In

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, 2020

or

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

For the transition period from _____ to _____

Commission file number: 000-50633

CYTOKINETICS, INCORPORATED

(Exact name of registrant as specified in its charter)

Delaware	**94-3291317**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
280 East Grand Avenue South San Francisco, California	**94080**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (650) 624-3000

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

Title of each class	**Trading symbol**	**Name of each exchange on which registered**
Common Stock, $0.001 par value	**CYTK**	**The Nasdaq Global Select Market**

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

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

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

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

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

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

Number of shares of common stock, $0.001 par value, outstanding as of November 2, 2020: 70,779,023

CYTOKINETICS, INCORPORATED
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FOR THE THREE MONTHS ENDED SEPTEMBER 30, 2020

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

CYTOKINETICS, INCORPORATED
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except per share data) (Unaudited)

	September 30, 2020	December 31, 2019
ASSETS		
Current assets:		
Cash and cash equivalents	$ 200,812	$ 36,433
Short-term investments	209,452	188,679
Accounts receivable	4,965	5,163
Prepaid expenses and other current assets	3,183	3,477
Total current assets	418,412	233,752
Long-term investments	40,958	42,650
Property and equipment, net	7,667	4,530
Operating lease right-of-use assets and other assets	7,075	8,882
Total assets	$ 474,112	$ 289,814
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts payable	$ 6,738	$ 8,160
Accrued liabilities	14,486	12,123
Short-term lease liability	3,943	4,616
Other current liabilities	2,406	1,124
Total current liabilities	27,573	26,023
Term loan, net	45,920	45,052
Convertible notes, net	88,102	84,205
Liability related to the sale of future royalties, net	160,395	143,276
Long-term lease and other non-current liabilities	2,517	2,195
Total liabilities	324,507	300,751
Commitments and contingencies		
Stockholders' equity (deficit):		
Preferred stock, $0.001 par value	—	—
Common stock, $0.001 par value	70	59
Additional paid-in capital	1,096,953	853,341
Accumulated other comprehensive income	958	679
Accumulated deficit	(948,376)	(865,016)
Total stockholders' equity (deficit)	149,605	(10,937)
Total liabilities and stockholders' equity (deficit)	$ 474,112	$ 289,814

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

CYTOKINETICS, INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(In thousands, except per share data) (Unaudited)

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
Revenues:				
Research and development revenues	$ 5,187	$ 6,055	$ 12,605	$ 21,656
License revenues	36,501	—	36,501	—
Total revenues	41,688	6,055	49,106	21,656
Operating expenses:				
Research and development	24,202	20,229	67,730	67,791
General and administrative	12,302	9,753	38,912	29,026
Total operating expenses	36,504	29,982	106,642	96,817
Operating income (loss)	5,184	(23,927)	(57,536)	(75,161)
Interest expense	(3,976)	(1,345)	(11,945)	(3,892)
Non-cash interest expense on liability related to the sale of future royalties	(5,461)	(5,321)	(17,062)	(15,204)
Interest and other income, net	1,078	1,020	3,183	3,205
Net loss	$ (3,175)	$ (29,573)	$ (83,360)	$ (91,052)
Net loss per share — basic and diluted	$ (0.05)	$ (0.50)	$ (1.34)	$ (1.60)
Weighted-average number of shares used in computing net loss per share — basic and diluted	68,279	58,640	62,406	57,050
Other comprehensive loss:				
Unrealized (loss) gain on available-for-sale securities, net	(379)	(42)	279	219
Comprehensive loss	$ (3,554)	$ (29,615)	$ (83,081)	$ (90,833)

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

CYTOKINETICS, INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
(In thousands, except share data) (Unaudited)

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount				
Balance, December 31, 2019	59,172,124	$ 59	$ 853,341	$ 679	$ (865,016)	$ (10,937)
Exercise of stock options	12,165	—	93	—	—	93
Vesting of restricted stock units, net of taxes withheld	274,563	—	(2,255)	—	—	(2,255)
Stock-based compensation	—	—	3,524	—	—	3,524
Claims settlement under Section 16(b)	—	—	2,151	—	—	2,151
Issuance of warrants	—	—	184	—	—	184
Other comprehensive income	—	—	—	934	—	934
Net loss	—	—	—	—	(39,405)	(39,405)
Balance, March 31, 2020	59,458,852	$ 59	$ 857,038	$ 1,613	$ (904,421)	$ (45,711)
Exercise of stock options	396,379	1	3,333	—	—	3,334
Stock-based compensation	—	—	4,527	—	—	4,527
Issuance of common stock under Employee Stock Purchase Plan	86,839	—	826	—	—	826
Other comprehensive loss	—	—	—	(276)	—	(276)
Net loss	—	—	—	—	(40,780)	(40,780)
Balance, June 30, 2020	59,942,070	$ 60	$ 865,724	$ 1,337	$ (945,201)	$ (78,080)
Exercise of stock options	171,363	—	1,227	—	—	1,227
Exercise of warrants	95,932	—	—	—	—	-
Stock-based compensation	—	—	4,692	—	—	4,692
Underwritten public offering of common stock, net of discounts, commissions and offering cost	8,385,417	8	188,875	—	—	188,883
Issuance of common stock upon private placement	2,000,000	2	36,435	—	—	36,437
Other comprehensive loss	—	—	—	(379)	—	(379)
Net loss	—	—	—	—	(3,175)	(3,175)
Balance, September 30, 2020	70,594,782	$ 70	$ 1,096,953	$ 958	$ (948,376)	$ 149,605

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount				
Balance, December 31, 2018	54,717,906	$ 55	$ 768,703	$ 500	$ (743,324)	$ 25,934
Exercise of stock options	5,116	—	31	—	—	31
Vesting of restricted stock units, net of taxes withheld	165,347	—	(732)	—	—	(732)
Stock-based compensation	—	—	2,282	—	—	2,282
Issuance of common stock under at-the-market offering, net of issuance costs	562,811	—	5,117	—	—	5,117
Other comprehensive income	—	—	—	106	—	106
Net loss	—	—	—	—	(29,366)	(29,366)
Balance, March 31, 2019	55,451,180	$ 55	$ 775,401	$ 606	$ (772,690)	$ 3,372
Exercise of stock options	62,356	—	441	—	—	441
Stock-based compensation	—	—	2,819	—	—	2,819
Issuance of common stock under at-the-market offering, net of issuance costs	2,449,984	3	19,694	—	—	19,697
Issuance of common stock under Employee Stock Purchase Plan	92,975	—	548	—	—	548
Issuance of warrants	—	—	185	—	—	185
Other comprehensive income	—	—	—	155	—	155
Net loss	—	—	—	—	(32,113)	(32,113)
Balance, June 30, 2019	58,056,495	$ 58	$ 799,088	$ 761	$ (804,803)	$ (4,896)
Exercise of stock options	53,350	—	459	—	—	459
Stock-based compensation	—	—	2,783	—	—	2,783
Issuance of common stock under at-the-market offering, net of issuance costs	972,054	1	11,399	—	—	11,400
Other comprehensive loss	—	—	—	(42)	—	(42)
Net loss	—	—	—	—	(29,573)	(29,573)
Balance, September 30, 2019	59,081,899	$ 59	$ 813,729	$ 719	$ (834,376)	$ (19,869)

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

CYTOKINETICS, INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands) (Unaudited)

	Nine Months Ended	
	September 30, 2020	September 30, 2019
Cash flows from operating activities:		
Net loss	$ (83,360)	$ (91,052)
Adjustments to reconcile net loss to net cash used in operating activities:		
Non-cash interest expense on liability related to sale of future royalties	17,119	15,204
Non-cash stock-based compensation expense	12,743	7,884
Depreciation and amortization of property and equipment	1,360	902
Interest receivable and amortization on investments	(402)	(1,583)
Non-cash interest expense related to debt	4,949	807
Changes in operating assets and liabilities:		
Accounts receivable	198	(4,345)
Contract assets	—	4,554
Prepaid and other current assets	294	(1,745)
Operating lease right-of-use assets and other assets	3,126	2,631
Accounts payable	(1,422)	(352)
Accrued and other liabilities	5,645	(1,903)
Operating lease liabilities	(3,457)	(2,854)
Net cash used in operating activities	(43,207)	(71,852)
Cash flows from investing activities:		
Purchases of investments	(166,547)	(141,798)
Maturities of investments	148,147	170,474
Sales of investments	—	3,196
Purchases of property and equipment	(4,497)	(1,313)
Net cash (used in) provided by investing activities	(22,897)	30,559
Cash flows from financing activities:		
Proceeds from public offerings of common stock, net of discounts, commissions and offering cost	188,883	—
Proceeds from private placement, net	36,225	—
Proceeds from stock-based award activities, net	3,224	747
Claims settlement under Section 16(b)	2,151	—
Net proceeds from long-term debt, net of debt discount and issuance cost	—	1,710
Issuance of common stock under at-the-market offering, net of issuance costs	—	36,214
Net cash provided by financing activities	230,483	38,671
Net increase (decrease) in cash and cash equivalents	164,379	(2,622)
Cash and cash equivalents, beginning of period	36,433	42,256
Cash and cash equivalents, end of period	$ 200,812	$ 39,634
Non-cash investing and financing activities:		
Right-of-use assets recognized in exchange for lease obligations	$ 1,106	$ 10,687

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

CYTOKINETICS, INCORPORATED
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1 — Organization and Significant Accounting Policies

Cytokinetics, Incorporated (the "Company", "we" or "our") was incorporated under the laws of the state of Delaware on August 5, 1997. The Company is a late stage biopharmaceutical company focused on the discovery and development of novel small molecule therapeutics that modulate muscle function for the potential treatment of serious diseases and medical conditions.

Our financial statements contemplate the conduct of our operations in the normal course of business. We have incurred an accumulated deficit of $948.4 million since inception and there can be no assurance that we will attain profitability. The Company anticipates that it will have operating losses and net cash outflows in future periods.

We are subject to risks common to late stage biopharmaceutical companies including, but not limited to, development of new drug candidates, dependence on key personnel, and the ability to obtain additional capital as needed to fund our future plans. Our liquidity will be impaired if sufficient additional capital is not available on terms acceptable to us. To date, we have funded operations primarily through sales of our common stock, contract payments under our collaboration agreements, sale of future royalties, debt financing arrangements and issuances, government grants and interest income. Until we achieve profitable operations, we intend to continue to fund operations through payments from strategic collaborations, additional sales of equity and debt securities, grants and debt financings. We have never generated revenues from commercial sales of our drugs and may not have drugs to market for at least several years, if ever. Our success is dependent on our ability to enter into new strategic collaborations and/or raise additional capital and to successfully develop and market one or more of our drug candidates. As a result, we may choose to raise additional capital through equity or debt financings to continue to fund operations in the future. We cannot be certain that sufficient funds will be available from such a financing or through a collaborator when required or on satisfactory terms. Additionally, there can be no assurance that our drug candidates will be accepted in the marketplace or that any future products can be developed or manufactured at an acceptable cost. These factors could have a material adverse effect on our future financial results, financial position and cash flows.

Based on the current status of our research and development activities, we believe that our existing cash, cash equivalents and investments will be sufficient to fund cash requirements for at least the next 12 months from the filing date of this Quarterly Report on Form 10-Q. If, at any time, our prospects for financing research and development programs decline, we may decide to reduce research and development expenses by delaying, discontinuing or reducing funding of one or more of our research or development programs. Alternatively, we might raise funds through strategic collaborations, public or private financings or other arrangements. Such funding, if needed, may not be available on favorable terms, or at all. These financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis of Presentation

Our condensed consolidated financial statements include the accounts of Cytokinetics and our wholly-owned subsidiary. The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") for interim financial information and the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. The financial statements include all adjustments (consisting only of normal recurring adjustments) that management believes are necessary for the fair statement of our financial information. These interim results are not necessarily indicative of results to be expected for the full fiscal year or any future interim period. The balance sheet as of December 31, 2019 has been derived from the audited financial statements at that date, but does not include all of the information and footnotes required by GAAP for complete financial statements. The financial statements and related disclosures have been prepared with the presumption that users of the interim financial statements have read or have access to the audited financial statements for the preceding fiscal year. Accordingly, these financial statements should be read in conjunction with the audited financial statements and notes thereto contained in the Company's Form 10-K for the year ended December 31, 2019, as filed with the Securities and Exchange Commission.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the condensed consolidated financial statements and reported amounts of revenues and expenses during the reporting periods. We evaluate our estimates on an ongoing basis. We base our estimates on our historical experience and also on assumptions that we believe are reasonable; however, actual results could significantly differ from those estimates.

Recent Accounting Pronouncements

In June 2016, the Financial Accounting Standards Board ("FASB") issued ASU 2016-13, *'Financial Instruments — Credit Losses — Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"), which requires that financial assets measured at amortized cost be presented at the net amount expected to be collected. The measurement of expected credit losses is based on historical experience, current conditions, and reasonable and supportable forecasts that affect collectability. ASU 2016-13 also eliminates the concept of "other-than-temporary" impairment when evaluating available-for-sale debt securities and instead focuses on determining whether any impairment is a result of a credit loss or other factors. An entity will recognize an allowance for credit losses on available-for-sale debt securities rather than an other-than-temporary impairment that reduces the cost basis of the investment. ASU 2016-13 is effective for annual and interim reporting periods beginning after December 15, 2019. We adopted ASU 2016-13 as of January 1, 2020 and the adoption did not have a material impact on the Condensed Consolidated Financial Statements.

In November 2018, the FASB issued ASU 2018-18, *Collaborative Arrangements (Topic 808): Clarifying the Interaction between Topic 808 and Topic 606* ("ASU 2018-18"), which makes targeted improvements to clarify the interaction between Topic 808, *Collaborative Arrangements*, and Topic 606, *Revenue from Contracts with Customers*. ASU 2018-18 is effective for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. We adopted ASU 2018-18 on January 1, 2020 and the adoption did not have a material impact on the Condensed Consolidated Financial Statements.

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting* ("ASU 2020-04'). ASU 2020-04 provides optional guidance for a limited period of time to ease the potential burden associated with the expected market transition from the London Inter-Bank Offer Rate ("LIBOR") to alternative reference rates. Companies can apply ASU 2020-04 immediately, however the guidance will only be available until December 31, 2022. The Company's term loan utilizes LIBOR as the reference rate and we are currently evaluating the impact that adopting this new accounting standard will have on our Condensed Consolidated Financial Statements and related disclosures.

In August 2020, the FASB issued ASU 2020-06, *Debt-Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity* ("ASU 2020-06"). ASU 2020-06 amends the guidance on convertible instruments and the derivatives scope exception for contracts in an entity's own equity, and also improves and amends the related earnings per share guidance. ASU 2020-06 will be effective for annual reporting periods after December 15, 2021 and interim periods within those annual periods and early adoption is permitted. We are currently evaluating the impact that adopting this new accounting standard will have on our Condensed Consolidated Financial Statements and related disclosures.

Note 2 — Net Loss Per Share

We excluded the following from diluted net loss per share because inclusion would have been antidilutive (in thousands):

	September 30, 2020	September 30, 2019
Options to purchase common stock	8,805	7,787
Warrants to purchase common stock	62	165
Restricted stock and performance units	1,124	867
Shares issuable related to the ESPP	36	75
Shares issuable upon conversion of convertible notes	16,675	—
Total shares	26,702	8,894

Note 3 — Research and Development Arrangements

Amgen Inc. ("Amgen")

We and Amgen continue activities related to novel small molecule therapeutics, including omecamtiv mecarbil, that activate cardiac muscle contractility for potential applications in the treatment of heart failure under the collaboration and option agreement between the Company and Amgen dated December 29, 2006, as amended (the "Amgen Agreement").

Under the Amgen Agreement, we are eligible to receive over $300.0 million in additional development milestone payments based on various clinical milestones, including the initiation of certain clinical studies, the submission of an application for marketing authorization for a drug candidate to certain regulatory authorities and the receipt of such approvals. Additionally, we are eligible to receive up to $300.0 million in commercial milestone payments provided certain sales targets are met. Due to the nature of drug development, including the inherent risk of development and approval of drug candidates by regulatory authorities, we cannot estimate if and when these milestone payments could be achieved or become due and, accordingly, we consider the milestone payments to be constrained and exclude the milestone payments from the transaction price.

In 2018, we paid Amgen $18.8 million and completed the exercise of our option under the Amgen Agreement to co-invest $40.0 million in the Phase 3 development program of omecamtiv mecarbil in exchange for a total incremental royalty from Amgen of up to 4% on increasing worldwide sales of omecamtiv mecarbil outside Japan (the “Co-Invest Option”).

On October 8, 2020, we, Amgen and Servier announced topline results from GALACTIC-HF. The results of GALACTIC-HF show that treatment with omecamtiv mecarbil achieved the primary composite efficacy endpoint and demonstrated a statistically significant effect to reduce cardiovascular (“CV”) death or heart failure events (heart failure hospitalization and other urgent treatment for heart failure), compared to placebo in patients treated with standard of care (HR: 0.92; 95% CI: 0.86, 0.99, p-0.025). No reduction in the secondary endpoint of CV death was observed. Adverse events, including major ischemic cardiac events, were balanced between treatment arms. Additional analyses of data are underway and primary results from GALACTIC-HF will be presented at the American Heart Association (AHA) Scientific Sessions 2020, in a virtual Late Breaking Clinical Trial session on Friday, November 13, 2020 from 10:35-10:45 a.m. CDT.

We recognize research and development revenue for reimbursements from Amgen of both internal costs of certain full-time employee equivalents and other costs related to the Amgen Agreement. Research and development revenue from Amgen of $3.8 million and $3.5 million for the three months ended September 30, 2020 and 2019, respectively, and $8.3 million and $10.5 million for the nine months ended September 30, 2020 and 2019, respectively, and consists of reimbursement of costs we incurred related to METEORIC-HF (**M**ulticenter **E**xercise **T**olerance **E**valuation of **O**mecamtiv Mecarbil **R**elated to **I**ncreased **C**ontractility in **H**eart **F**ailure), a Phase 3 clinical trial intended to evaluate the potential of omecamtiv mecarbil to increase exercise performance.

We had accounts receivable of $3.8 million from Amgen as of September 30, 2020 and $3.3 million as of December 31, 2019.

Astellas Pharma Inc. (“Astellas”)

We and Astellas entered into that certain License and Collaboration Agreement, dated June 21, 2013 (as subsequently amended and restated, the “Astellas Agreement”) focused on the research, development, and commercialization of skeletal muscle activators.

In 2014, we and Astellas amended and restated the Astellas Agreement and expanded the objective of the collaboration to include spinal muscular atrophy (“SMA”) and potentially other neuromuscular indications for reldesemtiv and other fast skeletal muscle troponin activators (“FSTAs”).

In 2016, we and Astellas amended the Astellas Agreement (the “2016 Astellas Amendment”) to expand the collaboration to include the development of reldesemtiv for the potential treatment of amyotrophic lateral sclerosis (“ALS”), as well as the possible development in ALS of other FSTAs previously licensed by us to Astellas, and Astellas paid us a $35.0 million non-refundable upfront amendment fee and an accelerated $15.0 million milestone payment for the initiation of the first Phase 2 clinical trial of reldesemtiv in ALS that was otherwise provided for in the Astellas Agreement, as if such milestone had been achieved upon the execution of the 2016 Astellas Amendment, and committed research and development consideration of $44.2 million, for total consideration of $94.2 million.

On April 23, 2020, we and Astellas entered into the two agreements referenced below which, taken together, amend and restate the Company’s research, development and commercialization collaboration with Astellas under the Astellas Agreement.

Fast Skeletal Regulatory Activator Agreement

The Company and Astellas entered into that certain Fast Skeletal Regulatory Activator Agreement, dated April 23, 2020 (the “Astellas FSRA Agreement”). As a result of the Astellas FSRA Agreement, the Company will now have exclusive control and responsibility for the Company's future development and commercialization of reldesemtiv, CK-601 and other fast skeletal regulatory activator (collectively “FSRA”) compounds and products, and accordingly, Astellas has agreed to terminate its license to all FSRA compounds and related products.

Under the Astellas FSRA Agreement, Astellas has agreed to pay one-third of the out-of-pocket clinical development costs which may be incurred in connection with the Company's potential Phase 3 clinical trial of reldesemtiv in ALS, up to a maximum contribution by Astellas of $12 million. In addition, Astellas has agreed to non-cash contributions to the Company, which include the transfer of its existing inventories of active pharmaceutical ingredient of reldesemtiv and CK-601. Astellas has also agreed to the continued conduct of ongoing stability studies pertaining to such existing inventories of active pharmaceutical ingredient, at Astellas' cost. In exchange, the Company will pay Astellas a low- to mid- single digit royalty on sales of reldesemtiv in the United States, Canada, United Kingdom and the European Union until the later of (i) ten years following the first commercial sale of such product in a major market country, or (ii) December 31, 2034, subject to certain royalty reduction provisions. The Company would not owe Astellas royalties on sales of reldesemtiv in any other country, or on the sale of any FSRA compounds or related products other than reldesemtiv.

License and Collaboration Agreement for Other Skeletal Sarcomere Activators

The Company and Astellas also entered into that certain License and Collaboration Agreement for Other Skeletal Sarcomere Activators, dated April 23, 2020 (the "Astellas OSSA Agreement"), which is an amendment and restatement of the Astellas Agreement and removes the FSRA compounds and related products from the collaboration.

Under the Astellas OSSA Agreement, additional research and early and late state development milestone payments for research and clinical milestones, including the initiation of certain clinical studies, the submission of an application for marketing authorization for a drug candidate to certain regulatory authorities and the commercial launch of collaboration products could total up to $250.0 million, except under certain scenarios. Additionally, $200.0 million in commercial milestones could be received under the Astellas OSSA Agreement provided certain sales targets are met. We are eligible to receive $1.0 million in research milestone payments under the collaboration for each future potential drug candidate. Due to the nature of drug development, including the inherent risk of development and approval of drug candidates by regulatory authorities, it is not possible to estimate if and when these milestone payments could be achieved or become due.

We continue to recognize research revenue for reimbursements from Astellas of internal costs of certain full-time employee equivalents, supporting collaborative research and development programs, and of other costs related to those programs. Research and development revenue from Astellas was $1.4 million and $2.5 million for the three months ended September 30, 2020 and 2019 respectively, and $4.0 million and $11.2 million for the nine months ended September 30, 2020 and 2019.

We had accounts receivable due from Astellas of $1.1 million as of September 30, 2020 and $1.9 million as of December 31, 2019.

RTW Transactions

On July 14, 2020, we entered into a series of transactions as described below with third parties, including RTW Royalty Holdings Designated Activity Company ("RTW Royalty Holdings"), an entity affiliated with certain investment funds managed by RTW Investments, LP ("RTW"), and Ji Xing Pharmaceuticals Limited ("Ji Xing"), an affiliate of RTW, related to Cytokinetics' proprietary small molecule cardiac myosin inhibitor product referred to as CK-274 and other assets (together, the "RTW Transactions"). The RTW Transactions include entering into a licensing and collaboration agreement with Ji Xing, the sale of Cytokinetics common stock to the RTW Investors (as defined below), an agreement to sell to RTW Royalty Holdings our interest in certain future royalties on net sales of products containing the compound mavacamten that is being developed by MyoKardia, Inc,. and the ability for the Company to obtain additional funding in the future from RTW Royalty Holdings, upon the achievement of certain clinical trial milestones, in exchange for future royalty payments as further discussed below. As a result, we have or expect to receive a combination of committed capital, funding and sale proceeds from the RTW Royalty Investors, RTW Holdings and Ji Xing.

The RTW Transactions were entered into with parties that are affiliated and in contemplation of one another and, accordingly, we have assessed the accounting for these transactions in the aggregate. We concluded that there were three units of accounting in the RTW Transactions as further described below. The Company allocated the total consideration in accordance with *ASC 820, Fair Value Measurement* and *ASC 606 Revenue from Contracts with Customers* as follows (in thousands):

		Allocated Consideration
Units of Accounting:		
License and collaboration (residual)	$	36,501
Royalty (fair value)		87,000
Common stock (fair value)		36,499
Total consideration	$	160,000

License and Collaboration Agreement

We entered into a License and Collaboration Agreement (the "Ji Xing License Agreement") with Ji Xing, pursuant to which we granted to Ji Xing an exclusive license to develop and commercialize CK-274 in the greater China region. Under the terms of the Ji Xing License Agreement, we received from Ji Xing a nonrefundable upfront payment of $25.0 million. We may be eligible to receive from Ji Xing milestone payments totaling up to $200.0 million for the achievement of certain development and commercial milestone events in connection to CK-274 in the field of obstructive hypertrophic cardiomyopathy ("oHCM") and/or non-obstructive hypertrophic cardiomyopathy ("nHCM") and other indications. In addition, Ji Xing will pay us tiered royalties in the low-to-high teens range on the net sales of the products containing CK-274 in the greater China region, subject to certain reductions for generic competition, patent expiration and payments for licenses to third party patents.

Ji Xing will be responsible for the development and commercialization of CK-274 at its own cost and is required to use diligent efforts to develop and commercialize CK-274 in the greater China region. The development of CK-274 will be initially focused on hypertrophic cardiomyopathy, and Ji Xing will have the opportunity to participate in Cytokinetics' global pivotal clinical trials of CK-274. Cytokinetics or a designated supplier will supply CK-274 to Ji Xing either as a finished product or as an active pharmaceutical ingredient.

The Ji Xing License Agreement, unless terminated earlier, will continue on a market-by-market basis until expiration of the relevant royalty term. Ji Xing has the right to terminate the Ji Xing License Agreement for convenience. Each party may terminate the Ji Xing License Agreement for the other party's uncured material breach, insolvency, or failure to perform due to extended force majeure events. Cytokinetics may also terminate the Ji Xing License Agreement if Ji Xing challenges Cytokinetics' patents or undergoes certain change of control transactions. Rights granted to Ji Xing in relation to CK-274 will revert to Cytokinetics upon termination, and, under certain circumstances, subject to a low single digit royalty payment by the Company to Ji Xing on the net sales of the products containing the compound CK-274 in the greater China region.

We assessed this arrangement in accordance with *ASC 606* and concluded that there is one performance obligation relating to the license of functional intellectual property. The performance obligation was satisfied, and we recognized the residual allocation of arrangement consideration as revenue of $36.5 million for the three months ended September 30, 2020. Due to the nature of development, including the inherent risk of development and approval by regulatory authorities, we are unable to estimate if and when the development milestone payments could be achieved or become due and, accordingly, we consider the milestone payments to be fully constrained and exclude the milestone payments from the initial transaction price.

The consideration related to sales-based milestone payments, including royalties, will be recognized when the related sales occur under the sales- and usage-based royalty exception as these amounts have been determined to relate predominantly to the license.

We re-evaluate the probability of achievement of development milestones and any related constraints each reporting period. We will include consideration, without constraint, in the transaction price to the extent it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur.

We had no accounts receivable from Ji Xing as of September 30, 2020.

Royalty Purchase Agreement

We entered into a Royalty Purchase Agreement (the "Royalty Purchase Agreement") with RTW Royalty Holdings, pursuant to which we will sell our right to receive certain payments on the net sales of products containing the compound mavacamten, a cardiac myosin inhibitor (the "Mavacamten Royalty"), under the Research Collaboration Agreement, dated August 24, 2012, between us and MyoKardia, Inc. ("MyoKardia") (as amended, the "Collaboration Agreement"), to RTW Royalty Holdings for a one-time payment of $85.0 million. The purchase price will be paid to us at closing, which is expected to occur upon fulfillment of certain closing conditions. The closing of the transaction contemplated by the Royalty Purchase Agreement is subject to customary closing conditions, and subject to the parties obtaining the consent of MyoKardia to the sale of the Mavacamten Royalty to RTW Royalty Holdings, as well as obtaining the consent of the Company's senior secured lenders, Oxford Finance LLC and Silicon Valley Bank (collectively the "Lenders"). On July 16, 2020, the Company and the Lenders entered into an amendment to the Term Loan Agreement, as defined in Note 7, pursuant to which the Lenders granted their consent to the consummation of the transactions contemplated by the Royalty Purchase Agreement. The closing under the Royalty Purchase Agreement was initially expected to occur on or before October 12, 2020. Since the closing conditions under the Royalty Purchase Agreement have not been fulfilled on or before October 12, 2020, the parties have agreed to extend the date by which the closing conditions must be fulfilled until November 11, 2020 and may, but have no obligation to, agree to further extensions, if necessary.

We accounted for the sale of our right as deferred revenue under *ASC 470 Debt*, because: the arrangement is a sale of our future right to receive royalties, we don't have any significant continuing involvement; the one-time payment is not required to be paid back to RTW Royalty Holdings; the investor's return is not limited and will be driven by net sales; and RTW Royalty Holdings does not have any recourse to the Company's assets.

The allocation of the consideration resulted in $87.0 million allocated to the Royalty Purchase Agreement representing its fair value. The fair value was determined using an income approach method based on management's estimates of the discounted cash flows to be received over the term of the related royalty agreement, which are Level 3 fair value inputs. Management's estimates included significant unobservable inputs. These inputs are derived using internal management estimates developed based on third party data and reflect management's judgements, current market conditions surrounding competing products, and forecasts. The significant unobservable inputs include the estimated patient population, estimated selling price, estimated peak sales and sales ramp, the expected term of the royalty stream, and timing of the expected launch. We did not record the receivable and deferred revenue of $85.0 million as of September 30, 2020 as the closing conditions have not been fulfilled. The remaining allocated consideration to Royalty Purchase Agreement representing deferred revenue of $2.0 million was recorded as of September 30, 2020. The amount recorded as deferred revenue in addition to the future receipt of $85.0 million will be amortized using the units-of-revenue method. Under the units-of-revenue method, amortization for a period is calculated by computing a ratio of the proceeds received from the investor to the total payments expected to be made to the investor over the term of the agreement, and then applying that ratio to the period's cash payment. We will record any adjustments due to changes in the underlying royalties on a cumulative catch up basis.

Common Stock Purchase Agreement

On July 14, 2020, we entered into Common Stock Purchase Agreements (each, a "CSPA") with each of RTW Master Fund, Ltd., RTW Innovation Master Fund, Ltd. and RTW Venture Fund Limited (collectively, the "RTW Investors").The CSPAs provide for the sale and issuance of an aggregate of 2.0 million shares of common stock of Cytokinetics (the "Shares") at a price per share of $25.00 and an aggregate purchase price of $50.0 million. The closing occurred on July 14, 2020. The RTW Investors have agreed to certain trading and other restrictions with respect to the Shares, including a restriction on sales or other transfers of the Shares, subject to certain exceptions, for a period of two years from the closing date, which period will be extended if certain conditions are met. The restrictions resulted in a premium paid by RTW investors of $13.5 million which represents the excess amount paid over the fair value of the shares. The premium was determined by analyzing the holding period discount applied to the 30-day average stock price as of July 14, 2020, which are Level 2 fair value inputs. The cash received less the calculated premium is the $36.5 million fair value of the common stock recorded.

Funding Agreement

We entered into a Funding Agreement (the "Funding Agreement") with RTW Royalty Holdings. Pursuant to the Funding Agreement, RTW Royalty Holdings has committed to provide up to $90.0 million (the "Funding Commitment"), to fund our development and commercialization of CK-274 in nHCM and oHCM. Half of the Funding Commitment will be available, at our option, if certain clinical trial milestones of CK-274 for oHCM are achieved by January 14, 2023, and the remaining $45.0 million of the Funding Commitment will be available, at our option, if certain clinical trial milestones of CK-274 for nHCM are achieved by January 14, 2024. If we develop CK-274 in another indication, we will negotiate an additional funding commitment from RTW to fund our development and commercialization of CK-274 in such other indication (other than oHCM or nHCM).

In exchange for the Funding Commitment and upon receipt of such funding from RTW Royalty Holdings, we have agreed to make payments to RTW Royalty Holdings equal to 2%, if RTW Royalty Holdings funds $45.0 million of the Funding Commitment, or 4%, if RTW Royalty Holdings funds the full $90.0 million of the Funding Commitment, in each case in respect of net sales of CK-274 by us and any of our licensees in the United States, the European Union, Switzerland, the United Kingdom and certain other countries in Europe (collectively referred to as the "CK-274 Territory"). In addition, should we exercise our option draw borrowings pursuant to the Funding Agreement, such agreement contains certain covenants applicable to us, including, among other things, development and commercialization diligence obligations in connection to the CK-274 Territory, use of proceeds, reporting and encumbrances. There are no performance obligations related to the Funding Agreement, as access to the Funding Commitment is at the option of the Company and based upon the achievement of certain development milestones.

The Funding Agreement contains customary conditions to disbursement, which may include the consent of our senior secured lenders, Oxford and SVB, at the time of disbursement. On July 16, 2020, we entered into an amendment to the Term Loan Agreement, as defined in Note 7, which permits, subject to entry into an intercreditor agreement between Oxford and RTW in form and substance reasonably satisfactory to the Lenders and RTW, the draw of funding under the Funding Agreement and the grant of a security interest to RTW in the intellectual property located in the United States and accounts receivable related to CK-274 thereunder.

The Company granted RTW Royalty Holdings a security interest in all of its right, title and interest in, to certain intellectual property, accounts receivable and any proceeds from such collateral. The security interest will automatically terminate when total net payments made to RTW Royalty Holdings exceed a certain agreed threshold.

We incurred debt issuance costs of $0.2 million associated with the Funding Commitment which primarily consisting of legal fees. The debt issuance costs are presented as other long-term assets in the consolidated balance sheet and will be presented as a direct reduction from the liability once we draw on the Funding Commitment in the future.

Note 4 — Fair Value Measurements

We value our financial assets and liabilities at fair value, defined as the price that would be received for assets when sold or paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). We utilize market data or assumptions that we believe market participants would use in pricing the asset or liability, including assumptions about risk and the risks inherent in the inputs to the valuation technique. These inputs can be readily observable, market corroborated or generally unobservable.

We primarily apply the market approach for recurring fair value measurements and endeavor to utilize the best information reasonably available. Accordingly, we use valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible, and consider the security issuers' and the third-party issuers' credit risk in our assessment of fair value.

