or is suspended and Brii Bio Develops or Commercializes a back-up or follow-on compound that is also a Licensed Product, then Brii Bio shall pay milestones [***]. Notwithstanding anything to the contrary in this Agreement, the maximum amount payable by Brii Bio under this Section 8.3(a) for any Licensed Product (and all of its back-up and follow-on compounds) is One Hundred Fifty Million Dollars ($150,000,000).

(b) Brii Bio shall promptly notify AN2 in writing following achievement of a sales milestone by Brii Bio or any of its Affiliates. Thereafter, AN2 shall invoice Brii Bio for the payment set forth above with respect to such sales milestone, and Brii Bio shall pay such invoice within [***] of receipt.

8.4 Royalty Payments.

(a) In partial consideration of the rights granted by AN2 to Brii Bio hereunder and subject to the terms and conditions set forth in this Agreement, Brii Bio shall pay to AN2 the following royalties on Net Sales of each Licensed Product in the Licensed Territory:

Annual Net Sales of a given Licensed Product in the Licensed Territory	**Royalty Rate**
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]

(b) The above royalty payments shall be payable on a Region-by- Region and Licensed Product-by-Licensed Product basis during the period commencing from the date of the First Commercial Sale of such Licensed Product in such Region until the later of: (i) fifteen (15) years following the date of First Commercial Sale of such Licensed Product in such Region; (ii) expiration of all regulatory or data exclusivity of such Licensed Product in such Region; or (iii) expiration or abandonment of the last-to-expire Valid Claim in such Region that covers the composition of matter or approved use of such Licensed Product in such Region (the "**Royalty Term**").

8.5 Royalty Reduction. The amount of royalties payable by Brii Bio pursuant to Section 8.4 shall be reduced in the following circumstances:

(a) **[***]

(b) **[***]

(c) **[***]

(d) **[***]

8.6 Royalty Payments and Reports. Within [***] after the end of each [***], Brii Bio shall make all royalty payments payable to AN2 under this Article 8 with respect to such [***]. Along with such payments, Brii Bio shall also provide a report containing the following information for the applicable [***], on a Licensed Product-by-Licensed Product and Region-by-Region basis: [***] (the "**Royalty Report**").

8.7 No Projections or Guaranteed Payment.

(a) Each Party acknowledges and agrees that nothing in this Agreement shall be construed as representing an estimate or projection of anticipated sales of any Licensed Product and that the milestone events and Net Sales levels set forth above or that have otherwise been discussed by the Parties are merely intended to define the milestone events and royalty obligations to AN2 if such milestone events or Net Sales levels are achieved.

(b) AN2 expressly acknowledges and agrees that it may not receive and, absent the achievement of a milestone event in Section 8.2 or Section 8.3, or the achievement of Net Sales of a Licensed Product, will not be entitled to receive any further payments hereunder (including any milestone payments or royalties) other than: (i) the equity investment in Section 8.1(a) and (ii) such other costs to be paid by Brii Bio for Manufacturing of Licensed Products as set forth in Section 7.2. The Parties expressly acknowledge and agree that the milestone payments and royalties are contingent upon satisfaction of conditions provided for herein that may not be satisfied, and as a result, some or all of such payments may not become obligations of Brii Bio (or its assigns) and may therefore never be paid. AN2 expressly acknowledges that: (A) the equity investment in Section 8.1(a); (B) such other costs to be paid by Brii Bio for Manufacturing of Licensed Products as set forth in Section 7.2; and (C) the possibility of receiving milestone payments and royalties in accordance with the terms set forth herein constitute sufficient consideration for entering into this Agreement. Neither Party has made any representation or warranty to the other that any such conditions will be satisfied. Accordingly, if such conditions to any payments are not satisfied, no Party will have any recourse against the other Party hereunder unless there is an independent breach of this Agreement.

ARTICLE 9

PAYMENTS, BOOKS AND RECORDS

9.1 Payment Method. All payments to AN2 under this Agreement shall be made by bank wire transfer in immediately available funds to an account in the name of AN2 designated in writing by AN2. Payments hereunder shall be considered to be made as of the day on which they are received by AN2's designated bank.

9.2 Payment Currency; Currency Conversion.

(a) **United States Dollars**. Unless otherwise expressly stated in this Agreement, all amounts specified to be payable under this Agreement are in Dollars and shall be paid in Dollars.

(b) **Currency Conversion**. For the purpose of computing the Net Sales for any Licensed Product sold in a currency other than Dollars and for purposes of determining Net Sales and development costs, or other shared expenses under this Agreement incurred by a Party in a currency other than Dollars, such Net Sales or costs amounts shall be converted into Dollars each quarter using an exchange rate that is the arithmetic average of the daily exchange rates (obtained as described below) during such quarter. Each daily exchange rate shall be obtained from *The Wall Street Journal*, Eastern United States Edition, or, if not so available, as otherwise agreed by the Parties.

(c) **Blocked Currency**. Notwithstanding the provisions of Section 9.2, if by Applicable Law of a Region, conversion into Dollars or transfer of funds of a convertible currency to the United States is restricted, forbidden or substantially delayed, then Brii Bio shall promptly notify AN2 and, thereafter, amounts accrued in such Region shall be paid to AN2 in such Region in local currency by deposit in a local bank designated by AN2 for a period no longer than [***], after which any payments due to AN2 shall be paid in Dollars, unless the Parties otherwise agree.

9.3 Taxes.

(a) **Cooperation and Coordination**. The Parties acknowledge and agree that it is their mutual objective and intent to minimize, to the extent feasible, income and other taxes, including withholding taxes, and similar obligations payable with respect to their collaborative efforts under this Agreement and that they shall use their reasonable efforts to cooperate and coordinate with each other to achieve such objective. Each Party shall provide the other Party any tax forms that may be reasonably necessary in order for the Party making a payment (the "**Paying Party**") to the other Party (the "**Non-Paying Party**") under this Agreement not to withhold tax or deduct an amount of Transfer Taxes or to withhold tax or deduct Transfer Taxes at a reduced rate under an applicable bilateral income tax treaty or otherwise. Each Party shall use reasonable efforts to identify any such forms prior to the due date for such payment, and the Non-Paying Party shall use reasonable efforts to provide any such forms to the Paying Party in advance of such date. Each Party shall provide the other with reasonable assistance to enable the recovery, as permitted by Applicable Law, of withholding taxes, Transfer Taxes or similar obligations resulting from

payments made under this Agreement, such recovery to be for the benefit of the Party with respect to which such amount was withheld or deducted (or, if the amount was not withheld or deducted, the Party that actually bore the economic cost of the tax that is recovered).

(b) **Payment of Tax**. Except as otherwise set forth in this Section 9.3, each Party shall be solely responsible for the payment of all taxes imposed on its share of income arising directly or indirectly from the activities of the Parties under this Agreement. If Applicable Law requires that taxes be deducted and withheld from a payment, the Paying Party shall (i) deduct those taxes from the payment; (ii) timely pay the taxes to the proper taxing authority; and (iii) send evidence of the obligation together with proof of payment to the other Party within thirty (30) days following that payment.

9.4 Records. Brii Bio shall keep, and cause its Affiliates and Sublicensees to keep, complete, true and accurate books of accounts and records of all data in sufficient detail for the purpose of determining, in a manner consistent with GAAP, the amounts payable to AN2 pursuant to this Agreement. Such books and records shall be kept for such period of time required by Applicable Law, but no less than at least [***] following the end of the year to which they pertain. Such records shall be subject to inspection in accordance with Section 9.5.

9.5 Audits. Upon not less than [***] prior written notice, Brii Bio shall permit an independent, certified public accountant selected by AN2 and reasonably acceptable to Brii Bio, which acceptance will not be unreasonably withheld or delayed (for the purposes of this Section 9.5, the "**Auditor**"), to audit or inspect those books or records of Brii Bio or its Affiliates that relate to Net Sales and Royalty Reports for the sole purpose of verifying the: (a) royalties payable hereunder in respect of Net Sales; (b) withholding taxes, if any, required by Applicable Law to be paid by Brii Bio in respect of such Net Sales; and (c) exchange rates used in determining the amount of Dollars. Such Auditor shall be under reasonable written obligations of confidentiality to the audited Party and shall disclose to AN2 only the amount and accuracy of payments reported and actually paid or otherwise payable under this Agreement. The Auditor shall send a copy of the report to Brii Bio at the same time it is sent to AN2. Such inspections may be made no more than once each Calendar Year and during normal business hours. [***]. The results of such audit shall be final and binding, absent manifest error.

9.6 Late Payments. In the event that any payment due under this Agreement is not made when due, the payment shall accrue interest from the date due at a rate per annum equal to [***] above the U.S. Prime Rate (as set forth in the *Wall Street Journal*, Eastern Edition) for the date on which payment was due, calculated daily on the basis of a three hundred and sixty-five (365)-day year, or similar reputable data source; *provided that*, in no event shall such rate exceed the maximum legal annual interest rate.

ARTICLE 10

CONFIDENTIALITY

10.1 Confidential Information. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Parties, the Parties agree that the receiving Party

(the "**Receiving Party**") shall keep confidential and shall not publish or otherwise disclose or use for any purpose other than the performance of its obligations or exercise of its rights under this Agreement any confidential or proprietary information and materials, patentable or otherwise, in any form (written, oral, photographic, electronic, magnetic or otherwise) that is disclosed to it by the other Party (the "**Disclosing Party**") including, but not limited to, all Know-How, Inventions and any other technical, regulatory or business information of whatever nature (collectively, "**Confidential Information**").

10.2 Exceptions. Notwithstanding Section 10.1 above, the obligations of confidentiality and non-use shall not apply to Confidential Information to the extent that such Confidential Information, in each case as demonstrated by competent evidence:

(a) was already known by the Receiving Party or any of its Affiliates, other than under an obligation of confidentiality, at the time of disclosure;

(b) was generally available to the public or was otherwise part of the public domain at the time of its disclosure to the Receiving Party;

(c) became generally available to the public or otherwise part of the public domain after its disclosure by the Disclosing Party and other than through any act or omission of the Receiving Party or any of its Affiliates or disclosees in breach of this Agreement;

(d) was subsequently lawfully disclosed to the Receiving Party or any of its Affiliates by a Person other than the Disclosing Party, and who did not directly or indirectly receive such information directly or indirectly from the Disclosing Party under an obligation of confidence; or

(e) was independently developed by the Receiving Party or its Affiliate without use of or reference to any information or materials disclosed by the Disclosing Party.

10.3 Permitted Disclosures. Notwithstanding the provisions of Section 10.1, each Party may disclose Confidential Information belonging to the other Party as expressly permitted by this Agreement or if and to the extent such disclosure is reasonably necessary in the following instances:

(a) filing or prosecuting Patents as permitted by this Agreement;

(b) prosecuting or defending an arbitration, litigation or expert determination as permitted by this Agreement or enforcing or challenging an arbitral award or expert determination;

(c) submission to a Regulatory Authority in connection with a Marketing Approval of a Licensed Product;

(d) complying with applicable court orders, Applicable Law or governmental regulations including the requirements of any securities exchange; *provided*, that in such event such Party shall promptly notify the other Party in writing of such required disclosure and provide

reasonable assistance in obtaining a protective order or confidential treatment preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required or for which the order was issued;

(e) to those of its employees, Affiliates, contractors or agents who have a need to know such Confidential Information in order to enable the Receiving Party to carry out its obligations or exercise its rights pursuant to this Agreement; *provided*, that such persons are subject to obligations of confidentiality and non-use at least equivalent in scope to the obligations set forth in this Article 10;

(f) to existing or potential acquirers or merger candidates; (sub)licensees; investment bankers; existing or potential investors, venture capital firms or other financial institutions or investors for purposes of obtaining financing; or other commercial partners, each of whom prior to disclosure must be bound by obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Article 10; and advisors; *provided*, *however*, that, (i) neither Party shall make such disclosure to a Competitor of the other Party without first obtaining the non-Disclosing Party's prior written consent unless such Competitor is a bona fide acquirer or investor of the Disclosing Party and, in connection with such acquisition or investment, has requested information specific to the Licensed Territory, in which case the Disclosing Party shall promptly notify the other Party of such disclosure and shall ensure that such disclosure is subject to confidentiality and non-use obligations at least equivalent in scope to those set forth in this Article 10, and (ii) each Party will remain responsible for any failure by any of the foregoing individuals to treat such Confidential Information as required under Section 10.1 as if such individuals were parties directly bound to the requirements of this Article 10. For purposes of this Section 10.3(f), "**Competitor**" shall mean (x) with respect to Brii Bio, a pharmaceutical or biotechnology company engaged in the development or commercialization of Competing Compounds in the Licensed Territory, where such development activities in the Licensed Territory comprise a material portion of such company's global business, and (y) with respect to AN2, a biotechnology company engaged in the development or commercialization of Competing Compounds in the AN2 Territory.

