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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2018

or

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

Commission File Number 001-36570

ZOSANO PHARMA CORPORATION
(Exact name of registrant as specified in its charter)

Delaware	**45-4488360**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

34790 Ardentech Court
Fremont, CA 94555
(Address of principal executive offices) (Zip Code)

(510) 745-1200
(Registrant's telephone number, including area code)

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

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

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

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

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

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

As of November 12, 2018, the registrant had a total of 11,973,039 shares of its common stock, $0.0001 par value per share, outstanding.

Zosano Pharma Corporation
Quarterly Report on Form 10-Q

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ZOSANO PHARMA CORPORATION
CONDENSED BALANCE SHEETS
(in thousands, except par value and share amounts)

	September 30, 2018 *(unaudited)*	December 31, 2017
ASSETS		
Current assets:		
Cash and cash equivalents	$ 11,962	$ 11,651
Short-term investments in marketable securities	17,514	—
Prepaid expenses and other current assets	1,069	1,742
Total current assets	30,545	13,393
Restricted cash	35	35
Property and equipment, net	7,620	4,152
Other long-term assets	655	420
Total assets	$ 38,855	$ 18,000
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 1,205	$ 1,511
Accrued compensation	1,733	1,571
Secured promissory note (including accrued interest), net of issuance costs, current portion	—	6,687
Build-to-suit obligation, current portion	1,336	—
Other accrued liabilities	1,388	688
Total current liabilities	5,662	10,457
Deferred rent	1,428	495
Build-to-suit obligation, long-term portion, net of debt discount	3,265	—
Total liabilities	10,355	10,952
Commitments and contingencies (note 6)		
Stockholders' equity:		
Preferred stock, $0.0001 par value, 5,000,000 shares authorized; none issued and outstanding as of September 30, 2018 and December 31, 2017	—	—
Common stock, $0.0001 par value; 250,000,000 and 100,000,000 shares authorized as of September 30, 2018 and December 31, 2017, respectively; 11,973,039 and 1,973,039 shares issued and outstanding as of September 30, 2018 and December 31, 2017, respectively	1	—
Additional paid-in capital	279,584	232,922
Accumulated deficit	(251,085)	(225,874)
Stockholders' equity	28,500	7,048
Total liabilities and stockholders' equity	$ 38,855	$ 18,000

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

ZOSANO PHARMA CORPORATION
CONDENSED STATEMENTS OF OPERATIONS
(unaudited; in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Revenue	$ —	$ —	$ —	$ —
Operating expenses:				
Research and development	5,899	5,683	18,238	14,672
General and administrative	2,353	2,036	6,887	6,346
Total operating expenses	8,252	7,719	25,125	21,018
Loss from operations	(8,252)	(7,719)	(25,125)	(21,018)
Other income (expense):				
Interest income (expense), net	74	(154)	(99)	(608)
Other income, net	9	—	13	10
Loss before provision for income taxes	(8,169)	(7,873)	(25,211)	(21,616)
Provision for income taxes	—	—	—	—
Net loss	(8,169)	(7,873)	(25,211)	(21,616)
Net loss per common share – basic and diluted	$ (0.68)	$ (0.20)	$ (2.93)	$ (0.66)
Weighted-average shares used in computing net loss per common share – basic and diluted	11,973	39,228	8,603	32,991

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

ZOSANO PHARMA CORPORATION
CONDENSED STATEMENTS OF CASH FLOWS
(unaudited; in thousands)

	Nine Months Ended September 30,	
	2018	2017
Cash flows from operating activities:		
Net loss	$ (25,211)	$ (21,616)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	614	1,902
Stock-based compensation	815	562
Gain on sale of equipment	—	(13)
Amortization of debt discount/accretion of premium	4	—
Accretion of interest	(535)	44
Deferred rent	1,026	271
Change in operating assets and liabilities:		
Interest receivable	55	—
Prepaid expenses and other assets	307	(1,325)
Accounts payable	(306)	(370)
Accrued compensation and other accrued liabilities	861	(410)
Net cash used in operating activities	(22,370)	(20,955)
Cash flows from investing activities:		
Purchases of property and equipment	(4,082)	(709)
Proceeds from sales of property and equipment	—	22
Purchases of marketable securities	(46,700)	(8,280)
Proceeds from maturities of marketable securities	29,255	1,720
Net cash used in investing activities	(21,527)	(7,247)
Cash flows from financing activities:		
Proceeds from public offering of securities, net of offering costs	45,604	26,623
Proceeds from exercise of warrants and issuance of common stock	—	4,041
Payment of loan principal	(6,316)	(4,310)
Proceeds from exercise of stock options and issuance of common stock	—	137
Proceeds from build-to-suit obligation	5,000	—
Payment of build-to-suit obligation	(80)	—
Net cash provided by financing activities	44,208	26,491
Net increase (decrease) in cash and cash equivalents	311	(1,711)
Cash, cash equivalents and restricted cash at beginning of period	11,686	15,038
Cash, cash equivalents and restricted cash at end of period	$ 11,997	$ 13,327
Supplemental cash flow information:		
Interest paid	$ 257	$ 718
Acquisition of property and equipment under accounts payable	$ —	$ 45

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

Zosano Pharma Corporation
Notes to Condensed Financial Statements
September 30, 2018
(unaudited)

1. Organization and Basis of Presentation

The Company

Zosano Pharma Corporation (the "Company") is a clinical stage biopharmaceutical company focused on providing rapid systemic administration of therapeutics to patients using our proprietary Adhesive Dermally-Applied Microarray, or ADAM™, technology. In February 2017, the Company announced positive results from its ZOTRIP pivotal efficacy trial, or ZOTRIP trial, that evaluated M207, which is its proprietary formulation of zolmitriptan delivered via the Company's ADAM technology, as an acute treatment for migraine. The Company is focused on developing products where rapid administration of established molecules with known safety and efficacy profiles provides an increased benefit to patients, for markets where patients remain underserved by existing therapies. The Company anticipates that many of our current and future development programs may enable the Company to utilize a regulatory pathway that would streamline clinical development and accelerate the path towards commercialization.

Basis of Presentation

The condensed financial statements have been prepared in accordance with United States generally accepted accounting principles ("U.S. GAAP") for interim financial information, the instructions to Form 10-Q and Regulation S-X. They do not include all the information and notes required by U.S. GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Operating results for the nine months ended September 30, 2018 are not necessarily indicative of the results that may be expected for the year ending December 31, 2018, or any other subsequent period. These financial statements should be read in conjunction with the Company's audited financial statements for the year ended December 31, 2017, included in the Company's annual report on Form 10-K and filed with the United States Securities and Exchange Commission ("SEC") on March 12, 2018.

On January 23, 2018, the Company's stockholders approved an increase to the number of authorized shares of the Company's common stock from 100,000,000 to 250,000,000 shares. On January 23, 2018, the board of directors approved a 1-for-20 reverse stock split of our outstanding common stock, which was effected on January 25, 2018. At the effective time, every twenty shares of common stock issued and outstanding were automatically combined into one share of issued and outstanding common stock. The par value of the Company's stock remained unchanged at $0.0001 per share. No fractional shares of our common stock were issued in the reverse stock split, but in lieu thereof, each holder of common stock who would otherwise have been entitled to a fraction of a share in the reverse stock split received a cash payment. In addition, by reducing the number of the Company's outstanding shares, its loss per share in all prior periods increased by a factor of twenty. A proportionate adjustment was also made to the per share exercise price and the number of shares issuable upon the exercise of its outstanding equity awards, options and warrants to purchase shares of its common stock and to the number of shares reserved for issuance pursuant to its equity incentive compensation plans. The reverse stock split affected all stockholders uniformly. As a result of the reverse stock split, the number of the Company's outstanding shares of common stock as of January 25, 2018 decreased from 39,460,931 (pre-split) shares to 1,973,039 (post-split) shares. Unless otherwise noted, all share and per share information included in the financial statements have been retroactively adjusted to give effect to the reverse stock split.

Liquidity and Substantial Doubt in Going Concern

Since inception, the Company has incurred recurring operating losses and negative cash flows from operating activities, and as of September 30, 2018, had an accumulated deficit of $251.1 million. As of September 30, 2018, the Company had approximately $29.5 million in cash, cash equivalents and short-term investments. Presently, the Company does not have sufficient cash, cash equivalents and short-term investments to enable it to fund the anticipated level of operations and meet its obligations as they become due within twelve months following the date of issuance of this Quarterly Report on Form 10-Q. The aforementioned factors raise substantial doubt about the Company's ability to continue as a going concern.

There are no assurances that additional funding will be achieved and that the Company will succeed in its future operations. The Company's inability to obtain required funding in the near future or its inability to obtain funding on favorable terms will have a material adverse effect on its operations and strategic development plan for future growth. If the Company cannot successfully raise additional capital and implement its strategic development plan, its liquidity, financial condition and business prospects will be materially and adversely affected, and it may have to cease operations.

In October 2017, the Company entered into a purchase agreement (the "Lincoln Park Purchase Agreement") with Lincoln Park Capital, LLC ("Lincoln Park"). Under the terms and subject to the conditions of the Lincoln Park Purchase Agreement, the Company has the right, but not the obligation, to sell to Lincoln Park up to $35.0 million worth of shares of our common stock. Such future sales of common stock by the Company, if any, will be subject to certain limitations, and may occur from time to time, at the Company's option, over a 30-month period that commenced on November 21, 2017. No sales of common stock have been made under the Lincoln Park Purchase Agreement as of September 30, 2018. See Note 7 to the accompanying condensed financial statements for additional information on the Lincoln Park Purchase Agreement.

In April 2018, the Company closed a public offering of 10,000,000 shares of common stock at a public offering price of $5.00 per share. The Company received gross proceeds of $50.0 million and approximately $45.6 million of net proceeds from the offering and is using the net proceeds from the offering to fund the long-term safety study of M207 and for working capital and general corporate purposes.

In September 2018, the Company entered into an build-to-suit obligation with Trinity Capital Fund III, L.P. ("Trinity") that provides the Company access to funds in the aggregate principal amount of up to $14 million. The Company drew the first advance of $5 million and may draw up to an additional $9 million, at any time prior to March 30, 2020. See Note 5 for discussion of Trinity Note.

As of September 30, 2018, the Company has an outstanding equipment purchase commitment aggregating approximately $9.2 million. Commitments to other third-party manufacturers and suppliers to conduct pre-commercialization manufacturing activities totaled approximately $4.8 million, which is due in the current fiscal year, and $23.3 million, which is due thereafter. See Note 6.

Historically, the Company's major sources of cash have comprised of proceeds from various public and private offerings of our common stock, warrant exercises, and debt financings. To date, none of its product candidates have been approved by the United States Food and Drug Administration ("FDA"), for sale. The Company will continue to require additional financing to develop M207 and any additional product candidates that it develops. Management intends to seek capital to support the Company's initiatives through equity or debt financing, collaboration or other arrangements with corporate partners, and/or other sources of financing. Management's plans to meet its operating cash flow requirements include financing activities such as public or private offerings of its common stock, and/or preferred stock offerings, issuances of debt and convertible debt instruments and collaborative or other arrangements with corporate partners. However, if such financing is not available at adequate levels or on acceptable terms, the Company could be required to significantly reduce its operating expenses and delay, reduce the scope of or eliminate some of its development programs, out-license intellectual property rights, or a combination of the above, which may have a material adverse effect on the Company's business, results of operations, financial condition and/or its ability to meet its scheduled obligations on a timely basis, if at all.

The Company will continue to evaluate its timelines, strategic needs, and working capital requirements. There can be no assurance that if the Company attempts to raise additional capital, it will be successful in doing so on terms acceptable to the Company, or at all. Further, there can be no assurance that it will be able to gain access and/or be able to execute on securing new sources of funding, new development opportunities, successfully obtain regulatory approvals for and commercialize new products, achieve significant product revenues from its products (if approved), or achieve or sustain profitability in the future.

2. Summary of Significant Accounting Policies

Significant Accounting Policies

There have been no material changes to the Company's significant accounting policies during the nine months ended September 30, 2018, as compared to the significant accounting policies described in Note 2 of the "Notes to Financial Statements" in the Company's Annual Report on Form 10-K for the year ended December 31, 2017.

Use of Estimates

The preparation of the accompanying condensed financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities as of the date of the condensed financial statements, and the reported amounts of revenue and expenses during the periods reported. Actual results could differ from those estimates.

Cash and Cash Equivalents and Restricted Cash

The following table provides a reconciliation of cash, cash equivalents and restricted cash to amounts shown in the statement of cash flows (in thousands):

	September 30,	
	2018	2017
Cash and cash equivalents	$11,962	$13,292
Restricted cash	35	35
	$11,997	$13,327

Cash and Cash Equivalents

All highly liquid investments with maturities of three months or less at the date of purchase are classified as cash equivalents.

Restricted Cash

The Company's restricted cash consists of funds set aside by a contractual pledge and security agreement with a bank whereby $35,000 is held as a security for corporate purchasing cards.

Marketable Securities

The Company classifies its investments in marketable securities as available-for sale. Investments with original maturities between three and twelve (12) months are considered short-term investments. Investments with original maturities greater than 12 months are considered long-term investments. The Company's investments that are classified as available-for-sale are recorded at fair value based upon quoted market prices at period end. Unrealized gains and losses are recorded in earnings. Realized gains and losses are included in earnings and are derived using the specific identification method for determining the cost of investments sold.

Fair Value Instruments

The Company records its financial assets and liabilities at fair value. 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 1 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 carrying values of certain assets and liabilities of the Company, such as cash and cash equivalents, accounts receivable, and accounts payable, approximate fair value due to their relatively short maturities. The carrying value of the Company's short-term notes payable approximates their fair value as the terms of the borrowing are consistent with current market rates and the duration to maturity is short.

Revenue

Effective January 1, 2018, the Company adopted Accounting Standards Codification ("ASC") Topic 606, Revenue from Contracts with Customers. In accordance with ASC Topic 606, the Company recognizes revenue when the customer obtains control of promised goods or services, in an amount that reflects the consideration which it expects to receive in exchange for those goods and services. To determine revenue recognition for arrangements that the Company deems are within the scope of ASC Topic 606, the Company performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) calculate transfer price; (iv) allocate the transaction price to the performance obligation in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation.

Research and Development Expenses

Research and development costs are charged to expense as incurred and consist of costs related to (i) furthering the Company's research and development efforts, and (ii) designing and manufacturing products that incorporate the Company's ADAM technology for the Company's clinical and nonclinical studies.

Net Loss Per Common Share

Basic net loss per common share is calculated by dividing the net loss by the weighted-average number of common shares outstanding during the period, without consideration for potentially dilutive common stock equivalents. Diluted earnings per common share is computed by giving effect to all potentially dilutive common stock equivalents outstanding for the period. For purposes of this calculation, warrants and options to purchase common stock are considered potentially dilutive common stock equivalents. For the nine months ended September 30, 2018 and 2017, diluted net loss per common share was the same as basic net loss per common share since the effect of inclusion of potentially dilutive common stock equivalents would have an antidilutive effect due to the loss reported. The following outstanding common stock equivalents were excluded from the computations of diluted net loss per common share for the periods presented as the effect of including such securities would be antidilutive:

	September 30,	
	2018	2017
Warrants to purchase common stock	274,524	199,524
Options to purchase common stock	1,189,317	90,358
	1,463,841	289,882

Recent Accounting Pronouncements

In August 2018, the U.S Securities and Exchange Commission, (the "SEC"), adopted the final rule under SEC Release No. 33-10532, *"Disclosure Update and Simplification"*, amending certain disclosure requirements that were redundant, duplicative, overlapping, outdated or superseded. In addition, the amendments expanded the disclosure requirements on the analysis of stockholders' equity for interim financial statements. Under the amendments, an analysis of changes in each caption of stockholders' equity presented in the balance sheet must be provided in a note or separate statement. The analysis should present a reconciliation of the beginning balance to the ending balance for each period for which a statement of comprehensive income is required to be filed. This final rule is effective on November 5, 2018. The Company plans to apply the new guidance to its condensed financial statements during the first quarter of 2019.

In August 2018, the FASB issued ASU 2018-15, *Intangible – Goodwill and Other – Internal-Use Software (Subtopic 350-40)*, which aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. ASU 2018-15 is effective for public business entities for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. Early adoption is permitted. The Company is currently evaluating ASU 2018-15 to determine the impact to its condensed financial statements and related disclosures.

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement (Topic 820)*. The new guidance modifies the disclosure requirements on fair value measurements. ASU 2018-13 is effective for all entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. Early adoption is permitted. The Company is currently evaluating ASU 2018-13 to determine the impact to its condensed financial statements and disclosures.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation – Stock Compensation (Topic 718); Improvements to Nonemployee Share-Based Payment Accounting* which aligned certain aspects of share-based payments accounting between employees and non-employees. Specifically, nonemployee share-based payment awards within the scope of Topic 718 are measured at grant-date fair value of the equity instruments that an entity is obligated to issue when the good has been delivered or the service has been rendered and any other conditions necessary to earn the right to benefit from the instruments have been satisfied and an entity considers the probability of satisfying performance conditions when nonemployee share-based payment awards contain such conditions. ASU No. 2018-07 is effective for fiscal years beginning after December 15, 2018, including interim periods within that fiscal year. Early adoption is permitted, but no earlier than an entity's adoption date of Topic 606. The Company is currently evaluating ASU 2018-07 to determine the impact to its condensed financial statements and related disclosures.

In July 2017, the FASB issued ASU No. 2017-11, *Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815), (Part I) Accounting for Certain Financial Instruments with Down Round Features, (Part II) Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception*, which allows for the exclusion of a down round feature, when evaluating whether or not an instrument or embedded feature requires derivative classification. ASU No. 2017-11 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. Early adoption is permitted, including adoption in an interim period. The Company is currently evaluating ASU 2017-11 to determine the impact to its condensed financial statements and related disclosures.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments.* This new guidance is intended to present credit losses on available for sale debt securities as an allowance rather than as a write-down. ASU 2016-13 is effective for annual reporting periods, including interim periods within those annual periods, beginning after December 15, 2019, with early adoption permitted for those fiscal years beginning after December 15, 2018. Adoption of ASU 2016-13 is not expected to have a significant impact in the Company's financial statements and disclosures.

In February 2016, the FASB issued authoritative guidance under ASU 2016-02, *Leases* (Topic 842). ASU 2016-02 requires lessees to recognize lease assets and lease liabilities on the balance sheet and requires expanded disclosures about leasing arrangements. ASU 2016-02 is effective for fiscal years beginning after December 15, 2018 and interim periods in fiscal years beginning after December 15, 2018, with early adoption permitted. While the Company continues to evaluate the effect of adoption on its financial statements, the Company expects the adoption will result in the recognition of right-of-use assets and lease liabilities that were not previously recognized, which will increase total assets and liabilities on the balance sheet.

3. Cash, Cash Equivalents and Investments in Marketable Securities

As September 30, 2018 and December 31, 2017, cash, cash equivalent, and investments in marketable securities, comprised of funds in depository, money market accounts, U.S. treasury securities, commercial paper, and corporate bonds. The Company classifies all highly liquid investments with maturities of three months or less at the date of purchase as cash equivalents. The following table presents cash equivalents and investments carried at fair value as of September 30, 2018 and December 31, 2017 in accordance with the fair value hierarchy defined in Note 2.

		Fair Value Measurements		
		Quoted prices in active market Level I	Significant other observable inputs Level II	Significant unobservable inputs Level III
		(unaudited; in thousands)		
As of September 30, 2018:				
Cash and restricted cash	$ 3,238			
	Total			
Money market funds, included in cash equivalents	8,759	8,759	—	—
Commercial paper	3,237	—	3,237	—
Corporate notes and bonds	6,491	—	6,491	—
U.S. treasuries	7,786	7,786	—	—
Total	$ 26,273	$ 16,545	$ 9,728	$ —

		Quoted prices in active market Level I	Significant other observable inputs Level II	Significant unobservable inputs Level III
As of December 31, 2017:				
Cash and restricted cash	$ 4,587			
	Total			
Money market funds, included in cash equivalents	6,414	6,414	—	—
U.S. government agencies, included in cash equivalents	650	—	650	—
Total	$ 7,064	$ 6,414	$ 650	—

	September 30, 2018			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
	(unaudited; in thousands)			
Commercial paper	$ 3,237	$ —	$ —	$ 3,237
Corporate notes and bonds	6,494	—	(3)	6,491
U.S. Treasuries	7,787	—	(1)	7,786
	$ 17,518	$ —	$ (4)	$ 17,514

	December 31, 2017			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
	(in thousands)			
U.S. government agency bonds	$ 650	$ —	$ —	$ 650
	$ 650	$ —	$ —	$ 650

4. Property and Equipment

The following summarizes the Company's property and equipment for each of the periods presented:

	September 30, 2018 (unaudited; in thousands)	December 31, 2017 (in thousands)
Laboratory and office equipment	$ 1,379	$ 1,159
Manufacturing equipment	10,423	10,387
Computer equipment and software	223	209
Leasehold improvements	16,460	15,660
Construction in progress	5,312	2,351
	33,797	29,766
Less: accumulated depreciation	(26,177)	(25,614)
	$ 7,620	$ 4,152

Depreciation and amortization expense was approximately $0.2 million and $0.6 million for the three months ended September 30, 2018 and 2017, respectively. Depreciation and amortization expense was $0.6 million and $1.9 million for the nine months ended September 30, 2018 and 2017, respectively.

5. Debt Financing

Build-to-Suit Obligation with Trinity

In September 2018, the Company entered into a build-to-suit arrangement with, Trinity Capital Fund III, L.P., ("Trinity") with a maximum funding from Trinity of $14 million. The Company is considered the deemed owner of the asset under construction, and as a result, the Company recorded the cost of the asset under construction as construction in progress which is included as a component of Property and Equipment and a corresponding payable to Trinity on the accompanying unaudited condensed balance sheet for the amount of approximately $2 million as of September 30, 2018. Upon completion of construction, the Company will apply sale-and-leaseback accounting to determine whether it can derecognize the project.

As of September 30, 2018, the Company had taken a single drawdown of $5 million on the build-to-suit arrangement, of which approximately $2 million was incurred for the cost of asset under construction and approximately $2 million to pay off an existing loan with Hercules loan (see below). Each drawdown is accounted for as a separate funding under the build-to-suit arrangement, with each drawdown having a term of thirty-six months. In September 2018, the Company paid interim rent of $80,000 and a security deposit of $160,000. Under the terms of the master lease agreement, the Company will pay subsequent monthly rent payments of $160,000 starting October 2018.

Additional drawdowns, up to an additional $9 million, can be drawn at the Company's option at any time, subject to Trinity's approval, until expiration of the build-to-suit arrangement on March 30, 2020. Upon expiration of the build-to-suit arrangement in March 2020, title to the manufacturing equipment system will transfer to Trinity Capital. The Company has the option, as of the end of the thirty-six month term of the Company's final drawdown (which could be up to 36 months after March 30, 2020 if the final drawdown is taken on March 30, 2020), to (i) extend the lease term for an additional three months, with the option to purchase the equipment at 4% of equipment cost following the end of such extended term, or (ii) purchase the equipment at 12% of equipment cost. It is the Company's intention to exercise one of the aforementioned options in order to take title to the equipment.

Upon expiration of the agreement on March 30, 2020, the Company must pay Trinity a non-utilization fee equal to 3% of any unused portion of the $14 million. The Company has granted Trinity first priority liens and security interests in substantially all of the Company's assets as collateral.

In connection with the build-to-suit arrangement, the Company issued a warrant ("Trinity Warrant") for a total of 75,000 shares of common stock at an exercise price of $3.5928 per share. The Trinity Warrant will expire on September 25, 2025. Proceeds allocated to the Trinity Warrant based on its relative fair value approximated $244,000 was recorded as a discount and will amortize over 36 months. There has been no amortization expense recorded for the period ending September 30, 2018 on the build-to-suit arrangement. In addition, the Company incurred debt issuance costs of $75,400 in connection with the build-to-suit arrangement with Trinity. These deferred financing fees are being amortized as interest expense using the effective interest method.

Senior Secured Term Loan with Hercules

In June 2014, the Company entered into a loan and security agreement with Hercules Capital Inc. ("Hercules"). Hercules provided the Company a $15 million loan ("Hercules Term Loan") of which equal installment payments of principal and interest were due monthly, with the schedule maturity date of December 1, 2018. The Hercules Term Loan bore interest at a variable rate equal to the greater of (i) 7.95%, or (ii) 7.95% plus the prime rate as quoted in the Wall Street Journal minus 5.25%. The interest rate on the Hercules Term Loan was 7.95% as of December 31, 2017. On June 1, 2017, the Company paid a $100,000 legacy end of term charge. On September 25, 2018, the Company paid all its outstanding obligations under the Hercules Term Loan, including an end of term charge of $351,135.

For the three and nine months ended September 30, 2018, the Company recorded total interest expense of $0.1 million and $0.3 million, respectively. For the three and nine months ended September 30, 2017, the Company recorded interest expense of $0.2 million and $0.7 million, respectively, related to the Hercules Term Loan. The outstanding obligation under the Hercules Term Loan was paid in full in September 2018.

6. Commitments and Contingencies

Litigation

The Company is not party to any material pending legal proceedings. However, the Company may from time to time become involved in litigation relating to claims arising in the ordinary course of business.

Operating lease

The Company has an operating lease with BMR-34790 Ardentech Court LP, an affiliate of BMR Holdings and related party, for its office, research and development, and manufacturing facilities in Fremont, California. On June 6, 2017, the Company entered into the seventh amendment to the existing lease ("Seventh Amendment"), effective as of May 30, 2017. The Company entered into the eighth amendment to the existing lease ("Eight Amendment"), effective as of May 30, 2018.

Under the Seventh Amendment, the Company extended the term of the lease for the Company's headquarters in Fremont, California through August 31, 2024, with an option to further extend the lease for an additional 65 months, subject to certain terms and conditions. The Company has agreed to pay a monthly base rent of $136,191 for the period commencing September 1, 2017, and ending on August 31, 2018, with an increase on September 1, 2018, and annual increases on September 1 of each subsequent year until the lease year beginning September 1, 2023. The Seventh Amendment also provides for rent abatements, subject to certain conditions, totaling $275,552 and certain tenant improvements to be completed at the Landlord's expense (not to exceed $975,000 or, under certain conditions, $1,100,000). The Company will incur additional expense of approximately $0.4 million under the lease in connection with roof repairs that will be treated as additional rent and paid over the term of the lease.

The Eighth Amendment extended the deadline for the Company to cause certain tenant improvements to be completed at the landlord's expense from May 30, 2018 to September 30, 2018. No change to the financial statements resulted from the terms of the Eighth Amendment. For the three and nine months ended September 30, 2018, the Company recorded rental expense under the related party operating lease of $0.4 million and $1.2 million, respectively. For the three and nine months ended September 30, 2017, the Company recorded rental expense under the related party operating lease of $0.4 million and $0.8 million, respectively.

As of September 30, 2018, future minimum payments under the Company's non-cancelable related party operating lease for each year ending December 31 are as follows:

	Total
	(unaudited; in thousands)
Remaining of 2018	$ 434
2019	1,754
2020	1,807
2021	1,861
2022	1,914
2023 and thereafter	3,310
	$ 11,080

Severance obligations

The Company has entered into employment agreements with some of its executive officers. Generally, the terms of these agreements provide that, if the Company terminates the officer other than for cause, death, or disability, or if the officer terminates his or her employment with the Company for good cause, the officer shall be entitled to receive certain severance compensation and benefits as described in each such agreement.

On May 15, 2018, Georgia Erbez resigned as Chief Business Officer and Chief Financial Officer. Pursuant to the terms of a Separation Agreement entered into May 10, 2018, the Company agreed to pay severance totaling approximately $201,000, including base salary and benefit continuation coverage, for the six months following the separation date. Accordingly, as of September 30, 2018, the Company has approximately $55,000 of remaining severance related to this arrangement accrued and unpaid. In addition, 25% of the unvested portion of Ms. Erbez' equity awards at the time of her resignation were accelerated. Her vested options remain exercisable for a period of eighteen months following her resignation.

On May 8, 2017, Konstantinos Alataris resigned as President and Chief Executive Officer. Pursuant to the terms of a Separation Agreement, the Company agreed to pay severance totaling approximately $252,000, including base salary and benefit continuation coverage, for six months following the separation date. As of September 30, 2018, the Company had no severance due to Dr. Alataris related to his separation agreement.

Equipment Purchase Commitment

In May 2018, the Company entered into a Purchase Order with Harro Hofliger Packaging Systems to purchase a commercial coating and primary packaging machine for the production of its product candidate, M207, for an aggregate purchase price of $12.2 million. The terms of the purchase commitment are contingent upon performance of certain milestones. The Company anticipates that the obligation will be paid over an eighteen-month period. As of September 30, 2018, the Company had made payments totaling $3.0 million which were recorded in construction-in-progress and the total remaining obligation on the equipment purchase commitment was $9.2 million.

Manufacturing and Supply Agreement with Patheon.

In September 2018, the Company entered into a manufacturing and supply agreement with Patheon Manufacturing Services LLC ("Patheon"), for Patheon to provide services related to the manufacture and commercialization of M207. During the term of the agreement, Patheon will provide manufacturing services to the Company for the manufacturing of M207, including, services related to processing, packaging, labelling and storing of M207, in addition to other services such as stability testing, quality control and assurance and waste disposal.

The Company is required to pay for commercial supply by Patheon in annual base fees in equal monthly installments in the amounts specified in the agreement. In addition, we are required to pay an additional product fee for units in excess of the number of units covered by the base fee at the price per unit provided for in the agreement. The agreement contains negotiated representations and warranties, indemnification, limitations of liability, and other provisions. The initial term of the agreement continues until the seventh anniversary of the date on which we receive NDA approval of M207 in the United States.

The Company may terminate the agreement if M207 is not granted certain regulatory approvals or if such regulatory approval is withdrawn under certain circumstances. The Company or Patheon may terminate the agreement for the other's uncured material breach, uncured force majeure or bankruptcy or insolvency-related events.

Other Commitments

As of September 30, 2018, the Company had $4.8 million of noncancelable purchase commitments due within the current fiscal year and $23.3 million due thereafter, primarily related with third party manufacturers.

7. Stockholders' Equity

On January 24, 2018, the Company amended its certificate of incorporation to increase the number of shares of common stock authorized for issuance from 100,000,000 to 250,000,000. On January 25, 2018, the Company effected a 1-for-20 reverse stock split of its outstanding common stock.

Equity Line of Credit

On October 20, 2017, the Company entered into a purchase agreement and a registration rights agreement with an accredited investor, Lincoln Park, providing for the purchase of up to $35.0 million worth of the Company's common stock over the term of the purchase agreement (the "Equity Line of Credit").

Under the terms and subject to the conditions of the Equity Line of Credit, the Company has the right, but not the obligation, to sell to Lincoln Park, and Lincoln Park is obligated to purchase, up to $35.0 million worth of shares of the Company's common stock. The Company's board of directors reserved 392,104 shares for issuance pursuant to the Equity Line of Credit (inclusive of commitment shares). On October 20, 2017, the Company issued 11,375 shares of its common stock, as initial commitment shares, to Lincoln Park with a fair value of $15.30 per share which was recorded as deferred financing costs and is included within other current assets in the accompanying balance sheet as of September 30, 2018. The deferred financing costs are amortized as interest expense using the effective interest rate method over the term of the Equity Line of Credit as there is no guaranty that additional shares will be sold under the Equity Line of Credit. Additionally, the Company will issue, pro rata, up to an additional 11,375 shares of its common stock as additional commitment shares to Lincoln Park in connection with any additional purchases. Such future sales of common stock by the Company, if any, will be subject to certain limitations, and may occur from time to time, at the Company's option, over the 30-month period that commenced on November 21, 2017, the date that the registration statement was declared effective by the SEC, and the other conditions of the Equity Line of Credit were satisfied. No sales of common stock have been made under the Lincoln Park purchase agreement as of September 30, 2018.

Public Offering – March 2017

On March 22, 2017, the Company completed a registered public offering of 977,500 shares of common stock at a price of $30.00 per share, which included the exercise in full by the underwriters of their over-allotment option to purchase up to 127,500 additional shares of common stock. The total proceeds from the offering were $26.6 million, net of underwriters' discounts and commissions and offering expenses.

Public Offering – April 2018

On April 3, 2018, the Company closed a public offering of 10,000,000 shares of common stock at a public offering price of $5.00 per share. The Company received gross proceeds of $50.0 million and approximately $45.6 million of net proceeds from this offering. The offering was made by the Company pursuant to a registration statement on Form S-1 previously filed with the SEC on December 22, 2017, as amended and declared effective by the SEC on March 28, 2018.

Warrants

Below is a table summarizing the warrants issued and outstanding as of December 31, 2017 and September 30, 2018:

	Warrants Outstanding as of As of December 31, 2017	Warrants Issued	Warrants Exercised	Warrants Expired	Warrants Outstanding As of September 30, 2018	Exercise Price	Expiration Date
PIPE Financing - Series B	195,906	—	—	—	195,906	$ 31.00	8/19/2021
Hercules - June 2014	1,583	—	—	—	1,583	$176.80	1/27/2020
Hercules - June 2015	2,035	—	—	—	2,035	$147.40	6/23/2020
Trinity - September 2018	—	75,000	—	—	75,000	$ 3.59	9/25/2025
Total	199,524	75,000	—	—	274,524		

As of September 30, 2018, the Company had warrants outstanding to purchase 274,524 shares of common stock classified as equity warrants. Equity warrants are recorded at their relative fair market value in the stockholders' equity section of the balance sheet. The Company's equity warrants can only be settled through the issuance of shares.

8. Stock-Based Compensation

The Amended and Restated 2014 Equity and Incentive Plan

The Amended and Restated 2014 Equity and Incentive Plan (the "2014 Plan") provides for the issuance of (i) cash awards and (ii) equity-based awards, denominated in shares of the Company's common stock, including incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock awards, restricted stock units, unrestricted stock awards, performance share awards and dividend equivalent rights. Incentive stock options may be granted only to Company employees. Nonqualified stock options may be granted to Company employees, outside directors and consultants. As of September 30, 2018, the Company had reserved 1,348,173 shares of its common stock for issuance under its 2014 Plan, subject to automatic annual increases as set forth in the plan. Options and awards under the 2014 Plan may be granted for periods of up to ten years. Employee options granted by the Company generally vest over four years. Restricted stock awards granted to employees, directors and consultants can be subject to the same vesting conditions and the right of repurchase by the Company on unvested shares as determined by its board of directors. As of September 30, 2018, the Company had 176,476 shares available for grant under the 2014 Plan. During the nine month period ended September 30, 2018, the Company granted stock options to purchase 131,000 shares of common stock to non-employee directors.

The following table summarizes option and award activity, excluding inducement grants, for the nine months ended September 30, 2018 (unaudited):

	Shares Available for Grant	Outstanding Number of Shares	Weighted-Average Exercise Price per Share	Weighted-Average Remaining Contractual Term (In Years)	Aggregate Intrinsic Value
Balance at December 31, 2017	29,571	99,029	$ 25.33		
Additional shares reserved	1,225,223	—	$ —		
Options granted	(1,089,450)	1,089,450	$ 4.28		
Options cancelled/forfeited/expired	12,999	(12,999)	$ 13.40		
Shares expired under 2012 Plan	(1,867)	—	$ —		
Balance at September 30, 2018	176,476	1,175,480	$ 5.95	9.42	$ 1,170
Exercisable at September 30, 2018		154,081	$ 12.57	8.90	$ —
Vested or expected to vest at September 30, 2018		1,076,786	$ 6.07	9.41	$ 1,027

The aggregate intrinsic value is calculated as the difference between the exercise price of the option and the estimated fair value of the Company's common stock for in-the-money options at September 30, 2018.

Inducement Grants

The Company has also awarded inducement grants to purchase common stock to new employees outside the existing equity compensation plans in accordance with Nasdaq listing rule 5635(c)(4). Such options vest at a rate of 25% of the shares on the first anniversary of the commencement of such employee's employment with the Company, and then one forty-eighth (1/48) of the shares monthly thereafter subject to such employee's continued service. The following table summarizes the Company's inducement grant stock option activities:

	Outstanding Number of Shares	Weighted-Average Exercise Price per Share	Remaining Contractual Term (In Years)	Aggregate Intrinsic Value
Balance at December 31, 2017	19,350	$ 19.12		
Options granted	—	$ —		
Options cancelled/forfeited/expired	(5,513)	$ 15.40		
Balance at September 30, 2018	13,837	$ 20.60	4.77	$ —
Exercisable at September 30, 2018	9,586	$ 18.14	3.07	$ —
Vested or expected to vest at September 30, 2018	13,499	$ 20.46	4.68	$ —

The following summarizes the composition of stock options outstanding and exercisable within the approved stock options plans, which excludes inducement grants, as of September 30, 2018:

	Options Outstanding			Options Exercisable	
Exercise Price	Number of Shares	Weighted-Average Remaining Contractual Life (in years)	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price
$3.97 - $3.97	9,750	9.93	$ 3.97	—	$ —
$4.24 - $4.24	939,533	9.53	$ 4.24	98,364	$ 4.24
$4.27 - $181.00	224,647	8.95	$ 11.94	54,423	$ 23.52
$182.60 - $182.60	150	6.57	$182.60	128	$182.60
$185.80 - $185.80	1,400	6.64	$185.80	1,166	$185.80

Stock-Based Compensation Expense

Total stock-based compensation expense recognized was as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2018	2017	2018	2017
	(unaudited; in thousands)		*(unaudited; in thousands)*	
Research and development	$ 160	$ 61	$ 369	$ 198
General and administrative	186	85	446	364
	$ 346	$ 146	$ 815	$ 562

As of September 30, 2018, the Company had $3.5 million of total unrecognized stock-based compensation, net of estimated forfeitures, related to outstanding stock options that will be recognized over a weighted-average period of 3.5 years.

The Company's stock-based compensation expense for stock options is estimated at the grant date based on the award's fair value as calculated by the Black-Scholes option pricing model and is recognized as expense over the requisite service period. The Black-Scholes option pricing model requires various highly judgmental assumptions including expected volatility and expected term. The expected volatility is based on the historical stock volatilities of several of the Company's publicly listed peers over a period equal to the expected terms of the options as the Company does not have sufficient trading history to use the volatility of its own common stock. To estimate the expected term, the Company has opted to use the simplified method which is the use of the midpoint of the vesting term and the contractual term. If any of the assumptions used in the Black-Scholes option pricing model changes significantly, stock-based compensation expense may differ materially in the future from that recorded in the current period. In addition, the Company estimates the forfeiture rate based on historical experience and its expectations regarding future pre-vesting termination behavior of employees. To the extent that the actual forfeiture rate is different from this estimate, stock-based compensation expense is adjusted accordingly.

The following table presents the weighted-average assumptions for the Black-Scholes option-pricing model used in determining the fair value of options granted:

	For the three months ended September 30,		For the nine months ended September 30,	
	2018	2017	2018	2017
Dividend yield	0%	0%	0%	0%
Risk-free interest rate	2.80%	1.94%	2.74% - 3.00%	1.90% - 2.13%
Expected volatility	89%	89%	89%	89%
Expected term (years)	6.08	6.08	6.08	6.08

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis should be read in conjunction with our financial statements and accompanying notes included in this Quarterly Report on Form 10-Q and the financial statements and accompanying notes thereto and Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2017, filed with the Securities and Exchange Commission, or SEC, on March 12, 2018, as amended. This discussion contains "forward-looking statements" within the meaning of the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995. Such forward looking statements involve risks and uncertainties. We use words such as "may," "continue," "goal," "would," "could," "might," "project," "anticipate," "intend," "forecast," "designated," "approximate," "will," "expect," "anticipate," "estimate," "intend," "plan," "predict," "potential," "believe," "should" or negatives of these words and similar expressions and references to future periods to identify forward-looking statements. Although we believe the expectations reflected in these forward- looking statements are reasonable, such statements are inherently subject to risk and we can give no assurances that our expectations will prove to be correct. These statements appearing throughout this Quarterly Report on Form 10-Q are statements regarding our intent, belief, or current expectations, primarily regarding our operations. You should not place undue reliance on these forward-looking statements, which apply only as of the date of this Quarterly Report on Form 10-Q. As a result of many factors, such as those set forth under "Risk Factors" under Item 1A of Part II below, and elsewhere in this Quarterly Report on Form 10-Q, our actual results may differ materially from those anticipated in these forward-looking statements. We undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this report or to reflect actual outcomes.

Overview

We are a clinical stage biopharmaceutical company focused on providing rapid systemic administration of therapeutics to patients using our proprietary Adhesive Dermally-Applied Microarray, or ADAM™, technology. In February 2017, we announced positive results from our ZOTRIP pivotal efficacy trial, or ZOTRIP trial, that evaluated M207, which is our proprietary formulation of zolmitriptan delivered via our ADAM™ technology, as an acute treatment for migraine. We are focused on developing products where rapid administration of established molecules with known safety and efficacy profiles provides an increased benefit to patients, for markets where patients remain underserved by existing therapies. We anticipate that many of our current and future development programs may enable us to utilize a regulatory pathway that would streamline clinical development and accelerate the path towards commercialization.

ADAM™ is our proprietary, investigational technology platform designed to offer rapid drug absorption into the bloodstream, which can result in an improved pharmacokinetic profile compared to original dosage forms. ADAM™ consists of an array of drug-coated titanium microprojections mounted on an adhesive backing that is pressed on to the skin using a reusable handheld applicator. The microprojections penetrate the stratum corneum, the outermost layer of skin of the epidermis, and allow the drug to be absorbed into very small blood vessels, microcapillaries, that connect to the larger blood vessels that transport the drug to the systemic circulation. We focus on developing products based on our ADAM™ technology for indications in which rapid onset, ease of use and stability offer significant therapeutic and practical advantages, for markets where there is a need for more effective therapies.

Our development efforts are focused on our product candidate, M207. M207 is our proprietary formulation of zolmitriptan delivered utilizing our ADAM™ technology. Zolmitriptan is one of a class of serotonin receptor agonists known as triptans and is used as an acute treatment for migraine. Migraine is a debilitating neurological disease, symptoms of which include moderate to severe headache pain, nausea and vomiting, and abnormal sensitivity to light and sound. The objective of M207 is to provide faster onset of efficacy and sustained freedom from migraine symptoms by delivering rapid absorption while avoiding the gastrointestinal tract. The United States Food and Drug Administration, or FDA, has indicated that one positive pivotal efficacy study, in addition to the required safety study, would be sufficient for approval of M207 for the treatment of migraine.

We have no product sales to date, and we will not have product sales unless and until we receive approval from the FDA or equivalent foreign regulatory bodies, to market and sell M207, or any other product candidate that we develop. Accordingly, our success depends not only on the development, but also on our ability to finance the development of M207, or any other product candidate that we develop. We will require substantial additional funding to complete development and seek regulatory approval for M207, or any other product candidate that we develop. Additionally, we currently have no sales, marketing or distribution capabilities and thus our ability to market our products in the future will depend in part on our ability to develop such capabilities either alone or with collaboration partners.

M207 Long-Term Safety Study

In November 2017, we announced the initiation of our long-term safety study for M207 as an acute treatment for migraine, with the enrollment of the first subject in the study. M207-ADAM is an open label study evaluating the safety of the 3.8 mg dose of zolmitriptan in migraine subjects who have historically experienced at least two migraines per month. Subjects are expected to treat a minimum of two migraines per month on average, with no maximum treatment limits. The study will evaluate at least 150 subjects for six months, and 50 subjects for a year at 31 sites in the U.S. The study is open-label, with investigator visits at months one, two, three, six, nine and twelve. The primary objective of our long-term safety study is to assess the safety of M207 during repeated use over six and twelve months. Other endpoints are electrocardiography and laboratory parameters, as well as percentage of headaches with pain-free response.