We classify fair value based on the observability of those inputs using a hierarchy that prioritizes the inputs used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurement) and the lowest priority to unobservable inputs (Level 3 measurement):

Level 1 — Observable inputs, such as quoted prices in active markets for identical assets or liabilities;

Level 2 — Inputs, other than the quoted prices in active markets, that are observable either directly or through corroboration with observable market data; and

Level 3 — Unobservable inputs, for which there is little or no market data for the assets or liabilities, such as internally-developed valuation models.

Fair value of financial assets:

The follow tables set forth the fair value of our financial assets, which consists of cash equivalents and investments classified as available-for-sale securities, that were measured on a recurring basis (in thousands):

		September 30, 2020			
	Fair Value Hierarchy Level	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
Money market funds	Level 1	$ 189,389	$ —	$ —	$ 189,389
U.S. Treasury securities	Level 1	159,498	343	—	159,841
Agency bonds	Level 2	43,491	6	(2)	43,495
Commercial paper	Level 2	19,076	1	—	19,077
Corporate obligations	Level 2	35,173	38	(1)	35,210
		$ 446,627	$ 388	$ (3)	$ 447,012

		December 31, 2019			
	Fair Value Hierarchy Level	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
Money market funds	Level 1	$ 31,535	$ —	$ —	$ 31,535
U.S. Treasury securities	Level 1	134,845	72	(1)	134,916
Agency bonds	Level 2	47,024	23	(9)	47,038
Commercial paper	Level 2	10,435	4	—	10,439
Corporate obligations	Level 2	40,426	24	(7)	40,443
		$ 264,265	$ 123	$ (17)	$ 264,371

Interest income, net was $1.1 million and $1.0 million for three months ended September 30, 2020 and 2019, respectively, and $3.2 million and $3.2 million for the nine months ended September 30, 2020 and 2019, respectively.

Investments available for sale as of September 30, 2020 and December 31, 2019 exclude an investment in equity classified as a Level 1 investment in our short-term investments with a fair value of $1.9 million and $1.0 million, respectively. For the three months ended September 30, 2020 and 2019, we recognized an unrealized gain of $0.5 million and an immaterial unrealized gain, respectively, for this Level 1 investment. For the nine months ended September 30, 2020 and 2019, we recognized an unrealized gain of $0.9 million and an immaterial unrealized gain, respectively, for this Level 1 investment. As of September 30, 2020, unrealized losses were not due to changes in credit risk and we believe investments with unrealized losses would be held until maturity.

No credit losses on debt securities were recorded during the three or nine months ended September 30, 2020 or 2019. In its evaluation to determine expected credit losses, management considered all available historical and current information, expectations of future economic conditions, the type of security, the credit rating of the security, and the size of the loss position, as well as other relevant information. The Company does not intend to sell, and is unlikely to be required to sell, any of these available-for-sale investments before their effective maturity or market price recovery.

The carrying amount of our accounts receivable and accounts payable approximates fair value due to the short-term nature of these instruments.

Fair value of financial liabilities:

As of September 30, 2020 and December 31, 2019, the fair value of our term loan approximated its carrying value of $45.9 million and $45.1 million, respectively, because it is carried at a market observable interest rate, which is a Level 2 input (see Note 7 – “Debt”).

As of September 30, 2020 and December 31, 2019, the estimated fair value of our convertible notes was $308.4 million and $170.6 million, respectively, and was based upon observable, Level 2 inputs, including pricing information from recent trades of the convertible notes (see Note 7 – “Debt”).

As of September 30, 2020 and December 31, 2019, the fair value of the liability related to the sale of future royalties is $160.4 million and $143.3 million, respectively, and is based on our current estimates of future royalties expected to be paid to RPI Finance Trust, an entity related to Royalty Pharma, over the life of the arrangement, which are considered Level 3 inputs (See Note 8 – “Liability Related to Sale of Future Royalties”).

There were no transfers between Level 1, Level 2, and Level 3 during the periods presented.

Note 5 — Balance Sheet Components

Accrued liabilities were as follows (in thousands):

	September 30, 2020	December 31, 2019
Accrued liabilities:		
Clinical and preclinical costs	$ 3,004	$ 2,215
Compensation related	10,045	8,343
Other accrued expenses	1,437	1,565
Total accrued liabilities	$ 14,486	$ 12,123

Note 6 — Leases

The lease for our existing facilities expires in 2021 and includes rental payments on a graduated scale and payment of certain operating expenses. As of September 30, 2020, the remaining lease term is 0.8 years and the discount rate used to determine the operating lease liability was 9.0%.

In July 2019, we amended the lease agreement in connection with our leasing of additional premises within the same office location (the “Expansion Lease”) for 9,530 square feet of office space. The Expansion Lease has an initial term of 39 months, and commenced in January 2020. As of September 30, 2020, the remaining lease term of the Expansion Lease is 2.5 years and the discount rate used to determine the operating lease liability was 11.5%.

In July 2019, we entered into a lease agreement for approximately 234,892 square feet of office and laboratory space at a facility located in South San Francisco, California (the "Oyster Point Lease"). The lease has an initial term of twelve years and may commence in the fourth quarter of 2021. We have two consecutive five-year options to extend the lease. Subject to rent abatement for the first two months of the lease, we will be required to pay $5.45 per square foot for 159,891 square feet for the first twelve months of the lease term, which will increase at a rate of 3.5% per year. After the first twelve months of the lease, rent will be payable on the entire leased square footage. A refundable security deposit of $5.1 million is also required as part of the lease. We paid fifty percent of the security deposit amount on December 31, 2019 and the remaining fifty percent is due in January 2021. The landlord will provide a tenant improvement allowance of $35.3 million for costs relating to the initial design and construction of the improvements. We will pay certain operating costs of the facility and have certain rights to sublease under the agreement. The total commitment of undiscounted lease payments for the Oyster Point lease was $217.7 million as of September 30, 2020.

The Company has not recognized a right-of-use asset or aggregate lease liability as of September 30, 2020 for the Oyster Point Lease as the underlying assets were unavailable for use by the Company at any time in the period ended September 30, 2020.

The undiscounted future non-cancellable lease payments under all of our lease agreements as of September 30, 2020 is as follows (in thousands):

Years ending December 31:		
2020 remainder	$	1,332
2021		4,616
2022		12,694
2023		16,195
2024		16,648
Thereafter		170,919
Total undiscounted future lease payments		222,404
Less: Undiscounted lease payments related to Oyster Point Lease		(217,667)
Less: Present value adjustments		(277)
Total lease liability	$	4,460

Cash paid for amounts included in the measurement of lease liabilities for the nine months ended September 30, 2020 and 2019 was $5.2 million and $3.5 million, respectively, and was included in net cash used in operating activities in our condensed consolidated statements of cash flows.

Rent expense was $1.4 million and $1.3 million for the three months ended September 30, 2020 and 2019 respectively, and $4.2 million and $3.8 million for the nine months ended September 30, 2020 and 2019, respectively.

Note 7 — Debt

Term Loan

Prior to May 17, 2019 we maintained a loan and security agreement dated as of October 19, 2015, as amended (the "Original Loan Agreement") with Oxford Finance LLC ("Oxford") and Silicon Valley Bank ("SVB") (Oxford and SVB, collectively the "Lenders") to fund our working capital and other general corporate needs.

Subsequently, we and the Lenders entered into that certain Loan and Security Agreement, dated May 17, 2019, as amended, (the "Term Loan Agreement") pursuant to which the Lenders made available to us a $45.0 million loan (the "Term Loan"). The proceeds of the Term Loan were used in part to repay in full all amounts outstanding under the Original Loan Agreement, an aggregate principal amount of $42.0 million.

The Term Loan was accounted for as a debt modification in a non-troubled debt restructuring, rather than a debt extinguishment, based on a comparison of the present value of the cash flows under the terms of the debt immediately before and after the effective date of the Term Loan, which resulted in a change of less than 10%. As a result, issuance costs paid to the Lenders in connection with the Term Loan were recorded as a reduction of the carrying amount of the debt liability and were not significant. Unamortized issuance costs as of the date of the modification were amortized to interest expense over the repayment term of Term Loan.

Both borrowings under the Original Loan Agreement and Term Loan Agreement bear interest at an annual rate equal to the greater of (a) 8.05% or (b) the sum of 6.81% plus the 30-day U.S. LIBOR rate. The borrowing under the Original Loan Agreement was repayable in monthly interest-only payments through November 2019 followed by 35 months of monthly payments of interest and principal. The borrowing under the Term Loan Agreement was initially repayable in monthly interest-only payments through December 31, 2020. The interest-only period was automatically extended until July 1, 2021 as a result of the Company's initiation of a Phase 2 trial for CK-274 in cardiomyopathy and will be extended through December 31, 2021 as a result of the achievement of positive results in GALACTIC-HF, the trial of omecamtiv mecarbil in chronic heart failure as announced on October 8, 2020. The ultimate interest-only period will be followed by equal monthly payments of principal and interest to the maturity date in December 2023. We are required to make a final payment upon loan maturity of 6.00% of the notes payable, which we accrete over the life of the Term Loan. Our obligations under the Term Loan Agreement are secured by substantially all our current and future assets, other than our intellectual property.

Interest expense for the Term Loan was $1.2 million and $1.3 million for the three months ended September 30, 2020 and 2019, respectively, and $3.7 million and $3.9 million for the nine months ended September 30, 2020 and 2019, respectively. As of September 30, 2020, the interest rate applicable to borrowings under the Term Loan was 8.05%.

The Term Loan Agreement contains customary representations and warranties and customary affirmative and negative covenants applicable to us and includes customary events of default, including but not limited to the nonpayment of principal or interest, violations of covenants and material adverse changes. Upon an event of default, the Lenders may, among other things, accelerate the loans and foreclose on the collateral. Our obligations under the Term Loan Agreement are secured by substantially all our current and future assets, other than our intellectual property. If the Term Loan becomes subject to mandatory prepayment under these provisions, we are subject to certain prepayment premiums of 3.00% in the first year, 2.00% in the second year and 1.00% in the third year and thereafter. We determined that these contingent prepayment provisions were an embedded component that qualified as a derivative which should be bifurcated from the Term Loan and accounted for separately from the host contract. As of September 30, 2020, the fair value of this embedded derivative was immaterial.

Future minimum payments under the Term Loan Agreement are (in thousands):

Years ending December 31:		
2020 remainder	$	916
2021		12,519
2022		20,264
2023		23,381
Future minimum payments		57,080
Less: Interest and final payment		(12,080)
Term Loan, gross	$	45,000

Convertible Notes

On November 13, 2019, the Company issued $138.0 million aggregate principal amount of 2026 Notes. The 2026 Notes are unsecured obligations and bear interest at an annual rate of 4.0% per year, payable semi-annually on May 15 and December 15 of each year, beginning May 15, 2020. The 2026 Notes are governed by an indenture between the Company and U.S. Bank National Association, as trustee. The 2026 Notes will mature on November 15, 2026, unless earlier repurchased or redeemed by the Company or converted at the option of the holders. The Company may redeem the 2026 Notes prior to the maturity date but is not required to and no sinking fund is provided for the 2026 Notes. The 2026 Notes may be converted, under certain circumstances as described below, based on an initial conversion rate of 94.7811 shares of common stock per $1,000 principal amount (which represents an initial conversion price of $10.55 per share). The conversion rate for the 2026 Notes will be subject to adjustment upon the occurrence of certain specified events. In addition, upon the occurrence of a make-whole fundamental change (as defined in the indenture), the Company will, in certain circumstances, increase the conversion rate by a number of additional shares for a holder that elects to convert its notes in connection with such make-whole fundamental change. The Company received approximately $133.9 million in net proceeds, after deducting the initial purchasers' discount, from the issuance of the 2026 Notes.

The 2026 Notes may be converted at the option of the holder under any of the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on March 31, 2020 (and only during such calendar quarter), if the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter exceeds 127.5% of the last reported sale price of the Company's common stock on November 7, 2019; (2) during the 5 consecutive business days immediately after any 10 consecutive trading day period (such 10 consecutive trading day period, the "measurement period") if the trading price per $1,000 principal amount of 2026 Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price per share of the Company's common stock on such trading day and the conversion rate on such trading day; (3) upon the occurrence of certain corporate events or distributions on the Company's common stock; (4) if the Company calls the 2026 Notes for redemption; and (5) at any time from, and including, July 15, 2026 until the close of business on the scheduled trading day immediately before the maturity date, November 15, 2026. The Company will settle conversions by paying or delivering, as applicable, cash, shares of the Company's common stock, or a combination of cash and shares of the Company's common stock, at the Company's election, based on the applicable conversion rate.

The 2026 Notes will be redeemable, in whole or in part, at the Company's option at any time, and from time to time, on or after November 20, 2023 and, in the case of any partial redemption, on or before the 60th scheduled trading day before the maturity date, at a cash redemption price equal to the principal amount of the 2026 Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date but only if the last reported sale price per share of the Company's common stock exceeds 130% of the conversion price on (1) each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related redemption notice; and (2) the trading day immediately before the date the Company sends such notice. If a "fundamental change" (as defined in the indenture) occurs, then, subject to certain exceptions, holders may require the Company to repurchase their 2026 Notes at a cash repurchase price equal to the principal amount of the 2026 Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date.

In accounting for the issuance of the 2026 Notes, the Company separated the 2026 Notes into liability and equity components. The carrying amount of the liability component of approximately $84.2 million was calculated by using a discount rate of 12.0%, which was estimated to be the Company's borrowing rate on the date of the issuance of the notes for a similar debt instrument without the conversion feature. The carrying amount of the equity component of approximately $49.5 million, representing the conversion option, was determined by deducting the fair value of the liability component from the par value of the 2026 Notes. The equity component of the 2026 Notes is included in additional paid-in capital in the consolidated balance sheets and is not remeasured as long as it continues to meet the conditions for equity classification. The difference between the principal amount of the 2026 Notes and the liability component (the "debt discount") is amortized to interest expense using the effective interest method over the term of the 2026 Notes.

Debt issuance costs for the issuance of the 2026 Notes were approximately $5.0 million, consisting of initial purchasers' discount and other issuance costs. In accounting for the transaction costs, the Company allocated the total amount incurred to the liability and equity components using the same proportions as the proceeds from the 2026 Notes. Transaction costs attributable to the liability component were approximately $3.1 million, were recorded as debt issuance cost (presented as contra debt in the consolidated balance sheet) and are being amortized to interest expense over the term of the 2026 Notes. The transaction costs attributable to the equity component were approximately $1.9 million and were netted with the equity component in stockholders' equity. As of September 30, 2020, the unamortized debt issuance cost for the 2026 Notes was $2.9 million on the consolidated balance sheet.

The following table presents the total amount of interest cost recognized relating to the 2026 Notes (in thousands):

	Three months ended September 30, 2020	Nine months ended September 30, 2020
Contractual interest expense	$ 1,380	$ 4,140
Amortization of debt discount	1,346	3,859
Amortization of debt issuance costs	13	38
Total interest costs recognized	$ 2,739	$ 8,037

The effective interest rate on the liability component of the 2026 Notes was 12.5% for the year ended September 30, 2020, which remains unchanged from the date of issuance. The remaining unamortized debt discount was $47.0 million as of September 30, 2020, and will be amortized over approximately 6.2 years. The if-converted value of the 2026 Notes exceeded its principal amount by $223.0 million as of September 30, 2020.

Capped Call Transactions

In connection with the offering of the 2026 Notes, the Company entered into privately-negotiated capped call transactions with one of the underwriters in the offering or its affiliate. The Company used approximately $13.4 million of the net proceeds from the offering of the 2026 Notes to pay the cost of the capped call transactions. The capped call transactions are expected generally to reduce potential dilution to the Company's common stock upon any conversion of the 2026 Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted 2026 Notes, as the case may be, in the event that the market value per share of the Company's common stock, as measured under the terms of the capped call transactions at the time of exercise, is greater than the strike price of the capped call transactions (which initially corresponds to the initial conversion price of the 2026 Notes, and is subject to certain adjustments), with such reduction and/or offset subject to a cap initially equal to approximately $14.07 per share (which represents a premium of approximately 70% over the last reported sale price of the Company's common stock on November 7, 2019), subject to certain adjustments. The capped call transactions are separate transactions, entered into by the Company and are not part of the terms of the 2026 Notes.

Given that the transactions meet certain accounting criteria, the convertible note capped call transactions are recorded in stockholders' equity, and they are not accounted for as derivatives and are not remeasured each reporting period. As of September 30, 2020, the Company had not purchased any shares under the convertible note capped call transactions.

Note 8 — Liability Related to Sale of Future Royalties

In February 2017, we entered into a royalty purchase agreement (the "RPI Agreement") with RPI Finance Trust ("RPI") under which we sold a portion of our right to receive royalties on potential net sales of omecamtiv mecarbil (and potentially other compounds with the same mechanism of action) under the Amgen Agreement to RPI for a payment of $90.0 million, which is non-refundable even if omecamtiv mecarbil is never commercialized (the "RPI Royalty Monetization"). Under the Amgen Agreement, we are entitled to tiered royalties of 16.0% - 26.0% related to worldwide sales (excluding Japan) of omecamtiv mecarbil. Under the RPI Agreement, RPI is entitled to receive a royalty on omecamtiv mecarbil sales (and potentially other compounds with the same mechanism of action) that would have otherwise been payable to the Company from Amgen during the period from its commercialization through 2035. The royalty rate payable to RPI in respect of worldwide net sales of *omecamtiv mecarbil* is dependent upon the date of its marketing approval in the United States (4.5% payable if such marketing approval is obtained prior to July 1, 2022, subject to a potential increase of up to an additional 1% if there is a delay in such marketing approval). Concurrently, we entered into a common stock purchase agreement with RPI through which RPI purchased 875,656 shares of the Company's common stock for $10.0 million. We allocated the consideration and issuance costs on a relative fair value basis to the Liability related to the sale of future royalties (the "RPI Liability") and the common stock, which resulted in the RPI Liability being initially recognized at $92.3 million.

We account for the RPI Royalty Monetization as a liability primarily because we have significant continuing involvement in generating the royalty stream under the Amgen Agreement. If and when omecamtiv mecarbil is commercialized and royalties become payable under the Amgen Agreement, we will recognize the portion of royalties paid to RPI from Amgen as non-cash revenue with a corresponding decrease to the RPI Liability.

In order to amortize the RPI Liability, we estimate the future royalties to be paid by Amgen to RPI over the life of the arrangement. The excess of future estimated royalty payments over the $92.3 million of allocated proceeds, less issuance costs, is recognized as non-cash interest expense using the effective interest method. Consequently, we estimate an imputed rate of interest on the unamortized portion of the RPI Liability, which was approximately 15% as of September 30, 2020 and 17% as of December 31, 2019.

We periodically assess the amount and timing of expected royalty payments using a combination of internal projections and forecasts from external sources. To the extent such payments are greater or less than our initial estimates or the timing of such payments is materially different than its original estimates, we will prospectively adjust the amortization of the RPI Liability and the effective interest rate.

There are a number of factors that could materially affect the amount and timing of royalty payments from Amgen, most of which are not within our control. The RPI Liability is recognized using significant unobservable inputs. These inputs are derived using internal management estimates developed based on third party data, including data from Amgen who has primary commercialization responsibilities, and reflect management's judgements, current market conditions surrounding competing products, and forecasts. The significant unobservable inputs include the estimated patient population, estimated selling price, estimated peak sales and sales ramp, the expected term of the royalty stream, timing of the expected launch and its impact on the royalty rate as well as the overall probability of a successful Phase 3 trial. A significant change in unobservable inputs could result in a material increase or decrease to the effective interest rate of the RPI Liability. We have updated the analysis to include the data released on October 8, 2020 relating to the GALACTIC-HF trial.

Changes to the RPI Liability related to the sale of future royalties are as follows (in thousands):

	2020	2019
Beginning balance, January 1	$ 143,276	$ 122,473
Interest accretion	5,689	4,819
Amortization of issuance costs	18	16
Ending balance, March 31	148,983	127,308
Interest accretion	5,912	5,064
Amortization of issuance costs	19	16
Ending balance, June 30	154,914	132,388
Interest accretion	5,461	5,321
Amortization of issuance costs	20	17
Ending balance, September 30	$ 160,395	$ 137,726

We recognized $5.5 million and $5.3 million in non-cash interest expense for the three months ended September 30, 2020 and 2019, respectively, and $17.1 million and $15.2 million for the nine months ended September 30, 2020 and 2019, respectively, related to the RPI Agreement.

Note 9 — Stockholders' Equity

Common Stock Purchase Agreements

On July 14, 2020, we entered into Common Stock Purchase Agreements (each, a "CSPA") with each of RTW Master Fund, Ltd., RTW Innovation Master Fund, Ltd. and RTW Venture Fund Limited (collectively, the "RTW Investors").The CSPAs provide for the sale and issuance of an aggregate of 2.0 million shares of common stock of Cytokinetics (the "Shares") at a price per share of $25.00 and an aggregate purchase price of $50.0 million. The closing occurred on July 14, 2020. The RTW Investors have agreed to certain trading and other restrictions with respect to the Shares, including a restriction on sales or other transfers of the Shares, subject to certain exceptions, for a period of two years from the closing date, which period will be extended if certain conditions are met.

Public Offering of Common Stock

In July 2020, we closed an underwritten public offering of 8.4 million shares of our common stock at a public offering price per share of $24.00, which included the exercise in full by the underwriters of their option to purchase up to 1,093,750 shares of our common stock at the same price. The gross proceeds were $201.3 million and net proceeds were approximately $189 million, after deducting underwriting discounts, commissions and offering costs.

Equity Incentive Plan

In May 2019, the Company's stockholders approved an amendment to the Amended and Restated 2004 Equity Incentive Plan (the "2004 Plan") to increase the number of authorized shares reserved for issuance under the 2004 Plan by 4.1 million shares. In May 2020, the Company's board of directors approved an amendment to the 2004 Plan to increase the number of authorized shares reserved for issuance under the 2004 Plan by 0.8 million shares for inducement grants to new employees. We started granting inducement grants in September 2020. As of September 30, 2020, an insignificant number of stock options were granted and 2.7 million authorized shares were available for grant under the 2004 Plan.

Employee Stock Purchase Plan

In May 2020, the Company's stockholders approved an amendment to the 2015 Employee Stock Purchase Plan (the "ESPP") to increase the number of common stock shares reserved for issuance under the ESPP by 0.5 million shares. As of September 30, 2020, 0.5 million shares of common stock were reserved for issuance under the ESPP.

Warrants

During the first quarter of 2020, in connection with the Term Loan Agreement further described in Note 7, we issued a warrant with an exercise price of $10.42 per share to purchase 21,595 shares of our common stock. The warrant was issued in connection with achieving the interest-only extension milestone 1 in the Term Loan Agreement. The warrant was fully exercisable and expires in January 2030. The $0.2 million fair value of the warrant related to the Term Loan was recorded as interest expense in the period.

In July 2020, OTA LLC, an assignee of Oxford, exercised 51,214 warrants with a strike price of $6.59 per share, 48,892 warrants with a strike price of $6.903 per share, and 25,352 warrants with a strike price of $7.10 per share and elected the cashless settlement method. Accordingly, in July 2020, we issued to OTA LLC a total of 95,932 shares of our common stock.

As of September 30, 2020, we had outstanding warrants issued pursuant to the Original Loan Agreement and Term Loan Agreement with a weighted average exercise price of $9.26 per share to purchase 61,561 shares of our common stock.

Claims settlement

In the first quarter of 2020, we received $2.2 million from a claims settlement with certain institutional investors that were beneficial owners of our common stock related to the disgorgement of short swing profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended.

Note 10 – Subsequent Events

In October 2020, OTA LLC exercised 13,839 warrants with a strike price of $9.755 per share and elected cashless settlement method. Accordingly, in October 2020, we issued OTA LLC a total of 8,958 shares of our common stock.

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

This discussion and analysis should be read in conjunction with our financial statements and accompanying notes included elsewhere in this report. Operating results are not necessarily indicative of results that may occur in future periods.

This report contains forward-looking statements indicating expectations about future performance and other forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the Private Securities Litigation Reform Act of 1995, that involve risks and uncertainties. We intend that such statements be protected by the safe harbor created thereby. Forward-looking statements involve risks and uncertainties and our actual results and the timing of events may differ significantly from the results discussed in the forward-looking statements. Examples of such forward-looking statements include, but are not limited to, statements about or relating to:

- guidance concerning revenues, research and development expenses and general and administrative expenses for 2020;
- the sufficiency of existing resources to fund our operations for at least the next 12 months;
- our capital requirements and needs for additional financing;
- the initiation, design, conduct, enrollment, progress, timing and scope of clinical trials and development activities for our drug candidates conducted by ourselves or our partners, Amgen, Astellas and Ji Xing, including the anticipated timing for initiation of clinical trials, anticipated rates of enrollment for clinical trials and anticipated timing of results becoming available or being announced from clinical trials;
- the results from the clinical trials, the non-clinical studies and chemistry, manufacturing, and controls activities of our drug candidates and other compounds, and the significance and utility of such results;
- anticipated interactions with regulatory authorities;
- our and our partners' plans or ability to conduct the continued research and development of our drug candidates and other compounds;
- the advancement of omecamtiv mecarbil in Phase 3 clinical development or the timing of any results from such Phase 3 clinical trial and the timing and likelihood of regulatory approval for omecamtiv mecarbil;
- our expected roles in research, development or commercialization under our strategic alliances with Amgen, Astellas and Ji Xing;
- the properties and potential benefits of, and the potential market opportunities for, our drug candidates and other compounds, including the potential indications for which they may be developed;
- the sufficiency of the clinical trials conducted with our drug candidates to demonstrate that they are safe and efficacious;
- our receipt of milestone payments, royalties, reimbursements and other funds from current or future partners under strategic alliances, such as with Amgen, Astellas or Ji Xing;
- our ability to continue to identify additional potential drug candidates that may be suitable for clinical development;
- market acceptance of our drugs;
- changes in third party healthcare coverage and reimbursement policies;
- our plans or ability to commercialize drugs, with or without a partner, including our intention to develop sales and marketing capabilities;
- the focus, scope and size of our research and development activities and programs;
- the utility of our focus on the biology of muscle function, and our ability to leverage our experience in muscle contractility to other muscle functions;
- our ability to protect our intellectual property and to avoid infringing the intellectual property rights of others;
- future payments and other obligations under loan, lease agreements, and revenue interest agreement and the convertible notes;
- potential competitors and competitive products;

- retaining key personnel and recruiting additional key personnel;
- the potential impact of recent accounting pronouncements on our financial position or results of operations; and
- the continuing impact of the COVID-19 pandemic on our research and development activities and business operations, including the availability of financing.

Such forward-looking statements involve risks and uncertainties, including, but not limited to:

- Amgen's decisions with respect to the timing, design and conduct of research and development activities for omecamtiv mecarbil and related compounds, including decisions to postpone or discontinue research or development activities relating to omecamtiv mecarbil and related compounds;
- Astellas' decisions with respect to the timing, design and conduct of research and development activities for those skeletal muscle activators subject to the Astellas OSSA Agreement;
- Ji Xing's decisions with respect to the timing, design and conduct of development and commercialization activities for CK-274 in the People's Republic of China (including the Hong Kong SAR and Macau SAR) (together "China") and Taiwan;
- our ability to consummate the transactions contemplated by the Royalty Purchase Agreement;
- our ability to receive funds under the Funding Agreement, which is subject to certain conditions;
- our ability to enter into strategic partnership agreements for any of our programs on acceptable terms and conditions or in accordance with our planned timelines;
- our ability to obtain additional financing on acceptable terms, if at all;
- our receipt of funds and access to other resources under our current or future strategic alliances, in the development, testing, manufacturing or commercialization of our drug candidates or slower than anticipated patient enrollment, in our or partners' clinical trials, or in the manufacture and supply of clinical trial materials;
- failure by our contract research organizations, contract manufacturing organizations and other vendors to properly fulfill their obligations or otherwise perform as expected;
- results from non-clinical studies that may adversely impact the timing or the further development of our drug candidates and other compounds;
- the possibility that the U.S. Food and Drug Administration (the "FDA") or foreign regulatory agencies may delay or limit our or our partners' ability to conduct clinical trials or may delay or withhold approvals for the manufacture or sale of our products;
- changing standards of care and the introduction of products by competitors or alternative therapies for the treatment of indications we target that may limit the commercial potential of our drug candidates;
- difficulties or delays in achieving market access, reimbursement and favorable drug pricing for our drug candidates and the potential impacts of health care reform;
- changes in laws and regulations applicable to drug development, commercialization or reimbursement;
- the uncertainty of protection for our intellectual property, whether in the form of patents, trade secrets or otherwise;
- potential infringement or misuse by us of the intellectual property rights of third parties;
- activities and decisions of, and market conditions affecting, current and future strategic partners;
- accrual information provided by and performance of our contract research organizations ("CROs"), contract manufacturing organizations ("CMOs"), and other vendors;
- potential ownership changes under Internal Revenue Code Section 382; and
- the timeliness and accuracy of information filed with the U.S. Securities and Exchange Commission (the "SEC") by third parties.

In addition, such statements are subject to the risks and uncertainties discussed in the "Risk Factors" section and elsewhere in this document and the documents incorporated herein by reference. Such statements speak only as of the date on which they are made, and, except as required by law, we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for us to predict which factors will arise. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

Business

When used in this report, unless otherwise indicated, "Cytokinetics," "Company," "we," "our" and "us" refers to Cytokinetics, Incorporated. CYTOKINETICS, and our logo used alone and with the mark CYTOKINETICS, are registered service marks and trademarks of Cytokinetics. Other service marks, trademarks and trade names referred to in this report are the property of their respective owners.

Overview

We are a late-stage biopharmaceutical company focused on discovering, developing and commercializing first-in-class muscle activators and next-in-class muscle inhibitors as potential treatments for debilitating diseases in which muscle performance is compromised and/or declining. We have discovered and are developing muscle-directed investigational medicines that may potentially improve the health span of people with devastating cardiovascular and neuromuscular diseases of impaired muscle function. Our research and development activities relating to the biology of muscle function have evolved from our knowledge and expertise regarding the cytoskeleton, a complex biological infrastructure that plays a fundamental role within every human cell. As a leader in muscle biology and the mechanics of muscle performance, we are developing small molecule drug candidates specifically engineered to impact muscle function and contractility.

Our clinical-stage drug candidates are: omecamtiv mecarbil, a novel cardiac myosin activator, AMG 594, a novel cardiac troponin activator, reldesemtiv, a novel fast skeletal muscle troponin activator ("FSTA"), CK-3773274 ("CK-274"), a novel cardiac myosin inhibitor, and CK-3772271 ("CK-271"), our second novel cardiac myosin inhibitor.

Omecamtiv mecarbil is being evaluated for the potential treatment of heart failure under a strategic alliance with Amgen to discover, develop, and commercialize novel small molecule therapeutics designed to activate cardiac muscle contractility pursuant to the collaboration and option agreement dated December 29, 2006, as amended (the "Amgen Agreement"). Amgen, in collaboration with Cytokinetics, conducted GALACTIC-HF (**G**lobal **A**pproach to **L**owering **A**dverse **C**ardiac Outcomes **T**hrough **I**mproving **C**ontractility in **H**eart Failure), a Phase 3 cardiovascular outcomes clinical trial of omecamtiv mecarbil in heart failure. In collaboration with Amgen, we are conducting METEORIC-HF (**M**ulticenter **E**xercise **T**olerance **E**valuation of **O**mecamtiv Mecarbil **R**elated to **I**ncreased **C**ontractility in **H**eart **F**ailure), a second Phase 3 clinical trial intended to evaluate its potential to increase exercise performance.

AMG 594 was discovered under our joint research program with Amgen. In collaboration with Cytokinetics, Amgen conducted a randomized, placebo-controlled, double-blind, single and multiple ascending dose, single-center Phase 1 study to assess the safety and tolerability, pharmacokinetics and pharmacodynamics of AMG 594 in healthy subjects.

CK-274 is a novel, oral, small molecule cardiac myosin inhibitor that we discovered independent of our collaborations. CK-274 arose from an extensive chemical optimization program conducted with attention to therapeutic index and pharmacokinetic properties that may translate into next-in-class potential in clinical development. CK-274 was designed to reduce the hypercontractility that is associated with hypertrophic cardiomyopathy ("HCM"). In preclinical models, CK-274 reduces myocardial contractility by binding directly to cardiac myosin at a distinct and selective allosteric binding site, thereby preventing myosin from entering a force producing state. CK-274 reduces the number of active actin-myosin cross bridges during each cardiac cycle and consequently reduces myocardial contractility. This mechanism of action may be therapeutically effective in conditions characterized by excessive hypercontractility, such as HCM. We completed a Phase 1 study which met its primary and secondary objectives to assess the safety and tolerability of single and multiple oral doses of CK-274, describe the pharmacokinetics of CK-274 and its pharmacodynamic effects as measured by echocardiography, as well as to characterize the pharmacokinetics ("PK") and pharmacodynamic ("PD") relationship with regards to cardiac function. These data support the advancement of CK-274 into a Phase 2 clinical trial in patients with obstructive HCM which started in the first quarter of 2020. REDWOOD-HCM is a multicenter, randomized, placebo-controlled, double-blind, dose-finding clinical trial in patients with symptomatic, obstructive HCM.

CK-271 is our second novel, oral, small molecule cardiac myosin inhibitor that we discovered independent of our collaborations. CK-271 is an allosteric cardiac myosin inhibitor that produces reversible dose and plasma concentration-dependent reductions in cardiac contractility without affecting heart rate in preclinical models. CK-271 reduces compensatory cardiac hypertrophy and cardiac fibrosis in preclinical models of HCM and heart failure with preserved ejection fraction. CK-271 is the second cardiac myosin inhibitor arising from the Company's extensive chemical optimization program conducted with careful attention to therapeutic index and pharmacokinetic properties and may be therapeutically effective by providing rapid relief of excessive hypercontractility such as HCM.