Notwithstanding the foregoing, in the event a Party is required to make a disclosure of the other Party's Confidential Information, it shall, except where impracticable, give reasonable advance notice to the other Party of such disclosure and use efforts to secure confidential treatment of such information at least as diligent as such Party would use to protect its own confidential information, but in no event less than reasonable efforts; *provided*, that any Confidential Information so disclosed shall still be subject to the restrictions on use set forth in this Article 10. In any event, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information hereunder.

10.4 Confidentiality of this Agreement and its Terms. Except as otherwise provided in this Article 10, each Party agrees not to disclose to any Third Party the existence of this Agreement or the terms of this Agreement without the prior written consent of the other Party hereto, which Agreement and terms shall be deemed the Confidential Information of both Parties.

10.5 Public Announcements and Filings. Following the Effective Date hereof, each Party shall have the right to issue a press release announcing the existence of this Agreement; *provided that* the non-issuing Party has approved such press release in writing. For greater certainty, neither Party (nor its Affiliates) shall be obligated to consult with or obtain approval from the other Party with respect to any filings to the SEC, the NASDAQ stock exchange or any other stock exchange or Governmental Authority; *provided that* a Disclosing Party shall give [***] advance notice to the other Party of such disclosure and use efforts to secure confidential treatment of such information at least as diligent as such Party would use to protect its own confidential information.

10.6 Prior Non-Disclosure Agreements. As of the Effective Date, the terms of this Article 10 shall supersede any prior non-disclosure, secrecy or confidentiality agreement between the Parties (or their Affiliates) dealing with the subject of this Agreement, including without limitation the Confidentiality Agreement. Any information disclosed under such prior agreements shall be deemed as Confidential Information disclosed under this Agreement.

10.7 Use of Name. Each Party may use the name, insignia, symbol, trademark, trade name or logotype of the other Party only: (a) in connection with permitted disclosures relating to this Agreement and the activities contemplated hereby; (b) as required by Applicable Law, or (c) as otherwise expressly permitted by this Agreement or agreed in writing by such other Party; *provided* that each Party shall use the other Party's name, insignia, symbol, trademark, trade name or logotype only in such manner that the distinctiveness, reputation and validity of any trademarks and corporate or trade names of such other Party shall not be impaired, and consistent with best practices used by such first Party for its other collaborators.

10.8 Publication. At least [***] prior to publishing, publicly presenting and/or submitting for written or oral publication a manuscript, abstract or the like that includes information relating to any Global Development Plan, Brii Bio Development Plan, Patent or Invention that has not been previously published, each Party shall provide to the other Party a draft copy thereof for its review. The publishing Party shall consider in good faith any comments provided by the other Party during such [***] period. In addition, the publishing Party shall, at the other Party's reasonable request, remove therefrom any Confidential Information of such other Party. If requested in writing by the non-publishing Party, the publishing Party shall withhold material from submission for publication or presentation for an additional [***] to allow for the filing of a Patent application or the taking of such other measures as may be required to establish and preserve proprietary rights in the information in the material being submitted for publication or presentation. The contribution of each Party shall be noted in all publications or presentations by acknowledgment or co-authorship, whichever is appropriate.

ARTICLE 11

INTELLECTUAL PROPERTY

11.1 Ownership; License Grants.

(a) **Data**. AN2 shall solely own all Data solely generated by AN2. For clarity, all Data Controlled by AN2 are included in the AN2 Know-How and licensed to Brii Bio under Section 4.1. Brii Bio shall solely own all Data solely generated by Brii Bio in the Development of Licensed Products in the Field in the Licensed Territory. During the Term, Brii Bio hereby grants to AN2 a royalty-free, fully paid-up, exclusive license, with the right to grant sublicenses, to use such Data generated by Brii Bio from Development activities conducted under the Brii Bio Development Plan and owned by Brii Bio solely for the further Development and Commercialization of Licensed Products in the AN2 Targeted Indications in the AN2 Territory. The Parties shall jointly own all Data jointly generated by AN2 and Brii Bio. Each Party shall be free to exploit such joint Data for all purposes, provided that such Data shall be deemed Confidential Information of both Parties subject to the confidentiality provisions set forth in Article 10.

(b) **Inventions**.

(i) **Ownership**. Ownership of all Inventions will be assigned based on inventorship, as determined in accordance with the rules of inventorship under United States patent laws. Each Party owns all Inventions that are made solely by its and its Affiliates' employees, agents and independent contractors during the performance of activities under this Agreement ("**Sole Inventions**"). The Parties shall jointly own all Inventions that are made jointly by the employees, agents and independent contractors of one Party and its Affiliates together with the employees, agents and independent contractors of the other Party and its Affiliates ("**Joint Inventions**"). Any Patents claiming the Joint Inventions are "**Joint Patents**". Each Party owns an undivided half interest in the Joint Inventions, without a duty of accounting or an obligation to seek consent from the other Party, for the exploitation or license of the Joint Inventions (subject to the licenses granted to Brii Bio under this Agreement).

(ii) **Disclosure and Assignment**. Each Party shall promptly disclose to the other Party all Inventions, including all invention disclosure or other similar documents submitted to a Party by its or its Affiliates' employees, agents, Sublicensees, licensees or contractors relating to such Inventions, and shall also promptly respond to reasonable requests from the other Party for additional information relating to such Inventions. Each Party will cause all employees, agents, Sublicensees, licensees or contractors who perform activities for such Party under this Agreement to be under an obligation to assign their rights in any Inventions and Know-How, whether or not patentable, resulting therefrom to such Party.

(iii) **License Grants**.

(1) All AN2 Sole Inventions and AN2's interest in any Joint Inventions shall be included in the AN2 Technology licensed to Brii Bio under Section 4.1, including any Patent rights therein.

(2) During the Term, Brii Bio hereby grants to AN2 a royalty-free, fully paid-up, non-exclusive license, with the right to grant sublicenses, under Brii Bio Sole Inventions related to the Licensed Product in the AN2 Territory for the development, manufacture, or use of Licensed Compounds or Licensed Products for all research, development, and regulatory purposes. For clarity, AN2 shall not have any rights to sell or distribute any Licensed Compounds or Licensed Products pursuant to the license granted under this Section 11.1(b)(iii)(2).

11.2 Patent Prosecution and Maintenance.

(a) **AN2 Patents**. Subject to Section 11.2(c)(i), AN2 shall have the first right to prepare, file, prosecute and maintain all AN2 Patents in the Licensed Territory at AN2's cost and expense. During the Term, AN2 shall retain patent counsel registered to practice before the applicable patent and trademark office and shall keep Brii Bio fully informed of progress with regard to the preparation, filing, prosecution and maintenance of the AN2 Patents in the Licensed Territory. Specifically, AN2 shall: [***].

(b) **Joint Patents**.

(i) **AN2 Territory**. Subject to Section 11.2(c)(i), AN2 shall have the first right to prepare, file, prosecute and maintain all Joint Patents in the AN2 Territory at AN2's cost and expense. During the Term, AN2 shall retain patent counsel registered to practice before the applicable patent and trademark office and shall keep Brii Bio fully informed of progress with regard to the preparation, filing, prosecution and maintenance of the Joint Patents in the AN2 Territory. Specifically, AN2 shall: [***].

(ii) **Licensed Territory**. Subject to Section 11.2(c)(ii), Brii Bio shall have the first right to prepare, file, prosecute and maintain all Joint Patents in the Licensed Territory at Brii Bio's cost and expense. During the Term, Brii Bio shall retain patent counsel registered to practice before the Chinese patent and trademark office and shall keep AN2 fully informed of progress with regard to the preparation, filing, prosecution and maintenance of the Joint Patents in the Licensed Territory. Specifically, Brii Bio shall: [***].

(iii) **Coordination; Disputes**. Each Party shall use good faith efforts to coordinate with the other Party in its prosecution and maintenance of Joint Patents in its respective Territory. If either Party disagrees with the other Party's comments with respect to the filing or prosecution of any Joint Patent in its respective territory, such Party may refer such disagreement to each Party's patent liaison ("**Patent Liaison**"). The Patent Liaisons shall negotiate in good faith to resolve the dispute within [***], and if the Patent Liaisons are unable to resolve the dispute within such time period, then the disagreement shall be finally resolved by Brii Bio, except that [***].

(c) **Step-In Right**.

(i) If AN2 elects not to prosecute or maintain any AN2 Patent in the Licensed Territory or Joint Patent in the AN2 Territory, AN2 shall provide reasonable prior written notice to Brii Bio of such intention (which notice shall, to the extent possible, be given no later than [***] prior to the next deadline for any action that must be taken with respect to such AN2 Patent or Joint Patent in the relevant patent office). In such case, Brii Bio will thereafter have the right to assume responsibility for the filing, prosecution and maintenance of such AN2 Patent or Joint Patent by so notifying AN2 in writing. If Brii Bio assumes such responsibility for filing, prosecution and maintenance of such AN2 Patent or Joint Patent, then: (A) AN2 shall, and hereby

does, assign all of its right, title and interest in and to such AN2 Patent or Joint Patent to Brii Bio; and (B) AN2 shall cooperate as reasonably requested by Brii Bio to facilitate control of such filing, prosecution and maintenance of such AN2 Patent or Joint Patent by Brii Bio.

(ii) If Brii Bio elects not to prosecute or maintain any Joint Patent in the Licensed Territory, Brii Bio shall provide reasonable prior written notice to AN2 of such intention (which notice shall, to the extent possible, be given no later than [***] prior to the next deadline for any action that must be taken with respect to such Joint Patent in the relevant patent office). In such case, AN2 will thereafter have the right to assume responsibility for the filing, prosecution and maintenance of such Joint Patent by so notifying Brii Bio in writing. If AN2 assumes such responsibility for filing, prosecution and maintenance of such Joint Patent, then: (A) Brii Bio shall, and hereby does, assign all of its right, title and interest in and to such Joint Patent to AN2; and (B) Brii Bio shall cooperate as reasonably requested by AN2 to facilitate control of such filing, prosecution and maintenance of such Joint Patent by AN2.

(d) **Cooperation**. Each Party shall provide the other Party with all reasonable assistance and cooperation in the patent prosecution efforts set forth in this Section 11.2, including providing any necessary powers of attorney and executing any other required documents or instruments for such prosecution.

11.3 Infringement by Third Parties.

(a) **Notice**. In the event that either AN2 or Brii Bio becomes aware of any infringement or threatened infringement by a Third Party of the AN2 Patents or Joint Patents, which infringement adversely affects or is expected to adversely affect any Licensed Product in the Field in the Licensed Territory, or any related declaratory judgment, opposition or similar action alleging the invalidity, unenforceability or non-infringement of any of the AN2 Patents or Joint Patents in the Licensed Territory (collectively, "**Licensed Compound Infringement**"), it will notify the other Party in writing to that effect. Any such notice shall include any available evidence to support an allegation of infringement or threatened infringement by such Third Party.

(b) **Licensed Territory**. AN2 shall have the first right (but not the obligation), as between AN2 and Brii Bio, to bring and control any action or proceeding with respect to Licensed Compound Infringement in the Licensed Territory. Brii Bio shall have the right, at its own expense, to be represented in any such action by counsel of its own choice, and Brii Bio and its counsel will reasonably cooperate with AN2 and its counsel in strategizing, preparing and presenting any such action or proceeding. If AN2 fails to bring an action or proceeding with respect to such Licensed Compound Infringement in the Licensed Territory: [***], then Brii Bio shall have the right (but not the obligation) to bring and control any such action at Brii Bio's cost and expense, and AN2 shall have the right, at its own expense, to be represented in any such action by counsel of its own choice; provided that, in the event the Person engaged in the Licensed Compound Infringement in the Licensed Territory is also engaged in such infringement in the AN2 Territory, and AN2 has commenced a suit to secure the abatement of such infringement in the AN2 Territory, then AN2 shall promptly notify Brii Bio thereof and Brii Bio shall not have the right to commence such suit or action without the prior written consent of AN2, not to be unreasonably withheld, delayed or conditioned. In such case, AN2 shall take appropriate actions in order to enable Brii Bio to commence a suit or take the actions set forth in the preceding sentence.