In October 2018, we announced that, of the 344 subjects enrolled, more than 150 evaluable subjects have completed their six month visit in the M207-ADAM study. This marked the completion of the first major goal of this study, a defined data set per the protocol in which 150 subjects must treat on average at least two migraines per month for six months and 50 subjects must treat at least two migraines per month for one year. Study subjects have treated more than 4,000 migraines since study initiation. We expect clinical completion by March 2019, when at least 50 of these subjects will complete one year in the study and have treated at least two migraines per month.

As of the date of this filing, we completed the manufacturing of our registration batches in support of the New Drug Application (“NDA”) for M207.

Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our condensed financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"). The preparation of our financial statements in conformity with U.S. GAAP requires our management to make estimates and assumptions that affect the amounts and disclosures reported in the financial statements and accompanying notes. Actual results could differ materially from those estimates. Our management believes judgment is involved in determining revenue recognition, the fair value-based measurement of stock-based compensation, and accruals. Our management evaluates estimates and assumptions as facts and circumstances dictate. As future events and their effects cannot be determined with precision, actual results could differ from these estimates and assumptions, and those differences could be material to the financial statements. If our assumptions change, we may need to revise our estimates, or take other corrective actions, either of which may also have a material adverse effect on our results of operations, liquidity and financial condition.

We are an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012. Emerging growth companies can delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards, and, therefore, will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

There have been no significant and material changes in our critical accounting policies and use of estimates during the nine months ended September 30, 2018, as compared to those disclosed in "Part II, Item 7 – Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Significant Judgments and Estimates" in our Annual Report on Form 10-K for the year ended December 31, 2017 filed with the SEC.

Financial Operations Overview

As of September 30, 2018, we had an accumulated deficit of $251.1 million. We have incurred significant losses and expect to incur significant losses in the foreseeable future as we advance M207 into later stages of development, and if approved, commercialization. On April 3, 2018, the Company closed a public offering of 10,000,000 shares of common stock at a public offering price of $5.00 per share. The net proceeds of the offering were approximately $45.6 million. We are using the net proceeds from this offering to advance the long-term safety study of M207 and for working capital and general corporate purposes.

We expect our research and development expenses to increase significantly as we continue to advance M207 through clinical development. Because of the numerous risks and uncertainties associated with our technology and drug development, we are unable to predict the timing or amount of expenses incurred or when, or if, we will be able to achieve commercialization, revenue or profitability.

Research and development expenses

Research and development expenses represent costs incurred to conduct research, such as the discovery and development of our proprietary product candidates. We recognize all research and development expenses as they are incurred.

Research and development expenses consist of:

- production costs which include, but are not limited to, employee-related expenses, including salaries, benefits and stock-based compensation expense, and fees paid to conduct nonclinical studies, drug formulation, and cost of consumables used in nonclinical and clinical trials;
- expenses related to the purchase of active pharmaceutical ingredients and raw materials for the production of product candidates based on our ADAM technology, including fees paid to contract manufacturing organizations ("CMOs");
- fees paid to contract research organizations ("CROs"), clinical consultants, clinical trial sites and vendors, including institutional review boards ("IRBs"), in conjunction with implementing and monitoring our clinical trials and acquiring and evaluating clinical trial data, including all related fees, such as for investigator grants, subject screening fees, laboratory work and statistical compilation and analysis;
- fees paid to conduct clinical studies, drug formulation, and cost of consumables used in nonclinical and clinical trials;
- other consulting fees paid to third parties; and
- allocation of certain shared costs, such as facilities-related costs and information technology ("IT") support services.

For the immediate future, our research and development efforts and resources will be focused primarily on advancing our product candidate M207 through clinical development.

We cannot forecast with any degree of certainty if any of our product candidates will be subject to future collaborations or how such arrangements would affect our development plans or capital requirements. As a result of the uncertainties discussed above, 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 any of our product candidates.

General and administrative expenses

General and administrative expenses consist principally of personnel-related costs, professional fees for legal, consulting, audit and tax services, rent and other general operating expenses not otherwise included in research and development.

Other income and expenses

Interest expense, net. Interest expense, net of interest income, consists primarily of interest costs related to our debt and the amortization of debt discount and issuance costs. Interest expense for the nine months ended September 30, 2018 reflects accrued and paid interest related to our secured term loan facility ("Hercules Term Loan") with Hercules Capital, Inc. ("Hercules"), and the related amortization of debt discount and issuance costs.

Other income, net. Other income, net of other expense, consists of certain miscellaneous income or expenses that are not included in other categories of the condensed statements of operations. (See explanations under the subheading, Results of Operations).

Results of Operations

Comparison of the three months ended September 30, 2018 and 2017

Research and development expenses

	Three months ended September 30,		Change	
	2018	2017	Amount	%
	(In thousands)			
Research and development	$ 5,899	$ 5,683	$ 216	4%

Research and development expenses increased approximately $0.2 million, or 4%, for the three months ended September 30, 2018, as compared to the same period in 2017. The increase in research and development expense was primarily attributable to an increase in clinical trial costs of $0.7 million related to the M207 long-term safety study, offset by a decrease of $0.4 million in clinical supply costs due to completion of the registration batches.

General and administrative expenses

	Three months ended September 30,		Change	
	2018	2017	Amount	%
	(In thousands)			
General and administrative	$ 2,353	$ 2,036	$ 317	16%

General and administrative expenses increased approximately $0.3 million, or 16%, for the three months ended September 30, 2018 as compared to the same period in 2017. Increases in expenses were primarily due to increase Enterprise Resource Planning ("ERP") implementation costs as well as increases in payroll and stock compensation costs.

Other income (expenses)

	Three months ended September 30,		Change	
	2018	2017	Amount	%
	(In thousands)			
Interest income (expense), net	$ 74	$ (154)	$ 228	148%
Other income (expense), net	9	—	9	100%

Interest expense, net increase approximately $0.2 million, or 148%, for the three months ended September 30, 2018, as compared to the same period in 2017. Interest expense is primarily attributable to the Hercules Term Loan, for which the outstanding obligation was paid in full in September 2018. The decrease in interest expense is attributable to the lower interest costs resulting from the lower loan principal balance during the three months ended September 30, 2018 as compared to the same period in 2017, offset by interest income from marketable securities.

Comparison of the nine months ended September 30, 2018 and 2017

Research and development expenses

	Nine months ended September 30,		Change	
	2018	2017	Amount	%
	(In thousands)			
Research and development	$ 18,238	$ 14,672	$3,566	24%

Research and development expenses increased approximately $3.6 million, or 24%, for the nine months ended September 30, 2018, as compared to the same period in 2017. The increase in research and development expense was primarily attributable to an increase in clinical trial costs of $3.2 million related to the long-term safety study and to an additional increase $0.4 million attributed to an increase in costs related to the production of our registration batches.

General and administrative expenses

	Nine months ended September 30,		Change	
	2018	2017	Amount	%
	(In thousands)			
General and administrative	$ 6,887	$ 6,346	$ 541	9%

General and administrative expenses increased approximately $0.5 million or 9% for the nine months ended September 30, 2018 as compared to the same period in 2017. Increases in expenses were primarily due to increase in building rent and franchise taxes.

Other income (expenses)

	Nine months ended September 30,		Change	
	2018	2017	Amount	%
	(In thousands)			
Interest expense, net	$ (99)	$ (608)	$ (509)	(84%)
Other income (expense), net	13	10	3	(30%)

Interest expense, net decreased approximately $0.5 million, or 84%, for the nine months ended September 30, 2018, as compared to the same period in 2017. Interest expense is primarily attributable to the Hercules Term Loan. The decrease in interest expense is attributable to the lower interest costs resulting from the lower loan principal balance during the nine months ended September 30, 2018 as compared to the same period in 2017. The outstanding obligation under the Hercules Term Loan was paid in full in September 2018.

Other income was primarily comprised of gains from the sale of equipment during both periods presented.

Liquidity and Capital Resources

Since inception, we have incurred recurring operating losses and negative cash flows from operating activities, and as of September 30, 2018, had an accumulated deficit of $251.1 million. We expect to incur additional losses in the future to conduct research and development of our M207 product candidate and to conduct pre-commercialization manufacturing activities. As of September 30, 2018, we had approximately $29.5 million in cash, cash equivalents, and investments. Presently, we do not believe we have sufficient cash, cash equivalents, and investments to fund our anticipated level of operations based on our current operating plans for at least the next twelve months following the date of issuance of this Quarterly Report on From 10-Q. The aforementioned factors raise substantial doubt about the Company's ability to continue as a going concern.

Our accumulated deficit, negative cash flows and insufficient cash resources raise substantial doubt regarding the Company's ability to continue as a going concern. There are no assurances that additional funding will be achieved and that we will succeed in our future operations. Our inability to obtain required funding in the near future or our inability to obtain funding on favorable terms will have a material adverse effect on our operations and strategic development plan for future growth. If we cannot successfully raise additional capital and implement our strategic development plan, our liquidity, financial condition and business prospects will be materially and adversely affected, and we may have to cease operations.

In October 2017, we entered into the Lincoln Park Purchase Agreement with Lincoln Park. Under the terms and subject to the conditions of the Lincoln Park Purchase Agreement, we have the right, but not the obligation, to sell to Lincoln Park up to $35.0 million worth of shares of our common stock. Such future sales of common stock by us, if any, will be subject to certain limitations, and may occur from time to time, at our option, over a 30 month period that commenced on November 21, 2017. No sales of common stock have been made under the Lincoln Park Purchase Agreement as of September 30, 2018. See Note 7 to the accompanying condensed financial statements for additional information on the Lincoln Park Purchase Agreement. On April 2018, we closed a public offering of 10,000,000 shares of common stock at a public offering price of $5.00 per share. We received gross proceeds of $50.0 million and approximately $45.6 million of net proceeds from the offering and are using the net proceeds from the offering to fund the long-term safety study of M207, and for working capital and general corporate purposes. On September 2017, we entered into a build-to-suit obligation with Trinity Capital Fund III, L.P. ("Trinity") that provides us access to funds in the aggregate principal amount of up to $14 million. We drew the first advance of $5 million and may draw up to an additional $9 million, at any time prior to March 30, 2020.

Historically, our major sources of cash have comprised proceeds from various public and private offerings of our common stock, warrant exercises, and debt financings. To date, we have no product candidates approved by the FDA for sale. We will continue to require additional financing to develop M207, develop additional product candidates and fund operating losses. Management intends to seek capital to support the Company's initiatives through equity or debt financing, collaboration or other arrangements with corporate partners, and/or other sources of financing. Management plans to meet its operating cash flow requirements include financing activities such as public or private offerings of its common stock, and/or preferred stock offerings, issuances of debt and convertible debt instruments and collaborative or other arrangements with corporate resources. However, if such financing is not available at adequate levels or on acceptable terms, the Company could be required to significantly reduce its operating expenses and delay, reduce the scope of or eliminate some of its development programs, out-license intellectual property rights, or a combination of the above, which may have a material adverse effect on the Company's business, results of operations, financial condition and/or its ability to meet its scheduled obligations on a timely basis, if at all.

We anticipate that we will need to raise substantial additional capital, the requirements of which will depend on many factors, including, but not limited to:

- the scope, progress, expansion, costs, and results of our clinical trials;
- the scope, progress, expansion, and costs of manufacturing our product candidates;
- the timing of and costs involved in obtaining regulatory approvals;
- the type, number, costs, and results of the product candidate development programs which we are pursuing or may choose to pursue in the future;
- our ability to establish and maintain development partnering arrangements;
- the timing, receipt and amount of contingent, royalty, and other payments from any of our future development partners;
- the emergence of competing technologies and other adverse market developments;
- the costs of maintaining, expanding, and protecting our intellectual property portfolio, including potential litigation costs and liabilities;
- the resources we devote to marketing, and if approved, commercializing our product candidates;
- our ability to draw funds from our equipment lease line of credit; and
- the costs associated with being a public company.

If we are unable to raise additional funds when needed, we may be required to delay, reduce, or terminate our development programs and clinical trials. We may also be required to sell or license to others technologies or clinical product candidates or programs that we would prefer to develop and commercialize ourselves.

There are no assurances that such additional funding will be achieved and that we will succeed in our future operations. Adequate additional funding may not be available to us on acceptable terms or at all. Our inability to obtain required funding in the near future or our inability to obtain funding on favorable terms will have a material adverse effect on our operations and strategic development plan for future growth. If we cannot successfully raise additional capital and implement our strategic development plan, our liquidity, financial condition and business prospects will be materially and adversely affected, and we may have to cease operations.

Cash Flows

The following table shows a summary of our cash flows for the nine months ended September 30, 2018 and 2017:

	Nine Months Ended September 30,	
	2018	2017
	(In thousands)	
Net cash (used in) provided by:		
Operating activities	$ (22,370)	$ (20,955)
Investing activities	(21,527)	(7,247)
Financing activities	44,208	26,491
Net increase (decrease) in cash and cash equivalents	$ 311	$ (1,711)

Operating Cash Flow: Net cash used in operating activities was approximately $22.4 million and $21.0 million for the nine months ended September 30, 2018 and 2017, respectively. Net cash used during the first nine months of 2018 was primarily due to tenant improvements for our operating lease for the Company headquarters, in addition to other research and development and administrative expenses incurred in the course of our continuing operations. Net cash used during the first nine months of 2017 was primarily due to the closing costs of the ZOTRIP trial and start-up costs for our upcoming long-term safety study, in addition to other research and development and administrative expenses incurred in the course of our continuing operations.

Investing Cash Flow: Net cash used in investing activities was approximately $21.5 million and $7.2 million for the nine months ended September 30, 2018 and 2017, respectively. Net cash used in investing activities during the first nine months of 2018 was primarily the result of the purchase of certain marketable securities. Net cash used in investing activities during the first nine months of 2017 was primarily due to the purchase of investments in marketable securities.

Financing Cash Flow: Net cash provided by financing activities was approximately $44.2 million and $26.5 million for the nine months ended September 30, 2018 and 2017, respectively. Net cash provided by financing activities for the first nine months of 2018 was primarily from $45.6 million in net proceeds from a registered public offering of common stock. Net cash generated by financing activities for the first nine months of 2017 was primarily due to proceeds from a registered public offering of $26.6 million, net of underwriter's discounts, commissions, and offering expenses and to warrant exercises to purchase 136,301 shares common stock for proceeds of $4.0 million. The increase was partially offset by payments on the Hercules Term Loan of approximately $4.3 million.

Contractual Obligations and Commitments

Operating Lease. We have an operating lease with BMR-34790 Ardentech Court LP, an affiliate of BMR Holdings and related party, for its office, research and development, and manufacturing facilities in Fremont, California. The lease for our headquarters extends through August 2024. See Note 6 to the accompanying condensed financial statements for a discussion of the related party operating lease for our headquarters. As of September 30, 2018, the total noncancelable obligation was $11.1 million, which is classified within current liabilities and non-current liabilities on our condensed balance sheets.

Equipment Purchase Commitment. In May 2018, we entered into a Purchase Order with Harro Hofliger Packaging Systems to purchase a commercial coating and primary packaging machine for the production of our product candidate, M207, for an aggregate purchase price of $12.2 million. The terms of the purchase commitment are contingent upon performance of certain milestones. We anticipate that the obligation will be paid over an eighteen-month period. As of September 30, 2018, we had made payments totaling $3.0 million which were recorded in construction-in-progress and the total remaining obligation on the equipment purchase commitment was $9.2 million.

Build-to-Suit Obligation. In September 2018, we entered into a build-to-suit Obligation with Trinity. Under the Lease Agreement, Trinity agreed to provide us with access to an equipment lease in an aggregate principal amount of up to $14.0 million. We are obligated to make monthly rent payments based on a monthly rate factor of 0.0320 for a term of thirty-six months on the principal amount drawn. As of September 30, 2018, we had an outstanding obligation of $5.0 million on the equipment.

Manufacturing and Supply Agreement with Patheon. In September 2018, we entered into a manufacturing and supply agreement with Patheon Manufacturing Services LLC ("Patheon"), for Patheon to provide services related to the manufacture and commercialization of M207. During the term of the agreement, Patheon will provide manufacturing services to us for the manufacturing of M207, including, services related to processing, packaging, labelling and storing of M207, in addition to other services such as stability testing, quality control and assurance and waste disposal.

We are required to pay for commercial supply by Patheon in annual base fees in equal monthly installments in the amounts specified in the agreement. In addition, we are required to pay an additional product fee for units in excess of the number of units covered by the base fee at the price per unit provided for in the agreement. The agreement contains negotiated representations and warranties, indemnification, limitations of liability, and other provisions. The initial term of the agreement continues until the seventh anniversary of the date on which we receive NDA approval of M207 in the United States.

We may terminate the agreement if M207 is not granted certain regulatory approvals or if such regulatory approval is withdrawn under certain circumstances. We or Patheon may terminate the agreement for the other's uncured material breach, uncured force majeure or bankruptcy or insolvency-related events.

Other Commitments. As of September 30, 2018, we had $4.8 million of noncancelable purchase commitments due in 2018 and $23.3 million due thereafter, primarily related with third party manufacturers.

Recent Accounting Pronouncements

See Note 2 to the accompanying condensed financial statements for the Recent Accounting Pronouncements.

Off-Balance Sheet Arrangements

We currently have no off-balance sheet arrangements, such as structured finance, special purpose entities or variable interest entities.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to market risks in the ordinary course of our business. Some of the securities that we invest in have market risk where a change in prevailing interest rates may cause the principal amount of the marketable securities to fluctuate. Financial instruments which potentially subject us to concentrations of credit risk consist principally of cash and cash equivalents, as well as investments in short-term marketable securities. We had cash and cash equivalents of $12.0 million as of September 30, 2018, which consisted of bank deposits and money market funds. We had short-term investment in marketable securities of $17.5 million as of September 30, 2018, which consisted primarily of commercial paper, corporate notes and bonds, and U.S. treasuries. The primary objectives of our investment activities are to ensure liquidity and to preserve principal while at the same time maximizing the income we receive from our marketable securities without significantly increasing risk. Additionally, we established guidelines regarding approved investments and maturities of investments, which are designed to maintain safety and liquidity.

Our cash and cash equivalents are held for working capital purposes. Cash balances are insured by the Federal Deposit Insurance Corporation ("FDIC") up to regulatory limits, and we are exposed to credit risk when our cash balances exceed FDIC insurance limits. Our total cash and cash equivalent balances exceed the maximum amounts insured by the FDIC.

Our primary exposure to market risk is interest rate sensitivity, which is affected by changes in the general level of United States interest rates. We hold interest-earning instruments, which carry a degree of interest rate risk. In addition, the monthly rent factor on the equipment lease is determined and indexed to the Prime Lending Rate as reported in the Wall Street Journal. To date, fluctuations in interest income and expense have not been significant. However, fluctuations in market interest rates in the future could have a material impact on our financial condition and results of operations.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2018. The term "disclosure controls and procedures," as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's rules and forms.

Based on the evaluation of our disclosure controls and procedures as of September 30, 2018, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures are designed to, and are effective to, provide assurance at a reasonable level that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

Our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Changes in Internal Control over Financial Reporting

During the quarter ended September 30, 2018, we completed the implementation of several significant Enterprise Resource Planning System ("ERP"), modules including core financial and purchasing modules. In connection with the implementation of the ERP system, we updated the processes that constitute our internal control over financial reporting to accommodate changes to our business processes and accounting procedures.

Except as otherwise described above, there have been no other changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities and Exchange Act of 1934, as amended) during the quarter ended September 30, 2018, that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

We are not party to any material pending legal proceedings. However, we may from time to time become involved in litigation relating to claims arising in the ordinary course of our business.

Item 1A. Risk Factors

Investing in our common stock involves a high degree of risk. You should carefully consider the following risks and uncertainties, as well as general economic and business risks, and all of the other information contained in our Annual Report on Form 10-K for the year ended December 31, 2017 and other documents that we file with the U.S. Securities and Exchange Commission, or the SEC. Any of the following risks could have a material adverse effect on our business, operating results, financial condition and prospects and cause the trading price of our common stock to decline, which would cause you to lose all or part of your investment. You should also refer to the other information contained in this Annual Report on Form 10-K, including our audited financial statements and the related notes thereto.

RISKS RELATED TO OUR FINANCIAL POSITION AND NEED FOR ADDITIONAL CAPITAL

We will need substantial additional funding to fund our operations, and we may not be able to continue as a going concern if we are unable to do so. We could also be forced to delay, reduce or terminate our product development, other operations or commercialization effort.

Developing and commercializing biopharmaceutical products, including launching new products into the marketplace and conducting preclinical studies and clinical trials, is an expensive and highly uncertain process that takes years to complete. As of September 30, 2018, we had an accumulated deficit of $251.1 million as well as negative cash flows from operating activities. We will continue to require substantial funds to continue research and development, including clinical trials of our lead product candidate, M207. Presently, we do not believe we have sufficient cash, cash equivalents and investments to fund our anticipated level of operations based on our current operating plans for at least the next twelve months following the date of issuance of this Quarterly Report on Form 10-Q. The aforementioned factors raised substantial doubt about the Company's ability to continue as a going concern. We expect to finance our cash needs through a combination of equity offerings, debt financing and license and collaboration agreements. There is no assurance that such additional funds will be obtained for our ongoing operations or that we will succeed in it future operations. Our audited financial statements included in our Annual Report for the year ended December 31, 2017 include a "going concern" disclosure that may discourage some third parties from contracting with us and some investors from purchasing our stock or providing alternative capital financing, which could adversely affect our business, financial condition, results of operations and prospects.

We have a history of operating losses. We expect to continue to incur losses over the next several years and may never become profitable.

Since inception, we have incurred significant operating losses. For the period ended September 30, 2018 we incurred a net loss of $25.2 million. As of September 30, 2018, we had an accumulated deficit of $251.1 million. We expect to continue to incur additional significant operating losses and capital expenditures and anticipate that our expenses will increase substantially in the foreseeable future as we continue the development of our product candidate, M207, or any other product we develop. These expenditures will be incurred for development, clinical trials, regulatory compliance, infrastructure, and manufacturing. Even if we succeed in developing, obtaining regulatory approval for and commercializing M207 or any other product we develop, because of the numerous risks and uncertainties associated with our commercialization efforts, we are unable to predict that we will ever be able to manufacture, distribute and sell any of our products profitably, and we may never generate revenue that is significant enough to achieve or maintain profitability. Even if we do achieve profitability, we may not be able to sustain or increase profitability on an ongoing basis.

We have generated only limited revenues and will need additional capital to develop and commercialize our product candidates, which may cause dilution to our existing stockholders, restrict our operations or require us to relinquish rights to our technologies or lead product candidates.

Since inception, we have generated no revenues from product sales. We are not approved to make and have not made any commercial sales of products. We expect that our product development activities will require additional significant operating and capital expenditures resulting in negative cash flow for the foreseeable future.

We expect to finance our cash needs through a combination of equity offerings, debt financing and license and collaboration agreements. 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.

However, adequate and additional funding may not be available to us on acceptable terms or at all. 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 common 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 on our common stock.

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 research programs or product candidates or grant licenses on terms that may not be favorable to us.

If we are unable to raise additional funds through equity or debt financings or other arrangements with third parties when needed, we may be required to delay, limit, reduce or terminate our development or future commercialization efforts or partner with third parties to develop and market product candidates that we would otherwise prefer to develop and market ourselves. The amount and timing of our future financing requirements will depend on many factors, including:

- the scope, progress, expansion, costs, and results of our clinical trials;
- the scope, progress, expansion, and costs of manufacturing our product candidates;
- the timing of and costs involved in obtaining regulatory approvals;
- the type, number, costs, and results of the product candidate development programs which we are pursuing or may choose to pursue in the future;
- our ability to establish and maintain development partnering arrangements;
- the timing, receipt and amount of contingent, royalty, and other payments from any of our future development partners;
- the emergence of competing technologies and other adverse market developments;
- the costs of maintaining, expanding, and protecting our intellectual property portfolio, including potential litigation costs and liabilities;
- the resources we devote to marketing, and if approved, commercializing our product candidates;
- our ability to draw funds from our equipment lease line of credit; and
- the costs associated with being a public company.

Our equipment lease with Trinity Capital Fund III, L.P. ("Trinity") imposes restrictions on our business, and if we default on our obligations, Trinity would have a right to request payment in full of the equipment lease.

We also agreed to covenants in connection with the Trinity equipment lease that may limit our ability to take some actions without the consent of Trinity, as applicable. In particular, without Trinity's consent under the terms of the loan facility or the secured note, as applicable, we are restricted in our ability to:

- create liens on our property;
- sell, transfer, or otherwise dispose of all or substantially all of our assets;
- transfer, dispose or relocate financed equipment;
- acquire or merge with another entity; and
- engage in a transaction that would constitute 50% or more in change in control.

Our indebtedness to Trinity may prevent us from engaging in activities that could be beneficial to our business and our stockholders unless we repay the outstanding obligation, which may not be desirable or possible.

We have pledged substantially all of our assets, including our intellectual property, to secure our obligations to Trinity. If we default on our obligations prior to repaying this indebtedness and are unable to obtain a waiver for such default, Trinity would have a right to accelerate our payments under the equipment lease, as applicable, and possibly foreclose on the collateral, which would potentially include our intellectual property. Any such action on the part of Trinity would significantly harm our business and our ability to operate.

We have limited operating history and capabilities.

Although our business was formed in 2006, we have had limited operations since that time. We do not currently have the ability to perform the sales, marketing and manufacturing functions necessary for the production and sale of M207 or our other product candidates on a commercial scale. The successful commercialization of any of our product candidates will require us to perform a variety of functions, including:

- continuing to conduct clinical development of our product candidates;
- obtaining required regulatory approvals;
- formulating and manufacturing products; and
- conducting sales and marketing activities.

Our operations continue to be focused on acquiring, developing and securing our proprietary technology and undertaking preclinical and clinical trials of our products.

We expect our financial condition and operating results to continue to fluctuate from quarter to quarter and year to year due to a variety of factors, many of which are beyond our control. We will need to transition at some point from a company with a research and development focus to a company capable of undertaking commercial activities. We may encounter unforeseen expenses, difficulties, complications and delays and may not be successful in such a transition.

RISKS RELATED TO THE DEVELOPMENT AND COMMERCIALIZATION OF OUR PRODUCT CANDIDATES

The development and commercialization of our product candidates is subject to many risks. If we do not successfully develop and commercialize our product candidates, our business will be adversely affected.

We have focused our clinical development efforts on our product candidate, M207. The development and commercialization of M207 and any product candidates we may develop and commercialize in the future is subject to many risks including:

- we may be unable to obtain additional funding to develop our product candidates;
- we may experience delays in regulatory review and approval of product candidates in clinical development;
- the results of our clinical trials may not meet the level of statistical or clinical significance required by the FDA for marketing approval;
- the FDA may disagree with the number, design, size, conduct or implementation of our clinical trials;
- the FDA may not find the data from preclinical studies and clinical trials sufficient to demonstrate that clinical and other benefits outweigh its safety risks;

- the FDA may disagree with our interpretation of data from our preclinical studies and clinical trials or may require that we conduct additional studies or trials;
- the FDA may not accept data generated at our clinical trial sites;
- we may be unable to obtain and maintain regulatory approval of our product candidates in the United States and foreign jurisdictions;
- potential side effects of our product candidates could delay or prevent commercialization, limit the indications for any approved product candidates, require the establishment of a risk evaluation and mitigation strategy, or REMS, or cause an approved product candidate to be taken off the market;
- the FDA may identify deficiencies in our manufacturing processes or facilities or those of our CMOs;
- the FDA may change its approval policies or adopt new regulations;
- we may need to depend on third-party manufacturers to supply or manufacture our products;
- we depend on contract research organizations to conduct our clinical trials;
- we may experience delays in the commencement of, enrollment of patients in and timing of our clinical trials;
- we may not be able to demonstrate that any of our product candidates are safe and effective as a treatment for their respective indications to the satisfaction of the United States Food and Drug Administration (the "FDA"), or other similar regulatory bodies;
- we may be unable to establish or maintain collaborations, licensing or other arrangements;
- the market may not accept our product candidates;
- we may be unable to establish and maintain an effective sales and marketing infrastructure, either through the creation of a commercial infrastructure or through strategic collaborations;
- we may experience competition from existing products or new products that may emerge; and
- we and our licensors may be unable to successfully obtain, maintain, defend and enforce intellectual property rights important to protect our products.

If any of these risks materializes, we could experience significant delays or an inability to successfully commercialize our product candidates, which would have a material adverse effect on our business, financial condition and results of operations.

The long-term safety study for M207 is an important next step in the development of M207. If we cannot raise capital, manufacture supply for the safety study, continue to enroll subjects, complete the safety study in a timely manner, or produce results that satisfy FDA requirements, the regulatory approval process could be delayed and our business could be adversely affected.

After receiving positive results from our ZOTRIP Phase 2/3 efficacy trial of M207, the next step in the regulatory approval process is to complete a long-term safety study. We initiated this study in the second half of 2017. To complete the safety study, we will need to raise additional capital to fund the manufacture of sufficient supply of M207 and to continue to enroll subjects in the study. There are no assurances that such additional capital will be available to us on terms that are favorable to us or our existing stockholders or at all. The study will also need to produce results that satisfy FDA requirements. Any failure or setback in completing any of these required steps could require us to delay, limit, reduce or terminate our development of M207. Also, even though we have discussed our development strategy with the FDA on our M207 program and received feedback from the FDA about the size and the length of the safety study, the FDA may decide to expand on the requirements that have already been provided to us, which would further delay the regulatory approval process and require additional clinical work.

If the FDA does not conclude that our product candidates satisfy the requirements for the 505(b)(2) regulatory approval pathway, or if the requirements for approval of any of our product candidates under Section 505(b)(2) are not as we expect, the approval pathway for our product candidates will likely take significantly longer, cost significantly more and encounter significantly greater complications and risks than anticipated, and in any case may not be successful.

We intend to seek FDA approval through the 505(b)(2) regulatory pathway our product candidate described in this Annual Report on Form 10-K. The Drug Price Competition and Patent Term Restoration Act of 1984, also known as the Hatch-Waxman Act, added Section 505(b)(2) to the Federal Food, Drug and Cosmetic Act ("FDCA"). Section 505(b)(2) permits the filing of an NDA where at least some of the information required for approval comes from studies that were not conducted by or for the applicant.

If the FDA does not allow us or any partner with which we collaborate to pursue the 505(b)(2) regulatory pathway for our product candidates, we or they may need to conduct additional clinical trials, provide additional data and information and meet additional standards for regulatory approval. If this were to occur, we or they will need to successfully complete additional Phase 2 and/or Phase 3 clinical trials and submit to the FDA for approval one or more NDAs in order to obtain FDA approval to market each of our product candidates. The time and financial resources required to obtain FDA approval for our product candidates would likely substantially increase. The conduct of later-stage clinical trials and the submission of a successful NDA is a complicated process. To date, we have conducted only one Phase 2/3 clinical trial and have initiated a long-term safety study of M207, we have limited experience in preparing and submitting regulatory filings, and we have not previously submitted an NDA for any product candidate. Consequently, we may be unable to successfully and efficiently execute and complete necessary clinical trials in a way that leads to an NDA submission for M207 or for any other product candidates we may develop in the future.

Moreover, the inability to pursue the 505(b)(2) regulatory pathway could result in new competitive products reaching the market faster than our product candidates, which could materially adversely impact our competitive position and prospects. Even if we are allowed to pursue the 505(b)(2) regulatory pathway for a product candidate, we cannot assure you that we will receive the requisite approvals for commercialization of such product candidate.

In addition, our competitors may file petitions with the FDA in an attempt to persuade the FDA that our product candidates, or the clinical studies that support their approval, contain deficiencies. Such actions by our competitors could delay or even prevent the FDA from approving any NDA that we submit under Section 505(b)(2).

Clinical trials are very expensive, time-consuming and difficult to design and implement.

Human clinical trials are very expensive, time-consuming and difficult to design and implement, in part because they are subject to rigorous regulatory requirements. Furthermore, failure of a product candidate can occur at any stage of the trials, and we could encounter problems that cause us to abandon or repeat clinical trials. The commencement and completion of clinical trials may be delayed by several factors, including:

- changes in government regulation, administrative action or changes in FDA policy with respect to clinical trials that change the requirements for approval;
- unforeseen safety issues;
- determination of dosing issues;
- lack of effectiveness during clinical trials;
- slower than expected rates of patient recruitment and enrollment;
- inability to monitor patients adequately during or after treatment; and
- inability or unwillingness of medical investigators to follow our clinical protocols.

In addition, we, the FDA, or other regulatory authorities and ethics committees with jurisdiction over our studies may suspend our clinical trials at any time if it appears that we are exposing participants to unacceptable health risks or if the FDA or other authorities find deficiencies in our regulatory submissions or the conduct of these trials. Therefore, we cannot predict with any certainty the schedule for existing or future clinical trials. Any such unexpected expenses or delays in our clinical trials could increase our need for additional capital, which may not be available on favorable terms or at all.

If we are required to conduct additional clinical trials or other testing of our product candidates beyond those that we currently contemplate, if we are unable to successfully complete clinical trials of our product candidates or other testing, if the results of these clinical trials or tests are not positive or are only modestly positive and/or if there are safety concerns, 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;
- be subject to additional post-marketing testing requirements; or
- have our product candidate(s) removed from the market after obtaining marketing approval.

Our development costs will also increase if we experience delays in testing or marketing approvals. We do not know whether any of our preclinical studies or clinical trials will begin as planned, will need to be restructured or will be completed on schedule, or at all. Significant preclinical study or clinical trial delays also could shorten any periods during which we may have the exclusive right to commercialize our product candidates or allow our competitors to bring product candidates to market before we do, and thereby impair our ability to successfully commercialize our product candidates.

The results of our clinical trials may not support the intended use of M207 or any other product candidates we may develop.

Even if our clinical trials are completed as planned, we cannot be certain that the results will support the intended use of our products. Success in preclinical testing and early clinical trials does not ensure that later clinical trials will be successful, and we cannot be sure that the results of later clinical trials will replicate the results of prior clinical trials and preclinical testing. The clinical trial process may fail to demonstrate that our product candidates are safe for humans and effective for indicated uses. This failure would cause us to abandon a product candidate and may delay development of other product candidates. Any delay in, or termination of, our clinical trials will delay the filing of our NDAs with the FDA and, ultimately, our ability to commercialize our product candidates and generate revenues. In addition, our clinical trials to date have involved small patient populations. Because of the small sample sizes, the results of these clinical trials may not be indicative of future results.

Clinical failure can occur at any stage of clinical development. Because the results of earlier clinical trials are not necessarily predictive of future results, any product candidate we advance through clinical trials may not have favorable results in later clinical trials or receive regulatory approval.

Clinical failure can occur at any stage of clinical development. Clinical trials may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical or preclinical trials. In addition, data obtained from trials are susceptible to varying interpretations, and regulators may not interpret our data as favorably as we do, which may delay, limit or prevent regulatory approval. Success in preclinical testing, early clinical trials and even later stage clinical trials, like our phase 2/3 ZOTRIP trial, does not ensure that later clinical trials will generate the same results or otherwise provide adequate data to demonstrate the efficacy and safety of a product candidate. Frequently, product candidates that have shown promising results in early clinical trials have subsequently suffered significant setbacks in later clinical trials. In addition, the design of a clinical trial can determine whether its results will support approval of a product and flaws in the design of a clinical trial may not become apparent until the clinical trial is well advanced. While members of our management team have experience in designing clinical trials, we have limited experience in designing clinical trials and we may be unable to design and execute a clinical trial to support regulatory approval. Further, clinical trials of potential products often reveal that it is not practical or feasible to continue development efforts. If our product candidates are found to be unsafe or lack efficacy, we will not be able to obtain regulatory approval for them and our business would be harmed.

We may in the future conduct clinical trials for product candidates in sites around the world, and government regulators, including the FDA in the United States, may choose to not accept data from trials conducted in such locations.

We have conducted, and may in the future choose to conduct, one or more of our clinical trials outside the United States.

There is no guarantee that data from these clinical trials will be accepted by regulators approving our product candidates for commercial sale. In the case of the United States, although the FDA may accept data from clinical trials conducted outside the United States, acceptance of this data is subject to certain conditions imposed by the FDA. For example, the clinical trial must be well designed and conducted and performed by qualified investigators in accordance with ethical principles. The trial population must also adequately represent the United States population, and the data must be applicable to the United States population and United States medical practice in ways that the FDA deems clinically meaningful. Generally, the patient population for any clinical trials conducted outside of the United States must be representative of the population for whom we intend to label the product in the United States. In addition, while these clinical trials are subject to the applicable local laws, FDA acceptance of the data will be dependent upon its determination that the trials also complied with all applicable U.S. laws and regulations. There can be no assurance the FDA will accept data from trials conducted outside of the United States. If the FDA does not accept the data from our clinical trials, it would likely result in the need for additional clinical trials, which would be both costly and time-consuming and likely to delay or permanently halt our development of a product candidate. Similar regulations and risks apply to other jurisdictions as well.

In addition, the conduct of clinical trials outside the United States could have a significant negative impact on us. Risks inherent in conducting international clinical trials include:

- foreign regulatory requirements that could restrict or limit our ability to conduct our clinical trials;
- administrative burdens of conducting clinical trials under multiple foreign regulatory schema;
- foreign exchange fluctuations; and
- diminished protection of intellectual property in some countries.

We will not be able to sell our products if we do not obtain required United States regulatory approvals.

We cannot assure you that we will receive the approvals necessary to commercialize M207 or any product candidate we acquire or develop in the future. We will need FDA approval to commercialize our product candidates in the United States. In order to obtain FDA approval of any product candidate, we expect that we will have to submit to the FDA an NDA demonstrating that the product candidate is safe for humans and effective for its intended indication and indicated use. This demonstration requires significant research and animal tests, which are referred to as preclinical studies, as well as human tests, which are referred to as clinical trials. Satisfaction of the FDA's regulatory requirements typically takes many years, depends upon the type, complexity and novelty of the product candidate and requires substantial resources for research, development and testing. We cannot predict whether our product candidates will ultimately be considered safe for humans and effective for indicated uses by the FDA. The FDA has substantial discretion in the drug approval process and may require us to conduct additional preclinical and clinical testing or to perform post-marketing studies. The approval process may also be delayed by changes in government regulation, future legislation or administrative action or changes in FDA policy that occur prior to or during its regulatory review. Delays in obtaining regulatory approvals may:

- delay commercialization of, and our ability to derive product revenues from, our products;
- impose costly procedures on us; and
- diminish any competitive advantages that we may otherwise enjoy.

We may never obtain regulatory approval for any of our product candidates. Failure to obtain approval of any of our product candidates will severely undermine our business by leaving us without a saleable product, and therefore without any source of revenues, unless other products can be developed. There is no guarantee that we will ever be able to develop or acquire another product.

Even if M207 or any other product candidates we develop in the future receive regulatory approval, we may still face future development and regulatory difficulties.

The manufacturing processes, post-approval clinical data, labeling, advertising and promotional activities for our product candidates will be subject to continual requirements of and review by the FDA and other regulatory authorities. These requirements include submissions of safety and other post-marketing information and reports, registration and listing requirements, current good manufacturing practices, or cGMP requirements relating to quality control, quality assurance and corresponding maintenance of records and documents, requirements regarding the distribution of samples to physicians and recordkeeping. The regulatory approvals for our product candidates may be subject to limitations on the indicated uses for which the products may be marketed or to the conditions of approval or contain requirements for costly post-marketing testing and surveillance to monitor the safety or efficacy of the product candidates. The FDA closely regulates the post-approval marketing and promotion of drugs and drug delivery devices to ensure they are marketed only for the approved indications and in accordance with the provisions of the approved labeling. The FDA imposes stringent restrictions on manufacturers' communications regarding off-label use and, if we do not market our product candidates for their approved indications, we may be subject to enforcement action for off-label marketing.

The FDA has the authority to require a Risk Evaluation and Mitigation Strategy ("REMS") as part of an NDA or after approval, which may impose further requirements or restrictions on the distribution or use of an approved drug, such as limiting prescribing authorization to certain physicians or medical centers that have undergone specialized training, limiting treatment to patients who meet certain safe-use criteria or requiring patient testing, monitoring and/or enrollment in a registry.

We may also be subject, directly or indirectly through our customers and partners, to various fraud and abuse laws, including, without limitation, the U.S. Anti-Kickback Statute, U.S. False Claims Act, and similar state laws, which impact, among other things, our proposed sales, marketing, and scientific/educational grant programs. If we participate in the U.S. Medicaid Drug Rebate Program, the Federal Supply Schedule of the U.S. Department of Veterans Affairs, or other government drug programs, we will be subject to complex laws and regulations regarding reporting and payment obligations. All of these activities are also potentially subject to U.S. federal and state consumer protection and unfair competition laws and similar requirements in other countries.

With respect to sales and marketing activities by us or any future partner, advertising and promotional materials must comply with FDA rules in addition to other applicable federal, state and local laws in the United States and similar legal requirements in other countries. In addition, our product labeling, advertising and promotion would be subject to regulatory requirements and continuing regulatory review. The FDA strictly regulates the promotional claims that may be made about prescription products. In particular, a product may not be promoted for uses that are not approved by the FDA as reflected in the product's approved labeling. If we receive marketing approval for our products, physicians may nevertheless legally prescribe our products to their patients in a manner that is inconsistent with the approved label. If we are found to have promoted such off-label uses, we may become subject to significant liability and government fines. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant sanctions, including revocation of its marketing approval. The federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. The FDA has also requested that companies enter into consent decrees of permanent injunctions under which specified promotional conduct is changed or curtailed.

In addition, later discovery of previously unknown problems with our product candidates, manufacturing processes, or failure to comply with regulatory requirements, may yield various results, including:

- restrictions on such product candidate, or manufacturing processes;
- restrictions on the labeling or marketing of a product;
- restrictions on product distribution or use;
- requirements to conduct post-marketing 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 revenue;
- suspension or withdrawal of marketing approvals;
- refusal to permit the import or export of our products;
- product seizure; or
- injunctions or the imposition of civil or criminal penalties.

The occurrence of any event or penalty described above may inhibit our ability to commercialize our products and generate revenue. Adverse regulatory action, whether pre- or post-approval, can also potentially lead to product liability claims and increase our product liability exposure.

We or any of our future partners may choose not to continue developing or commercialize a product or product candidate at any time during development or after approval, which would reduce or eliminate our potential return on investment for that product or product candidate.

We currently do not have any products approved for sale and currently are focusing our clinical development efforts solely on M207. Currently, we do not have any collaborations with any partners for any of our products.

At any time, we or any partners with whom we collaborate in the future may decide to discontinue the development of a marketed product or product candidate or not to continue commercializing a marketed product or a product candidate for a variety of reasons, including the appearance of new technologies that make our product obsolete, the position of our partner in the market, competition from another product, or changes in or failure to comply with applicable regulatory requirements. If we or our partners terminate a program in which we have invested significant resources, we will not receive any return on our investment and we will have lost the opportunity to allocate those resources to potentially more productive uses. If one of our future partners terminates a development program or ceases to market an approved or commercial product, we will not receive any future milestone payments or royalties relating to that program or product under a partnership agreement with that party.

We may not be able to complete the clinical trials required for our product candidates.

We may not be able to complete the clinical trials required for our product candidates in a timely manner, or at all, and ultimately obtain regulatory approval for any of our product candidates. If we are unable to complete clinical trials of and obtain regulatory approval for our product candidates, our business will be significantly affected.

Our long-term growth will be limited unless we successfully develop a pipeline of additional product candidates.

Our long-term growth will be limited unless we successfully develop a pipeline of additional product candidates. We do not have internal new drug discovery capabilities, and our primary focus is on developing improved intracutaneous drug delivery systems by reformulating drugs previously approved by the FDA using our proprietary technologies.

If we are unable to expand our product candidate pipeline and obtain regulatory approval for our product candidates on the timelines we anticipate, we will not be able to execute our business strategy effectively and our ability to substantially grow our revenues will be limited, which would harm our long-term business, results of operations, financial condition and prospects.

If serious adverse or inappropriate side effects are identified during the clinical trials of our product candidates, we may need to abandon our development of some of these product candidates.

M207 and any other product candidates we develop in the future may have undesirable side effects, or have characteristics that are unexpected.