Reldesemtiv selectively activates the fast skeletal muscle troponin complex in the sarcomere by increasing its sensitivity to calcium, leading to an increase in skeletal muscle contractility. Reldesemtiv was developed under our joint development program with Astellas under the License and Collaboration Agreement, dated June 21, 2013, as amended and restated (the "Astellas Agreement").

In collaboration with Astellas, we conducted a Phase 2 clinical trial of reldesemtiv in patients with spinal muscular atrophy ("SMA") and a Phase 2 clinical trial of reldesemtiv in patients with amyotrophic lateral sclerosis ("ALS"), called FORTITUDE-ALS (**F**unctional **O**utcomes in a **R**andomized **T**rial of **I**nvestigational **T**reatment with CK-2127107 to **U**nderstand **De**cline in **E**ndpoints – in **ALS**). Astellas, in collaboration with us, conducted a Phase 2 clinical trial of reldesemtiv in patients with chronic obstructive pulmonary disease ("COPD") and a Phase 1b clinical trial of reldesemtiv in elderly subjects with limited mobility.

Our research continues to drive innovation and leadership in muscle biology. All of our drug candidates have arisen from our cytoskeletal research activities. Our focus on the biology of the cytoskeleton distinguishes us from other biopharmaceutical companies, and potentially positions us to discover and develop novel therapeutics that may be useful for the treatment of severe diseases and medical conditions. Each of our drug candidates has a novel mechanism of action compared to currently marketed drugs, which we believe validates our focus on the cytoskeleton as a productive area for drug discovery and development. We intend to leverage our experience in muscle contractility to expand our current pipeline and expect to identify additional potential drug candidates that may be suitable for clinical development.

Research and Development Programs

Our long-standing interest in the cytoskeleton has led us to focus our research and development activities on the biology of muscle function and, in particular, small molecule modulation of muscle contractility. We believe that our expertise in the modulation of muscle contractility is an important differentiator for us. Our preclinical and clinical experience in muscle contractility may position us to discover and develop additional novel therapies that have the potential to improve the health of patients with severe and debilitating diseases or medical conditions.

Small molecules that affect muscle contractility may have several applications for a variety of serious diseases and medical conditions. For example, heart failure is a disease often characterized by impaired cardiac muscle contractility which may be treated by modulating the contractility of cardiac muscle. Similarly, certain diseases and medical conditions associated with muscle weakness may be amenable to treatment by enhancing the contractility of skeletal muscle. Because the modulation of the contractility of different types of muscle, such as cardiac and skeletal muscle, may be relevant to multiple diseases or medical conditions, we believe we can leverage our expertise in these areas to more efficiently discover and develop potential drug candidates that modulate the applicable muscle type for multiple indications.

We segment our research and development activities related to muscle contractility by our cardiac muscle contractility program and our skeletal muscle contractility program. We also conduct research and development on novel treatments for disorders involving muscle function beyond muscle contractility.

Cardiac Muscle Program

Our cardiac muscle contractility program is focused on the cardiac sarcomere, the basic unit of muscle contraction in the heart. The cardiac sarcomere is a highly ordered cytoskeletal structure composed of cardiac myosin, actin and a set of regulatory proteins. Cardiac myosin is the cytoskeletal motor protein in the cardiac muscle cell. It is directly responsible for converting chemical energy into the mechanical force, resulting in cardiac muscle contraction. Our most advanced cardiac program is based on the hypothesis that activators of cardiac myosin may address certain adverse properties of existing positive inotropic agents. Current positive inotropic agents, such as beta-adrenergic receptor agonists or inhibitors of phosphodiesterase activity, increase the concentration of intracellular calcium, thereby increasing cardiac sarcomere contractility. The effect on calcium levels, however, also has been linked to potentially life-threatening side effects. In contrast, our novel cardiac myosin activators work by a mechanism that directly stimulates the activity of the cardiac myosin motor protein, without increasing the intracellular calcium concentration. They accelerate the rate-limiting step of the myosin enzymatic cycle and shift it in favor of the force-producing state. Rather than increasing the velocity of cardiac contraction, this mechanism instead lengthens the systolic ejection time, which results in increased cardiac function in a potentially more oxygen-efficient manner.

Our earlier stage cardiac program is based on the hypothesis that inhibitors of hyperdynamic contraction and obstruction of left ventricular blood flow may counteract the pathologic effects of mutations in the sarcomere that lead to hypertrophic cardiomyopathies. A targeted oral therapy addressing this disease etiology may improve symptoms, exercise capacity and potentially slow disease progression.

Amgen Strategic Alliance

Our strategic alliance with Amgen to discover, develop, and commercialize novel small molecule therapeutics designed to activate cardiac muscle, including omecamtiv mecarbil, for the potential treatment of heart failure is governed by the Amgen Agreement. Amgen has exclusive, worldwide rights to develop and commercialize omecamtiv mecarbil and related compounds subject to our specified development and commercial participation rights. Amgen has also entered an alliance with Les Laboratoires Servier and Institut de Recherches Internationales Servier (“Servier”) for exclusive commercialization rights for omecamtiv mecarbil in Europe as well as the Commonwealth of Independent States (“CIS”), including Russia; Servier contributes funding for development and provides strategic support to the program.

Under the Amgen Agreement we are eligible for potential additional pre-commercialization and commercialization milestone payments of over $600.0 million in the aggregate on omecamtiv mecarbil and other potential products arising from research under the collaboration, and royalties that escalate based on increasing levels of annual net sales of products commercialized under the agreement.

The Amgen Agreement provided for us to receive increased royalties by co-funding the Phase 3 development program for omecamtiv mecarbil and other drug candidates under the collaboration. We co-invested $40.0 million in the Phase 3 development program of omecamtiv mecarbil in exchange for a total incremental royalty from Amgen of up to 4% on increasing worldwide sales of omecamtiv mecarbil outside Japan and the right to co-promote omecamtiv mecarbil in institutional care settings in North America, with reimbursement by Amgen for certain sales force activities. A joint commercial operating team comprising representatives of Cytokinetics and Amgen will be responsible for the day-to-day management of the commercialization program of omecamtiv mecarbil.

Amgen generally has discretion to elect whether to pursue or abandon the development of omecamtiv mecarbil and may terminate our strategic alliance for any reason upon six months’ prior notice. With our consent, Amgen granted Servier an option to commercialize omecamtiv mecarbil in Europe and the CIS, including Russia, which Servier decided to exercise. In August 2016, we entered into a letter agreement with Amgen and Servier, which provides that if Amgen’s rights to omecamtiv mecarbil are terminated with respect to the territory subject to Servier’s sublicense, the sublicensed rights previously granted by Amgen to Servier with respect to omecamtiv mecarbil, will remain in effect and become a direct license or sublicense of such rights by us to Servier, on substantially the same terms as those in the Option, License and Collaboration Agreement between Amgen and Servier.

Omecamtiv mecarbil

Our lead drug candidate from our cardiac contractility program is omecamtiv mecarbil, a novel cardiac myosin activator. We expect omecamtiv mecarbil to be developed as a potential treatment across the continuum of care in heart failure both for use in the hospital setting and for use in the outpatient setting. Omecamtiv mecarbil is the subject of a Phase 3 development program in patients with heart failure with reduced ejection fraction under our strategic alliance with Amgen.

Omecamtiv mecarbil: Clinical Development

GALACTIC-HF: GALACTIC-HF is a Phase 3 cardiovascular outcomes clinical trial of omecamtiv mecarbil which was conducted by Amgen, in collaboration with Cytokinetics. The primary objective of this double-blind, randomized, placebo-controlled multicenter clinical trial is to determine if treatment with omecamtiv mecarbil when added to standard of care is superior to standard of care plus placebo in reducing the risk of cardiovascular death or heart failure events in patients with high risk chronic heart failure and reduced ejection fraction. GALACTIC-HF was conducted under a Special Protocol Assessment ("SPA") with the FDA. GALACTIC-HF completed enrollment in mid-2019, having enrolled 8,256 symptomatic chronic heart failure patients with reduced ejection fraction in over 1,000 sites in 35 countries who were either currently hospitalized for a primary reason of heart failure or had had a hospitalization or admission to an emergency room for heart failure within one year prior to screening. Patients are randomized to either placebo or omecamtiv mecarbil with dose titration up to a maximum dose of 50 mg twice daily based on the plasma concentration of omecamtiv mecarbil after initiation of drug therapy. The primary endpoint is a composite of time to cardiovascular death or first heart failure event, whichever occurs first, with heart failure event defined as hospitalization, emergency room visit, or urgent unscheduled clinic visit for heart failure. Secondary endpoints include time to cardiovascular death; patient reported outcomes as measured by the Kansas City Cardiomyopathy Questionnaire Total Symptom Score; time to first heart failure hospitalization; and time to all-cause death.

In February 2020, we announced the publication of a manuscript relating to the design of GALACTIC-HF in the *Journal of American College of Cardiology: Heart Failure (JACC: HF)*.

In February 2020, we, Amgen and Servier announced that the Data Monitoring Committee ("DMC") for GALACTIC-HF recently completed the second and final planned interim analysis, which included consideration of pre-specified criteria for futility and superiority. The DMC reviewed data from GALACTIC-HF and recommended that GALACTIC-HF continue without changes to its conduct. The second interim analysis was triggered once a pre-specified number of cardiovascular deaths had occurred in GALACTIC-HF as stipulated by the trial's protocol. A futility analysis allowed the potential for stopping GALACTIC-HF early had the interim analysis shown a low likelihood of the trial demonstrating a clinically meaningful and statistically significant benefit on the primary endpoint in patients receiving omecamtiv mecarbil, plus standard of care, compared to patients receiving placebo plus standard of care. A superiority analysis allowed the potential for stopping the trial early if the primary composite endpoint and the secondary endpoint (time to cardiovascular death) reached statistical significance, adjusting the statistical threshold for interim review. The DMC considers all available evidence in its recommendations regarding trial conduct, and the stopping boundaries provide guidance to the DMC but are not binding rules.

In March 2020, we announced that patient baseline characteristics and demographics from GALACTIC-HF were published during the Virtual American College of Cardiology 69th Annual Scientific Session together with the World Congress of Cardiology (ACC.20/WCC Virtual).

On May 8, 2020, we announced that the FDA has granted fast track designation for omecamtiv mecarbil for the potential treatment of chronic heart failure with reduced ejection fraction. Fast track designation may potentially expedite the review of a drug that is intended for the treatment of a serious or life-threatening disease or condition and demonstrates the potential to address an unmet medical need for such a disease or condition.

On October 2, 2020, we announced that a manuscript detailing the baseline characteristics from GALACTIC-HF was published in the *European Journal of Heart Failure*.

On October 5, 2020, we announced that new data were presented at the Heart Failure Society of America (HFSA) Virtual Annual Scientific Meeting 2020. The first presentation provided analyses of outcomes research in patients with heart failure with heart failure with reduced ejection fraction whose characteristics were similar to those patients who met eligibility criteria for GALACTIC-HF. The second presentation provided post hoc analyses of effects of omecamtiv mecarbil on right ventricular function arising from COSMIC-HF.

On October 8, 2020, we, Amgen and Servier announced topline results from GALACTIC-HF. The results of GALACTIC-HF show that treatment with omecamtiv mecarbil achieved the primary composite efficacy endpoint and demonstrated a statistically significant effect to reduce cardiovascular ("CV") death or heart failure events (heart failure hospitalization and other urgent treatment for heart failure), compared to placebo in patients treated with standard of care (HR: 0.92; 95% CI: 0.86, 0.99, p-0.025). No reduction in the secondary endpoint of CV death was observed. Adverse events, including major ischemic cardiac events, were balanced between treatment arms. Additional analyses of data are underway and primary results from GALACTIC-HF will be presented at the American Heart Association (AHA) Scientific Sessions 2020, in a virtual Late Breaking Clinical Trial session on Friday, November 13, 2020 from 10:35-10:45 a.m. CDT.

We are reviewing prespecified analyses and supplemental analyses of results of GALACTIC-HF in collaboration with Amgen and discussing potential next steps with Amgen.

METEORIC-HF: In collaboration with Amgen, we are conducting METEORIC-HF, a second Phase 3 clinical trial intended to evaluate its potential to increase exercise performance. Patients are being randomized in a 2:1 fashion to omecamtiv mecarbil, which is started at 25 mg twice daily and titrated to 25, 37.5 or 50 mg twice daily based on the same PK-guided dosing regimen as is used in GALACTIC-HF, or to placebo. METEORIC-HF is planned to enroll approximately 270 symptomatic chronic heart failure patients in nine countries. The primary endpoint of METEORIC-HF is change in peak oxygen uptake on Cardio-Pulmonary Exercise Testing ("CPET") from baseline to Week 20. Secondary endpoints include change in total workload during CPET from baseline to Week 20, change in ventilatory efficiency during CPET from baseline to Week 20 and change in the average daily activity units measured over 2 weeks from baseline to Week 18-20. After temporarily suspending enrollment in METEORIC-HF due to the COVID-19 pandemic earlier this year, we resumed enrollment in June. We believe enrollment may be completed in the first half of 2021.

AMG 594

AMG 594 is a novel, selective, oral, small molecule cardiac troponin activator which was discovered under our joint research program with Amgen. In preclinical models, AMG 594 increases myocardial contractility by binding to cardiac troponin through an allosteric mechanism that sensitizes the cardiac sarcomere to calcium, facilitating more actin-myosin cross bridge formation during each cardiac cycle thereby resulting in increased myocardial contractility. Similar to cardiac myosin activation, preclinical research has shown that cardiac troponin activation does not change the calcium transient of cardiac myocytes.

In March 2020, we announced that preclinical data were presented at the Keystone Symposium "Charting a New Course for Heart Failure: From Discovery to Data," demonstrating that AMG 594 selectively increases calcium sensitivity of cardiac muscle fibers and increases cardiac contractility.

AMG 594: Clinical Development

In collaboration with Cytokinetics, Amgen conducted a randomized, placebo-controlled, double-blind, single and multiple ascending dose, single-center Phase 1 study to assess the safety and tolerability, pharmacokinetics and pharmacodynamics of AMG 594 in healthy subjects. The study design includes several single ascending dose cohorts and three multiple ascending dose cohorts, with eight healthy subjects per cohort. The Phase 1 study is now complete with data analysis ongoing. We are discussing with Amgen potential next steps in the development program for AMG 594.

CK-274

CK-274 is a novel, oral, small molecule cardiac myosin inhibitor that our company scientists discovered independent of our collaborations. CK-274 arose from an extensive chemical optimization program conducted with attention to therapeutic index and pharmacokinetic properties that may translate into next-in-class potential in clinical development. CK-274 was purposely designed to reduce the hypercontractility that is associated with HCM. In preclinical models, CK-274 reduces myocardial contractility by binding directly to cardiac myosin at a distinct and selective allosteric binding site, thereby preventing myosin from entering a force producing state. CK-274 reduces the number of active actin-myosin cross bridges during each cardiac cycle and consequently reduces myocardial contractility. This mechanism of action may be therapeutically effective in conditions characterized by excessive hypercontractility, such as HCM. The preclinical pharmacokinetics of CK-274 were characterized evaluated and optimized for potential rapid onset, ease of titration and rapid symptom relief in the clinical setting. The initial focus of the development program for CK-274 will include an extensive characterization of its PK/PD relationship as has been a hallmark of Cytokinetics' industry-leading development programs in muscle pharmacology. The overall development program will assess the potential of CK-274 to improve exercise capacity and relieve symptoms in patients with hyperdynamic ventricular contraction due to HCM.

In February 2020, we announced that preclinical data were presented at the Biophysical Society 64th Annual Meeting demonstrating that CK-274 has a distinct binding site on cardiac myosin, and selectively reduces cardiac myosin activity *in vitro*.

On October 27, 2020, we presented preclinical data at the American Association of Pharmaceutical Scientists (AAPS) 2020 PharmSci 360 showing that CK-274 demonstrated desirable pharmacokinetics in vivo, supporting the intended pharmacokinetic profile of once daily oral dosing and steady state plasma concentrations reached within two weeks of dosing onset in humans and steady state plasma concentrations achieved within two weeks of initiation of dosing.

Ji Xing Strategic Alliance

On July 14, 2020, we entered into the Ji Xing License Agreement, pursuant to which we granted to Ji Xing an exclusive license to develop and commercialize CK-274 in the greater China region. Under the terms of the Ji Xing License Agreement, we received from Ji Xing an upfront payment of $25.0 million. We may be eligible to receive from Ji Xing milestone payments totaling up to $200.0 million for the achievement of certain development and commercial milestone events in connection to CK-274 in the field of obstructive hypertrophic cardiomyopathy, or oHCM, and/or non-obstructive hypertrophic cardiomyopathy, or nHCM, and other indications. In addition, Ji Xing will pay us tiered royalties in the low-to-high teens range on the net sales of CK-274 in the greater China region, subject to certain reductions for generic competition, patent expiration and payments for licenses to third party patents. The Ji Xing License Agreement, unless terminated earlier, will continue on a market-by-market basis until expiration of the relevant royalty term.

CK-274: Clinical Development

We conducted a Phase 1 double-blind, randomized, placebo-controlled, multi-part, single and multiple ascending dose clinical trial of CK-274 to assess the safety and tolerability, pharmacokinetics and pharmacodynamics of CK-274 in healthy subjects. In 2019 we presented data from the Phase 1 study of CK-274. The study met its primary and secondary objectives to assess the safety and tolerability of single and multiple oral doses of CK-274, describe the pharmacokinetics of CK-274 and its pharmacodynamic effects as measured by echocardiography, as well as to characterize the PK/PD relationship with regards to cardiac function. These data support the advancement of CK-274 into a Phase 2 clinical trial in patients with obstructive HCM. In 2019, we prepared for the start of REDWOOD-HCM (**R**andomized **E**valuation of **D**osing **W**ith CK-274 in **O**bstructive **O**utflow **D**isease in HCM), the Phase 2 clinical trial designed to determine the safety and tolerability of CK-274 in patients with symptomatic, obstructive HCM. REDWOOD-HCM started in the first quarter of 2020 and will continue through 2020. Recently we completed enrollment of first cohort of patients in REDWOOD-HCM, summary data from which will inform progression to the second cohort of the trial, expected by the end of 2020.

CK-271

In the first quarter of 2020, we submitted an IND for CK-271, a second cardiac myosin inhibitor, and we were notified by the FDA that the IND was accepted. We plan to start a Phase 1 study of CK-271 in the third quarter of 2020. One of the hallmarks of Cytokinetics' research and development approach has been to advance multiple compounds to enable potential expansion of a drug development program into different indications and patient populations.

On September 23, 2020, we announced that the first participants have been dosed in a Phase 1 placebo-controlled, single ascending dose clinical study of CK-271. The primary objective of this Phase 1 placebo-controlled, single ascending dose clinical study in healthy adults is to assess the safety and tolerability of CK-271. The secondary objective is to evaluate the pharmacokinetic profile of CK-271 following single oral ascending doses. The study design includes three cohorts, with 8 adults per cohort randomized (6:2) in a blinded fashion to CK-271 or placebo. Dose escalation decisions will be made after review of the available safety, pharmacokinetic, and echocardiography data. We expect to complete the study by the end of 2020.

Skeletal Muscle Contractility Program

Our skeletal muscle contractility program is focused on the activation of the skeletal sarcomere, the basic unit of skeletal muscle contraction. The skeletal sarcomere is a highly ordered cytoskeletal structure composed of skeletal muscle myosin, actin, and a set of regulatory proteins, which include the troponins and tropomyosin. This program leverages our expertise developed in our ongoing discovery and development of cardiac sarcomere activators, including the cardiac myosin activator, omecamtiv mecarbil.

We believe that our skeletal sarcomere activators may lead to new therapeutic options for diseases and medical conditions associated with neuromuscular dysfunction and potentially also conditions associated with aging and muscle weakness and wasting. The clinical effects of muscle weakness and wasting, fatigue and loss of mobility can range from decreased quality of life to, in some instances, life-threatening complications. By directly improving skeletal muscle function, a small molecule activator of the skeletal sarcomere potentially could enhance functional performance and quality of life in patients suffering from diseases or medical conditions associated with skeletal muscle weakness or wasting, such as ALS, SMA, COPD or sarcopenia (general frailty associated with aging).

Astellas Strategic Alliance

Our strategic alliance with Astellas to advance novel therapies for diseases and medical conditions associated with muscle impairment and weakness commenced in 2013 under the original Astellas Agreement. Initially we exclusively licensed to Astellas rights to co-develop and potentially co-commercialize reldesemtiv and other FSTAs in non-neuromuscular indications and to develop and commercialize other novel mechanism skeletal muscle activators in all indications, subject to certain Cytokinetics' development and commercialization rights. Subsequently, in 2014, we and Astellas expanded the strategic alliance to include certain neuromuscular indications, including SMA, for reldesemtiv and other FSTAs and to advance reldesemtiv into Phase 2 clinical development, initially in SMA. In 2016, we and Astellas further expanded the strategic alliance to include the development of reldesemtiv for the potential treatment of ALS, as well as the possible development in ALS of other FSTAs previously licensed by us to Astellas, and granted Astellas an option for a global collaboration for the development and commercialization of our first-generation FSTA, tirasemtiv (the "Option on Tirasemtiv").

On April 23, 2020, Cytokinetics and Astellas entered into two agreements, which, taken together, amend and restate our research, development and commercialization collaboration with Astellas under the Astellas Agreement, as set out below.

Cytokinetics and Astellas signed a Fast Skeletal Regulatory Activator Agreement dated April 23, 2020 (the "Astellas FSRA Agreement"). As a result of the FSRA Agreement, Cytokinetics will now have exclusive control and responsibility for Cytokinetics' future development and commercialization of reldesemtiv, CK-601 and other fast skeletal regulatory activator (collectively "FSRA") compounds and products, and accordingly, Astellas has agreed to terminate its license to all FSRA compounds and related products. Under the Astellas FSRA Agreement, Astellas has agreed to pay one-third of the out-of-pocket clinical development costs which may be incurred in connection with Cytokinetics' potential Phase 3 clinical trial of reldesemtiv in ALS up to a maximum contribution by Astellas of $12 million. In addition, Astellas has agreed to non-cash contributions to Cytokinetics, which include the transfer of its existing inventories of active pharmaceutical ingredient of reldesemtiv and CK-601. Astellas has also agreed to the continued conduct of ongoing stability studies pertaining to such existing inventories of active pharmaceutical ingredient, at Astellas' cost. In exchange, Cytokinetics will pay Astellas a low- to mid- single digit royalty on sales of reldesemtiv in the United States, Canada, United Kingdom and the European Union until the later of (i) ten years following the first commercial sale of such product in a major market country, or (ii) December 31, 2034, subject to certain royalty reduction provisions. Cytokinetics would not owe Astellas royalties on sales of reldesemtiv in any other country, or on the sale of any FSRA compounds or related products other than reldesemtiv.

Cytokinetics and Astellas also signed a License and Collaboration Agreement for Other Skeletal Sarcomere Activators, dated April 23, 2020 (the "Astellas OSSA Agreement"). The Astellas OSSA Agreement is an amendment and restatement of the Astellas Agreement and removes the FSRA compounds and related products from the collaboration.

Under the Astellas OSSA Agreement, Astellas has extended the joint research program at Cytokinetics focused on the discovery of additional next-generation skeletal muscle activators (other than FSRAs) through December 31, 2020, with a minimum of fifteen (15) research FTE's being supported by Astellas.

In addition, under the Astellas OSSA Agreement, Astellas has exclusive rights to co-develop and commercialize skeletal sarcomere activators (other than FSRA compounds and products) in all indications, subject to certain development and commercialization rights of Cytokinetics; Cytokinetics may co-promote and conduct certain commercial activities in the U.S., Canada and/or Europe under agreed scenarios. Astellas will be responsible for the costs associated with the development of all collaboration products under the Astellas OSSA Agreement, subject to Cytokinetics' option to co-fund certain development costs as described below. Cytokinetics retains an option to conduct early-stage development for certain agreed indications at its initial expense, subject to reimbursement if development continues under the collaboration. Astellas will reimburse Cytokinetics for certain expenses associated with its co-promotion activities. The Astellas OSSA Agreement also provides for Cytokinetics to lead certain activities relating to the commercialization of collaboration products for neuromuscular indications in the U.S., Canada and Europe under particular scenarios. The research term may be extended beyond December 31, 2020 by mutual consent.

If development candidates are identified and advance in clinical research, the Astellas OSSA Agreement contains provisions related to shared development roles between Cytokinetics and Astellas, and opportunities for Cytokinetics to co-invest and/or co-promote under certain conditions. In the case of molecules taken forward solely by Astellas, Cytokinetics would receive development and regulatory milestones of $25 to $35 million per product, up to $250 million for all products, except under certain scenarios, commercial milestones of up to $200 million, and royalties that range from a mid-single digit level to low double-digits. In the event of co-investment by Cytokinetics and approvals in certain indications, Cytokinetics would receive royalties ranging from mid-to-high double digits (not to exceed an incremental rate in the mid-twenties).

Astellas may terminate the Astellas OSSA Agreement as to any particular product or territory, or in its entirety, upon 180 days advance written notice following expiration of the research term.

Reldesemtiv

Reldesemtiv selectively activates the fast skeletal muscle troponin complex in the sarcomere by increasing its sensitivity to calcium, leading to an increase in skeletal muscle contractility. Reldesemtiv has demonstrated pharmacological activity in preclinical models and evidence of potentially clinically relevant pharmacodynamic effects in humans. The FDA granted reldesemtiv orphan drug designation for the potential treatment of SMA in 2017 and for the potential treatment of ALS in 2019. The European Medicines Agency ("EMA") granted orphan medicinal product designation to reldesemtiv for the potential treatment of SMA in 2019 and for the potential treatment of ALS in March 2020.

Reldesemtiv: Clinical Development

SMA: In 2018, we announced data from a hypothesis-generating, Phase 2 double-blind, randomized, placebo-controlled clinical study in patients with SMA which was designed to determine potential pharmacodynamic effects of a suspension formulation of reldesemtiv following 8 weeks of oral dosing in each of two cohorts of 36 patients with Type II, Type III, or Type IV disease. Secondary objectives were to evaluate the safety, tolerability and pharmacokinetics of reldesemtiv. The study showed statistically significant concentration-dependent increases in changes from baseline in Six Minute Walk Distance ("6MWD"), a sub-maximal exercise test of aerobic capacity and endurance. The study also showed statistically significant increases for Maximal Expiratory Pressure ("MEP"), a measure of strength of respiratory muscles. Other assessments, including the Hammersmith Functional Motor Score – Extended, Revised Upper Limb Module, Timed Up-and-Go, Forced Vital Capacity, and the SMA Health Index ("SMA-HI"), a patient reported outcome measure ("PROM") developed to comply with FDA standards for PROMs, did not demonstrate differences between reldesemtiv versus placebo. Adverse events were similar between groups receiving reldesemtiv and placebo.

Additional results presented in 2018 showed sustained increases in 6MWD and MEP four weeks after discontinuation of study drug (i.e., follow-up). A post-hoc analysis also showed that changes from baseline in the 6MWD at 450 mg twice daily were significantly correlated with changes from baseline on certain domains of the SMA-HI intended to reflect improved endurance, especially Fatigue and Activity Participation. Decreases in SMA-HI scores reflect reduced disease burden as measured by that PROM, suggesting that as 6MWD increased, disease burden assessed by that domain of the SMA-HI was reduced.

In 2019, we announced that we received feedback from the FDA that the 6MWD is an acceptable primary efficacy endpoint for a potential registration program for reldesemtiv in patients with SMA who have maintained ambulatory function. The FDA also recommended adding a global function scale as a secondary endpoint.

In 2019, we announced that data from two preclinical studies of reldesemtiv showed that the addition of reldesemtiv to treatment with SMN upregulators (nusinersen and SMN-C1, an analogue to risdiplam) significantly increased muscle force in a mouse model of SMA.

ALS: In collaboration with Astellas, we conducted FORTITUDE-ALS. This trial enrolled 458 eligible ALS patients who were randomized (1:1:1:1) to receive either 150 mg, 300 mg or 450 mg of reldesemtiv or placebo dosed orally twice daily for 12 weeks. The primary efficacy endpoint of FORTITUDE-ALS was the change from baseline in the percent predicted slow vital capacity ("SVC") at 12 weeks. Secondary endpoints included slope of the change from baseline in the mega-score of muscle strength measured by hand held dynamometry and handgrip dynamometry in patients on reldesemtiv; change from baseline in the ALS Functional Rating Scale – Revised ("ALSFRS-R"); incidence and severity of treatment-emergent adverse events; and plasma concentrations of reldesemtiv at the sampled time points during the study. Exploratory endpoints measured included the effect of reldesemtiv versus placebo on self-assessments of respiratory function made at home by the patient with help as needed by the caregiver; disease progression through quantitative measurement of speech production characteristics over time; disease progression through quantitative measurement of handwriting abilities over time; and the change from baseline in quality of life (as measured by the ALS Assessment Questionnaire-5) in patients on reldesemtiv.

In 2019, we announced that results of FORTITUDE-ALS. FORTITUDE-ALS did not achieve statistical significance for a pre-specified dose-response relationship in its primary endpoint of change from baseline in SVC after 12 weeks of dosing (p=0.11). Similar analyses of ALSFRS-R and slope of the Muscle Strength Mega-Score yielded p-values of 0.09 and 0.31, respectively. However, patients on all dose groups of reldesemtiv declined numerically less than patients on placebo for SVC and ALSFRS-R, with larger differences emerging over time.

While the dose-response analyses for the primary and secondary endpoints did not achieve statistical significance at the level of 0.05, in a post-hoc analysis pooling the doses together, patients who received reldesemtiv in FORTITUDE-ALS declined less than patients who received placebo. The trial showed numerical effects favoring reldesemtiv across dose levels and timepoints with clinically meaningful magnitudes of effect observed at 12 weeks for the primary and secondary endpoints. The differences between reldesemtiv and placebo in SVC and ALSFRS-R total score observed after 12 weeks of treatment were still evident at follow-up, four weeks after the last dose of study drug.

The incidence of early treatment discontinuations, serious adverse events and clinical adverse events in FORTITUDE-ALS were similar between placebo and active treatment arms. The most common clinical adverse effects in the trial included fatigue, nausea and headache. The leading cause for early termination from FORTITUDE-ALS for patients who received placebo was progressive disease; the leading cause for early termination for patients who received reldesemtiv was a decline in cystatin C based estimated glomerular filtration rate ("eGFR"), a measure of renal function. Elevations in transaminases and declines in cystatin C eGFR were dose-related.

In 2019, post-hoc analyses from FORTITUDE-ALS were presented. The analyses demonstrated that, in the combined middle and faster progressing tertiles of patients, the decline in the ALSFRS-R total score from baseline to week 12 in patients who received any dose of reldesemtiv was significantly smaller than the decline on placebo, while no significant difference between reldesemtiv and placebo was observed in slower progressing patients.

In 2019, we presented subgroup analyses of FORTITUDE-ALS, the Phase 2 clinical trial of reldesemtiv in patients with ALS, showing that the effect of reldesemtiv on patients with ALS was similar whether or not patients were also receiving edaravone and/or riluzole.

In the fourth quarter of 2019 and through the third quarter of 2020, we convened regulatory interactions and conducted feasibility and other planning activities in preparation for the potential advancement of reldesemtiv to a Phase 3 trial in patients in ALS.

CK-601

In October 2018, we announced the advancement of CK-601, a next-generation FSTA, into Investigational New Drug ("IND")-enabling studies, which triggered a $2.0 million milestone payment from Astellas to us. CK-601 was designed in a joint research program conducted by the companies' scientists to have different pharmacokinetics and physicochemical properties than reldesemtiv which may inform its development for the treatment of diseases and conditions associated with both neuromuscular and non-neuromuscular etiology and pathogenesis. We expect to continue IND-enabling studies for CK-601 in 2020.

Ongoing Research in Skeletal Muscle Activators

Currently our research on the direct activation of skeletal muscle continues in two areas. We are conducting translational research in preclinical models of disease and muscle function with FSTAs to explore the potential clinical applications of this novel mechanism in diseases or conditions associated with skeletal muscle dysfunction. We also are conducting preclinical research on other chemically and pharmacologically distinct mechanisms to activate the skeletal sarcomere, which we have agreed to be the focus for our continued joint research program with Astellas, which was extended through 2020.

Beyond Muscle Contractility

We developed preclinical expertise in the mechanics of skeletal, cardiac and smooth muscle that extends from proteins to tissues to intact animal models. Our translational research in muscle contractility has enabled us to better understand the potential impact of small molecule compounds that increase skeletal or cardiac muscle contractility and to apply those findings to the further evaluation of our drug candidates in clinical populations. In addition to contractility, other major functions of muscle play a role in certain diseases that could benefit from novel mechanism treatments. Accordingly, our knowledge of muscle contractility may serve as an entry point to the discovery of novel treatments for disorders involving muscle functions other than muscle contractility. We are leveraging our current understandings of muscle biology to investigate new ways of modulating these other aspects of muscle function for other potential therapeutic applications.

COVID-19 Business Update

We are continuing to closely monitor the impact of the global COVID-19 pandemic on our business and are taking proactive efforts designed to protect the health and safety of our employees, patients, study investigators and clinical research staff, and to maintain business continuity. We believe that the measures we are implementing are appropriate and are helping to reduce the transmission of COVID-19, and we will continue to monitor and seek to comply with guidance from governmental authorities and adjust our activities as appropriate.

Based on guidance issued by federal, state and local authorities, we transitioned to a remote work model for a vast majority of our employees effective March 16, 2020, while maintaining certain essential in-person laboratory functions in order to advance key research and development initiatives, supported by the implementation of updated onsite procedures. We have since implemented a voluntary return to work for our employees subject to precautionary measures such as mandatory temperature checks for those employees that do work on site from time to time.

In the conduct of our business activities, we are also taking actions designed to protect the safety of patients and healthcare professionals. For patients already enrolled in our clinical trials, we and our partners are working closely with study investigators and clinical trial site staff to continue treatment in compliance with trial protocols and to uphold trial integrity, while working to observe government and institutional guidelines designed to safeguard the health and safety of patients and site staff.