(c) **AN2 Territory**. AN2 shall have the sole right to bring and control any action or proceeding with respect to Licensed Compound Infringement in the AN2 Territory; *provided*, *that* AN2 shall keep Brii Bio reasonably informed of all steps with regard to any such infringement actions to the extent relevant to Licensed Products in the Licensed Territory, including by providing Brii Bio with a copy of all proposed material filings and summaries of all material communications to and from any patent authority regarding such infringement proceeding. Except as otherwise agreed to by the Parties as part of a cost-sharing arrangement, any recovery or damages realized as a result of such action or proceeding shall be retained by AN2.

(d) **Cooperation**. In the event a Party (the "**Enforcing Party**") brings an infringement action or proceeding in accordance with this Section 11.3, the other Party shall cooperate fully, including, if required to bring such action, the furnishing of a power of attorney or being named as a party to such action. The Enforcing Party shall keep the other Party regularly informed of the status and progress of such enforcement efforts, and shall reasonably consider the other Party's comments on any such efforts. The non-enforcing Party shall be entitled to separate representation in such matter by counsel of its own choice and at its own expense, but such Party shall at all times cooperate fully with the Enforcing Party.

(e) **Expenses and Recoveries**. The Enforcing Party shall be solely responsible for any expenses it incurs as a result of any claim, suit or action brought by such Enforcing Party under Section 11.3(b), except that the Parties shall share equally the cost and expense of the enforcement action when AN2 is the Enforcing Party and Brii Bio elects to join the enforcement action. If the Enforcing Party recovers monetary damages in such claim, suit or action brought under Section 11.3(b), such recovery shall be allocated first to the reimbursement of any documented expenses incurred by the Parties in such enforcement action, and any remaining amounts shall be shared by the Parties as follows:

(i) if AN2 is the Enforcing Party and Brii Bio elects to join the enforcement action and share the cost and expenses related thereto: [***];

(ii) if AN2 is the Enforcing Party and Brii Bio does not elect to join the enforcement action and share the cost and expenses related thereto: [***];

(iii) if Brii Bio is the Enforcing Party: [***].

11.4 Infringement of Third Party Rights. Each Party shall promptly notify the other in writing of any allegation by a Third Party that the activity of either of the Parties pursuant to this Agreement in the Licensed Territory infringes or may infringe the intellectual property rights of such Third Party. AN2 shall have the sole right to control any defense of any such claim involving alleged infringement of Third Party rights by AN2's activities at its own expense, and Brii Bio shall have the right, at its own expense, to be represented in any such action by counsel of its own choice. Brii Bio shall have the sole right to control any defense of any such claim involving alleged infringement of Third Party rights by Brii Bio's activities at its own expense, and AN2 shall have the right, at its own expense, to be represented in any such action by counsel of its own choice.

11.5 Consent for Settlement. Neither Party shall enter into any settlement or compromise of any action or proceeding under Section 11.3 or Section 11.4 that would in any manner: (a) limit the scope, validity or enforcement of any of the AN2 Patents, (b) admit fault or wrongdoing on the part of the other Party or (c) impose any obligations or restriction on the other Party (whether financial or otherwise) without the prior written consent of such other Party.

11.6 Patent Term Extensions. The JSC shall make recommendations regarding patent term extensions for AN2 Patents, including supplementary protection certificates and any other extensions that are now or become available in the future, wherever applicable, and: [***]. Notwithstanding the foregoing, the Parties shall coordinate their activities with respect to any patent term extension with respect to all Patents in order to secure the optimal protection for each Licensed Product available under Applicable Law.

11.7 Trademarks. For each Licensed Product for which Brii Bio has delivered a PoC Acceptance Notice, Brii Bio or its Affiliates shall own and be responsible for all trademarks, trade names, branding, logos and domain names related to such Licensed Product in the Licensed Territory ("**Brii Bio Product Marks**") and shall be responsible for selecting, registering, enforcing, defending and maintaining such Brii Bio Product Marks. If it is necessary or reasonably useful for Brii Bio to use any trademarks, trade names, branding, logos and domain names that are Controlled by AN2 or its Affiliates ("**Licensed Compound Marks**"), the Parties shall enter into a reasonable and customary trademark license granting the rights to use such Licensed Compound Marks in connection with the Development and Commercialization of Licensed Products under this Agreement.

11.8 Maintenance of Patents. During the Term, AN2 shall take all steps required to maintain in good standing any AN2 Patents licensed to Brii Bio hereunder.

11.9 Patent Marking. For each Licensed Product for which Brii Bio has delivered a PoC Acceptance Notice, Brii Bio shall mark, and shall require Affiliates and Sublicensees to mark, all Licensed Products in such a manner as to conform with the patent marking notices required by the Applicable Laws of any country or Region where such Licensed Products are made, sold, used or shipped, including, but not limited to, the applicable patent laws of such country or Region.

ARTICLE 12

REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 Mutual Representations and Warranties. Each Party hereby represents and warrants to the other Party, as of the Effective Date, as follows:

(a) **Duly Organized**. Such Party is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation and has full corporate or other power and authority to enter into this Agreement and to carry out the provisions hereof.

(b) **Due Authorization; Binding Agreement**. This Agreement has been duly executed and delivered on behalf of such Party and constitutes a legal, valid and binding obligation of such Party and is enforceable against it in accordance with the terms hereof subject to the effects of bankruptcy, insolvency or other laws of general application affecting the enforcement of creditor rights and judicial principles affecting the availability of specific performance and general principles of equity, whether enforceability is considered a proceeding at law or equity.

(c) **Consents**. Such Party has obtained, or is not required to obtain, the consent, approval, order or authorization of any Third Party, or has completed or is not required to complete any registration, qualification, designation, declaration or filing with any Regulatory Authority or Governmental Authority, in connection with the execution and delivery of this Agreement and the performance by such Party of its obligations under this Agreement.

(d) **No Conflicting Grant of Rights**. The execution and delivery of this Agreement and the performance of such Party's obligations hereunder: (i) do not conflict with or violate any requirement of Applicable Law or any provision of the articles of incorporation, bylaws or any similar instrument of such Party, as applicable, in any material way, and (ii) do not conflict with, violate or breach, or constitute a default or require any consent under, any contractual obligation or court or administrative order by which such Party is bound.

(e) **Employee/Contractor Agreements**. All of such Party's employees or contractors acting on its behalf pursuant to this Agreement are and will be obligated under a binding written agreement to assign to such Party or its designee all AN2 Technology and Inventions (as applicable) and to comply with obligations of confidentiality and non-use consistent with those set forth in Article 10.

(f) **Debarment**. Such Party is not debarred under the FDA, NMPA or similar Regulatory Authority in any other jurisdiction and it does not, and will not during the Term, employ or use the services of any Person who is debarred in connection with the Development, Manufacture or Commercialization of Licensed Products. In the event that either Party becomes aware of the debarment or threatened debarment of any Person providing services to such Party, including the Party itself and its Affiliates, contractors, Sublicensees and Distributors, which directly or indirectly relate to activities under this Agreement, the other Party shall be immediately notified in writing.

(g) **Compliance**. As of the Effective Date, each Party is in material compliance with all Applicable Laws with respect to the subject matter of this agreement.

(h) **No Third Party Rights**. Neither Brii Bio nor AN2 is a party to or otherwise bound by any oral or written contract or agreement that would result in any Third Party obtaining any interest in, or that would give to any Third Party any right to assert any claim in or with respect to, any Inventions or Patents except as disclosed on Schedule C hereto.

(i) **CFIUS**.

(i) Based on AN2's reasonable assessment and to its actual knowledge as of the Effective Date, AN2 is not a U.S. business that produces, designs, tests, manufactures,

fabricates, or develops "critical technologies" that are: (A) utilized in connection with AN2's activity in one or more "pilot program industries;" or (B) designed by AN2 specifically for use in one or more "pilot program industries," as those terms are defined in 31 C.F.R. Parts 800 and 801.

(ii) Based on Brii Bio's reasonable assessment of the information provided by AN2 as of the Effective Date, AN2 is not a U.S. business that produces, designs, tests, manufactures, fabricates, or develops "critical technologies" that are: (A) utilized in connection with AN2's activity in one or more "pilot program industries;" or (B) designed by AN2 specifically for use in one or more "pilot program industries," as those terms are defined in 31 C.F.R. Parts 800 and 801.

12.2 Additional Representations and Warranties of AN2. AN2 represents and warrants to Brii Bio, as of the Effective Date, that:

(a) **Right to Grant Licenses**. AN2 has the right to grant (or cause its Affiliates to grant) the licenses contemplated under this Agreement and has not granted, assigned, transferred, conveyed or encumbered and will not during the Term grant, assign, transfer, convey or encumber any right, title or interest in any of the AN2 Technology in any way that would prevent AN2 from granting Brii Bio an exclusive license under such the AN2 Technology to research, Develop, Manufacture, have Manufactured, use, distribute, sell, offer for sale, import and otherwise Commercialize Licensed Products in the Field in the Territory.

(b) **Ownership; Control**. AN2 is the sole and exclusive owner of, or Controls, the AN2 Technology licensed by AN2 to Brii Bio under this Agreement. Except with respect to payments owed under the Anacor Agreement, no royalties, license fees, sublicense revenue or other payments are required to be paid by AN2 to any Third Party in connection with the research, Development, Manufacture, use, distribution, sale, offer for sale, import and other Commercialization of Licensed Products in the Field in the Territory.

(c) **AN2 Patents**. Schedule A sets forth a true, complete and correct list of the AN2 Patents existing as of the Effective Date, and: (i) to the knowledge of AN2, the issued patents within the AN2 Patents are valid and enforceable; (ii) AN2 has not received any written notice from any Third Party asserting the invalidity, unenforceability or non-infringement of any AN2 Patents (including, by way of example, through the institution or written threat of institution of interference, nullity, opposition, inter partes or post-grant review or similar invalidity proceedings before the United States Patent and Trademark Office or any analogous foreign Regulatory Authority); (iii) the AN2 Patents are being prosecuted in the respective patent offices in accordance with Applicable Law; and (iv) the AN2 Patents have been filed and maintained properly and correctly and all applicable fees have been paid on or before the due date for such payments. From time to time during the Term, AN2 shall update Schedule A to reflect the AN2 Patents existing as of such date; *provided that*, any Patent not included on Schedule A that otherwise meets the definition of an AN2 Patent shall still be considered an AN2 Patent notwithstanding its omission from Schedule A.

(d) **Non-Infringement by Third Parties**. To AN2's knowledge, no Third Party is infringing or misappropriating or threatening to infringe or misappropriate any AN2 Technology.

(e) **Non-Infringement of Third Party Rights**. To AN2's knowledge, neither AN2 nor any of its Affiliates has received any written notice from any Person, or has knowledge of, any actual or threatened claim or assertion that the use or practice of the AN2 Patents infringes or misappropriates the intellectual property rights of a Third Party.

(f) **Claims; Judgements; Settlements**. Except as disclosed in Schedule B, there are no claims, judgments or settlements against or pending, or amounts with respect thereto, owed by AN2 or any of its Affiliates with respect to the AN2 Technology licensed by AN2 to Brii Bio under this Agreement, and AN2 has not received written notice threatening any such claims, judgments or settlements.

(g) **Employee Agreements**. All current and former employees and consultants of AN2 and its Affiliates who are or have been substantively involved in the design, review, evaluation or development of the AN2 Patents owned by AN2 have executed written contracts or are otherwise obligated to assign their rights to AN2 or its designee.

(h) **No Third Party Rights**. AN2 is not a party to or otherwise bound by any oral or written contract or agreement that will result in any Third Party obtaining any interest in, or that would give to any Third Party any right to assert any claim in or with respect to, any AN2 Technology exclusively licensed to Brii Bio hereunder except as disclosed on Schedule C hereto.

(i) **Third Party Grant of Rights**. As of the Effective Date, AN2 has not granted to a Third Party any Development, Manufacturing or Commercialization rights with respect to an existing Program, nor is AN2 engaged in bona fide negotiations with a Third Party for such rights.

(j) **No Other Technology**. To AN2's knowledge: (i) there are no other backup compounds to epetraborole that AN2 Controls other than the compounds listed in Section 1.69(b); and (ii) the AN2 Technology in existence as of the Effective Date comprises all of the intellectual property rights that are used by or on behalf of AN2 and its Affiliates in the research, Development and Manufacturing of Licensed Compounds as of the Effective Date.

(k) **Anacor Agreement.** AN2 has provided Brii Bio with a true copy of the Anacor Agreement and has not omitted any portions that would have a material adverse effect on Brii Bio's rights or obligations under this Agreement.