If any of our product candidates cause serious adverse events or undesirable side effects:

- regulatory authorities may impose a clinical hold which could result in substantial delays and adversely impact our ability to continue development of the product candidate;
- regulatory authorities may require the addition of labeling statements, specific warnings, a contraindication or field alerts to physicians and pharmacies;
- we may be required to change the way the product candidate is administered, conduct additional clinical trials or change the labeling of the product;
- we may be required to implement a risk minimization action plan, which could result in substantial cost increases and have a negative impact on our ability to commercialize the product candidate;
- we may be required to limit the patients who can receive the product candidate;
- we may be subject to limitations on how we promote the product candidate;
- sales of the product candidate may decrease significantly;
- regulatory authorities may require us to take our approved product candidate off the market;
- we may be subject to litigation or product liability claims; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the affected product candidate or could substantially increase commercialization costs and expenses, which in turn could delay or prevent us from generating significant revenues from the sale of our product candidates.

We may encounter manufacturing risks or failures that could impede or delay supply for our clinical trials of our product candidates.

While we currently manufacture M207 internally, we have entered into agreements with third party CMOs, including Patheon related to the development, manufacture, and supply of M207 as we transition to rely on such CMOs to manufacture and supply M207 on our behalf. Any failure or delay in our internal manufacturing operations or those of our CMOs, or the technology transfer process in connection with our plan to transition to rely on such CMOs for manufacture and supply, could cause us to be unable to meet the demand for product candidates for our clinical trials and delay the development or regulatory approval of M207. We and our CMOs may encounter difficulties involving, among other things, material supplies, production yields, regulatory compliance, quality control and quality assurance, and shortages of qualified personnel. The manufacturing facilities in which M207, or our future product candidates, are made could be adversely affected by equipment failures, labor shortages, natural disasters, power failures and numerous other factors. We may also have to take inventory write-offs and incur other charges and expenses for products that fail to meet specifications, undertake costly remediation efforts or seek more costly manufacturing alternatives. Regulatory approval of M207 or our future product candidates could be impeded, delayed, limited or denied if the FDA does not maintain the approval of the manufacturing processes and facilities in which such product candidates are made.

Difficulties in relevant manufacturing processes and facilities implicated could result in supply shortfalls of M207 or our future product candidates, and could delay our preclinical studies, clinical trials and regulatory submissions with respect thereto. In addition, M207 (or our future product candidates) that has been produced and is stored for later use, may degrade, become contaminated or suffer other quality defects (including in connection with any shipment thereof), which may cause the affected product candidate to no longer be suitable for its intended use in clinical trials or other development activities. If the defective product candidate cannot be replaced in a timely fashion, we may incur significant delays in our development programs that could adversely affect the value of such product candidate.

We have only manufactured our proposed product candidates for our clinical trials and we have no experience manufacturing on a commercial scale.

We have limited experience manufacturing our product candidates, including M207, and to date have only manufactured our product candidates for our clinical trials. If any of our product candidates are approved, we will need to scale up our own capabilities or those of our CMOs to support the production of commercial level quantities of our product candidates, which may require expensive process improvements.

While we intend to rely on CMOs, including Patheon, to support commercial scale manufacture of M207 and have entered into agreements, including with Patheon, regarding the same, we may nevertheless not be able to successfully produce, develop and market one or more of M207 or our future product candidates, or we may be delayed in doing so. For example, we may be required to devote substantial resources to the construction or purchase of a commercial scale manufacturing facility, the purchase of manufacturing equipment and hiring additional personnel, including as currently contemplated under our agreement with Patheon with respect to M207. Significant scale up of manufacturing may also require process improvements as well as additional technologies and validation studies, which are costly, may not be successful and which the FDA must review and approve. If we or our CMOs are unable to establish a new manufacturing facility or expand existing manufacturing facilities, purchase equipment, hire adequate personnel to support our manufacturing efforts or implement necessary process improvements, we may be unable to produce commercial materials or meet demand, if any should develop, for M207 or our future product candidates. Any such failure would have a material adverse effect on our business, financial condition and results of operations.

Reliance on CMOs also entails risks to which we would not be subject if we manufactured product candidates ourselves, including reliance on the third party for regulatory compliance and quality control and assurance, volume production, the possibility of breach of the manufacturing agreement by the third party because of factors beyond our control (including a failure to synthesize and manufacture our product candidates in accordance with our product specifications) and the possibility of termination or nonrenewal of the agreement by the third party at a time that is costly or damaging to us. In addition, the FDA and other regulatory authorities require that our product candidates be manufactured according to cGMP and similar foreign standards. Any failure by our CMOs to comply with cGMP or failure to scale up manufacturing processes, including any failure to deliver sufficient quantities of product candidates in a timely manner, could lead to a delay in, or failure to obtain, regulatory approval of any of our product candidates. CMOs may not be able to manufacture our product candidates at a cost or in quantities or in a timely manner necessary to develop and commercialize them. If our CMOs are unable to successfully scale up the manufacture of any of our product candidates in sufficient quality and quantity and at commercially reasonable prices, and we are unable to find one or more replacement manufacturers capable of production at a substantially equivalent cost in substantially equivalent volumes and quality, and we are unable to successfully transfer the processes on a timely basis, the development of that product candidate and regulatory approval or commercial launch for any resulting products may be delayed, or there may be a shortage in supply, either of which could significantly harm our business, financial condition, operating results and prospects. Our reliance on CMOs will further expose us to the possibility that they, or third parties with access to their facilities, will have access to and may misappropriate our trade secrets or other proprietary information.

Even if we receive regulatory approval for any product candidate, we still may not be able to successfully commercialize it and the revenue that we generate from its sales, if any, may be limited.

If approved for marketing, the commercial success of M207 or any product candidates we develop in the future will depend upon their acceptance by the medical community, including physicians, patients and health care payers. The degree of market acceptance of any product candidate will depend on a number of factors, including:

- demonstration of clinical safety and efficacy of our products generally;
- relative convenience and ease of administration;
- prevalence and severity of any adverse effects;
- willingness of physicians to prescribe our product and of the target patient population to try new therapies and routes of administration;
- efficacy and safety of our products compared to competing products;
- introduction of any new products, including generics, that may in the future become available to treat indications for which our products may be approved;
- new procedures or methods of treatment that may reduce the incidences of any of the indications in which our products may show utility;
- pricing and cost-effectiveness;
- effectiveness of our or any future collaborators' sales and marketing strategies;
- limitations or warnings contained in FDA-approved labeling; and
- our ability to obtain and maintain sufficient third-party coverage or reimbursement from government health care programs, including Medicare and Medicaid, private health insurers and other third-party payers.

If any of our product candidates are approved, but do not achieve an adequate level of acceptance by physicians, health care payers and patients, we may not generate sufficient revenue and we may not be able to achieve or sustain profitability. Our efforts to educate the medical community and third-party payers on the benefits of our product candidates may require significant resources and may never be successful.

Even if we obtain regulatory approvals, the timing or scope of any approvals may prohibit or reduce our ability to commercialize our product candidates successfully. For example, if the approval process takes too long, we may miss market opportunities and give other companies the ability to develop competing products or establish market dominance. Any regulatory approval we ultimately obtain may be limited or subject to restrictions or post-approval commitments that render our product candidates not commercially viable. For example, regulatory authorities may approve our product candidates for fewer or more limited indications than we request, may not approve the price we intend to charge for our product candidates, may grant approval contingent on the performance of costly post-marketing clinical trials, or may approve our product candidates with a label that does not include the labeling claims necessary or desirable for the successful commercialization of that indication. Further, the FDA may place conditions on approvals including potential requirements or risk management plans and the requirement for a REMS to assure the safe use of the drug or a black-box warning (which is a warning required by the FDA that appears on the package insert for or in literature describing certain prescription drugs, signifying that medical studies indicate that the drug carries a significant risk of serious adverse effects). If the FDA concludes a REMS is needed, the sponsor of the NDA must submit a proposed REMS; the FDA will not approve the NDA without an approved REMS, if required. A REMS 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. A black-box warning will limit how we are able to market and advertise our product. Any of these limitations on approval or marketing could restrict the commercial promotion, distribution, prescription or dispensing of our product candidates. Moreover, approvals may be withdrawn for non-compliance with regulatory standards or if problems occur following the initial marketing of product candidates. Any of the foregoing scenarios could materially harm the commercial success of our product candidates.

We may expend our limited resources to pursue a particular product candidate and fail to capitalize on product candidates that may be more profitable or for which there is a greater likelihood of success.

Because we have limited financial and managerial resources, we have decided to focus on developing our product candidate M207 for treatment of migraine. 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 product candidates 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.

RISKS RELATED TO OUR DEPENDENCE ON THIRD PARTIES

We use customized equipment to coat and package our microneedle patch system; any production or equipment performance failures could negatively impact our clinical trials of our product candidates or sales of our product candidates, if approved.

We presently use customized equipment to coat and package our microneedle patch system. We also rely on third parties to manufacture our equipment. If we experience equipment malfunctions and we do not have adequate inventory of spare parts or qualified personnel to repair the equipment, we may encounter delays in the manufacture of our microneedle patch system and may not have sufficient inventory to meet the demands of our clinical development programs or, if any of our product candidates is approved, our customers' demands, each of which could adversely affect our business, financial condition and results of operations.

We rely on CMOs for various components of our microneedle patch system, and our business could be harmed if those third parties fail to provide us with sufficient quantities of those components at acceptable quality levels and prices.

We rely on CMOs for various components of our microneedle patch system, including API raw materials used in manufacturing, and capital equipment. Reliance on third party manufacturers entails additional risks, including reliance on the third party for regulatory compliance and quality assurance. In addition, CMOs may not be able to comply with cGMP, 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 products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of our product candidates or any other product candidates that we may develop.

There can be no assurance that our supply of these various components will not be limited, interrupted, or of satisfactory quality or continue to be available at acceptable prices. Additionally, we do not have any control over the process or timing of the acquisition or manufacture of materials by our manufacturers and cannot ensure that they will deliver to us the components we order on time, or at all. Any failure or refusal to supply the components for M207 or any other product candidates that we may develop could delay, prevent or impair our clinical development or commercialization efforts. If our CMOs were to fail to fill our purchase orders, the development or commercialization of the affected product candidates could be delayed, which could have an adverse effect on our business. Any change in our manufacturers could be costly because the commercial terms of any new arrangement could be less favorable, the lead time needed to establish a new relationship can be lengthy, and because the expenses relating to the transfer of necessary technology and processes could be significant. It may take several years to establish an alternative source of supply for our product candidates and to have any such new source approved by the FDA, the European Medicines Agency, or EMA, or any other relevant regulatory authorities.

We rely on third parties to conduct our clinical trials and those third parties may not perform satisfactorily, including failing to meet deadlines for the completion of such trials.

We rely on a third-party contract research organization, or CRO, to manage our clinical trials. In addition, we rely on other third parties, such as clinical data management organizations, medical institutions and clinical investigators, to conduct those clinical trials. While we have agreements governing their activities, we will have limited influence over their actual performance and we will control only certain aspects of their activities. In addition, the use of third-party service providers requires us to disclose our proprietary information to these parties, which could increase the risk that this information will be misappropriated. Further, agreements with such third parties might terminate for a variety of reasons, including a failure to perform by the third parties. If there is any dispute or disruption in our relationship with our CROs or if we need to enter into alternative arrangements, that would delay our product development activities.

There is a limited number of third party service providers that specialize or have the expertise required to achieve our business objectives. In particular, there would be a significant increase in clinical trial expenses, including as a result of adopting a new electronic data capture platform or other technology platforms, the need to enter into new contracts and costs associated with the transfer of data, as well as an increased risk of the loss of data. Identifying, qualifying and managing performance of third party service providers can be difficult, time-consuming and may cause delays in our development programs. These investigators and CROs will not be our employees and we will not be able to control, other than by contract, the amount of resources, including time, which they devote to our product candidates and clinical trials. 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. If any of our CROs' processes, methodologies or results were determined to be invalid or inadequate, our own clinical data and results and related regulatory approvals could be adversely affected. Moreover, the FDA requires us to comply with standards, commonly referred to as good clinical practices ("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. The FDA enforces these GCPs through periodic inspections of trial sponsors, principal investigators and clinical trial sites. If we or our CRO fail to comply with applicable GCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA may require us to perform additional clinical trials before approving any marketing applications. Upon inspection, the FDA may determine that our clinical trials did not comply with GCPs. In addition, our clinical trials will require a sufficiently large number of test subjects to evaluate the safety and effectiveness of a product candidate. Accordingly, if our CROs fail to comply with these regulations or fail to recruit a sufficient number of patients, our clinical trials may be delayed, or we may be required to repeat such clinical trials, which would delay the regulatory approval process.

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 if the quality of the clinical data they obtain is compromised due to the failure to 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 our product candidates and will not be able to, or may be delayed in our efforts to, successfully commercialize our product candidates.

We currently depend on a single source supplier for manufacture of our product. If this manufacturer fails to provide us or our collaborators with adequate supplies of materials for clinical trials or commercial product or fail to comply with the requirements of regulatory authorities, we may be unable to develop or commercialize M207 or other product candidates.

We have contracted with CMOs (including Patheon) to produce, in collaboration with us, M207, for commercial use in the United States. We have not entered into any agreements with any alternate suppliers for M207 product or API. Even if we were able to enter into other long-term agreements for manufacture of commercial supply on reasonable terms, we may face delays or increased costs in our supply chain that could jeopardize the commercialization of M207. Additionally, if M207 or any other future product candidates is approved by the FDA or other regulatory agencies for commercial sale or if M207 is approved for commercial sale in jurisdictions outside the United States, we will need to contract with a third party to manufacture such products for commercial sale in the United States and/or in such other jurisdictions.

Our dependence on single source suppliers with respect to our supply chain for M207 exposes us to certain risks, including the following:

- our supplier may cease or reduce production or deliveries, raise prices or renegotiate terms;
- we may be unable to locate a suitable replacement on acceptable terms or on a timely basis, if at all;
- delays caused by supply issues may harm our reputation; and
- our ability to progress our business could be materially and adversely impacted if our single-source supplier upon which we rely were to experience a significant business challenge, disruption or failure due to issues such as financial difficulties or bankruptcy, issues relating regulatory or quality compliance issues, or other legal or reputational issues.

Even though we have an agreement with a CMO, Patheon, to supply M207, and even if we enter into other long-term agreements with other CMOs, the FDA may not approve the facilities of such CMOs, the CMOs may not perform as agreed or the CMOs may terminate their agreements with us. If any of the foregoing circumstances occur, we may need to find alternative manufacturing facilities, which would significantly impact our ability to develop, maintain or obtain, as applicable, regulatory approval for or market M207 or any other future product candidate. In the event that we seek such alternative sources, we may not be able to enter into replacement arrangements without delays or additional expenditures. We cannot estimate these delays or costs with certainty but, if they were to occur, they could cause a delay in our development and commercialization efforts.

The manufacturer(s) of M207 are obliged to operate in accordance with FDA-mandated current good manufacturing practices, or cGMPs, and we have limited control over the ability of CMOs to maintain adequate quality control, quality assurance and qualified personnel to ensure compliance to cGMPs. In addition, the facilities used by our CMOs to manufacture M207 must be approved by the FDA pursuant to inspections that will be conducted prior to any grant or regulatory approval by the FDA. If any of our CMOs are unable to successfully manufacture material that conform to our specifications the FDA's strict regulatory requirements pass regulatory inspections, they will not be able to secure or maintain approval for the manufacturing facilities. Additionally, a failure by any of our CMOs to establish and follow cGMPs or to document their adherence to such practices may negatively impact our commercialization or lead to significant delays in the launch and commercialization of any other products that we may have in the future. Failure by our CMOs or us to comply with application regulations could result sections being imposed on us, including fines, injunctions, civil penalties, failure of the government to grant pre-market approval of drugs, delays, suspensions or withdrawal of approvals, seizures or recalls of product, operating restrictions, and criminal prosecutions.

The manufacturer of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of pharmaceutical products often encounter difficulties in production. These problems include difficulties with production costs and yields, quality control, including stability of the product, quality assurance testing, shortages of qualified personnel, as well as compliance with strictly-enforced federal, state and foreign regulations. We cannot assure you that any issues relating to the manufacture of M207 will not occur in the future. Additionally, our CMOs may experience manufacturing difficulties due to resource constraints or as a result of labor disputes. If our CMOs were to encounter difficulties, or otherwise fail to comply with their contractual obligations, our ability to commercialize M207 in the United States would be jeopardized. Any delay or interruption in our ability to meet commercial demand for M207 will result in the loss of potential revenue and could adversely affect our ability to gain market acceptance for these products.

Failures or difficulties faced at any level of our supply chain could materially adversely affect our business and delay or impede commercialize of M207 and could have a material adverse effect on our business, results of operations, financial conditions and prospects.

If we are not able to establish collaborations, we may have to alter our development plans.

Our product development programs and the potential commercialization of our product candidates will require substantial additional cash to fund our expenses. We may seek to collaborate with third parties for certain of our development programs, and potentially for the commercialization of our lead product candidate, M207.

We face significant competition in seeking appropriate collaborators. Whether we reach a definitive collaborative agreement will depend, among other things, upon our assessment of the collaborator's resources and expertise, the terms and conditions of the proposed collaboration and the proposed collaborator's evaluation of a number of factors. Those factors may include the design or results of clinical trials, the likelihood of approval by the FDA or similar regulatory authorities outside the United States, the potential market for the subject product candidate, the costs and complexities of manufacturing and delivering such product candidate to patients, the potential existence of competing drugs, the existence of uncertainty with respect to our ownership of technology, which can exist if there is a challenge to such ownership without regard to the merits of the challenge and industry and market conditions generally. The collaborator may also consider alternative product candidates or technologies for similar indications that may be available on which to collaborate and whether such a collaboration could be more attractive than the one with us for our product candidate. In addition, there have been a significant number of recent business transactions among large pharmaceutical companies that have resulted in a reduced number of potential future collaborators.

We face significant competition in seeking appropriate collaborators. Collaborations are complex and time-consuming to negotiate and document. We may also be restricted under collaboration agreements from entering into agreements with other potential collaborators. We may not be able to negotiate collaborations on acceptable terms, or at all. If that were to occur, we may have to curtail, reduce or delay the development of a particular product candidate, or one or more of our other development programs, delay its or their potential commercialization or reduce the scope of our sales or marketing activities, or increase our expenditures and undertake development or commercialization activities at our own expense. If we elect to increase our expenditures to fund development or commercialization activities on our own, we may need to obtain additional capital, which may not be available to us on acceptable terms or at all. If we do not have sufficient funds, we will not be able to bring our product candidates to market and generate revenue.

In addition, any future collaborations that we enter into may not be successful. The success of our collaboration arrangements will depend heavily on the efforts and activities of our collaborators. Collaborators generally have significant discretion in determining the efforts and resources that they will apply to these collaborations. Disagreements between parties to a collaboration arrangement regarding clinical development and commercialization matters can lead to delays in the development process or commercializing the applicable product candidate and, in some cases, termination of the collaboration arrangement. These disagreements can be difficult to resolve if neither of the parties has final decision-making authority. Collaborations with pharmaceutical or biotechnology companies and other third parties may be terminated or allowed to expire by the other party. Any such termination or expiration would adversely affect us financially and could harm our business reputation.

We may form strategic partnerships and collaborations in the future, and we may not realize the benefits of such alliances.

We may seek strategic partnerships, create joint ventures or collaborations or enter into licensing arrangements with third parties that we believe will complement or augment our existing business. These relationships may require us to incur non-recurring and other charges, increase our near- and long-term expenditures, issue securities that dilute our existing stockholders or disrupt our management and business. In addition, we face significant competition in seeking appropriate strategic partners and the negotiation process is time-consuming and complex.

The process of establishing and maintaining collaborative relationships is difficult, time-consuming and involves significant uncertainty, including:

- a collaboration partner may seek to renegotiate or terminate their relationships with us due to unsatisfactory clinical results, manufacturing issues, a change in business strategy, a change of control or other reasons;
- a collaboration partner may shift its priorities and resources away from our product candidates due to a change in business strategy, or a merger, acquisition, sale or downsizing;
- a collaboration partner may not devote sufficient resources towards, or cease development in, therapeutic areas which are the subject of our strategic collaboration;
- a collaboration partner may change the success criteria for a product candidate thereby delaying or ceasing development of such candidate;
- a collaboration partner could develop a product candidate that competes, either directly or indirectly, with our product candidate;
- a significant delay in initiation of certain development activities by a collaboration partner will also delay payment of milestones tied to such activities, thereby impacting our ability to fund our own activities;
- a collaboration partner with commercialization obligations may not commit sufficient financial or human resources to the marketing, distribution or sale of a product;
- a collaboration partner with manufacturing responsibilities may encounter regulatory, resource or quality issues and be unable to meet demand requirements;
- a dispute may arise between us and a collaboration partner concerning the research, development or commercialization of a product candidate resulting in a delay in milestones, royalty payments or termination of an alliance and possibly resulting in costly litigation or arbitration which may divert management attention and resources;
- a collaboration partner may use our products or technology in such a way as to invite litigation from a third party; and
- a collaboration partner may exercise a contractual right to terminate a strategic alliance, making us ineligible to receive milestone or royalty payments under such agreement.

RISKS RELATED TO MARKETING AND SALE OF OUR PRODUCTS

We have no experience selling, marketing or distributing approved product candidates and have no internal capabilities to do so.

We currently have no sales, marketing or distribution capabilities. We do not anticipate having the resources in the foreseeable future to allocate developing adequate sales and marketing support for any of our product candidates, if approved by the FDA. Although we may develop a targeted commercial infrastructure to market and distribute our proprietary product candidates, our future success may depend, in part, on our ability to enter into and maintain collaborative relationships to provide such capabilities, on the collaborators' strategic interest in the product candidates under development and on such collaborators' ability to successfully market and sell any such product candidates. There can be no assurance that we will be able to establish or maintain such collaborative arrangements, or if we are able to do so, that our collaborators will have effective sales forces. To the extent that we decide not to, or are unable to, enter into collaborative arrangements with respect to the sales and marketing of our product candidates, significant capital expenditures, management resources and time will be required to establish and develop an in-house marketing and sales force with the needed technical expertise. There can also be no assurance that we will be able to establish or maintain relationships with third-party collaborators or develop in-house sales and distribution capabilities. To the extent that we depend on third parties for marketing and distribution, any revenues we receive will depend upon the efforts of such third parties, and there can be no assurance that such efforts will be successful. In addition, there can also be no assurance that we will be able to market and sell our products in the United States or overseas.

If our product candidates do not obtain sufficient market share against competitive products, we may not achieve substantial product revenues and our business will suffer.

The markets for our product candidates are characterized by intense competition and rapid technological advances. All of our product candidates will, if approved, compete with a number of existing and future drug delivery systems and therapies developed, manufactured and marketed by others. Existing or future competing products may provide greater therapeutic convenience or clinical or other benefits for a specific indication than our product candidates or may offer comparable performance at a lower cost. If our product candidates fail to capture and maintain market share, we may not achieve sufficient revenues and our business will suffer.

We will compete against fully integrated pharmaceutical companies and smaller companies that are collaborating with larger pharmaceutical companies, academic institutions, government agencies and other public and private research organizations. Many of these competitors, either alone or together with their collaborative partners, operate larger research and development programs or have substantially greater financial and other resources than we do, as well as significantly greater experience in:

- developing drugs;
- undertaking preclinical testing and human clinical trials;
- obtaining FDA and other regulatory approvals of drugs;
- formulating and manufacturing drugs; and
- launching, marketing and selling drugs.

The development and commercialization of new products to treat migraine is highly competitive. We expect to have considerable competition from major pharmaceutical, biotechnology and specialty pharmaceutical companies. Companies marketing products that treat migraine that may compete with our M207 product candidate include Alder Biopharmaceuticals, Allergan, Inc., AstraZeneca plc, Biohaven Pharmaceuticals, Eli Lilly & Company, GlaxoSmithKline plc, Promius Pharma, LLC, Teva Pharmaceutical Industries, Inc., and Zogenix, Inc.

Products developed or under development by competitors may render our product candidates or technologies obsolete or non-competitive.

The biotechnology and pharmaceutical industries are intensely competitive and subject to rapid and significant technological change. Our product candidates will have to compete with existing therapies, new formulations of existing drugs and new therapies that may be developed in the future. We face competition from pharmaceutical, biotechnology and medical device companies, including intracutaneous delivery companies, in the United States and abroad. In addition, companies pursuing different but related fields represent substantial competition. Many of these organizations competing with us have substantially greater capital resources, larger research and development staffs and facilities, longer drug development history in obtaining regulatory approvals and greater manufacturing and marketing capabilities than we do. These organizations also compete with us to attract qualified personnel and parties for acquisitions, joint ventures or other collaborations, and therefore, we may not be able to hire or retain qualified personnel to run all facets of our business.

Our ability to generate revenues from the sale of our product candidates will be diminished if we are unable to obtain third party coverage and adequate levels of reimbursement for any approved product candidate.

Our ability to commercialize any product candidate for which we receive regulatory approval, alone or with collaborators, will depend in part on the extent to which coverage and reimbursement for the product candidate will be available from:

- government and health administration authorities;
- private health maintenance organizations and health insurers; and
- other healthcare payers.

Significant uncertainty exists as to the reimbursement status of newly approved healthcare products. The regulations that govern marketing approvals, pricing and reimbursement for new drug products vary widely from country to country. In the United States, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act of 2010 ("ACA"), is significantly changing the way healthcare is financed by both governmental and private insurers. While we cannot predict what impact on federal reimbursement policies this law or any amendment to it will continue to have in general or specifically on any product that we may commercialize, the ACA or any such amendment may result in downward pressure on pharmaceutical reimbursement, which could negatively affect market acceptance of new products. In addition, although the United States Supreme Court has upheld the constitutionality of most of the ACA, several states have not implemented certain sections of the ACA, including 19 that have rejected the expansion of Medicaid eligibility for low income citizens, and some members of the U.S. Congress are still working to repeal the ACA. More recently, President Trump and the Republican majorities in both houses of the U.S. Congress have been seeking to repeal or replace all or portions of the ACA but to date they have been unable to agree on any such legislation. While Congress has not passed repeal legislation, the Tax Cuts and Jobs Act of 2017 includes a provision repealing, effective January 1, 2019, the tax-based shared responsibility payment imposed by the ACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the "individual mandate". Congress may consider other legislation to repeal or replace elements of the ACA in the future. We cannot predict what legislation, if any, to repeal or replace the ACA will become law, or what impact any such legislation may have on our product candidates. Additionally, healthcare payers, including Medicare, are challenging the prices charged for medical products and services. Government and other healthcare payers increasingly attempt to contain healthcare costs by limiting both coverage and the level of reimbursement for drugs. Even if one of our product candidates is approved by the FDA, insurance coverage may not be available, and reimbursement levels may be inadequate, to cover the product candidate. If government and other healthcare payers do not provide adequate coverage and reimbursement levels for one of our product candidates, once approved, market acceptance of the product could be reduced.

We face potential product liability exposure, and if successful claims are brought against us, we may incur substantial liability and may have to limit development of a product candidate or commercialization of an approved product.

The use of our product candidates in clinical trials and the sale of any products for which we may obtain marketing approval expose us to the risk of product liability claims. Product liability claims may be brought against us by participants enrolled in our clinical trials, patients, healthcare providers or others using, administering or selling our product candidate. If we cannot successfully defend ourselves against any such claims, we would incur substantial liabilities. Regardless of merit or eventual outcome, product liability claims may result in:

- withdrawal of clinical trial participants;
- termination of clinical trial sites or entire trial programs;
- costs of related litigation;
- substantial monetary awards to patients or other claimants;
- decreased demand for an approved product and loss of revenue;
- impairment of our business reputation;
- diversion of management and scientific resources from our business operations; and
- the inability to commercialize an approved product candidate.

Insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to product liability. We intend to expand our insurance coverage to include the sale of commercial products if we obtain marketing approval for our product candidates, but we may be unable to obtain commercially reasonable product liability insurance for any product candidates approved for marketing. Large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or a series of claims brought against us, particularly if judgments exceed our insurance coverage, could cause our stock price to decline and could adversely affect our results of operations and business.

We may be exposed to liability claims associated with the use of hazardous materials and chemicals.

Our research and development activities may involve the controlled use of hazardous materials and chemicals. Although we believe that our safety procedures for using, storing, handling and disposing of these materials comply with federal, state and local laws and regulations, we cannot completely eliminate the risk of accidental injury or contamination from these materials. In the event of such an accident, we could be held liable for any resulting damages and any liability could materially adversely affect our business, financial condition and results of operations. In addition, the federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of hazardous materials and waste products may require us to incur substantial compliance costs that could materially adversely affect our business, financial condition and results of operations.

Business disruptions could seriously harm our future revenues, results of operations and financial condition and increase our costs and expenses.

Our operations could be subject to earthquakes, power shortages, telecommunications failures, water shortages, floods, fires, extreme weather conditions, medical epidemics and other natural or manmade disasters or business interruptions, for which we are predominantly self-insured. We do not carry insurance for all categories of risk that our business may encounter. The occurrence of any of these business disruptions could seriously harm our operations and financial condition and increase our costs and expenses.

RISKS RELATED TO OUR INTELLECTUAL PROPERTY

If we fail to comply with our obligations to our licensor in our intellectual property license, we could lose license rights that are important to our business.

We are a party to an Intellectual Property License Agreement dated October 5, 2006, as amended, with ALZA Corporation and we may enter into additional license agreements in the future. Our existing license agreement imposes, and we expect that any future license agreements will impose, various diligence, product payment, royalty, insurance and other obligations on us. If we fail to comply with these obligations, our licensors may have the right to terminate these agreements, in which event we might not be able to develop and market any product candidate that is covered by these agreements. Termination of these licenses or reduction or elimination of our licensed rights may result in our having to negotiate new or reinstated licenses with less favorable terms. These risks could delay or prevent us from offering our product candidates. We might not have the necessary rights or the financial resources to develop, manufacture or market our current or future product candidates without the rights granted under these licenses, and the loss of sales or potential sales in such product candidates could have a material adverse effect on our business, financial condition, results of operations and prospects. The occurrence of such events could have a material adverse effect on our business, financial condition and results of operations. Determining the scope of licenses and related obligations may be difficult and could lead to disputes between us and the licensor. Disputes may arise regarding intellectual property subject to a licensing agreement, including:

- the scope of rights granted under a 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 or 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.

Additionally, the agreement under which we currently license intellectual property is complex, and certain provisions 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, increase what we believe to be our financial or other obligations under the relevant agreement, or decrease the third-party's financial or other obligations under the relevant agreement, any of which could have a material adverse effect on our business, financial condition, results of operations and prospects.

Our failure to obtain and maintain patent protection for our technology and our product candidates could permit our competitors to develop and commercialize technology and products similar or identical to ours, and our ability to successfully commercialize our technology and product candidates may be adversely affected.

Our commercial success is significantly dependent on intellectual property related to our product candidate portfolio. We are either the licensee or assignee of numerous issued and pending patent applications that cover various aspects of our assets, including, most importantly, our microneedle patch system and our product candidates.

Our success depends in large part on our and our licensor's ability to obtain and maintain patent protection in the United States and other countries with respect to our proprietary technology and product candidates. In some circumstances, we may not have the right to control the preparation, filing and prosecution of patent applications, or to maintain the patents, covering technology or products that we license from third parties. Therefore, we cannot be certain that these patents and applications will be prosecuted and enforced in a manner consistent with the best interests of our business. In addition, if third parties who license patents to us fail to maintain such patents, or lose rights to those patents, the rights we have licensed may be reduced or eliminated.

The patent prosecution process is expensive, time-consuming and complex, and we may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner or in all jurisdictions where protection may be commercially advantageous, or we may not be financially able to protect our proprietary rights at all. It is also possible that we may fail to identify patentable aspects of our research and development output before it is too late to obtain patent protection. We may not be able to obtain or maintain patent protection from our pending patent applications, from those we may file in the future, or from those we may license from third parties. There is no assurance that all potentially relevant prior art relating to our patents and patent applications has been found. We may be unaware of prior art that could be used to invalidate an issued patent or prevent our pending patent applications from issuing as patents. Moreover, even if we are able to obtain patent protection, such patent protection may be of insufficient scope to achieve our business objectives or provide any competitive advantage. In addition, although we enter into non-disclosure and confidentiality agreements with parties who have access to patentable aspects of our research and development output, any of these parties may breach such agreements and disclose such output before a patent application is filed, thereby jeopardizing our ability to seek patent protection.

The patent position of biotechnology and pharmaceutical companies generally is highly uncertain, involves complex legal and factual questions and has in recent years been the subject of much litigation. As a result, the issuance, scope, validity, enforceability and commercial value of our and our licensor's patent rights are highly uncertain. Our and our licensor's pending and future patent applications may not result in patents being issued which protect our technology or products or which effectively prevent others from commercializing competitive technologies and products. 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. The standards which the United States Patent and Trademark Office, or USPTO, and foreign patent offices use to grant patents are not always applied predictably or uniformly and can change. There is also no uniform, worldwide policy regarding the subject matter and scope of claims granted or allowable in pharmaceutical or biotechnology patents. The laws of foreign countries may not protect our rights to the same extent as the laws of the United States, and many companies have encountered significant problems and costs in protecting their proprietary information in these non-U.S. countries. Outside the United States, patent protection must be sought in individual jurisdictions, further adding to the cost and uncertainty of obtaining adequate patent protection outside of the United States. Accordingly, we cannot predict whether additional patents protecting our product candidates will issue in the United States or in non-U.S. jurisdictions, or whether any patents that do issue are valid, enforceable and have claims of adequate scope to provide competitive advantage. 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 licensor were the first to make the inventions claimed in our owned and licensed patents or pending patent applications, or that we or our licensor were the first to file for patent protection of such inventions. Assuming the other requirements for patentability are met, the first to file a patent application is entitled to the patent. We may become involved in opposition or interference proceedings challenging our patent rights or the patent rights of others. An adverse determination in any such proceeding 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 our product candidates without infringing third-party patent rights.

Even if our owned and licensed patent applications issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors from competing with us or otherwise provide us with any competitive advantage. Our competitors may be able to circumvent our owned or licensed patents by developing similar or alternative technologies or products in a non-infringing manner. Third parties may have patents that could prevent us from marketing our own patented product candidates. Third parties may also seek to market generic versions of any of our approved products. Even if we have valid and enforceable patents, these patents still may not provide protection against competing products or processes sufficient to achieve our business objectives. The issuance of a patent is not conclusive as to its scope, validity or enforceability, and our owned and licensed patents may be challenged in the courts or patent offices in the United States and abroad. Such challenges may result in patent claims being narrowed, invalidated or held unenforceable, which could limit our ability to stop or prevent us from stopping others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our technology and product candidates. 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. As a result, our owned and licensed patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

Bearing the costs and other requirements associated with prosecution of pending patent applications and maintenance of issued patents are essential to procurement and maintenance of patents integral to our product candidates, and our patent protection could be reduced or eliminated for non-compliance for these requirements.

Periodic maintenance fees, renewal fees, annuity fees and various other governmental fees on patents and/or patent applications will come due for payment periodically throughout the lifecycle of patent applications and issued patents. In order to help ensure that we comply with any required fee payment, documentary and/or procedural requirements as they might relate to any patents for which we are an assignee or co-assignee, we employ legal help and related professionals as needed to comply with those requirements. Failure to meet a required fee payment, document production or procedural requirement can result in the abandonment of a pending patent application or the lapse of an issued patent. In some instances, the defect can be cured through late compliance, but there are situations where the failure to meet the required deadline cannot be cured. Such an occurrence could compromise the intellectual property protection around a preclinical or clinical product candidate and possibly weaken or eliminate our ability to protect our eventual market share for that product candidate.

Our business will be harmed if we do not successfully protect the confidentiality of our trade secrets.

In addition to our patented technology and product candidates, we rely on trade secrets, including unpatented know-how, technology and other proprietary information, to maintain our competitive position. We seek to protect these trade secrets, in part, by entering into non-disclosure and confidentiality agreements with parties that have access to them, such as our corporate collaborators, outside scientific collaborators, sponsored researchers, 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, any of these parties may breach the agreements and disclose our proprietary information, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

In addition to contractual measures, we try to protect the confidential nature of our proprietary information using commonly accepted physical and technological security measures. Such security measures may not provide adequate protection for our proprietary information, for example, in the case of misappropriation of a trade secret by an employee, consultant, or third party with authorized access. Monitoring unauthorized uses and disclosures is difficult, and we do not know whether the steps we have taken to protect our proprietary technologies will be effective. Unauthorized parties may also attempt to copy or reverse engineer certain aspects of our products that we consider proprietary. Even though we use commonly accepted security measures, the criteria for protection of trade secrets can vary among different jurisdictions.

We could be prevented from selling product candidates, if approved, and could be forced to pay damages and defend against litigation, if we infringe the rights of third parties.

We conduct freedom-to-operate studies to guide our early-stage research and development away from areas where we are likely to encounter obstacles in the form of third party intellectual property conflicts, and to assess the advisability of licensing third party intellectual property or taking other appropriate steps to address any freedom-to-operate or development issues. However, with respect to third party intellectual property, it is impossible to establish with certainty that any of our product candidates will be free of claims by third party intellectual property holders or whether we will require licenses from such third parties. Even with modern databases and on-line search engines, literature searches are imperfect and may fail to identify relevant patents and published applications.

In the pharmaceutical industry, significant litigation and other proceedings, including interferences, oppositions, reexamination, *inter partes* review, derivation and post-grant review proceedings before the USPTO and corresponding foreign patent offices, regarding patents, patent applications, trademarks and other intellectual property rights have become commonplace. The types of situations in which we may become a party to such proceedings include:

- we or our collaborators may initiate litigation or other proceedings against third parties seeking to invalidate the patents held by those third-parties or to obtain a judgment that our products or processes do not infringe those third parties' patents;
- if our competitors file patent applications that claim technology also claimed by us or our licensors, we or our licensors may be required to participate in interference or opposition proceedings to determine the priority of invention, which could jeopardize our patent rights and potentially provide a third party with a dominant patent position;
- if third parties initiate litigation claiming that our processes or products infringe their patent or other intellectual property rights, we and our collaborators will need to defend against such proceedings; and;

- if a license to necessary intellectual property is terminated, the licensor may initiate litigation claiming that our processes or products infringe, misappropriate or otherwise violate their patent or other intellectual property rights and/or that we breached our obligations under the license agreement, and we and our collaborators would need to defend against such proceedings.

Third parties may assert that we are employing their proprietary technology without authorization or have infringed upon, misappropriated or otherwise violated their intellectual property or other rights. Even if we believe third-party claims of infringement against us or our collaborators are without merit, there is a risk that a court would decide that we or our collaborators are infringing the third party's valid and enforceable patents. If our product candidates, methods, processes or other technologies infringe the proprietary rights of other parties, we could incur substantial costs and may have to:

- obtain licenses, which may not be available on commercially reasonable terms, if at all;
- abandon an infringing product;
- redesign our product candidates or processes to avoid infringement;
- stop using the subject matter claimed in the patents held by others;
- pay damages; or
- defend litigation or administrative proceedings which may be costly whether we win or lose and which could result in a substantial diversion of our financial and management resources.

We intend to pursue Section 505(b)(2) regulatory approval filings with the FDA for our product candidates where applicable. Such filings involve significant costs, and we may also encounter difficulties or delays in obtaining regulatory approval for our product candidates under Section 505(b)(2).

We intend to pursue regulatory approval of certain of our product candidates, including M207, pursuant to Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act, or the FDCA. A Section 505(b)(2) application is a type of NDA that enables the applicant to rely, in part, on the FDA's findings of safety and efficacy of a previously approved product for which the applicant has no right of reference, or published literature, in support of its application. Section 505(b)(2) NDAs often provide an alternate path to FDA approval for new or improved formulations or new uses of previously approved products. Such applications involve significant costs, including filing fees.

To the extent that a Section 505(b)(2) NDA relies on clinical trials conducted for a previously approved product or the FDA's prior findings of safety and effectiveness for a previously approved product, the Section 505(b)(2) applicant must submit patent certifications in its Section 505(b)(2) application with respect to any patents for the previously approved product on which the applicant's application relies and that are listed in the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations, commonly known as the Orange Book. Specifically, the applicant must certify for each listed patent that, in relevant part, (1) the required patent information has not been filed by the original applicant; (2) the listed patent has expired; (3) the listed patent has not expired, but will expire on a particular date and approval is not sought until after patent expiration; or (4) the listed patent is invalid, unenforceable or will not be infringed by the proposed new product. A certification that the new product will not infringe the previously approved product's listed patent or that such patent is invalid or unenforceable is known as a Paragraph IV certification. If the applicant does not challenge one or more listed patents through a Paragraph IV certification, the FDA will not approve the Section 505(b)(2) NDA application until all the listed patents claiming the referenced product candidate have expired.

If the Section 505(b)(2) NDA applicant has provided a Paragraph IV certification to the FDA, the applicant must also send notice of the Paragraph IV certification to the owner of the referenced NDA for the previously approved product and relevant patent holders within 20 days after the Section 505(b)(2) NDA has been accepted for filing by the FDA. The NDA and patent holders may then initiate a patent infringement suit against the Section 505(b)(2) applicant. Under the FDCA, the filing of a patent infringement lawsuit within 45 days of receipt of the notification regarding a Paragraph IV certification automatically prevents the FDA from approving the Section 505(b)(2) NDA until the earliest to occur of 30 months beginning on the date the patent holder receives notice, expiration of the patent, settlement of the lawsuit, or until a court deems the patent unenforceable, invalid or not infringed.

If we rely in our Section 505(b)(2) regulatory filings on clinical trials conducted, or the FDA's prior findings of safety and effectiveness, for a previously approved product that involves patents referenced in the Orange Book, then we will need to make the patent certifications or the Paragraph IV certification described above. If we make a Paragraph IV certification and the holder of the previously approved product that we referenced in our application initiates patent litigation within the time periods described above, then any FDA approval of our Section 505(b)(2) application would be delayed until the earlier of 30 months, resolution of the lawsuit, or the other events described above. Accordingly, our anticipated dates of commercial introduction of our product candidates would be delayed. In addition, we would incur the expenses, which could be material, involved with any such patent litigation. As a result, we may invest a significant amount of time and expense in the development of our product candidates only to be subject to significant delay and patent litigation before our product candidates may be commercialized, if at all.

In addition, even if we submit a Section 505(b)(2) application that relies on clinical trials conducted for a previously approved product where there are no patents referenced in the Orange Book for such other product with respect to which we have to provide certifications, we are subject to the risk that the FDA could disagree with our reliance on the particular previously approved product, conclude that such previously approved product is not an acceptable reference product, and require us instead to rely as a reference product on another previously approved product that involves patents referenced in the Orange Book, requiring us to make the certifications described above and subjecting us to additional delay, expense and the other risks described above.

We may become involved in costly and time-consuming lawsuits with uncertain outcomes to protect or enforce our patents.

Competitors may infringe our patents. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time consuming. In addition, in an infringement proceeding, a court may decide that a patent of ours is invalid or unenforceable or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. If we initiate legal proceedings against a third party to enforce a patent covering any of our product candidates, the defendant could counterclaim that the patent covering our product candidate is invalid or unenforceable. In patent litigation in the United States, defendant counterclaims alleging invalidity or unenforceability are commonplace. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including a lack of novelty, obviousness, written description or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld information material to patentability from the USPTO, or made a misleading statement, during prosecution. Third parties also may raise similar claims before administrative bodies in the United States or abroad, even outside the context of litigation. Such mechanisms include *ex parte* reexamination, post-grant review, *inter partes* review, interference proceedings, derivation proceedings, and equivalent proceedings in foreign jurisdictions (e.g., opposition proceedings).

There is a risk that a court or administrative body would decide to revoke, cancel or amend our patents in such a way that they no longer cover and protect a product candidate. In addition, a court or administrative body may decide that our patents are invalid, unenforceable or not infringed by a third party's activities. The outcome following legal assertions of invalidity and unenforceability is unpredictable. With respect to the validity question, for example, we cannot be certain that there is no invalidating prior art of which the patent examiner and we or our licensing partners were unaware during prosecution. An adverse result in any litigation or proceeding could put one or more of our patents at risk of being invalidated or interpreted narrowly. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, our licensors may have rights to file and prosecute such claims and we may be reliant on them to do so.