After temporarily suspending enrollment in METEORIC-HF and REDWOOD-HCM due to the COVID-19 pandemic earlier this year, we have since resumed enrollment in both trials. In respect of METEORIC-HF, we believe enrollment may be completed in the first half of 2021. Recently we completed enrollment of first cohort of patients in REDWOOD-HCM, summary data from which will inform progression to the second cohort of the trial, expected by the end of 2020.

While the potential economic impact brought by, and the duration of, the COVID-19 pandemic may be difficult to assess or predict, the pandemic could result in significant and prolonged disruption of global financial markets, reducing our ability to access capital, which could in the future negatively affect our liquidity. In addition, a recession or market correction resulting from the spread of COVID-19 could materially affect our business and the value of our common stock.

While we expect the COVID-19 pandemic to continue to affect our business operations, the extent of the impact on our clinical development and regulatory efforts and the value of and market for our common stock will depend on future developments that are highly uncertain and cannot be predicted with confidence at this time, such as the ultimate duration of the pandemic, travel restrictions, quarantines, social distancing and business closure requirements in the U.S. and in other countries, and the effectiveness of actions taken globally to contain and treat COVID-19. For additional information about risks and uncertainties related to the COVID-19 pandemic that may impact our business, our financial condition and our results of operations, see the section titled “Risk Factors” under Part II, Item 1A in this Quarterly Report on Form 10-Q.

Critical Accounting Policies and Significant Estimates

The accounting policies that we consider to be our most critical (i.e., those that are most important to the portrayal of our financial condition and results of operations and that require our most difficult, subjective or complex judgments), the effects of those accounting policies applied and the judgments made in their application are summarized in *“Item 7 — Management’s Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies and Significant Estimates”* in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019.

Our discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses and related disclosure of contingent assets and liabilities. We review our estimates on an ongoing basis. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

Recent Accounting Pronouncements

See Note 1, “Recent Accounting Pronouncements” in the Notes to Unaudited Condensed Consolidated Financial Statements for a discussion of recently adopted accounting pronouncements and accounting pronouncements not yet adopted, and their expected impact on our financial position and results of operations.

Results of Operations

Revenues

Research and development revenues for the three months ended September 30, 2020 and 2019 was $5.2 million and $6.1 million, respectively, and primarily consisted of research and development revenue from our collaborations with Amgen of $3.8 million and $3.5 million, respectively, and Astellas of $1.4 million and $2.5 million, respectively.

Research and development revenues for the nine months ended September 30, 2020 and 2019 was $12.6 million and $21.7 million, respectively, and primarily consisted of research and development revenue from our collaborations with Amgen of $8.3 million and $10.5 million, respectively, and Astellas of $4.0 million and $11.2 million, respectively.

License revenues for the three and nine months ended September 30, 2020 was the result of a series of transactions we entered into with a third party, RTW Royalty Holdings Designated Activity Company ("RTW Royalty Holdings"), an entity affiliated with certain investment funds managed by RTW Investments, LP, ("RTW") and Ji Xing Pharmaceuticals Limited ("Ji Xing"), an affiliate of RTW, related to Cytokinetics' proprietary small molecule cardiac myosin inhibitor product referred to as CK-274 and other assets (together, the "RTW Transactions"). We entered into a License and Collaboration Agreement (the "Ji Xing License Agreement") with Ji Xing, pursuant to which we granted to Ji Xing an exclusive license to develop and commercialize CK-274 in the greater China region. Under the terms of the Ji Xing License Agreement, we received from Ji Xing a nonrefundable upfront payment of $25.0 million. License revenues for the three and nine months ended September 30, 2020 was $36.5 million and consisted of the residual allocation of consideration from the RTW transactions.

Research and Development Expenses

Research and development expenses for the three and nine months ended September 30, 2020 and 2019, were as follows (in thousands):

	Three Months Ended			Nine Months Ended		
	September 30, 2020	September 30, 2019	Increase (Decrease)	September 30, 2020	September 30, 2019	Increase (Decrease)
Cardiac muscle contractility	$ 14,167	$ 12,331	$ 1,836	$ 39,048	$ 35,154	$ 3,894
Skeletal muscle contractility	3,247	787	2,460	8,309	14,569	(6,260)
All other research programs	6,788	7,111	(323)	20,373	18,068	2,305
Total research and development expenses	$ 24,202	$ 20,229	$ 3,973	$ 67,730	$ 67,791	$ (61)

Research and development expenses for the three months ended September 30, 2020 increased by $4.0 million from the three months ended September 30, 2019 primarily due to increased spending for reldesemtiv and clinical activities for our cardiac myosin inhibitor program. Research and development expenses for the nine months ended September 30, 2020 were comparable to the nine months ended September 30, 2019 with higher expenses for METEORIC-HF and our cardiac myosin inhibitor program offset by decreased spending for the Phase 2 clinical trial of reldesemtiv (FORTITUDE-ALS) which was completed in 2019.

We may continue to develop reldesemtiv to treat ALS and SMA. Under the Astellas FSRA Agreement, Astellas has agreed to pay one-third of the out-of-pocket clinical development costs which may be incurred in connection with Cytokinetics' potential Phase 3 clinical trial of reldesemtiv in ALS up to a maximum contribution by Astellas of $12 million. In addition, Astellas has agreed to non-cash contributions to Cytokinetics, which include the transfer of its existing inventories of active pharmaceutical ingredient of reldesemtiv and CK-601. Astellas has also agreed to the continued conduct of ongoing stability studies pertaining to such existing inventories of active pharmaceutical ingredient, at its cost. Under our strategic alliance with Amgen, we expect to continue the Phase 3 development of omecamtiv mecarbil for the potential treatment of heart failure. We expect to continue the development of CK-274 to assess the potential of CK-274 to improve exercise capacity and relieve symptoms in patients with hyperdynamic ventricular contraction due to HCM.

Clinical development timelines, the likelihood of success and total completion costs vary significantly for each drug candidate and are difficult to estimate. We anticipate that we will determine on an ongoing basis which research and development programs to pursue and how much funding to direct to each program, taking into account the potential scientific and clinical success of each drug candidate. The lengthy process of seeking regulatory approvals and subsequent compliance with applicable regulations requires the expenditure of substantial resources. Any failure by us to obtain and maintain, or any delay in obtaining, regulatory approvals could cause our research and development expenditures to increase and, in turn, could have a material adverse effect on our results of operations.

General and Administrative Expenses

General and administrative expenses for the three and nine months ended September 30, 2020 increased by $2.5 million and $9.9 million, respectively, from the three and nine months ended September 30, 2019, primarily due to an increase in personnel related costs including stock-based compensation and higher outside service spend. We expect that general and administrative expenses will fluctuate in the future, depending in part on the timing of and investments in commercial readiness.

Interest expense

Interest expense for the three and nine months ended September 30, 2020 and 2019, were as follows (in thousands):

	Three Months Ended			Nine Months Ended		
	September 30, 2020	September 30, 2019	Increase (Decrease)	September 30, 2020	September 30, 2019	Increase (Decrease)
Term loan	$ 1,217	$ 1,328	$ (111)	$ 3,667	$ 3,844	$ (177)
Convertible notes	2,739	—	2,739	8,037	—	8,037
Warrants	—	—	—	184	—	184
Other	20	17	3	57	48	9
Total interest expense	$ 3,976	$ 1,345	$ 2,631	$ 11,945	$ 3,892	$ 8,053

Non-cash interest expense on liability related to sale of future royalties

Non-cash interest expense related to liability related to sale of future royalties for the three and nine months ended September 30, 2020 and 2019 resulted from accretion of the liability related to the sale of future royalties. We anticipate that this non-cash interest expense will increase in the future primarily due to accretion of the liability over time.

Interest and Other Income, net

Interest and other income, net for the three and nine months ended September 30, 2020 and 2019 primarily consisted of interest income generated from our cash, cash equivalents and investments.

Liquidity and Capital Resources

Our cash, cash equivalents and investments and a summary of our borrowings and working capital is summarized as follows:

	September 30, 2020
Financial assets:	
Cash and cash equivalents	$ 200,812
Short-term investments	209,452
Total cash, cash equivalents and marketable securities	$ 410,264
Borrowings:	
Term loan, net	45,920
Convertible notes, net	88,102
Total borrowings	$ 134,022
Working capital:	
Current assets	$ 418,412
Current liabilities	27,573
Working capital	$ 390,839

Sources and Uses of Cash

From inception, we funded our operations through the sale of equity securities, non-equity payments from collaborators, a royalty monetization agreement, long-term debt, capital equipment financings, grants and interest income. We have generated significant operating losses since our inception. Our expenditures are primarily related to research and development activities. Based on current plans, we believe that our existing cash, cash equivalents and investments will be sufficient to fund our cash requirements for at least the next 12 months.

Net cash used in operating activities of $43.2 million in the first nine months of 2020 was largely due to ongoing research and development activities, and general and administrative expenses to support those activities. Net loss for the first nine months of 2020 included, among other items: non-cash stock-based compensation, non-cash interest expense related to sale of future royalties and non-cash interest expense related to debt.

Net cash used by investing activities of $22.9 million in the first nine months of 2020 was primarily due to purchases of investments offset by proceeds from maturity of investments.

Net cash provided by financing activities of $230.5 million in the first nine months of 2020 was primarily due to $188.9 million proceeds related to issuance of common stock in an underwritten public offering, proceeds from RTW private placement, stock based activities, and claims settlement with certain institutional investors that were beneficial owners of our common stock related to the disgorgement of short swing profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended.

Off-Balance Sheet Arrangements

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

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our exposure to market risk has not changed materially since our disclosures in Item 7A, "Quantitative and Qualitative Disclosures About Market Risk" in our Annual Report on Form 10-K for the year ended December 31, 2019.

ITEM 4. CONTROLS AND PROCEDURES

(a) Evaluation of disclosure controls and procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Exchange Act, and the rules and regulations thereunder, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, or persons performing similar functions, as appropriate, to allow for timely decisions regarding required or necessary disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable, not absolute, assurance of achieving the desired control objectives, and we are required to apply judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of September 30, 2020, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

(b) Changes in internal control over financial reporting

There were no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2020, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

(c) Limitations on the effectiveness of controls

A control system, no matter how well-conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the controls are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected. Accordingly, our disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the objectives of our disclosure control system are met.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

None

ITEM 1A. RISK FACTORS

In evaluating our business, you should carefully consider the following risks in addition to the other information in this report. Any of the following risks could materially and adversely affect our business, results of operations, financial condition or your investment in our securities, and many are beyond our control. The risks and uncertainties described below are not the only ones facing us. Additional risks and uncertainties not presently known to us, or that we currently see as immaterial, may also adversely affect our business.

Risks Related to Our Business

We have a history of significant losses and may not achieve or sustain profitability and, as a result, you may lose part or all of your investment.

We have generally incurred operating losses in each year since our inception in 1997, due to costs incurred in connection with our research and development activities and general and administrative costs associated with our operations. Our drug candidates are all in early through late-stage clinical testing, and we and our partners must conduct significant additional clinical trials before we and our partners can seek the regulatory approvals necessary to begin commercial sales of our drugs. We expect to incur increasing losses for at least several more years, as we continue our research activities and conduct development of, and seek regulatory approvals for, our drug candidates, and commercialize any approved drugs. If our drug candidates fail or do not gain regulatory approval, or if our drugs do not achieve market acceptance, we will not be profitable. If we fail to become and remain profitable, or if we are unable to fund our continuing losses, you could lose part or all of your investment.

We will need substantial additional capital in the future to sufficiently fund our operations.

We have consumed substantial amounts of capital to date, and our operating expenditures will increase over the next several years if we expand our research and development activities. We have funded our operations and capital expenditures with proceeds primarily from private and public sales of our equity securities, royalty monetization agreements, a revenue interest agreement, strategic alliances, long-term debt, other financings, interest on investments and grants. We believe that our existing cash and cash equivalents, short-term investments and interest earned on investments should be sufficient to meet our projected operating requirements for at least the next 12 months. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect. Because of the numerous risks and uncertainties associated with the development of our drug candidates and other research and development activities, including risks and uncertainties that could impact the rate of progress of our development activities, we are unable to estimate with certainty the amounts of capital outlays and operating expenditures associated with these activities.

For the foreseeable future, our operations will require significant additional funding, in large part due to our research and development expenses and the absence of any revenues from product sales. For example, we will require significant additional funding to enable us to conduct further development of our product candidates. Until we can generate a sufficient amount of product revenue, we expect to raise future capital through strategic alliance and licensing arrangements, public or private equity offerings and debt financings. We do not currently have any commitments for future funding other than through our Royalty Purchase Agreement with RTW Royalty Holdings, the Funding Agreement with RTW Royalty Holdings, and reimbursements, milestone and royalty payments that we may receive under our collaboration agreements with Amgen, Astellas and Ji Xing. We may not receive any further funds under those agreements. Our ability to raise funds may be adversely impacted by current economic conditions. As a result of these and other factors, we do not know whether additional financing will be available when needed, or that, if available, such financing would be on terms favorable to our stockholders or us.

For example, under the Funding Agreement, we have the right to exercise an option to receive up to $90.0 million in cash upon initiation of a global registration program for CK-274 in each of oHCM and nHCM if certain conditions are met. No assurance can be given that any of such conditions will be fulfilled prior to expiration of our ability to exercise our option pursuant to the Funding Agreement, and all or part of the proceeds made available to us, may need to be utilized for the prepayment or repayment of other outstanding indebtedness at the time under our Loan and Security Agreement, dated as of May 17, 2019, or the Term Loan Agreement, with Oxford Finance LLC, or Oxford, as collateral agent, and Silicon Valley Bank and Oxford as lenders party thereto, or the Lenders, as amended, pursuant to which the Lenders made available to us a $45.0 million loan, or the Term Loan, or any other indebtedness we have outstanding at that time. Moreover, in the event we were to exercise our option pursuant to the Funding Agreement, we would be obligated to make royalty payments to RTW of up to 4% of our net sales of CK-274 in the CK-274 Territory, which may or may not be more favorable to us than prevailing interest rates at the time of exercising such option.

To the extent that we raise additional funds through strategic alliances or licensing or other arrangements with third parties, we will likely have to relinquish valuable rights to our technologies, research programs or drug candidates, grant licenses on terms that may not be favorable to us, or, as in the case of the Funding Agreement, incur obligations to pay amounts based on future sales of our product candidate CK-274. To the extent that we raise additional funds by issuing equity securities, our stockholders will experience additional dilution and our share price may decline. To the extent that we raise additional funds through debt financing, the financing may involve covenants that restrict our business activities. In addition, funding from any of these sources, if needed, may not be available to us on favorable terms, or at all, or in accordance with our planned timelines.

If we cannot raise the funds we need to operate our business, we will need to delay or discontinue certain research and development activities, and our stock price may be negatively affected.

We are obligated to develop and maintain proper and effective internal control over financial reporting. In the future, we may not complete our execution of our internal control over financial reporting in a timely manner, or these internal controls may not be determined to be effective, which may result in additional material misstatements in our consolidated financial statements and may adversely affect investor confidence in our company and, as a result, the value of our common stock.

We are required, pursuant to Section 404 of the Sarbanes-Oxley Act, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting.

Complying with Section 404 requires a rigorous compliance program as well as adequate time and resources. We may not be able to complete our internal control evaluation, testing and any required remediation in a timely fashion. Additionally, if we identify one or more material weaknesses in our internal control over financial reporting, we will not be able to assert that our internal controls are effective. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. As of December 31, 2019, we have remediated the material weakness related to our internal controls over financial reporting that were determined to be ineffective as of December 31, 2018. As of December 31, 2018, we identified a material weakness related to the ineffective review and verification of internally prepared reports and analyses utilized in our financial statement closing process. The material weakness related to employee turnover resulting in a temporary lack of resources in financial reporting roles with the appropriate skills to perform effective review during our financial statement close process. This material weakness did not result in the restatement of prior quarterly or annually filed financial statements. During 2019, management conducted a remediation plan to address its material weakness, which included increasing the quality and level of resources with the accounting department and other enhancements and design improvements to our processes to improve the level of review of financial information.

Even though we remediated this material weakness as of December 31, 2019, we cannot be certain that other material weaknesses and control deficiencies will not be discovered in the future. If our efforts are not successful or other material weaknesses are identified in the future or we are not able to comply with the requirements of Section 404 in a timely manner, our reported financial results could be materially misstated, we would receive an adverse opinion regarding our internal controls over financial reporting from our independent registered public accounting firm, and we could be subject to investigations or sanctions by regulatory authorities, which would require additional financial and management resources, and the value of our common stock could decline. To the extent we identify future weaknesses or deficiencies, there could be material misstatements in our consolidated financial statements and we could fail to meet our financial reporting obligations. As a result, our ability to obtain additional financing, or obtain additional financing on favorable terms, could be materially and adversely affected which, in turn, could materially and adversely affect our business, our financial condition and the value of our common stock. If we are unable to assert that our internal control over financial reporting is effective in the future, or if our independent registered public accounting firm is unable to express an opinion or expresses an adverse opinion on the effectiveness of our internal controls in the future, investor confidence in the accuracy and completeness of our financial reports could be further eroded, which would have a material adverse effect on the price of our common stock.

Our indebtedness and liabilities could limit the cash flow available for our operations, expose us to risks that could adversely affect our business, financial condition and results of operations and impair our ability to satisfy our obligations under the 2026 Notes and our Term Loan.

As of December 31, 2019, we had $183.0 million aggregate principal amount of indebtedness, comprised of $45.0 million under our Term Loan, on a senior secured basis, and $138.0 million under our convertible senior notes due 2026, or the 2026 Notes. Additionally, we have the ability to exercise an option for up to $90.0 million in cash under the Funding Agreement, which, if utilized, will result in additional payment obligations of up to 4% of our net sales of CK-274 in the CK-274 Territory. We may also incur additional indebtedness to meet future financing needs. Our indebtedness could have significant negative consequences for our security holders and our business, results of operations and financial condition by, among other things:

- increasing our vulnerability to adverse economic and industry conditions;
- limiting our ability to obtain additional financing;
- requiring the dedication of a substantial portion of our cash flow from operations to service our indebtedness, which will reduce the amount of cash available for other purposes;
- limiting our flexibility to plan for, or react to, changes in our business;
- diluting the interests of our existing stockholders as a result of issuing shares of our common stock upon conversion of the notes; and
- placing us at a possible competitive disadvantage with competitors that are less leveraged than us or have better access to capital.

Our business may not generate sufficient funds, and we may otherwise be unable to maintain sufficient cash reserves, to pay amounts due under our indebtedness, including the 2026 Notes, and our cash needs may increase in the future. In addition, any required repurchase of the 2026 Notes for cash as a result of a fundamental change would lower our current cash on hand such that we would not have those funds available for us in our business. Further any future indebtedness that we may incur may contain financial and other restrictive covenants that limit our ability to operate our business, raise capital or make payments under our other indebtedness. If we fail to comply with these covenants or to make payments under our indebtedness when due, then we would be in default under that indebtedness, which could, in turn, result in that and our other indebtedness becoming immediately payable in full.

Covenants in our Term Loan Agreement, the indenture related to the 2026 Notes and the Funding Agreement restrict our business and operations in many ways and if we do not effectively manage our covenants, our financial conditions and results of operations could be adversely affected. Our operations may not provide sufficient cash to meet the repayment obligations of our debt incurred under the Term Loan Agreement.

The Term Loan Agreement and the indenture related to the 2026 Notes requires that we comply with certain covenants applicable to us, including among other things, covenants restricting dispositions, changes in business, management, ownership or business locations, mergers or acquisitions, indebtedness, encumbrances, distributions, investments, transactions with affiliates and subordinated debt, any of which could restrict our business and operations, particularly our ability to respond to changes in our business or to take specified actions to take advantage of certain business opportunities that may be presented to us. In addition, should we exercise our option pursuant to the Funding Agreement, such agreement contains certain covenants applicable to us, including among other things, development and commercialization diligence obligations in connection to CK-274, use of proceeds, reporting and encumbrances, which could also restrict our business and operations, particularly in connection to our development and commercialization of CK-274.

Our failure to comply with any of the covenants could result in a default under the Term Loan Agreement, the indenture related to the 2026 Notes, or the Funding Agreement which could permit the creditors to declare all or part of any outstanding borrowings or other payment obligations to be immediately due and payable and/or enforce any outstanding liens against our assets.

In addition, certain provisions in the 2026 Notes and the related indenture could make a third party attempt to acquire us more difficult or expensive. For example, if a takeover constitutes a fundamental change under our indenture, then noteholders will have the right to require us to repurchase their notes for cash. In addition, if a takeover constitutes a make-whole fundamental change under our indenture, then we may be required to temporarily increase the conversion rate. In either case, and in other cases, our obligations under the notes and the Indenture could increase the cost of acquiring us or otherwise discourage a third party from acquiring us or removing incumbent management, including in a transaction that noteholders or holders of our common stock may view as favorable.

If we are unable to repay those amounts, the relevant creditors could proceed against the collateral granted to them to secure that debt (if any), which would seriously harm our business. In addition, should we be unable to comply with these covenants or if we default on any portion of our outstanding borrowings, the Lenders in connection to the Term Loan can also impose a 5.0% penalty. In addition, the Term Loan has interest only payments through July 1, 2021. The interest only period will be extended through December 31, 2021 as a result of the achievement of positive results in GALACTIC-HF, the trial of omecamtiv mecarbil in chronic heart failure.

We will depend on Ji Xing for the development and commercialization of CK-274 in the greater China region.

Under the terms of the Ji Xing License Agreement, Ji Xing will be responsible for the development and commercialization of CK-274 in the greater China region, including mainland China, Hong Kong, Macau and Taiwan. The timing and amount of any milestone and royalty payments we may receive under the Ji Xing License Agreement will depend in part on the efforts and successful commercialization of CK-274 by Ji Xing. We do not control the individual efforts of Ji Xing, and any failure by Ji Xing to devote sufficient time and effort to the development and commercialization of CK-274 or to meet its obligations to us, including for future milestone and royalty payments; or to adequately deploy business continuity plans in the event of a crisis, or to satisfactorily resolve significant disagreements with us could each have an adverse impact on our financial results and operations. We will also depend on Ji Xing to comply with all applicable laws relative to the development and commercialization of CK-274 in the greater China region. If Ji Xing were to violate, or was alleged to have violated, any laws or regulations during the performance of its obligations for us, it is possible that we could suffer financial and reputational harm or other negative outcomes, including possible legal consequences.

Any termination, breach or expiration of the Ji Xing License Agreement could have a material adverse effect on our financial position by reducing or eliminating the potential for us to receive milestones and royalties. In such an event, we may be required to devote additional efforts and to incur additional costs associated with pursuing the development and commercialization of CK-274 in greater China. Alternatively, we may attempt to identify and transact with a new sub-licensee, but there can be no assurance that we would be able to identify a suitable sub-licensee or transact on terms that are favorable to us.

Our right to receive payment under the Royalty Purchase Agreement is conditional upon satisfaction of certain conditions precedent.

On July 14, 2020, we entered into the Royalty Purchase Agreement with RTW Royalty Holdings, pursuant to which we agreed to sell to RTW Royalty Holdings our right to receive the Mavacamten Royalty under the Collaboration Agreement in consideration for a cash payment by RTW Royalty Holdings to us of $85.0 million. The closing of the transaction contemplated by the Royalty Purchase Agreement (including the payment of the $85.0 million purchase price) is subject to the satisfaction of certain closing conditions, including MyoKardia providing its consent to the sale of the Mavacamten Royalty to RTW Royalty Holdings. In order to complete this sale transaction, the closing conditions must have been satisfied or waived on or prior to October 12, 2020. Since the closing conditions were not satisfied by such date, the Company and RTW Royalty Holdings have extended the date for fulfilment of the closing conditions until November 11, 2020 and may, but have no obligation to, agree to further extensions, if necessary. If the closing conditions are not satisfied or waived by or on November 11, 2020 or such other date as may be agreed by the parties, each of the parties shall have the right, but not the obligation to, terminate the Royalty Purchase Agreement. Until such time when all of the closing conditions to RTW Royalty Holdings' obligations to consummate the sale transaction are satisfied or waived, RTW Royalty Holdings will be under no obligation to consummate the sale transaction or pay the purchase price to us (in which case we will retain our rights to the Mavacamten Royalty). Similarly, until such time when all of the closing conditions to the Company's obligations to consummate the sale transaction are satisfied or waived, the Company will be under no obligation to consummate the sale transaction.

We have never generated, and may never generate, revenues from commercial sales of our drugs and we will not have drugs to market for at least several years, if ever.

We currently have no drugs for sale and we cannot guarantee that we will ever develop or obtain approval to market any drugs. To receive marketing approval for any drug candidate, we must demonstrate that the drug candidate satisfies rigorous standards of safety and efficacy to the FDA in the United States and other regulatory authorities abroad. We and our partners will need to conduct significant additional research and preclinical and clinical testing before we or our partners can file applications with the FDA or other regulatory authorities for approval of any of our drug candidates. In addition, to compete effectively, our drugs must be easy to use, cost-effective, covered by insurance or government sponsored medical plans, and economical to manufacture on a commercial scale, compared to other therapies available for the treatment of the same conditions. We may not achieve any of these objectives. Currently, our clinical-stage drug candidates include omecamtiv mecarbil for the potential treatment of heart failure, reldesemtiv for the potential treatment of ALS and potentially other indications associated with muscle weakness, and CK-274 for the potential treatment of HCM and potentially other indications. We cannot be certain that the clinical development of our current or any future drug candidates will be successful, that they will receive the regulatory approvals required to commercialize them, that they will ultimately be accepted by prescribers or reimbursed by insurers or that any of our other research programs will yield a drug candidate suitable for clinical testing or commercialization. Our commercial revenues, if any, will be derived from sales of drugs that we do not expect to be commercially marketed for at least several years, if at all. The development of any one or all of these drug candidates may be discontinued at any stage of our clinical trials programs and we may not generate revenue from any of these drug candidates.

Clinical trials may fail to demonstrate the desired safety and efficacy of our drug candidates, which could prevent or significantly delay completion of clinical development and regulatory approval.

Prior to receiving approval to commercialize any of our drug candidates, we or our partners must adequately demonstrate to the satisfaction of FDA and foreign regulatory authorities that the drug candidate is sufficiently safe and effective with substantial evidence from well-controlled clinical trials. We or our partners will need to demonstrate efficacy in clinical trials for the treatment of specific indications and monitor safety throughout the clinical development process and following approval. None of our drug candidates have yet met the safety and efficacy standards required for regulatory approval for commercialization and they may never do so. In addition, for each of our preclinical compounds, we or our partners must adequately demonstrate satisfactory chemistry, formulation, quality, stability and toxicity in order to submit an IND to the FDA, or an equivalent application in foreign jurisdictions, that would allow us to advance that compound into clinical trials. Furthermore, we or our partners may need to submit separate INDs (or foreign equivalent) to different divisions within the FDA (or foreign regulatory authorities) in order to pursue clinical trials in different therapeutic areas. Each new IND (or foreign equivalent) must be reviewed by the new regulatory division before the clinical trial under its jurisdiction can proceed, entailing all the risks of delay inherent to regulatory review. If our or our partners' current or future preclinical studies or clinical trials are unsuccessful, our business will be significantly harmed and our stock price could be negatively affected.

All of our drug candidates are prone to the risks of failure inherent in drug development. Preclinical studies may not yield results that would adequately support the filing of an IND (or a foreign equivalent) with respect to our potential drug candidates. Even if the results of preclinical studies for a drug candidate are sufficient to support such a filing, the results of preclinical studies do not necessarily predict the results of clinical trials. As an example, because the physiology of animal species used in preclinical studies may vary substantially from other animal species and from humans, it may be difficult to assess with certainty whether a finding from a study in a particular animal species will result in similar findings in other animal species or in humans. For any of our drug candidates, the results from Phase 1 clinical trials in healthy volunteers and clinical results from Phase 1 and 2 trials in patients are not necessarily indicative of the results of later and larger clinical trials that are necessary to establish whether the drug candidate is safe and effective for the applicable indication. Likewise, interim results from a clinical trial may not be indicative of the final results from that trial, and results from early Phase 2 clinical trials may not be indicative of the results from later clinical trials. For example, early Phase 2 clinical trials of tirasemtiv in patients with ALS showed encouraging dose-related trends in measurements of the ALSFRS-R, a clinically validated instrument designed to measure disease progression and changes in functional status, for patients receiving tirasemtiv compared to those receiving placebo. However, BENEFIT-ALS, a Phase 2b clinical trial of tirasemtiv in patients with ALS, did not achieve its primary efficacy endpoint, the mean change from baseline in the ALSFRS-R for patients receiving tirasemtiv compared to those receiving placebo, and in November 2017, we announced that VITALITY-ALS did not achieve its primary endpoint or secondary endpoints. Following the results of VITALITY-ALS, we suspended development of tirasemtiv.

Moreover, the Phase 2 clinical trial of reldesemtiv in COPD and Phase 1b clinical trial of reldesemtiv in elderly subjects with limited mobility did not show efficacy, and there can be no assurance that reldesemtiv will demonstrate efficacy in other indications, regardless of the phase of development.

In addition, while the clinical trials of our drug candidates are designed based on the available relevant information, such information may not accurately predict what actually occurs during the course of the trial itself, which may have consequences for the conduct of an ongoing clinical trial or for the eventual results of that trial. For example, the number of patients planned to be enrolled in a placebo-controlled clinical trial is determined in part by estimates relating to expected treatment effect and variability about the primary endpoint. These estimates are based upon earlier non-clinical and clinical studies of the drug candidate itself and clinical trials of other drugs thought to have similar effects in a similar patient population. If information gained during the conduct of the trial shows these estimates to be inaccurate, we may elect to adjust the enrollment accordingly, which may cause delays in completing the trial, additional expense or a statistical penalty to apply to the evaluation of the trial results.

Furthermore, in view of the uncertainties inherent in drug development, such clinical trials may not be designed with focus on indications, patient populations, dosing regimens, endpoints, safety, efficacy or pharmacokinetic parameters or other variables that will provide the necessary safety or efficacy data to support regulatory approval to commercialize the resulting drugs. For example, we believe that effects on respiratory function, including SVC, may be appropriate as a clinical endpoint for reldesemtiv; however, regulatory authorities may not accept these effects as a clinical endpoint to support registration of reldesemtiv for the treatment of ALS. Clinical trials of our drug candidates are designed based on guidance or advice from regulatory agencies, which is subject to change during the development of the drug candidate at any time. Such a change in a regulatory agency's guidance or advice may cause that agency to deem results from trials to be insufficient to support approval of the drug candidate and require further clinical trials of that drug candidate to be conducted. In addition, individual patient responses to the dose administered of a drug may vary in a manner that is difficult to predict. Also, the methods we select to assess particular safety, efficacy or pharmacokinetic parameters may not yield the same statistical precision in estimating our drug candidates' effects as may other methodologies. Even if we believe the data collected from clinical trials of our drug candidates are promising, these data may not be sufficient to support approval by the FDA or foreign regulatory authorities. Non-clinical and clinical data can be interpreted in different ways. Accordingly, the FDA or foreign regulatory authorities could interpret these data in different ways from us or our partners, which could delay, limit or prevent regulatory approval.

Furthermore, while planned interim analyses in clinical trials can enable early terminations for futility or for overwhelming efficacy, the timing, which can be based on accrual of events, enrollment or other factors, and the results of such analyses, is unpredictable.

GALACTIC-HF was conducted under an SPA agreement with FDA. However, even where the FDA agrees to the design, execution and analysis proposed in protocols reviewed under the SPA process, the FDA may revoke or alter its agreement in certain circumstances, and the FDA retains significant latitude and discretion in interpreting the terms of the SPA agreement and the data and results from any study that is subject to the SPA agreement. The existence of an SPA agreement in respect of GALACTIC-HF or any other trial does not guarantee that FDA would approve any resulting NDA in respect of any product that is the subject of any clinical trial subject to an SPA agreement.

Administering any of our drug candidates or potential drug candidates may produce undesirable side effects, also known as adverse events. Toxicities and adverse events observed in preclinical studies for some compounds in a particular research and development program may also occur in preclinical studies or clinical trials of other compounds from the same program. Potential toxicity issues may arise from the effects of the active pharmaceutical ingredient itself or from impurities or degradants that are present in the active pharmaceutical ingredient or could form over time in the formulated drug candidate or the active pharmaceutical ingredient. These toxicities or adverse events could delay or prevent the filing of an IND (or a foreign equivalent) with respect to our drug candidates or potential drug candidates or cause us, our partners or the FDA or foreign regulatory authorities to modify, suspend or terminate clinical trials with respect to any drug candidate at any time during the development program. Further, the administration of two or more drugs contemporaneously can lead to interactions between them, and our drug candidates may interact with other drugs that trial subjects are taking. If the adverse events are severe or frequent enough to outweigh the potential efficacy of a drug candidate, the FDA or other regulatory authorities could deny approval of that drug candidate for any or all targeted indications. Even if one or more of our drug candidates were approved for sale as drugs, the occurrence of even a limited number of adverse events or toxicities when used in large populations may cause the FDA or foreign regulatory authorities to impose restrictions on, or stop, the further marketing of those drugs. Indications of potential adverse events or toxicities which do not seem significant during the course of clinical trials may later turn out to actually constitute serious adverse events or toxicities when a drug is used in large populations or for extended periods of time.

We have observed certain adverse events in the clinical trials conducted with our drug candidates. For example, in clinical trials of omecamtiv mecarbil, adverse events of chest discomfort, palpitations, dizziness and feeling hot, increases in heart rate, declines in blood pressure, electrocardiographic changes consistent with acute myocardial ischemia and transient rises in the MB fraction of creatine kinase and cardiac troponins I and T, which are indicative of myocardial infarction were observed during treatment with omecamtiv mecarbil.