12.3 Mutual Covenants; Anacor Agreement Covenants. Each Party hereby covenants to the other Party during the Term that in the performance of its obligations under this Agreement, such Party shall comply with, and shall cause its and its Affiliates' employees and Sublicensees to comply, with all Applicable Laws (including, for the avoidance of doubt, Anti-Corruption Laws). AN2 will, and will cause its Affiliates to: (i) maintain Control of all Patents and Know-How sublicensed to Brii Bio under the Anacor Agreement; (ii) not breach or be in default under the Anacor Agreement in a manner that would permit the counterparty thereto to

terminate such Anacor Agreement or otherwise diminish the scope or exclusivity of the sublicenses granted to Brii Bio under the AN2 Technology; and (iii) not terminate or breach the Anacor Agreement in a manner that would terminate rights that are sublicensed to Brii Bio or otherwise diminish the scope or exclusivity of the licenses granted to Brii Bio under the AN2 Technology. If AN2 or its Affiliate receives notice of an alleged breach by AN2 or its Affiliates under the Anacor Agreement, where termination of the Anacor Agreement or any diminishment of the scope or exclusivity of the sublicenses granted to Brii Bio under the AN2 Technology is being or could be sought by the counterparty, then AN2 will promptly, but in no event less than [***] thereafter, provide written notice thereof to Brii Bio and grant Brii Bio the right (but not the obligation) to either cure such alleged breach or to enter into a direct license with such counterparty. AN2 will not, and will cause its Affiliates not to, amend the Anacor Agreement in any manner that adversely affects Brii Bio's exclusive rights to research, Develop, Manufacture or Commercialize any Licensed Products pursuant to this Agreement without first obtaining, in each case, Brii Bio's prior written consent.

12.4 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, OR ANY OTHER AGREEMENT CONTEMPLATED HEREUNDER, NEITHER PARTY MAKES ANY REPRESENTATIONS OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW OR OTHERWISE AND EACH PARTY EXPRESSLY DISCLAIMS: (A) ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE; (B) ANY WARRANTY AS TO THE VALIDITY OR ENFORCEABILITY OF PATENTS OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES; (C) ANY WARRANTY AS TO THE PROSPECTS OR LIKELIHOOD OF DEVELOPMENT OR COMMERCIAL SUCCESS OF THE LICENSED PRODUCT; OR (D) ANY WARRANTY THAT ANY PARTICULAR NET SALES LEVEL OF ANY LICENSED PRODUCT WILL BE ACHIEVED.

12.5 Compliance with Anti-Corruption Laws.

(a) Notwithstanding anything to the contrary in this Agreement, each Party hereby agrees that with respect to its activities in the Licensed Territory it shall not, and shall ensure that its Affiliates will not, in the performance of this Agreement in the Licensed Territory, perform any actions that are prohibited by Anti-Corruption Laws that may be applicable to one or both Parties to this Agreement.

(b) Each Party represents and warrants that, to its knowledge, neither it nor any of its Affiliates, directors, officers, employees, distributors, agents, representatives, sales intermediaries or other Third Parties acting on behalf of such Party or any of its Affiliates under this Agreement with respect to activities in the Licensed Territory has taken any action in violation of any applicable anticorruption law, including the U.S. Foreign Corrupt Practices Act (15 U.S.C. § 78 dd-1 et seq.).

ARTICLE 13

INDEMNIFICATION

13.1 Indemnification of AN2. Brii Bio shall indemnify, defend and hold harmless AN2 and its Affiliates and its and their directors, officers, employees and agents (the "**AN2 Indemnitees**") from and against any and all losses, liabilities, damages, penalties, fines, costs and expenses (including reasonable attorneys' fees and other expenses of litigation) ("**Losses**") from any claims, actions, suits or proceedings brought by a Third Party (a "**Third Party Claims**") incurred by any AN2 Indemnitee, to the extent arising from, or occurring as a result of: (a) the Development, Manufacture, use, handling, storage, sale or other Commercialization of Licensed Product by Brii Bio or its Affiliates or Sublicensees in the Licensed Territory, including, without limitation, product liability claims (but excluding claims resulting from AN2's Manufacture of the Licensed Products); (b) gross negligence or willful misconduct by or on behalf of Brii Bio or its Affiliates in performing any activities in connection with this Agreement; and (c) any breach of any representations, warranties or covenants by Brii Bio under this Agreement; except, in each case ((a)–(c)), to the extent such Third Party Claims fall within the scope of the indemnification obligations of AN2 set forth in Section 13.2.

13.2 Indemnification of Brii Bio. AN2 shall indemnify, defend and hold harmless each of Brii Bio and its Affiliates and its and their directors, officers, employees and agents of such entities (the "**Brii Bio Indemnitees**") from and against any and all Losses from any Third Party Claim incurred by any Brii Bio Indemnitee to the extent arising from, or occurring as a result of: (a) the Development, Manufacture, use, handling, storage, sale or other Commercialization of Licensed Products by AN2 or its Affiliates in the AN2 Territory or in the Licensed Territory under a Global Development Plan or AN2 Global Clinical Trial; (b) gross negligence or willful misconduct by or on behalf of AN2 or its Affiliates in performing any activities in connection with this Agreement; and (c) any breach of any representations, warranties or covenants by AN2 under this Agreement; except, in each case ((a)–(c)) to the extent such Third Party Claims fall within the scope of the indemnification obligations of Brii Bio set forth in Section 13.1.

13.3 Procedure. A Party that intends to claim indemnification under this Article 13 (the "**Indemnitee**") shall promptly notify the indemnifying Party (the "**Indemnitor**") in writing of any Third Party Claim in respect of which the Indemnitee intends to claim such indemnification. The Indemnitee shall provide the Indemnitor with reasonable assistance, at the Indemnitor's expense, in connection with the defense of the Third Party Claim for which indemnity is being sought. The Indemnitee may participate in and monitor such defense with counsel of its own choosing at its sole expense; *provided*, *however*, the Indemnitor shall have the right to assume and conduct the defense of the Third Party Claim with counsel of its choice, which counsel shall be reasonably acceptable to Indemnitee. The Indemnitor shall not settle any Third Party Claim without the prior written consent of the Indemnitee, not to be unreasonably withheld, delayed or conditioned, unless the only liability to the Indemnitee is the payment of money and the Indemnitor makes such payment. So long as the Indemnitor is actively defending the Third Party Claim in good faith, the Indemnitee shall not settle any such Third Party Claim without the prior written consent of the Indemnitee. If the Indemnitor does not assume and conduct the defense of the Third Party Claim as provided above: (a) the Indemnitee may defend against and consent to the entry of any judgment

or enter into any settlement with respect to the Third Party Claim in any manner the Indemnitee may deem reasonably appropriate (and the Indemnitee need not consult with, or obtain any consent from, the Indemnitor in connection therewith); and (b) the Indemnitor will remain responsible to indemnify the Indemnitee as provided in this Article 13. The failure to deliver written notice to the Indemnitor within a reasonable time after the commencement of any action with respect to a Third Party Claim shall only relieve the Indemnitor of its indemnification obligations under this Article 13 if and to the extent the Indemnitor is actually prejudiced thereby.

13.4 Insurance. Each Party, at its own expense, shall maintain product liability and other appropriate insurance (including D&O insurance) in an amount consistent with industry standards for a company in a similar position to such Party during the Term. Each Party shall provide the other Party with written notice at least [***] prior to any cancellation, nonrenewal or material change in the insurance described above. Each Party shall provide a certificate of insurance evidencing such coverage to the other Party upon request. Each Party shall provide a certificate of insurance evidencing its D&O insurance annually. It is understood that such insurance shall not be construed to create a limit of either Party's liability with respect to its indemnification obligations under this Article 13.

13.5 No Third Party Beneficiary. Except for Anacor pursuant to Section 4.2, no Third Party is an intended third-party beneficiary of this Agreement.

13.6 LIMITATION OF LIABILITY. EXCEPT FOR DAMAGES RESULTING FROM BREACHES OF SECTION 4.6 (EXCLUSIVITY), ARTICLE 10 (CONFIDENTIALITY) OR INDEMNIFIABLE CLAIMS UNDER ARTICLE 13 (INDEMNIFICATION), IN NO EVENT WILL EITHER PARTY HAVE ANY CLAIMS AGAINST OR LIABILITY TO THE OTHER PARTY WITH RESPECT TO ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING ANY CLAIMS FOR LOST PROFITS OR REVENUES) ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN INFORMED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

ARTICLE 14

TERM AND TERMINATION

14.1 Term. This Agreement shall commence on the Effective Date, and unless terminated earlier as provided in this Article 14, shall continue in full force and effect on a Region-by-Region and Licensed Product-by-Licensed Product basis until [***] (the "**Term**"). Upon expiration (but not an earlier termination) of this Agreement with respect to any Licensed Products in a Region of the Licensed Territory, AN2 shall grant to Brii Bio a perpetual, non-exclusive, fully paid-up, royalty-free license under the AN2 Technology in such Region to Develop, Manufacture and have Manufactured, use, sell, offer for sale, import and otherwise Commercialize such Licensed Products in the Field in such Region.

14.2 Early Termination.

(a) **Material Breach**. Each Party shall have the right to terminate this Agreement in its entirety upon written notice by either Party if the other Party is in material breach of this Agreement and has not cured such breach within [***] after notice from the terminating Party requesting cure of the breach. Any such termination shall become effective at the end of such [***] period, as applicable, unless the breaching Party has cured any such breach or default prior to the end of such period; *provided that*, if such breach is not reasonably capable of cure within such [***] period, but is capable of cure within [***] from such notice, the breaching Party may submit, within [***] of such notice, a reasonable cure plan to remedy such breach as soon as possible and in any event prior to the end of such [***] period, and, upon such submission, the [***] cure period shall be automatically extended for so long as the breaching Party continues to use diligent efforts to cure such breach in accordance with the cure plan, but for no more than [***], and *provided further* that, such time periods shall be tolled during the pendency of any good faith dispute that has been deferred to resolution pursuant to this Article 14 with respect to the validity of such allegation of breach. It is understood and acknowledged that during the pendency of such a dispute, all of the terms and conditions of this Agreement shall remain in effect and the Parties shall continue to perform all of their respective obligations hereunder.

(b) **Insolvency**. Brii Bio shall have the right to terminate this Agreement in its entirety at any time if AN2 shall: (i) file in any court or agency pursuant to any statute or regulation of any jurisdiction a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of AN2 or of its assets; (ii) propose an out-of-court restructuring of substantially all of AN2's indebtedness outside the ordinary course of business; (iii) be served with an involuntary petition against AN2, filed in any insolvency proceeding, and such petition shall not be dismissed within [***] after the filing thereof; (iv) propose or be a party to any dissolution or liquidation; or (v) make an assignment of all or substantially all of its assets for the benefit of its creditors (each, an "**Insolvency Event**").

(c) **Voluntary Termination**. Brii Bio shall have the right in its sole and absolute discretion to terminate this Agreement, either with respect to a Licensed Product or in its entirety, upon [***] prior written notice to AN2 for convenience, without cause and for any or no reason.

(d) **Expiration of PoC Term**. If AN2 has not received a PoC Acceptance Notice for any Licensed Compound or Licensed Product prior to the expiration of the PoC Term, AN2 shall have the right to terminate this Agreement in its entirety immediately upon written notice to Brii Bio.

14.3 Effects of Termination by Brii Bio pursuant to Section 14.2(c) or by AN2 pursuant to Section 14.2(a). Upon any termination of this Agreement by Brii Bio pursuant to Section 14.2(c) or by AN2 pursuant to Section 14.2(a), the following shall apply (in addition to any other rights and obligations under this Agreement with respect to such termination):

(a) **Licenses from AN2.** All licenses and other rights granted by AN2 to Brii Bio under this Agreement shall terminate, including all sublicenses granted by Brii Bio unless such

sublicenses are assumed by AN2 pursuant to Section 4.4, which shall survive such termination. AN2 shall have a reversion of all rights previously licensed to Brii Bio under Section 4.1 for which the relevant licenses have terminated on a fully paid-up and royalty-free basis, itself or with or through an Affiliate or Third Party, to Develop and Commercialize the Licensed Products in the Field in the Licensed Territory at AN2's discretion.

(b) **Wind-Down**. Brii Bio will at AN2's reasonable written request either:

(i) responsibly wind-down after the effective date of the termination, in accordance with accepted pharmaceutical industry norms and ethical practices, any on-going Clinical Trials for which Brii Bio has responsibility hereunder in which patient dosing has commenced, wherein: [***]; or

(ii) transfer to AN2 or its designee such Clinical Trial to the extent permitted under Applicable Laws and accepted pharmaceutical industry norms and ethical practices, wherein AN2 will bear all costs associated with such transfer;

provided that, in each case of (i) and (ii), to the extent consistent with accepted pharmaceutical industry norms and ethical practices, [***].