An adverse outcome in a litigation or proceeding involving our patents could limit our ability to assert our patents against competitors, affect our ability to receive royalties or other licensing consideration from our licensees, and may curtail or preclude our ability to exclude third parties from making, using and selling similar or competitive products. Any of these occurrences could have a material adverse effect on our business, financial condition, results of operations and prospects.

We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

Some of our employees 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 do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or our employees have used or disclosed intellectual property, including trade secrets or other proprietary information, of any such employee's former employer, or that patents and applications we have filed to protect inventions of these employees, even those related to one or more of our product candidates, are rightfully owned by their former or concurrent employer. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

Our agreements with employees and our personnel policies also provide that any inventions conceived by the individual in the course of rendering services to us shall be our exclusive property. Although our policy is to have all employees complete these agreements, we may not obtain these agreements in all circumstances, and individuals with whom we have these agreements may not comply with their terms. The assignment of intellectual property may not be self-executing and despite such agreement, such inventions may become assigned to third parties. In the event of unauthorized use or disclosure of our trade secrets or proprietary information, these agreements, even if obtained, may not provide meaningful protection, particularly for our trade secrets or other confidential information. To the extent that our employees, consultants or contractors use technology or know-how owned by third parties in their work for us, disputes may arise between us and those third parties as to the rights in related inventions. We may also be subject to claims that former employees, collaborators, or other third parties have an ownership interest in our patents or other intellectual property. In addition, we may face claims by third parties that our agreements with employees, contractors, or consultants obligating them to assign intellectual property to us are ineffective or in conflict with prior or competing contractual obligations of assignment, which could result in ownership disputes regarding intellectual property we have developed or will develop and interfere with our ability to capture the commercial value of such intellectual property. To the extent that an individual who is not obligated to assign rights in intellectual property to us is rightfully an inventor of intellectual property, we may need to obtain an assignment or a license to that intellectual property from that individual, or a third party or from that individual's assignee. Such assignment or license may not be available on commercially reasonable terms or at all.

Intellectual property litigation could cause us to spend substantial resources and distract our personnel from their normal responsibilities.

There is a great deal of litigation concerning intellectual property in our industry, and we could become involved in litigation. Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses and could distract our technical and management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. Such litigation or proceedings could substantially increase our operating losses and reduce our resources available for development activities. We may not have sufficient financial or other resources to adequately conduct such litigation or proceedings. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their substantially greater financial resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our business, financial condition, results of operations and ability to compete in the marketplace.

Recent patent reform legislation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents.

On September 16, 2011, the Leahy-Smith America Invents Act, or the Leahy-Smith Act, was signed into law. The Leahy-Smith Act includes a number of significant changes to U.S. patent law. These include provisions that affect the way patent applications will be prosecuted and may also affect patent litigation. In particular, under the Leahy-Smith Act, the United States transitioned in March 2013 to a "first to file" system in which the first inventor to file a patent application will be entitled to the patent. Third parties are allowed to submit prior art before the issuance of a patent by the USPTO and may become involved in opposition, derivation, reexamination, inter-parties review or interference proceedings challenging our patent rights or the patent rights of others. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, or invalidate, our patent rights, which could adversely affect our competitive position.

The USPTO is implementing regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act, and in particular, the first to file provisions, did not become effective until March 16, 2013. In addition, courts continue to decide how to interpret and enforce patent law. Accordingly, it is not clear what, if any, impact the Leahy-Smith Act will have on the operation of our business. However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business, results of operations, financial condition and cash flows and future prospects.

In addition, the patent positions of companies in the development and commercialization of biologics and pharmaceuticals are particularly uncertain. Recent U.S. Supreme Court rulings have narrowed the scope of patent protection available in certain circumstances and weakened the rights of patent owners in certain situations. This combination of events has created uncertainty with respect to the validity and enforceability of patents, once obtained. Depending on future actions by the U.S. Congress, the federal courts, and the USPTO, the laws and regulations governing patents could change in unpredictable ways that could have a material adverse effect on our existing patent portfolio and our ability to protect and enforce our intellectual property in the future. Similarly, statutory or judicial changes to the patent laws of other countries may increase the uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of issued patents.

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

Any future programs we choose to pursue may require the use of proprietary rights held by third parties, and the growth of our business will likely depend in part on our ability to acquire, in-license, maintain or use these proprietary rights. We may be unable to acquire or in-license any compositions, methods of use, processes, or other third-party intellectual property from third parties that we later identify as necessary for our future product candidates or such intellectual property may not be available on commercially reasonable terms. The licensing and acquisition of third-party intellectual property rights is a competitive area, and a number of more established companies are also pursuing strategies to license or acquire third-party intellectual property rights that we may consider attractive. These established companies may have a competitive advantage over us due to their size, financial resources, and greater clinical development and commercialization capabilities.

For example, we may in the future collaborate with non-profit and academic institutions to accelerate our preclinical research or development under written agreements with these institutions. These institutions may provide us with an option to negotiate a license to any of the institution's rights in technology resulting from the collaboration. Regardless of such option, we may be unable to negotiate a license within the specified time frame or under terms that are acceptable to us. If we are unable to do so, the institution may offer the intellectual property rights to other parties, potentially blocking our ability to pursue our applicable product candidate or program.

In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We also may be unable to license or acquire third-party intellectual property rights on terms that would allow us to make an appropriate return on our investment. If we are unable to successfully obtain a license to third-party intellectual property rights necessary for the development of a product candidate or program on reasonable terms or at all, we may have to abandon development of that product candidate or program and our business and financial condition could materially adversely suffer.

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 may be prohibitively expensive, and our intellectual property rights in some countries outside the United States and Europe can be less extensive than those in the United States and Europe. In addition, the laws of some countries outside the United States and Europe do not protect intellectual property rights to the same extent as federal and state laws in the United States and laws in Europe. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the United States and Europe, or from selling or importing products made using our inventions in and into the United States, Europe or other jurisdictions. Third parties may use our technologies in jurisdictions where we have not obtained or are unable to adequately enforce 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 and Europe. These products may compete with our products and our patents or other intellectual property 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 jurisdictions outside the United States and Europe. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents, trade secrets, and other intellectual property protection, particularly those relating to biotechnology products, which could make it difficult for us to stop the infringement of our patents, the reproduction of our manufacturing or other know-how or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our intellectual property rights in jurisdictions outside the United States and Europe, whether or not successful, could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

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

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

Depending upon the timing, duration and conditions of any FDA marketing approval of our product candidates, one or more of our U.S. patents may be eligible for limited patent term extension under the Hatch-Waxman Act and similar legislation in the EU. The Hatch-Waxman Act permits a patent term extension of up to five years for a patent covering an approved product as compensation for effective 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 receive an extension, for example, if we fail to apply within applicable deadlines, fail to apply prior to expiration of relevant patents or otherwise fail to satisfy applicable requirements. Moreover, the length of the extension could be less than we request. If we are unable to obtain patent term extension or the term of any such extension is less than we request, the period during which we can enforce our patent rights for that product will be shortened and our competitors may obtain approval to market competing products sooner. As a result, our business, financial condition, results of operations, and prospects may be adversely affected.

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

Our pending or future registered or unregistered trademarks or trade names may not issue and may be challenged, infringed, circumvented or declared generic or determined to be infringing on other marks. We may not be able to protect our rights to these trademarks and trade names, which we need to build name recognition by potential partners or customers in our markets of interest. At times, competitors may adopt trade names or trademarks similar to ours, thereby impeding our ability to build brand identity and possibly leading to market confusion. Over the long term, if we are unable to establish name recognition based on our trademarks and trade names, then we may not be able to compete effectively, and our business may be adversely affected.

Intellectual property rights do not necessarily address all potential threats to any competitive advantage we may have.

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

- Others may be able to make compounds that are the same as or similar to our product candidates, which are aimed initially at the generic market and are not covered by the claims of the patents that we own or have exclusively licensed;
- We or any of our licensors or strategic partners might not have been the first to make the inventions covered by the issued patent or pending patent application that we own or have exclusively licensed;
- Others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;
- It is possible that our pending patent applications will not lead to issued patents;
- Issued patents that we own or have exclusively licensed may not provide us with any competitive advantages, or may be held invalid or unenforceable, as a result of legal challenges by our competitors;
- Our competitors might conduct research and development activities in the United States and other countries that provide a safe harbor from patent infringement claims for certain research and development activities, as well as in countries where we do not have patent rights, and then use the information learned from such activities to develop competitive products for sale in our major commercial markets.

RISKS RELATED TO LEGISLATION AND ADMINISTRATIVE ACTIONS

Our relationships with customers and third-party payers will be subject to applicable anti-kickback, fraud and abuse and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm and diminished profits and future earnings.

Healthcare providers, physicians and third-party payers will play a primary role in the recommendation and prescription of any product candidates for which we obtain marketing approval. Our future arrangements with third party payers and customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations that may constrain the business or financial arrangements and relationships through which we market, sell and distribute any products for which we obtain marketing approval. Restrictions under applicable federal and state healthcare laws and regulations include the following:

- the federal Anti-Kickback Statute 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, order or recommendation of, any good or service, for which payment may be made under a federal healthcare program such as Medicare and Medicaid;
- the federal False Claims Act imposes criminal and civil penalties, including civil whistleblower or *qui tam* actions, against individuals or entities for, among other things, knowingly presenting, or causing to be presented false or fraudulent claims for payment by a federal government program, or making a false statement or record material to payment of a false claim or avoiding, decreasing or concealing an obligation to pay money to the federal government;
- the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, imposes criminal and civil liability for executing a scheme to defraud any healthcare benefit program and also imposes obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations, also imposes obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;
- the federal false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement in connection with the delivery of or payment for healthcare benefits, items or services;
- federal law requires applicable manufacturers of covered drugs to report payments and other transfers of value to physicians and teaching hospitals;
- the federal transparency requirements under the ACA require manufacturers of drugs, devices, biologics and medical supplies to report to the Department of Health and Human Services information related to physician payments and other transfers of value and physician ownership and investment interests; and
- analogous state laws and regulations, such as state anti-kickback and false claims laws and analogous non-U.S. fraud and abuse laws and regulations, may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payers, including private insurers, and some state laws require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government in addition to requiring drug manufacturers to report information related to payments to physicians and other health care providers or marketing expenditures.

State and non-U.S. laws also govern the privacy and security of health information in some circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations will 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 and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, imprisonment, exclusion of products from government funded healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations.

The implementation of the reporting and disclosure obligations of the Physician Payments Sunshine Act/Open Payments provisions of the Patient Protection and Affordable Care Act could adversely affect our business.

An ACA provision, generally referred to as the Physician Payments Sunshine Act or Open Payments Program, has imposed new reporting and disclosure requirements for applicable drug and device manufacturers of covered products and those entities under common ownership that provide assistance and support to the applicable manufacturers, with regard to payments or other transfers of value made to certain practitioners (including physicians, dentists and teaching hospitals), and certain investment/ownership interests held by physicians in the reporting entity. On February 1, 2013, Centers for Medicare & Medicaid Services, or CMS, released the final rule to implement the Physician Payments Sunshine Act.

The final rule implementing the Physician Payments Sunshine Act is complex, ambiguous, and broad in scope. When and if M207 and any other product candidates we develop in the future are approved, we will within a defined time period become subject to the reporting and disclosure provisions of the Physician Payments Sunshine Act. Accordingly, we will be required to collect, and report detailed information regarding certain financial relationships we have with physicians, dentists and teaching hospitals. It is difficult to predict how the new requirements may impact existing relationships among manufacturers, distributors, physicians, dentists and teaching hospitals. The Physician Payments Sunshine Act preempts similar state reporting laws, although we may also be required to continue to report under certain provisions of such state laws. While we expect to have substantially compliant programs and controls in place to comply with the Physician Payments Sunshine Act requirements, our compliance with the new final rule will impose additional costs on us. Additionally, failure to comply with the Physician Payment Sunshine Act may subject us to civil monetary penalties.

Healthcare reform may have a material adverse effect on our industry and our results of operations.

From time to time, legislation is implemented to rein in rising healthcare expenditures. In March 2010, President Obama signed into law the ACA, as amended by the Health Care and Education Reconciliation Act. The ACA included a number of provisions affecting the pharmaceutical industry, including annual, non-deductible fees on any entity that manufactures or imports certain branded prescription drugs and biologics and increases in Medicaid rebates owed by manufacturers under the Medicaid Drug Rebate Program. In addition, among other things, the ACA also established a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in and conduct comparative clinical effectiveness research. Congress has also proposed a number of legislative initiatives, including possible repeal of the ACA. At this time, it remains unclear whether there will be any changes made to certain provisions of the ACA or its entirety.

As noted above, the ACA is significantly changing the way healthcare is financed by both governmental and private insurers. While we cannot predict what impact on federal reimbursement policies this law or any amendment to it will continue to have in general or specifically on any product that we may commercialize, the ACA or any such amendment may result in downward pressure on pharmaceutical reimbursement, which could negatively affect market acceptance of new products. In addition, although the United States Supreme Court has upheld the constitutionality of most of the ACA, several states have not implemented certain sections of the ACA, including 19 that have rejected the expansion of Medicaid eligibility for low income citizens, and some members of the U.S. Congress are still working to repeal the ACA. More recently, President Trump and the Republican majorities in both houses of the U.S. Congress have been seeking to repeal or replace all or portions of the ACA but to date they have been unable to agree on any such legislation. While Congress has not passed repeal legislation, the Tax Cuts and Jobs Act of 2017 includes a provision repealing, effective January 1, 2019, the tax-based shared responsibility payment imposed by the ACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the “individual mandate”. Congress may consider other legislation to repeal or replace elements of the ACA in the future. We cannot predict what legislation, if any, to repeal or replace the ACA will become law, or what impact any such legislation may have on our product candidates.

If any of our product candidates become subject to recall it could harm our reputation, business and financial results.

The FDA and similar foreign governmental authorities have the authority to require the recall of commercialized products in the event of material deficiencies or defects in design, manufacture or labeling. In the case of the FDA, the authority to require a recall must be based on an FDA finding that there is a reasonable probability that the product would cause serious injury or death. In addition, foreign governmental bodies have the authority to require the recall of our products in the event of material deficiencies or defects in design or manufacture. Manufacturers may, under their own initiative, recall a product if any material deficiency in a product is found. A government-mandated or voluntary recall by us could occur as a result of component failures, manufacturing errors, design or labeling defects or other deficiencies and issues. Recalls of any of our product candidates would divert managerial and financial resources and have an adverse effect on our financial condition and results of operations. The FDA requires that certain classifications of recalls be reported to the FDA within 10 working days after the recall is initiated. Companies are required to maintain records of recalls, even if they are not reportable to the FDA. We may initiate voluntary recalls involving our product candidates in the future that we determine do not require notification of the FDA. If the FDA disagrees with our determinations, we could be required to report those actions as recalls. A recall announcement could harm our reputation with customers and negatively affect our sales. In addition, the FDA could take enforcement action for failing to report the recalls when they were conducted.

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

In some countries, 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 our product candidate to other available therapies. If reimbursement for our product candidates is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be harmed, possibly materially.

RISKS RELATED TO EMPLOYEE MATTERS, OUR OPERATIONS AND MANAGING GROWTH

We may enter into or seek to enter into business partnerships, combinations and/or acquisitions which may be difficult to integrate, disrupt our business, divert management attention or dilute stockholder value.

We may enter into business partnerships, combinations and/or acquisitions. We have limited experience in making acquisitions, which are typically accompanied by a number of risks, including:

- the difficulty of integrating the operations and personnel of the acquired companies;
- the potential disruption of our ongoing business and distraction of management;
- potential unknown liabilities and expenses;
- the failure to achieve the expected benefits of the combination or acquisition;
- the maintenance of acceptable standards, controls, procedures and policies; and
- the impairment of relationships with employees as a result of any integration of new management and other personnel.

If we are not successful in completing acquisitions that we may pursue in the future, we would be required to reevaluate our business strategy and we may have incurred substantial expenses and devoted significant management time and resources in seeking to complete the acquisitions. In addition, we could use substantial portions of our available cash as all or a portion of the purchase price, or we could issue additional securities as consideration for these acquisitions, which could cause our stockholders to suffer significant dilution.

We rely on key executive officers and their knowledge of our business and technical expertise would be difficult to replace.

We are highly dependent on our chief executive officer and our chief financial officer. We do not have “key person” life insurance policies for any of our officers. The loss of the technical knowledge and management and industry expertise of any of our key personnel could result in delays in product development and diversion of management resources, which could have a material adverse effect on our business, financial condition and results of operations.

If we are unable to hire additional qualified personnel, our ability to grow our business may be harmed.

We will need to hire additional qualified personnel with expertise in preclinical testing, clinical research and testing, government regulation, formulation and manufacturing and sales and marketing. We compete for qualified individuals with numerous biopharmaceutical companies, universities and other research institutions. Competition for such individuals is intense, and we cannot be certain that our search for such personnel will be successful. Attracting and retaining qualified personnel will be critical to our success.

Our employees 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. Misconduct by employees could include intentional failures to comply with FDA regulations, to provide accurate information to the FDA, to comply with manufacturing standards we have established, to comply with federal and state healthcare fraud and abuse laws and regulations, to report financial information or data accurately or to disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Employee 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. We have adopted a code of business conduct and ethics, but it is not always possible to identify and deter employee misconduct, and the 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 or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant fines or other sanctions, including civil, criminal or administrative.

We may not successfully manage our growth.

Our success will depend upon the effective management of our growth, which will place a significant strain on our management and on administrative, operational and financial resources. To manage this growth, we may be required to expand our facilities, augment our operational, financial and management systems and hire and train additional qualified personnel. Our inability to manage this growth could have a material adverse effect on our business, financial condition and results of operations.

Our business and operations would suffer in the event of computer system failures or security breaches.

Despite the implementation of security measures, our internal computer systems, and those of our CROs and other third parties on which we rely, are vulnerable to damage from computer viruses, unauthorized access, natural disasters, fire, terrorism, war and telecommunication and electrical failures. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our development and manufacturing programs. For example, the loss of clinical trial data from completed, ongoing or planned clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach results in a loss of or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability and development of our product candidates could be delayed.

Risks associated with use of our company-wide enterprise resource planning ("ERP") system may adversely affect our business and results of operations or the effectiveness of internal control over financial reporting.

We began implementing a company-wide ERP system in the third fiscal quarter of 2018 to handle the business and financial processes within our operations and corporate functions. To reap the benefits of our ERP system, we were required to change certain business and financial processes. Our business and results of operations may be adversely affected if we experience operating problems or cost overruns during the implementation process, or if the systems and the associated process changes do not give rise to the benefits that we expect. If we do not effectively implement, maintain or integrate the ERP system as planned or if the systems do not operate as intended, it may adversely affect our ability to manage and run our business operations, file reports with the SEC in a timely manner, and/or otherwise affect our internal control environment. Any of these consequences could have an adverse effect on our results of operations and financial condition.

Failure in our information technology systems, including by cybersecurity attacks or other data security incidents, could significantly disrupt our operations.

Our operations depend, in part, on the continued performance of our information technology systems. Our information technology systems are potentially vulnerable to physical or electronic break-ins, computer viruses and similar disruptions. Failure of our information technology systems could adversely affect our business, profitability and financial condition. Although we have information technology security systems, a successful cybersecurity attack or other data security incident could result in the misappropriation and/or loss of confidential or personal information, create system interruptions, or deploy malicious software that attacks our systems. It is possible that a cybersecurity attack might not be noticed for some period of time. The occurrence of a cybersecurity attack or incident could result in business interruptions from the disruption of our information technology systems, or negative publicity resulting in reputational damage with our shareholders and other stakeholders and/or increased costs to prevent, respond to or mitigate cybersecurity events. In addition, the unauthorized dissemination of sensitive personal information or proprietary or confidential information could expose us or other third-parties to regulatory fines or penalties, litigation and potential liability, or otherwise harm our business.

RISKS RELATING TO AN INVESTMENT IN OUR COMMON STOCK

The trading price of our common stock has been volatile with substantial price fluctuations on heavy volume, which could result in substantial losses for purchasers of our common stock and existing stockholders.

Our stock price has been and, in the future, may be subject to substantial volatility. During the period from January 2, 2018 through September 30, 2018, for example, our stock has traded in a range with a low of $3.66 and a high of $18.49. 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. We do not, for example, have any explanation for the volatility in our stock price or the heavy volume of trading (on some days exceeding six times the number of shares currently outstanding) that has occurred in our common stock in February and March of 2018. As a result of this volatility, investors may not be able to sell their common stock at or above the price paid for the shares. The market price for our common stock may be influenced by many factors, including:

- announcements relating to development, regulatory approvals or commercialization of our product candidates or those of competitors;
- results of clinical trials of our product candidates or those of our competitors;
- announcements by us or our competitors of significant strategic partnerships or collaborations or terminations of such arrangements;
- actual or anticipated variations in our operating results;
- changes in financial estimates by us or by any securities analysts who might cover our stock;
- conditions or trends in our industry;
- changes in laws or other regulatory actions affecting us or our industry;
- stock market price and volume fluctuations of comparable companies and, in particular, those that operate in the biopharmaceutical industry;
- announcements of investigations or regulatory scrutiny of our operations or lawsuits filed against us;
- capital commitments;
- investors' general perception of our company and our business;
- disputes concerning our intellectual property or other proprietary rights;
- recruitment or departure of key personnel; and
- sales of our common stock, including sales by our directors and officers or specific stockholders.

In the past, stockholders have initiated class action lawsuits against pharmaceutical and biotechnology companies following periods of volatility in the market prices of these companies' stock. Such litigation, if instituted against us, could cause us to incur substantial costs and divert management's attention and resources from our business.

If we are unable to maintain listing of our securities on the Nasdaq Capital Market or another reputable stock exchange, it may be more difficult for our stockholders to sell their securities.

Nasdaq requires listing issuers to comply with certain standards in order to remain listed on its exchange. On November 28, 2017, we received a letter from the Nasdaq Stock Market, LLC (the "Letter") stating that we had failed to maintain at least a $1.00 minimum bid price for its common stock (the "Minimum Bid Requirement") as required for continued listing of our common stock on the Nasdaq Capital Market. We subsequently effected a 1-for-20 reverse stock split of our outstanding common stock and, on February 9, 2018, we received a letter from the Director of Nasdaq Listing Qualifications indicating that we had regained compliance with the Minimum Bid Requirement under Nasdaq Rule 5550(a)(2).

If, for any reason, Nasdaq should delist our securities from trading on its exchange (including if we fail to comply with the Minimum Bid Requirement in the future) and we are unable to obtain listing on another reputable national securities exchange, a reduction in some or all of the following may occur, each of which could materially adversely affect our stockholders:

- the liquidity of our common stock;
- the market price of our common stock;
- our ability to obtain financing for the continuation of our operations;
- the number of institutional and general investors that will consider investing in our common stock;
- the number of market makers in our common stock;
- the availability of information concerning the trading prices and volume of our common stock; and
- the number of broker-dealers willing to execute trades in shares of our common stock.

Substantial future sales of shares by existing stockholders, or the perception that such sales may occur, could cause our stock price to decline.

If our existing stockholders, particularly our directors and executive officers, or are perceived by the public market as intending to sell substantial amounts of our common stock, the trading price of our common stock could decline significantly. As of March 1, 2018, we had 1,973,039 shares of common stock outstanding. Sales of a substantial number of shares of our common stock in the public market, or the perception that these sales might occur may reduce the prevailing market price of our common stock and make it more difficult for you to sell your common stock at a time and price that you deem appropriate. In addition, certain holders of our common stock and a warrant to purchase our common stock are entitled to rights with respect to the registration of their shares under the Securities Act of 1933, as amended ("Securities Act"). As long as the registration statements covering the resale of such shares remain in effect, such shares shall be freely tradable without restriction under the Securities Act, except for shares held by affiliates, as defined in Rule 144 under the Securities Act. Any sales of securities by existing stockholders could have a material adverse 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 depends in part on the research and reports that securities and industry analysts publish about us or our business. If one or more of the analysts who covers us downgrades our stock or publishes unfavorable research about our business, or if our clinical trials or operating results fail to meet the analysts' expectations, our stock price would likely decline. If one or more of these analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

Requirements associated with being a public reporting company will continue to increase our costs significantly, as well as divert significant company resources and management attention.

We have only been subject to the reporting requirements of the Securities Exchange Act of 1934, as amended ("Exchange Act") and the other rules and regulations of the SEC since January 2015. We are working with our legal, independent accounting, and financial advisors to identify those areas in which changes should be made to our financial and management control systems to manage our growth and our obligations as a public reporting company. These areas include corporate governance, corporate control, disclosure controls and procedures, and financial reporting and accounting systems. We have made, and will continue to make, changes in these and other areas. Compliance with the various reporting and other requirements applicable to public reporting companies will require considerable time, attention of management, and financial resources.

Further, the listing requirements of the Nasdaq Capital Market require that we satisfy certain corporate governance requirements relating to director independence, stockholder meetings, approvals and voting, soliciting proxies, conflicts of interest and a code of conduct. Our management and other personnel will need to devote a substantial amount of time and financial resources to ensure that we comply with all of these requirements. These reporting and corporate governance requirements, coupled with the increase in potential litigation exposure associated with being a public company, could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors or board committees or to serve as executive officers, or to obtain certain types of insurance, including directors' and officers' insurance, on acceptable terms.

Any changes we make to comply with these obligations may not be sufficient to allow us to satisfy our obligations as a public company on a timely basis, or at all.

We do not currently intend to pay cash dividends on our common stock and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.

We have never declared or paid any cash dividends on our common stock, and we currently intend to retain future earnings, if any, to fund the development and growth of our business. Additionally, our existing debt agreements contain covenants that restrict our ability to pay dividends. Therefore, we do not expect to declare or pay any dividends on our common stock for the foreseeable future. As a result, your ability to receive a return on an investment in our common stock will depend on any future appreciation in the market value of our common stock. There is no guarantee that our common stock will appreciate or even maintain the price at which you purchased it.

Our principal stockholders and management own a significant percentage of our stock and will be able to exert significant control over matters subject to stockholder approval.

Our directors, executive officers, and the holders of more than 10% of our common stock together with their affiliates beneficially own a significant number of shares of our common stock. These stockholders, acting together, may be able to determine all matters requiring stockholder approval. For example, these stockholders may be able to control elections of directors, amendments of our organizational documents, or approval of any merger, sale of assets, or other major corporate transaction. This may prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may feel are in your best interest as one of our stockholders.

If we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements on a timely basis could be impaired.

We are subject to the reporting requirements of the Exchange Act, certain provisions of the Sarbanes-Oxley Act and the rules and regulations of the Nasdaq Capital Market. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal controls over financial reporting.

If we are not able to comply with the requirements of Section 404 of the Sarbanes-Oxley Act in a timely manner, or if we are unable to maintain proper and effective internal controls, we may not be able to produce timely and accurate financial statements. If that were to happen, the market price of our stock could decline, and we could be subject to sanctions or investigations by Nasdaq, the SEC or other regulatory authorities.

Our disclosure controls and procedures may not be effective to ensure that we make all required disclosures.

As a public reporting company, we are subject to the periodic reporting requirements of the Exchange Act. Our disclosure controls and procedures are designed to reasonably assure that information required to be disclosed by us in reports we file or submit under the Exchange Act is accumulated and communicated to management, recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. We believe that any disclosure controls and procedures or internal controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met.

These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements or insufficient disclosures due to error or fraud may occur and not be detected.

Anti-takeover provisions in our amended and restated certificate of incorporation and amended and restated bylaws, as well as provisions in Delaware law, might discourage, delay or prevent a change of control of our company or changes in our management and, therefore, depress the trading price of our common stock.

Our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law contain provisions that could have the effect of rendering more difficult or discouraging an acquisition deemed undesirable by our board of directors. Our corporate governance documents include provisions:

- providing for three classes of directors with the term of office of one class expiring each year, commonly referred to as a staggered board;
- authorizing blank check preferred stock, which could be issued with voting, liquidation, dividend and other rights superior to our common stock;
- limiting the liability of, and providing indemnification to, our directors;
- limiting the ability of our stockholders to call and bring business before special meetings and to take action by written consent in lieu of a meeting;
- requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our board of directors;
- controlling the procedures for the conduct and scheduling of board and stockholder meetings;
- limiting the determination of the number of directors on our board and the filling of vacancies or newly created seats on the board to our board of directors then in office; and
- providing that directors may be removed by stockholders only for cause.

These provisions, alone or together, could delay hostile takeovers and changes in control or changes in our management.

As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation law, which prohibits a publicly-held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person which together with its affiliates owns, or within the last three years has owned, 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner.

The existence of the foregoing provisions and anti-takeover measures could limit the price that investors might be willing to pay in the future for shares of our common stock. They could also deter potential acquirers of our company, thereby reducing the likelihood that our stockholders could receive a premium for their common stock in an acquisition.

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 Jumpstart Our Business Startups Act of 2012, or the JOBS Act, and we intend to take advantage of some of the exemptions from reporting requirements that are applicable to other public companies that are not emerging growth companies, including:

- being permitted to provide only two years of audited financial statements, in addition to any required unaudited interim financial statements, with correspondingly reduced "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" disclosure;
- not being required to comply with the auditor attestation requirements in the assessment of our internal control over financial reporting;
- not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements;
- reduced disclosure obligations regarding executive compensation; and
- not being required to hold a non-binding advisory vote on executive compensation or obtain stockholder approval of any golden parachute payments not previously approved.

We cannot predict whether investors will find our common stock less attractive because we will rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile. We may take advantage of these reporting exemptions until we are no longer an emerging growth company. We will remain an emerging growth company until the earliest of (i) the end of the fiscal year in which the market value of our common stock that is held by non-affiliates exceeds $700 million as of the end of the second fiscal quarter, (ii) the end of the fiscal year in which we have total annual gross revenue of $1.07 billion or more during such fiscal year, (iii) the date on which we issue more than $1 billion in non-convertible debt in a three-year period or (iv) December 31, 2019, the end of the fiscal year following the fifth anniversary of the first sale of our common equity securities pursuant to an effective registration statement filed under the Securities Act.

Under Section 107(b) of the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not Applicable.

Item 5. Other Information

None.

Item 6. Exhibits

Exhibit number	Description
4.1	Warrant to Purchase Stock, dated as of September 25, 2018 *(Incorporated by reference to the registrant's current report on Form 8-K filed with the SEC on September 26, 2018).*
10.1	Amended and Restated Employment Agreement dated September 18, 2018 with Donald Kellerman, Pharm.D. (Incorporated by reference to the registrant's current report on Form 8-K filed with the SEC on September 24, 2018).
10.2	Amended and Restated Employment Agreement dated September 18, 2018 with Hayley Lewis *(Incorporated by reference to the registrant's current report on Form 8-K filed with the SEC on September 24, 2018).*
10.3	Amendment Agreement dated October 15, 2018 with Donald Kellerman, Pharm.D. *(Incorporated by reference to the registrant's current report on Form 8-K filed with the SEC on October 16, 2018).*
10.4	Amendment Agreement dated October 15, 2018 with Hayley Lewis *(Incorporated by reference to the registrant's current report on Form 8-K filed with the SEC on October 16, 2018).*
10.5	Employment Agreement dated September 25, 2018 with Greg Kitchener *(Incorporated by reference to the registrant's current report on Form 8-K filed with the SEC on October 16, 2018).*
10.6†	Master Lease Agreement, dated September 25, 2018, with Trinity Capital Fund III, L.P.
10.7†*	Manufacturing and Supply Agreement, dated September 25, 2018 with Patheon Manufacturing Services LLC
31.1†	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2†	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1†**	Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS†	XBRL Instance Document XBRL
101.SCH†	XBRL Taxonomy Extension Schema Document
101.CAL†	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF†	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB†	XBRL Taxonomy Extension Label Linkbase Document
101.PRE†	XBRL Taxonomy Extension Presentation Linkbase Document

† *Filed herewith*

* *Confidential treatment has been requested for certain information contained in this Exhibit (indicated by asterisk). Such information has been omitted and filed separately with the SEC.*

** *Exhibit 32.1 is being furnished and shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liability of that section, nor shall such exhibit be deemed to be incorporated by reference in any registration statement or other document filed under the Securities Act of 1933, as amended, or the Exchange Act, except as otherwise specifically stated in such filing.*

SIGNATURES

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

Dated: November 15, 2018

Zosano Pharma Corporation
(Registrant)

/s/ John Walker

John Walker
Chief Executive Officer
(Principal Executive Officer)

/s/ Gregory Kitchener

Gregory Kitchener
Chief Financial Officer
(Principal Financial and Accounting Officer)

TRINITY CAPITAL FUND III, L.P.

MASTER LEASE AGREEMENT

THIS MASTER LEASE AGREEMENT (this **"Agreement"**) is made as of September 25, 2018, between TRINITY CAPITAL FUND III, L.P., a Delaware limited partnership ("Lessor") and ZOSANO PHARMA CORPORATION (**"Lessee"**).

Lessee desires to lease from Lessor the equipment and other property (the **"Equipment"**) described in each Equipment Schedule executed pursuant to this Lease (each, a **"Schedule"**) incorporating by reference the terms and conditions of this Lease. Each Schedule identified as being part of this Agreement incorporates the terms of this Agreement and constitutes a separate lease agreement and is referred to herein as the "**Lease**." Certain definitions and construction of certain of the terms used in this Lease are provided in Section 19 hereof.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows:

(a) **1. AGREEMENT TO LEASE; TERM.** Subject to the terms of this Agreement, Lessor has agreed to make available to Lessee lease financing in the aggregate amount of $14,000,000 (the "**Commitment Amount**") for the period from the date hereof through the earliest to occur of (i) May 30, 2019, (ii) the date of any Default or Event of Default, and (iii) the occurrence of an Event of Default that continues (such date, the "**Expiration Date**"). Subject to the conditions precedent set forth in Section 5 herein, (x) on the date hereof, the initial agreement of Lessor to purchase and lease any Equipment under a Schedule shall be for Equipment with a Total Cost of not less than $5,000,000; and (y) for the period beginning on October 1, 2018 and ending on the Expiration Date any agreement of Lessor to purchase and lease any Equipment under a Schedule shall be, in each instance, for Equipment with a Total Cost of not less than $500,000. Notwithstanding anything to the contrary contained herein, in any other Lease Document, or in the Confidential Proposal by and between Lessor and Lessee dated August 9, 2018, Lessor shall not be obligated to enter into any Schedule (1) after the Expiration Date, (2) in excess of the Commitment Amount, or (3) at any time that an Event of Default has occurred and is continuing hereunder or under any other Lease Document. On the Expiration Date, Lessee shall pay Lessor a fee equal to 3.0% of the difference between the Commitment Amount and the aggregate Total Cost of the Equipment leased hereunder.

(b) This Agreement is effective as of the date specified above. By entering into a Schedule, Lessor leases the Equipment described therein to Lessee, and Lessee leases such Equipment from Lessor, in each case, subject to the terms and conditions in this Lease, each Schedule, each Security Agreement and all of the other documents and agreements executed in connection herewith (collectively, the **"Lease Documents"**). Each Schedule, incorporating the terms and conditions of this Lease, will constitute a separate instrument of lease. The term of lease with respect to each item of Equipment leased under a Schedule shall commence on the date of execution of such Schedule and accompanying Security Agreement and continue for the term provided in that Schedule. The monthly rent factor with respect to each Schedule will be fixed on the commencement date for such Schedule, which will be determined by Lessor indexing the Prime Lending Rate as reported in the Wall Street Journal on the first day of the month in which a Schedule is executed against (5.0%) (which was the Prime Lending Rate at the time the monthly rent factors described above were set). With respect to any new Schedule executed by Lessee from or after the date of the increase in the Prime Lending Rate, the monthly rent factors described above will be increased by the increase in the implied interest rate underlying such monthly rent factor to the extent of any increase in the Prime Lending Rate. By way of example only, if the Prime Lending Rate is 6.0% on the date of execution of a Schedule, the implied lending rate will be increased by one percentage point and the monthly rent factors will be adjusted accordingly. Any drop in the Prime Lending Rate shall not cause a corresponding drop in the monthly rent factors from those described above. This Lease is not cancellable or terminable by Lessee for the term set forth in each Schedule.

2. RENT. Lessee shall pay Lessor (a) the rental installments (**"Basic Rent"**) as and when specified in each Schedule, without demand, and (b) all of the other amounts payable in accordance with this Lease, such Schedule and/or any of the other Lease Documents (**"Other Payments"**, and together with the Basic Rent, collectively, the **"Rent"**). Upon Lessee's

execution thereof, the related Schedule shall constitute a non-cancelable net lease, and Lessee's obligation to pay Rent, and otherwise to perform its obligations under or with respect to such Schedule and all of the other Lease Documents, are and shall be absolute and unconditional and shall not be affected by any circumstances whatsoever, including any right of setoff, counterclaim, recoupment, deduction, defense or other right which Lessee may have against Lessor, the manufacturer or vendor of the Equipment (the **"Suppliers"**), or anyone else, for any reason whatsoever (each, an **"Abatement"**). Lessee agrees that all Rent shall be paid in accordance with Lessor's or Assignee's written direction. Time is of the essence. If any Rent is not paid within five (5) days of the due date, Lessor may collect, and Lessee agrees to pay a late charge (accruing at the **"Late Charge Rate"** specified in the related Schedule) with respect to the amount in arrears for the period such amount remains unpaid (the **"Late Charge"**). The assessment of a Late Charge shall be in addition to, and not in lieu of, Lessor's imposition of a default rate (accruing at the **"Default Rate"** specified in the related Schedule) with respect to the unpaid and accelerated balance due hereunder.

3. REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF LESSEE. Lessee represents, warrants and agrees that, as of the effective date of this Lease and of each Schedule: (a) Lessee has the form of business organization indicated, and is and will remain duly organized and existing in good standing under the laws of the state specified, under Lessee's signature and, except where failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect, is duly qualified to do business wherever necessary to perform its obligations under the Lease Documents, including each jurisdiction in which the Equipment is or will be located. Lessee's legal name is as shown in the preamble of this Lease; and Lessee's Federal Employer Identification Number and organizational number are as set forth under Lessee's signature. Within the previous six (6) years, Lessee has not changed its name, done business under any other name, or merged or been the surviving entity of any merger, except as disclosed to Lessor in writing. (b) The Lease Documents have been duly authorized by all necessary action consistent with Lessee's form of organization, do not require the approval of, or giving notice to, any governmental authority, do not contravene or constitute a default under any applicable law, Lessee's organizational documents, or any material agreement, indenture, or other instrument to which Lessee is a party or by which it may be bound, and constitute legal, valid and binding obligations of Lessee enforceable against Lessee, in accordance with the terms thereof. (c) There are no pending actions or proceedings to which Lessee is a party, and there are no other pending or threatened actions or proceedings of which Lessee has knowledge, before any court, arbitrator or administrative agency, in each case which, either individually or in the aggregate, would have a Material Adverse Effect. As used herein, **"Material Adverse Effect"** shall mean (i) a materially adverse effect on the business, financial condition, operations, performance or properties of Lessee, or (ii) a material impairment of the ability of Lessee to perform its obligations under or remain in compliance with such Schedule or any of the other Lease Documents. Further, Lessee is not in default under any financial or other material agreement that, either individually, or in the aggregate, would have the same such effect. (d) All of the Equipment covered by such Schedule is located solely in the jurisdiction(s) specified in such Schedule. (e) Under the applicable laws of each such jurisdiction, such Equipment consists (and shall continue to consist) solely of personal property and not fixtures. Such Equipment is removable from and is not essential to the premises at which it is located. (f) The financial statements of Lessee (copies of which have been furnished to Lessor) have been prepared in accordance with generally accepted accounting principles consistently applied (**"GAAP"**), and fairly present Lessee's financial condition and the results of its operations as of the date of and for the period covered by such statements, and since the date of such statements there has been no material adverse change in such conditions or operations. (g) With respect to any Collateral, Lessee has good title to, rights in, and/or power to transfer all of the same. (h) No Supplier is an affiliate of Lessee. (i) The Supply Contract (as such term is hereinafter defined) represents an arms' length transaction and the purchase price for the Equipment specified therein is the amount obtainable in an arms' length transaction between a willing and informed buyer and a willing and informed seller under no compulsion to sell. Lessee further waives any and all rights and remedies conferred by UCC 2A-508 through 2A-522, including, but not limited to, Lessee's right to (1) cancel or repudiate the Lease; (2) reject or revoke acceptance of the Equipment; (3) deduct from rental payments all or any part of any claimed damages resulting from Lessor's default under the Lease; (4) recover from Lessor any general, special, incidental, or consequential damages, for any reason whatsoever. Lessee further waives any and all rights, now or hereafter conferred by statute or otherwise, that may require Lessor to sell, re-lease, or otherwise use or dispose of the Equipment in mitigation of Lessor's damages or that may otherwise limit or modify any of Lessor's rights or remedies hereunder.

4. FURTHER ASSURANCES AND OTHER COVENANTS. Lessee agrees as follows: (a) Lessee will furnish Lessor with (1) Lessee's balance sheet, statement of income and statement of retained earnings, prepared in accordance with GAAP, certified by a recognized public accounting firm acceptable to Lessor, within one hundred eighty (180) days of the close of each fiscal year of Lessee, (2) at Lessor's request, Lessee's monthly financial report certified by the chief financial officer of Lessee, within thirty (30) days of the close of each fiscal month of Lessee, which will be in accordance with GAAP (except that the unaudited financial statements may not contain all footnotes required by GAAP), (3) within

forty-five (45) days after the end of each fiscal quarter, (x) a copy of Borrower's unaudited financial statements pertaining to the results of operations for the fiscal quarter then ended and certified as true and correct by Borrower's chief operating officer or chief financial officer, consisting of a consolidated balance sheet, income statement and cash flow statement, prepared in accordance with GAAP and (y) forward looking financial projections, prepared on a quarterly basis, and covering a time period of no less than four (4) quarters; (4) all of Lessee's Forms 10-K and 10-Q, if any, filed with the Securities and Exchange Commission (**"SEC"**) as and when filed, (5) a complete and accurate listing of all Equipment which includes its then current location within thirty (30) days of request by Lessor, and (6) a list of Lessee's fixed assets within thirty (30) days of the end of each fiscal quarter of Lessee. Any documents required to be delivered to Lessor hereunder may be deemed delivered to Lessee electronically and if so furnished, shall be deemed to have been furnished on the date on which Lessee posts such documents with the SEC, or provides a link thereto, on Lessee's website on the internet at Lessee's website address. (b) Lessee shall obtain and deliver to Lessor and/or promptly execute or otherwise authenticate any documents, filings, waivers (including any landlord and mortgagee waivers), releases and other records, and will take such further action as Lessor may reasonably request in furtherance of Lessor's rights under any of the Lease Documents. Lessee irrevocably authorizes Lessor to file UCC financing statements (**"UCCs"**), and other filings with respect to the Equipment or any Collateral. Without Lessor's prior written consent, Lessee agrees not to file any corrective or termination statements or partial releases with respect to any UCCs filed by Lessor pursuant to this Lease. (c) Lessee shall provide written notice to Lessor within thirty (30) days prior to any change in Lessee's name or jurisdiction or form of organization, promptly upon the occurrence of any Event of Default (as defined in Section 15) and/or promptly upon Lessee becoming aware of any alleged violation of applicable law relating to the Equipment or this Lease. (d) LESSEE acknowledges that LESSOR is a SMALL BUSINESS INVESTMENT COMPANY as organized under the SMALL BUSINESS INVESTMENT COMPANY ACT of 1958. LESSEE agrees to cooperate with LESSOR in fulfilling the requirements for compliance under the SBIC program, which includes providing SBA-specific information as requested from time to time by the SBA via LESSOR.