In addition, clinical trials of reldesemtiv and omecamtiv mecarbil enroll patients who typically suffer from serious diseases which put them at increased risk of death. These patients may die while receiving our drug candidates. In such circumstances, it may not be possible to exclude with certainty a causal relationship to our drug candidate, even though the responsible clinical investigator may view such an event as not study drug-related.

Any failure or significant delay in completing preclinical studies or clinical trials for our drug candidates, or in receiving and maintaining regulatory approval for the sale of any resulting drugs, may significantly harm our business and negatively affect our stock price.

The failure of a number of Phase 3 clinical trials evaluating other compounds as potential treatments for patients with ALS may suggest an increased risk that our clinical development program of reldesemtiv in patients with ALS will also fail.

In recent years, a number of Phase 3 clinical trials of potential treatments for ALS have failed to demonstrate the requisite efficacy for regulatory approval or for their continued development. These include our trial of tirasemtiv known as VITALITY-ALS, Biogen's trial of dexpramipexole, known as EMPOWER, the National Institute of Neurological Disorders and Stroke's trial of ceftriaxone, and Trophos SA's trial of olesoxime. Reldesemtiv, like these compounds, may fail in clinical development if it does not show a statistically significant level of clinical efficacy or if the adverse event profile is too great compared to its benefits. Further, even if we believe the data collected from the planned clinical development program of reldesemtiv are promising and should support approval, the FDA or other regulatory authorities may not deem these data to be sufficient to support approval.

Clinical trials are expensive, time-consuming and subject to delay.

Clinical trials are subject to rigorous regulatory requirements and are very expensive, difficult and time-consuming to design and implement. The length of time and number of trial sites and patients required for clinical trials vary substantially based on the type, complexity, novelty, intended use of the drug candidate and safety concerns. Clinical trials of our current drug candidates can each continue for several more years. However, the clinical trials for all or any of our drug candidates may take significantly longer to complete. The commencement and completion of our or our partners' clinical trials could be delayed or prevented by many factors, including, but not limited to:

- delays in obtaining, or inability to obtain, regulatory or other approvals to commence and conduct clinical trials in the manner we or our partners deem necessary for the appropriate and timely development of our drug candidates and commercialization of any resulting drugs;
- delays in identifying and reaching agreement, or inability to identify and reach agreement, on acceptable terms, with prospective clinical trial sites and other entities involved in the conduct of our or our partners' clinical trials;
- delays or additional costs in developing, or inability to develop, appropriate formulations of our drug candidates for clinical trial use;
- slower than expected rates of patient recruitment and enrollment;
- for those drug candidates that are the subject of a strategic alliance, delays in reaching agreement with our partner as to appropriate development strategies;
- a regulatory authority may require changes to a protocol for a clinical trial that then may require approval from regulatory agencies in other jurisdictions where the trial is being conducted;
- an institutional review board ("IRB") or its foreign equivalent may require changes to a protocol that then require approval from regulatory agencies and other IRBs and their foreign equivalents, or regulatory authorities may require changes to a protocol that then require approval from the IRBs or their foreign equivalents;
- for clinical trials conducted in foreign countries, the time and resources required to identify, interpret and comply with foreign regulatory requirements or changes in those requirements, and political instability or natural disasters occurring in those countries;
- lack of effectiveness of our drug candidates during clinical trials;
- unforeseen safety issues;
- inadequate supply, or delays in the manufacture or supply, of clinical trial materials;
- uncertain dosing issues;
- failure by us, our partners, or clinical research organizations, investigators or site personnel engaged by us or our partners to comply with good clinical practices and other applicable laws and regulations, including those concerning informed consent;
- inability or unwillingness of investigators or their staffs to follow clinical protocols;
- failure by our clinical research organizations, clinical manufacturing organizations and other third parties supporting our or our partners' clinical trials to fulfill their obligations;
- inability to monitor patients adequately during or after treatment;

- introduction of new therapies or changes in standards of practice or regulatory guidance that render our drug candidates or their clinical trial endpoints obsolete; and
- results from non-clinical studies that may adversely impact the timing or further development of our drug candidates.

We do not know whether planned clinical trials will begin on time, or whether planned or currently ongoing clinical trials will need to be restructured or will be completed on schedule, if at all. Significant delays in clinical trials will impede our ability to commercialize our drug candidates and generate revenue and could significantly increase our development costs.

If we encounter difficulties enrolling patients in our clinical trials, our clinical development activities could be delayed or otherwise adversely affected.

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

- the patient eligibility criteria defined in the protocol;
- the size of the patient population required for analysis of the trial's primary endpoints;
- the proximity of patients to study sites;
- the design of the trial;
- the ability to recruit clinical trial investigators with the appropriate competencies and experience;
- clinicians' and patients' perceptions as to the potential advantages of the product candidate being studied in relation to other available therapies or clinical trials, including any new drugs that may be approved for the indications we are investigating or clinical trial results;
- the ability to obtain and maintain patient consents; and
- the risk that patients enrolled in clinical trials will drop out of the trials before completion.

In addition, our and our partners' clinical trials will compete with other clinical trials for product candidates that are in the same therapeutic areas as our and our partners' product candidates, and this competition will reduce the number and types of patients available to us, because some patients who might have opted to enroll in our or our partners' trials may instead opt to enroll in a trial being conducted by one of our competitors. Since the number of qualified clinical investigators is limited, we expect to conduct some of our or our partners' clinical trials at the same clinical trial sites that some of our competitors use, which will reduce the number of patients who are available for our clinical trials in such clinical trial site.

Delays in patient enrollment may result in increased costs or may affect the timing or outcome of the planned clinical trials, which could prevent completion of these trials and adversely affect our and our partners' ability to advance the development of product candidates.

We depend on Amgen for the conduct and funding of the development and commercialization of omecamtiv mecarbil.

Under our strategic alliance, Amgen holds an exclusive worldwide license to our drug candidate omecamtiv mecarbil. As a result, Amgen is responsible for the development and obtaining and maintaining regulatory approval of omecamtiv mecarbil for the potential treatment of heart failure worldwide.

Amgen conducted GALACTIC-HF, a Phase 3 clinical trial of omecamtiv mecarbil. We do not control the development activities being conducted or that may be conducted in the future by Amgen, including, but not limited to, the timing of initiation, termination or completion of clinical trials, the analysis of data arising out of those clinical trials or the timing of release of data concerning those clinical trials, which may impact our ability to report on Amgen's results. Amgen may conduct these activities more slowly or in a different manner than we would if we controlled the development of omecamtiv mecarbil. Amgen is responsible for submitting future applications to the FDA and other regulatory authorities for approval of omecamtiv mecarbil and will be the owner of marketing approvals issued by the FDA and other regulatory authorities for omecamtiv mecarbil, subject to Servier's exclusive rights for the commercialization of omecamtiv mecarbil in Europe, as well as the CIS, including Russia. If the FDA or other regulatory authorities approve omecamtiv mecarbil, Amgen will also be responsible for the marketing and sale of the resulting drug, subject to our right to co-promote omecamtiv mecarbil in North America in connection with the exercise of our option to co-fund Phase 3 development costs of omecamtiv mecarbil under the collaboration and subject to Servier's exclusive rights for the commercialization of omecamtiv mecarbil in Europe, as well as the CIS, including Russia. However, we cannot control whether Amgen will devote sufficient attention and resources to the development of omecamtiv mecarbil or will proceed in an expeditious manner, even with our exercise of our option and co-funding of the Phase 3 development program of omecamtiv mecarbil. Even if the FDA or other regulatory agencies approve omecamtiv mecarbil, Amgen or Servier may elect not to proceed with the commercialization of the resulting drug in one or more countries.

Disputes may arise between us and Amgen, which may delay or cause the termination of any clinical trials of omecamtiv mecarbil, result in significant litigation or cause Amgen to act in a manner that is not in our best interest. The costs associated with the continuing development of omecamtiv mecarbil may cause Amgen to reconsider the terms of its investment and seek to amend or terminate our collaboration agreement or to suspend the development of omecamtiv mecarbil. If development of omecamtiv mecarbil does not progress for these or any other reasons, we would not receive further milestone payments or royalties on product sales from Amgen with respect to omecamtiv mecarbil. If the results of one or more clinical trials with omecamtiv mecarbil do not meet Amgen's expectations at any time, Amgen may elect to terminate further development of omecamtiv mecarbil or certain of the potential clinical trials for omecamtiv mecarbil, even if the actual number of patients treated at that time is relatively small. In addition, Amgen generally has discretion to elect whether to pursue or abandon the development of omecamtiv mecarbil and may terminate our strategic alliance for any reason upon six months prior notice. With our consent, Amgen granted Servier an option to commercialize omecamtiv mecarbil in Europe and the CIS, including Russia, which Servier decided to exercise. In August 2016, we entered into a letter agreement with Amgen and Servier, which provides that if Amgen's rights to omecamtiv mecarbil are terminated with respect to the territory subject to Servier's sublicense, the sublicensed rights previously granted by Amgen to Servier with respect to omecamtiv mecarbil will remain in effect and become a direct license or sublicense of such rights by us to Servier, on substantially the same terms as those in the Option, License and Collaboration Agreement between Amgen and Servier. If Amgen abandons omecamtiv mecarbil, it would result in a delay in or could prevent us from commercializing omecamtiv mecarbil and would delay and could prevent us from obtaining revenues for this drug candidate. In addition, we would be required to provide Servier with a direct license or sublicense and the rights to commercialize omecamtiv mecarbil in Europe and the CIS, including Russia, on terms that were not negotiated by us. There can be no assurance that we would be able to negotiate and enter into a definitive agreement with Servier on terms favorable or acceptable to us, or at all.

If Amgen abandons development of omecamtiv mecarbil prior to regulatory approval or if it elects not to proceed with commercialization of the resulting drug following regulatory approval, we would have to seek a new partner for development or commercialization, curtail or abandon that development or commercialization, or undertake and fund the development of omecamtiv mecarbil or commercialization of the resulting drug ourselves. If we seek a new partner but are unable to do so on acceptable terms, or at all, or do not have sufficient funds to conduct the development or commercialization of omecamtiv mecarbil ourselves, we would have to curtail or abandon that development or commercialization, which could harm our business.

If we do not enter into strategic alliances for our unpartnered drug candidates or research and development programs or fail to successfully maintain our current or future strategic alliances, we may have to reduce, delay or discontinue our advancement of our drug candidates and programs or expand our research and development capabilities and increase our expenditures.

Drug development is complicated and expensive. We currently have limited financial and operational resources to carry out drug development. Our strategy for developing, manufacturing and commercializing our drug candidates currently requires us to enter into and successfully maintain strategic alliances with pharmaceutical companies or other industry participants to advance our programs and reduce our expenditures on each program. Accordingly, the success of our development activities depends in large part on our current and future strategic partners' performance, over which we have little or no control.

Our ability to commercialize drugs that we develop with our partners and that generate royalties from product sales depends on our partners' abilities to assist us in establishing the safety and efficacy of our drug candidates, obtaining and maintaining regulatory approvals and achieving market acceptance of the drugs once commercialized. Our partners may elect to delay or terminate development of one or more drug candidates, independently develop drugs that could compete with ours or fail to commit sufficient resources to the marketing and distribution of drugs developed through their strategic alliances with us. Our partners may not proceed with the development and commercialization of our drug candidates with the same degree of urgency as we would because of other priorities they face. In addition, new business combinations or changes in a partner's business strategy may adversely affect its willingness or ability to carry out its obligations under a strategic alliance.

If we are not able to successfully maintain our existing strategic alliances or establish and successfully maintain additional strategic alliances, we will have to limit the size or scope of, or delay or discontinue, one or more of our drug development programs or research programs, or undertake and fund these programs ourselves. Alternatively, if we elect to continue to conduct any of these drug development programs or research programs on our own, we will need to expand our capability to conduct clinical development by bringing additional skills, technical expertise and resources into our organization. This would require significant additional funding, which may not be available to us on acceptable terms, or at all.

To the extent we elect to fund the development of a drug candidate, or the commercialization of a drug at our expense, we will need substantial additional funding.

The discovery, development and commercialization of new drugs is costly. As a result, to the extent we elect to fund the development of a drug candidate or the commercialization of a drug, we will need to raise additional capital to:

- fund clinical trials and seek regulatory approvals;
- expand our development capabilities;
- engage third-party manufacturers for such drug candidate or drug;
- build or access commercialization capabilities;
- implement additional internal systems and infrastructure;
- maintain, defend and expand the scope of our intellectual property; and
- hire and support additional management and scientific personnel.

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

- the rate of progress and costs of our or our partners' clinical trials and other research and development activities;
- the costs and timing of seeking and obtaining regulatory approvals;
- the costs associated with establishing manufacturing and commercialization capabilities;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- the costs of acquiring or investing in businesses, products and technologies;
- the effect of competing technological and market developments; and
- the status of, payment and other terms, and timing of any strategic alliance, licensing or other arrangements that we have entered into or may establish.

Until we can generate a sufficient amount of product revenue to finance our cash requirements, which we may never do, we expect to continue to finance our future cash needs primarily through strategic alliances and other financings. We cannot be certain that additional funding will be available on acceptable terms, or at all. If we are not able to secure additional funding when needed, we may have to delay, reduce the scope of or eliminate one or more of our clinical trials or research and development programs or future commercialization initiatives.

We depend on CROs to conduct our clinical trials and have limited control over their performance. If these CROs do not successfully carry out their contractual duties or meet expected deadlines, or if we lose any of our CROs, we may not be able to obtain regulatory approval for or commercialize our product candidates on a timely basis, if at all.

We have used and intend to continue to use a limited number of CROs within and outside of the United States to conduct clinical trials of our drug candidates and related activities. We do not have control over many aspects of our CROs' activities, and cannot fully control the amount, timing or quality of resources that they devote to our programs. CROs may not assign as high a priority to our programs or pursue them as diligently as we would if we were undertaking these programs ourselves. The activities conducted by our CROs therefore may not be completed on schedule or in a satisfactory manner. CROs may also give higher priority to relationships with our competitors and potential competitors than to their relationships with us. Outside of the United States, we are particularly dependent on our CROs' expertise in communicating with clinical trial sites and regulatory authorities and ensuring that our clinical trials and related activities and regulatory filings comply with applicable laws.

Our CROs' failure to carry out development activities on our behalf as agreed and in accordance with our and the FDA's or other regulatory agencies' requirements and applicable U.S. and foreign laws, or our failure to properly coordinate and manage these activities, could increase the cost of our operations and delay or prevent the development, approval and commercialization of our drug candidates. For example, in June 2013, we learned from our data management vendor for BENEFIT-ALS that a programming error in the electronic data capture system controlling study drug assignment caused 58 patients initially randomized to and treated with tirasemtiv to receive placebo instead at a certain trial visit and for the remainder of the trial. In order to maintain the originally intended statistical power of the trial, we amended the protocol to permit enrollment of approximately 680 patients, or 180 patients in addition to the 500 patients allowed under the existing protocol. This protocol amendment resulted in additional costs and delays in conducting BENEFIT-ALS. Further, for the quarter ended September 30, 2016, we determined that there was an error in the accounting for the recognition of clinical research and development expenses related to the information received from one of our CROs, which resulted in a restatement of our clinical research and development expenses, related clinical accrual accounts and related financial disclosures as of and for the three and nine month periods ended September 30, 2016. In addition, if a CRO fails to perform as agreed, our ability to collect damages may be contractually limited. If we fail to effectively manage the CROs carrying out the development of our drug candidates or if our CROs fail to perform as agreed, the commercialization of our drug candidates will be delayed or prevented. In many cases, our CROs have the right to terminate their agreements with us in the event of an uncured material breach. Identifying, qualifying and managing performance of third-party service providers can be difficult, time consuming and cause delays in our development programs. In addition, there is a natural transition period when a new CRO commences work and the new CRO may not provide the same type or level of services as the original provider. If any of our relationships with our third-party CROs terminate, we may not be able to enter into arrangements with alternative CROs or to do so timely or on commercially reasonable terms.

We have no manufacturing capacity and depend on our strategic partners and contract manufacturers to produce our clinical trial materials, including our drug candidates, and anticipate continued reliance on contract manufacturers for the development and commercialization of our potential drugs.

We do not currently operate manufacturing facilities for clinical or commercial production of our drug candidates. We have limited experience in drug formulation and manufacturing, and we lack the resources and the capabilities to manufacture any of our drug candidates on a clinical or commercial scale. Amgen has assumed responsibility to conduct these activities for the ongoing development of omecamtiv mecarbil worldwide. Prior to entry into the Astellas FSRA Agreement, Astellas had primary responsibility for the manufacturing for the ongoing development of reldesemtiv worldwide. Now that we have assumed responsibility for the ongoing development of reldesemtiv worldwide, we will need to effect a transfer of manufacturing of reldesemtiv to one or more contract manufacturers and to rely on such contract manufacturers for future supply. If any partner were to terminate the development of any of our other existing drug candidates, we may need to rely on contract manufacturers for the ongoing supply of those drug candidates as well. Moreover, under the Ji Xing License Agreement, we have committed to providing Ji Xing with supply of CK-274 for development and commercialization of CK-274 in the greater China region, which we will have to source from our contract manufacturers. We expect to rely on contract manufacturers to supply all future drug candidates for which we conduct development, as well as other materials required to conduct our clinical trials, and to fulfil our obligations under the Ji Xing License Agreement. If any of our existing or future contract manufacturers fail to perform satisfactorily, it could delay development or regulatory approval of our drug candidates or commercialization of our drugs, producing additional losses and depriving us of potential product revenues, and also lead to our breach of the Ji Xing License Agreement, giving rise to the ability to terminate such agreement and other adverse consequences as stipulated in the Ji Xing License Agreement. In addition, if a contract manufacturer fails to perform as agreed, our ability to collect damages may be contractually limited.

Our drug candidates require precise high-quality manufacturing. The failure to achieve and maintain high manufacturing standards, including failure to detect or control anticipated or unanticipated manufacturing errors or the frequent occurrence of such errors, could result in patient injury or death, discontinuance or delay of ongoing or planned clinical trials, delays or failures in product testing or delivery, cost overruns, product recalls or withdrawals and other problems that could seriously hurt our business. Contract drug manufacturers often encounter difficulties involving production yields, quality control and quality assurance and shortages of qualified personnel. These manufacturers are subject to stringent regulatory requirements, including the FDA's current good manufacturing practices regulations and similar foreign laws and standards. Each contract manufacturer must pass a pre-approval inspection before we can obtain marketing approval for any of our drug candidates and following approval will be subject to ongoing periodic unannounced inspections by the FDA, the U.S. Drug Enforcement Agency and other regulatory agencies, to ensure strict compliance with current good manufacturing practices and other applicable government regulations and corresponding foreign laws and standards. We seek to ensure that our contract manufacturers comply fully with all applicable regulations, laws and standards. However, we do not have control over our contract manufacturers' compliance with these regulations, laws and standards. If one of our contract manufacturers fails to pass its pre-approval inspection or maintain ongoing compliance at any time, the production of our drug candidates could be interrupted, resulting in delays or discontinuance of our clinical trials, additional costs and potentially lost revenues. In addition, failure of any third-party manufacturers or us to comply with applicable regulations, including pre- or post-approval inspections and the current good manufacturing practice requirements of the FDA or other comparable regulatory agencies, could result in sanctions being imposed on us. These sanctions could include fines, injunctions, civil penalties, failure of regulatory authorities to grant marketing approval of our products, delay, suspension or withdrawal of approvals, license revocation, product seizures or recalls, operational restrictions and criminal prosecutions, any of which could significantly and adversely affect our business.

In addition, our existing and future contract manufacturers may not perform as agreed or may not remain in the contract manufacturing business for the time required to successfully produce, store and distribute our drug candidates. If a natural disaster, business failure, strike or other difficulty occurs, we may be unable to replace these contract manufacturers in a timely or cost-effective manner and the production of our drug candidates would be interrupted, resulting in delays, loss of customers and additional costs.

Switching manufacturers or manufacturing sites would be difficult and time-consuming because the number of potential manufacturers is limited. In addition, before a drug from any replacement manufacturer or manufacturing site can be commercialized, the FDA and, in some cases, foreign regulatory agencies, must approve that site. These approvals would require regulatory testing and compliance inspections. A new manufacturer or manufacturing site also would have to be educated in, or develop substantially equivalent processes for, production of our drugs and drug candidates. It may be difficult or impossible to transfer certain elements of a manufacturing process to a new manufacturer or for us to find a replacement manufacturer on acceptable terms quickly, or at all, either of which would delay or prevent our ability to develop drug candidates and commercialize any resulting drugs.

We may not be able to successfully manufacture our drug candidates in sufficient quality and quantity, which would delay or prevent us from developing our drug candidates and commercializing resulting approved drugs, if any.

To date, our drug candidates have been manufactured in quantities adequate for preclinical studies and early through late-stage clinical trials. In order to conduct large scale clinical trials for a drug candidate and for commercialization of the resulting drug if that drug candidate is approved for sale, we will need to manufacture some drug candidates in larger quantities. We may not be able to successfully repeat or increase the manufacturing capacity for any of our drug candidates, whether in collaboration with third-party manufacturers or on our own, in a timely or cost-effective manner or at all. If a contract manufacturer makes improvements in the manufacturing process for our drug candidates, we may not own, or may have to share, the intellectual property rights to those improvements. Significant changes or scale-up of manufacturing may require additional validation studies, which are costly and which regulatory authorities must review and approve. In addition, quality issues may arise during those changes or scale-up activities because of the inherent properties of a drug candidate itself or of a drug candidate in combination with other components added during the manufacturing and packaging process, or during shipping and storage of the finished product or active pharmaceutical ingredients. If we are unable to successfully manufacture of any of our drug candidates in sufficient quality and quantity, the development of that drug candidate and regulatory approval or commercial launch for any resulting drugs may be delayed or there may be a shortage in supply, which could significantly harm our business. In addition, data demonstrating the stability of both drug substance and drug product, using the commercial manufacturing process and at commercial scale, are required for marketing applications. Failure to produce drug substance and drug products in a timely manner and obtain stability data could result in delay of submission of marketing applications.

The mechanisms of action of our drug candidates are unproven, and we do not know whether we will be able to develop any drug of commercial value.

We have discovered and develop drug candidates that have what we believe are novel mechanisms of action directed against cytoskeletal targets. Because no currently-approved drugs appear to operate via the same biochemical mechanisms as our compounds, we cannot be certain that our drug candidates will result in commercially viable drugs that safely and effectively treat the indications for which we intend to develop them. The results we have seen for our compounds in preclinical models may not translate into similar results in humans, and results of early clinical trials in humans may not be predictive of the results of larger clinical trials that may later be conducted with our drug candidates. Even if we are successful in developing and receiving regulatory approval for a drug candidate for the treatment of a particular disease, we cannot be certain that it will be accepted by prescribers or be reimbursed by insurers or that we will also be able to develop and receive regulatory approval for that or other drug candidates for the treatment of other diseases. If we or our partners are unable to successfully develop and commercialize our drug candidates, our business will be materially harmed.

Moreover, in the event any of our competitors were to develop their own drug candidates that have a similar mechanism of action to any of our drug candidates and compounds, any efficacy or safety concerns identified during the development of such similar drug candidates may have an adverse impact on the development of our own drug candidates. For example, if a competitors' drug candidate having a similar mechanism of action as any of our own drug candidates is shown in clinical trials to give rise to serious safety concerns or have poor efficacy when administered to the target patient population, the FDA or other regulatory bodies may subject our drug candidates to increased scrutiny, leading to additional delays in development and potentially decreasing the chance of ultimate approval of our own drug candidates.

Our success depends substantially upon our ability to obtain and maintain intellectual property protection relating to our drug candidates, compounds and research technologies.

We own, co-own or hold exclusive licenses to a number of U.S. and foreign patents and patent applications directed to our drug candidates, compounds and research technologies. Our success depends on our ability to obtain patent protection both in the United States and in other countries for our drug candidates, their methods of manufacture and use, and our technologies. Our ability to protect our drug candidates, compounds and technologies from unauthorized or infringing use by third parties depends substantially on our ability to obtain and enforce our patents. If our issued patents and patent applications, if granted, do not adequately describe, enable or otherwise provide coverage of our technologies and drug candidates, we or our licensees would not be able to exclude others from developing or commercializing these drug candidates. Furthermore, the degree of future protection of our proprietary rights is uncertain because legal means may not adequately protect our rights or permit us to gain or keep our competitive advantage. If we are unable to obtain and maintain sufficient intellectual property protection for our technologies and drug candidates, or if the scope of the intellectual property protection obtained is not sufficiently broad, our competitors could develop and commercialize drug candidates similar or identical to ours, and our ability to successfully commercialize product candidates that we may pursue may be impaired.

Obtaining and enforcing biopharmaceutical patents is costly, time consuming and complex, and we may not be able to file and prosecute all necessary or desirable patent applications, or maintain, enforce and license any patents that may issue from such patent applications, at a reasonable cost or in a timely manner. It is also possible that we will fail to identify patentable aspects of our research and development output before it is too late to obtain patent protection. We may not have the right to control the preparation, filing and prosecution of patent applications, or to maintain the rights to patents licensed to third parties. Therefore, these patents and applications may not be prosecuted and enforced in a manner consistent with the best interests of our business.

Due to evolving legal standards relating to the patentability, validity and enforceability of patents covering pharmaceutical inventions and the claim scope of these patents, our ability to enforce our existing patents and to obtain and enforce patents that may issue from any pending or future patent applications is uncertain and involves complex legal, scientific and factual questions. The standards which the U.S. Patent and Trademark Office and its foreign counterparts use to grant patents are not always applied predictably or uniformly and are subject to change. To date, no consistent policy has emerged regarding the breadth of claims allowed in biotechnology and pharmaceutical patents. Thus, we cannot be sure that any patents will issue from any pending or future patent applications owned by, co-owned by or licensed to us. Even if patents do issue, we cannot be sure that the claims of these patents will be held valid or enforceable by a court of law, will provide us with any significant protection against competitive products, or will afford us a commercial advantage over competitive products. In particular:

- we or our licensors might not have been the first to make the inventions covered by each of our pending patent applications or issued patents;
- we or our licensors might not have been the first to file patent applications for the inventions covered by our pending patent applications or issued patents;

- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;
- some or all of our or our licensors' pending patent applications may not result in issued patents or the claims that issue may be narrow in scope and not provide us with competitive advantages;
- our and our licensors' issued patents may not provide a basis for commercially viable drugs or therapies or may be challenged and invalidated by third parties;
- our or our licensors' patent applications or patents may be subject to interference, post-grant proceedings, derivation, reexamination, inter partes review, opposition or similar legal and administrative proceedings that may result in a reduction in their scope or their loss altogether;
- we may not develop additional proprietary technologies or drug candidates that are patentable; or
- the patents of others may prevent us or our partners from discovering, developing or commercializing our drug candidates.

We may not be able to protect our intellectual property rights throughout the world. Patent protection is afforded on a country-by-country basis. Filing, prosecuting and defending patents on our product candidates in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States can be less extensive than those in the United States. Many companies have encountered significant difficulties in protecting and defending intellectual property rights in foreign jurisdictions. Some of our development efforts are performed in countries outside of the United States through third-party contractors. We may not be able to effectively monitor and assess intellectual property developed by these contractors. We therefore may not be able to effectively protect this intellectual property and could lose potentially valuable intellectual property rights. In addition, the legal protection afforded to inventors and owners of intellectual property in countries outside of the United States may not be as protective of intellectual property rights as in the United States. Therefore, we may be unable to acquire and protect intellectual property developed by these contractors to the same extent as if these development activities were being conducted in the United States. If we encounter difficulties in protecting our intellectual property rights in foreign jurisdictions, our business prospects could be substantially harmed.

Patent terms may be inadequate to protect our competitive position on our technologies and drug candidates for an adequate amount of time. Patents have a limited lifespan. In the United States, if all maintenance fees are timely paid, the natural expiration of a patent is generally 20 years from its earliest U.S. non-provisional filing date. Various extensions may be available, but the life of a patent, and the protection it affords, is limited. Even if patents covering our technologies and drug candidates are obtained, once the patent life has expired, we may be open to competition from competitive products, including generics or biosimilars. Given the amount of time required for the development, testing and regulatory review of new drug candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized. As a result, our owned, co-owned and licensed patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours or our partners.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements. Periodic maintenance fees, renewal fees, annuity fees and various other governmental fees on patents and/or applications will be due to be paid to the USPTO and various governmental patent agencies outside of the United States in several stages over the lifetime of the patents and/or applications. Non-compliance could result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, our competitors might be able to enter the market and this circumstance would have a material adverse effect on our business.

We may be subject to claims challenging the inventorship or ownership of our patents and other intellectual property. We rely on intellectual property assignment agreements with our corporate partners, employees, consultants, scientific advisors and other collaborators to grant us ownership of new intellectual property that is developed. These agreements may not result in the effective assignment to us of that intellectual property. As a result, our ownership of key intellectual property could be compromised.

We or our licensors may be subject to claims that former employees, collaborators, consultants or other third parties have an interest in our owned, co-owned or in-licensed patents, trade secrets, or other intellectual property as an inventor or co-inventor. For example, we or our licensors may have inventorship disputes arise from conflicting obligations of employees, collaborators, consultants or others who are involved in developing our product candidates. Litigation may be necessary to defend against these and other claims challenging inventorship or our or our licensors' ownership of our owned, co-owned or in-licensed patents, trade secrets or other intellectual property. If we or our licensors fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, intellectual property that is important to our product candidates. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and prospects.

We are a party to license agreements and may need to obtain additional licenses from others to advance our research and development activities or allow the commercialization of our drug candidates and future drug candidates we may identify and pursue. If we fail to comply with our obligations in the agreements under which we license intellectual property rights from third parties or these agreements are terminated or we otherwise experience disruptions to our business relationships with our licensors, we could lose intellectual property rights that are important to our business. Our licensors might conclude that we have materially breached our obligations under such license agreements and might therefore terminate, or seek to terminate, the license agreements, thereby removing or limiting our ability to develop and commercialize products and technology covered by these license agreements. If our license agreements are terminated, we may be required to cease our development and commercialization of our product candidates. Any of the foregoing could have a material adverse effect on our competitive position, business, financial conditions, results of operations and prospects. Moreover, disputes may arise regarding intellectual property subject to a licensing agreement. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology, or increase what we believe to be our financial or other obligations under the agreement, either of which could have a material adverse effect on our business, financial condition, results of operations and prospects. Moreover, if disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on commercially acceptable terms, we may be unable to successfully develop and commercialize the affected product candidates. Any of the foregoing could have a material adverse effect on our competitive position, business, financial conditions, results of operations and prospects.

Changes in either the patent laws or their interpretation in the United States or other countries may diminish the value of our intellectual property or our ability to obtain patents. For example, the America Invents Act of 2011 may affect the scope, strength and enforceability of our patent rights in the United States or the nature of proceedings which may be brought by us related to our patent rights in the United States.

If one or more products resulting from our drug candidates is approved for sale by the FDA and we do not have adequate intellectual property protection for those products, competitors could duplicate them for approval and sale in the United States without repeating the extensive testing required of us or our partners to obtain FDA approval. Regardless of any patent protection, under current law, an application for a generic version of a new chemical entity cannot be approved until at least five years after the FDA has approved the original product. When that period expires, or if that period is altered, the FDA could approve a generic version of our product regardless of our patent protection. An applicant for a generic version of our product may only be required to conduct a relatively inexpensive study to show that its product is bioequivalent to our product, and may not have to repeat the lengthy and expensive clinical trials that we or our partners conducted to demonstrate that the product is safe and effective. In the absence of adequate patent protection for our products in other countries, competitors may similarly be able to obtain regulatory approval in those countries of generic versions of our products.

If we are unable to protect the confidentiality of our trade secrets, the value of our technology could be materially adversely affected and our business would be harmed.

We also rely on trade secrets to protect our technology, particularly where we believe patent protection is not appropriate or obtainable. However, trade secrets are often difficult to protect, especially outside of the United States. While we endeavor to use reasonable efforts to protect our trade secrets, our or our partners' employees, consultants, contractors or scientific and other advisors may unintentionally or willfully disclose our information to competitors. In addition, confidentiality agreements, if any, executed by those individuals may not be enforceable or provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure. We cannot be certain that such agreements have been entered into with all relevant parties, and we cannot be certain that our trade secrets and other confidential proprietary information will not be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. Pursuing a claim that a third party had illegally obtained and was using our trade secrets would be expensive and time-consuming, and the outcome would be unpredictable. Even if we are able to maintain our trade secrets as confidential, if our competitors lawfully obtain or independently develop information equivalent or similar to our trade secrets, our business could be harmed.

If we are not able to defend the patent or trade secret protection position of our technologies and drug candidates, then we will not be able to exclude competitors from developing or marketing competing drugs, and we may not generate enough revenue from product sales to justify the cost of development of our drugs or to achieve or maintain profitability.

If we are sued for infringing third-party intellectual property rights, it will be costly and time-consuming, and an unfavorable outcome could have a significant adverse effect on our business.

Our ability to commercialize drugs depends on our ability to use, manufacture and sell those drugs without infringing the patents or other proprietary rights of third parties. Numerous U.S. and foreign issued patents and pending patent applications owned by third parties exist in the therapeutic areas in which we are developing drug candidates and seeking new potential drug candidates. In addition, because patent applications can take several years to issue, there may be currently pending applications, unknown to us, which could later result in issued patents that our activities with our drug candidates could infringe. There may also be existing patents, unknown to us, that our activities with our drug candidates could infringe.

Other future products of ours may be impacted by patents of companies engaged in competitive programs with significantly greater resources. Further development of these products could be impacted by these patents and result in significant legal fees.

If a third party claims that our actions infringe its patents or other proprietary rights, we could face a number of issues that could seriously harm our competitive position, including, but not limited to:

- infringement and other intellectual property claims that, even if meritless, can be costly and time-consuming to litigate, delay the regulatory approval process and divert management's attention from our core business operations;
- substantial damages for past infringement which we may have to pay if a court determines that our drugs or technologies infringe a third party's patent or other proprietary rights;
- a court prohibiting us from selling or licensing our drugs or technologies unless the holder licenses the patent or other proprietary rights to us, which it is not required to do; and
- if a license is available from a holder, we may have to pay substantial royalties or grant cross-licenses to our patents or other proprietary rights.