(c) **Marketing Approvals**. To the extent permitted under Applicable Laws, Brii Bio shall provide and assign to AN2 or its designee all Marketing Approvals for the Licensed Compounds (but excluding any Marketing Approvals covering Other Products). Brii Bio shall bear any costs associated with such assignment (internal or external).

(d) **Licenses from Brii Bio**. Brii Bio hereby grants to AN2 a royalty-free, fully paid-up, non-exclusive license, with the right to grant sublicenses, to use any Data generated by Brii Bio from Development activities conducted under the Brii Bio Development Plan and owned by Brii Bio solely for the further Development and Commercialization of Licensed Products in the in the AN2 Territory and the Licensed Territory. Upon receipt of AN2's written request after the effective date of termination, Brii Bio and AN2 shall negotiate in good faith for a period of up to [***] the commercial terms under which Brii Bio would grant to AN2 an exclusive royalty-bearing, sublicensable license under Patent, Know-How (excluding Data) and trademark rights that, in each case, are Controlled by Brii Bio as of the effective date of such termination and that are necessary to Commercialize Licensed Compounds in the Licensed Territory. If the Parties do not agree on such commercial terms by the end of such [***] period, then the Parties may finalize such commercial terms pursuant to baseball arbitration under Section 15.2(c).

(e) **Transition Assistance**. Upon AN2's reasonable request after the effective date of termination, Brii Bio shall provide AN2 with copies of any promotional and marketing materials generated by or on behalf of Brii Bio with respect to Licensed Compounds prior to the effective date of termination. Brii Bio shall bear its internal costs associated with providing such materials, and AN2 shall reimburse Brii Bio for any external costs associated with providing such materials.

(f) **Inventory**. If this Agreement is terminated by Brii Bio pursuant to Section 14.2(c) or by AN2 pursuant to Section 14.2(a), then AN2 shall have the right, but not the

obligation, to purchase any and all of the inventory of Licensed Products held by Brii Bio or its Affiliates or Sublicensees as of the effective date of termination, at a price equal to the transfer price paid by Brii Bio to AN2 for such inventory.

14.4 Effects of Termination by Brii Bio pursuant to Sections 14.2(a) or Section 14.2(b). If Brii Bio would have the right to terminate this Agreement under Section 14.2(a) or Section 14.2(b), then Brii Bio may, in its sole discretion, elect by written notice to AN2:

(a) to either exercise such termination right, such that (i) the effects of termination set forth in Sections 14.3(a) and 14.3(b) shall continue to apply, except that AN2 shall bear all costs incurred under Sections 14.3(b); and (ii) if such termination occurs following the First Commercial Sale of Licensed Product in the Licensed Territory, the Parties shall confer and discuss in good faith any appropriate remedies corresponding to Sections 14.3(c), 14.3(d), 14.3(e) and 14.3(f); or

(b) instead of exercising such termination right, and without limiting Brii Bio's rights otherwise set under this Agreement: (i) terminate any review, comment, discussion, or approval rights granted to AN2 under this Agreement with respect to Licensed Products, in whole or in part, including rights at the JSC; (ii) reduce Brii Bio's Development and Commercialization reporting obligations (other than Sales & Royalty Reports) with respect to Licensed Products to a single annual high-level summary of Brii Bio's Development and Commercialization activities with respect thereto; and/or (iii) require the Parties to re-negotiate and amend the financial terms set forth in Article 8, subject to baseball arbitration under Section 15.2(c) if the Parties are unable to agree within [***] following the effective date of Brii Bio's request for such revised payment structure. For clarity, the Parties hereby agree and acknowledge that any renegotiation or arbitration to any financial terms pursuant to Section 14.4(b)(iii) shall be subject to, and the Parties and/or arbitration tribunal shall fully take into account during such renegotiation or arbitration, the limitations of liability set forth in Section 13.6 with respect to any claims to any indirect, punitive, special, incidental and consequential damages (including any claims for lost profits or revenues) arising under or in connection with this Agreement under any theory of liability.

14.5 Effects of Termination by AN2 pursuant to Section 14.2(d).

(a) **Licenses from AN2.** All licenses and other rights granted by AN2 to Brii Bio under this Agreement shall terminate, including all sublicenses granted by Brii Bio unless such sublicenses are assumed by AN2 pursuant to Section 4.4, which shall survive such termination. AN2 shall have a reversion of all rights previously licensed to Brii Bio under Section 4.1 for which the relevant licenses have terminated on a fully paid-up and royalty-free basis, itself or with or through an Affiliate or Third Party, to Develop and Commercialize the Licensed Products in the Field in the Licensed Territory at AN2's discretion.

14.6 General Effects of Termination.

(a) **Multiple Remedies**. Notwithstanding anything to the contrary in this Agreement, termination is not the sole remedy under this Agreement, and all other remedies will remain available if any termination is affected.

(b) **Return of Confidential Information**. Upon any termination of this Agreement, each Party shall promptly return to the other Party, or delete or destroy, all relevant records and materials in such Party's possession or control containing Confidential Information of the other Party; *provided that*: (i) such Party may keep one (1) copy of such materials for archival purposes only, subject to continuing confidentiality obligations; and (ii) each Receiving Party will not be obligated to destroy such materials containing Confidential Information of the Disclosing Party that are necessary for the Receiving Party to exercise any other license or right of the Receiving Party that survives such termination of this Agreement.

14.7 Survival. Any expiration or termination of this Agreement shall not affect rights or obligations of the Parties under this Agreement that have accrued prior to the date of expiration or termination. Notwithstanding anything to the contrary, the following provisions shall survive any termination of this Agreement: Sections 4.7, 11.1(a), 11.1(b)(i), 14.3, 14.4, 14.5, 14.6 and 14.7, and 14.8, and Article 1 (as applicable), Article 9 (solely with respect to any payments accrued prior to the effective date of termination), Article 10, Article 13, Article 15 and Article 16.

14.8 Termination License to Anacor. If: (a) Anacor terminates the Anacor Agreement pursuant to Sections 13.2 or 13.3 of the Anacor Agreement, or AN2 terminates the Anacor Agreement pursuant to Section 13.4 of the Anacor Agreement; and (b) Brii Bio does not enter into a direct license with Anacor pursuant to Section 12.2(k), then Anacor shall have a perpetual, irrevocable, worldwide, fully-paid up, royalty-free exclusive right and license, with the right to grant sublicenses, under the Brii Bio Sole Inventions that relate to the Licensed Product and the Brii Bio Joint Inventions that relate to the Licensed Product, as they exist as of the effective date of termination of the Anacor Agreement, to use, develop, commercialize and manufacture Licensed Compounds and Licensed Products.

ARTICLE 15

DISPUTE RESOLUTION AND GOVERNING LAW

15.1 Dispute Resolution Process. The Parties recognize that from time to time, there may be disputes, controversies or claims arising out of or relating this Agreement. If the Parties cannot resolve any such dispute within [***] after written notice of a dispute from one (1) Party to another, either Party may, by written notice to the other Party, have such dispute referred to the Senior Executives. The Senior Executives shall negotiate in good faith to resolve the dispute within [***]. During such period of negotiations, any applicable time periods under this Agreement shall be tolled. If the Senior Executives are unable to resolve the dispute within such time period, then the dispute shall be resolved as follows:

(a) for final resolution of matters not referred to expert determination under Section 2.1 or Section 5.1(f)(ii)(C), including disputes regarding whether a Party properly exercised its final decision-making authority under Section 5.1(f)(ii)(A) or Section 5.1(f)(ii)(B), by binding arbitration in accordance with Section 15.2. Notwithstanding anything in this Article 15 to the contrary, AN2 and Brii Bio shall each have the right to apply to any court of competent jurisdiction for appropriate interim or provisional relief, as necessary to protect the rights or property of that Party;

(b) for final resolution of matters designated under Section 2.1 and Section 5.1(f)(ii)(C), to be resolved by expert determination, in accordance with Section 15.3.

15.2 Arbitration.

(a) If the Parties are unable to resolve such dispute through the procedures described in Section 15.1, then, except in the case of a dispute, controversy or claim that concerns the validity or infringement of a patent, trademark or copyright, the dispute shall be finally resolved by expedited binding arbitration under the Rules of Arbitration of the International Chamber of Commerce (the "**ICC Rules**") before a tribunal of [***] independent and neutral arbitrators experienced in the pharmaceutical business; [***] nominated by AN2, [***] nominated by Brii Bio and [***] nominated by the foregoing [***] Party-nominated arbitrators within [***] of the second Party-nominated arbitrator's appointment. The Parties agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply irrespective of the amount in dispute, except as modified herein.

(b) The seat, or legal place, of arbitration shall be New York City, New York. The arbitration shall be conducted in the English language. Notwithstanding Section 15.4, the arbitration and this agreement to arbitrate shall be governed by Title 9 (Arbitration) of the United States Code. Based on the Request, Answer and Counterclaims (if any) and Reply (if any) (each as defined under the ICC Rules), the tribunal shall determine whether any discovery process is necessary, and, if it is, the parameters of such process with the intent of resolving the arbitration as expeditiously as possible (*e.g.*, limiting the number of depositions and the time discovery is permitted to take). The Parties and arbitrators shall employ procedures designed to resolve the conflict by arbitration within [***] of the dispute being referred for arbitration. Judgment upon the award may be entered in any court of competent jurisdiction. The existence and contents of the arbitration shall be kept confidential by each Party except to the extent that disclosure may be required to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in legal proceedings.

(c) If a Dispute proceeds to arbitration pursuant to the provisions of Sections 14.3(d) or 14.4 of the Agreement, the arbitration shall be conducted in accordance with the provisions of Section 15.2, except that the tribunal's decision shall be rendered as follows: (i) at the conclusion of the arbitration hearings, each Party shall submit one (1) proposal to the tribunal; and (ii) the tribunal shall accept only one (1) of the proposals submitted by the Parties (without making any changes to such proposal) and render such proposal as the tribunal's final decision. Notwithstanding anything to the contrary in the Agreement, the tribunal shall not have the authority to render any decision other than selecting one (1) of the proposals submitted by a Party pursuant to this Section 15.2(c).

15.3 Expert Determination. For final resolution of matters designated under Section 2.1 and Section 5.1(f)(ii)(C) to be resolved by expert determination, the Parties hereby agree that such decision shall be conducted expeditiously by an independent expert selected unanimously by the Parties. Either Party may initiate the expert determination by giving written notice to the other Party. If the Parties are unable to agree upon an expert within [***] after receipt of the notice of request for an expert determination, then, the ICC International Centre for ADR

shall appoint such expert in accordance with the Rules for the Appointment of Experts and Neutrals of the International Chamber of Commerce. The expert, once appointed, shall have no ex parte communications with either Party concerning the expert determination or the underlying dispute. The Parties agree to cooperate fully in the expeditious conduct of such expert determination and to provide the expert with access to all facilities, books, records, documents, information and personnel necessary to make a fully informed decision in an expeditious manner. Before issuing a final decision, the expert shall issue a draft report and allow the Parties to the dispute to comment on it. The expert shall endeavor to resolve the dispute within [***] after his or her appointment, taking into account the circumstances requiring an expeditious resolution of the matter in dispute. The expert's decision shall be final and binding on the Parties. The costs of the expert determination shall be shared by the Parties, regardless of the outcome of the determination.

15.4 Governing Law; Jurisdiction. This Agreement and all questions regarding its existence, validity, interpretation, breach or performance, shall be governed by, and construed in accordance with, the laws of the State of New York, United States, without reference to its conflicts of law principles.

ARTICLE 16

GENERAL PROVISIONS

16.1 Force Majeure. Neither Party shall be held liable or responsible to the other Party or be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement to the extent such failure or delay is caused by or results from events beyond the reasonable control of the non-performing Party, including fires, floods, earthquakes, extreme weather, embargoes, shortages, epidemics, quarantines, war, acts of war (whether war be declared or not) or terrorism, insurrections, riots, civil commotion, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any Governmental Authority (each of the foregoing, a "**Force Majeure Event**"). The non-performing Party shall notify the other Party of such Force Majeure Event within ten (10) days after such occurrence by giving written notice to the other Party stating the nature of the event, its anticipated duration, and any action being taken to avoid or minimize its effect. The suspension of performance shall be of no greater scope and no longer duration than is necessary and the non-performing Party shall use Commercially Reasonable Efforts to remedy its inability to perform; *provided, however*, that in the event the suspension of performance continues for sixty (60) days after the date of the occurrence, the Parties shall meet to discuss in good faith how to proceed in order to accomplish the goals outlined in this Agreement.