5. CONDITIONS PRECEDENT. Lessor's agreement to purchase and lease any Equipment under a Schedule, is conditioned upon Lessor's determination that all of the following have been satisfied: (a) Lessor having received the following, in form and substance reasonably satisfactory to Lessor: (1) evidence as to due compliance with the insurance provisions of Section 11; (2) lien searches in the jurisdiction of Lessee's organization, and wherever else Lessor deems appropriate; (3) UCCs, real property waivers and all other filings required by Lessor; (4) a certificate of an appropriate Officer of Lessee certifying: (A) resolutions duly authorizing the transactions contemplated in the applicable Lease Documents, and (B) the incumbency and signature of the officers of Lessee authorized to execute such documents; (5) [reserved]; (6) duly executed copies of the applicable Schedule, and counterpart originals of all other Lease Documents; (7) all purchase documents pertaining to the Equipment (collectively, the **"Supply Contract"**); (8) good standing certificates from the jurisdiction of Lessee's organization and the location of the Equipment, and evidence of Lessee's organizational number; and (9) such other documents, agreements, instruments, certificates, opinions, and assurances, as Lessor reasonably may require. (b) All representations and warranties provided by Lessee in favor of Lessor in any of the Lease Documents shall be true and correct on the effective date of the related Schedule (Lessee's execution and delivery of the Schedule shall constitute Lessee's acknowledgment of the same). (c) There shall be no default or Event of Default under the Schedule or any other Lease Documents. The Equipment shall have been delivered to and accepted by Lessee, as evidenced by the Schedule, and shall be in the condition and repair required hereby; and on the effective date of such Schedule Lessor shall have received good title to the Equipment described therein, free and clear of any claims, liens, attachments, rights of others and legal processes (**"Liens"**).

6. ACCEPTANCE UNDER LEASE. Lessor hereby appoints Lessee as Lessor's agent for the sole purpose of accepting delivery of the Equipment from the applicable Supplier. Upon delivery, Lessee shall inspect and, if conforming to the condition required by the applicable Supply Contract, accept the Equipment and execute and deliver to Lessor a Schedule describing such Equipment. The Schedule will evidence Lessee's unconditional and irrevocable acceptance under the Schedule of the Equipment described therein. However, if Lessee fails to accept delivery of any item of the Equipment, or accepts such Equipment but fails to satisfy any or all of the other conditions set forth in Section 5, Lessor shall have no obligation to purchase or lease such Equipment. In such event, Lessor's rights shall include, among other things, the right to demand that Lessee (a) fully assume all obligations as purchaser of the Equipment, with the effect of causing Lessor to be released from any liability relating thereto, (b) immediately remit to Lessor an amount sufficient to reimburse it for all advance payments, costs, taxes or other charges paid or incurred with respect to the Equipment (including any of such amounts paid by Lessor to any Supplier under the Supply Contract or as a reimbursement to Lessee), together with interest at the Late Charge Rate accruing from the date or dates such amounts were paid by Lessor until indefeasibly repaid by Lessee in full, and (c) take all other actions necessary to accomplish such assumption.

7. USE AND MAINTENANCE. (a) Lessee shall (1) use the Equipment solely in the continental United States and in the conduct of it business, for the purpose for which the Equipment was designed, in a careful and proper manner, and shall not permanently discontinue use of the Equipment; (2) operate, maintain, service and repair the Equipment, and maintain all records and other materials relating thereto, (A) in accordance and consistent with (i) the applicable Supplier's recommendations and all maintenance and operating manuals or service agreements, whenever furnished or entered into, including any subsequent amendments or replacements thereof, issued by any Supplier or service provider, (ii) the requirements of all applicable insurance policies, (iii) the Supply Contract, so as to preserve all of Lessee's and Lessor's rights thereunder, including all rights to any warranties, indemnities or other rights or remedies, (iv) all applicable laws, and (v) the prudent practice of other similar companies in the same business as Lessee, but in any event, to no lesser standard than that employed by Lessee for comparable equipment owned by or leased by it; and (B) without limiting the foregoing, so as to cause the Equipment to be in good repair and operating condition and in at least the same condition as when delivered to Lessee hereunder, except for ordinary wear and tear resulting despite Lessee's full compliance with the terms hereof; (3) provide written notice to Lessor not less than thirty (30) days after any change of the location of any Equipment (or the location of the principal garage of any Equipment, to the extent that such Equipment is mobile equipment) as specified in the Schedule; and (4) not attach or incorporate the Equipment to or in any other property in such a manner that the Equipment may be deemed to have become an accession to or a part of such other property; (5) not allow any Hazardous Material (as hereafter defined) to be used, generated, released, stored, disposed of or transported in, on or around the Equipment. (b) Within a reasonable time, Lessee will replace any parts of the Equipment which become worn out, lost, destroyed, or damaged beyond repair or otherwise unfit for use, by new or reconditioned replacement parts which are free and clear of all Liens and have a value, utility and remaining useful life at least equal to the parts replaced (assuming that they were in the condition required by this Lease). Any modification or addition to the Equipment that is required by this Lease shall be made by Lessee. Title to all such parts, modifications and additions to the Equipment immediately shall vest in Lessor, without any further action by Lessor or any other person, and they shall be deemed incorporated in the Equipment for all purposes of the related Schedule. Unless replaced in accordance with this Section, Lessee shall not remove any parts originally or from time to time attached to the Equipment, if such parts are essential to the operation of the Equipment, are required by any other provision of this Lease or cannot be detached from the Equipment without materially interfering with the operation of the Equipment or adversely affecting the value, utility and remaining useful life which the Equipment would have had without the addition of such parts. Except as permitted in this Section, Lessee shall not make any material alterations to the Equipment. (c) Upon at least five (5) business days' notice (and no more than twice per year so long as no Event of Default has occurred and is continuing), Lessee shall afford Lessor and/or its designated representatives access to the premises where the Equipment is located for the purpose of inspecting such Equipment and all applicable maintenance or other records relating thereto at any reasonable time during normal business hours. If any material discrepancies are found as they pertain to the general condition of the Equipment, Lessor will communicate these discrepancies to Lessee in writing. Lessee shall then have thirty (30) days (as may be extended by Lessor in its reasonable discretion) to rectify these discrepancies at its sole expense. Lessee shall pay all expenses of re-inspection by Lessor's appointed representative, if corrective measures were required.

8. DISCLAIMER; QUIET ENJOYMENT. THE EQUIPMENT IS LEASED HEREUNDER "AS IS, WHERE IS". LESSOR IS NOT A SUPPLIER, AND LESSOR SHALL NOT BE DEEMED TO HAVE MADE, AND HEREBY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE EQUIPMENT, INCLUDING ANY PART, OR ANY MATTER WHATSOEVER, INCLUDING, AS TO EACH ITEM OF EQUIPMENT, ITS DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, ABSENCE OF ANY PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT OR LATENT DEFECT (WHETHER OR NOT DISCOVERABLE BY LESSEE), COMPLIANCE OF SUCH ITEM WITH ANY APPLICABLE LAW, CONFORMITY OF SUCH ITEM TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE DOCUMENT OR TO THE DESCRIPTION SET FORTH IN THE RELATED SCHEDULE OR ANY OF THE OTHER LEASE DOCUMENTS, OR ANY INTERFERENCE OR INFRINGEMENT (EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8(b)), OR ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE, NOR SHALL LESSOR BE LIABLE, FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR STRICT OR ABSOLUTE LIABILITY IN TORT; AND LESSEE HEREBY WAIVES ANY CLAIMS ARISING OUT OF ANY OF THE FOREGOING. Lessee has selected the Equipment and represents to Lessor that all of the Equipment is suitable for Lessee's purposes. If Lessee has any claims regarding the Equipment or any other matter arising from Lessee's relationship with any Supplier, Lessee must make them against such Supplier. Without limiting the foregoing, Lessor will not be responsible to Lessee or any other person with respect to, and Lessee agrees to bear sole responsibility for, any risk or other matter that is the subject of Lessor's disclaimer; and Lessor's agreement to enter into this Lease and any Schedule is in reliance upon the freedom from and complete negation of liability or responsibility for the matters so waived or disclaimed herein or covered by the indemnity in this Lease. So long as no Event of Default has occurred, Lessee may exercise Lessor's rights, if any, under

any warranty with respect to the Equipment. Lessee's exercise of such rights shall be at its sole risk, shall not result in any prejudice to Lessor, and may be exercised only during the term of the related Schedule. Lessee shall not attempt to enforce any such warranty by legal proceeding without Lessor's prior written approval. This provision survives termination and/or expiration of the Lease.

9. FEES AND TAXES. Lessee agrees to: (a) (1) if permitted by law, file in Lessee's own name or on Lessor's behalf, directly with all appropriate taxing authorities all declarations, returns, inventories and other documentation with respect to any personal property taxes (or any other taxes in the nature of or imposed in lieu of property taxes) due or to become due with respect to the Equipment, and if not so permitted by law, to promptly notify Lessor and provide it with all information required in order for Lessor to timely file all such declarations, returns, inventories, or other documentation, and (2) pay on or before the date when due all such taxes assessed, billed or otherwise payable with respect to the Equipment directly to the appropriate taxing authorities; (b) (1) pay when due as requested by Lessor, and (2) defend and indemnify Lessor on a net after-tax basis against liability for all license and/or registration fees, assessments, and sales, use, property, excise, privilege, Federal Highway Use, value added and other taxes or other charges or fees now or hereafter imposed by any governmental body or agency upon the Equipment or with respect to the manufacture, shipment, purchase, ownership, delivery, installation, leasing, operation, possession, use, return, or other disposition thereof or the Rent hereunder (other than taxes on or measured solely by the net income of Lessor); and (c) indemnify Lessor against any penalties, charges, interest or costs imposed with respect to any items referred to in clauses (a) and (b) above (the items referred to as clauses (a), (b), and (c) above being referred to herein as **"Impositions"**). Any Impositions which are not paid when due and which are paid by Lessor shall, at Lessor's option, become immediately due from Lessee to Lessor.

10. TITLE; GRANTING CLAUSE. (a) Lessee and Lessor intend that: (1) each Schedule, incorporating by reference the terms of this Lease, constitutes a true "lease" and a "finance lease" as such terms are defined in Article 2A of the Uniform Commercial Code and not a sale or retention of a security interest; and (2) Lessor is and shall remain the owner of each item of Equipment (unless sold by Lessor pursuant to any Lease Document), and Lessee shall not acquire any right, title or interest in or to such Equipment except the right to use it in accordance with the terms of the related Schedule. (b) In order to secure the prompt payment of the Rent and all of the other amounts from time to time outstanding with respect hereto and to each Schedule, and the performance and observance by Lessee of all of the provisions hereof and thereof and of all of the other Lease Documents (other than any warrant or other equity instrument), Lessee hereby agrees to execute a security agreement in favor of Lessor in the form of Exhibit A in conjunction with the execution of each Schedule (individually and collectively, and as each may be amended, amended and restated, supplemented or otherwise modified from time to time, the "**Security Agreement**") and collaterally assigns, grants, and conveys to Lessor, a security interest in and lien on all of Lessee's right, title and interest in and to all of the following (whether now existing or hereafter created, and including any other collateral described on any rider hereto; the **"Collateral"**): (1) the Equipment described in such Schedule or otherwise covered thereby (including all inventory, fixtures or other property comprising the Equipment), together with all related software (embedded therein or otherwise) and related general intangibles, all additions, attachments, accessories and accessions thereto whether or not furnished by a Supplier; (2) all subleases, chattel paper, accounts, security deposits, and general intangibles relating thereto, and any and all substitutions, replacements or exchanges for any such item of Equipment or other Collateral, in each such case in which Lessee shall from time to time acquire an interest; (3) any and all insurance and/or other proceeds of the property and other collateral in and against which a security interest is granted under the Lease Documents; and (4) collectively, all "Collateral" as defined in each Security Agreement. The collateral assignment, security interest and lien granted in the Lease Documents shall survive the termination, cancellation or expiration of each Schedule until such time as Lessee's obligations thereunder and under the other Lease Documents (other than any warrant or other equity instrument) are paid in cash in full (other than inchoate indemnity obligations). (c) If contrary to the parties' intentions a court determines that any Schedule is not a true "lease", the parties agree that in such event Lessee agrees that: (1) with respect to the Equipment, in addition to all of the other rights and remedies available to Lessor hereunder upon the occurrence of an Event of Default, Lessor shall have all of the rights and remedies of a first priority secured party under the UCC; and (2) any obligation to pay Basic Rent or any Other Payment, to the extent constituting the payment of interest, shall be at an interest rate that is equal to the lesser of the maximum lawful rate permitted by applicable law or the effective interest rate used by Lessor in calculating such amounts. Lessee waives any and all written notices for demand, presentment, notice of intent to accelerate and acceleration otherwise applicable under any article of the UCC or other statutory provision.

11. INSURANCE. Upon acceptance under a Schedule, until the Equipment is returned to Lessor in accordance with this Lease, Lessee shall maintain all-risk insurance coverage with respect to the Equipment insuring against, among other things: (a) any casualty to the Equipment (or any portion thereof), including loss or damage due to fire and the risks

normally included in extended coverage, malicious mischief and vandalism, for not less than the full replacement value of the Equipment; and (b) any commercial liability arising in connection with the Equipment, including both bodily injury and property damage with a combined single limit per occurrence of not less than One Million Dollars ($1,000,000); having a deductible reasonably satisfactory to Lessor. The required insurance policies (including endorsements) shall (i) be in form and amount reasonably satisfactory to Lessor, and written by insurers of recognized reputation and responsibility satisfactory to Lessor, (ii) be endorsed to name Lessor as an additional insured (but without responsibility for premiums), (iii) provide that any amount payable under the required casualty coverage shall be paid directly to Lessor as sole loss payee, (iv) provide for thirty (30) days' (ten (10) days' for nonpayment of premium) written notice by such insurer of cancellation or non-renewal, and (v) provide that in respect of the interests of Lessor in such policies, the insurance shall not be invalidated by any action or inaction of Lessee or any other person operating or in possession of the Equipment regardless of any breach or violation of any warranties, declarations or conditions contained in such policies by or binding upon Lessee or any other person operating or in possession of the Equipment. Lessee agrees that it shall obtain and maintain such other coverages, or cause adjustments to be made to the scope, amount or other aspects of the existing coverages, promptly upon Lessor's request, as and when Lessor deems such additional coverages or modifications to be appropriate in light of any changes in applicable law, prudent industry practices, Lessee's anticipated use of the Equipment or other pertinent circumstances.

12. LOSS AND DAMAGE. (a) At all times until the Equipment is returned to Lessor in accordance with this Lease, Lessee shall bear the risk of loss, theft, confiscation, taking, unavailability, damage or partial destruction of the Equipment and shall not be released from its obligations under any Schedule or other Lease Document in any such event. (b) Lessee shall provide prompt written notice to Lessor of any Total Loss or any material damage to the Equipment. Any such notice must be provided together with any damage reports provided to any governmental authority, the insurer or Supplier, and any documents pertaining to the repair of such damage, including copies of work orders, and all invoices for related charges. (c) Without limiting any other provision hereof, Lessee shall repair all damage to any item of Equipment from any and all causes, other than a Total Loss, so as to cause it to be in the condition and repair required by this Lease. (d) A **"Total Loss"** shall be deemed to have occurred to an item of Equipment upon the actual or constructive total loss of any item of the Equipment, the loss, disappearance, theft or destruction of any item of the Equipment, or damage to any item of the Equipment that is uneconomical to repair or renders it unfit for normal use, or the condemnation, confiscation, requisition, seizure, forfeiture or other taking of title to or use of any item of the Equipment or the imposition of any Lien thereon by any governmental authority. On the next rent payment date following a Total Loss (a "Loss Payment Date"), Lessee shall pay to Lessor the Basic Rent due on that date plus the Stipulated Loss Value of the item or items of the Equipment with respect to which the Total Loss has occurred (the **"Lost Equipment"**), together with any Other Payments due hereunder with respect to the Lost Equipment. Upon making such payment, (i) Lessee's obligation to pay future Basic Rent shall terminate solely with respect to the items of Lost Equipment so paid for, but Lessee shall remain liable for, and pay as and when due, all Other Payments, and (ii) Lessor shall convey to Lessee all of Lessor's right, title and interest in the Lost Equipment "AS IS WHERE IS", but subject to the requirements of any third party insurance carrier in order to settle an insurance claim. As used in this Lease, "**Stipulated Loss Value**" shall mean, with respect to any Equipment on a Schedule, as of the Loss Payment Date, the product of (i) the sum of any accrued and unpaid Rent, plus the present value as of such date of the total Basic Rent for the then remaining term of such Schedule, plus Lessor's reasonable estimate at the time the Schedule was entered into of Lessor's residual interest in the Equipment, plus the present value of the Other Payments (other than Basic Rent) to become due during the balance of the term of the applicable Schedule, including amounts such as future taxes and (ii) the percentage of the Total Invoice Cost of the Lost Equipment divided by the Total Invoice Cost applicable to such Schedule. After the final rent payment date of the original term or any renewal term of a Schedule, the Stipulated Loss Value shall be determined as of the last rent payment date during the applicable term of such Schedule. (e) Lessor shall be under no duty to Lessee to pursue any claim against any person in connection with a Total Loss or other loss or damage. (f) If Lessor receives a payment under an insurance policy required under this Lease in connection with any Total Loss or other loss of or damage to an item of Equipment, and such payment is both unconditional and indefeasible, then provided Lessee shall have complied with the applicable provisions of this Section, Lessor shall either (1) if received pursuant to a Total Loss, remit such proceeds to Lessee up to an amount equal to the amount paid by Lessee to Lessor as the Stipulated Loss Value, or credit such proceeds against any amounts owed by Lessee pursuant to Section 12(d), or (2) if received with respect to repairs to be made pursuant to Section 12(c), remit such proceeds to Lessee up to an amount equal to the amount of the costs of repair.

13. REDELIVERY. In the event Lessee returns the Equipment to Lessor pursuant to the terms of the applicable Schedule, Lessee shall provide, at its expense, transit insurance for the redelivery period in an amount equal to the replacement value of the Equipment and Lessor shall be named as the loss payee on all such policies of insurance. Lessee shall cause: (1) the applicable Supplier's representative or other qualified person acceptable to Lessor (the

"Designated Person") to de-install the Equipment in accordance with the applicable Supplier's specifications (as applicable) and pack the Equipment properly and in accordance with the applicable Supplier's recommendations (as applicable); and (2) the Equipment to be transported in a manner consistent with the applicable Supplier's recommendations and practices (as applicable). Upon return, the Equipment shall be: (i) in the same condition as when delivered to Lessee under the related Schedule, ordinary wear and tear excepted; (ii) mechanically and structurally sound, capable of performing the functions for which the Equipment was originally designed, in accordance with the applicable Supplier's published and recommended specifications (as applicable); (iii) redelivered with all component parts in good operating condition (and all components must meet or exceed the applicable Supplier's minimum recommended specifications, unless otherwise agreed by Lessor in writing); and (iv) cleaned and cosmetically acceptable, with all Lessee-installed markings removed and all rust, corrosion or other contamination having been removed or properly treated, and in such condition so that it may be immediately installed and placed in service by a third party. Upon delivery, the Equipment shall be in compliance with all applicable Federal, state and local laws, and health and safety guidelines. Lessee shall be responsible for the cost of all repairs, alterations, inspections, appraisals, storage charges, insurance costs, demonstration costs and other related costs necessary to cause the Equipment to be in full compliance with the terms of this Lease. (c) If requested by Lessor, Lessee shall also deliver all related records and other data to Lessor, including all records of maintenance, modifications, additions and major repairs, computerized maintenance history, and any maintenance and repair manuals (collectively, the **"Records"**). All manuals or other documents delivered to Lessor that are subject to periodic revision will be fully up-to-date and current to the latest revision standard of any particular manual or document. In the event any such Records are missing or incomplete, Lessor shall have the right to cause the same to be reconstructed at Lessee's expense. (d) In addition to Lessor's other rights and remedies hereunder, if the Equipment and the related Records are not returned in a timely fashion, or if repairs are necessary to place any item of Equipment in the condition required in this Section, Lessee shall (i) continue to pay to Lessor per diem rent at the last prevailing lease rate under the applicable Schedule with respect to such item of Equipment, for the period of delay in redelivery, and/or for the period of time reasonably necessary to accomplish such repairs, and (ii) pay to Lessor an amount equal to the aggregate cost of any such repairs. Lessor's acceptance of such rent on account of such delay and/or repair does not constitute an extension or renewal of the term of the related Schedule or a waiver of Lessor's right to prompt return of the Equipment in proper condition. Such amount shall be payable upon the earlier of Lessor's demand or the return of the Equipment in accordance with this Lease. (e) Without limiting any other terms or conditions of this Lease, the provisions of this Section are of the essence of each Schedule, and upon application to any court of equity having jurisdiction, Lessor shall be entitled to a decree against Lessee requiring Lessee's specific performance of its agreements and continued in this Section.

14. INDEMNITY. Lessee shall indemnify, defend and keep harmless Lessor and any Assignee (as defined in Section 17), and their respective agents and employees (each, an **"Indemnitee"**), from and against any and all Claims (other than such as may directly and proximately result from the actual, but not imputed, gross negligence or willful misconduct of such Indemnitee), by paying or otherwise discharging same, when and as such Claims shall become due. Lessee agrees that the indemnity provided for in this Section includes the agreement by Lessee to indemnify each Indemnitee from the consequences of its own simple negligence, whether that negligence is the sole or concurring cause of the Claims, and to further indemnify each such Indemnitee with respect to Claims for which such Indemnitee is strictly liable. Lessor shall give Lessee prompt notice of any Claim hereby indemnified against and Lessee shall be entitled to control the defense of and/or to settle any Claim, in each case, so long as (a) no Event of Default has occurred and is then continuing, (b) Lessee confirms, in writing, its unconditional and irrevocable commitment to indemnify each Indemnitee with respect to such Claim, (c) Lessee is financially capable of satisfying its obligations under this Section, and (d) Lessor approves the defense counsel selected by Lessee. The term **"Claims"** shall mean all claims, allegations, harms, judgments, settlements, suits, actions, debts, obligations, damages (whether incidental, consequential or direct), demands (for compensation, indemnification, reimbursement or otherwise), losses, penalties, fines, liabilities (including strict liability), charges that Lessor has incurred or for which it is responsible, in the nature of interest, Liens, and costs (including attorneys' fees and disbursements and any other legal or non-legal expenses of investigation or defense of any Claim, whether or not such Claim is ultimately defeated or enforcing the rights, remedies or indemnities provided for hereunder, or otherwise available at law or equity to Lessor), of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, by or against any person, arising on account of (1) any Lease Document, including the performance, breach (including any Event of Default) or enforcement of any of the terms thereof, or (2) the Equipment, or any part or other contents thereof, any substance at any time contained therein or emitted therefrom, including any Hazardous Materials that may exist in violation hereof, or the premises at which the Equipment may be located from time to time, or (3) the ordering, acquisition, delivery, installation or rejection of the Equipment, the possession of any property to which it may be attached from time to time, maintenance, use, condition, ownership or operation of any item of Equipment, and by whomsoever owned, used, possessed or operated, during the term of any

Schedule with respect to that item of Equipment, the existence of latent and other defects (whether or not discoverable by Lessor or Lessee) any claim in tort for negligence or strict liability, and any claim for patent, trademark or copyright infringement, or the loss, damage, destruction, theft, removal, return, surrender, sale or other disposition of the Equipment, or any item thereof, including, Claims involving or alleging environmental damage, or any criminal or terrorist act, or for whatever other reason whatsoever. If any Claim Is made against Lessee or an Indemnitee, the party receiving notice of such Claim shall promptly notify the other, but the failure of the party receiving notice to so notify the other shall not relieve Lessee of any obligation hereunder.

15. DEFAULT. A default shall be deemed to have occurred hereunder and under a Schedule upon the occurrence of any of the following (each, an **"Event of Default"**):

(a) non-payment of Basic Rent on the applicable rent payment date;

(b) non-payment of any Other Payment within five (5) days after it is due;

(c) failure to maintain, use or operate the Equipment in compliance with applicable law except where failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect;

(d) failure to obtain, maintain and comply with all of the insurance coverages required under this Lease;

(e) other than Permitted Liens, the existence of any Lien that is prohibited by this Lease;

(f) a payment or other default by Lessee under any loan, lease, guaranty or other financial obligation to Lessor or its affiliates which default entitled the other party to such obligation to accelerate such obligations in an amount greater than $250,000;

(g) a default by Lessee under any material loan, lease, guaranty or other material financial obligation to any third party which default has been declared and results in the right to accelerate such obligations in an amount greater than $250,000;

(h) an inaccuracy in any representation or breach of warranty by Lessee (including any false or misleading representation or warranty) in any financial statement or Lease Document, including any omission of any substantial contingent or unliquidated liability or Claim against Lessee;

(i) (x) Lessee becomes insolvent, or makes an assignment for the benefit of its creditors, files any petition or takes any action under any bankruptcy, reorganization or insolvency laws or (y) the commencement of any bankruptcy, insolvency, receivership or similar proceeding by or against Lessee or any of its properties or business (unless, if involuntary, the proceeding is dismissed within forty-five (45) days of the filing thereof) or the rejection of this Lease or any other Lease Document in any such proceeding;

(j) the occurrence of a circumstance or circumstances that have a Material Adverse Effect;

(k) Lessee:

(1) enters into any transaction of merger or consolidation, unless Lessee shall be the surviving entity (such actions being referred to as an **"Event"**), unless the surviving entity is organized and existing under the laws of the United States or any state, and prior to such Event: (A) such person executes and delivers to Lessor (x) an agreement satisfactory to Lessor, in its sole discretion, containing such person's effective assumption, and its agreement to pay, perform, comply with and otherwise be liable for, in a due and punctual manner, all of Lessee's obligations having previously arisen, or then or thereafter arising, under any and all of the Lease Documents, and (y) any and all other documents, agreements, instruments, certificates, opinions and filings requested by Lessor; and (B) Lessor is satisfied as to the creditworthiness of such person, and as to such person's conformance to the other standard criteria then used by Lessor when approving transactions similar to the transactions contemplated in this Lease; or

(2) ceases to do business, liquidates, or dissolves; or

(3) sells, transfers, or otherwise disposes of all or substantially all of its assets or property;

(l) if 50% of Lessee's voting capital stock/membership interests/partnership interests, issued and outstanding from time to time, is not retained by the then-present holders (unless Lessee shall have provided seven (7 days' prior written notice to Lessor of the proposed disposition and Lessor shall have consented thereto in writing);

(m) breach by Lessee of any other covenant, condition or agreement (other than those in items (a)-(l)) under this Lease or any of the other Lease Documents that continues for twenty (20) days after the occurrence of such default (but such cure period will not be applicable unless such breach is curable by practical means within such period).

(r) failure to promptly remit to Lessor an amount sufficient to reimburse Lessor for all amounts paid to a Supplier under a Supply Contract in the event Lessee fails to accept delivery of any item of Equipment.

16. REMEDIES. (a) if an Event of Default occurs and is continuing, Lessor may (in its sole discretion) exercise any one or more of the following remedies with respect to such Schedule and any or all other Schedules to which such Lessor is then a party: (1) proceed at law or in equity, to enforce specifically Lessee's performance or to recover damages; (2) declare each such Schedule in default, and cancel each such Schedule or otherwise terminate Lessee's right to use the Equipment and Lessee's other rights, but not its obligations, thereunder and Lessee shall immediately assemble, make available and, if Lessor requests, return the Equipment to Lessor in accordance with the terms of this Lease; (3) enter any premises where any item of Equipment is located and take immediate possession of and remove (or disable in place) such item (and/or any unattached parts) by self-help, summary proceedings or otherwise without liability; (4) use Lessee's premises for storage without liability; (5) sell, re-lease or otherwise dispose of any or all of the Equipment, whether or not in Lessor's possession, at public or private sale, with or without notice to Lessee, and apply or retain the net proceeds of such disposition, with Lessee remaining liable for any deficiency and with any excess being retained by Lessor; (6) enforce any or all of the preceding remedies with respect to any related Collateral, and apply any deposit or other cash collateral, or any proceeds of any such Collateral, at any time to reduce any amounts due to Lessor; (7) demand, accelerate and recover from Lessee all Rent and all other damages whenever the same shall be due; and (8) exercise any and all other remedies allowed by applicable law, including the UCC.

(b) If an Event of Default occurs and is continuing hereunder or with respect to any Schedule and:

(1) if Lessor recovers the Equipment and disposes of it by a lease or elects not to dispose of the Equipment after recovery, upon demand, Lessee shall pay to Lessor an amount equal to the sum of:

(A) any accrued and unpaid Rent as of the date Lessor recovers possession of the Equipment, plus (B) the present value as of such date of the total Basic Rent for the then remaining term of such Schedule, minus (C) either, as reasonably determined by Lessor, (i) the present value, as of the commencement date of any substantially similar re-lease of the Equipment, of the re-lease rent payable for that period, commencing on such date, which is comparable to the then remaining term of such Schedule or (ii) the present value, as of that certain date which may be determined by taking into account Lessor's having a reasonable opportunity to remarket the Equipment, of the "market rent" for such Equipment (as computed pursuant to Article 2A) in the continental United States on that date, computed for that period, commencing on such date, which is comparable to the then remaining term of such Schedule; provided, however, Lessee acknowledges that if Lessor is unable after reasonable effort to dispose of the Equipment at a reasonable price and pursuant to other reasonable terms, or the circumstances reasonably indicate that such an effort will be unavailing, the "market rent" in such event will be deemed to be $0.00, but in the event that Lessor does eventually re-lease or otherwise dispose of the Equipment, it will apply the net proceeds of such disposition, to the extent received in good and indefeasible funds, as a credit or reimbursement, as applicable, in a manner consistent with the applicable provisions of Article 2A. Any amounts discounted to present value shall be discounted at a discount rate equal to the Wall Street Journal Prime Rate, as of the date of default, compounded annually.

(2) if Lessee fails to return the Equipment in the manner and condition required by this Lease, or if Lessor recovers and sells the Equipment, upon demand, Lessee shall pay to Lessor an amount an amount equal to the sum of:

(A) the Stipulated Loss Value, plus (B) without duplication of any amounts paid in the preceding clause (A), all Enforcement Costs (defined in Section 16(c), minus (C) a credit for any disposition proceeds, if applicable, pursuant to the application provisions in the next sentence. If Lessor recovers and sells the Equipment, any proceeds received in good and indefeasible funds shall be applied by Lessor, with respect to the related Schedule: first, to pay all

Enforcement Costs, to the extent not previously paid; second, to pay to Lessor an amount equal to any unpaid Rent due and payable to the extent not previously paid; third, to pay to Lessor any interest accruing on the amounts covered by the preceding clauses, at the Late Charge Rate, from and after the date the same becomes due, through the date of payment; and fourth, (A) if the Lessor under such Schedule is also the Lessor under any other Schedules (whether by retaining the same, or as Assignee), to satisfy any remaining obligations under any or all such other Schedules, or (B) if such Lessor is not the Lessor under any other Schedule, or if Lessee's obligations to such Lessor under such other Schedules have been fully and indefeasibly satisfied, to reimburse Lessee for such amounts to the extent previously paid by Lessee. Any amounts discounted to present value shall be discounted at a discount rate equal to the Wall Street Journal Prime Rate, as of the date of default, compounded annually.

(c) A cancellation of any Schedule shall occur only upon written notice by Lessor to Lessee. Unless already specifically provided for in Section 16(b), if an Event of Default occurs with respect to any Schedule, Lessee shall also be liable for all of the following ("Enforcement Costs"): (1) all unpaid Rent due before, during or after exercise of any of the foregoing remedies, and (2) all reasonable legal fees (including consultation, drafting notices or other documents, expert witness fees, sending notices or instituting, prosecuting or defending litigation or arbitration) and other enforcement costs and expenses incurred by reason of any default or Event of Default or the exercise of Lessor's rights or remedies, including all expenses incurred in connection with the return or other recovery of any Equipment in accordance with the terms of this Lease or in placing such Equipment in the condition required hereby, or the sale, re-lease or other disposition (including but not limited to costs of transportation, possession, storage, insurance, taxes, lien removal, repair, refurbishing, advertising and brokers' fees), and all other pre-judgment and post-judgment enforcement related actions taken by Lessor or any actions taken by Lessor in any bankruptcy case involving Lessee, the Equipment, or any other person. Late Charges shall accrue with respect to any amounts payable under this Section for as long as such amounts remain outstanding, and shall be paid by Lessee upon demand. No right or remedy is exclusive and each may be used successively and cumulatively. Any failure to exercise the rights granted hereunder upon any default or Event of Default shall not constitute a waiver of any such right. The execution of a Schedule shall not constitute a waiver by Lessor of any pre-existing default or Event of Default. With respect to any disposition of any Equipment or Collateral pursuant to this Section, (i) Lessor shall have no obligation, subject to the requirements of commercial reasonableness, to clean-up or otherwise prepare the same for disposition, (ii) Lessor may comply with any applicable law in connection with any such disposition, and any actions taken in connection therewith shall not be deemed to have adversely affected the commercial reasonableness of any disposition thereof, (iii) Lessor may disclaim any title or other warranties in connection with any such disposition, and (iv) Lessee shall remain responsible for any deficiency remaining after Lessor's exercise of its remedies and application of any funds or credits against Lessee's obligations under any Schedule, and Lessor shall retain any excess after such application.

17. ASSIGNMENT. (a) LESSEE SHALL NOT ASSIGN, DELEGATE, TRANSFER OR ENCUMBER ANY OF ITS RIGHTS OR OBLIGATIONS HEREUNDER OR UNDER ANY SCHEDULE, OR ITS LEASEHOLD INTEREST OR ANY COLLATERAL, SUBLET THE EQUIPMENT OR OTHERWISE PERMIT THE EQUIPMENT TO BE OPERATED OR USED BY, OR TO COME INTO OR REMAIN IN THE POSSESSION OF, ANYONE BUT LESSEE. Without limiting the foregoing, (1) Lessee may not attempt to dispose of any of the Equipment, and (2) Lessee shall (A) maintain the Equipment free from all Liens, other than Permitted Liens, (B) notify Lessor immediately upon receipt of notice of any Lien (other than Permitted Liens) affecting the Equipment, and (C) defend Lessor's title to the Equipment. A "Permitted Lien" shall mean (x) any Lien for Impositions, Liens of mechanics, materialmen, or suppliers and similar Liens arising by operation of law, provided that any such Lien is incurred by Lessee in the ordinary course of business, for sums that are not yet delinquent or are being contested in good faith and with due diligence, by negotiations or by appropriate proceedings which suspend the collection thereof and, in Lessor's sole discretion, (i) do not involve any substantial danger of the sale, forfeiture or loss of the Equipment or any interest therein, and (ii) for the payment of which adequate assurances or security have been provided to Lessor an (y) licenses of Lessee's intellectual property in Lessee's ordinary course of business. No disposition referred to in this Section shall relieve Lessee of its obligations, and Lessee shall remain primarily liable under each Schedule and all of the other Lease Documents. (b) Lessor may at any time with or without notice to Lessee grant a security interest in, sell, assign, delegate or otherwise transfer (an "Assignment") all or any part of its interest in the Equipment, this Lease or any Schedule and any related Lease Documents or any Rent thereunder" or the right to enter into any Schedule, and Lessee shall perform all of its obligations thereunder, to the extent so transferred, for the benefit of the beneficiary of such Assignment (such beneficiary, including any successors and assigns, an **"Assignee"**). Lessee agrees not to assert against any Assignee any Abatement (without limiting the provisions of Section 2) or Claim that Lessee may have against Lessor, and Assignee shall not be bound by, or otherwise required to perform any of Lessor's obligations, unless expressly assumed by such Assignee. Lessor shall be relieved of any such assumed obligations. If so directed in writing, Lessee shall pay all Rent and all other sums that become due

under the assigned Schedule and other Lease Documents directly to the Assignee or any other party designated in writing by Lessor or such Assignee. Lessee acknowledges that Lessor's right to enter into an Assignment is essential to Lessor and, accordingly, waives any restrictions under applicable law with respect to an Assignment and any related remedies. Upon the request of Lessor or any Assignee, Lessee also agrees (i) to promptly execute and deliver to Lessor or to such Assignee an acknowledgment of the Assignment in form and substance satisfactory to the requesting party, an insurance certificate and such other documents and assurances reasonably requested by Lessor or Assignee, and (ii) to comply with all other reasonable requirements of any such Assignee in connection with any such Assignment. Upon such Assignment and except as may otherwise be provided herein, all references in this Lease to "Lessor" shall include such Assignee. (c) Subject always to the foregoing, this Lease and each Schedule shall inure to the benefit of, and are binding upon, Lessee's and Lessor's respective successors and assigns. Notwithstanding the foregoing, any such assignment(s) (i) shall be subject to Lessee's right to quiet use and enjoyment of the Equipment so long as there is no Event of Default has occurred and is continuing and (ii) shall not release any of Lessor's obligations hereunder, or any claim, which Lessee has against Lessor.

18. MISCELLANEOUS. (a) This Lease, each Schedule hereto or thereto and any commitment letter between the parties, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and shall not be amended or modified in any manner except by a document in writing executed by both parties. (b) In the event of any inconsistency between this Lease and any Schedule, the terms of such Schedule shall control as to the Equipment listed on such Schedule. (c) Any provision of this Lease that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The representations, warranties and agreements of Lessee herein shall be deemed to be continuing and to survive the execution and delivery of this Lease, each Schedule and any other Lease Documents. With respect to each Schedule, the obligations of Lessee under this Lease which have accrued but not been fully satisfied, performed or complied with prior to the expiration or earlier cancellation or termination of such Schedule, shall survive the expiration or earlier cancellation or termination thereof. (d) All of Lessee's obligations hereunder and under any Schedule shall be performed at Lessee's sole expense. Lessee shall reimburse Lessor promptly upon demand for all expenses incurred by Lessor in connection with (1) any action taken by Lessor at Lessee's request, or in connection with any option, (2) the filing or recording of real property waivers and UCCs, (3) any Enforcement Costs not recovered pursuant to Section 16, (4) all inspections conducted pursuant to the terms herein (not to exceed $3,000 per inspection), (5) all lien search reports (and copies of filings) requested by Lessor and (6) all other reasonable costs and expenses incurred in connection with this Lease. If Lessee fails to perform any of its obligations with respect to a Schedule, Lessor shall have the right, but shall not be obligated, to affect such performance, and Lessee shall reimburse Lessor, upon demand, for all expenses incurred by Lessor in connection with such performance. Lessor's effecting such compliance shall not be a waiver of Lessee's default. All amounts payable under this Section, if not paid when due, shall be paid to Lessor together with interest thereon at the Late Charge Rate. (e) Lessee irrevocably appoints Lessor as Lessee's attorney-in-fact (which power shall be deemed coupled with an interest) to execute, endorse and deliver any documents and checks or drafts relating to or received in payment for any loss or damage under the policies of insurance required by this Lease, but only to the extent that the same relates to the Equipment. (f) LESSOR AND LESSEE HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH LESSEE AND/OR LESSOR MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS LEASE. IF THIS JURY WAIVER IS NOT ENFORCEABLE, THEN LESSOR AND LESSEE SHALL RESOLVE ALL DISPUTES BY JUDICIAL REFERENCE PURSUANT TO CODE OF CIVIL PROCEDURE BEFORE A MUTUALLY ACCEPTABLE REFEREE OR, IF NONE IS MUTUALLY ACCEPTABLE, BY A REFEREE APPOINTED BY THE PRESIDING JUDGE OF THE CALIFORNIA SUPERIOR COURT FOR SANTA CLARA COUNTY, IN ALL CASES SITTING WITHOUT A JURY. (g) All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, personally delivered, delivered by overnight courier service, sent by facsimile transmission (with confirmation of receipt), or sent by certified mail, return receipt requested, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other party; and shall be effective from the date of receipt. (h) This Lease shall not be effective unless and until accepted by execution by an officer of Lessor at the address, in the State of California (the **"State"**), as set forth below the signature of Lessor. THIS LEASE AND ALL OF THE OTHER LEASE DOCUMENTS, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER, SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF THE STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE EQUIPMENT. The parties agree that any action or proceeding arising out of or relating to this Lease may be commenced in any state or Federal court in the State, and agree that a summons and

complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served personally or by certified mail to it at the mailing address below Lessee's signature, or as it may provide in writing from time to time, or as otherwise provided under the laws of the State. (i) This Lease and all of the other Lease Documents may be executed in counterparts. (j) If Lessor is required by the terms hereof to pay to or for the benefit of Lessee any amount received as a refund of an Imposition or as insurance proceeds, Lessor shall not be required to pay such amount, if any Event of Default has occurred and not been cured. In addition, if Lessor is required by the terms hereof to cooperate with Lessee in connection with certain matters, such cooperation shall not be required if an Event of Default has then occurred and is continuing. To the extent not otherwise set forth in the Lease Documents, this Lease and the other Lease Documents are subject to the terms and conditions set forth in that certain term sheet attached hereto as Exhibit B.

19. DEFINITIONS AND RULES OF CONSTRUCTION. (a) The following terms when used in this Lease or in any of the Schedules have the following meanings: (1) **"affiliate"**: with respect to any given person, shall mean (i) each person that directly or indirectly owns or controls, whether beneficially or as a trustee, guardian or other fiduciary, ten (10) percent or more of the voting stock, membership interest or similar equity interest having ordinary voting power in the election of directors or managers of such person, (ii) each person that controls, is controlled by, or is under common control with, such person, or (iii) each of such person's officers, directors, members, joint venturers and partners. For the purposes of this definition, "control" of a person means the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise; (2) **"applicable law" or "law"**: any law, rule, regulation, ordinance, order, code, common law, interpretation, judgment, directive, decree, treaty, injunction, writ, determination, award, permit or similar norm or decision of any governmental authority; (3) **"AS IS, WHERE IS"**: AS IS, WHERE IS, without warranty, express or implied, with respect to any matter whatsoever; (4) **"business day"**: any day, other than a Saturday, Sunday, or legal holiday for commercial banks under the laws of the state of the Lessor's notice address; (5) **"governmental authority"**: any federal, state, county, municipal, regional or other governmental authority, agency, board, body, instrumentality or court, in each case, whether domestic or foreign; (6) **"hazardous material"**: means any chemical, compound, materials, substance or other matter that: (i) is a flammable explosive, asbestos, radioactive materials, nuclear medicine materials, drug, vaccine, bacteria, virus, hazardous waste, toxic substance, petroleum product, or related injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (7) **"person"**: any individual, corporation, limited liability entity, partnership, joint venture, or other legal entity or a governmental authority, whether employed, hired, affiliated, owned, contracted with, or otherwise related or unrelated to Lessee or Lessor; and (8) **"UCC" or "Uniform Commercial Code"**: the Uniform Commercial Code as in effect in the State or in any other applicable jurisdiction; and any reference to an article (including Article 2A) or section thereof shall mean the corresponding article or section (however termed) of any such applicable version of the Uniform Commercial Code. (b) The following terms when used herein or in any of the Schedules shall be construed as follows: (1) "herein," "hereof," "hereunder," etc. means in, of, under, etc. this Lease or such other Lease Document in which such term appears (and not merely in, of, under, etc. the section or provision where the reference occurs); (2) "including": means including without limitation unless such term is followed by the words "and limited to", or similar words; and (3) "or" means at least one, but not necessarily only one, of the alternatives enumerated. Any defined term used in the singular preceded by "any" indicates any number of the members of the relevant class. Any Lease Document or other agreement or instrument referred to herein means such agreement or instrument as supplemented and amended from time to time. Any reference to Lessor or Lessee shall include their permitted successors and assigns. Any reference to an applicable law shall also mean such law as amended, superseded or replaced from time to time.

20. PUBLICITY: Lessor will have the right to disclose to others and to include on or in its website, brochures and other marketing materials information consisting of "tombstone-like" statements about this lease transaction which mention Lessee and may use Lessee's logo and the amount of the lease funding provided by Lessor to Lessee. Such information shall not include any proprietary or confidential information of Lessee. Lessee grants Lessor permission to make reference to Lessee in its marketing materials referenced in this Section 20, unless otherwise notified by Lessee in writing.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Master Lease Agreement to be duly executed as of the day and year first above set forth.