If any of these events occur, it could significantly harm our business and negatively affect our stock price.

We may undertake infringement or other legal proceedings against third parties, causing us to spend substantial resources on litigation and exposing our own intellectual property portfolio to challenge.

Third parties may infringe our patents. To prevent infringement or unauthorized use, we may need to file infringement suits, which are expensive and time-consuming. In an infringement proceeding, a court may decide that one or more of our patents is invalid, unenforceable, or both. In such case third parties may be able to use our technology without paying licensing fees or royalties. Even if the validity of our patents is upheld, a court may refuse to stop the other party from using the technology at issue on the ground that the other party's activities are not covered by our patents. Policing unauthorized use of our intellectual property is difficult, and we may not be able to prevent misappropriation of our proprietary rights, particularly in countries where the laws may not protect such rights as fully as in the United States. In addition, third parties may affirmatively challenge our rights to, or the scope or validity of, our patent rights.

The uncertainties associated with litigation could have a material adverse effect on our ability to raise the funds necessary to conduct clinical trials, continue our research programs, license necessary technology from third parties, or enter into development partnerships that would help us bring our drug candidates or other product candidates that we may identify to market. 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. There could also be public announcements of the results of hearings, motions, or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of our common stock.

We may become involved in disputes with our strategic partners over intellectual property ownership, and publications by our research collaborators and clinical investigators could impair our ability to obtain patent protection or protect our proprietary information, either of which would have a significant impact on our business.

Inventions discovered under our current or future strategic alliance agreements may become jointly owned by our strategic partners and us in some cases, and the exclusive property of one of us in other cases. Under some circumstances, it may be difficult to determine who owns a particular invention or whether it is jointly owned, and disputes could arise regarding ownership or use of those inventions. These disputes could be costly and time-consuming, and an unfavorable outcome could have a significant adverse effect on our business if we were not able to protect or license rights to these inventions. In addition, our research collaborators and clinical investigators generally have contractual rights to publish data arising from their work. Publications by our research collaborators and clinical investigators relating to our research and development programs, either with or without our consent, could benefit our current or potential competitors and may impair our ability to obtain patent protection or protect our proprietary information, which could significantly harm our business.

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

Many of our employees were previously employed at universities or other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although no legal proceedings against us are currently pending, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. If we fail in defending these claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. A loss of key research personnel or their work product could hamper or prevent our ability to develop and commercialize certain potential drugs, which could significantly harm our business. Even if we are successful in defending against these claims, litigation could result in substantial costs and distract management.

Our competitors may develop drugs that are less expensive, safer or more effective than ours, which may diminish or eliminate the commercial success of any drugs that we may commercialize.

We compete with companies that have developed drugs or are developing drug candidates for cardiovascular diseases, diseases and conditions associated with muscle weakness or wasting and other diseases for which our drug candidates may be useful treatments. For example, if omecamtiv mecarbil is approved for marketing by the FDA or other regulatory authorities for the treatment of heart failure, it would compete against other drugs used for the treatment of acute and chronic heart failure. These include generic drugs, such as milrinone, dobutamine or digoxin and branded drugs such as Corlanor® (ivabradine), and Entresto® (sacubitril/valsartan). Omecamtiv mecarbil could also potentially compete against other novel drug candidates and therapies in development, such as those being developed by, but not limited to, Novartis AG, Merck & Co., Inc., Bayer AG, AstraZeneca PLC and MyoKardia, Inc. Omecamtiv mecarbil may also compete with currently approved products, such as in the SGLT2 class, that may expand their labels to include treatment of patients with heart failure, including Forxiga® (dapagliflozin), Invokana® (canagliflozin), and Jardiance® (empagliflozin). In addition, there are a number of medical devices both marketed and in development for the potential treatment of heart failure.

If reldesemtiv is approved for marketing by the FDA or other regulatory authorities for the treatment of ALS, it will then compete with RADICAVA™ (edaravone), the first FDA approved drug for the treatment of ALS since riluzole in 1995, and may then compete with other potential new therapies for ALS that are currently being developed by companies including, but not limited to, Alexion Pharmaceuticals, Inc., Orphazyme, NeuralStem, MediciNova, Ionis Pharmaceuticals, Inc. (in collaboration with Biogen Inc.), AB Sciences, Orion, Pharmaceuticals, Mitsubishi Tanabe Pharma Corporation, Treeway, Genentech, Inc., and BrainStorm Cell Therapeutics. Also, if reldesemtiv is approved by the FDA or other regulatory authorities for the treatment of SMA, it will then compete with SPINRAZA® (nusinersen) and Zolgensma® (onasemnogene abeparvovec-xioi) and may then compete with other potential new therapies being developed by companies including, but not limited to, F. Hoffman-La Roche Ltd. (in collaboration with PTC Therapeutics, Inc.). If reldesemtiv is approved by the FDA or other regulatory authorities for the treatment of non-neuromuscular indications associated with muscle weakness, it may then compete with other potential new therapies being developed by companies including, but not limited to, Regeneron Pharmaceuticals, Inc. (in collaboration with Sanofi), Eli Lilly and Company, Stealth BioTherapeutics, and Novartis (in collaboration with MorphoSys AG).

Our competitors may:

- develop drug candidates and market drugs that are less expensive or more effective than our future drugs;
- commercialize competing drugs before we or our partners can launch any drugs developed from our drug candidates;
- hold or obtain proprietary rights that could prevent us from commercializing our products;
- initiate or withstand substantial price competition more successfully than we can;
- more successfully recruit skilled scientific workers and management from the limited pool of available talent;
- more effectively negotiate third-party licenses and strategic alliances;
- take advantage of acquisition or other opportunities more readily than we can;
- develop drug candidates and market drugs that increase the levels of safety or efficacy that our drug candidates will need to show in order to obtain regulatory approval; or
- introduce therapies or market drugs that render the market opportunity for our potential drugs obsolete.

We will compete for market share against large pharmaceutical and biotechnology companies and smaller companies that are collaborating with larger pharmaceutical companies, new companies, academic institutions, government agencies and other public and private research organizations. Many of these competitors, either alone or together with their partners, may develop new drug candidates that will compete with ours. Many of these competitors have larger research and development programs or substantially greater financial resources than we do. Our competitors may also have significantly greater experience in:

- developing drug candidates;
- undertaking preclinical testing and clinical trials;
- building relationships with key customers and opinion-leading physicians;
- obtaining and maintaining FDA and other regulatory approvals of drug candidates;
- formulating and manufacturing drugs; and
- launching, marketing and selling drugs.

If our competitors market drugs that are less expensive, safer or more efficacious than our potential drugs, or that reach the market sooner than our potential drugs, we may not achieve commercial success. In addition, the life sciences industry is characterized by rapid technological change. If we fail to stay at the forefront of technological change, we may be unable to compete effectively. Our competitors may render our technologies obsolete by improving existing technological approaches or developing new or different approaches, potentially eliminating the advantages in our drug discovery process that we believe we derive from our research approach and proprietary technologies.

We have been granted orphan designation by the FDA and EMA for reldesemtiv for the potential treatment of SMA and ALS; however, there can be no guarantee that we will receive orphan approval for reldesemtiv, nor that we will be able to prevent third parties from developing and commercializing products that are competitive to reldesemtiv.

We have been granted orphan drug designation in the U.S. by the FDA for reldesemtiv for the potential treatment of SMA and the potential treatment of ALS. In the U.S., upon approval from the FDA of an NDA, products granted orphan drug designation are generally provided with seven years of marketing exclusivity in the U.S., meaning the FDA will generally not approve applications for other product candidates that contain the same active ingredient for the same orphan indication. Even if we are the first to obtain approval of an orphan product and are granted such exclusivity in the U.S., there are limited circumstances under which a later competitor product may be approved for the same indication during the seven-year period of marketing exclusivity, such as if the later product is shown to be clinically superior to our product or due to an inability to assure a sufficient quantity of the orphan drug.

EMA has granted orphan medicinal product designation to reldesemtiv for the potential treatment of SMA and the potential treatment of ALS. Orphan medicinal product status in the E.U. can provide up to 10 years of marketing exclusivity, meaning that another application for marketing authorization of a later similar medicinal product for the same therapeutic indication will generally not be approved in the E.U. Although we may have drug candidates that may obtain orphan drug exclusivity in Europe, the orphan approval and associated exclusivity period may be modified for several reasons, including a significant change to the orphan medicinal product designations or approval criteria after-market authorization of the orphan product (e.g., product profitability exceeds the criteria for orphan drug designation), problems with the production or supply of the orphan drug or a competitor drug, although similar, is safer, more effective or otherwise clinically superior than the initial orphan drug.

We are not guaranteed to maintain orphan status for reldesemtiv or to receive orphan status for reldesemtiv for any other indication or for any of our other drug candidates for any indication. If our drug candidates that are granted orphan status were to lose their status as orphan drugs or the marketing exclusivity provided for them in the U.S. or the E.U., our business and results of operations could be materially adversely affected. While orphan status for any of our products, if granted or maintained, would provide market exclusivity in the U.S. and the E.U. for the time periods specified above, we would not be able to exclude other companies from manufacturing and/or selling products using the same active ingredient for the same indication beyond the exclusivity period applicable to our product on the basis of orphan drug status. Moreover, we cannot guarantee that another company will not receive approval before we do of an orphan drug application in the U.S. or the E.U. for a product candidate that has the same active ingredient or is a similar medicinal product for the same indication as any of our drug candidates for which we plan to file for orphan designation and status. If that were to happen, our orphan drug applications for our drug candidate for that indication may not be approved until the competing company's period of exclusivity has expired in the U.S. or the E.U., as applicable. Further, application of the orphan drug regulations in the U.S. and Europe is uncertain, and we cannot predict how the respective regulatory bodies will interpret and apply the regulations to our or our competitors' products.

Our failure to attract and retain skilled personnel could impair our drug development, commercialization and financial reporting activities.

Our business depends on the performance of our senior management and key scientific and technical personnel. The loss of the services of any member of our senior management or key scientific, technical or financial reporting staff may significantly delay or prevent the achievement of drug development and other business objectives by diverting management's attention to transition matters and identifying suitable replacements. For example, our management concluded that our internal controls over financial reporting were not effective as of December 31, 2018 because an unremediated material weakness existed in our internal control over financial reporting related to employee turnover resulting in a temporary lack of resources in financial reporting roles with the appropriate skills to perform effective review during our financial statement close process. We also rely on consultants and advisors to assist us in formulating our research and development strategy. All of our consultants and advisors are either self-employed or employed by other organizations, and they may have conflicts of interest or other commitments, such as consulting or advisory contracts with other organizations, that may affect their ability to contribute to us. In addition, if and as our business grows, we will need to recruit additional executive management and scientific, technical and financial reporting personnel. There is intense competition for skilled executives and employees with relevant scientific and technical expertise, and this competition is likely to continue. Our inability to attract and retain sufficient scientific, technical and managerial personnel could limit or delay our product development activities, which would adversely affect the development of our drug candidates and commercialization of our potential drugs and growth of our business.

Any future workforce and expense reductions may have an adverse impact on our internal programs and our ability to hire and retain skilled personnel.

Our future success will depend in large part upon our ability to attract and retain highly skilled personnel. In light of our continued need for funding and cost control, we may be required to implement future workforce and expense reductions, which could further limit our research and development activities. We may have difficulty retaining and attracting such personnel as a result of a perceived risk of future workforce reductions. In addition, the implementation of any workforce or expense reduction programs may divert the efforts of our management team and other key employees, which could adversely affect our business.

We may expand our development and clinical research capabilities and, as a result, we may encounter difficulties in managing our growth, which could disrupt our operations.

We may have growth in our expenditures, the number of our employees and the scope of our operations, in particular with respect to those drug candidates that we elect to develop or commercialize independently or together with a partner. To manage our anticipated future growth, we must continue to implement and improve our managerial, operational and financial systems, expand our facilities and continue to recruit and train additional qualified personnel. Due to our limited resources, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. The physical expansion of our operations may lead to significant costs and may divert our management and business development resources. Any inability to manage growth could delay the execution of our business plans or disrupt our operations.

We currently have no sales or marketing capabilities and, if we are unable to enter into or maintain strategic alliances with marketing partners or to develop our own sales and marketing capabilities, we may not be successful in commercializing our potential drugs.

We currently have no sales, marketing or distribution capabilities. We plan to commercialize drugs that can be effectively marketed and sold in concentrated markets that do not require a large sales force to be competitive. To achieve this goal, we will need to establish our own specialized sales force and marketing organization with technical expertise and supporting distribution capabilities. Developing such an organization is expensive and time-consuming and could delay a product launch. In addition, we may not be able to develop this capacity efficiently, cost-effectively or at all, which could make us unable to commercialize our drugs. If we determine not to market our drugs on our own, we will depend on strategic alliances with third parties, such as Amgen and Astellas, which have established distribution systems and direct sales forces to commercialize them. If we are unable to enter into such arrangements on acceptable terms, we may not be able to successfully commercialize these drugs. To the extent that we are not successful in commercializing any drugs ourselves or through a strategic alliance, our product revenues and business will suffer and our stock price would decrease.

Our internal computer systems, or those of our CROs, CMOs, supply chain partners, collaboration partners or other contractors or consultants, may fail or suffer security breaches, which could result in a material disruption of our drug development programs.

Despite the implementation of security measures, our internal computer systems and those of our third-party CROs, CMOs, supply chain partners, collaboration partners and other contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, 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 drug development programs. For example, the loss of clinical study data from completed or ongoing clinical studies for any of our drug candidates 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 were to result in a loss of or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability, our operations could be compromised and the further development of our product candidates could be delayed.

Significant disruptions of information technology systems or breaches of data security could adversely affect our business.

Our business is increasingly dependent on complex and interdependent information technology systems, including internet-based systems, databases and programs, to support our business processes as well as internal and external communications. As use of information technology systems has increased, deliberate attacks and attempts to gain unauthorized access to computer systems and networks have increased in frequency and sophistication. Our information technology, systems and networks are potentially vulnerable to breakdown, malicious intrusion and computer viruses which may result in the impairment of production and key business processes or loss of data or information. We are also potentially vulnerable to data security breaches—whether by employees or others—which may expose sensitive data to unauthorized persons. We have in the past and may in the future be subject to security breaches. For example, in February 2018, we discovered that our e-mail server suffered unauthorized intrusions in which proprietary business information was accessed. In addition, in December 2019, one of our employee's email account suffered an unauthorized intrusion, leading to the submission and inadvertent payment of a fraudulent invoice in the amount of approximately one hundred thousand dollars. In December 2019, our IT systems were exposed to a ransomware attack, which partially impaired certain IT systems for a short period of time. Finally, in September 2020, one of our employees' email account suffered unauthorized access as result of a phishing incident, but the Company believes no sensitive information was accessed. Although we do not believe that we have experienced any material losses related to security breaches, including in three recent email "phishing" incidents or the ransomware attack, there can be no assurance that we will not suffer such losses in the future. Breaches and other inappropriate access can be difficult to detect and any delay in identifying them could increase their harm. While we have implemented measures to protect our data security and information technology systems, such measures may not prevent these events. Any such breaches of security and inappropriate access could disrupt our operations, harm our reputation or otherwise have a material adverse effect on our business, financial condition and results of operations.

Our reported financial results may be adversely affected by changes in accounting principles generally accepted in the U.S.

We prepare our financial statements in conformity with accounting principles generally accepted in the U.S. These accounting principles are subject to interpretation by the FASB and the SEC. A change in these policies or interpretations could have a significant effect on our reported financial results, may retroactively affect previously reported results, could cause unexpected financial reporting fluctuations, and may require us to make costly changes to our operational processes and accounting systems.

We are a smaller reporting company, and any decision on our part to comply only with certain reduced reporting and disclosure requirements applicable to smaller reporting companies could make our common stock less attractive to investors. In addition, the loss of smaller reporting company status could require additional cost and effort to comply with applicable corporate governance, federal securities law and accounting requirements.

We are a "smaller reporting company," as defined under the Exchange Act, in accordance with the amendments to such definition that became effective on September 10, 2018. For as long as we continue to be a smaller reporting company, we may choose to take advantage of exemptions from various reporting requirements applicable to other public companies that are not smaller reporting companies, including, but not limited to, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. In addition, as a smaller reporting company, we are only required to include two years of audited financial statements in our annual reports. Investors could find our common stock less attractive if we choose to rely on these scaled disclosure requirements. If some investors find our common stock less attractive as a result of any choices to reduce future disclosure, there may be a less active trading market for our common stock and our stock price may be more volatile.

We will remain a "smaller reporting company" until (i) the market value of our common shares held by non-affiliates exceeds $250 million as of June 30 of any year; or (ii) either (a) our annual revenues exceed $100 million or (b) the market value of our common shares held by non-affiliates exceeds $700 million, as of June 30 of any year. On June 30, 2020, the market value of our common shares held by non-affiliates exceeded $700 million. Accordingly, we will no longer qualify as a "smaller reporting company" for our annual report for the year ending December 31, 2020, which may require us to carry out additional activities and comply with additional reporting requirements, which may divert management's attention from other business concerns. Any failure to adequately comply with applicable federal securities laws, rules or regulations could subject us to fines or regulatory actions, which may adversely affect our business, results of operations and financial condition.

Our revenue to date has been primarily derived from our research and license agreements, which can result in significant fluctuation in our revenue from period to period, and our past revenue is therefore not necessarily indicative of our future revenue.

Our revenue is primarily derived from our research and license agreements, from which we receive upfront fees, contract research payments, milestone and other contingent payments based on clinical progress, regulatory progress or net sales achievements and royalties. Significant variations in the timing of receipt of cash payments and our recognition of revenue can result from significant payments based on the execution of new research and license agreements, the timing of clinical outcomes, regulatory approval, commercial launch or the achievement of certain annual sales thresholds. The amount of our revenue derived from research and license agreements in any given period will depend on a number of unpredictable factors, including our ability to find and maintain suitable collaboration partners, the timing of the negotiation and conclusion of collaboration agreements with such partners, whether and when we or our collaboration partners achieve clinical, regulatory and sales milestones, the timing of regulatory approvals in one or more major markets, reimbursement levels by private and government payers, and the market introduction of new drugs or generic versions of the approved drug, as well as other factors. Our past revenue generated from these agreements is not necessarily indicative of our future revenue. If any of our existing or future collaboration partners fails to develop, obtain regulatory approval for, manufacture or ultimately commercialize any product candidate under our collaboration agreement, our business, financial condition, and results of operations could be materially and adversely affected.

Indebtedness under our Term Loan agreement bears interest at variable interest rates based on LIBOR. Changes in the method of determining LIBOR, or the replacement of LIBOR with an alternative reference rate, may adversely affect interest rates on our current or future indebtedness and may otherwise adversely affect our financial condition and results of operations.

In July 2017, the Financial Conduct Authority, the authority that regulates LIBOR, announced that it intended to stop compelling banks to submit rates for the calculation of LIBOR after 2021. The Alternative Reference Rates Committee ("ARRC") in the U.S. has proposed that the Secured Overnight Financing Rate ("SOFR") is the rate that represents best practice as the alternative to the U.S. dollar LIBOR for use in derivatives and other financial contracts that are currently indexed to LIBOR. ARRC has proposed a paced market transition plan to SOFR from U.S. dollar LIBOR and organizations are currently working on industry-wide and company-specific transition plans as relating to derivatives and cash markets exposed to U.S. dollar LIBOR. We have certain financial contracts, including the Term Loan agreement, that are indexed to U.S. dollar LIBOR. Changes in the method of determining LIBOR, or the replacement of LIBOR with an alternative reference rate, may adversely affect interest rates on our current or future indebtedness. Any transition process may involve, among other things, increased volatility or illiquidity in markets for instruments that rely on LIBOR, reductions in the value of certain instruments or the effectiveness of related transactions such as hedges, increased borrowing costs, uncertainty under applicable documentation, or difficult and costly consent processes. We are monitoring this activity and evaluating the related risks, and any such effects of the transition away from LIBOR may result in increased expenses, may impair our ability to refinance our indebtedness or hedge our exposure to floating rate instruments, or may result in difficulties, complications or delays in connection with future financing efforts, any of which could adversely affect our financial condition and results of operations.

We may not be able to complete our relocation to our new facility as scheduled prior to expiry of the lease to our existing facility.

On July 24, 2019, we entered into a lease agreement with KR Oyster Point 1, LLC (the "Kilroy"), a subsidiary of Kilroy Realty Corporation, relating to the lease of approximately 234,892 square feet of office and laboratory space at a facility (currently under construction) located in South San Francisco, California (the "New Facility"). Kilroy is expected to deliver possession of the New Facility in the fourth quarter of 2021, while the lease (the "Current Lease") to our existing facility at 280 E Grand Avenue, South San Francisco (the "Old Facility") expires on June 30, 2021. In the event that the New Facility is not delivered to us in sufficient time to allow us to move our operations to the New Facility as anticipated, whether as a result of potential construction delays attributable to the COVID 19 pandemic or otherwise, we may be required to holdover the Old Facility past expiry of its term, leading to: (i) additional costs (including holdover rent at 150% of our current rent); (ii) liability under our indemnification obligations owed to our current landlord under the Current Lease; and (iii) disruption to our business.

Our business is currently adversely affected and could be materially and adversely affected in the future by the effects of disease outbreaks, epidemics and pandemics, including the ongoing COVID 19 pandemic. The COVID-19 pandemic continues to adversely impact our business and could materially and adversely affect our operations, as well as the businesses or operations of our or our partners, manufacturers, CROs or other third parties with whom we or our partners conduct business.

Disease outbreaks and epidemics in regions where we, our partners or other third parties on which we rely have manufacturing facilities, clinical trial sites or other important operations or pandemics such as the COVID-19 pandemic could adversely affect our business, including by causing significant disruptions in our operations and/or in the operations of third-party manufacturers and CROs upon whom we rely. For example, in March 2020, the World Health Organization declared the COVID-19 outbreak a pandemic, and the pandemic has presented a substantial public health and economic challenge around the world and is affecting employees, patients, communities and business operations, as well as the U.S. economy and financial markets. In this regard, the COVID-19 pandemic and government measures taken in response have had a significant impact, both direct and indirect, on business and commerce, as significant reductions in business-related activities have occurred, supply chains have been disrupted and manufacturing and clinical development activities have been curtailed or suspended.

Remote work policies, quarantines, shelter-in-place and similar governmental orders, shutdowns or other restrictions on the conduct of business operations related to the COVID-19 pandemic could materially and adversely affect our operations. Based on guidance issued by federal, state and local authorities, we have implemented a voluntary work-from-home policies for our employees. The effects of the safer community order and our work-from-home and voluntary work-on-site policies may negatively impact productivity, disrupt our, or our partners to which we rely, business and delay clinical programs and timelines, the magnitude of which will depend, in part, on the length and severity of the restrictions and other limitations on the ability to conduct business in the ordinary course. In connection with these measures, we may be subject to claims based upon, arising out of, or related to COVID-19 and our actions and responses thereto, including any determinations that we have made and may in the future make with respect to our onsite operations. These and similar, and perhaps more severe, disruptions in operations could negatively impact our business, operating results and financial condition.

In addition, our clinical trials or those conducted by our partner, Amgen, may continue to be adversely affected by the COVID-19 pandemic. For example, earlier this year we temporarily suspended enrollment in METEORIC-HF and REDWOOD-HCM due to the COVID-19 pandemic, although we have since resumed enrollment in both trials. Clinical site initiation, conduct, and patient enrollment has been and may continue to be delayed due to prioritization of medical resources toward the COVID-19 pandemic and restrictions on the ability to travel. It may not be possible to carry out some aspects of clinical trial protocols if quarantines or other restrictions impede patient movement or interrupt healthcare services. It may be necessary to suspend enrollment at some or all clinical trial sites to comply with shelter in place orders, and to reduce the risk to patients, their caretakers, and healthcare providers from contracting COVID-19. Patients may be forced to quarantine or comply with shelter-in-place orders or may refuse home healthcare visits, particularly in medically vulnerable patient populations. Similarly, principal investigators and site staff who, as healthcare providers, may have heightened exposure to COVID-19 but also may be pulled into clinical care and away from clinical research, may adversely impact our or our partner's clinical trial operations. Further, our clinical trial patients who contract COVID-19 may (i) experience unexpected adverse medical events that could be wrongfully attributable to our investigational drugs, and (ii) experience endpoint events because of COVID-19 that could confound the interpretation of data and results relating to our investigational drugs arising from our clinical trials. Other key clinical trial activities, such as clinical trial site data monitoring and site inspections, may also be adversely affected due to limitations on travel imposed or recommended by governmental authorities, which may impact the integrity of subject data and clinical study endpoints. Finally, disruptions in our supply chain due to loss of the ability of sites to dispense study drug, travel and import/export restrictions or lack of raw materials may result in an interruption, or delays in receiving, supplies of our drug candidates from our contract manufacturing organizations or study sites, which in turn may also adversely affect our clinical trials.

The spread of COVID-19, which has caused a broad impact globally, may materially affect us economically. While the potential economic impact brought by, and the duration of, COVID-19 may be difficult to assess or predict, a widespread pandemic could result in significant disruption of global financial markets, reducing our ability to access capital, which could in the future negatively affect our liquidity. In addition, a recession or market correction resulting from the spread of COVID-19 could materially affect our business and the value of our common stock.

The global pandemic of COVID-19 continues to rapidly evolve. The ultimate impact of the COVID-19 pandemic or a similar health epidemic is highly uncertain and subject to change. We do not yet know the full extent of potential delays or impacts on our business, our clinical trials, healthcare systems or the global economy as a whole. However, these effects could have a material impact on our operations, and we will continue to monitor the COVID-19 situation closely.

Risks Related to Our Industry

The regulatory approval process is expensive, time-consuming and uncertain and may prevent our partners or us from obtaining approvals to commercialize some or all of our drug candidates.

The research, testing, manufacturing, selling and marketing of drugs are subject to extensive regulation by the FDA and other regulatory authorities in the United States and other countries, and regulations differ from country to country. Neither we nor our partners are permitted to market our potential drugs in the United States until we receive approval of a new drug application ("NDA") from the FDA. Neither we nor our partners have received NDA or other marketing approval for any of our drug candidates.

Obtaining NDA approval is a lengthy, expensive and uncertain process. In addition, failure to comply with FDA and other applicable foreign and U.S. regulatory requirements may subject us to administrative or judicially imposed sanctions. These include warning letters, civil and criminal penalties, injunctions, product seizure or detention, product recalls, total or partial suspension of production, and refusal to approve pending NDAs or supplements to approved NDAs.

Regulatory approval of an NDA or NDA supplement is never guaranteed, and the approval process typically takes several years and is extremely expensive. The FDA and foreign regulatory agencies also have substantial discretion in the drug approval process, and the guidance and advice issued by such agencies is subject to change at any time. Despite the time and efforts exerted, failure can occur at any stage, and we may encounter problems that cause us to abandon clinical trials or to repeat or perform additional preclinical testing and clinical trials. The number and focus of preclinical studies and clinical trials that will be required for approval by the FDA and foreign regulatory agencies varies depending on the drug candidate, the disease or condition that the drug candidate is designed to address, and the regulations applicable to any particular drug candidate. In addition, the FDA may require that a proposed Risk Evaluation and Mitigation Strategy ("REMS") be submitted as part of an NDA if the FDA determines that it is necessary to ensure that the benefits of the drug outweigh its risks. The FDA and foreign regulatory agencies can delay, limit or deny approval of a drug candidate for many reasons, including, but not limited to:

- they might determine that a drug candidate is not safe or effective;
- they might not find the data from non-clinical testing and clinical trials sufficient and could request that additional trials be performed;
- they might not approve our, our partner's or the contract manufacturer's processes or facilities; or
- they might change their approval policies or adopt new regulations.

Even if we receive regulatory approval to manufacture and sell a drug in a particular regulatory jurisdiction, other jurisdictions' regulatory authorities may not approve that drug for manufacture and sale. If we or our partners fail to receive and maintain regulatory approval for the sale of any drugs resulting from our drug candidates, it would significantly harm our business and negatively affect our stock price.

If we or our partners receive regulatory approval for our drug candidates, we or they will be subject to ongoing obligations to and continued regulatory review by the FDA and foreign regulatory agencies, and may be subject to additional post-marketing obligations, all of which may result in significant expense and limit commercialization of our potential drugs.

Any regulatory approvals that we or our partners receive for our drug candidates may be subject to limitations on the indicated uses for which the drug may be marketed or require potentially costly post-marketing follow-up studies or compliance with a REMS. In addition, if the FDA or foreign regulatory agencies approves any of our drug candidates, the labeling, packaging, adverse event reporting, storage, advertising, promotion and record-keeping for the drug will be subject to extensive regulatory requirements. The subsequent discovery of previously unknown problems with the drug, including adverse events of unanticipated severity or frequency, or the discovery that adverse events or toxicities observed in preclinical research or clinical trials that were believed to be minor constitute much more serious problems, may result in restrictions on the marketing of the drug or withdrawal of the drug from the market.

The FDA and foreign regulatory agencies may change their policies and additional government regulations may be enacted that could prevent or delay regulatory approval of our drug candidates. We cannot predict the likelihood, nature or extent of adverse government regulation that may arise from future legislation or administrative action, either in the United States or abroad. If we are not able to maintain regulatory compliance, we might not be permitted to market our drugs and our business would suffer.

If physicians and patients do not accept our drugs, we may be unable to generate significant revenue, if any.

Even if our drug candidates obtain regulatory approval, the resulting drugs, if any, may not gain market acceptance among physicians, healthcare payors, patients and the medical community. Even if the clinical safety and efficacy of drugs developed from our drug candidates are established for purposes of approval, physicians may elect not to recommend these drugs for a variety of reasons including, but not limited to:

- introduction of competitive drugs to the market;
- clinical safety and efficacy of alternative drugs or treatments;
- cost-effectiveness;
- availability of coverage and reimbursement from health maintenance organizations and other third-party payors;
- convenience and ease of administration;
- prevalence and severity of adverse events;
- other potential disadvantages relative to alternative treatment methods; or
- insufficient marketing and distribution support.

If our drugs fail to achieve market acceptance, we may not be able to generate significant revenue and our business would suffer.

The commercial success of our products depends on the availability and sufficiency of third-party payor coverage and reimbursement.

Patients in the United States and elsewhere generally rely on third-party payors to reimburse part or all of the costs associated with their prescription drugs. Accordingly, market acceptance of our products is dependent on the extent to which third-party coverage and reimbursement is available from government health administration authorities (including in connection with government healthcare programs, such as Medicare and Medicaid in the United States), private healthcare insurers and other healthcare funding organizations. Significant uncertainty exists as to the coverage and reimbursement status of any products for which we may obtain regulatory approval. Even if we obtain coverage for a given drug product, the associated reimbursement rate may not be adequate to cover our costs, including research, development, intellectual property, manufacture, sale and distribution expenses, or may require co-payments that patients find unacceptably high.

Coverage and reimbursement policies for drug products can differ significantly from payor to payor as there is no uniform policy of coverage and reimbursement for drug products among third-party payors in the United States. There may be significant delays in obtaining coverage and reimbursement as the process of determining coverage and reimbursement is often time-consuming and costly which will require us to provide scientific and clinical support for the use of our products to each payor separately, with no assurance that coverage or adequate reimbursement will be obtained. It is difficult to predict at this time what third-party will decide with respect to coverage and reimbursement for our products.

In addition, we expect that increased emphasis on cost containment measures in the United States by third-party payors to continue and will place pressure on pharmaceutical pricing and coverage. If we are unable to obtain and maintain sufficient third-party coverage and adequate reimbursement for our products, the commercial success of our drug products may be greatly hindered and our financial condition and results of operations may be materially and adversely affected.

Recently enacted and future legislation, including potentially unfavorable pricing regulations or other healthcare reform initiatives, may increase the difficulty and cost for us to obtain regulatory approval of and commercialize our product candidates and affect the prices we may obtain.

The regulations that govern, among other things, regulatory approvals, coverage, pricing and reimbursement for new drug products vary widely from country to country. In the United States and some foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay regulatory approval of our product candidates, restrict or regulate post-approval activities and affect our ability to successfully sell any product candidates for which we obtain regulatory approval. In particular, in March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act (collectively, the "ACA") was enacted, which substantially changes the way health care is financed by both governmental and private insurers, and significantly impacts the U.S. pharmaceutical industry. The ACA and its implementing regulations, among other things, addressed a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for certain drugs and biologics, including our product candidates that are inhaled, infused, instilled, implanted or injected, increased the minimum Medicaid rebates owed by manufacturers under the Medicaid Drug Rebate Program, extended the Medicaid Drug Rebate Program to utilization of prescriptions of individuals enrolled in Medicaid managed care organizations, subjected manufacturers to new annual fees and taxes for certain branded prescription drugs, provided incentives to programs that increase the federal government's comparative effectiveness research and established a new Medicare Part D coverage gap discount program.

Other legislative changes have been proposed and adopted in the United States since the ACA was enacted. In August 2011, the Budget Control Act of 2011, among other things, created measures for spending reductions by the U.S. Congress. A Joint Select Committee on Deficit Reduction, tasked with recommending a targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, was unable to reach required goals, thereby triggering the legislation's automatic reduction to several government programs. This includes aggregate reductions of Medicare payments to providers of 2% per fiscal year, which went into effect in April 2013, and, due to subsequent legislative amendments, will remain in effect through 2029 unless additional Congressional action is taken. In January 2013, the American Taxpayer Relief Act of 2012 was enacted which, among other things, further reduced Medicare payments to several providers, including hospitals and outpatient clinics, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years.