16.2 Waiver of Breach. Any waiver of any provision of this Agreement shall be effective only if in writing (specifying the provision so waived) and signed by the Party to be charged. No delay or waiver by either Party of any condition or term in any one (1) or more instances shall be construed as a further or continuing waiver of such condition or term or of another condition or term.

16.3 Further Assurances. Each Party agrees to execute, acknowledge and deliver such further instruments, and to perform all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

16.4 Amendment. No amendment or modification of any provision of this Agreement shall be effective unless in writing (specifying the provision so amended or modified) and signed by both Parties hereto.

16.5 Severability. In the event any provision of this Agreement should be held invalid, illegal or unenforceable, the Parties shall negotiate, in good faith a valid, legal and enforceable substitute provision that most nearly reflects the original intent of the Parties. All other provisions of this Agreement shall remain in full force and effect in such jurisdiction.

16.6 Entire Agreement. This Agreement (including the Schedules attached hereto) constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous agreements and understandings, negotiations, writings and commitments, either oral or written, in respect to the subject matter hereof, including the Confidentiality Agreement. Each of the Parties acknowledges and agrees that, in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any Person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

16.7 Notices. Any notice or communication required or permitted under this Agreement shall be in writing in the English language, delivered personally, sent by email (and promptly confirmed by personal delivery, registered mail or overnight courier), sent by courier or sent by registered mail, postage prepaid to the following addresses of the Parties (or such other address for a Party as may be at any time thereafter specified by like notice):

To AN2:	**To Brii Bio:**
AN2 Therapeutics, Inc.	Brii Biosciences Limited
[***]	[***]

Any such notice shall be deemed to have been given: (a) when delivered if personally delivered; (b) on the next Business Day if sent by email; and/or (c) on the fifth (5th) Business Day following the date of mailing if sent by mail or courier. Notices hereunder will not be deemed sufficient if provided only between or among each Party's representatives on the Joint Steering Committee.

16.8 Assignment. This Agreement shall not be assigned or otherwise transferred, nor may any right or obligations hereunder be assigned or transferred, by either Party without the prior written consent of the other Party; except that either Party may assign or otherwise transfer this Agreement without the consent of the other Party (a) to an Affiliate; or (b) to a successor in interest that acquires all or substantially all of the business, stock or assets of the assigning Party relating to the subject matter of this Agreement, whether by merger, consolidation, acquisition or otherwise. Subject to the foregoing, this Agreement shall inure to the benefit of each Party, its successors and permitted assigns. Any assignment of this Agreement in contravention of this Section 16.8 shall be null and void.

16.9 Acquisition Affiliates. Notwithstanding anything to the contrary set forth in this Agreement, with respect to any Third Party that becomes an Affiliate of a Party after the Effective Date as a result of such Party (or Affiliate of a Party, as applicable) undergoing a Change of Control with such Third Party or acquiring such Third Party, whether by merger, stock purchase, or purchase of assets, such Party (or Affiliate of a Party, as applicable) will not be deemed to Control any Know-How, Patents, Marketing Approval, Regulatory Documentation, regulatory data, or other intellectual property rights of such Third Party (or such Third Party's pre-Change of Control or pre-acquisition affiliates) where (i) such Know-How, Patents, Marketing Approval, Regulatory Documentation, regulatory data, or other intellectual property rights are owned or in-licensed by such Third Party (or its pre-Change of Control or pre-acquisition affiliate) prior to becoming an Affiliate of such Party or developed by such Third Party (or its pre-Change of Control or pre—acquisition affiliate) entirely independent of this Agreement and the technology of such Party (and its Affiliates) undergoing such transaction and without use, practice or reference to the Patents, Know-How and other materials licensed to a Party hereunder, and (ii) such Know-How, Patents, Marketing Approval, Regulatory Documentation, regulatory data, or other intellectual property rights were not Controlled by such Party (or Affiliate of a Party, as applicable) prior to such Change of Control or acquisition. For clarity, in the event such Third Party (or its pre-Change of Control or pre-acquisition affiliate) performs under this Agreement or practices any of the Patents, Know-How or other materials licensed by the Parties hereunder, or the Party (or its Affiliate) for such Change of Control or acquisition transaction uses the Know-How, Patents, Marketing Approval, Regulatory Documentation, regulatory data, or other intellectual property rights of such Third Party (or such Third Party's pre-Change of Control or pre-acquisition affiliates) in performance hereunder, then the foregoing shall be deemed to be "Controlled" by such Party for purposes hereof.

16.10 Relationship of the Parties. The Parties shall be independent contractors of one another and nothing in this Agreement or any action that may be taken pursuant to its terms is intended, or shall be deemed, to establish a partnership, joint venture or agency between the Parties. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party. All persons employed by a Party shall be employees of such Party and not of the other Party and all costs and obligations incurred by reason of any such employment shall be for the account and expense of such Party.

16.11 Headings. The heading of the Articles and Sections of this Agreement are included for convenience of reference and shall not affect its meaning or interpretation.

16.12 Counterparts. This Agreement may be executed in two (2) counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed signature pages of this Agreement may be scanned and delivered electronically and such signatures shall be deemed to bind each Party hereto as if they were original signatures.

16.13 Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this Agreement, and any dispute proceeding related to or arising hereunder, shall be in the English language. If there is a discrepancy between any translation of this Agreement, this Agreement shall prevail.

16.14 Interpretation. Except where the context expressly requires otherwise, (a) the use of any gender herein shall be deemed to encompass references to either or both genders, and the use of the singular shall be deemed to include the plural (and vice versa); (b) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation"; (c) the word "will" shall be construed to have the same meaning and effect as the word "shall"; (d) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein); (e) any reference herein to any person or entity shall be construed to include the person's or entity's successors and assigns; (f) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof; (g) all references herein to Sections, or Schedules shall be construed to refer to Sections, or Schedules of this Agreement, and references to this Agreement include all Schedules hereto; (h) the word "notice" means notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other written communications contemplated under this Agreement; (i) provisions that require that a Party, the Parties or any committee hereunder "agree," "consent" or "approve" or the like shall require that such agreement, consent or approval be specific and in writing, whether by written agreement, letter, approved minutes or otherwise, including by e-mail; (j) unless stated otherwise, references to any specific law, rule or regulation, or article, section or other division thereof, shall be deemed to include the then-current amendments thereto or any replacement or successor law, rule or regulation thereof; (k) the term "or" shall be interpreted in the inclusive sense commonly associated with the term "and/or"; (l) each Party has used its legal counsel in the negotiation of this Agreement, and the Agreement will not be construed against either Party as the drafter; and (m) references to any Article include Sections that are part of such Article, and references to a Section includes subsections that are part of the related Section (*e.g.*, a section numbered "Section 2.1" would be part of "Article 2", and references to "Section 2.1" would also refer to material contained in the subsection described as "Section 2.1(a)").

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

AN2 THERAPEUTICS, INC.

By: /s/ Eric Easom
Name: Eric Easom
Title: CEO

BRII BIOSCIENCES LIMITED

By: /s/ Zhi Hong
Name: Zhi Hong
Title: CEO

[Signature Page to License Agreement]

Schedule A

AN2 Patents

[***]

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

Schedule B

Claims; Judgments; Settlements

[***]

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

Schedule C

Disclosures

[***]

[***] Certain information in this document has been omitted from this exhibit because AN2 Therapeutics, Inc. has determined that it is both (i) not material and (ii) is of the type that would customarily and actually be treated as private or confidential.

Exhibit 10.15

March 5, 2021

AN2 Therapeutics, Inc

Re: Amended and Restated Global Health Agreement

Ladies and Gentlemen:

This amended and restated global health agreement ("Global Health Agreement") is entered into in connection with the commitment by Adjuvant Global Health Technology Fund L.P. and Adjuvant Global Health Technology Fund DE L.P. (together, "Adjuvant") to purchase and subscribe for 198,333 Series B Preferred Shares of AN2 Therapeutics, Inc., a Delaware corporation (the "Company") at a price of $35.20404 per share (for a total of $6,999,972.84) (the "Investment") and pursuant to Adjuvant's prior subscription of 834,724 Series A Preferred Shares at a price of $5.99 per share (for a total of $4,999,996.76). Adjuvant is making the Investment in particular pursuant to the terms of this Global Health Agreement, the Series B Preferred Stock Purchase Agreement dated March 5, 2021, the Amended and Restated Investors' Rights Agreement dated March 5, 2021 and the amended and restated certificate of incorporation of the Company approved by the stockholders of the Company on March 4, 2021, each such documents as amended from time to time (collectively, the "Investment Documents").

1. Background

(a) The Company is a US-based company holding assets originally developed by Anacor, a biopharmaceutical company that focused on developing small-molecule therapeutics and was later acquired by Pfizer. Following a strategic review that deprioritized certain assets at Pfizer, the Company was formed to develop anti-infective therapeutics for significant unmet needs. The Company's lead asset, known as Epetraborole, has been licensed from Pfizer (the "Epetraborole License") and targets infections caused by Gram-negative bacterium.

(b) Adjuvant is a life sciences investment fund formed for the charitable purpose of improving global health through the provision of financing to address global health challenges by supporting the development, production and commercialization of drugs, vaccines, medical devices, diagnostics and other related technology targeting global health conditions primarily impacting low- and lower-middle-income countries as defined by the World Bank Group, including those countries listed in Exhibit 1 (the "Target Countries"). Adjuvant has determined that the Investment will offer significant potential to improve global health in Target Countries in accordance with Adjuvant's charitable purpose.

(c) Adjuvant's funders include one or more private foundations that made investments in Adjuvant in the form of program-related investments ("PRIs") under Section 4944(c) of the Internal Revenue Code of 1986, as amended (the "Code"). As part of the PRI requirements in connection with such investments, Adjuvant is required to include certain terms and conditions in the governing documents of its investments. Such terms and conditions are set forth in the Investment Documents, including this Global Health Agreement.

2. PRI Requirements

In consideration of Adjuvant making the Investment on the terms and conditions stated in the Investment Documents (including this Global Health Agreement), and for other good and valuable consideration, the undersigned hereby irrevocably agree to the program-related investment requirements ("PRI Requirements") as follows:

(a) Purposes and Use of Funds

(i) The charitable purposes of the Investment are to provide relief to the poor and distressed, advance science, and improve the health of those living in Target Countries around the world by, among other things, ensuring that innovative and affordable drugs to treat disease are made available for use in public health programs for the benefit of the poor and distressed and made available for purchase in the Target Countries (the "Global Health Objectives"). The proceeds of the Investment will be used by the Company in particular (A) to support the research and clinical development program for Epetraborole for infectious diseases and (B) to thereby facilitate the advancement of Epetraborole indicated for melioidosis, tuberculosis, and any other mutually agreed upon products and/or claims by Adjuvant and the Board of Directors of the Company (together, the "Global Access Products"), in order to further the Global Health Objectives and otherwise carry out the Global Access Commitments set forth below, without impairing the sustainability of the Company.

(ii) The Company acknowledges and understands that the purpose of Adjuvant making the Investment is to advance the Global Heath Objectives while seeking a financial return consistent with Adjuvant's charitable objectives. The Company confirms that, with the funding to be provided by the Investment, the Company has sufficient resources to comply with the PRI Requirements for a certain period of time.

(b) Global Access Commitments. The Company shall engage in the following activities in order to advance the Global Health Objectives (the "Global Access Commitments").

(i) The Company acknowledges the importance of these Global Access Commitments and that their purpose is to ensure that innovative and affordable drugs to treat disease are made available for use in public health programs and private purchase in (i) melioidosis-endemic and melioidosis-at-risk countries and (ii) tuberculosis-endemic and tuberculosis-at-risk countries listed in Exhibit 1 (the "Target Countries"), as agreed to by the Company and Adjuvant.

(ii) The Company shall use its reasonably diligent endeavors to make the Global Access Products accessible to most people in need in the Target Countries, to the extent such access can be achieved on terms that are commercially reasonable for the Company. For the avoidance of doubt, the Company agrees that the maximum price of Global Access Products in the Target Countries will be capped at cost of sales plus 25%. In no event shall the Company be obligated to sell the Global Access Products at a loss.

(iii) In addition to the Investment, the Company shall also actively seek funding from government grants and other granting sources to advance the development of the Global Access Products. Furthermore, the Company shall also use its reasonably diligent endeavors to enter into good faith negotiations with the Gates Medical Research Institute.