Lessor

TRINITY CAPITAL FUND III, L. P.,
a Delaware limited partnership

By: TRINITY SBIC PARTNERS III, LLC,
a Delaware limited liability company,
its general partner

By: TRINITY SBIC MANAGEMENT, LLC,
a Delaware limited liability company,
its Manager

By: /s/ Steven L. Brown
Name: Steven L. Brown
Title: Managing Member

Lessee

ZOSANO PHARMA CORPORATION,
a Delaware corporation

By: /s/ John Walker
Name: John Walker
Title: Chief Executive Officer

Exhibit A

SECURITY AGREEMENT

This SECURITY AGREEMENT (this "***Agreement***") is made as of September 25, 2018 by and between Zosano Pharma Corporation (the "***Debtor***"), and Trinity Capital Fund III, L.P. ("***Secured Party***").

RECITALS

Debtor and Secured Party are parties to certain Lease Documents, as defined in the Master Lease Agreement of even date (as amended from time to time, the "***Lease Documents***"). To secure Debtor's performance under the Lease Documents, Debtor wishes to grant Secured Party a security interest in certain of Debtor's personal property.

Now, Therefore, the parties agree as follows.

1. Grant of Security Interest. As security for payment and performance of all of its obligations under the Lease Documents (other than any warrant or other equity instrument) (the "***Obligations***"), Debtor grants Secured Party a security interest in all of Debtor's goods, equipment, inventory, general intangibles, intellectual property, cash, deposit accounts, investment property, financial assets, and commercial tort claims, now owned and hereafter acquired, and all proceeds of any or all of the foregoing (the "***Collateral***").

Notwithstanding the foregoing, the Collateral does not include (i) any property that is nonassignable by its terms without the consent of the licensor thereof or another party (but only to the extent such prohibition on transfer is enforceable under applicable law, including, without limitation, Sections 9406 and 9408 of the UCC), (ii) any property that the granting of a security interest therein is contrary to applicable law, provided that upon the cessation of any such restriction or prohibition, such property shall automatically become part of the Collateral, (iii) any property that constitutes the capital stock of a subsidiary that is not an entity organized under the laws of the United States or any state thereof, in excess of sixty five percent (65%) of the voting power of all classes of capital stock of such subsidiary entitled to vote, or (iv) any United States intent-to-use trademark or service mark application to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark or service mark application under United States federal law. For the avoidance of doubt, Debtor shall be permitted to license its intellectual property in Debtor's ordinary course of business.

2. Termination. As long as an Event of Default is not then continuing, this Agreement and the security interest granted hereunder shall terminate upon Debtor's delivery to Secured Party of an executed Delivery and Acceptance Certificate in the form attached hereto and Secured Party's acceptance of that Certificate.

3. Event of Default. Upon the occurrence of an Event of Default under the Lease Documents, Secured Party may exercise all of the rights and remedies of a secured party under the Uniform Commercial Code. Without limiting the foregoing, Debtor shall reimburse Secured Party for all reasonable costs and expenses, including reasonable attorneys fees, that Secured Party may incur in connection with the exercise of any such remedies.

4. 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 instrument.

5. Choice of Law. This Agreement shall be governed by the laws of the State of California, without giving effect to conflicts of laws principles.

6. JURY WAIVER; Judicial Reference. Secured Party and Debtor waive any right to a trial by jury of any matter arising out of this Agreement, or any transaction or action related thereto. If this waiver is not enforceable, Debtor and Secured Party shall resolve all disputes by judicial reference pursuant to Code

of Civil Procedure Section 638 et seq before a mutually acceptable referee or, if none is mutually acceptable, by a referee appointed by the Presiding Judge of the California Superior Court for Santa Clara County, in all cases sitting without a jury.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered as of the date first written above.

DEBTOR:

ZOSANO PHARMA CORPORATION

By: /s/John P. Walker
Title: Chief Executive Officer

SECURED PARTY:

TRINITY CAPITAL FUND III, L. P.,
a Delaware limited partnership

By: TRINITY SBIC PARTNERS III, LLC,
a Delaware limited liability company,
its general partner

By: TRINITY SBIC MANAGEMENT, LLC,
a Delaware limited liability company,
its Manager

By: /s/ Steven L. Brown
Name: Steven L. Brown
Title: Managing Member

DELIVERY AND ACCEPTANCE CERTIFICATE

Re: Master Lease Agreement dated as of September __, 2018 between Zosano Pharma Corporation ("Lessee") and Trinity Capital Fund III, L.P. ("Lessor") and Equipment Schedule No. __ dated as of September __, 2018 (the "Lease Documents").

To Lessor:

All of the items referred to in the Lease Documents have been delivered to and have been received by Lessee. All installation or other work necessary prior to the use thereof has been completed. The equipment leased under the Lease Documents (the "Equipment") has been examined and/or tested and is in good operating order and condition, and is in all respects satisfactory to Lessee and is as represented. The Equipment has been accepted by Lessee and complies with all terms of the Lease Documents.

In the future, even if the Equipment fails to perform as expected or represented, Lessee will continue to comply with the Lease Documents by continuing to make our periodic payments in the normal course of business, and Lessee will look solely to the seller or manufacturer for the performance of all covenants and warranties. In addition, Lessee shall indemnify and hold harmless and defend Lessor from such nonperformance of the Equipment. Lessee has obtained all insurance policies required by the Lease Documents. Those policies are in full force and effect.

Lessee acknowledges that Lessor is not the manufacturer, distributor, or seller of the Equipment and has no control, knowledge, or familiarity with the conditioning, capacity, functioning, or other characteristics of the Equipment.

Lessee confirms that no Event of Default is continuing under the Lease Documents.

[SIGNATURE PAGE TO FOLLOW]

LESSEE:

ZOSANO PHARMA CORPORATION

By: _____
Title: _____
Date: _____

Accepted:

TRINITY CAPITAL FUND III, L. P.,
a Delaware limited partnership

By: TRINITY SBIC PARTNERS III, LLC,
a Delaware limited liability company,
its general partner

By: TRINITY SBIC MANAGEMENT, LLC,
a Delaware limited liability company,
its Manager

By: _____
Name: Steven L. Brown
Title: Managing Member

[***] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

MANUFACTURING AND SUPPLY AGREEMENT

This **MANUFACTURING AND SUPPLY AGREEMENT** (this "Agreement") dated as of September 25, 2018 (the "Effective Date") is made by and between Zosano Pharma Corporation, a corporation existing under the laws of the State of Delaware, having its principal place of business at 34790 Ardentech Court, Fremont, California 94555 ("Client"), and Patheon Manufacturing Services LLC, a limited liability company existing under the laws of the State of Delaware, having a principal place of business at [***] ("Patheon"). Client and Patheon are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

BACKGROUND

Client has a commercial interest in the manufacture and commercialization of its proprietary product known as M207 (zolmitriptan microneedle system), a low-bioburden, combination product designed for docking on to an applicator, and application to a subject's upper arm during a migraine attack.

Patheon has expertise and experience in manufacturing and packaging pharmaceutical products and is interested in providing manufacturing services to Client for the Product (as defined in the Technology Transfer Agreement, defined beow).

In anticipation of this Agreement and the services that Patheon will supply hereunder, the Parties are executing a Technology Transfer Agreement under which Patheon will perform certain technology transfer and construction services in order to validate Client's technology and process for manufacturing M207, and prepare Patheon's facilities for the manufacture of the Product.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and covenants of the Parties contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I. DEFINITIONS

The following terms will have the meanings set forth below. Unless the context indicates otherwise, the singular will include the plural and the plural will include the singular. Any term used but not defined hereunder will have the meaning ascribed to that term in the Technology Transfer Agreement.

"Additional Services" means any services requested and approved by Client that supplement Patheon's regular performance of the Manufacturing Services under this Agreement (including without limitation those set forth in Schedule B) or that supplement Patheon's regular performance of the Transfer Services under the Technology Transfer Agreement, as applicable.

"Affiliate" means, for any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, that Person. For the purposes of this definition only, a Person will be regarded as in control of another Person if the Person owns, or directly or indirectly controls, 50% or more of the voting securities (or comparable equity interests) or other ownership interests of the other Person, or if the Person directly or indirectly possesses the power to direct or cause the direction of the management or policies of the other Person, whether through the ownership of voting securities, by contract, or any other means whatsoever.

"Agreed Delivery Date" has the meaning set forth in Section 2.3(f).

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

"API" means the active pharmaceutical ingredient Zolmitriptan USP (CAS Number: 139264-17-8).

"Applicable Law" means applicable United States and foreign federal, state, and local laws, orders, rules, regulations, guidelines, standards, customs and ordinances, including, without limitation, those (to the extent they are applicable) of the FDA and comparable foreign Regulatory Authorities, including the FDA Act, including without limitation GMP.

"Applicator" means the device developed by or on behalf of Client for applying a microneedle system to the upper arm of a patient.

"Base Fee" means the annual fee to be paid by Client in monthly installments, as more specifically set forth in Schedule B. Base Fees do not include Technology Transfer Fees or Capital Expenditures (both as defined in the Technology Transfer Agreement), Product Fees, Material Costs, Maintenance Costs, Disposal Costs or charges for Bill Back Items or Additional Services.

"Basic Engineering Design" means the basic engineering design to be conducted by Patheon as established by the Steering Committee under the Technology Transfer Agreement.

"Bill Back Items" means the items and services set forth in Schedule B or other project-specific items that are used or necessary in connection with the Manufacture of the Products and that are not included as Materials, and that are approved by Client.

"Certificate of Analysis" means a certificate evidencing the analytical tests conducted on a specific batch of Product or Material and setting forth, *inter alia*, the items tested, specifications, and test results.

"Certificate of Compliance" means a certificate stating that a specific batch of Product has been Manufactured in compliance with GMP and the Specifications.

"Claim" has the meaning set forth in Section 9.3(a).

"Client" has the meaning set forth in the Preamble hereto.

"Client Indemnified Parties" has the meaning set forth in Section 9.2.

"Client Manufacturing Equipment" means equipment necessary to Manufacture the primary packaged Product that consists of equipment for the bulk Manufacturing of the microneedle system, formulation preparation, drug product coating of the microneedle system, and in-process control testing of the Product and its intermediates or components as more fully set forth in Exhibit F of the Technology Transfer Agreement.

"Client Manufacturing Process" means the proprietary process developed by or on behalf of Client for Manufacturing the Product as of the Effective Date, as the same will be disclosed by Client to Patheon pursuant to the Technology Transfer Agreement, and each intermediate or component of the Product, including without limitation, as set forth in the investigational new drug application filed with the FDA for the Product, and, when applicable, as set forth in the NDA as may be filed with, and approved by, the FDA for the Product.

"Client Manufacturing Process Improvements" has the meaning set forth in Section 5.1(e)(i).

"Client Product Improvements" has the meaning set forth in Section 5.1(e)(i).

"Client Specification Improvements" has the meaning set forth in Section 5.1(e)(i).

"Client-Supplied Materials" has the meaning set forth in Section 2.2(a).

"Commercially Reasonable Efforts" means, with respect to the efforts to be expended by a Party to achieve any objective, the reasonable, diligent efforts to accomplish the objective as a similarly situated party (with respect to size, resources and assets) in the pharmaceutical industry would normally use to accomplish a similar objective in its own interests under similar circumstances for comparable products.

"Confidentiality Agreement" has the meaning set forth in Section 7.1.

"Confidential Information" has the meaning set out in the Confidentiality Agreement.

"Control" or "Controlled" means that a Party owns or has the right to assign or grant a license or sublicense under Intellectual Property rights to the other Party of the scope set forth herein, without breaching or conflicting with any agreement between the granting party and with a Third Party.

"Deficiency Notice" has the meaning set forth in Section 2.8(b).

"Discretionary Manufacturing Changes" has the meaning set forth in Section 2.10(b)(ii).

"Disposal Costs" means the cost charged by a Third Party for disposal of waste from the Manufacture of the Product plus [***].

"Effective Date" has the meaning set forth in the Preamble hereto

"EMA" means the European Medicines Agency or its successor.

"Equipment" means any equipment to be used in the Manufacture of the Product as more fully set forth in Exhibit F of the Technology Transfer Agreement.

"Existing Client Intellectual Property" has the meaning set forth in Section 5.1(a).

"Existing Patheon Intellectual Property" has the meaning set forth in Section 5.1(b).

"Expected Yield" has the meaning set forth in Section 2.9(a).

"Expert" has the meaning set forth in Section 2.8(d)(vi).

"Exploit" means to make, have made, import, use, sell, offer for sale, receive or otherwise dispose of a product or process, including the research, development (including the conduct of clinical trials), registration, modification, enhancement, improvement, Manufacture, storage, formulation, optimization, export, transport, distribution, promotion, or marketing of a product or process.

"Facility" means Patheon's facility located at [***], or any other facility approved in accordance with Section 3.4(a).

"FDA" means the United States Food and Drug Administration and any successor organization thereto and all agencies under its direct control.

"FDA Act" means the US Federal Food, Drug, and Cosmetic Act, as amended.

"FDA Approval Date" means the date of receipt by Client of Regulatory Approval in the United States for Products Manufactured at the Manufacturing Suite.

"Filing Party" has the meaning set forth in Section 3.17(d).

"Final Filing" has the meaning set forth in Section 3.17(g).

"Forecast" has the meaning set forth in Section 2.3(a).

"GMP" means the current good manufacturing practices applicable to the Manufacturing of the Product, or any intermediate of the Product, under Applicable Law, including those promulgated under the FDA Act at 21 C.F.R. (Parts 210 and 211 and Part 4 as relevant for combination products), Commission Directive (EU) 2017/1572 (art. 2), together with the latest FDA, EMA and European Commission guidance documents pertaining to manufacturing and quality control practice, all as updated, amended and revised from time to time. Guidance in draft status will be considered as in effect for the purposes of this definition if this guidance has been adopted by Patheon at the Facility in relation to all its other clients and included as part of Patheon's Standard Operating Procedures or if it is agreed to be adopted by the Commercial Steering Committee.

"Indemnified Party" has the meaning set forth in Section 9.3(a).

"Indemnifying Party" has the meaning set forth in Section 9.3(a).

"Initial Draft" has the meaning set forth in Section 3.17(e).

"Initial Term" has the meaning set forth in Section 8.1.

"Intellectual Property" includes, without limitation, rights in patents, patent applications, formulae, trademarks, trademark applications, trade-names, Inventions, copyrights, designs, trade secrets, databases and rights in know how (whether or not any of these is registered or capable of registration and including applications for registration of any such thing) and all other similar rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

"Invention" means any innovation, improvement, development, discovery, computer program, device, trade secret, method, know-how, process, technique or the like, whether or not written or otherwise fixed in any form or medium, regardless of the media on which it is contained and whether or not patentable or copyrightable.

"Loss" means any claims, lawsuits, subpoenas, losses, damages, liabilities, penalties, costs, and expenses (including reasonable attorneys' fees and disbursements).

"Maintenance" means the maintenance of Equipment and the Facility in satisfactory operating condition, including performing systematic inspection and service of Equipment under to the applicable Standard Operating Procedures of Patheon, as reviewed and agreed to by Client (the "Equipment Standard Operating Procedures"), or the manufacturer's terms of operation and recommended procedures.

"Maintenance Costs" means the cost charged by a Third Party for (a) [***] Maintenance; or (b) [***], plus [***].

"Make Good Costs" has the meaning set forth in Section 8.3(d).

"Manufacture" and "Manufacturing Services" means the manufacture of the Products, including without limitation the planning, purchasing and receipt of Patheon-Supplied Materials, planning (based on the Forecast), receipt of Client-Supplied Materials and the manufacturing, processing, formulating, coating, primary packaging, sterilization, bulk packaging, bulk labelling, storage, handling, quality release of Products (Certificate of Compliance), together with all agreed sample retention, stability testing, quality control and assurance and waste disposal.

"Manufacturing Services Termination Costs" has the meaning set forth in Section 8.3(e).

"Manufacturing Suite" means the manufacturing suite at the Facility, whose footprint was determined in accordance with the Technology Transfer Agreement.

"Marketing Authorization" means an approved New Drug Application as defined in the FDA Act and the regulations promulgated thereunder, or any corresponding foreign application, registration, or certification, necessary or reasonably useful to market any product containing the Product and an Applicator in a country or regulatory jurisdiction other than the United States, including applicable pricing and reimbursement approvals, and all supplements and amendments thereto.

"Material Costs" has the meaning set forth in Section 2.2(b).

"Materials" means all API, excipients and processing aids, processing, coating and packaging components listed in Schedule C, as amended by agreement in writing.

"NDA" means the US new drug application for a product, including a product containing the Product and the Applicator, requesting permission to place a drug on the market in accordance with 21 C.F.R. Part 314, and all supplements (SNDA) filed under the requirements of the FDA, including all documents, data, and other information filed concerning a product that are necessary for FDA approval to market a product in the Territory.

"Non-Conforming Product" means (a) a batch of Product that is not Manufactured to completion, or is aborted during processing; or (b) a Product Manufactured by Patheon that fails to conform to the warranty set forth in Section 6.3.

"Non-Filing Party" has the meaning set forth in Section 3.17(d).

"Party" and "Parties" have the meanings set forth in the Preamble hereto.

"Patheon" has the meaning set forth in the Preamble hereto.

"Patheon Indemnified Parties" has the meaning set forth in Section 9.1.

"Patheon Independent Manufacturing Equipment Improvements" has the meaning set forth in Section 5.1(f)(i).

"Patheon Manufacturing Equipment" means any equipment, other than the Client Manufacturing Equipment, necessary to Manufacture the Product including as more fully set forth in Exhibit F of the Technology Transfer Agreement, waste handling systems and all building infrastructure and any and all improvements or additions made thereto, as approved in writing by Client.

"Patheon Nonconformance" has the meaning set forth in Section 2.8(d)(i).

"Patheon-Supplied Materials" has the meaning set forth in Section 2.2(a).

"Person" means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, or other similar entity or organization, including a government or political subdivision, department, or agency of a government.

"Product" has the meaning set forth in the Technology Transfer Agreement.

"Product Fee" has the meaning set forth in Section 2.4.

"Project Manager" and "Project Managers" have the meaning set forth in Section 3.5(a).

"Purchase Order" means a written purchase order that sets forth (a) the quantities of each presentation of Product to be delivered by Patheon to Client, (b) the requested delivery dates therefor, and (c) the bulk packaging to be used for the Product.

"Quality Agreement" has the meaning set forth in Section 3.1.

"Regulatory Approval" means all approvals (including pricing and reimbursement approvals), licenses, registrations, or authorizations of any Regulatory Authority necessary to Exploit a product containing the Product and an Applicator in any country in the Territory, including any Marketing Authorization and supplements and amendments thereto.

"Regulatory Authority" means any applicable supra-national, federal, national, regional, state, provincial, or local regulatory agencies, departments, bureaus, commissions, councils, or other government entities regulating or otherwise exercising authority for the Exploitation of a product containing the Product and an Applicator in the Territory.

"Regulatory Filings" has the meaning set forth in Section 3.17.

"Regulatory Obligations" has the meaning set forth in Section 3.17.

"Remediation Period" has the meaning set forth in Section 8.2(a)(vi).

"Reports" has the meaning set forth in Section 3.13.

"Required Manufacturing Changes" has the meaning set forth in Section 2.10(b)(i).

"Shipment Costs" has the meaning set forth in Section 2.8(d)(ii).

"Specifications" means the specifications for each presentation of Product (*i.e.*, the dosage forms in Schedule A) given by Client to Patheon relating to: the specifications of the Materials; the Manufacturing specifications, directions and processes; the storage requirements; all environmental, health and safety information for the Product including material safety data sheets and the finished Product specifications, specifications for bulk and primary packaging and shipping requirements for the Product, in each case as amended, modified, or supplemented by the Parties.

"Standard Operating Procedures" means Patheon's standard operating procedures used for the Manufacture of the Product.

"Technology Transfer Agreement" means the agreement executed on the date hereof between Client and Patheon in order for Patheon to establish and qualify the Facility to Manufacture the Products, and the processes for Manufacturing the Product at the Facility, as described in more detail in the Background Section.

"Term" has the meaning set forth in Section 8.1.

"Territory" means the United States and other territories agreed by the Parties under Section 2.2(t).

"Third Party" means a Person who is neither a Party nor an Affiliate of a Party.

"Third Party Losses" means Losses incurred as a result of claims brought by Third Parties.

"Third Party Subcontractors" has the meaning set forth in Section 3.16.

ARTICLE II. MANUFACTURING SERVICES

2.1 Supply Obligations.

(a) Subject to the completion of the Transfer Services under the Technology Transfer Agreement to validate Client's technology package and prepare Patheon's facilities for the Manufacture of the Product, and the terms and conditions hereof, and in consideration for the payments set forth in Schedule B, Client appoints Patheon as a non-exclusive supplier of the Products and Patheon will perform the Manufacturing Services and will supply the Product to Client.

(b) Under the Technology Transfer Agreement, Client will transfer to Patheon, and Patheon will confirm**,** the Client Manufacturing Process. The Client Manufacturing Process is the Confidential Information of Client, is subject to the Confidentiality Agreement, and accordingly Patheon may not allow Third Parties (other than relevant Regulatory Authorities or Third Party Subcontractors) to access the Manufacturing Suite or view documentation describing the Client Manufacturing Process without Client's prior written consent, [***].

(c) Patheon will Manufacture all Products delivered hereunder:

(i) in the Facility;

(ii) in accordance with the Specifications, this Agreement and the Quality Agreement; and

(iii) in compliance with GMP and other Applicable Law,

(iv) in conformance with the applicable Specifications.

(d) Patheon will ensure that sufficient numbers of adequately educated and experienced staff are retained at the Facility to Manufacture the volumes of Product set out in the Forecast. Patheon will perform all activities necessary to maintain a GMP compliant status of the manufacturing lines and areas of the Facility applicable to the Manufacture of the Product.

2.2 Materials, Bill Back Items and Additional Services.

(a) All Materials necessary for the Manufacture of the Product are set forth in Schedule C. Materials that will be purchased by Client and shipped to Patheon ("Client-Supplied Materials") are listed in Part A of Schedule C. Materials that will be purchased by Patheon ("Patheon-Supplied Materials") are listed in Part B of Schedule C.

(b) Patheon-Supplied Materials will be invoiced to Client monthly at the time of purchase by Patheon at cost plus [***], in accordance with the invoicing procedure set forth in ARTICLE IV ("Material Costs"). Patheon will obtain the prior written approval of Client on the cost of the Patheon-Supplied Materials if the cost of any individual item of Patheon-Supplied Material increases by more than (i) [***]%; or (ii) $[***], whichever is the lower. Where Client nominates a particular supplier to supply certain Patheon-Supplied Materials, Patheon will purchase those Materials from that supplier subject to Section 2.2(d). All purchases of Patheon-Supplied Materials by Patheon will be made on Patheon's own behalf and not as an agent for Client.

(c) Patheon will store, handle, and protect the Materials supplied or purchased for the Manufacturing Services other than in connection with the Transfer Services, with no less than a reasonable level of care, which will include taking all reasonable precautions to ensure that the Materials are not subject to contamination, deterioration, destruction, or theft. Patheon will keep adequate records of its use of the Materials for Manufacturing Services during the Term.

(d) Client acknowledges that Patheon is required under GMP to follow certain verification and approval processes for all vendors used by Patheon in the procurement of Materials. If Client requests Patheon to procure Materials from a vendor that is not [***], Client will [***], provided that Patheon must notify Client if the vendor [***] and Client will have the right to approve [***]. Client will be responsible for validation of suppliers of Client-Supplied Materials unless otherwise agreed. Patheon will be responsible for validation of suppliers of Patheon-Supplied Materials. Any changes to a supplier of Materials proposed by either Party will be subject to the change control procedure set out in Section 2.10(b) and may not be used until, as applicable, a regulatory submission has been filed to necessary health authorities if necessary therefor and appropriate required approvals are obtained.

(e) Patheon will be responsible for ordering and paying for the relevant quantities of Patheon-Supplied Materials necessary for the Manufacture of Products on the terms and conditions that Patheon agrees to with relevant suppliers.

(f) The Commercial Steering Committee will discuss and agree the process by which Patheon will order from Client the relevant quantities of Client-Supplied Materials necessary for the Manufacture of Products during the Term. Client will keep Patheon informed of the standard lead time for and cost of Client-Supplied Materials and will supply the Client-Supplied Materials free of charge on a consignment basis in response to orders placed by Patheon under this Agreement.

(g) Client will at its sole cost and expense, deliver Client-Supplied Materials to the Facility [***] (Incoterms 2010) at no cost to Patheon in the quantities and on the dates agreed with Patheon in response to orders placed under the process agreed under Section 2.2(f). If the Client-Supplied Materials are not received on or before the agreed date, Patheon may delay the Manufacture of Product for a period of time [***] to the delay.

(h) All shipments of Client-Supplied Materials, if required, will be accompanied by Certificates of Analysis and/or Certificates of Conformance from the Material manufacturer or Client confirming in writing its compliance with the Material's specifications, together with all required documentation as specified in the Quality Agreement. Client or Client's designee will be the "Importer of Record" for Client-Supplied Materials imported to the Facility. Client-Supplied Materials will be held by Patheon on behalf of Client as set forth in this Agreement or as otherwise required by Client.

(i) Title to Client-Supplied Materials will at all times remain the property of Client. Risk in the Client-Supplied Materials will remain with Patheon at all times from the point when the Client-Supplied Materials are delivered to Patheon until delivery of the Products to Client (or return of the Client-Supplied Materials to Client), at which time it will pass to Client (or its relevant Affiliate). The transfer of risk in the Client-Supplied Materials to Patheon will be without prejudice to Section 9.5 ([***]) and will be subject to [***]. Patheon will not be liable for [***]. The transfer of risk will further be subject to [***].

(j) Client-Supplied Materials will only be used by Patheon to perform the Manufacturing Services or associated activities necessary to perform the Manufacturing Services and will be kept in a manner that prevents access thereto by any personnel or Third Parties not performing Transfer or Manufacturing Services under this Agreement.

(k) Client will supply the Client-Supplied Materials in accordance with the requirements of the Quality Agreement, the Specifications, the Marketing Authorization, and Applicable Law.

(l) Patheon will notify Client [***] in writing if, after having carried out the analysis and testing of Client-Supplied Materials as set out in the Quality Agreement or the Specifications it considers that any delivered Client-Supplied Materials do not comply with Section 2.2(k), and will provide samples of the delivery together with copies of any relevant analysis records. Upon receipt of notification under to this Section 2.2(l) by Client, the Parties will use Commercially Reasonable Efforts to agree (each acting in good faith) whether or not the Client-Supplied Materials in question are compliant with the requirements set out in Section 2.2(k) and:

(i) Client will be entitled at all reasonable times to inspect and/or analyze the delivery in question;

(ii) Patheon will not use any of the Client-Supplied Materials in question in the Manufacture of Product until the matter has been resolved in accordance with this Section 2.2(l) and Section 2.2(m) unless agreed otherwise; and

(iii) at Patheon's request, Client will deliver to Patheon replacement Client-Supplied Materials as soon as practicable, using Commercially Reasonable Efforts to enable continuity of Patheon's Manufacture of the relevant Products.

(m) If the Parties do not agree on whether the Client-Supplied Materials in question are compliant with the requirements set out in Section 2.2(k), the matter may be referred to an Expert in accordance with the procedure in Section 2.8(d)(vi).

(n) If Client-Supplied Materials are not compliant (or are determined to be non-compliant) with the requirements set out in Section 2.2(k) and Patheon does not have sufficient quantity of released Client-Supplied Materials that are compliant, then Patheon will have no liability to Client [***] if [***]. Client will pay Patheon for the Purchase Order in accordance with Section 2.4 which payment will be credited against the Product Fees that are payable for future Purchase Orders.

(o) Where Patheon fails to carry out incoming analysis of Client-Supplied Materials in accordance with the Specifications and uses the Client-Supplied Materials in question in the Manufacture of Product and these Client-Supplied Materials thereafter are agreed or determined under Section 2.8(d)(vi) to not comply with the requirements set out in Section 2.2(k), Patheon will:

(i) provide the remedies set out in Section 2.8(d)(ii) for any Non-Conforming Product that is caused by the failure (and Patheon's obligation to reimburse Client-Supplied Materials incorporated into Non-Conforming Product caused by the failure will be captured and calculated in the Yield Reimbursement Payment under Section 2.9, which will be subject to the limitation of liability in Section 9.5(a)); and

(ii) at Client's option, subject to completion of any quality investigation, any sample retention requirements and the provisions of the Quality Agreement, take all necessary action (at its own expense), to rework or reprocess (both of which will be done promptly) or destroy any Non-Conforming Products caused by the failure.

(p) [***] for all Non-Conforming Product that arises from Client-Supplied Materials that do not comply with the requirements set out in Section 2.2(k) that could not be detected by Patheon carrying out the incoming analysis of Client-Supplied Materials in accordance with this Agreement, the Specifications and the Quality Agreement.

(q) Patheon will provide free of charge sufficient storage capacity to support storage of the required quantity of Materials for the longer of [***] or the amount of time set forth for the applicable Material on Schedule C. Patheon will also provide free of charge sufficient storage capacity to support storage of Product for up to [***] after the release of the relevant Product. Any additional storage, or storage of Materials or Product beyond the applicable period stated herein will be subject to the mutual agreement of the Parties, this agreement to include the fees relating thereto. Patheon's standard storage fees as of the Effective Date are $[***] per pallet, per month for storing the Materials or finished Product. Storage fees for Materials or Product that contain controlled substances or require refrigeration are charged at $[***] per pallet per month. Storage fees are subject to a one pallet minimum charge per month. Storage fees will not apply to (i) any registration batches for up to [***] after the Marketing Authorization for the United States has been granted; and (ii) any stocks of Products Manufactured during the first [***] after the Effective Date in anticipation of launch in the US, but where Patheon is unable to accommodate all or some of the launch quantities it may engage a Third Party Subcontractor approved by Client (not to be unreasonably withheld, conditioned or delayed) to do so in accordance with Section 3.16.

(r) Bill Back Items will be charged to Client at Patheon's cost plus [***]. Patheon will invoice Client monthly for any Bill Back Items used to Manufacture the Products during the preceding month in accordance with ARTICLE IV. Patheon may only invoice Bill Back Items that have been quoted to and approved in writing by an authorized person of Client in advance. The cost of any Bill Back Items where use is shared between Client and Patheon or other clients of Patheon will be apportioned in good faith in proportion to their use.

(s) If Client is interested in having Patheon perform Additional Services, Client will provide Patheon with a written request containing sufficient detail to enable Patheon to provide Client with a quote and proposal to provide the Additional Services. Patheon may only invoice for Additional Services that have been quoted to and approved in writing by an authorized person of Client in advance. Where a rate for Additional Services has been specified in Schedule B, the rates are calculated as at the Effective Date. These fees will be adjusted on 1st January of each year (first review [***]) to reflect any increase in the Producer Price Index pcu32541235412 for Pharmaceutical Preparation Manufacturing (PPI) published by the United States Department of Labor, Bureau of Labor Statistics during the previous 12 months (based on the average of the monthly changes over the 12-month period). Patheon will invoice Client monthly for any Additional Services performed by Patheon during the preceding month in accordance with ARTICLE IV.

(t) If Client decides to have Patheon perform Manufacturing Services for the Product for a territory outside the United States, then Client will inform Patheon of the additional requirements for each new country and Patheon will prepare a quotation for consideration by Client of any additional costs for the Product destined for each new country. The agreed additional requirements and change to any Product Fees will be set out in a written amendment to this Agreement. The Product Fees for products supplied to [***] will be consistent with those for the United States save to the extent Additional Services are required for the Products, *e.g.*, [***], which will be subject to Section 2.2(s).

(u) Patheon-Supplied Materials.

(i) If the Parties agree that Patheon is to source all or any of the Materials, Client understands and acknowledges that Patheon will rely on Client's Purchase Orders and Forecasts in ordering the Patheon-Supplied Materials required to meet the Purchase Orders. Accordingly, Client authorizes Patheon to purchase Patheon-Supplied Materials to satisfy the Manufacturing Services requirements for Products for the first [***] contemplated in the most recent Forecast. Patheon may make other purchases of Patheon-Supplied Materials to meet Manufacturing Services requirements for longer periods if agreed to in writing by the Parties. Client will give Patheon written authorization to order Patheon-Supplied Materials for any launch quantities of Product requested by Client, which order will expressly state that the authorization is for launch quantities, and will be considered a Purchase Order when accepted by Patheon.

(ii) Client will reimburse Patheon for any destruction costs of any Patheon-Supplied Materials ordered by Patheon under Purchase Orders or under Section 2.2(u)(i) that are not included in finished Products Manufactured for Client within [***] after the forecasted month for which the purchases have been made (or for a longer period as the Parties may agree in writing). If any non-expired Patheon-Supplied Materials are used in Products subsequently manufactured for Client, Client will receive credit for any costs of those Patheon-Supplied Materials previously paid to Patheon by Client.

(v) Waste Disposal. Patheon will dispose of waste arising from the Manufacture of the Product. Disposal Costs will be invoiced to Client monthly in accordance with the invoicing procedure set forth in ARTICLE IV. Patheon may only invoice Disposal Costs that have been quoted to and approved in writing by an authorized person of Client in advance.

2.3 Forecasting, Order, and Delivery of Products.

(a) No later than [***] prior to the anticipated FDA Approval Date and thereafter at least [***] prior to the first day of each calendar month during the Term, Client will deliver to Patheon a written good faith [***] forecast, calculated monthly, estimating the quantities of each presentation of Product that Client expects to order from Patheon during the period (each, a "Forecast").

(b) If Patheon is unable to accommodate any portion of the Forecast, it will notify Client in writing setting out the reasons and the Parties will [***] any revisions to the Forecast. Without prejudice to Client's other rights and remedies under this Agreement, Patheon will take actions as reasonably requested by Client to minimize the damage to Client (if any) caused by Patheon's inability to accommodate any portion of the Forecast at its own cost where this inability is a result of a failure by Patheon to comply with its obligations under this Agreement, and otherwise at Client's cost. Taking these actions will not constitute an admission of liability by Patheon or any acceptance that an inability to accommodate any portion of the Forecast will cause damage to Client.

(c) Client will update the Forecast within [***] of each calendar month on a rolling forward basis. Patheon's obligations under this Agreement will be determined based on the most recent Forecast submitted by Client. Except as set forth in Section 2.3(e) below, each Forecast will be non-binding and will be used by Patheon for planning purposes only.

(d) When this Agreement is executed, Client will give Patheon a written non-binding [***] forecast for strategic purposes, of the volume of Product Client then anticipates to purchase from Patheon for each year during this period (the "Long Term Forecast"). The Long Term Forecast will thereafter be updated every [***] during the Term. If Patheon is unable to accommodate any portion of the Long Term Forecast, it will notify Client and the Parties will [***] any revisions to the Long Term Forecast.

(e) The first [***] of each Forecast will be considered binding firm orders. Client will issue corresponding Purchase Orders on a monthly basis to purchase and, when accepted by Patheon, for Patheon to Manufacture and deliver the agreed quantity of the Product for each month of the [***] period, but the delivery lead time must be at least [***] from the date of Patheon's acceptance (or deemed acceptance) of the Purchase Order under Section 2.3(f) below. With respect to the next month which becomes binding in a subsequent Forecast, Patheon will be obligated to accept Purchase Orders for Product for that month up to [***]% of the amount forecasted for the same month in the immediately prior Forecast, and Patheon will use Commercially Reasonable Efforts to fulfill and accept Purchase Orders for any additional amount forecasted, subject to the then-existing Manufacturing Equipment capacity. Expedited Purchase Orders will be subject to additional fees on reasonable terms that are consistent with those generally offered to Patheon's other customers.

(f) Patheon will accept Purchase Orders for amounts of Product ordered in the binding portion of a Forecast by sending an acknowledgement to Client within [***] days of its receipt of the Purchase Order. The acknowledgement will include confirmation of the quantity of Product ordered as set out in the Purchase Order and the delivery dates for the Product ordered as set out in the Purchase Order ("Agreed Delivery Date"). Upon receipt of the acknowledgement, each Purchase Order will be regarded by the Parties as a binding irrevocable commitment by Client to purchase from Patheon, and for Patheon to Manufacture and supply to Client, the relevant quantity of Product according to the requirements set out in the Purchase Order.

(g) Patheon will only be required to provide a delivery month for any Purchase Orders or part thereof that do not relate to the first [***] of the applicable Forecast. The Agreed Delivery Date may be amended by agreement of the Parties. If Patheon fails to acknowledge receipt of a Purchase Order within the five business day period, the Purchase Order will be considered to have been accepted by Patheon.

(h) Patheon will deliver Product to Client [***] (as defined in Incoterms 2010) by the Agreed Delivery Date and in the quantities specified in the relevant Purchase Order. Client may accept deliveries in advance of the Agreed Delivery Date at its discretion. All Product will be packed for shipping in accordance with the Specifications.

(i) Title to the Products will vest in Client from the point during the Manufacturing process when the Client-Supplied Materials are first converted into, or used in, the Product. Risk of loss to Product will pass to Client (or a designated Client Affiliate) at the time when Patheon [***]. Neither payment for the Products by Client, nor passing of risk in the Products to Client, will be considered acceptance of the Products by Client.

(j) Each delivery of Product will be accompanied by a Certificate of Analysis and a Certificate of Compliance and any other documents required under the Quality Agreement. All Products will be released for delivery within [***]. If the [***], the Parties will engage in good faith discussions to agree a remediation plan describing the steps to be taken to improve shelf life performance. Patheon will use Commercially Reasonable Efforts to implement the plan. If Product is released later than [***], Client may reject the same [***]. Any rejected Product will be regarded as Non-Conforming Product. The costs of all freight, insurance, handling fees, taxes, and other costs associated with the shipment of Product, as well as export licenses, import license, and customs formalities for the import and export of goods will be [***]. Client will [***] on the date specified in the relevant Purchase Order [***].

(k) If Client cancels any Purchase Order after acceptance by Patheon or considered accepted as described in Section 2.3(f) or (g), Client will pay Patheon [***]% of the Product Fee for the Purchase Order which payment will be credited against the Product Fees that are payable for future Purchase Orders.

(l) Patheon will use Commercially Reasonable Efforts to satisfy, any changes in quantity, delivery phasing or dates requested by Client for Purchase Orders or any additional orders. Any additional fees to reflect additional activities required to be conducted by Patheon as a result of these changes or additional orders will be agreed by the Parties in advance.

2.4 Product Fees. The purchase price for Products Manufactured hereunder (the "Product Fee") will be calculated according to the model as set forth in Schedule B. This means that the Product Fee payable per Product varies on an incremental basis as further described in Schedule B. All purchases of Products will be invoiced at the applicable Product Fee based on the volume of Products expected to be supplied in that calendar year (or part thereof) based on most recent Forecast at the start of the calendar year. Patheon will invoice Client for the relevant Product Fee [***]. All Product Fees will be due and payable in accordance with the invoicing procedures set forth in ARTICLE IV.

2.5 Base Fees. Patheon will invoice Client monthly in advance for the Base Fees set forth Schedule B. All Base Fees will be due and payable in accordance with the invoicing procedures set forth in ARTICLE IV.

2.6 Fee Adjustment.

(a) The Base Fee and Product Fee stated herein are calculated as at the Effective Date and will be fixed until [***]. Thereafter, starting on [***] the Base Fee and Product Fee will be adjusted annually to reflect any change in the Producer Price Index pcu32541235412 for Pharmaceutical Preparation Manufacturing (PPI) published by the United States Department of Labor, Bureau of Labor Statistics during the preceding 12 months (based on the average of the monthly changes over the 12-month period).

(b) Patheon, in collaboration with Client, will use Commercially Reasonable Efforts to identify and target potential areas of cost reduction (*e.g.*, [***]) and process improvements (*e.g.*, [***]) relating to its performance under this Agreement. The net benefits of cost savings and improved efficiencies achieved as a result of the same will be allocated as follows:

(i) where benefits of cost reductions and improved efficiencies are only applicable to the Manufacture of the Products, the amount of these benefits will be [***]; and

(ii) where benefits of cost reductions and improved efficiencies are applicable to the general manufacturing and supply chain costs of Patheon, such that Patheon and/or its customers generally benefit, the allocation of the benefits will be discussed in good faith and allocated between the Parties as agreed at the time.

2.7 Inability to Supply Product.

(a) Patheon will ensure that Product is Manufactured and delivered to Client on a timely basis consistent with this Agreement (including the Forecast and Purchase Order procedures set forth in Section 2.3). If Patheon, at any time during the Term, is unable or will have reason to believe that it will be unable to supply Client with the full quantity of Product forecasted to be ordered or actually ordered by Client in a timely manner and in conformity with the warranty set forth in Section 6.3 (whether by reason of force majeure or otherwise), Patheon will notify Client thereof in writing within [***] days setting out the reasons for the inability to supply. Promptly thereafter, the Parties will meet to discuss how Client will obtain the full quantity of conforming Product and Patheon will take all actions as may be reasonably agreed by the Parties to minimise any delay. Compliance by Patheon with this Section 2.7(a) will not relieve Patheon of any other obligation or liability under this Agreement. If Patheon's inability to supply is partial, Patheon will fulfill Purchase Orders with quantities of Product as are available and the Client's payment obligations relating to the Product Fee will be reduced accordingly. If Patheon's inability to meet Purchase Orders or forecasts is due to a shortage of production capacity in the Manufacturing Suite, Patheon will in addition to the foregoing requirements, promptly notify Client of the shortage of production capacity and the estimated date the shortage of production capacity is to end.

(b) The Parties acknowledge that following Completion of the Tech Transfer (as defined in the Technology Transfer Agreement), (i) the engineering approach and footprint agreed by the Parties for the Manufacturing Suite and utility requirements is intended to provide capacity for the Manufacture of [***] patches of Product per year and (ii) the provision of personnel supporting the Manufacturing Suite is intended to support the Manufacture of the volumes of Product as set out in the relevant Forecast. Patheon undertakes to maintain the capacity and associated support processes for the Term in order to be able to ramp up to manufacture of at least [***] patches of Product per year, subject to Client's provision of Forecasts for these volumes in accordance with Section 2.3(a). Patheon will not without Client's prior written consent take any step that might reduce this capacity.

2.8 Non-Conforming Product.

(a) If Patheon discovers a potential Non-Conforming Product before delivery of the Product to Client, Patheon will suspend any planned release or delivery of the Products in accordance with the Quality Agreement and provide written notice to Client as soon as practicable describing in detail the Non-Conforming Product and the potential cause for the Non-Conforming Product.

(b) Client (or its designee) will perform a customary inspection of the Products Manufactured by Patheon on receipt. This inspection [***] to a visual inspection of the shipment-ready packaged Products (and associated shipping documentation) and Client (or its designee) will not be obligated to perform any testing of the Product. Client will (i) within [***] days after receipt by Client (or its designee) of a shipment of Product or (ii) within [***] days after Client (or its designee) discovers or is informed of a discovery of nonconformity that could not reasonably have been detected by the customary inspection on delivery (but not after the expiration date of the Product), give Patheon notice of any Non-Conforming Product (including a sample of the Non-Conforming Product, if applicable) (a "Deficiency Notice"). If Client fails to give Patheon the Deficiency Notice within the expiry of the applicable notice period, then the delivery will be considered to have been accepted by Client. Patheon will have no liability whether under this Section 2.8, Section 3.12 or Section 3.14 or otherwise for any Non-Conforming Product for which it has not received a Deficiency Notice within the expiry of the applicable notice period.