Since its enactment, there have been judicial and Congressional challenges to numerous elements of the ACA, as well as efforts by both the executive and legislative branches of the federal government to repeal or replace certain aspects of the ACA. For example, the President signed Executive Orders designed to delay the implementation of certain provisions of the ACA or otherwise circumvent some of the requirements for health insurance mandated by the ACA. In addition, the U.S. Congress has considered legislation that would repeal or repeal and replace all or part of the ACA. While the U.S. Congress has not passed comprehensive repeal legislation, it has enacted laws that modify certain provisions of the ACA, such as removing penalties, starting January 1, 2019, for not complying with the ACA's individual mandate to carry health insurance, eliminating the implementation of certain mandated fees, and increasing the point-of-sale discount that is owed by pharmaceutical manufacturers who participate in Medicare Part D. In December 2018, a Texas U.S. District Court Judge ruled that the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress as part of the Tax Cuts and Jobs Act of 2017, or the Tax Act. Additionally, on December 18, 2019, the U.S. Court of Appeals for the 5th Circuit upheld the District Court ruling that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. It is unclear how this decision, subsequent appeals, and other efforts to repeal and replace the ACA will impact the ACA and our business. The U.S. Congress may consider and adopt other legislation to repeal and replace all or certain elements of the ACA. Any other executive, legislative or judicial action to "repeal and replace" all or part of the ACA may have the effect of limiting the amounts that government agencies will pay for healthcare products and services, which could result in reduced demand for our products or additional pricing pressure, or may lead to significant deregulation, which could make the introduction of competing products and technologies much easier. Policy changes, including potential modification or repeal of all or parts of the ACA or the implementation of new health care legislation, could result in significant changes to the health care system which may adversely affect our business in unpredictable ways.

There have been, and likely will continue to be, legislative and regulatory proposals at the foreign, federal and state levels directed at broadening the availability of healthcare and containing or lowering the cost of healthcare. We cannot predict the initiatives that may be adopted in the future. The continuing efforts of governments, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare, including by imposing price controls, may adversely affect the demand for our product candidates for which we obtain regulatory approval and our ability to set a price that we believe is fair for our products. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors.

Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for pharmaceutical products. We cannot be sure whether additional legislative changes will be enacted, or whether the FDA or foreign regulations, guidance or interpretations will be changed, or what the impact of these changes on the regulatory approvals of our product candidates, if any, may be. In the United States, the E.U. and other potentially significant markets for our product candidates, government authorities and third-party payors are increasingly attempting to limit or regulate the price of medical products and services, particularly for new and innovative products and therapies, which has resulted in lower average selling prices. For example, in the United States, there have been several recent Congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to drug pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drugs. At the federal level, the U.S. presidential administration's budget proposal for fiscal year 2020 contained further drug price control measures that could be enacted during the budget process or in other future legislation, including, for example, measures to permit Medicare Part D plans to negotiate the price of certain drugs under Medicare Part B, to allow some states to negotiate drug prices under Medicaid, and to eliminate cost sharing for generic drugs for low-income patients. Additionally, in May 2018, the U.S. presidential administration laid out a "Blueprint" to lower drug prices and reduce out of pocket costs of drugs that contains additional proposals to increase manufacturer competition, increase the negotiating power of certain federal healthcare programs, incentivize manufacturers to lower the list price of their products and reduce the out of pocket costs of drug products paid by consumers. The U.S. Department of Health and Human Services ("HHS") has solicited feedback on some of these measures implemented others under its existing authority. For example, in May 2019, CMS issued a final rule to allow Medicare Advantage plans the option to use step therapy for Part B drugs beginning January 1, 2020. This final rule codified CMS's policy change that was effective January 1, 2019. Although some of these and other measures may require additional authorization to become effective, members of Congress and the U.S. presidential administration have indicated that they will continue to seek new legislative or administrative measures to control drug costs. At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, to encourage importation from other countries and bulk purchasing. Furthermore, the increased emphasis on managed healthcare in the United States and on country and regional pricing and reimbursement controls in the E.U. will put additional pressure on product pricing, reimbursement and usage, which may adversely affect our future product sales. These pressures can arise from rules and practices of managed care groups, judicial decisions and governmental laws and regulations related to Medicare, Medicaid and healthcare reform, pharmaceutical reimbursement policies and pricing in general.

In addition, there is significant uncertainty regarding the reimbursement status of newly approved healthcare products. We may need to conduct expensive pharmacoeconomic studies in order to demonstrate the cost-effectiveness of our products. If third-party payors do not consider our products to be cost-effective compared to other therapies, the payors may not cover our products after approved as a benefit under their plans or, if they do, the level of payment may not be sufficient to allow us to sell our products on a profitable basis.

We may be subject to costly product liability or other liability claims and may not be able to obtain adequate insurance.

The use of our drug candidates in clinical trials may result in adverse events. We cannot predict all the possible harms or adverse events that may result from our clinical trials. We currently maintain limited product liability insurance. We may not have sufficient resources to pay for any liabilities resulting from a personal injury or other claim excluded from, or beyond the limit of, our insurance coverage. Our insurance does not cover third parties' negligence or malpractice, and our clinical investigators and sites may have inadequate insurance or none at all. In addition, in order to conduct clinical trials or otherwise carry out our business, we may have to contractually assume liabilities for which we may not be insured. If we are unable to look to our own insurance or a third party's insurance to pay claims against us, we may have to pay any arising costs and damages ourselves, which may be substantial.

In addition, if we commercially launch drugs based on our drug candidates, we will face even greater exposure to product liability claims. This risk exists even with respect to those drugs that are approved for commercial sale by the FDA and foreign regulatory agencies and manufactured in licensed and regulated facilities. We intend to secure additional limited product liability insurance coverage for drugs that we commercialize, but may not be able to obtain such insurance on acceptable terms with adequate coverage, or at reasonable costs. Even if we are ultimately successful in product liability litigation, the litigation would consume substantial amounts of our financial and managerial resources and may create adverse publicity, all of which would impair our ability to generate sales of the affected product and our other potential drugs. Moreover, product recalls may be issued at our discretion or at the direction of the FDA and foreign regulatory agencies, other governmental agencies or companies having regulatory control for drug sales. Product recalls are generally expensive and often have an adverse effect on the reputation of the drugs being recalled and of the drug's developer or manufacturer.

We may be required to indemnify third parties against damages and other liabilities arising out of our development, commercialization and other business activities, which could be costly and time-consuming and distract management. If third parties that have agreed to indemnify us against damages and other liabilities arising from their activities do not fulfill their obligations, then we may be held responsible for those damages and other liabilities.

Our relationships with customers, healthcare providers, clinical trial sites and professionals and third-party payors will be subject to applicable anti-kickback, fraud and abuse and other laws and regulations. If we fail to comply with federal, state and foreign laws and regulations, including healthcare, privacy and data security laws and regulations, we could face criminal sanctions, civil penalties, contractual damages, reputational harm and diminished profits and future earnings.

Healthcare providers, physicians and third-party payors play a primary role in the recommendation and prescription of any drug candidates for which we may obtain marketing approval. Our arrangements with customers, healthcare providers and professionals and third-party payors 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 develop, and may market, sell and distribute, our products for which we obtain marketing approval. Restrictions under applicable federal and state healthcare laws and regulations, include, but are not limited to, the following:

- The federal healthcare 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 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 federally funded healthcare programs such as Medicare and Medicaid. This statute has been broadly interpreted to apply to manufacturer arrangements with prescribers, purchasers and formulary managers, among others. Several other countries, including the United Kingdom, have enacted similar anti-kickback, fraud and abuse, and healthcare laws and regulations.
- The federal false claims laws, including the False Claims Act, which can be enforced through whistleblower or qui tam actions, imposes penalties against individuals or entities for knowingly presenting, or causing to be presented, to the federal government, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government. The government and qui tam relators have brought False Claims Act actions against pharmaceutical companies on the theory that their practices have caused false claims to be submitted to the 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. HIPAA also imposes obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information. HIPAA also imposes criminal liability for 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.
- The federal Physician Payments Sunshine Act requires manufacturers of drugs, devices, biologics and medical supplies to report to the HHS information related to payments and other transfers of value made to or at the request of covered recipients, such as physicians, as defined by such law, and teaching hospitals, and physician ownership and investment interests in such manufacturers. Payments made to physicians and research institutions for clinical trials are included within the ambit of this law.

- Analogous state laws and regulations, such as state anti-kickback and false claims laws, may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, 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 and state and local laws that require the registration of sales representatives.

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, exclusion from government funded healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations. Exclusion, suspension and debarment from government funded healthcare programs would significantly impact our ability to commercialize, sell or distribute any drug. If any of the physicians or other providers or entities with whom we expect to do business are found to be not in compliance with applicable laws, they may be subject to criminal, civil or administrative sanctions, including exclusions from government funded healthcare programs.

The collection, use, disclosure, transfer, or other processing of personal data regarding individuals in the E.U., including personal health data, is subject to the E.U. General Data Protection Regulation (the "GDPR"), which became effective in May 2018. The GDPR, which is wide-ranging in scope, imposes several requirements relating to the control over personal data by individuals to whom the personal data relates, the information provided to the individuals, the documentation we must maintain, the security and confidentiality of the personal data, data breach notification and the use of third-party processors in connection with the processing of personal data. The GDPR also imposes strict rules on the transfer of personal data out of the E.U., provides an enforcement authority and authorizes the imposition of large penalties for noncompliance, including the potential for fines of up to €20 million or 4% of the annual global revenues of the non-compliant company, whichever is greater. The GDPR has increased our responsibility and potential liability in relation to personal data that we process compared to prior E.U. law, and we may be required to put in place additional mechanisms to ensure compliance with the GDPR, which could divert management's attention and increase our cost of doing business. However, despite our ongoing efforts to bring our practices into compliance with the GDPR, we may not be successful either due to various factors within our control or other factors outside our control. It is also possible that local data protection authorities may have different interpretations of the GDPR, leading to potential inconsistencies amongst various E.U. Member States. Any failure or alleged failure (including as a result of deficiencies in our policies, procedures or measures relating to privacy, data security, marketing or communications) by us to comply with laws, regulations, policies, legal or contractual obligations, industry standards or regulatory guidance relating to privacy or data security, may result in governmental investigations and enforcement actions, litigation, fines and penalties or adverse publicity. In addition, new regulation, legislative actions or changes in interpretation of existing laws or regulations regarding data privacy and security (together with applicable industry standards) may increase our costs of doing business. We expect that there will continue to be new proposed laws, regulations and industry standards relating to privacy and data protection in the United States, the E.U. and other jurisdictions, such as the California Consumer Privacy Act of 2018 that went into effect as of January 1, 2020, and we cannot determine the impact such future laws, regulations and standards will have on our business.

Comprehensive U.S. tax reform legislation could increase the tax burden on our orphan drug programs and adversely affect our business and financial condition.

The U.S. government enacted comprehensive tax legislation in 2017 (the "2017 Tax Act") that includes significant changes to the taxation of business entities. These changes include, among others, (i) a permanent reduction to the corporate income tax rate, (ii) a partial limitation on the deductibility of business interest expense and net operating loss carryforwards, (iii) a shift of the U.S. taxation of multinational corporations from a tax on worldwide income to a territorial system (along with certain rules designed to prevent erosion of the U.S. income tax base) and (iv) a one-time tax on accumulated offshore earnings held in cash and illiquid assets, with the latter taxed at a lower rate. Further, the comprehensive tax legislation, among other things, reduces the orphan drug tax credit from 50% to 25% of qualifying expenditures. When and if we become profitable, this reduction in tax credits may result in an increased federal income tax burden on our orphan drug programs as it may cause us to pay federal income taxes earlier under the revised tax law than under the prior law and, despite being partially off-set by a reduction in the corporate tax rate from a top marginal rate of 35% to a flat rate of 21%, may increase our total federal tax liability attributable to such programs.

Notwithstanding the reduction in the corporate income tax rate, the overall impact of this comprehensive tax legislation resulted in an overall reduction in our deferred tax assets, and our business and financial condition could still be adversely affected as additional guidance and regulations are issued with respect to the original tax law change. In addition, it is uncertain if and to what extent various states will conform to this comprehensive tax legislation. The impact of this comprehensive tax legislation on holders of our common stock is also uncertain and could be adverse. Investors should consult with their legal and tax advisors with respect to this comprehensive tax legislation and the potential tax consequences of investing in or holding our common stock.

The withdrawal of the United Kingdom (the "U.K.") from the E.U., commonly referred to as "Brexit," may adversely impact our ability to obtain regulatory approvals of our product candidates in the U.K., result in restrictions or imposition of taxes and duties for importing our product candidates into the U.K. from the E.U., and may require us to incur additional expenses in order to develop, manufacture and commercialize our product candidates in the U.K.

Following the result of a referendum in 2016, the U.K. left the E.U. on January 31, 2020, commonly referred to as Brexit. Pursuant to the formal withdrawal arrangements agreed between the U.K. and the E.U., the U.K. will be subject to a transition period until December 31, 2020, or the Transition Period, during which E.U. rules will continue to apply. Negotiations between the U.K. and the E.U. are expected to continue in relation to the customs and trading relationship between the U.K. and the E.U. following the expiry of the Transition Period.

Since a significant proportion of the regulatory framework in the U.K. applicable to our business and our product candidates is derived from E.U. directives and regulations, Brexit, following the Transition Period, could materially impact the regulatory regime with respect to the development, manufacture, importation, approval and commercialization of our product candidates in the U.K. Following the Transition Period, the U.K. will no longer be covered by the centralized procedures for obtaining E.U-wide marketing authorization from the EMA and, unless a specific agreement is entered into, a separate process for authorization of drug products, including our product candidates, will be required in the U.K., the potential process for which is currently unclear. Any delay in obtaining, or an inability to obtain, any marketing approvals, as a result of Brexit or otherwise, would prevent us from commercializing our product candidates in the U.K. and restrict our ability to generate revenue and achieve and sustain profitability. In addition, we may be required to pay or be required to pay higher taxes or duties or be subjected to other hurdles in connection with the importation of our product candidates into the U.K. from the E.U. or elsewhere, if any of our product candidates are manufactured in the E.U. or elsewhere, and we may incur expenses in establishing a manufacturing facility in the U.K. in order to circumvent such hurdles. If any of these outcomes occur, we may be forced to restrict or delay efforts to seek regulatory approval in the U.K. for our product candidates, or incur significant additional expenses to operate our business, which could significantly and materially harm or delay our ability to generate revenues or achieve profitability of our business.

Our ability to use net operating loss carryforwards and tax credit carryforwards to offset future taxable income may be subject to certain limitations, and ownership changes may limit our ability to use our net operating losses and tax credits in the future.

Our ability to use our federal and state net operating loss carryforwards ("NOLs") to offset potential future taxable income and reduce related income taxes depends upon our generation of future taxable income. We cannot predict with certainty when, or whether, we will generate sufficient taxable income to use our NOLs.

Our federal NOLs generated prior to 2018 will continue to be governed by tax rules in effect prior to the 2017 Tax Act, with unused NOLs expiring 20 years after we report a tax loss. These NOLs could expire unused and be unavailable to offset future taxable income. We cannot predict if and to what extent various states will conform to the 2017 Tax Act.

In addition, generally, if one or more stockholders or groups of stockholders who owns at least 5% of stock increases its ownership by more than 50% over its lowest ownership percentage within a three-year testing period, an ownership change occurs (an "Ownership Change"). Our ability to utilize our NOLs and tax credit carryforwards to reduce taxes payable in a year we have taxable income may be limited if there has been an Ownership Change in our stock. Similar rules may apply under state tax laws. We may experience Ownership Changes in the future as a result of future stock sales or other changes in the ownership of our stock, some of which are beyond our control and, as a result, NOLs generated in 2017 and before, may expire unused.

Any material limitation or expiration of our NOLs and tax credit carryforwards may harm our future net income by effectively increasing our future effective tax rate, which could result in a reduction in the market price of our common stock.

Responding to any claims relating to improper handling, storage or disposal of the hazardous chemicals and radioactive and biological materials we use in our business could be time-consuming and costly.

Our research and development processes involve the controlled use of hazardous materials, including chemicals and radioactive and biological materials. Our operations produce hazardous waste products. We cannot eliminate the risk of accidental contamination or discharge and any resultant injury from those materials. Federal, state and local laws and regulations govern the use, manufacture, storage, handling and disposal of hazardous materials. We may be sued for any injury or contamination that results from our or third parties' use of these materials. Compliance with environmental laws and regulations is expensive, and current or future environmental regulations may impair our research, development and production activities.

Our facilities in California are located near an earthquake fault, and an earthquake or other types of natural disasters, catastrophic events or resource shortages could disrupt our operations and adversely affect our results.

All our facilities and our important documents and records, such as hard and electronic copies of our laboratory books and records for our drug candidates and compounds and our electronic business records, are located in our corporate headquarters at a single location in South San Francisco, California near active earthquake zones. If a natural disaster, such as an earthquake, fire or flood, a catastrophic event such as a disease pandemic or terrorist attack, or a localized extended outage of critical utilities or transportation systems occurs, we could experience a significant business interruption. Our partners and other third parties on which we rely may also be subject to business interruptions from such events. In addition, California from time to time has experienced shortages of water, electric power and natural gas. Future shortages and conservation measures could disrupt our operations and cause expense, thus adversely affecting our business and financial results.

Risks Related to an Investment in Our Common Stock

We expect that our stock price will fluctuate significantly, and you may not be able to resell your shares at or at or above your investment price.

The stock market, particularly in recent years, has experienced significant volatility, particularly with respect to pharmaceutical, biotechnology and other life sciences company stocks, which often does not relate to the operating performance of the companies represented by the stock. Factors that could cause volatility in the market price of our common stock include, but are not limited to:

- announcements concerning any of the clinical trials for our drug candidates (including, but not limited to, the timing of initiation or completion of such trials and the results of such trials, and delays or discontinuations of such trials, including delays resulting from slower than expected or suspended patient enrollment or discontinuations resulting from a failure to meet pre-defined clinical end points);
- announcements concerning our strategic alliance with Amgen, Astellas or Ji Xing or future strategic alliances;
- failure or delays in entering additional drug candidates into clinical trials;
- failure or discontinuation of any of our research programs;
- issuance of new or changed securities analysts' reports or recommendations;
- failure or delay in establishing new strategic alliances, or the terms of those alliances;
- market conditions in the pharmaceutical, biotechnology and other healthcare-related sectors;
- actual or anticipated fluctuations in our quarterly financial and operating results;
- developments or disputes concerning our intellectual property or other proprietary rights;
- introduction of technological innovations or new products by us or our competitors;
- issues in manufacturing, packaging, labeling and distribution of our drug candidates or drugs;
- market acceptance of our drugs;
- third-party healthcare coverage and reimbursement policies;
- FDA or other U.S. or foreign regulatory actions affecting us or our industry;
- litigation or public concern about the safety of our drug candidates or drugs;
- additions or departures of key personnel;
- substantial sales of our common stock by our existing stockholders, whether or not related to our performance;

- automated trading activity by algorithmic and high-frequency trading programs;
- volatility in the stock prices of other companies in our industry or in the stock market generally; and
- other factors described in this “Risk Factors” section.

These and other external factors may cause the market price and demand for our common stock to fluctuate substantially, which may limit or prevent investors from readily selling their shares of common stock and may otherwise negatively affect the liquidity of our common stock. In addition, when the market price of a stock has been volatile, holders of that stock have instituted securities class action litigation against the company that issued the stock. If any of our stockholders brought a lawsuit against us, we could incur substantial costs defending the lawsuit. Such a lawsuit could also divert our management’s time and attention.

If securities or industry analysts publish inaccurate or unfavorable research about our business, 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 or industry analysts publish about us or our business. If one or more of the analysts who covers us downgrades our stock or publishes inaccurate or unfavorable research about our business, our stock price may 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 might cause our stock price and trading volume to decline.

In addition, as required by the revenue recognition standard, *ASC 606*, we disclose the aggregate unsatisfied amount of transaction price allocated to performance obligations as of the end of the reporting period. Market practices surrounding the calculation of this measure are still evolving. It is possible that analysts and investors could misinterpret our disclosure or that the terms of our research or license agreements or other circumstances could cause our methods for preparing this disclosure to differ significantly from others, which could lead to inaccurate or unfavorable forecasts by analysts and investors.

Regardless of accuracy, unfavorable interpretations of our financial information and other public disclosures could have a negative impact on our stock price. If our financial performance fails to meet analyst estimates, for any of the reasons discussed above or otherwise, or one or more of the analysts who cover us downgrade our common stock or change their opinion of our common stock, our stock price would likely decline.

If the ownership of our common stock continues to be highly concentrated, it may prevent you and other stockholders from influencing significant corporate decisions and may result in conflicts of interest that could cause our stock price to decline.

Our executive officers, directors and their affiliates beneficially own or control some of the outstanding shares of our common stock. Accordingly, these executive officers, directors and their affiliates, acting as a group, may have substantial influence over the outcome of corporate actions requiring stockholder approval, including the election of directors, any merger, consolidation or sale of all or substantially all our assets or any other significant corporate transactions. These stockholders may also delay or prevent a change of control of us, even if such a change of control would benefit our other stockholders. The significant concentration of stock ownership may adversely affect the trading price of our common stock due to investors’ perception that conflicts of interest may exist or arise.

Volatility in the stock prices of other companies may contribute to volatility in our stock price.

The stock market in general, and the Nasdaq stock exchanges and the market for technology companies in particular, have experienced significant price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Further, there has been particular volatility in the market prices of securities of early stage and clinical stage life sciences companies. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance. In the past, following periods of volatility in the market price of a company’s securities, securities class action litigation has often been instituted. A securities class action suit against us could result in substantial costs, potential liabilities and the diversion of management’s attention and resources, and could harm our reputation and business.

Our common stock is not heavily traded and there may not be an active, liquid trading market for our common stock.

There is no guarantee that an active trading market for our common stock will be maintained on Nasdaq, or that the volume of trading will be sufficient to allow for timely trades. Investors may not be able to sell their shares quickly or at the latest market price if trading in our stock is not active or if trading volume is limited. In addition, if trading volume in our common stock is limited, trades of relatively small numbers of shares may have a disproportionate effect on the market price of our common stock.

Our stockholders will experience substantial additional dilution if outstanding equity awards are exercised or settled for common stock.

The exercise of stock options or settlement of equity awards for common stock would be substantially dilutive to the outstanding shares of common stock. Any dilution or potential dilution may cause our stockholders to sell their shares, which would contribute to a downward movement in the market price of our common stock.

Evolving regulation of corporate governance and public disclosure may result in additional expenses, use of resources and continuing uncertainty.

We regularly evaluate and monitor developments with respect to new and proposed laws, regulations and standards. For example, we spend significant financial and human resources to document and test the adequacy of our internal control over financial reporting to comply with the internal control requirements the Sarbanes-Oxley Act.

We intend to maintain high standards of corporate governance and public disclosure and to invest the resources necessary to comply with evolving laws, regulations and standards. This investment may result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities.

Changing laws, regulations and standards relating to corporate governance and public disclosure create uncertainty for public companies. In many cases, changes lack specificity and compliance with these changes may evolve over time as new guidance is provided by regulatory and governing bodies. We cannot accurately predict or estimate the amount or timing of the additional effort or expense we may incur complying with changes in these laws, regulations and standards. Therefore, we can provide no assurance as to conclusions of management or by our independent registered public accounting firm with respect to the effectiveness of our internal control over financial reporting in the future. If our efforts to comply with new or changed laws, regulations and standards differ from the activities intended by regulatory or governing bodies, due to ambiguities related to practice or otherwise, regulatory authorities may initiate legal proceedings against us, which could be costly and time-consuming, and our reputation and business may be harmed.

We have never paid dividends on our capital stock, and we do not anticipate paying any cash dividends in the foreseeable future.

We have paid no cash dividends on any of our classes of capital stock to date and we currently intend to retain our future earnings, if any, to fund the development and growth of our businesses. In addition, the terms of existing or any future debts may preclude us from paying these dividends.

Conversion of our outstanding 2026 Notes may result in the dilution of existing stockholders, create downward pressure on the price of our common stock, and restrict our ability to take advantage of future opportunities.

The 2026 Notes may be converted into cash and shares of our common stock (subject to our right or obligation to pay cash in lieu of all or a portion of such shares). If shares of our common stock are issued to the holders of the 2026 Notes upon conversion, there will be dilution to our stockholders' equity and the market price of our shares may decrease due to the additional selling pressure in the market. Any downward pressure on the price of our common stock caused by the sale or potential sale of shares issuable upon conversion of the 2026 Notes could also encourage short sales by third parties, creating additional selling pressure on our stock. The existence of the 2026 Notes and the obligations that we incurred by issuing them may restrict our ability to take advantage of certain future opportunities, such as engaging in future debt or equity financing activities.

The accounting method for the 2026 Notes could adversely affect our reported financial condition and results.

The accounting method for reflecting the 2026 Notes on our balance sheet, accruing interest expense for the notes and reflecting the underlying shares of our common stock in our reported diluted earnings per share may adversely affect our reported earnings and financial condition.

Under applicable accounting principles, the initial liability carrying amount of the 2026 Notes will be the fair value of a similar debt instrument that does not have a conversion feature, valued using our cost of capital for straight, unconvertible debt. We currently reflect the difference between the net proceeds from the sale of the 2026 Notes and the initial carrying amount as a debt discount for accounting purposes, which is amortized into interest expense over the term of the 2026 Notes. As a result of this amortization, the interest expense recognized for the 2026 Notes for accounting purposes is greater than the cash interest payments we will pay on the 2026 Notes, which results in lower reported net income. The lower reported income resulting from this accounting treatment could depress the trading price of our common stock and the 2026 Notes.

In addition, under certain circumstances we may be eligible to use the treasury stock method to reflect the shares underlying the 2026 Notes in our diluted earnings per share. Under this method, if the conversion value of the 2026 Notes exceeds their principal amount for a reporting period, then we will calculate our diluted earnings per share assuming that all the 2026 Notes were converted and that we issued shares of our common stock to settle the excess. However, if reflecting the 2026 Notes in diluted earnings per share in this manner is anti-dilutive, or if the conversion value of the 2026 Notes does not exceed their principal amount for a reporting period, then the shares underlying the 2026 Notes will not be reflected in our diluted earnings per share. In addition, if accounting standards change in the future and we are not permitted to use the treasury stock method, then our diluted earnings per share may decline. For example, in July 2019, the Financial Accounting Standards Board published an exposure draft proposing to amend these accounting standards to eliminate the treasury stock method for convertible instruments and instead require application of the "if-converted" method. Under that method, if it is adopted, diluted earnings per share would generally be calculated assuming that all the 2026 Notes were converted solely into shares of common stock at the beginning of the reporting period, unless the result would be anti-dilutive. The application of the if-converted method may reduce our reported diluted earnings per share.

Furthermore, if any of the conditions to the convertibility of the notes is satisfied, then we may be required under applicable accounting standards to reclassify the liability carrying value of the 2026 Notes as a current, rather than a long-term, liability. This reclassification could be required even if no noteholders convert their 2026 Notes and could materially reduce our reported working capital.

The capped call transactions may affect the value of the 2026 Notes and our common stock.

In connection with the issuance of the 2026 Notes, we entered into certain capped call transactions (the "Capped Call Transactions") with the capped call counterparty. The Capped Call Transactions are generally expected to reduce the potential dilution as a result of conversion of the 2026 Notes and/or offset any cash payments we are required to make in excess of the principal amount of converted notes, as the case may be, with such reduction and/or offset subject to a cap.

In connection with establishing its initial hedge of the Capped Call Transactions, the capped call counterparty or its affiliates purchased shares of our common stock and/or entered into various derivative transactions with respect to our common stock. This activity could have increased (or reduced the size of any decrease in) the market price of our common stock or the 2026 Notes at that time.

In addition, the capped call counterparty or its affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions (and are likely to do so on each exercise date of the Capped Call Transactions, which are expected to occur during the 60 trading day period beginning on the 61st scheduled trading day prior to the maturity date of the 2026 Notes, or following any termination of any portion of the Capped Call Transaction in connection with any repurchase, redemption or early conversion of the 2026 Notes). This activity could also cause or avoid an increase or a decrease in the market price of our common stock or the 2026 Notes.

We are subject to counterparty risk with respect to the Capped Call Transactions.

The capped call counterparty to the agreement related to the Capped Call Transactions (the "Capped Call Agreements") is a financial institution, and we will be subject to the risk that the capped call counterparty may default or otherwise fail to perform, or may exercise certain rights to terminate, its obligations under the Capped Call Agreements. Our exposure to the credit risk of the capped call counterparty will not be secured by any collateral. If the capped call counterparty becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at the time under such transaction. Our exposure will depend on many factors but, generally, our exposure will increase if the market price or the volatility of our common stock increases. In addition, upon a default or other failure to perform, or a termination of obligations, under the Capped Call Agreements by the capped call counterparty, we may suffer adverse tax consequences and more dilution than we currently anticipate with respect to our common stock. We can provide no assurances as to the financial stability or viability of the capped call counterparty.

A rating agency may not rate the notes or may assign a rating that is lower than expected.

We do not intend to seek to have the 2026 Notes rated by any rating agency. However, if one or more rating agencies rates the notes and assigns a rating that is lower than the rating that investors expect, or reduces their rating in the future, then the trading price of our common stock and the 2026 Notes could significantly decline.

In addition, market perceptions of our creditworthiness will directly affect the trading price of our common stock and the 2026 Notes. Accordingly, if a ratings agency rates any of our indebtedness in the future or downgrades or withdraws the rating, or puts us on credit watch, then the trading price of our common stock and the 2026 Notes will likely decline.

Provisions in our charter documents and under Delaware law could discourage a takeover that stockholders may consider favorable and may lead to entrenchment of management.

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that may discourage, delay or prevent a merger, acquisition or other change in control of us that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. These provisions also could limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, because our board of directors is responsible for appointing the members of our management team, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Among other things, these provisions:

- establish a classified board of directors with three-year staggered terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- eliminate cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- establish the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- prohibit removal of directors without cause;
- authorize our board of directors to issue preferred stock and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer;
- authorize our board of directors to alter our bylaws without obtaining stockholder approval;
- require the approval of at least two-thirds of the shares entitled to vote at an election of directors to adopt, amend or repeal our bylaws or repeal the provisions of our amended and restated certificate of incorporation regarding the election and removal of directors;
- prohibit stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- require that a special meeting of stockholders be called only by the chairman of the board of directors, the chief executive officer, the president or the board of directors, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors; and
- provide for advance notice procedures that stockholders must comply with in order to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of us.

We are also subject to the anti-takeover provisions contained in Section 203 of the Delaware General Corporation Law. Under Section 203, a corporation may not, in general, engage in a business combination with any holder of 15% or more of its capital stock unless the holder has held the stock for three years or, among other exceptions, the board of directors has approved the transaction. These provisions could discourage potential acquisition proposals and could delay or prevent a change in control transaction. They could also have the effect of discouraging others from making tender offers for our common stock, including transactions that may be in your best interests. These provisions may also prevent changes in our management or limit the price that investors are willing to pay for our stock.

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

Our amended and restated certificate of incorporation and amended and restated bylaws provide that we will indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law.

In addition, as permitted by Section 145 of the Delaware General Corporation Law, our amended and restated bylaws and our indemnification agreements that we have entered into with our directors and officers provide that:

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

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

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

None.

ITEM 5. OTHER INFORMATION

None.

ITEM 6.EXHIBITS

A list of exhibits filed with this Quarterly Report on Form 10-Q or incorporated herein by reference is found in the Index to Exhibits immediately following the signature page of this report and is incorporated into this Item 6 by reference.

Exhibit No.	Exhibits	Incorporated by Reference				Filed Herewith
		Form	File No.	Filing Date	Exh. No.	
3.1	Amended and Restated Certificate of Incorporation	S-3	333-174869	June 13, 2011	3.1	
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation	8-K	000-50633	May 20, 2016	3.1	
3.3	Amended and Restated Bylaws	S-1	333-112261	January 27, 2004	3.2	
4.1	Specimen Common Stock Certificate	10-Q	000-50633	May 9, 2007	4.1	
10.1*+	License and Collaboration Agreement, dated July 14, 2020, by and between the Company and Ji Xing Pharmaceuticals Limited					X
10.2*+	Funding Agreement, dated July 14, 2020, by and between the Company and Dolya Holdco 19 Designated Activity Company					X
10.3*+	Royalty Purchase Agreement, dated July 14, 2020, by and between the Company and Dolya Holdco 19 Designated Activity Company					X
10.4*	Form of Common Stock Purchase Agreement, dated July 14, 2020					X
10.5+	Third Amendment to Loan and Security Agreement, dated July 16, 2020, by and among the Company, Oxford Finance LLC and Silicon Valley Bank					X
31.1	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended					X
31.2	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended					X
31.3	Certification of Principal Accounting Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended					X
32.1	Certifications of the Principal Executive Officer, Principal Financial Officer, and Principal Accounting Officer pursuant to 18 U.S.C 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (1)					X
101.INS	Inline XBRL Instance Document (the Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document					X
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)					X

(1) This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Registrant under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

* Portions of the publicly filed document have been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K.

\+ Schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K and will be furnished on a supplemental basis to the Securities and Exchange Commission upon request.

SIGNATURES

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

Dated: November 6, 2020

CYTOKINETICS, INCORPORATED
(Registrant)

/s/ Robert I. Blum
Robert I. Blum
President and Chief Executive Officer
(Principal Executive Officer)

/s/ Ching Jaw
Ching Jaw
Senior Vice President, Chief Financial Officer
(Principal Financial Officer)

/s/ Robert Wong
Robert Wong
Vice President, Chief Accounting Officer
(Principal Accounting Officer)

Exhibit 10.1

[*] = CERTAIN INFORMATION IN THIS DOCUMENT HAS BEEN EXCLUDED PURSUANT TO REGULATION S-K, ITEM 601(B)(10). SUCH EXCLUDED INFORMATION IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED.

LICENSE AND COLLABORATION AGREEMENT

This **License and Collaboration Agreement** (this "**Agreement**") is made as of July 14, 2020 (the "**Effective Date**"), by and between **Cytokinetics, Incorporated**, a Delaware corporation with a place of business at 280 East Grand Avenue, South San Francisco, CA 94080, USA ("**Cytokinetics**"), and **Ji Xing Pharmaceuticals Limited,** a company organized under the laws of the Cayman Islands, with a business address located at [*] ("**Ji Xing**"). Cytokinetics and Ji Xing are referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**."