(iv) The Company shall develop regulatory strategies for the Global Access Products that in the opinion of the Company and Adjuvant, acting reasonably advances the Global Health Objectives, and it shall pursue the necessary product registrations for its Global Access Products in the Target Countries.

(v) The Company shall make the Global Access Products available to both public and private purchasers in the Target Countries at a reasonable volume that is sufficient to meet the demands of non-profit organization and public-sector purchasers in accordance with a tiered pricing framework that is commercially reasonable for the Company, in the opinion of the Company and Adjuvant, acting reasonably, and that reflects the needs, including price sensitivity, of low-income patients in the Target Countries. The tiered pricing framework shall include pricing based on the type of buyer (public or private) and the geographic location of such buyer.

(vi) The Global Access Commitments set forth in this Section 2 shall continue with respect to each Global Access Product (i) until Adjuvant ceases to be a shareholder of the Company or (ii) 10 years following Epetraborole approval for each respective Global Access Product by a stringent regulatory authority such as the US Food and Drug Administration or the European Medicines Agency, to be selected by the Company in its reasonable discretion, whichever event ((i) or (ii)) occurs later, and shall be fully enforceable by Adjuvant, notwithstanding any other provisions of the Investment Documents. Thereafter, the Company will consider in good faith any recommendation of Adjuvant to make the Global Access Products available in the Target Countries in order to advance the Global Access Objectives.

(vii) The Company shall use best efforts to ensure that its licensees, partners, and distributors in the Target Countries, or any assignee or transferee of its Intellectual Property relating to the Global Access Products, agree to comply with the Global Access Commitments in connection with their access to or use of the Global Access Products.

(viii) In the event of the assignment, sale, exclusive license, or other transfer of the Global Access Products, and/or related technology, the Global Access Commitments shall survive and the Company shall ensure that the Global Access Commitments are assumed by the purchaser, transferee, licensee, or acquirer. Adjuvant shall have the right to review the provisions of the written agreement with such third party that relate to the assumption of the Global Access Commitments to confirm that the Global Access Commitments will survive and be assumed by the third party. The Company shall not grant to a third party any rights or enter into any arrangements, amendments, or agreements that would limit or restrict Adjuvant’s rights to enforce the Global Access Commitments or the Company’s obligations to satisfy the Global Access Commitments, unless such third party expressly assumes such Global Access Commitments to the satisfaction of Adjuvant.

(c) Global Health License

(i) Upon the occurrence of a License Trigger Event, as defined below, the Company shall grant Adjuvant a Global Health License, which shall be a nonexclusive, perpetual, irrevocable, non-terminable, fully-paid up, royalty free license subject to the licensing terms associated with the Epetraborole License (including any payment obligations contained therein) (with the right to sublicense to third parties) to the Global Access Products to use, reproduce, modify, make, have made, distribute, sell and otherwise dispose of the Global Access Products in the Target Countries for the sole purpose of achieving the Global Access Commitments; provided, however, that the grant of such Global Health License shall be contingent upon the Company's obtaining any approvals to the Global Health License required under the Epetraborole License. The Company shall use its best efforts to obtain such approvals.

(ii) A "License Trigger Event" means:

(1) the Company fails to cure an Event of Non-Compliance of this Global Health Agreement, including a failure to perform the Global Access Commitments, within the applicable time period set forth in Section 2(e) of this Global Health Agreement;

(2) the Company or any transferee assigns or transfers (including by exclusive license) without Adjuvant's consent any material intellectual property related to the Global Access Products or other intellectual property subject to the Global Access Commitments and the successor fails to assume or perform the relevant Global Access Commitments (unless the Company has retained sufficient rights in any such material intellectual property to perform the relevant Global Access Commitments, in the opinion of the Company and Adjuvant, acting reasonably); or

(3) the Company or any transferee (1) institutes any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation, assignment for the benefit of creditors, or similar proceeding relating to it under the laws of any jurisdiction or any such proceeding is instituted (for justified reasons) against the Company or any transferee that remains undismissed or unstayed for a period of 90 days, or (2) ceases to conduct business in the ordinary course or is determined to no longer be a going concern.

(d) Required Reporting

(i) In addition to any and all reports required to be delivered to Adjuvant under the Investment Documents, the Company shall furnish, or cause to be furnished, to Adjuvant and, if requested, the Bill & Melinda Gates Foundation (the "Foundation"), the following reports and certifications (the "PRI Reports"):

(1) within 90 days after the end of each fiscal year of the Company during which Adjuvant owns all or a portion of the Investment, a full and complete financial report relating to the Investment of the type ordinarily required by the Company's commercial and public investors under similar circumstances, including but not limited to the use of Adjuvant's funds;

(2) within 90 days after the end of each fiscal year of the Company during the term of the Investment, a report, signed by an officer of the Company, (a) certifying

that the requirements of the Investment, as set forth in the Investment Documents (including this Global Health Agreement) were met during the immediately preceding year, and (b) describing the use of the proceeds of the Investment and evaluating the Company's progress toward achieving the purposes of the Investment, including specifically the Global Health Objectives and the covenants regarding charitable purposes described in Section 2 of this Global Health Agreement, and the activities and the use of the funds towards such purposes;

(3) within 90 days after Adjuvant is no longer an investor in the Company, a final report, signed by an officer of the Company, (a) certifying that the requirements of the Investment, as set forth in the Investment Documents (including this Global Health Agreement) were met during the term of the Investment, (b) describing the material activities of the Company with respect to the Investment and generally the use of proceeds made during the entire period in which the Investment was outstanding, and (c) evaluating the progress toward achieving the purposes of the Investment, including specifically the Global Health Objectives and the covenants regarding charitable purposes described in Section 2 of this Global Health Agreement.

(ii) The Company shall also provide Adjuvant with any other information about the use of funds, activities, operations, and financial condition of the Company as may be reasonably requested by the Adjuvant investment manager, the Foundation or any other PRI investor of Adjuvant and as may be necessary to discharge any expenditure responsibility, within the meaning of Sections 4945(d)(4) and 4945(h) of the Code, including but not limited to the information required to satisfy the applicable PRI reporting requirements.

(e) Maintenance of Charitable Objectives; Events of Default.

The Company shall utilize the proceeds of the Investment solely for the purposes set forth in the Investment Documents and, in particular, to advance the purposes and objectives described in Section 2 of this Global Health Agreement and in a manner consistent with the terms and provisions of this Global Health Agreement. If the Company fails to operate in accordance with such purposes or has failed to comply with the provisions of this Global Health Agreement, including the requirements regarding the use of the proceeds of the Investment (an "Event of Non-Compliance"), it shall notify Adjuvant in writing within 30 days of the occurrence of such Event of Non-Compliance and shall describe the steps the Company shall take to rectify the situation within 30 days of the notification. Notwithstanding the foregoing sentence, if Adjuvant believes an Event of Non-Compliance has occurred, it shall notify the Company in writing of such Event of Non-Compliance. Such notification shall clearly specify the basis for Adjuvant's determination and request that the Company rectify the specified Event of Non-Compliance within 30 days following the date of the notification. Any Event of Non-Compliance that remains uncured for more than 60 days shall be considered an "Event of Default".

(f) Discontinuation of Financing; Repayment.

If the Company fails to cure an Event of Non-Compliance within 60 days of such Event of Non-Compliance, Adjuvant shall not pay any further funds to the Company pursuant to the Investment Documents. To the extent legally permitted, the Company shall repay to Adjuvant any portion of the Investment that is not used for the purposes of the Investment, as set forth in Section 2(a) of this Global Health Agreement.

(g) Prohibited Uses

The Company shall not expend any proceeds of the Investment to carry on propaganda or otherwise to attempt to influence legislation (within the meaning of Section 4945(d)(1) of the Code), to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive (within the meaning of Section 4945(d)(2) of the Code, or to make any grant that does not comply with the requirements of Section 4945(d)(3) or (4) of the Code. Adjuvant and the Company agree that the proceeds of the Investment are not earmarked to be used for any activity, appearance or communication prohibited hereunder. Adjuvant and the Company further agree that no agreement or understanding exists between them whereby Adjuvant may cause the selection of any individual or organization as a recipient of payments made from the proceeds of the Investment. The parties understand that the Investment is not intended to benefit, and will not benefit, any person having a personal or private interest in Adjuvant.

(h) Transfer

The Company shall have no right to transfer or assign its obligations under this Global Health Agreement without the prior written consent of Adjuvant. Any attempted assignment in violation of this provision shall be void.

(i) Public Reports

Subject to the prior review of the Company, Adjuvant may include information about the Company in its periodic public reports to the extent such information is not considered confidential under the terms of the Investment Documents.

(j) Access to Records

The Company shall maintain books and records adequate to support the information in the PRI Reports and to provide the information ordinarily required by commercial investors under similar circumstances, and the Company shall make such books and records available at reasonable times and under reasonable circumstances for inspection by Adjuvant or its Managing Member. Such books and records shall be maintained and made available to Adjuvant as long as Adjuvant is a shareholder in the Company and for six years after Adjuvant ceases to be a shareholder in the Company. The Company shall meet with Adjuvant and any of its investors or representatives at the sole expense of Adjuvant or such investor, at mutually convenient times at the reasonable request of Adjuvant or the investor, subject to any applicable confidentiality restrictions inter alia to the extent reasonably necessary to monitor compliance with the terms of the Investment and the Environmental, Social and Governance Policies and Practices and Exclusion List, as set forth on Exhibit 2, and the covenants for AML/CFT/UN Security Council Resolutions & Sanctionable Practices, as set forth on Exhibit 3.

(k) Promotion of Terrorist Activities

In compliance with the provisions of the USA Patriot Act of 2001, Pub. L. No. 107-56, 115 Stat. 272, as amended, and U.S. Executive Order 13224, the Company represents that it will not promote or support terrorist activities and that it will not provide any proceeds of the Investment to any entity or individual that promotes or engages in such activities.

(l) Environmental, Social and Governance Requirements

The Company acknowledges the environmental, social and governance requirements of Adjuvant set forth on Exhibit 2 and agrees to observe the referenced International Finance Corporation ("IFC") performance standards.

(m) Anti-Corruption Requirements

The Company shall comply with the anti-corruption requirements set forth on Exhibit 3.

3. Miscellaneous

(a) Entire Agreement; Modification

The terms and conditions set forth in this Global Health Agreement are in addition to the provisions stated in any other documents executed between Adjuvant and the Company and the terms and conditions of this Global Health Agreement shall – with regard to the PRI Requirements set forth in Section 2 of this Global Health Agreement, including the Global Access Commitments – prevail over any discrepancies with provisions in any such other document, including without limitation the Investment Documents. All references to Sections shall be deemed to refer to sections of this Global Health Agreement unless otherwise specifically stated herein. No change, modification or waiver of any term or condition of this Global Health Agreement shall be valid unless it is in writing, it is signed by the party to be bound, and it expressly refers to this Global Health Agreement.

(b) Authority; Governing Law; Jurisdiction

Each of the signatories below covenants, represents and warrants that it has all power and authority necessary to enter into this Global Health Agreement, that its execution of this Global Health Agreement has been duly authorized by all necessary action and that, on execution, it will be fully binding and enforceable in accordance with its terms, and that no other consents or approvals of any other person or third parties are required or necessary for this Global Health Agreement to be so binding. This Global Health Agreement shall be governed by the laws of the State of Delaware without regard to its conflict of laws provisions.

(c) Counterparts

This Global Health Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall be deemed to be and constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused to be executed this Global Health Agreement effective as of March 5, 2021.

ADJUVANT GLOBAL HEALTH TECHNOLOGY FUND L.P.

BY: ADJUVANT CAPITAL GP, L.P.,
ITS GENERAL PARTNER
BY: ADJUVANT CAPITAL MANAGEMENT, LLC,
ITS GENERAL PARTNER

Name: */s/ Kabeer Aziz*
Title: Kabeer Aziz
Date: Secretary

ADJUVANT GLOBAL HEALTH TECHNOLOGY FUND DE, L.P.

BY: ADJUVANT CAPITAL GP, L.P.,
ITS GENERAL PARTNER
BY: ADJUVANT CAPITAL MANAGEMENT, LLC,
ITS GENERAL PARTNER

Name: */s/ Kabeer Aziz*
Title: Kabeer Aziz
Date: Secretary

AN2 THERAPEUTICS, INC.