(c) Following receipt of a Deficiency Notice Patheon will conduct a root-cause analysis to verify whether a Product constitutes a Non-Conforming Product and, if found, to determine the cause for the Non-Conforming Product (including by undertaking an appropriate evaluation of a Non-Conforming Product sample, as applicable). Client will provide reasonable cooperation to Patheon in connection with the root-cause analysis. The payment obligation in relation to the Product Fee for the Product will be suspended pending resolution of the issue. Patheon will notify Client in writing of its determination regarding whether the Product constitutes a Non-Conforming Product within [***] days after either discovery of the Non-Conforming Product or receipt of the Deficiency Notice from Client, as applicable. This notification will include Patheon's good faith determination of the cause of the Non-Conforming Product if the notification indicates Patheon agrees that the Product constitutes Non-Conforming Product. At Client's request and following the issue of a Purchase Order from Client, Patheon will [***] deliver a replacement delivery of the Product to Client as soon as practicable after receipt of the Deficiency Notice (subject to Client supplying Patheon with Client-Supplied Materials, if required for the replacement delivery) in order to ensure continuity of supply, and Client will pay Patheon for the delivery in accordance with this Agreement.

(d) Patheon Nonconformance.

(i) "Patheon Nonconformance" will mean Patheon's failure to Manufacture the Products or provide the Manufacturing Services in accordance with Section 2.1(c), any failure of Products to conform to the applicable Specifications or the warranty in Section 6.3 and any failure by Patheon to comply with the terms and conditions of this Agreement.

(ii) If there is Non-Conforming Product caused by a Patheon Nonconformance, Patheon will reimburse Client for:

1. the Product Fees for the Non-Conforming Products; and
2. any shipment costs incurred by Client [***] ("Shipment Costs"); and
3. cost of losses of Patheon-Supplied Materials incorporated into Non-Conforming Product,

in each case, to the extent applicable and/or already paid by Client.

(iii) Patheon's obligation to reimburse Client for Client-Supplied Materials incorporated into Non-Conforming Product caused by a Patheon Nonconformance will be captured and calculated in the Yield Reimbursement Payment under Section 2.9 which will be subject to the limitation of liability in Section 9.5(a).

(iv) Section 9.5(a) will not apply in relation to (A) the internal expenses incurred by Patheon to supply conforming Product to Client under Section 2.8(c) if this is to replace Non-Conforming Product caused by a Patheon Nonconformance, or (B) the cost of any Patheon-Supplied Materials or any Shipment Costs or the reimbursement of the Product Fee under Section 2.8(d)(ii). Client will not be liable to pay Product Fees for Non-Conforming Product caused by a Patheon Nonconformance and Patheon will have no obligation to reimburse any unpaid Product Fees for Non-Conforming Product caused by a Patheon Nonconformance.

(v) If the Non-Conforming Product was caused by any reason other than a Patheon Nonconformance, by agreement of the Parties or as may be determined by an Expert in accordance with Section 2.8(d)(vi), Client will be liable for all expected Product Fees for this Non-Conforming Product (to the extent not already paid).

(vi) If, following the root-cause analysis described in Section 2.8(c), Patheon notifies Client that it does not believe the Product is a Non-Conforming Product, or if the Parties disagree as to the cause of a Non-Conforming Product, the Parties will first submit the dispute to the Project Managers for prompt resolution. If the Project Managers cannot resolve the dispute within [***] days after considering the matter, the Parties will submit the dispute to [***] agreed by the Parties (an "Expert") for evaluation, but both Parties will be entitled to review and obtain copies of all results of the evaluation. The Expert will determine (i) whether the Product is a Non-Conforming Product and (ii) the cause (or likely cause) of the Non-Conforming Product. Both Parties will cooperate with the Expert's reasonable requests for assistance in connection with its evaluation hereunder. The findings of the Expert will be binding on the Parties, absent fraud or manifest error. The Expert will act as an expert and not as an arbitrator and (unless the Expert otherwise determines) the fees and expenses of the Expert will be borne (1) by Patheon if the testing confirms the Non-Conforming Product and the cause or likely cause is found to be a Patheon Nonconformance; (2) by Client if the testing confirms the Non-Conforming Product and the cause or likely cause is found not to be a Patheon Nonconformance or if the cause or likely cause of the non-conformance is not identifiable; or (3) by the Party stating the Product was Non-Conforming Product if the testing concludes that the Product meets the warranty set forth in Section 6.3. Costs of dealing with Product complaints and inquiries will be dealt with in accordance with Section 3.12. Costs of recalls will be dealt with in accordance with Section 3.14. Patheon will have no liability for any Non-Conforming Product unless the Non-Conforming Product is identified as being due to a Patheon Nonconformance.

2.9 Yield Reconciliation.

(a) During its performance of the Manufacturing Services, on an annual basis Patheon is expected to produce a certain yield of Product using Client-Supplied Material (the "Expected Yield"). The initial Expected Yield and the mechanism for calculating the same will be established by the Commercial Steering Committee after the [***] of commercial Product have been Manufactured by Patheon. Pending the establishment of the initial Expected Yield, the Expected Yield of Product conforming to the Specifications and the warranty set forth in Section 6.3 that is produced using Client-Supplied Material is eventually expected to be [***]% (e.g., [***]% of the Client-Supplied Materials entering into the Manufacturing process over a period of time result in a Product conforming to the Specifications and the warranty set forth in Section 6.3 during the period of time), but this percentage will not be contractually binding and the Parties acknowledge that this may not be attainable for early batches of Product produced by Patheon due to the limited experience that Patheon will have in Manufacturing commercial Product. Accordingly the Yield Reimbursement Payment and credit set out in Section 2.9(c) will not apply to the [***] of commercial Product Manufactured by Patheon.

(b) On a monthly basis during the Term, Patheon will provide Client with a report for the previous month and calendar year to date showing:

(i) the number of units (one drug patch being one unit) of Products released by Patheon to be delivered to Client in accordance with this Agreement in the applicable time periods;

(ii) Patheon's inventory of Client-Supplied Materials, quantity of Client-Supplied Materials that complies with Section 2.2(k) received at the Facility, quantity of Client-Supplied Materials dispensed for use in the Manufacture of Product, quantity of Client-Supplied Materials converted into Product, and any additional information as the Parties may agree; and

(iii) the Achieved Yield in that month and year to date, where "Achieved Yield" will be calculated under an equation to be agreed by the Steering Committee taking into account losses of Client-Supplied Materials due to Client-Supplied Materials that have expired as a result of a Patheon act or omission and any Client-Supplied Materials lost in the warehouse prior to and during Manufacture, but excluding losses or uses of Client-Supplied Materials due to (i) Client-Supplied Materials retained by Patheon as samples; (ii) Client-Supplied Materials used to Manufacture Product retained as samples; (iii) Client-Supplied Materials used in testing (if applicable) of Product; (iv) [***] and (v) Client-Supplied Materials received and used by Patheon under the Technical Transfer Agreement.

(c) If the Achieved Yield in any year commencing upon or after the date of Manufacture of [***] batch of commercial Product by Patheon under this Agreement is more than [***]% lower than the then-current Expected Yield established by the Commercial Steering Committee or that year, (i) Patheon and Client will engage in good faith discussions to agree a remediation plan describing the steps to be taken to achieve the then-current Expected Yield and (ii) Patheon will reimburse Client for excess Client-Supplied Materials used by Patheon to Manufacture Product needed as a result of Patheon's failure to meet the Expected Yield in these batches (*i.e.*, reimbursement to Client for the actual costs of any Client-Supplied Materials) subject to the limitation of liability in Section 9.5(a) (the "Yield Reimbursement Payment"). If the Achieved Yield in any year is more than [***]% greater than the then-current Expected Yield for that year, Patheon will be entitled to reduce any Yield Reimbursement Payment to be made in the next year by an amount equal to the value of the excess Client-Supplied Materials that would have been used by Patheon if the Achieved Yield for that year had been equal to the then-applicable Expected Yield for those batches of Product.

(d) Patheon will use Commercially Reasonable Efforts to drive year on year improvements in the Achieved Yield and the Expected Yield.

2.10 Equipment and Amendment of Product Specifications, Manufacturing Process, Equipment and Formulation.

(a) Equipment.

(i) Title to all Client Manufacturing Equipment will be held by Client or a Client Affiliate. Title to all Patheon Manufacturing Equipment will be held by Patheon.

(ii) Patheon is authorized to use the Client Manufacturing Equipment solely to perform the Manufacturing Services for Client. Patheon may not move the Client Manufacturing Equipment from the Facility nor use the Client Manufacturing Equipment to perform manufacturing services for other clients without the Client's prior written consent.

(iii) Patheon will not sell or offer to sell, assign, pledge, lease or otherwise transfer or encumber the Client Manufacturing Equipment or any interest therein, without the prior written consent of Client. Patheon will not create any adverse lien, security interest or encumbrance in the Client Manufacturing Equipment.

(iv) Patheon will use the Client Manufacturing Equipment in accordance with the Equipment Standard Operating Procedures or the relevant manufacturer's instructions and Client's instructions.

(v) During the Term, Patheon will, at its cost, keep the Client Manufacturing Equipment secure and will not allow Third Parties not performing the Manufacturing Services to have access to the Client Manufacturing Equipment.

(vi) Client will be responsible for additions and replacement cost of any (i) Client Manufacturing Equipment and (ii) Patheon Manufacturing Equipment that is used to Manufacture the Product or that is used for Client and other clients of Patheon (the cost of any additions and replacement for Patheon Manufacturing Equipment that is used for Client and other clients of Patheon will be apportioned in good faith in proportion to their use). All replacement parts and repairs to the Client Manufacturing Equipment will become Client's property. Patheon will not make any material alterations to the Equipment, the Manufacturing Suite or the Client Manufacturing Process used in the Manufacture of the Products without Client's prior written consent.

(vii) During the Term, Patheon will provide all Maintenance for the Equipment and the Facility. Maintenance Costs will be invoiced to Client monthly in accordance with the invoicing procedure set forth in ARTICLE IV, but Patheon may only invoice Maintenance Costs that have been quoted to and approved in writing by Client's authorized person in advance. Maintenance Costs relating to Patheon Manufacturing Equipment that is used for Client and other clients of Patheon will be apportioned in good faith in proportion to their use. Notwithstanding the foregoing, for Client Manufacturing Equipment and Patheon Manufacturing Equipment, Maintenance Costs do not include (A) the cost of spare parts (if Patheon keeps an inventory of original manufacturer spare parts as the Parties agree is reasonably necessary to maintain the Client Manufacturing Equipment, to include at a minimum all critical spares recommended by the manufacturer of the Client Manufacturing Equipment), (B) Equipment breakdowns caused by any reason outside of Patheon's reasonable control (other than breakdowns caused by Patheon's willful misconduct or failure to maintain the Equipment in accordance with the applicable Equipment Standard Operating Procedures of Patheon or the manufacturer's terms of operation and recommended procedures), or (C) specialized maintenance services not within Patheon's technical expertise or that requires specialist equipment where Patheon is required to utilize a Third Party contractor. Patheon's costs associated with these spare parts, Equipment breakdowns and Third Party contractors will be reimbursed by Client as a Bill Back Item. But where these spare parts, Equipment breakdowns and Third Party contractors relate to Patheon Manufacturing Equipment that is used for Client and other clients of Patheon, the costs will be apportioned in good faith in proportion to their use.

(viii) Patheon will not be liable for ordinary wear and tear of the Client Manufacturing Equipment or Patheon Manufacturing Equipment. Patheon will only be liable for the repair or replacement of any damage caused to Client Manufacturing Equipment or Patheon Manufacturing Equipment where the damage arises due to its negligence, willful misconduct or its failure to maintain Client Manufacturing Equipment or Patheon Manufacturing Equipment under the applicable Equipment Standard Operating Procedures of Patheon or the manufacturer's terms of operation and recommended procedures. Where this Section refers to costs relating to any Patheon Manufacturing Equipment, if the Patheon Manufacturing Equipment is used for Client and other clients of Patheon, these costs will be apportioned in good faith in proportion to their use.

(ix) Throughout the Term of this Agreement, Patheon will maintain property insurance on all Equipment in the amount equal to [***].

(x) Client may examine and inspect the Client Manufacturing Equipment at any reasonable time (wherever the Client Manufacturing Equipment is located in the Facility) so that Client can check the Client Manufacturing Equipment's existence, condition and proper maintenance.

(xi) Patheon will ensure that at all times the Client Manufacturing Equipment is clearly marked to identify that it is owned by Client and that it is to be used only for Client.

(xii) Patheon will promptly notify Client if any of the Client Manufacturing Equipment is lost, stolen or damaged.

(b) Change Control.

(i) For changes to the Specifications, Quality Agreement, the Client Manufacturing Process, the Equipment, the Manufacturing Services to be performed under this Agreement, the Transfer Services to be performed under the Technology Transfer Agreement or the formulation of the Product that are required by Applicable Law (collectively, "Required Manufacturing Changes"), Patheon and Client will cooperate to promptly make the changes within the required timeline and assess filing implications (prior approval, changes being effected, etc.).

(ii) For changes to the Specifications, Quality Agreement, the Client Manufacturing Process, the Equipment, the Manufacturing Services to be performed under this Agreement, the Transfer Services to be performed under the Technology Transfer Agreement, or the formulation of the Product that are not Required Manufacturing Changes (collectively, "Discretionary Manufacturing Changes"), Patheon will provide Client with an estimate of the timeframe and cost required to implement these changes. Patheon and Client must each agree to any Discretionary Manufacturing Changes and will cooperate in making the changes, and each agrees that it will not unreasonably withhold or delay its consent to the Discretionary Manufacturing Changes. Once Client has approved the estimate in writing, Patheon will implement the change within the agreed timeframe. Together the Parties will assess filing implications, as for example, annual reportable status.

(iii) Notwithstanding the foregoing, [***] costs, including, without limitation, costs of [***] will be allocated between the Parties as described below in this subsection (iii). To the extent that the change relates to the Product, the Specifications, the Client Manufacturing Process, the Equipment, the Manufacturing Services or the Manufacturing Suite or the Transfer Services to be performed under the Technology Transfer Agreement, Client will pay the costs and expenses of implementing the change together with the actual cost of write-off (including waste disposal costs) of any inventory of Products or Materials rendered obsolete as a result of the change. But Client will not be liable for the write-off costs of any Materials purchased in excess of those amounts needed to meet Purchase Orders or as otherwise agreed under Section 2.2(u). To the extent that the change results from a change in GMP or Applicable Laws that requires changes to the Facility or Manufacturing process (other than as a direct result of changes to the Product, the Specifications, the Client Manufacturing Process, the Equipment, the Manufacturing Services or the Manufacturing Suite or the Transfer Services to be performed under the Technology Transfer Agreement), the allocation of the benefits will be discussed in good faith and allocated between the Parties as agreed at the time, having regard to any appropriate allocation where other Patheon customers will benefit from the change.

(iv) The cost of implementing Discretionary Manufacturing Changes will be agreed by the Parties.

(v) If Client changes the Specifications, Quality Agreement, the Client Manufacturing Process, the Equipment, the Manufacturing Services to be performed under this Agreement, the Transfer Services to be performed under the Technology Transfer Agreement or the formulation of the Product, or consents to any change by Patheon, Patheon will provide to Client at Client's cost as an Additional Service any documentation or other information that relates to the Manufacturing Services as Client may reasonably request in order to obtain or maintain any Regulatory Approval or comply with GMP or other Applicable Law.

(vi) Patheon will not change the Specifications, the Materials or the Client Manufacturing Process used to Manufacture the Products, or make any other change which may reasonably be expected to have a regulatory impact on the Product, affect the Marketing Authorization or affect the quality or physical characteristics of the Product, without first obtaining written consent from Client.

ARTICLE III. REGULATORY, ACCESS, AND OTHER MATTERS

3.1 Quality Agreement. Prior to the expiry of the Technology Transfer Agreement, the Parties will enter into a mutually agreed upon quality agreement ("Quality Agreement"). If there is any inconsistency between this Agreement and the Quality Agreement, the Quality Agreement will control solely for quality issues, and this Agreement will control for all other issues.

3.2 Quality Assurance.

(a) Patheon will at all times ensure that agreed quality assurance tests are adopted and that reference and retention samples are taken, analyzed and retained in accordance with the Quality Agreement. These samples will (notwithstanding any termination of this Agreement) be retained by Patheon for the periods set out in the Quality Agreement at no additional cost.

(b) Unless otherwise specified in the Quality Agreement, Patheon will provide to Client, in a timely manner, sufficient quantities of reference standards for the Products to enable Client to carry out and/or maintain the necessary testing capability to comply with its Regulatory Obligations and the obligations set out in the Quality Agreement throughout the Term.

(c) Patheon will institute and maintain process controls during the Manufacture of the Products in accordance with GMP and will maintain full records of the process controls which will be made available to Client on request together with retained in-process samples. These records must align with documentation set out in the Specifications and samples will be retained by the Patheon for the period specified in the Quality Agreement or as otherwise required by Applicable Law at no additional cost.

3.3 Release. All Product will be released in accordance with the Quality Agreement.

3.4 Maintenance of Facility.

(a) Patheon will Manufacture the Product exclusively at the Facility, unless Client has granted prior written consent to Manufacture the Product at any other facility, this consent to be granted by Client in its sole discretion.

(b) Subject to Section 2.10(b), Patheon will at its own cost ensure that any and all necessary licenses, registrations, and (subject to any payments required under Section 3.10(b)) Regulatory Authority approvals have been obtained for the Facility and Equipment used in connection with the Manufacture of the Product by Patheon.

(c) Subject to Section 2.10, Patheon will maintain the Facility and Equipment in a state of repair and operating efficiency consistent with the requirements of the Specifications, the Regulatory Approvals, the Client Manufacturing Process, GMP, and all other Applicable Law. Before each use of Equipment in Manufacturing the Product, Patheon will ensure that the Equipment is cleaned and consistent with any procedures reasonably established by Client and notified to Patheon, the Specifications, the Regulatory Approvals, the Client Manufacturing Process, GMP, and all other Applicable Law. Without limiting the foregoing, Patheon agrees to implement, for the Manufacture of the Product, quality assurance and quality control procedures, including validation protocols and process change procedures that are reasonably satisfactory to Client.

(d) Patheon will maintain in the Facility an adequate GMP and temperature controlled area for the Product, all intermediates thereof and Materials used in Manufacturing the Product in accordance with the Specifications, the Regulatory Approvals, the Client Manufacturing Process, any risk mitigation plan, the Quality Agreement, GMP, and all Applicable Law. All Product, intermediates and Materials (as applicable) will be held by Patheon in a GMP and temperature controlled area (on a separate pallet and SAP reference from other products) until delivery to Client. In order for Patheon and Client to identify any potential effects on quality, safety or efficacy of the Products, subject to obligations of confidentiality that Patheon owes to Third Parties, Patheon will disclose to Client (on a no-names basis) information relating to the nature of any other products manufactured by Patheon for itself or Third Parties at the Facility (in particular, any [***]). Client agrees that Patheon may, disclose information (on a no-names basis and subject to ARTICLE VII) relating to the nature of Client's Product to other clients of Patheon at the Facility if requested.

(e) Patheon will only use qualified disposal services or sites that have appropriate environmental and operating permits and are in compliance with the Quality Agreement and Applicable Law.

(f) Patheon will develop and put in place a disaster recovery and business continuity plan for the Manufacture of Products at the Manufacturing Suite by [***], and will give Client a copy of the plan at Client's request. Client will provide Patheon with details of its requirements for these plans within a reasonable period from the Effective Date.

3.5 Project Managers; Steering Committee Meetings.

(a) Patheon and Client will each appoint a project manager (each, a "Project Manager" and, together, the "Project Managers"), who will meet as needed to resolve any issues or problems arising in the performance of this Agreement.

(b) Following completion of registration batches the Parties will establish a steering committee in respect of commercial supply (the "Commercial Steering Committee"), which will meet at least quarterly in order to manage the long term manufacturing and supply aspects of this Agreement. The responsibilities of the Commercial Steering Committee will include without limitation:

(i) reviewing any ongoing development activities for the Products that may lead to changes in demand;

(ii) reviewing and discussing any trends or concerns related to delivery performance, Achieved Yields, usage of Client-Supplied Materials, quality related issues or plans to improve performance under the Agreement;

(iii) reviewing any potential restrictions on the availability of additional space within the Facility, which will be notified by Patheon sufficiently far in advance of any proposed agreement with a Third Party in order for Client to be able assess its likely future requirements and for the Parties to have the opportunity to negotiate in good faith any reservation of the same; and

(iv) performing any other responsibilities as the Parties may agree.

Unless otherwise agreed by the Parties the Commercial Steering Committee will follow the membership and procedural arrangements agreed for the steering committee under Exhibit G of the Technology Transfer Agreement.

3.6 Notification of Regulatory Inspections. Patheon will notify Client by telephone within one business day, and in writing within two business days, after learning of any proposed or unannounced visit or inspection of any part of the Facility which relates to the Manufacture of the Product by any Regulatory Authority, including the Occupational Safety and Health Administration or any equivalent governmental agencies of the country of Manufacture, and provide all relevant information known to Patheon regarding the investigation. Patheon will permit Client or its agents to be present at the Facility to support Patheon during any visit or inspection if it impacts the Product or affects the Manufacturing Suite. Patheon will be responsible for conducting the inspection. Patheon will provide to Client in so far as it affects the Product or the Manufacturing Suite either a copy of or a summary of any report and other written communications received from the Regulatory Authority in connection with any visit or inspection, including FDA Form 483 observations and responses (or any equivalent observations and responses from any Regulatory Authority under Applicable Law). This copy or summary will be provided to Client within [***] days of Patheon's receipt thereof (and may be redacted as Patheon acting reasonably deems necessary to protect the confidentiality of matters not affecting the Product or the Manufacturing Suite or which are confidential to Patheon or to other clients of Patheon). Client will have the right to review and comment on any communications with the Regulatory Authority about the inspection as set forth in Section 3.17. If Client is subject to an inspection by any Regulatory Authority that relates to the Products or Patheon's performance of its obligations under this Agreement, Patheon will provide Client and the Regulatory Authority with access to Patheon's non-financial records, the Products and those portions of the Facility used in the Manufacture of the Products or storage, testing, handling or receiving of the Materials as required by this Agreement or otherwise by Applicable Law[***].

3.7 Manufacturing Records. Patheon will maintain, or cause to be maintained, (a) all records necessary to comply with GMP and all other Applicable Law relating to the Manufacture of Product, (b) all Manufacturing records, standard operating procedures, equipment log books, batch records, laboratory notebooks, and all raw data relating to the Manufacturing of the Product, and (c) any other records that Client may reasonably require in order to ensure compliance by Patheon with this Agreement. The template, form and style of all records referred to in this Section are the exclusive property of Patheon. Client Confidential Information and all Product-specific related information contained in these records will be considered Confidential Information of Client and be retained for the time required by GMP and all other Applicable Law.

3.8 Bulk Packaging. Client will specify all bulk packaging to be used for the Product. Patheon agrees to use only the bulk packaging on the Product as set out in the Specifications.

3.9 Compliance with Applicable Laws. Patheon will comply and will cause each of its Materials and Bill Back Items suppliers to comply with the Quality Agreement, GMP and Applicable Law in carrying out the Manufacturing of the Product and its other duties and obligations under this Agreement.

3.10 Compliance Audits

(a) With the exception of "for cause" audits (*e.g.*, audits arising from regulatory issues or material Product conformity issues), Client and its designated representatives will have the right to audit [***] per year free of charge all applicable non-financial records of Patheon to determine Patheon's compliance with the obligations set forth in this Agreement, including Sections 2.2(a) and 6.2, and any Purchase Order. This audit right will include the right to inspect: (a) the Materials used in the Manufacture of the Product, (b) the holding facilities for the Materials, (c) the Manufacturing Suite and all Equipment used in the Manufacture of the Product, (d) all non-financial records relating to the Manufacturing Suite and the Manufacturing of the Product (subject to any other restrictions set forth in this Agreement) and (e) all other documentation set forth in the Quality Agreement, in order to carry out a GMP, quality and/or compliance audit of those parts of the Facility involved in, or which could affect, the Manufacture of the Products. Client will give Patheon [***] days prior advance notice of its intention to conduct an audit and the Parties will determine a mutually agreeable date for the audit. Client will include no more than [***] of Client's representatives in each audit, with each audit lasting no more than [***] days, in each case without Patheon's prior written consent. Client will also have the right to carry out follow up audits [***] if any observations have been noted during any audit carried out under this Section 3.10(a) (excluding any "for cause" audits as described above or any audits where critical or major observations have been noted).

(b) Client may request additional GMP-type audits, additional audit days, or the participation of additional auditors subject to payment to Patheon of a fee of $[***] for each additional audit day and $[***] per audit day for each additional auditor. Patheon will support the first Product approval, including its inspection if required, of the FDA or equivalent regulatory launch for other jurisdictions (where applicable). Additional support (including, without limitation, subsequent regulatory launches or Product approval inspections/resulting reports for other jurisdictions) will be subject to additional fees.

(c) Patheon will use Commercially Reasonable Efforts to ensure that any corrective or preventative actions identified in any audit carried out under this Section 3.10 that are agreed by the Parties are carried out in accordance with any agreed timeline and subject to payment by Client of any agreed fees.

(d) Patheon will be responsible for ensuring the GMP compliance status of any authorized sub-contractors used to perform its obligations under this Agreement as described in Section 2.2(d). Patheon will assess each sub-contractor using Patheon's standard vendor assurance program and will report its findings to Client within ten business days of Client's request.

3.11 Inventory Reviews. Without limiting the foregoing, Client will have the right, with Patheon's assistance, to conduct [***] inventory count of the Materials and of the Products. Following an audit or inventory, Client may discuss its observations and conclusions with Patheon, and Patheon will promptly implement corrective actions after notification thereof by Client. If the Parties are unable to agree upon whether or not corrective actions are necessary, the dispute will be resolved under Section 10.10.

3.12 Product Inquiries and Complaints.

(a) For Products Manufactured by Patheon, Patheon will promptly submit to Client any Product safety and efficacy inquiries, Product quality complaints, and adverse drug event reports that it receives, together with all available evidence and other information relating thereto, in accordance with procedures to be agreed upon by the Parties. Patheon will promptly advise Client of any occurrence or information which arises out of the Manufacture of Products which has or could be reasonably expected to have adverse regulatory compliance and/or reporting consequences concerning the Products, and provide relevant information to Client upon request. Except as otherwise required by, or to comply with, Applicable Law or this Agreement, Client, as the Party holding the applicable Marketing Authorization, will be responsible for investigating and responding to these inquiries, complaints, and adverse events regarding the Product, and reporting to the FDA or any other Regulatory Authority.

(b) Under any reported complaint, adverse drug event or other issue which may pertain to the Manufacture of the Products Patheon will promptly conduct an internal investigations as may be reasonably necessary to determine the validity of the complaint, including performing analytical testing of corresponding Products or retention samples, and will provide the results to Client as soon as reasonably practicable, but no later than [***] days after Client's request. This testing will be performed using approved testing procedures as set forth in the applicable Regulatory Approval or the Quality Agreement. If the investigation or analytical testing concludes that the reported complaint or adverse drug event was the result of a Patheon Nonconformance, subject to Client having given Patheon a Deficiency Notice in accordance with Section 2.8(b) including as to timing, Patheon will reimburse Client for all reasonable out-of-pocket expenses associated with the complaint or adverse drug event and incurred by Client for the Non-Conforming Product, including reasonable costs of returns and destruction. Costs of recalls will be dealt with in accordance with Section 3.14. If the investigation or analytical testing concludes that the reported complaint or adverse drug event was not the result of a Patheon Nonconformance, Client will compensate Patheon for all costs associated with the complaint or adverse drug event and incurred by Patheon for the Non-Conforming Product, including costs of recalls, market withdrawals, returns, and destruction.

(c) If the Parties disagree as to which Party is responsible, Patheon and Client representatives will attempt to resolve the dispute. If the representatives cannot resolve the dispute within 15 days, the retention samples will be submitted by Patheon and Client to an Expert and Section 2.8(d)(vi) will apply.

3.13 Reports. Prior to the start of Patheon's commercial Manufacture of the Product (or as reasonably requested by Client prior to that date), Patheon and Client will work together in good faith to develop and agree upon Patheon's ordinary course reporting obligations. The reports ("Reports") will include information necessary for Client to (a) manage Product inventory; (b) measure the Achieved Yield and whether all Products on agreed Purchase Orders order are delivered on time and in full; (c) manage its financial close and reporting; (d) monitor on-going Product and process performance for its internal analysis and reporting; and (e) comply with Applicable Law. Patheon will deliver the reports via electronic delivery methods, including by utilizing Patheon's existing IT systems as practicable.

3.14 Product Recalls.

(a) If (i) any Regulatory Authority issues a request, directive, or order that Product be recalled, (ii) a court of competent jurisdiction orders a recall, or (iii) Client as holder of the applicable Marketing Authorization will reasonably determine that Product should be recalled, withdrawn, or a field correction issued, the Parties will take all appropriate corrective actions, and will cooperate in the investigations surrounding the recall. If Client or a Regulatory Authority determines that Product should be recalled, the recall strategy will be developed by Client in consultation with Patheon to the extent possible and followed by Patheon. To the extent any Product recall, withdrawal, or field correction results from a Patheon Nonconformance, Patheon will bear all Client's reasonable out-of-pocket expenses associated with the recall, withdrawal, or field correction, which will include expenses of notification and destruction or return of the recalled Product and all other documented out-of-pocket costs incurred in the recall, plus reasonable transportation costs incurred by Client for the Product, up to the maximum liability limits set forth in Section 9.5, with Client bearing the remainder of these costs. In all other circumstances that do not result from Patheon Nonconformance, all cost associated with any Product recall, withdrawal or filed correction will be borne by Client.

(b) If there is any dispute concerning which Party's acts or omissions gave rise to the recall of Product, Patheon and Client representatives will attempt to resolve the dispute. If the representatives cannot resolve the dispute within 15 days, the matter will be submitted by Patheon and Client to an Expert and Section 2.8(d)(vi) will apply.

3.15 Payment Audits.

(a) Upon [***] days' prior written notice, Client may audit any Third Party invoices subsequently invoiced to Client pertaining to Patheon's provision of Equipment, Materials, Bill Back Items and Additional Services. But Client will not be entitled to more than [***] audit during any 12 month period. These audits will be conducted during normal business hours, without undue disruption to Patheon's business, and may be conducted by Client, or by an independent public accounting firm designated by Client who is bound by confidentiality obligations at least as stringent as those set forth in the Confidentiality Agreement. Client will bear the full cost of the performance of the audit.

(b) If, as a result of any audit of the Third Party invoices, it is shown that the payments or credits from one Party to the other under this Agreement for the time audited were less than or more than the amount that should have been paid or credited, then the Parties will reconcile the amounts owed by each Party to the other.

3.16 Subcontractors. Patheon may arrange for Third Party subcontractors ("Third Party Subcontractors") to perform specific Manufacturing Services (such as testing or analysis) under this Agreement only with Client's written consent or at Client's request. Patheon will be liable for all acts and ommissions of any Third Party Subcontractors that it engages to perform the Manufacturing Services subject to all limitations on Patheon's liability as set out in this Agreement. Patheon will have no liability arising from the performance of Manufacturing Services by Third Party Subcontractors to the extent that the Third Party Subcontractor is [***]. Patheon will not be obliged to use a Third Party Subcontractor requested by Client if it does not comply with Patheon's supplier qualification requirements.

3.17 Regulatory Filing Obligations. (a) Except as otherwise set forth in this Agreement or the Technology Transfer Agreement, each Party will be responsible for all routine filings and communications with Regulatory Authorities ("Regulatory Filings") required for that Party's Regulatory Obligations hereunder.

(b) "Regulatory Obligations" will mean:

(i) for Client, any Regulatory Filings pertaining to Regulatory Approvals; and

(ii) for Patheon, any Regulatory Filings pertaining to the Manufacture of the Products at the Facility, including a Facility inspection by a Regulatory Authority (*e.g.*, those described in Section 3.6) ("Patheon Regulatory Obligation").

(c) Each Party will have the sole responsibility for Regulatory Filings for its Regulatory Obligations and will provide the other with a copy of any Regulatory Approval relevant to this Agreement on request, to the extent reasonably required for its Regulatory Filings or in order to satisfy its obligations under Applicable Laws.

(d) Cooperation. Each Party ("Non-Filing Party") will provide reasonable assistance and cooperation free of charge to the other Party ("Filing Party") for the Filing Party's Regulatory Obligations consistent with this Section 3.17 and the Non-Filing Party's obligations under this Agreement. The Filing Party will notify the Non-Filing Party in writing of any written communications received by the Filing Party from a Regulatory Authority related to the other Party's Regulatory Obligations within three business days after receipt thereof. The Filing Party will consult with the Non-Filing Party concerning the response of the Filing Party to each communication, unless the filing is not relevant to the Non-Filing Party's Regulatory Obligations.

(e) Verification of Data. Prior to filing any documents or communications with a Regulatory Authority that incorporate or uses data generated by the Non-Filing Party or otherwise relate to the Non-Filing Party's Regulatory Obligations, the Filing Party will give the Non-Filing Party a draft of the document or communication ("Initial Draft") to give the Non-Filing Party the opportunity to verify the accuracy and regulatory validity of the Initial Draft. The Non-Filing Party will be given a minimum of [***] days to review the Initial Draft, but the Parties may agree to a different time for the review as needed under the circumstances. The Initial Draft may be redacted by the Filing Party as reasonably deems necessary to protect the confidentiality of matters not affecting the Non-Filing Party or which are confidential to the Filing Party or to other clients or customers of the Non-Filing Party. The Parties agree that in reviewing the Initial Draft, the Non-Filing Party's role will be limited to verifying the accuracy of the description of its Regulatory Obligations or accuracy of its data or information in the Initial Draft.

(f) Inaccuracies. If the Non-Filing Party determines that any of its data or information in the Initial Draft is inaccurate or any other errors relating to the Non-Filing Party's Regulatory Obligations, the Non-Filing Party will notify Filing Party in writing of the inaccuracy and provide a recommendation to remediate the Initial Draft. This notice will also include documentation and data sufficient to substantiate the Non-Filing Party's claim that the Initial Draft is inaccurate to the Filing Party's reasonable satisfaction. The Non-Filing Party will provide comments to the Initial Draft no later than [***] days prior to the required filing date with the applicable Regulatory Authority. If the Non-Filing Party does not provide comments or notify the Filing Party of inaccuracies within this [***] day period, the Non-Filing Party will be deemed to have approved any data or language related to its Regulatory Obligations in the Initial Draft. The Filing Party will be required to incorporate the Non-Filing Party's recommendations to the extent they [***]. The Parties will work together in good faith to resolve any inaccuracies contained in the Initial Draft as soon as practicable under the circumstances to prevent a delay or postponement of the filing (or any related inspections by the Regulatory Authority to which the filing relates).

(g) Responsibilities. The Filing Party will deliver a copy of the final version of the filing ("Final Filing") to the Non-Filing Party at least three days prior to the required filing date. Subject to the foregoing, the Non-Filing Party will not assume any responsibility for the accuracy of any other materials submitted by the Filing Party to a Regulatory Authority in connection with this Agreement. Except as otherwise set forth in this Agreement or the Technology Transfer Agreement, the Filing Party is solely responsible for the preparation and filing of any materials required by a Regulatory Authority for that Party's Regulatory Obligations hereunder and any relevant costs will be borne by the Filing Party.

3.18 Client On Site Represenatitives. Client will be entitled to have a reasonable number of Client On Site Representatives present (and in any event at least [***]) at the Facility to oversee Patheon's performance of the Manufacturing Services.

ARTICLE IV. FEES AND INVOICING

4.1 General. Patheon will invoice Client for all applicable fees and charges incurred by Patheon. All invoices will be sent electronically on the date issued to the email address provided by Client to Patheon. Payment will be due [***] days after the date of an undisputed invoice. All fees and costs in this Agreement are shown in US Dollars (USD).

4.2 Late Fees. For all invoices issued by Patheon under this Agreement, if Client fails to make any payment due to Patheon by the due date for payment, then, without limiting Patheon's remedies under ARTICLE VIII or at law, Patheon may charge interest on past due accounts at [***]% per annum. Patheon may, on giving [***] days' notice to Client, suspend all Manufacturing Services, including release and shipment of Product, until all undisputed past due invoices have been paid in full. Patheon will have no liability to Client for losses caused by this suspension, including without limitation, losses due to delayed Product delivery or Product shortages.

4.3 Disputed Invoices. If Client disputes any portion of an invoice, (a) Client will give Patheon written notice of the disputed portion within ten business days of the date of Patheon's invoice and its reasons therefor and will not be obliged to pay the disputed portion until the disputed portion is determined to be due and owing, and (b) Patheon will cancel the invoice and issue a new invoice reflecting the undisputed invoiced amount, which will be paid by Client within [***] days after the date thereof. The Parties will use Commercially Reasonable Efforts to resolve the dispute regarding the disputed amount promptly and in good faith, and if the Parties agree that a balance is due, Patheon will issue an invoice for the balance, and payment will be due [***] days after receipt of this invoice. If there is any inconsistency between an invoice and this Agreement, this Agreement will control.

4.4 Taxes.

(a) Duties. Client will pay all duties, levies, tariffs and similar charges (and any related interest and penalties) (together "Duties") however designated, arising from the performance of the Manufacturing Services or the Transfer Services by Patheon, including (without limitation) those imposed as a result of the shipping of Materials or Product to, from or between Patheon sites. If these Duties are incurred by Patheon, then Patheon will be entitled to invoice Client for these Duties at the time that they are incurred.

(b) Withholding Tax.

(i) Where any sum due to be paid to Patheon under this Agreement or the Technology Transfer Agreement is subject to any withholding or similar tax, Client will pay the withholding or similar tax to the appropriate government authority and deduct the amount paid from the amount then due to Patheon, in a timely manner and promptly transmit to Patheon an official tax certificate or other evidence of the withholding sufficient to enable Patheon to claim the payment of taxes. The Parties agree to cooperate with one another and use Commercially Reasonable Efforts to reduce or eliminate tax withholding or similar obligations in respect of royalties, milestone payments, and other payments made by Client to Patheon under this Agreement or the Technology Transfer Agreement.

(ii) Patheon will provide Client any tax forms that may be reasonably necessary in order for Client not to withhold tax or to withhold tax at a reduced rate under an applicable bilateral income tax treaty.

(iii) Each Party will provide the other with reasonable assistance to enable the recovery, as permitted by Applicable Law, of withholding taxes, or similar obligations resulting from payments made under this Agreement or the Technology Transfer Agreement, this recovery to be for the benefit of the Party bearing the withholding tax.

(c) No Offset. Any tax or Duty that Client pays, or is required to pay, but which Client believes should properly be paid by Patheon under this Agreement or the Technology Transfer Agreement may not be offset against sums due by Client to Patheon whether due under this Agreement or the Technology Transfer Agreement or otherwise

ARTICLE V. INTELLECTUAL PROPERTY

5.1 Ownership.

(a) Client will maintain ownership and Control of all of its technology and Intellectual Property rights existing before the Effective Date ("Existing Client Intellectual Property").

(b) Patheon will maintain ownership and Control of all of its technology and Intellectual Property rights existing before the Effective Date ("Existing Patheon Intellectual Property").

(c) Existing Client Intellectual Property will include and Client will own all right, title, and interest in and to all Intellectual Property rights covering or claiming (i) the Product, (ii) the Specifications, and (iii) the Client Manufacturing Process.

(d) Existing Patheon Intellectual Property will include and Patheon will own all right, title, and interest in and to the Patheon Manufacturing Equipment as of the Effective Date.

(e) Client will own solely all right, title, and interest in and to, all Intellectual Property and any data, comprising, consisting of or relating to:

(i) (A) any improvement of, modification of, change of, enhancement of, new indication for, new formula for, new formulation for, new ingredients for, new dosage for, new dosage strength for, new means of delivery for, or new packaging for, the Product ("Client Product Improvements"); (B) any improvement of, modification of, change of, or enhancement of the Specifications ("Client Specification Improvements"); (C) any improvement of, modification of, change of, enhancement of, new process for, new procedure for, new step for the Client Manufacturing Process (the "Client Manufacturing Process Improvements"); and (D) any improvements of, modification of, change of or enhancement of Client Manufacturing Equipment (the "Client Manufacturing Equipment Improvements") in each of case (A), (B), (C) and (D), (1) that is developed, conceived, or created after the Effective Date specifically as a result of or in connection with this Agreement, including Patheon's Manufacturing of the Product hereunder, (2) whether or not patentable, (3) whether developed, conceived, or created by employees of, or consultants to, Client or Patheon, alone or jointly with each other or with permitted Third Parties (including permitted sublicensees and subcontractors), and (4) that specifically relates to the Product, Specifications, the Client Manufacturing Process or the Client Manufacturing Equipment, or components of any of the foregoing, as applicable, including without limitation [***]; and

(ii) any Intellectual Property developed, conceived, or created by Client, alone or jointly with Third Parties (other than Patheon or its Affiliates, or their respective employees and consultants), in the course of conducting activities outside the scope of this Agreement and without any use of any Existing Patheon Intellectual Property, Patheon Improvements or Patheon Independent Manufacturing Equipment Improvements (as defined hereunder).

(f) Patheon will own all right, title, and interest in and to, all Intellectual Property and any data that is not owned by Client pursuant to Section 5.1(e) comprising, consisting of or relating to:

(i) any improvement of, modification of, change of, enhancement of any Patheon Manufacturing Equipment, (1) that is developed, conceived, or created as a result of or in connection with this Agreement, including Patheon's Manufacturing of the Product hereunder, (2) whether or not patentable, (3) whether developed, conceived, or created by employees of, or consultants to, Client or Patheon, alone or jointly with each other or with permitted Third Parties (including permitted sublicensees), and (4) that is of general application to the manufacture of products rather than a specific solution that only has applicability to the Product, ("Patheon Independent Manufacturing Equipment Improvements");

(ii) any improvement of, modification of, change of, enhancement of manufacturing, processing, formulating, or packaging technology or equipment which is (x) generated or derived by Patheon, alone or jointly, and (y) of general application to the manufacture of products rather than specific to the Product ("Patheon Improvement"); and

(iii) any Intellectual Property developed, conceived, or created by Patheon, alone or jointly with Third Parties, in the course of conducting activities outside the scope of this Agreement and without any use of any Existing Client Intellectual Property, Client Confidential Information, Client Manufacturing Processes, Client Specifications, Products, Specifications or Client Manufacturing Equipment, or any Client Product Improvements, Client Specification Improvements, Client Manufacturing Process Improvements or Client Manufacturing Equipment Improvements.

(g) Patheon or its Affiliates will, promptly disclose in writing and in reasonable detail to Client any Client Product Improvements, Client Specification Improvements, Client Manufacturing Process Improvements or Client Manufacturing Equipment Improvements developed, conceived, or created by employees, consultants, or subcontractors of Patheon or its Affiliates, alone or jointly with employees, consultants or subcontractors of Client or its Affiliates. This written notice will be treated as the Confidential Information of Client hereunder.

(h) Client or its Affiliates will promptly disclose in writing and in reasonable detail to Patheon any potential Patheon Independent Manufacturing Equipment Improvements or Patheon Improvement developed, conceived, or created by employees, consultants, or subcontractors of Client or its Affiliates, alone or jointly with employees, consultants, or subcontractors of Patheon or its Affiliates. This written notice will be treated as the Confidential Information of Patheon hereunder.

(i) The Specifications, the Client Manufacturing Process, Client Manufacturing Equipment and any and all information or material related to the Existing Client Intellectual Property, Products, Client Product Improvements, Client Specification Improvements, Client Manufacturing Process Improvements or Client Manufacturing Equipment Improvements will constitute Confidential Information of Client, which will be deemed the disclosing party for the Confidential Information.

(j) The Patheon Manufacturing Equipment and any and all information or material related to the Existing Patheon Intellectual Property, the Patheon Independent Manufacturing Equipment Improvements or Patheon Improvements will constitute Confidential Information of Patheon, which will be deemed the Disclosing Party for the Confidential Information.

5.2 Licenses.

(a) Client hereby grants, for the purposes of this Agreement only, to Patheon a fully paid-up worldwide, non-exclusive license, under Client's entire right, title, and interest in and to the Existing Client Intellectual Property for Patheon to Manufacture the Products solely under this Agreement.

(b) Client hereby grants, for the purposes of this Agreement only, to Patheon a fully paid-up worldwide, non-exclusive license, under Client's entire right, title, and interest in and to the Client Product Improvements, Client Specification Improvements, Client Manufacturing Process Improvements and Client Manufacturing Equipment Improvements, in each case to make Products solely under this Agreement.

(c) Patheon hereby grants to Client a fully paid-up perpetual worldwide, non-exclusive license, with the right to sublicense to Affiliates and to Third Parties through multiple tiers, under Patheon's entire right, title, and interest in and to the Patheon Independent Manufacturing Equipment Improvements, the Existing Patheon Intellectual Property (to the extent incorporated in, or used in the Manufacture of, the Product) and the Patheon Improvements (to the extent incorporated in, or used in the Manufacture of, the Product) to make, use, offer for sale, sell, import, and otherwise dispose of the Product, components thereof and any other product developed by or on behalf of Client or its Affiliates [***].

ARTICLE VI. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of Each Party. Each Party hereby represents and warrants to the other Party as follows:

(a) The Party (i) is duly formed and in good standing under the laws of the jurisdiction of its formation, (ii) has the power and authority and the legal right to enter into this Agreement and perform its obligations hereunder, and (iii) has taken all necessary action on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder. This Agreement has been duly executed and delivered on behalf of the Party and constitutes a legal, valid, and binding obligation of the Party and is enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, or other similar 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.

(b) From the FDA Approval Date, all necessary consents, approvals, and authorizations of all Regulatory Authorities, other governmental authorities, and other Persons required to be obtained by the Party in connection with the execution and delivery of this Agreement and the performance of its obligations hereunder have been obtained.

(c) The execution and delivery of this Agreement and the performance of the Party's obligations hereunder (i) do not and will not conflict with or violate any requirement of Applicable Law or any provision of the articles of incorporation, bylaws limited partnership agreement, or other constituent document of the Party and (ii) do not and will 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 the Party is bound.

6.2 Additional Representations, Warranties, and Covenants of Patheon. Patheon warrants, represents, and covenants that:

(a) it has facilities, personnel, experience, and expertise sufficient in quality and quantity to perform its obligations hereunder;

(b) it will perform its obligations hereunder in conformity with GMPs where applicable;

(c) it will comply with the Quality Agreement and comply with all agreed upon quality assurance, quality controls, and review procedures in the performance of its obligations hereunder;

(d) it has at the Effective Date and will, during the Term of this Agreement and at its cost (subject to Section 2.10(b)), in connection with this Agreement, observe and comply with all Applicable Laws, including federal, state, and local laws, orders, regulations, rules, customs, and ordinances now in force or that may hereafter be in force, pertaining to the Facility and the performance of the Manufacturing Services and including, without limitation, (i) labor laws, orders, regulations, rules, customs, and ordinances of the country of Manufacture and (ii) those of the FDA pertaining to the Manufacturing Services and the Facility (but not those pertaining to non-Manufacturing matters relating to the Product, compliance with which will be the responsibility of Client), and any laws, orders, regulations, rules, or ordinances issued in addition to, as a supplement to or as a replacement of Applicable Laws.

(e) as at the Effective Date, it has received no warning letter from any Regulatory Authority in relation to the Facility in the [***] month period prior to the Effective Date (including in relation to the compliance of that Facility with all applicable requirements of GMP);

(f) as at the Effective Date, there are no outstanding FDA Form 483 observations (or any equivalent observations from any Regulatory Authority under Applicable Law) for the Facility;

(g) none of it, its Affiliates, nor any Person under its direction or control (including Third Party Subcontractors), has ever been, nor will it engage suppliers which have to its actual knowledge, after due inquiry, been, (i) debarred or convicted of a crime for which a person can be debarred, under Section 335(a) or 335(b) of the FDA Act, or any equivalent Applicable Law of the country of Manufacture, (ii) threatened to be debarred under the FDA Act or any equivalent Applicable Law of the country of Manufacture or (iii) indicted for a crime or otherwise (to its actual knowledge after due inquiry) engaged in conduct for which a person can be debarred by the FDA or any equivalent Regulatory Authority under Applicable Law of the country of Manufacture, and Patheon agrees that it will promptly notify Client if it receives notification of any debarment, conviction, threat or indictment. If Patheon becomes aware of any suspected non-compliance with the foregoing, Patheon will notify Client in writing of the issue within 48 hours. For the purpose of this Section 6.2, suppliers and subcontractors engaged by Patheon to undertake the Manufacture of the Product will be considered to be under Patheon's direction or control;

(h) none of it, its Affiliates, nor any Person under its direction or control is currently excluded from a federal or state health care program under Sections 1128 or 1156 of the Social Security Act, 42 U.S.C. §§ 1320a-7, 1320c-5 or any equivalent Applicable Law of the country of Manufacture, as may be amended or supplemented;

(i) none of it, its Affiliates, nor any Person under its direction or control is otherwise currently excluded from contracting with the U.S. federal government or the government of the country of Manufacture;

(j) none of it, its Affiliates, nor any Person under its direction or control is otherwise currently excluded, suspended, or debarred from any U.S. or foreign governmental program;

(k) to its knowledge, as at the Effective Date, the use of the Patheon-Supplied Materials, the Patheon Manufacturing Equipment and other technology and/or Intellectual Property Controlled by Patheon to perform the Manufacturing Services hereunder, in accordance with the terms and conditions hereof does not infringe or misappropriate any Third Party's Intellectual Property rights

(l) it will immediately notify Client if, at any time during the Term, Patheon, its Affiliates, or any Person under its direction or control is convicted of an offense that would subject it or Client to exclusion, suspension, or debarment from any U.S. or foreign governmental program;

(m) it agrees to keep the Equipment free from all liens and encumbrances; and

(n) it will not enter into any agreement or arrangement with any other Third Party that would prevent its ability to perform its obligations hereunder

6.3 Warranty. Patheon warrants that:

(a) Products will be Manufactured in accordance with Section 2.1(c) of this Agreement, Quality Agreement, GMP, and all other Applicable Law;

(b) without prejudice to Section 2.8, at the time of delivery the Products will conform with the Specifications in accordance with the testing regime set out therein and will conform with the Certificate of Analysis therefor provided under Section 2.3(j);

(c) at the time of delivery title to the Product will pass to Client as provided herein free and clear of any security interest, lien, or other encumbrance;

(d) at the time of delivery the Product will not be adulterated or misbranded within the meaning of the FDA Act as a result of a Patheon Nonconformance; and

(e) at the time of delivery the Product will not be an article that, under the FDA Act, may not be introduced into interstate commerce as a result of a Patheon Nonconformance.

6.4 Additional Representations, Warranties, and Covenants of Client. Client warrants, represents, and covenants that:

(a) Non-Infringement.

(i) to its knowledge, as at the Effective Date (1) it or its Affiliates Control all right, title, and interest in all Intellectual Property in the Client Manufacturing Process, the Client Manufacturing Equipment, the Product and the Specifications necessary for performance of the Manufacturing Services; and (2) it has the right to authorize Patheon to perform the Manufacturing Services, in each case in accordance with the terms and conditions hereof;

(ii) to its knowledge, as at the Effective Date, the performance of the Manufacturing Services hereunder, in accordance with the terms and conditions hereof and using the Client Manufacturing Process does not infringe or misappropriate any Third Party's Intellectual Property rights;

(iii) Client or its Affiliates Control and have the right to lawfully disclose the Specifications to Patheon and to authorize Patheon to use the Specification to perform the Manufacturing Services;

(iv) as of the Effective Date, so far as Client is aware there are no actions or other legal proceedings pending concerning the infringement of Third Party Intellectual Property rights related to any of the Specifications, the Client Manufacturing Process or any of the Materials, or the supply, use, or other disposition of any Product made in accordance with the Specifications.

(b) Quality and Compliance.

(i) during the Term, the Product, if Manufactured in accordance with the Specifications and in compliance with the Quality Agreement, applicable GMP and Applicable Laws, may be lawfully sold and distributed in every jurisdiction in which Client markets the Product; and

(ii) during the Term, on the date of shipment, the Client-Supplied Materials will conform to the specifications for the Client-Supplied Materials that Client has given to Patheon and the Client-Supplied Materials will be adequately contained, packaged, and labelled and will conform to the affirmations of fact on the container, but this will not negate Patheon's obligations to perform any incoming inspections of Client-Supplied Materials as set out in the Specifications or the Quality Agreement.

(c) Client agrees that, as a pre-condition to the adding of any country to the Territory under Section 2.2(t), Client will repeat the warranties above as at the date on which the country is added to the Territory.

6.5 **DISCLAIMER. THE FOREGOING EXPRESS WARRANTIES SET FORTH IN THIS ARTICLE VI ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY EACH PARTY.**

ARTICLE VII. CONFIDENTIALITY

7.1 Confidentiality Obligations. The Parties agree that the Confidentiality Agreement dated June 24, 2015, as amended March 7, 2018, between Client and Patheon Inc. (an Affiliate of Patheon), (the "Confidentiality Agreement"), will apply to all Confidential Information disclosed by a Party or its Affiliates to the other Party under this Agreement and is expressly incorporated into this Agreement.

7.2 Injunctive Relief. Each Party acknowledges that a breach by either Party of the Confidentiality Agreement or of this ARTICLE VII may not reasonably or adequately be compensated in damages in an action at law and that this breach may cause the other Party irreparable injury and damage. By reason thereof, each Party agrees that the other Party may be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to apply for preliminary and permanent injunctive and other equitable relief to prevent or curtail any breach of the Confidentiality Agreement or this ARTICLE VII. But no specification in this Agreement of a specific legal or equitable remedy will be construed as a waiver or prohibition against pursuing any other legal or equitable remedies if there is a breach. Each Party agrees that the existence of any claim, demand, or cause of action of it against the other Party, whether predicated upon this Agreement, or otherwise, will not constitute a defense to the enforcement by the other Party, or its successors or assigns, of the covenants contained in the Confidentiality Agreement and this ARTICLE VII.

ARTICLE VIII. TERM AND TERMINATION

8.1 Term. This Agreement will commence as of the Effective Date and, unless earlier terminated in accordance with the terms hereof, will expire on the seventh anniversary of the FDA Approval Date (the "Initial Term"). Notwithstanding the foregoing, by mutual agreement, the Parties may commence discussions three years prior to the end of the Initial Term with a view to extending the Initial Term for periods of two years each (collectively, the Initial Term and any extensions thereof, the "Term").

8.2 Termination. In addition to any other provision of this Agreement expressly providing for termination of this Agreement, this Agreement may be terminated as follows:

(a) Client may terminate this Agreement by notice in writing to Patheon:

(i) at any time prior to the grant of the Marketing Authorization for the Product in the United States, by giving Patheon [***] prior written notice if: (A) Client's application for Marketing Authorization in the United States is rejected, or (B) any Regulatory Authority causes the clinical hold or permanent withdrawal of the Product;

(ii) at any time after the grant of the Marketing Authorization for the Product in the United States, by giving Patheon [***] prior written notice if the Product is discontinued or withdrawn from (1) the United States, or (2) any other market in a country or countries of the Territory that represent [***]% or more of Client's overall Product sales, for safety, quality or regulatory reasons;

(iii) if any Regulatory Approval naming Patheon as the Manufacturer of the Product is withdrawn by the applicable Regulatory Authority for (1) the United States or (2) any other market in a country or countries of the Territory that represent [***]% or more of Client's overall Product sales;

(iv) if Patheon challenges Client's ownership of, or right to use, the Existing Client Intellectual Property by submission to a governmental authority responsible for Intellectual Property rights or to a court with jurisdiction over Intellectual Property rights if the performance of manufacturing or development services for other clients will not be regarded as a challenge to Client's ownership of, or right to use, the Existing Client Intellectual Property;

(v) [***]; or

(vi) at any time upon written notice if there is any material default by Patheon in the performance of any of its obligations hereunder that has not been cured by Patheon within [***] days after receiving written notice thereof ("Remediation Period"). But the Parties will use Commercially Reasonable Efforts to agree a plan to remedy the material default within [***] days after written notice is given to Patheon and Patheon will continue performing hereunder under Section 8.4 below. Client's right to terminate this Agreement for a particular breach under this Section 8.2(a)(vi) may only be exercised for a period of [***] days following the expiry of the Remediation Period (where the breach has not been cured) and, if the termination right is not exercised during this period, then Client will be considered to have waived its right to terminate this Agreement for the breach.

(b) Patheon may terminate this Agreement at any time upon written notice if (i) there is any material default by Client in the performance of any of its obligations hereunder (excluding payment) that has not been cured by Client within [***] days after receiving written notice thereof; or (ii) Client's default of its payment obligations in accordance with ARTICLE IV for undisputed invoices which has not been cured by Client within [***] days after receiving written notice thereof.

(c) This Agreement may be terminated at any time by either Party immediately upon written notice to the other Party (A) under Section 10.2, if there is a force majeure that remains uncured for the period set forth in Section 10.2, or (B) if the other Party files in any court or agency, under any statute or regulation of any state or country, a petition in bankruptcy or insolvency or for reorganization or for arrangement or for the appointment of a receiver or trustee of the other Party or of its assets, or if the other Party proposes a written agreement of composition of its debts, or if the other Party is served with an involuntary petition against it, filed in any insolvency proceeding, and the Party consents to the petition or if the petition is not dismissed within [***] days after filing, or if the other Party proposes to be a party to any dissolution or liquidation, or if the other Party makes an assignment for the benefit of its creditors.

(d) This Agreement will automatically terminate if either Party exercises its right to terminate the Technology Transfer Agreement (but not if the agreement expires as set forth in Section 8.2 thereof) prior to the FDA Approval Date, in which case, any payment to Patheon will be made in accordance with the Technology Transfer Agreement.

8.3 Effect of Termination.

(a) The expiration or termination of this Agreement will be without prejudice to any rights or obligations of the Parties that may have accrued prior to the termination, and the provisions of Sections 2.8, 3.7, 3.12, 3.14, 8.3 and 8.4, and ARTICLE I, ARTICLE IV, ARTICLE V, ARTICLE VII, ARTICLE IX and ARTICLE X will survive the expiration or termination of this Agreement. Except as otherwise expressly provided herein, termination of this Agreement in accordance with the provisions hereof will not limit remedies that may otherwise be available in law or equity.

(b) Upon expiration or termination of this Agreement, subject to the Parties' obligations under Section 8.4 below, each Party, at the request of the other, will return all data, files, records, and other materials in its possession or control containing or comprising the other Party's Confidential Information.

(c) Upon expiration or termination of this Agreement for any reason, subject to the Parties' obligations under Section 8.4 below:

(i) all submitted but unfilled Purchase Orders for which Patheon has (1) not begun Manufacture of Product will be cancelled, or (2) begun Manufacture of the Product will be completed, unless otherwise agreed;

(ii) Patheon will dismantle the Client Manufacturing Equipment and prepare and make it available for collection from the Facility according to a procedure reasonably agreed to by the Parties. Client will then remove all Client Manufacturing Equipment, Product and Materials from the Facility within [***] days after the completion of the procedure. If Client fails to do so, Client will pay a fee [***] for each month or part month the Client Manufacturing Equipment, Product or Materials remains at the Facility after [***] days post termination;

(iii) if Patheon has Manufactured any stocks of finished Product in addition to those ordered under a Purchase Order, or has ordered any Patheon-Supplied Materials in addition to those ordered as set out in Section 2.2(u), Client will at its option place an order with Patheon for any of the finished Products and/or Patheon-Supplied Materials in accordance with this Agreement;

(iv) Patheon will submit an invoice for any unpaid Material Costs, Maintenance Costs, Disposal Costs or any Bill Back Items which were ordered, purchased, produced or maintained by Patheon in contemplation of the Manufacture of the Product before the date of termination in accordance with Section 2.2. But Client will not be liable for the costs of any Materials purchased in excess of those amounts needed to meet Purchase Orders (or for a longer time as agreed to by the Parties);

(v) Client will pay Patheon any earned but unpaid Product Fees, including those under any outstanding Purchase Order as described in Section 8.3(c)(i);

(vi) Client will pay for any earned but undisputed and unpaid Base Fees, or fees for Additional Services; and

(vii) Client will pay all due and outstanding invoices under ARTICLE IV.

(d) Upon expiration or termination of this Agreement for any reason other than by Client under Section 8.2(a)(vi), subject to the Parties' obligations under Section 8.4 below, Client will pay to Patheon all and any (i) dismantling costs, (ii) removal costs and (iii) Make Good Costs associated with ending the Manufacturing Services or removal of the Client Manufacturing Equipment from the Facility. "Make Good Costs" means the reasonable costs required to clean, decontaminate or repair the Facility and return it to a clean, safe and useable area based on the contamination caused by the Manufacturing Services or repair of damage caused by the installation or removal of Client Manufacturing Equipment.

(e) Upon expiration or termination of this Agreement for any reason other than by Client under Section 8.2(a)(vi), subject to the Parties' obligations under Section 8.4 below, Client will pay to Patheon the following costs ("Manufacturing Services Termination Costs"): (i) all actual costs incurred by Patheon to complete activities associated with the completion, expiry or termination including, without limitation, disposal fees that may be payable for any Materials and supplies owned by Client to be disposed of by Patheon; and (ii) [***] direct costs and expenses, or wasted costs and expenses, or termination or cancellation fees payable by Patheon arising from the termination of this Agreement, to include but not limited to, [***]. Patheon will use Commercially Reasonable Efforts to mitigate the Manufacturing Services Termination Costs. Patheon will provide Client with documentation to substantiate the Manufacturing Services Termination Costs.

(f) Upon termination (in whole) or expiry of this Agreement for any reason:

(i) the licenses granted in Sections 5.2(a) and 5.2(b) will terminate and Patheon will not make any use for any purpose whatsoever of any of Client's Intellectual Property or any of Client's Confidential Information contained in the Quality Agreement except to the extent necessary to fulfil any Purchase Order or order placed by Client under Section 8.3(c)(iii) or to perform any other obligation under this Agreement;

(ii) any Yield Reimbursement Payment will be paid which may be pro rata basis for any part year as applicable and which may be offset by any undisputed amounts owing to Patheon under this Agreement.

(g) Client acknowledges that no Patheon competitor (being a Person that [***]) will be permitted access to the Facility.

(h) For any representatives of Client that are permitted access to the Facility under Sections 3.18, 8.3 or 8.4, Client will ensure that its representatives are appropriately trained by Client (*e.g.*, GMP training) and will observe Patheon's policies and procedures as they pertain to the Facility, including policies relating to health and safety and compliance with GMP, and comply with all reasonable directions of Patheon. But Client must be given notice of these policies and given a reasonable period of time to review and implement the policies. Patheon may refuse or limit in its sole discretion at any time admission to the Facility by any of Client's representatives who fail to observe the policies or comply with its reasonable directions.

(i) The Parties agree that if any fees or charges are duplicated under this Agreement and the Technology Transfer Agreement, Client will only be obligated to make the payment once.

8.4 Transition Assistance. Upon the delivery by either Party of a notice of termination of this Agreement for any reason other than by Patheon under Sections 8.2(b) or (c), upon Client's request, and subject to this Agreement, Patheon will provide Client with the reasonable assistance of its staff and reasonable access to its other internal resources to provide Client with a reasonable level of technical assistance and consultation to transfer the Manufacture and the regulatory qualification of the Product to a supplier of Client's election. But Client must reimburse Patheon for its fees and all documented costs and out-of-pocket expenses incurred in connection with this assistance (Patheon would provide a quotation for the services which Client requires under this Section 8.4 as Additional Services and upon acceptance by Client, Patheon will provide the services stated therein), except that Client will not be obligated to reimburse Patheon if this Agreement is terminated by Client pursuant to Section 8.2(a)(vi).

ARTICLE IX. INDEMNIFICATION

9.1 Client Indemnification Obligations. Client will indemnify and defend Patheon, its Affiliates, and their respective directors, officers, employees, and agents (the "Patheon Indemnified Parties"), from:

(a) all Third Party Losses incurred by any of them in connection with, arising from, or occurring as a result of: (i) any negligence or willful misconduct by Client or any of its Affiliates; (ii) any claim made by any Person that the Manufacture and supply of the Product using the Client Manufacturing Process or any of Client's Intellectual Property, in each case in accordance with the terms hereof, infringes or misappropriates the Intellectual Property rights of the Person (other than to the extent arising as a result of any of Patheon's Intellectual Property used in accordance this Agreement or the use by Patheon of any Third Party Intellectual Property or by use of the Patheon Supplied Materials or Patheon Manufacturing Equipment); or (iii) any product liability claim made by any Person for any Products which upon delivery conformed to and were Manufactured in accordance with Section 2.1(c); or

(b) any Loss incurred by any of the Patheon Indemnified Parties in connection with any damage to Patheon's property or any claims of personal injury to any Patheon employees or Third Party Subcontractors caused as a result of Patheon's use of the Client Manufacturing Equipment to perform the Manufacturing Services provided that Patheon and its employees and Third Party Subcontractors must have complied with this Agreement, the written instructions of Client, all applicable Equipment Standard Operating Procedures or the manufacturer's terms of operation and recommended procedures for the Client Manufacturing Equipment, Specifications, and have not otherwise acted in a negligent manner or committed an act of willful misconduct in the use and Maintenance of the Client Manufacturing Equipment;

(c) Client will not be required to indemnify the Patheon Indemnified Parties for any Loss hereunder to the extent the Loss (i) is caused by any breach of contract, negligent act or omission, or intentional misconduct by any Patheon Indemnified Parties or (ii) is a Loss for which Patheon is obliged to indemnify the Client Indemnified Parties under Section 9.2. Client acknowledges that Patheon has not and will not conduct any freedom to operate searches in relation to the Product or the Client Manufacturing Process or reviewed any Third Party patents in relation thereto and that Patheon's failure or omission to do so will not be considered negligence for the purposes of excluding or limiting a claim under this indemnity.

9.2 Patheon Indemnification Obligations. Patheon will indemnify and defend Client, its Affiliates, and their respective directors, officers, employees, and agents (the "Client Indemnified Parties"), from:

(a) any Third Party Losses incurred by any of them resulting from, or relating to, any claim of personal injury or property damage to the extent that the injury or damage is in connection with, arising from, or occurring as a result of: (i) any failure by Patheon to Manufacture and supply Products in accordance with this Agreement; (ii) any negligence or willful misconduct by Patheon or any of its Affiliates; or (iii) any product liability claim made by any Person for any Product Manufactured by Patheon to the extent the liability is caused by a Patheon Nonconformance; or

(b) any Third Party Losses incurred by any of them in connection with, arising from, or occurring as a result of a claim that any Patheon-Supplied Materials, Patheon Manufacturing Equipment, Existing Patheon Intellectual Property, Patheon Independent Manufacturing Improvement or Patheon Improvement used by Patheon in the Manufacture of the Product infringes or misappropriates the Intellectual Property rights of the Person;

(c) Patheon will not be required to indemnify the Client Indemnified Parties for any Loss hereunder to the extent the Loss (i) is caused by any breach of contract, negligent act or omission, or intentional misconduct by any Client Indemnified Parties or (ii) is a Loss for which Client is obliged to indemnify the Patheon Indemnified Parties under Section 9.1.

9.3 Indemnification Procedure.

(a) Indemnification Procedure. The indemnified Party (the "Indemnified Party") will give the indemnifying Party (the "Indemnifying Party") prompt written notice of any Loss, action, or discovery of facts upon which the Indemnified Party intends to base a request for indemnification under Sections 9.1 or 9.2 (a "Claim"), but the Indemnifying Party will not be liable for any Losses that result from any delay in providing the notice. The Indemnified Party will: (i) use Commercially Reasonable Efforts to mitigate the effects of the Claim; (ii) reasonably cooperate with the Indemnifying Party in the defense of the Claim; and (iii) permit the Indemnifying Party to control the defense and settlement of the Claim, all at the Indemnifying Party's cost and expense.

(b) Settlement. For any Losses (i) relating solely to the payment of money damages in connection with a Claim, (ii) that will not result in the Indemnified Party becoming subject to injunctive or other relief or otherwise adversely affect the business or reputation of the Indemnified Party in any manner, and (iii) as to which the Indemnifying Party has acknowledged in writing the obligation to indemnify the Indemnified Party hereunder, the Indemnifying Party will have the sole right to consent to the entry of any judgment, enter into any settlement, or otherwise dispose of the Loss, on such terms as the Indemnifying Party, in its sole discretion, considers appropriate. For all other Losses in connection with Claims, where the Indemnifying Party has assumed the defense of the Claim in accordance with Section 9.3(a), the Indemnifying Party will have authority to consent to the entry of any judgment, enter into any settlement, or otherwise dispose of the Loss but it must obtain the prior written consent of the Indemnified Party, which consent will not be unreasonably withheld or delayed. The Indemnifying Party will not, without the prior written consent of the Indemnified Party, agree to any settlement or acquiesce to any judgment for a Claim that obligates the Indemnified Party to pay any amount subject to indemnification by the Indemnifying Party or causes the Indemnified Party to admit to any civil or criminal liability.

9.4 Insurance. During the Term and for [***] years thereafter, each Party will procure and maintain at its own expense from a qualified and licensed insurer liability insurance or indemnity policies, in an amount not less than $[***] in the aggregate, subject to the deductible or self-retention limits as either Party in its business discretion may elect. These policies will insure against liability on the part of each Party and any of its Affiliates, as their interests may appear, due to injury, disability, or death of any person or persons, or injury to property, arising from the distribution of the Products. Upon the execution of this Agreement and thereafter on January 1 of each year during the Term, each Party upon the request of the other Party will provide a certificate of insurance (i) summarizing the insurance coverage and (ii) identifying any exclusions. Each Party will promptly notify the other of any material adverse alterations to this policy or decreases in the amounts for which insurance is provided.

9.5 Limitation on Damages

(a) Maximum Liability. Except with respect to a breach by Patheon of its obligations under ARTICLE V or ARTICLE VI, or with respect to costs or damages arising out of the willful misconduct of Patheon, and without limiting Patheon's obligations under Section 9.2, Patheon's maximum liability to Client in connection with the performance of the Manufacturing Services under this Agreement for any reason whatsoever, including, without limitation, any liability arising under Sections 2.2(o), 2.9, 3.12, 3.14 or 9.2 hereof or resulting from any breaches of its representations, warranties, or any other obligations under this Agreement in each calendar year will not exceed [***]% of the total Product Fees received by or payable to Patheon under this Agreement in the [***] month period prior to the month in which the underlying event occurred that gave rise to the liability (*e.g.*, the date of the incident or manufacture). For the first [***] month period after the first commercial batch, as Patheon will not have received Product Fees for a full [***] month period, the amount of the Product Fees for the purpose of the limitation of liability will be calculated based on the volume of Product set out in the first [***] months of the Forecast applicable on the date of Manufacture of the first commercial batch.

(b) Section 9.5(a) will not apply to any reimbursement of the Product Fee, Shipment Costs or Patheon-Supplied Materials under Section 2.8(d)(ii).

(c) Subject to Section 9.5(d), except in connection with a Party's breach of Article V, and without limiting a Party's obligations under Sections 9.1-9.2, neither Party will be liable to the other in contract, tort, negligence, breach of statutory duty, equity, or otherwise for: (i) any direct or indirect loss of profits, of production, of anticipated savings, of business, or goodwill, or costs of substitute services; (ii) any reliance damages, including but not limited to costs or expenditures incurred to evaluate the viability of entering into this Agreement or to prepare for performance under this Agreement; or (iii) for any other indirect or consequential loss, liability, damage, costs, penalty or expense, in each case, with respect to this Agreement (but excluding the Technology Transfer Agreement, the liabilities of the Parties thereunder being only limited by Section 7.4 therein).

(d) Nothing in this Agreement will exclude or limit either Party's liability for (i) personal injury or death caused by the negligence of that Party, or (ii) for fraud or fraudulent misrepresentation.

(e) The limitations of liability set forth in this Section 9.5 will have no impact on limiting the liabilities of the Parties under the Technology Transfer Agreement, the liabilities of the Parties thereunder being only limited by Sections 7.4 and 7.5 of the Technology Transfer Agreement.

(f) Sole & Exclusive Remedies. Notwithstanding anything in this ARTICLE IX to the contrary Patheon's sole liability and Client's sole and exclusive remedy whether in contract, tort, equity or otherwise for Non-Conforming Product based on or caused by a Patheon Nonconformance will be the rights and remedies set forth in Sections 2.2(o), 2.8, 2.9, 3.12, 3.14, 8.2 and 9.2 of this Agreement.

9.6 Product Liability Claims. As soon as it becomes aware, each Party will give the other prompt written notice of any defect or alleged defect in a Product, any injury alleged to have occurred as a result of the use or application of the Product, and any circumstances that may give rise to litigation or recall of a Product or regulatory action that may affect the sale or Manufacture of a Product, specifying, to the extent the Party has this information, the time, place, and circumstances thereof and the names and addresses of the persons involved. Each Party will also furnish promptly to the other copies of all papers received for any claim, action, or suit arising out of the alleged defect, injury, or regulatory action.

9.7 Allocation of Risk. This Agreement (including, without limitation, this ARTICLE IX) is reasonable and creates a reasonable allocation of risk for the relative profits the Parties each expect to derive from the Products.

ARTICLE X. MISCELLANEOUS

10.1 Notices. Notwithstanding that advance notification of any notices or other communications may be given by electronic mail transmission, all notices or other communications that will or may be given under this Agreement will be in writing (including by confirmed receipt electronic mail) and will be considered to be effective (a) when delivered if sent by registered or certified mail, return receipt requested, or (b) on the next business day, if sent by overnight courier, (c) when sent if sent by electronic mail if receipt is confirmed, in each case to the Parties at the following addresses (or at such other addresses as will be specified by like notice) with postage or delivery charges prepaid:

If to Client:

Zosano Pharma Corporation
34790 Ardentech Court, Fremont, California 94555
Attn: CEO

With copy to:

Latham & Watkins LLP
140 Scott Drive, Menlo Park, CA, 94025
Attn: Alan Mendelson

If to Patheon:

Patheon Manufacturing Services LLC
Executive Director & General Manager
[***]

with copy to:

Patheon Pharmaceuticals Inc.
Director of Legal Services
2110 East Galbraith Road
Cincinnati, OH 45237-1625
Email: [***]

10.2 Force Majeure. Neither Party will be liable for delay in delivery, performance or nonperformance, in whole or in part, nor will the other Party have the right to terminate this Agreement except as otherwise specifically provided in this Section 10.2 where the delay in delivery, performance or nonperformance results from acts beyond the reasonable control and without the fault or negligence of the Party including, but not limited to, the following conditions: fires, floods, storms, embargoes, shortages, epidemics, quarantines, war, acts of war (whether war be declared or not), terrorism, insurrections, riots, civil commotion, or acts, omissions, or delays in acting by any governmental authority. But the Party affected by this a condition must, within five days of its occurrence, give notice to the other Party stating the nature of the condition, its anticipated duration, and any action being taken to avoid or minimize its effect. The suspension of performance will be of no greater scope and no longer duration than is reasonably required, and the nonperforming Party will use Commercially Reasonable Efforts to remedy its inability to perform. If the suspension of performance continues for [***] after the date of the occurrence, and the failure to perform would constitute a material breach of this Agreement in the absence of the force majeure event, the non-affected Party may terminate this Agreement immediately by written notice to the affected Party.

10.3 Independent Contractor. The Parties to this Agreement are independent contractors. Nothing contained in this Agreement will be construed to place the Parties in the relationship of employer and employee, partners, principal, and agent or a joint venture. Neither Party will have the power to bind or obligate the other Party nor will either Party hold itself out as having this authority.

10.4 Waiver. Except where expressly stated to the contrary in this Agreement, including Sections 2.8, 2.9, 3.12, 3.14, 8.2, 8.4 and 9.5, no waiver by either Party of any provision or breach of this Agreement will constitute a waiver by that Party of any other provision or breach, and this waiver will not be effective unless made in writing and signed by an authorized representative of the Party against whom waiver is sought. No course of conduct or dealing between the Parties will act as a modification or waiver of any provision of this Agreement. Either Party's consent to or approval of any act of the other Party will not be deemed to render unnecessary the obtaining of that Party's consent to or approval of any subsequent act by the other Party.

10.5 Entire Agreement. This Agreement (together with all Schedules hereto, which are hereby incorporated by reference), the Quality Agreement, the Confidentiality Agreement, and the Technology Transfer Agreement constitute the final, complete, and exclusive agreement between the Parties relating to the subject matter hereof and supersede all prior conversations, understandings, promises, and agreements relating to the subject matter hereof. The "Background" Section of this document is expressly incorporated into this Agreement. Neither Party has relied upon any communications, representations, terms or promises, verbal or written, not set forth herein. No terms, provisions or conditions of any Purchase Order or other business form or written authorization used by Client or Patheon will have any effect on the rights, duties, or obligations of the Parties under or otherwise modify this Agreement, regardless of any failure of Client or Patheon to object to the terms, provisions, or conditions unless the document specifically refers to this Agreement and is signed by both Parties.

10.6 Assignment; Change of Control. This Agreement may not be assigned by Patheon without the prior written consent of Client. Notwithstanding the foregoing, either Party may assign this Agreement to an Affiliate, or to an acquirer or successor in interest in connection with a Change of Control of the Party, without the prior written consent of the other Party. But the Party must provide the other Party with written notice of this assignment. This Agreement will be binding upon and inure to the benefit of Client and Patheon and their respective successors, heirs, executors, administrators, and permitted assigns. "Change of Control" means the earlier of a public announcement of an agreement in principle or the closing of (a) a merger, consolidation or similar transaction providing for the acquisition of the direct or indirect ownership of more than 50% of a Party's shares or similar equity interests or voting power of the outstanding voting securities or that represents the power to direct the management and policies of a Party or (b) the sale of all or substantially all of a Party's assets related to the subject matter of the Agreement.

10.7 Amendment; Modification. This Agreement may not be amended, modified, altered, or supplemented except by a writing signed by both Parties. No modification of any nature to this Agreement and no representation, agreement, arrangement, or other communication will be binding on the Parties unless it is expressly contained in writing and executed by the Parties as an amendment to this Agreement. This Agreement may not be amended in any respect by any Purchase Order, invoice, acknowledgment, or other similar printed document issued by either Party.

10.8 Governing Law.

(a) This Agreement and any matter, claim or dispute arising out of or in connection with it, whether contractual or non-contractual, will be construed under and governed by the laws of the State of Delaware without regard to the application of principles of conflicts of law. Both Parties hereby submit to the exclusive jurisdiction of the courts of the State of Delaware.

(b) The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, if applicable.

(c) The Parties agree that nothing in this Agreement will (i) grant Client any property ownership rights in the Manufacturing Suite or the Facility or (ii) constitute a lease to the Manufacturing Suite or the Facility and no relationship of landlord and tenant is created between Patheon and Client under this Agreement. Patheon retains control, possession and management of the Facility and Manufacturing Suite and Client has no right to exclude Patheon from the Facility or Manufacturing Suite.

10.9 Compliance with Applicable Laws. Each Party and its Affiliates, and their respective representatives, will comply with all Applicable Laws in the performance of their obligations under this Agreement. Without limiting the foregoing, each Party and its Affiliates, and their respective representatives, will comply with export control laws and regulations of the country of Manufacture and of the United States. Neither Party nor its Affiliates (or representatives) will, directly or indirectly, without prior U.S. government authorization, export, re-export, or transfer the Product to any country subject to a U.S. trade embargo, to any resident or national of any country subject to a U.S. trade embargo, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury. In so far as it applies to a Party or its Affiliates, each Party and its Affiliates and respective representatives will comply with the requirements of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. § 78dd-1, *et seq*.).

10.10 Dispute Resolution.

(a) The Parties recognize that disputes may arise during the Term of this Agreement. It is the objective of the Parties to establish procedures to resolve these disputes in an expedient manner by mutual cooperation. To accomplish this objective, the Parties agree to follow the procedures set forth in this Section 10.10 if a dispute arises under this Agreement.

(b) Unless otherwise specifically recited in the Agreement, disputes between the Parties under this Agreement will be first referred to the Project Manager of each Party as soon as reasonably possible after the dispute arises. If the Project Managers are unable to resolve the dispute within [***] days of being requested by a Party to resolve the dispute, each Party will have the right, by written notice, to refer the dispute to the Senior Management of each Party for attempted resolution by negotiations within [***] days after the written notice is received. If the Senior Management are unable to resolve the dispute within [***] days of being requested by a Party to resolve the dispute, each Party will have the right to pursue any remedies available to it at law or in equity.

10.11 Press Releases; Use of Trademarks. The Parties agree not to disclose in any press release or other public statement any terms or conditions of this Agreement to any Third Party without the prior consent of the other Party, except as permitted in the Confidentiality Agreement. Neither Party will (a) issue a press release or make any other public statement that references this Agreement or (b) use the other Party's or the other Party's Affiliates' names or trademarks for publicity or advertising purposes, except with the prior written consent of the other Party, except as permitted under the Confidentiality Agreement or Securities and Exchange Commission filings which are required by Applicable Law, in which instance both Parties will work together in good faith to agree the disclosure to be made having due and proper regard to their legal obligations. Each Party agrees that it will cooperate fully and in a timely manner with the other for all disclosures to the Securities and Exchange Commission or any other governmental or regulatory agencies, including requests for confidential treatment of Confidential Information of either Party included in the disclosure.

10.12 Severability. If any provision of this Agreement is found by a proper authority to be unenforceable, that provision to the extent it is found to be unenforceable or invalid will be severed and the remainder of the provision and this Agreement will continue in full force and effect. The Parties will use their best efforts to agree upon a valid and enforceable provision as a substitute for any invalid or unenforceable provision, taking in to account the Parties' original intent of this Agreement.

10.13 Construction. Unless the context of this Agreement otherwise requires: (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms "hereof," "herein," "hereby," and derivative or similar words refer to this entire Agreement; (d) the terms "ARTICLE," "Section," "Schedule," refer to the specified ARTICLE, Section or Schedule of this Agreement; (e) "or" is disjunctive but not necessarily exclusive; and (f) the term "including" or "includes" means "including without limitation" or "includes without limitation." Whenever this Agreement refers to a number of days, the number will refer to calendar days unless business days are specified. The captions and headings of this Agreement are for convenience of reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The language of this Agreement will be deemed to be the language mutually chosen by the Parties, and no rule of strict construction will be applied against either Party hereto.

10.14 Third Party Beneficiaries. This Agreement is not intended to confer upon any non-party rights or remedies hereunder, except as may be received or created as part of a valid assignment.

Without prejudice to the previous sentence, any Affiliate of Client may submit Purchase Orders under this Agreement if the quantities of Product ordered are included in the Forecasts given by Client such that Patheon will receive a single consolidated Forecast under Section 2.3(a). Patheon will submit invoices to the Affiliate of Client directly for all applicable fees and charges, which will be payable by the Affiliate of Client directly in accordance with ARTICLE IV. The Parties agree that Client may delegate (in part) the benefits it receives under this Agreement, and its obligations, to any Affiliate in order that it may benefit from this Agreement in connection with Purchase Orders, but Client will remain ultimately liable for any act or omission under this Agreement of its Affiliate. This will not give an Affiliate any right to enforce any term of this Agreement against Patheon.

10.15 The rights of Patheon and Client to terminate, rescind or agree any variation, modification, amendment, waiver or settlement under this Agreement are not subject to the consent of any other person and expressly do not require the consent of any Affiliate.

10.16 Further Assurances. Each of the Parties agrees to duly execute and deliver, or cause to be duly executed and delivered, any further instruments and do and cause to be done any further acts and things, including the filing of any additional assignments, agreements, documents, and instruments, that may be necessary or as the other Party hereto may reasonably request in connection with this Agreement or to carry out more effectively the provisions and purposes of, or to better assure and confirm unto the other Party its rights and remedies under, this Agreement.

10.17 Counterparts. This Agreement may be signed in counterparts, each of which will be deemed an original. Electronic signatures will be treated as original signatures.

[The remainder of this page is left blank intentionally]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

PATHEON MANUFACTURING SERVICES LLC:	**ZOSANO PHARMA CORPORATION**:
By: /s/ Lukas Utiger	By: /s/ John Walker
Name: Lukas Utiger	Name: John Walker
Title: President DSS & PDS	Title: Chariman and CEO
Date: 27 September 2018	Date: 27 September 2018

[Signature Page of Manufacturing and Supply Agreement]

Schedule A

[***] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Product

Product	Format	Dose	Packaging Configuration
Zolmitriptan Intracutaneous Microneedle Patches	Patch	[***]	[***]

[***] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Schedule B
Fees

I. Base Fee

Patheon will charge an annual fee ("Base Fee") to be paid in equal monthly installments (or pro rata amount for any part of a calendar month), as forth below:

Ref	Base Fee	Payment structure	Covered Volume/ Base Fees and Product Fees	First payment due	End date
[***]	$[***]	Equal monthly installments [***]	[***]	[***]	[***]
[***]	$[***]	12 Equal Monthly Installments	[***]	[***]	[***]
[***]	$[***]	12 Equal Monthly Installments	[***]	[***]	[***]
[***]	$[***]	12 Equal Monthly Installments	[***]	[***]	[***]
[***]	$[***]	12 Equal Monthly Installments	[***]	[***]	[***]
[***]	$[***]	12 Equal Monthly Installments	[***]	[***]	[***]
[***]	$[***]	12 Equal Monthly Installments	[***]	[***]	[***]

The Base Fees will accrue under this Agreement alone. The fees for the Transfer Services are specified in the Technology Transfer Agreement.

Consequences for the failure to achieve milestones for the Transfer Services or effects of early completion of the Transfer Services are specified in Exhibit H of the Technology Transfer Agreement.

II. Product Fees

The Product Fees are to be calculated in accordance with the model as follows:

Base Fees cover operation and staffing of the Facility including services as noted below. In the years in the table above where a Covered Volume per Base Fee is listed, Client can order and Patheon will Manufacture Product up to an Annual Volume of patches equal to or less than the Covered Volume with no further Product Fees, [***].

If Client orders Product in excess of the Covered Volume in any year, the incremental Product orders in excess of the Covered Volume would be charged the Product Fee listed in Schedule B I above.

If Client orders less than the Covered Volume there will be no reimbursement or reduction in the Base Fee. This Base Fee is independent of production up to the Covered Volume.

Product Fees are invoiced [***]. Client should issue purchase orders for this Product including the Product Fees [***].

Base Fees and Product Fees account for Patheon providing the following services set forth below [***]:

- [***]

Base Fee and Product Fees DO NOT Include:

- Material Costs.
- [***]
- Disposal Costs.
- [***]
- Bill Back Items costs.
- Fees for any agreed Additional Services.

Materials:

Cost allocation for the procurement of Materials is set forth in Section 2.2. A provisional bill of Materials is listed in Schedule C.

Bill Back Items:

During the performance of the Transfer Services, Patheon and Client will work together to develop a non-exhaustive list of typical Bill Back Items. Terms for the procurement of Bill Back Items are described in Section 2.2(r).

Additional Services:

The following non-exhaustive list will be considered Additional Services and will be invoiced to Client at the price agreed to by the Parties according to Section 2.2(s).

- [***]

Schedule C
Materials

Part A: Client-Supplied Materials

[***]

Part B: Patheon-Supplied Materials

[***]

[***] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO EXCHANGE ACT RULE 13a-14(a) AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, John Walker, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Zosano Pharma Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 15, 2018

By: /s/ John Walker
John Walker
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO EXCHANGE ACT RULE 13a-14(a) AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Gregory Kitchener, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Zosano Pharma Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 15, 2018

By: /s/ Gregory Kitchener
Gregory Kitchener
Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 32.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, John Walker, the Chief Executive Officer of Zosano Pharma Corporation (the "Company"), and Gregory Kitchener, the Chief Financial Officer of the Company, hereby certify that, to their knowledge:

1. The Quarterly Report on Form 10-Q for the period ended September 30, 2018 of the Company (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 15, 2018

By: /s/ John Walker
John Walker
Chief Executive Officer
(Principal Executive Officer)

Date: November 15, 2018

By: /s/ Gregory Kitchener
Gregory Kitchener
Chief Financial Officer
(Principal Financial and Accounting Officer)