Name: */s/ Eric Easom*
Title: Eric Easom
Date: Chief Executive Officer

EXHIBIT 1

Target countries listed in this side letter shall be limited to **Thailand** as well as the Low Income and Lower-Middle Income Countries as defined by the World Bank, listed below.

Low-Income Countries

Afghanistan	Guinea-Bissau	Sierra Leone
Benin	Haiti	Somalia
Burkina Faso	Korea, Dem. People's Rep.	South Sudan
Burundi	Liberia	Syrian Arab Republic
Central African Republic	Madagascar	Tajikistan
Chad	Malawi	Tanzania
Comoros	Mali	Togo
Congo, Dem. Rep	Mozambique	Uganda
Eritrea	Nepal	Yemen, Rep.
Ethiopia	Niger	Zimbabwe
Gambia, The	Rwanda	
Guinea	Senegal	

Lower-Middle Income Countries

Angola	Indonesia	Papua New Guinea
Bangladesh	Kenya	Philippines
Bhutan	Kiribati	São Tomé and Principe
Bolivia	Kosovo	Solomon Islands
Cabo Verde	Kyrgyz Republic	Sri Lanka
Cambodia	Lao PDR	Sudan
Cameroon	Lesotho	Swaziland

Congo, Rep.	Mauritania	Timor-Leste
Côte d’Ivoire	Micronesia, Fed. Sts.	Tunisia
Djibouti	Moldova	Ukraine
Egypt, Arab Rep.	Mongolia	Uzbekistan
El Salvador	Morocco	Vanuatu
Georgia	Myanmar	Vietnam
Ghana	Nicaragua	West Bank and Gaza
Honduras	Nigeria	Zambia
India	Pakistan	

EXHIBIT 2

Adjuvant Investee ESG Requirements

1. In connection with any proposed investment:

i. Before any investment, Adjuvant will review and investigate information available in the public domain regarding any adverse impact on local communities or the environment or adverse environmental or social performance associated with Adjuvant's investment and use that information provisionally to designate the proposed investment a Category A, Category B or a Category C Client/Activity (as defined below). In addition, Adjuvant will perform an ES&G due diligence including a review of regulatory and applicable legal environmental and governance compliance and compliance with the IFC Performance Standards on Environmental and Social Sustainability - Effective January 1, 2012 of the proposed investee. Due diligence findings will be documented in an Environmental Social and Governance due diligence report ("ES&G Due Diligence Report"). In the event that there are any items that require corrective action, a Corrective Action Plan will be provided to the Company. Based on this due diligence, the initial categorization shall be either confirmed or revised to reflect the nature of the proposed investment.

ii. In connection with any capital call (or other application of Adjuvant capital) for the proposed investment, Adjuvant will confirm (a) the categorization of the operations of the Company, (b) the rationale for such categorization, and (c) that Adjuvant has applied the ES&G Management System in accordance with the ES&G Requirements with respect to the proposed investment.

iii. In addition, upon request by any member of the Limited Partner Advisory Committee, Adjuvant shall promptly (but in any event within two business days of such request, and prior to making the relevant investment), provide copies of the ES&G Due Diligence Report, and/or any proposed corrective action plan, prepared in connection with the proposed investment.

iv. Adjuvant will only make an investment in a company (including a new or follow-on investment in an existing portfolio company) if: (i) any identified adverse impact or performance has been resolved in accordance with the ES&G Requirements; or (ii) the company has agreed on a corrective action plan to so resolve the identified adverse impacts or performance within a reasonable timeline (including appropriate conditions precedent for the proposed investment), and the investment documentation includes appropriate remedies if the Company fails to implement that plan.

1. Definitions.

"Applicable ES&G Law"	All applicable statutes, laws, ordinances, rules and regulations, including, but not limited to, any license, permit or other governmental authorization imposing liability or setting standards of conduct concerning any environmental, social, labor, health and safety or security risks of the type contemplated by the Performance Standards.

“Authority”	Any national, supranational, regional or local government or governmental, administrative, fiscal, judicial, or government-owned body, department, commission, authority, tribunal, agency or entity.
“Category A Activity”	Any activity of the Company which is likely to have significant adverse environmental or social risks and/or impacts that are diverse, irreversible or unprecedented.
“Category A Client”	A company that carries or intends to carry out a Category A Activity.
“Category B Activity”	Any activity of the Company which is likely to have limited adverse environmental or social risks and/or impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures.
“Category B Client”	A company that carries or intends to carry out a Category B Activity.
“Category C Activity”	Any activity of the Company which is likely to have minimal or no adverse environmental or social risks and/or impacts.
“Category C Client”	A company that carries or intends to carry out a Category C Activity.
“Corrective Action Plan”	A plan outlining mitigation or corrective measures to ensure Company compliance with ESG Requirements.
“ES&G Due Diligence Report”	The environmental social and governance due diligence report prepared by the Investment Manager in connection with a proposed Investment by the Company.
“ES&G Management System”	The environmental, social, and governance management system of Adjuvant that enables Adjuvant to identify, assess, and manage the social and environmental risks in respect of Adjuvant’s investment operations and activities in accordance with the ES&G Requirements.
“ES&G Performance Report”	A written report prepared by the Investment Manager, evaluating the social and environmental performance of the Company and the portfolio companies for the previous

	fiscal year, describing in reasonable detail (i) implementation and operation of the ES&G Management System, (ii) the environmental and social performance of the portfolio companies, and (iii) as applicable, compliance by portfolio companies with any applicable portfolio company action plans. “ES&G Requirements”
	The social and environmental obligations to be undertaken by the portfolio companies to ensure compliance with: (i) the Exclusion List; (ii) Applicable ES&G Laws; (iii) the Performance Standards, and (iv) any other requirements established by the ES&G Management System.
“Exclusion List”	The list of prohibited activities set forth below.
“Investment Manager”	The Adjuvant Capital investment team.
“Limited Partner Advisory Committee”	A committee consisting of Adjuvant limited partners that provide advice and counsel as requested by Adjuvant and in connection with Adjuvant’s investments, potential conflicts of interest, and other related matters. “Performance Standards”IFC’s Performance Standards on Social & Environmental Sustainability, dated January 1, 2012.

2. Adjuvant Exclusion List

Adjuvant will apply the following exclusions:

- Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements, or subject to international bans, such as pesticides/herbicides, ozone depleting substances, polychlorinated biphenyls, wildlife or products regulated under CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora).
- Production or trade in weapons and munitions.
- Production or trade in alcoholic beverages (excluding beer and wine).
- Production or trade in tobacco.
- Gambling, casinos and equivalent enterprises.
- Production or trade in radioactive materials. This does not apply to the purchase and/or use of medical equipment, quality control (measurement) equipment and any equipment where IFC considers the radioactive source to be trivial and/or adequately shielded, or for purchase and/or use for pre-clinical and clinical purposes.
- Production or trade in unbonded asbestos fibers. This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.
- Drift net fishing in the marine environment using nets in excess of 2.5 km. in length.

- Production or activities involving harmful or exploitative forms of forced labor[1]/harmful child labor[2].
- Commercial logging operations for use in primary tropical moist forest.
- Production or trade in wood or other forestry products other than from sustainably managed forests.

[1] Forced labor means all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

[2] Harmful child labor means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, spiritual, moral, or social development.

EXHIBIT 3

IFC Anti-Corruption Guidelines

Compliance with United Nations Security Council Resolutions. Adjuvant shall ensure that the Company, consistent with the business and investment profile of Adjuvant, institutes, maintains and complies with internal policies and controls for the purpose of ensuring that the Company will not enter into any transaction (i) with, or for the benefit of, any of the persons or entities named on lists from time to time promulgated by or (ii) related to any activity from time to time prohibited by the United Nations Security Council or its committees pursuant to any resolution issued under Chapter VII of the United Nations Charter.

Sanctionable Practices. The Company shall not engage in (nor authorize or permit any of their Affiliates or any other Person acting on their behalf to engage in), any Sanctionable Practice defined as any Corrupt Practice, Fraudulent Practice, Coercive Practice, Collusive Practice, or Obstructive Practice, as those terms are defined in and interpreted in accordance with the Anti-Corruption Guidelines attached hereto as Exhibit 3A;

Policy Reporting Requirements. The Company commits that, should it become aware of any violation of the Policy Undertakings described in this Annex, it shall promptly notify the Investment Manager of Adjuvant. Furthermore, the Company agrees that should IFC notify Adjuvant of its concern that there has been a violation of the Policy Undertakings described in this Annex, the Company shall cooperate in good faith with the Investment Manager of Adjuvant and IFC and its representatives in determining whether such a violation has occurred, and shall respond promptly and in reasonable detail to any notice from IFC, and shall furnish documentary support for such response upon IFC's request.

Investment Guidelines on Policy Requirements. The Company shall not make or hold any Investments in any entity that (A) is sanctioned pursuant to United Nations Security Council resolutions issued under Chapter VII of the UN Charter; or (B) is on the World Bank Listing of Ineligible Firms (see www.worldbank.org/debarr or any successor website or location).

Divestment of Investments Violating Investment Guideline on Policy Requirements. If Adjuvant becomes aware that the Company is in breach of the Policy Requirements defined under the investment Adjuvant may be required to use reasonable efforts to dispose of the Investment on commercially reasonable terms, taking into account liquidity, market constraints and fiduciary responsibilities.

Definitions.

"AML/CFT" means anti-money laundering and combating the financing of terrorism;
"Policy Undertakings" means the undertakings contained in paragraphs 37(a) (AML/CFT), 37(b) (Compliance with United Nations Security Council Resolutions), 37(c) (Sanctionable Practices), 37(d) (Policy Reporting Requirements), Section 37(h) (Policy Restrictions on Transfers of Interest by Members) and 37(i) (Investment Guidelines on Policy Undertakings) hereof;

“World Bank Listing of Ineligible Firms” means the list, as updated from time to time, of persons or entities ineligible to be awarded a World Bank Group-financed contract or otherwise sanctioned by the World Bank Group Sanctions Board for the periods indicated on the list because they were found to have violated the fraud and corruption provisions of the World Bank Group anticorruption guidelines and policies. The list may be found at http://www.worldbank.org/debarr or any successor website.

EXHIBIT 3A

IFC ANTI-CORRUPTION DEFINITIONS

The purpose of these Guidelines is to clarify the meaning of the terms "Corrupt Practices", "Fraudulent Practices", "Coercive Practices", "Collusive Practices" and "Obstructive Practices" in the context of IFC operations.

1. Corrupt Practices

A "Corrupt Practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

Interpretation

a) Corrupt practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of corrupt practices.

b) It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payor's books and records. Similarly, an investor will not be held liable for corrupt or fraudulent practices committed by entities that administer bona fide social development funds or charitable contributions.

c) In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute corrupt practices unless the action violates applicable law.

d) Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.

e) The World Bank Group does not condone facilitation payments. For the purposes of implementation, the interpretation of "Corrupt Practices" relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.

2. Fraudulent Practices

A "Fraudulent Practice" is any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

Interpretation

a) An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a "Fraudulent Practice" for purposes of this Agreement.

b) Fraudulent Practices are intended to cover actions or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in IFC, MIGA, or PRG operations. Similarly, other illegal behavior is not condoned, but will not be considered as a Fraudulent Practice for purposes of this Agreement.

3. Coercive Practices

A "Coercive Practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

Interpretation

a) Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

b) Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

4. Collusive Practices

A "Collusive Practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

Interpretation

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

5. Obstructive Practices

An "Obstructive Practice" is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice, and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially

impede the exercise of IFC's access to contractually required information in connection with a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice.

Interpretation

Any action legally or otherwise properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

General Interpretation

A person should not be liable for actions taken by unrelated third parties unless the first party participated in the prohibited act in question.

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of AN2 Therapeutics, Inc. of our report dated March 4, 2022 relating to the financial statements of AN2 Therapeutics, Inc., which appears in this Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
San Jose, California
March 4, 2022

Exhibit 107

Calculation of Filing Fee Tables

Form S-1

(Form Type)

AN2 Therapeutics, Inc.

(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price[(1)]	Fee Rate	Amount of Registration Fee[(2)]
Fees to Be Paid	Equity	Common Stock, par value $0.0001 per share	457(o)	—	—	$75,000,000	0.0000927	$6,953
	Total Offering Amounts					$6,953		
	Total Fees Previously Paid					—		
	Total Fee Offsets					—		
	Net Fee Due					$6,953		

(1) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended (the "Securities Act"). Includes the aggregate offering price of additional shares that the underwriters have the option to purchase, if any.

(2) Calculated pursuant to Rule 457(o) under the Securities Act based on an estimate of the proposed maximum aggregate offering price.