Recitals

Whereas, Cytokinetics, a biopharmaceutical company directed to the research and development of small molecule compounds that modulate muscle function, is developing certain cardiac myosin inhibitors and owns or controls certain patents and know-how related thereto;

Whereas, Ji Xing is a pharmaceutical company organized to develop and commercialize pharmaceutical products in the Territory; and

Whereas, Ji Xing wishes to obtain an exclusive license from Cytokinetics to develop, import and commercialize the Product in the Territory, and Cytokinetics is willing to grant such a license and to supply the Product to Ji Xing for development and commercial use in the Territory, all in accordance with the terms and conditions set forth herein.

Agreement

Now, Therefore, in consideration of the foregoing premises and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

Unless specifically set forth to the contrary herein, the following terms, whether used in the singular or plural, shall have the respective meanings set forth below:

1.1. "**Active Ingredient**" means any clinically active material that provides pharmacological activity in a pharmaceutical product (excluding formulation components such as coatings, stabilizers, excipients or solvents, adjuvants or controlled release technologies).

1.2. "**Affiliate**" means, with respect to a Party, any person or entity that directly or indirectly controls, is controlled by or is under common control with such Party. As used in this definition, "control" (and, with correlative meanings, the terms "controlled by" and "under common control with") means, in the case of a corporation, the ownership of fifty percent (50%) or more of the outstanding voting securities thereof or, in the case of any other type of entity, an interest that results in the ability to direct or cause the direction of the management and policies of such party or the power to appoint fifty percent (50%) or more of the members of the governing body of the party. Notwithstanding the foregoing, for purposes of this Agreement but subject to Section 2.9, Affiliates of Ji Xing shall exclude [*].

1.3. "**Applicable Laws**" means all statutes, ordinances, regulations, rules or orders of any kind whatsoever of any Governmental Authority that may be in effect from time to time and applicable to the activities contemplated by this Agreement.

1.4. "**Arising Product IP**" means any inventions, process, method, composition of matter, article of manufacture, discovery or finding, patentable or otherwise, that is (a) invented or generated as a result of a Party exercising its rights or carrying out its obligations under this Agreement, whether directly or via its Affiliates, sublicensees, agents or contractors, and (b) relates to the Product or its formulation, method of use or manufacture, including all rights, title and interest in and to the intellectual property rights therein.

1.5. "**Business Day**" means a day other than Saturday, Sunday or any day on which banks located in San Francisco, U.S., Cayman Islands, or Beijing, China are authorized or obligated to close. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

1.6. "**Calendar Quarter**" means the period commencing on January 1 of each Calendar Year and ending on March 31 of the same Calendar Year, the period commencing on April 1 of each Calendar Year and ending on June 30 of the same Calendar Year, the period commencing on July 1 of each Calendar Year and ending on September 30 of the same Calendar Year and the period commencing on October 1 of each Calendar year and ending on December 31 of the same Calendar Year, as the context shall require.

1.7. "**Calendar Year**" means each twelve (12) month period commencing on January 1 and ending on December 31.

1.8. "**cGMP**" means in respect of Cytokinetics' obligations under this Agreement, all applicable current Good Manufacturing Practices as set forth in 21 C.F.R. Parts 4, 210, 211, 601, 610 and 820, and in respect of Ji Xing's obligations under this Agreement, the equivalent Applicable Laws in any relevant country or region in the Territory, each as may be amended and applicable from time to time.

1.9. "**Change of Control**" means, with respect to a Party, [*].

1.10. "**Clinical Trial**" means any clinical testing of the Product in human subjects.

1.11. "**Commercialization**" or "**Commercialize**" means all activities directed to commercializing, promoting, selling, offering for sale and related importing and exporting activities, but excluding Manufacturing.

1.12. "**Committee**" means the JSC, JDC, JCC or any subcommittee established by the JSC, as applicable.

1.13. "**Compound**" means Cytokinetics' proprietary cardiac myosin inhibitor known as CK-3773274, which is the subject of U.S. IND [*], including any [*].

1.14. "**Confidential Information**" of a Party means all Know-How, unpublished patent applications and other information and data of a financial, commercial, business, scientific or technical nature of such Party that is: (a) disclosed by or on behalf of such Party or any of its Affiliates or agents, or is otherwise made available to the other Party or any of its Affiliates, whether made available orally, in writing or in electronic form; or (b) learned by the other Party or come to the attention of the other Party in connection with the performance of this Agreement by either Party. The terms of this Agreement shall be considered the Confidential Information of both Parties, which neither Party may disclose without the other Party's prior written consent except as provided in Article 11.

1.15. "**Control**" or "**Controlled**" means, with respect to any Know-How, Patents or other intellectual property rights, that a Party has the legal authority or right (whether by ownership, license or otherwise) to grant to the other Party a license, sublicense, access or other right (as applicable) under such Know-How, Patents, or other intellectual property rights, on the terms and conditions set forth herein, in each case without breaching the terms of any agreement with a Third Party.

1.16. "**Cytokinetics Licensed IP**" means the Know-How and Patents that are (a) Controlled by Cytokinetics or its Affiliates as of the Effective Date or during the Term of this Agreement, and (b) necessary or reasonably useful for the Development and/or Commercialization of the Product in the Field. For clarity, Cytokinetics Licensed IP shall include Cytokinetics' and its Affiliates', agents' and contractors' ownership interest in Arising Product IP.

1.17. "**Cytokinetics Know-How**" means the Know-How included in Cytokinetics Licensed IP.

1.18. "**Cytokinetics Patents**" means the Patents within the Cytokinetics Licensed IP. Cytokinetics Patents existing as of the Effective Date are set forth in a side letter that Cytokinetics will deliver to Ji Xing on the Effective Date.

1.19. "**Development**" or "**Develop**" means all development activities to obtain and maintain Regulatory Approval for the Product, including all pre-clinical studies, non-clinical development research, and Clinical Trials of the Product, distribution of Product for use in Clinical Trials (including placebos and comparators), statistical analyses, the preparation of regulatory filings and all regulatory affairs related to any of the foregoing.

1.20. "**Diligent Efforts**" means [*].

1.21. "**Dollars**" or "**$**" means U.S. dollars, the lawful currency of the U.S.

1.22. "**FDA**" means the U.S. Food and Drug Administration or its successor.

1.23. "**Field**" means all prophylactic and therapeutic uses in humans, including HCM, and, subject to Section 4.6, [*].

1.24. "**First Commercial Sale**" means, with respect to any Product in any Market, the first sale of such Product to a Third Party for distribution, use or consumption in such Market after the Regulatory Approvals have been obtained for such Product in such Market. For clarity, First Commercial Sale shall not include any sale or transfer of the Product prior to receipt of Regulatory Approval, such as so-called "treatment IND sales," "named patient sales" and "compassionate use sales."

1.25. **"FTE"** means a full-time equivalent Cytokinetics employee or contractor providing technical assistance or other support to Ji Xing under this Agreement, based on the equivalent of [*] work hours per year by a single individual.

1.26. **"FTE Rate"** means an initial rate of [*] per FTE per year, which rate shall apply through [*]. Thereafter, the FTE Rate may be changed [*].

1.27. "**GAAP**" means, with respect to a person or entity's accounting standard in a country or jurisdiction, (a) if in regards to the U.S., U.S. generally accepted accounting principles, (b) if in regards to Mainland China, the PRC generally accepted accounting principles, (c) if in regard to any country or jurisdiction other than the U.S. and Mainland China, either (i) the International Financial Reporting Standards issued by the International Financial Reporting Standards Foundation and the International Accounting Standards Board, or (ii) the applicable accounting standards as published by the preeminent accounting society for that country or jurisdiction and followed by such person or entity, in each case of (a), (b) and (c), consistently applied and that provide for, among other things, assurance that the accounting and reported results are credible and accurate.

1.28. "**GCP**" means all applicable Good Clinical Practice standards for the design, conduct, performance, monitoring, auditing, recording, analyses and reporting of Clinical Trials, including, as applicable (a) as set forth in the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use Harmonized Tripartite Guideline for Good Clinical Practice (CPMP/ICH/135/95) and any other guidelines for good clinical practice for trials on medicinal products in the Territory, (b) the Declaration of Helsinki (2004) as last amended at the 52nd World Medical Association in October 2000 and any further amendments or clarifications thereto, (c) 21 C.F.R. Parts 50 (Protection of Human Subjects), 56 (Institutional Review Boards) and 312 (Investigational New Drug Application), as may be amended from time to time, and (d) the equivalent Applicable Laws in the Territory, each as may be amended and applicable from time to time and in each case, that provide for, among other things, assurance that the clinical data and reported results are credible and accurate and protect the rights, integrity, and confidentiality of trial subjects.

1.29. "**Generic Product**" means, with respect to a Product in a particular Market in the Territory, any pharmaceutical product that (a) contains the same Active Ingredient(s) as such Product in the same pharmaceutical form as such Product (and contains no other Active Ingredient); (b) [*] in such Market ([*] in such Market) [*] in such Market; (c) is [*] the Product, as determined by the [*] (e.g., a medication [*]); and (d) is sold in such Market by a Third Party that is not a sublicensee of Ji Xing or its Affiliates and did not purchase such product in a chain of distribution that included any of Ji Xing or its Affiliates or sublicensees.

1.30. "**GLP**" means all applicable Good Laboratory Practice standards, including, as applicable, as set forth in the then current good laboratory practice standards promulgated or endorsed by the U.S. Food and Drug Administration as defined in 21 C.F.R. Part 58, or the equivalent Applicable Laws in the region in the Territory, each as may be amended and applicable from time to time.

1.31. "**Governmental Authority**" means any court, commission, authority, department, ministry, official or other instrumentality of, or being vested with public authority under any law of, any country, region, state or local authority or any political subdivision thereof, or any association of countries.

1.32. "**HCM**" means hypertrophic cardiomyopathy, including (a) obstructive hypertrophic cardiomyopathy ("**oHCM**"), and (b) non-obstructive hypertrophic cardiomyopathy ("**nHCM**").

1.33. "**[*]**" means [*].

1.34. "**IND**" means any investigational new drug application, clinical trial application, clinical trial exemption or similar or equivalent application or submission for approval to conduct human clinical investigations filed with or submitted to a Regulatory Authority in conformance with the requirements of such Regulatory Authority.

1.35. "**Ji Xing Licensed IP**" means the Know-How and Patents that are (a) Controlled by Ji Xing, its Affiliates or sublicensees as of the Effective Date or during the Term of this Agreement, and (b) necessary or reasonably useful for the Development, Manufacture, and/or Commercialization of the Product in the Field. For clarity, Ji Xing Licensed IP shall include Ji Xing's and its Affiliates', sublicensees', agents' and contractors' ownership interest in Arising Product IP.

1.36. "**Ji Xing Know-How**" means the Know-How included in Ji Xing Licensed IP.

1.37. "**Ji Xing Patents**" means the Patents within the Ji Xing Licensed IP, but excluding any Patents jointly owned with Cytokinetics.

1.38. "**Ji Xing SH**" means Ji Xing Pharmaceuticals (Shanghai) Co., Ltd., an Affiliate of Ji Xing.

1.39. **"Knowledge**" means, with respect to a Party, the knowledge, after reasonable inquiry with respect to the applicable facts and information (including inquiry of outside legal counsel), of any senior officer or internal legal counsel of such Party or any of its Affiliates.

1.40. "**Know-How**" means any proprietary scientific or technical information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including databases, safety information, practices, methods, techniques, specifications, formulations, formulae, knowledge, know-how, skill, experience, test data including pharmacological, medicinal chemistry, biological, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, stability data, studies and procedures, and manufacturing process and development information, results and data.

1.41. "**Mainland China**" means People's Republic of China, not including the Hong Kong Special Administrative Region, Macau Special Administrative Region, or Taiwan for the purpose of this Agreement.

1.42. "**Major Market Country**" means [*].

1.43. "**Manufacture**" and "**Manufacturing**" mean activities directed to manufacturing, processing, filling, finishing, packaging, labeling, quality control, quality assurance testing and release, post-marketing validation testing, inventory control and management, storing and transporting any Compound and/or Product.

1.44. "**Manufacturing Cost**" means, with respect to the Product that is Manufactured by Cytokinetics' Third Party contract manufacturer and supplied by Cytokinetics to Ji Xing for Development and Commercialization use hereunder, Cytokinetics' [*] of the Manufacture and supply of such Product.

1.45. "**Market**" means each of the countries or jurisdictions of the Territory.

1.46. "**Medical Affairs Activities**" means the activities designed to ensure or improve appropriate medical use of, conduct medical education of, or further research regarding, the Product, including by way of example: (a) activities of medical science liaisons who, among their other functions may (i) conduct service based medical activities, including providing input and assistance with advisory meetings, (ii) recommend investigators for clinical trials and provide input in the design of such trials and other research related activities, and (iii) deliver non-promotional communications and conduct non-promotional activities, including presenting new clinical trial and other scientific information; (b) grants to support continuing medical education, symposia, and Third Party research related to the Product; (c) development, publication and dissemination of publications relating to the Product; (d) medical information services provided in response to inquiries received through sales representative, letter, phone call, email and other communication; (e) conducting advisory board meetings or other consultant programs; and (f) the support of investigator-initiated trials of the Product.

1.47. "**NDA**" means a New Drug Application, as defined by the FDA, or equivalent application for approval (but not including pricing and reimbursement approvals) to market a pharmaceutical product in a country or jurisdiction outside the U.S.

1.48. "**Net Sales**" means the [*] on sales of the Product by Ji Xing, its Affiliates, or sublicensees for sale of the Product to a Third Party in the Territory, less following deductions, to the extent allocable to such Product:

(a) [*];

(b) [*];

(c) [*];

(d) [*];

(e) [*]; and

(f) [*].

Each of the amounts set forth above shall be determined from the books and records of Ji Xing, its Affiliate or sublicensee, maintained in accordance with GAAP consistently applied. For the avoidance of doubt, if a single item falls into more than one of the categories set forth in clauses (a)-(e) above, such item may not be deducted more than once.

With respect to any sale of the Product [*].

Sales between Ji Xing and its Affiliates and sublicensees shall be disregarded for purposes of calculating Net Sales except if such purchaser is a distributor, a pharmacy or an end user. Net Sales also exclude any sale or transfer of the Product for free or below cost in early access, compassionate use or named patient programs.

Notwithstanding the foregoing, Net Sales shall not include amounts (whether actually existing or deemed to exist for purposes of calculation) for Product distributed for use in Clinical Trials or pre-clinical trials.

If the Product is (a) sold co-packaged with one or more other pharmaceutical product(s) that is not a Product ("**Co-Packaged Product**"), or (b) is sold together with other products of the selling party or Affiliates in which the joint selling price provides a discount (e.g., as part of a "bundled" or joint or combined discount arrangement) from the list price of the Product ("**Bundled Product**"), then the Net Sales for the Product contained in such Co-Packaged Product or Bundled Product shall be calculated [*].

If the Parties have [*] Net Sales (including any [*] Co-Packaged Products or Bundled Products), either Party may [*].

1.49. "**NMPA**" means National Medicine Products Administration of China (formerly known as the China Food and Drug Administration), or its successor.

1.50. "**Patents**" means all national, regional and international patents and patent applications, including divisions, continuations, continuations-in-part, additions, re-issues,

renewals, extensions, substitutions, re-examinations or restorations, registrations and revalidations, and supplementary protection certificates and equivalents to any of the foregoing.

1.51. "**Phase 1 Clinical Trial**" means any human clinical trial of the Product that would satisfy the requirements of 21 § CFR 312.21(a) or corresponding foreign regulations.

1.52. "**Phase 2 Clinical Trial**" means any human clinical trial of the Product that would satisfy the requirements of 21 § CFR 312.21(b) or corresponding foreign regulations.

1.53. "**Pivotal Clinical Trial**" means any human clinical trial of the Product that is intended (as of the time of Initiation of such clinical trial) to obtain the results and data to support the filing of an NDA (including label expansion but excluding the data that may be necessary to support the pricing and/or reimbursement approval), including so called Phase 2/3 trials and any human clinical trial that would satisfy the requirements of 21 § CFR 312.21(c) or corresponding foreign regulations. [*].

1.54. "**Product**" means any pharmaceutical product that contains the Compound as an Active Ingredient, alone or in combination with other Active Ingredients (whether co-formulated or co-packaged, but not in combination with any Active Ingredient that is proprietary to Cytokinetics but that is not the Compound), in any formulation or dosage form and for any mode of administration.

1.55. "**REDWOOD-HCM**" means that certain Phase 2 Clinical Trial of the Product that is being conducted by Cytokinetics as of the Effective Date and entitled "A Multi-Center, Randomized, Double-blind, Placebo-controlled, Dose-finding Study to Evaluate the Safety, Tolerability, Pharmacokinetics, and Pharmacodynamics of CK-3773274 in Adults With Symptomatic Hypertrophic Cardiomyopathy and Left Ventricular Outflow Tract Obstruction."

1.56. "**Regulatory Approval**" means, with respect to the Product in a country or jurisdiction, all approvals from the Regulatory Authorities necessary to market and sell the Product in such country or jurisdiction, including pricing and reimbursement approval.

1.57. "**Regulatory Authority**" means any applicable Government Authority responsible for granting Regulatory Approvals for Product, including the FDA, NMPA, and any corresponding national or regional regulatory authorities.

1.58. "**Regulatory Exclusivity**" means any exclusive marketing rights or data exclusivity rights (other than Patents) conferred by any Regulatory Authority with respect to a pharmaceutical or medical product, including without limitation [*].

1.59. "**Regulatory Materials**" means any regulatory application, submission, notification, communication, correspondence, registration, approval and other filings made to, received from or otherwise conducted with a Regulatory Authority regarding the Product, including any NDA and Regulatory Approval.

1.60. [*****].

1.61. "**Territory**" means the following jurisdictions: Mainland China, the Hong Kong Special Administrative Region, Macau Special Administrative Region, and Taiwan.

1.62. "**Third Party**" means an entity other than Cytokinetics, Ji Xing and Affiliates of either of them.

1.63. "**U.S.**" means United States of America, including all possession and territories thereof.

1.64. "**Valid Claim**" means a claim of a pending patent application or an issued and unexpired Patent (as may be extended through supplementary protection certificate or patent term extension or the like) that has not been revoked, held invalid or unenforceable by a patent office, court or other Governmental Authority of competent jurisdiction in a final and non-appealable judgment (or judgment from which no appeal was taken within the allowable time period) and which claim has not been disclaimed, denied or admitted to be invalid or unenforceable through reissue, re-examination or disclaimer or otherwise; provided that [*].

1.65. **Additional Definitions**. The following table identifies the location of definitions set forth in various Sections of the Agreement:

Defined Terms	**Section**
[*]	2.6
Alliance Manager	3.1
API Supply Agreement	7.3(b)
Bundled Product	1.48
China Launch Date	8.2
Clinical Quality Agreement	5.5
CMO	7.1
Co-Packaged Product	1.48
Commercialization Plan	8.3
Cytokinetics Arising Product IP	10.1(b)
Cytokinetics Indemnitee(s)	13.1
Cytokinetics Prosecuted Patents	10.2(a)
Development Plan	4.3
Development Supply Agreement	7.3(a)
Global Brand Elements	10.7(b)
Global Commercialization Plan	8.4(a)
Global Development Plan	4.5(a)
Global Medical Affairs Plan	6.3(a)
Indemnified Party	13.3
Indemnifying Party	13.3
[*]	[*]
Initiation	9.2(b)(iii)

Defined Terms	Section
Ji Xing Indemnitee(s)	13.2
Joint Commercialization Committee or JCC	3.4
Joint Development Committee or JDC	3.3
Joint Steering Committee or JSC	3.2
Losses	13.1
Manufacturing Quality Agreement	7.3(c)
Medical Affairs Plan	6.2
Multi-Region Trial	4.5(b)
nHCM	1.32
NRDL	8.2
oHCM	1.32
Pharmacovigilance Agreement	5.5
Prior CDA	11.6
Product CMO	7.5(a)
Product CMO Agreement	7.5(a)
Product Infringement	10.3(a)
Product Marks	10.7(a)
Proposed Terms	15.3(c)
Purchase Price	7.2
[*]	8.5
Requirements	15.3(b)
Remedial Action	5.8
Royalty Term	9.4(b)
SEC	11.5(b)
Third Party IP	2.7(a)
Third Party License	2.7(b)
Term	14.1

ARTICLE 2
LICENSES

2.1. License Grant to Ji Xing.

(a) Subject to the terms and conditions of this Agreement, Cytokinetics hereby grants to Ji Xing an exclusive (even as to Cytokinetics but subject to Cytokinetics' retained rights as set forth in Section 2.3), royalty-bearing license, with the right to grant sublicenses solely in accordance with Section 2.2, under the Cytokinetics Licensed IP to Develop and Commercialize the Product in the Field in the Territory during the Term of this Agreement. For clarity, the foregoing license [*].

(b) Notwithstanding anything to the contrary herein, Ji Xing shall not (and shall not permit its Affiliates and sublicensees to) Develop, Manufacture or Commercialize the Product except in accordance with the Development Plan or Commercialization Plan.

2.2. Right to Sublicense.

(a) Subject to the terms and conditions of this Agreement, Ji Xing shall have the right to grant sublicenses of the license granted to it under Section 2.1: (i) to any Affiliate [*], which shall [*], provided that [*]; and (ii) to Third Parties, which shall [*]; provided that [*].

(b) Each sublicense under the Cytokinetics Licensed IP shall be subject to a written agreement to which Cytokinetics, Ji Xing and the relevant sublicensee are party and that is consistent with the terms and conditions of this Agreement. Without limiting the foregoing, each sublicense shall contain at least the following terms and conditions: (i) requiring each such sublicensee to protect and keep confidential any Confidential Information of the Parties in accordance with Article 11 of this Agreement; [*].

(c) Ji Xing shall remain directly responsible for all of its obligations under this Agreement that have been delegated or sublicensed to any sublicensee or other subcontractor. Any sublicensee or subcontractor conduct, act, omission or state of affairs that would have constituted a breach of this Agreement shall be imputed to Ji Xing and deemed a breach of this Agreement as if such conduct, act, omission or state of affairs had been directly attributable to Ji Xing. Ji Xing shall not grant a sublicense to any sublicensee or engage the services of any subcontractor that has been debarred or disqualified by a Regulatory Authority.

2.3. Cytokinetics Retained Rights. Notwithstanding the exclusive license granted to Ji Xing under Section 2.1, Cytokinetics hereby expressly retains the rights to use the Cytokinetics Licensed IP in the Field in the Territory in order to perform its obligations under this Agreement, whether directly or through its Affiliates, licensees, sublicensees or agents. For clarity, Cytokinetics retains the exclusive right to practice, license and otherwise exploit the Cytokinetics Licensed IP outside the scope of the license granted to Ji Xing under Section 2.1, including the exclusive right to Develop and Commercialize the Compound and Product outside the Territory [*].

2.4. License Grant to Cytokinetics. Ji Xing hereby grants to Cytokinetics a [*].

2.5. No Implied Licenses; Negative Covenant. Except as set forth herein, neither Party shall acquire any license or other right or interest, by implication or otherwise, under any Know-How, Patent or other intellectual property of the other Party. Ji Xing shall not, and shall not permit any of its Affiliates or sublicensees to, practice any Cytokinetics Licensed IP outside the scope of the license granted by Cytokinetics to Ji Xing under Section 2.1 of this Agreement. Cytokinetics shall not, and shall not permit any of its Affiliates or sublicensees to, practice any Ji Xing Licensed IP outside the scope of the license granted by Ji Xing to Cytokinetics under Section 2.4 of this Agreement.

2.6. [*]. Notwithstanding anything to the contrary herein, if a Party [*], then all intellectual property rights that are [*], in each case shall be [*] by such Party to the other Party under this Agreement, provided, however, that if [*] the Development, Manufacture or Commercialization of or the conduct of Medical Affairs Activities for the Compound or Product, then such intellectual property right that [*]. For clarity, if the [*] under this Agreement, then the intellectual property [*] shall be [*].

2.7. Future Third Party In-License.

(a) If either Party becomes aware of any Patent or Know-How that is owned or controlled by a Third Party and is reasonably necessary or useful for the Development, Manufacture or Commercialization of the Product in the Field (such Patent or Know-How, "**Third Party IP**"), then such Party shall bring such matter to the attention of the other Party and the Parties shall discuss whether it is advisable for the Parties to obtain a license under Third Party IP for the Product in the Territory.

(b) As between the Parties, Cytokinetics shall have the exclusive right (but not the obligation) to obtain a worldwide license under such Third Party IP for the Product. If Cytokinetics obtains such a worldwide license (a "**Third Party IP License**"), such Third Party IP, to the extent falling within the definition of Cytokinetics Licensed IP, shall be included in Cytokinetics Licensed IP and sublicensed to Ji Xing under the terms and conditions of this Agreement; provided however that Ji Xing shall reimburse Cytokinetics for (i) [*]; and (ii) [*]. Any reimbursement by Ji Xing under this Section 2.7(b) shall not be subject to the further royalty offset provisions of Section 9.4(c)(iv).

(c) If Cytokinetics has not obtained such a worldwide license with sublicense rights for the Territory by the date that is the later of (i) [*], or (ii) [*], unless the Parties otherwise agree, then Ji Xing shall have the right to obtain, at its own cost and expense (which shall be subject to royalty offset provisions of Section 9.4(c)(iv)), a license under such Third Party IP for the Product but only in the Field in the Territory.

2.8. No Diversion. Each Party hereby covenants and agrees that it shall not, and shall ensure that its Affiliates and sublicensees shall not, either directly or indirectly, promote, market, distribute, import, sell or have sold any Product, including via the Internet or mail order, to any Third Party or to any address or Internet Protocol address or the like in the other Party's territory or to any Third Party that such Party knows (or reasonably should know after due inquiry) has previously exported or is likely to export the Product to the other Party's territory. Neither Party shall engage, nor permit its Affiliates and sublicensees to engage, in any advertising or promotional activities relating to any Product for use directed primarily to customers or other buyers or users of the Product located in any country or jurisdiction in the other Party's territory, or solicit orders from any prospective purchaser located in any country or jurisdiction in the other Party's territory. If a Party or its Affiliates or sublicensees receive any order for the Product from a prospective purchaser located in a country or jurisdiction in the other Party's territory, such Party shall immediately refer that order to such other Party and shall not accept any such orders. Neither Party shall, nor permit its Affiliates and sublicensees to, deliver or tender (or cause to be delivered or tendered) any Product to any Third Party for use in or distribution into the other Party's territory, except as permitted under this Agreement including under Section 2.3.

2.9. **[**[*]

2.10. **Subcontractors**. Subject to the terms and conditions of this Agreement (including Section 2.2), Ji Xing shall have the right to engage subcontractors for purposes of conducting Development, Commercialization and other activities for Ji Xing under this Agreement, provided that any such subcontractor is bound by a written agreement that is consistent with the terms and conditions of this Agreement (including those relating to confidentiality, intellectual property rights and compliance). Through the appropriate Committee, Ji Xing shall keep Cytokinetics informed on its selection and engagement of subcontractors, including the identity and qualification of any significant subcontractors it intends to engage in the Development and Commercialization of the Product, and shall consider in good faith Cytokinetics' comments and suggestions before engaging the subcontractor. Ji Xing shall remain directly responsible for any obligations under this Agreement that have been delegated or subcontracted to any subcontractor, and shall be directly responsible for the performance of its subcontractors.

ARTICLE 3
GOVERNANCE

3.1. **Alliance Managers**. Each Party hereby appoints the person listed on **Exhibit A** to act as its alliance manager under this Agreement as of the Effective Date (the "**Alliance Manager**"). The Alliance Managers shall facilitate the flow of information and otherwise promote communication, coordination and collaboration between the Parties and raise cross-Party and/or cross-functional issues in a timely manner. Each Party may replace its Alliance Manager by written notice to the other Party.

3.2. **Joint Steering Committee**. Each Party hereby appoints the Chief Executive Officer of Cytokinetics and the Chairman of Ji Xing to serve on a joint steering committee (the "**Joint Steering Committee**" or the "**JSC**") to manage the overall collaboration of the Parties under this Agreement. The JSC shall in particular: (a) review, discuss and approve the overall strategy for the Development of the Product in the Field in the Territory; (b) review and discuss the overall strategy for the Manufacture, Medical Affairs Activities and Commercialization of the Product in the Field in the Territory; (c) provide a forum for the discussion and coordination of the Parties' activities under this Agreement; (d) direct and oversee the operation of the JDC, JCC and any other joint subcommittee established by JSC, including resolving any disputed matter of the JDC, JCC and other joint subcommittees; (e) establish other joint subcommittees as necessary or advisable to further the purpose of this Agreement; and (f) perform such other functions as expressly set forth in this Agreement or allocated to it by the Parties' written agreement.

3.3. **Joint Development Committee**. Each Party hereby appoints three (3) representatives listed on **Exhibit A** to serve on a joint development committee (the "**Joint Development Committee**" or the "**JDC**") as of the Effective Date to oversee the Development of the Product in the Field in the Territory under this Agreement. The JDC shall in particular: [*].

3.4. Joint Commercialization Committee. At a time to be determined by the JSC (but no later than the submission of the first NDA for the Product in the Territory), each Party shall appoints three (3) representatives to serve on a joint Commercialization committee (the "**Joint Commercialization Committee**" or the "**JCC**") to oversee the Commercialization of the Product in the Field in the Territory under this Agreement. The JCC shall in particular: [*].

3.5. Limitation of Authority. Each Committee shall only have the powers expressly assigned to it in this Article 3 and elsewhere in this Agreement and shall not have the authority to: (a) modify or amend the terms and conditions of this Agreement; (b) waive either Party's compliance with the terms and conditions of this Agreement; or (c) determine any such issue in a manner that would conflict with the express terms and conditions of this Agreement.

3.6. Committee Members. Each Party's representatives on the Committees shall be an officer or employee of the applicable Party having sufficient seniority within such Party to make decisions arising within the scope of the applicable Committee's responsibilities. Each Party may replace its representatives on any Committee upon written notice to the other Party. Each Party shall appoint one of its representatives on each Committee to act as a co-chairperson of such Committee.

3.7. Meetings. Each Committee shall hold meetings at such times as it elects to do so, but in no event shall such meetings be held less frequently than once every Calendar Quarter. Each Party may call additional ad hoc Committee meetings as the needs arise with reasonable advance notice to the other Party. Meetings of any Committee may be held in person, by audio or video teleconference; provided that unless the Parties otherwise agree, at least [*] shall be held in person. In-person Committee meetings shall be held at [*]. The co-chairpersons of the applicable Committee shall jointly prepare the agenda and minutes for each Committee meeting. Each Party shall be responsible for all of its own expenses of participating in the Committee meetings. No action taken at any Committee meeting shall be effective unless at least one representative of each Party is participating in such Committee meeting.

3.8. Non-Member Attendance. Each Party may from time to time invite a reasonable number of participants, in addition to its representatives, to attend any Committee meeting in a non-voting capacity; provided that if either Party intends to have any Third Party (including any consultant) attend such a meeting, such Party shall provide prior written notice to the other Party. Such Party shall also ensure that such Third Party is bound by confidentiality and non-use obligations consistent with the terms of this Agreement.

3.9. Decision-Making. All decisions of each Committee shall be made by unanimous vote, with each Party's representatives having one vote. If after reasonable discussion and good faith consideration of each Party's view on a particular matter before the JDC, JCC or any subcommittee established by the JSC, the representatives of the Parties on such Committee cannot reach an unanimous decision as to such matter within [*] after a Party has requested resolution of such matter by such Committee, such matter shall be referred to the JSC for resolution. The JSC shall promptly meet and use good faith efforts to resolve such matter. If the JSC cannot resolve such matter within [*] after such matter has been referred to them, then:

(a) [*]; and

(b) [*].

3.10. Discontinuation of Committees. The activities to be performed by each Committee shall solely relate to governance under this Agreement, and are not intended to be or involve the delivery of services. Each Committee shall continue to exist until the first to occur of: (a) the Parties mutually agreeing to disband such Committee; or (b) Cytokinetics providing written notice to Ji Xing of its intention to disband and no longer participate in such Committee. Once the Parties mutually agree or Cytokinetics has provided written notice to disband any Committee, such Committee shall have no further obligations under this Agreement and, thereafter, the Alliance Managers shall be the contact persons for the exchange of information under this Agreement and decisions of such Committee shall be decisions as between the Parties, subject to the same respective decision-making rights and limitations set forth in Section 3.9 and other terms and conditions of this Agreement.

ARTICLE 4
DEVELOPMENT

4.1. General. Subject to the terms and conditions of this Agreement, Ji Xing shall be responsible for the Development of the Product in the Field in the Territory, including the performance of Clinical Trials of the Product in the Field in the Territory necessary for Regulatory Approval.

4.2. Development Diligence. Ji Xing shall carry out the initial Development Plan and subsequent Development Plans approved by the JDC and shall otherwise use Diligent Efforts to Develop the Product [*]. Without limiting the foregoing, Ji Xing shall use Diligent Efforts to [*].

4.3. Development Plan. All Development of the Product conducted by or on behalf of Ji Xing under this Agreement shall be conducted pursuant to a comprehensive written Development plan that sets forth the timeline and details of all clinical and regulatory activities to be conducted by or on behalf of Ji Xing to obtain and maintain Regulatory Approval of the Product in the Field in each Market in the Territory (the "**Development Plan**"). The Development Plan shall, except as expressly agreed by Cytokinetics in writing (e.g., to the extent required by the applicable Regulatory Authority or to address specific operational requirements in the Territory), be [*] and shall be focused [*]. As of the Effective Date, the Parties have agreed to the initial Development Plan, which is attached hereto as **Exhibit B**. The JDC shall review and update the Development Plan within [*] after the Effective Date. From time to time, but at least once every [*], Ji Xing shall propose updates or amendments to the Development Plan in consultation with Cytokinetics and submit such proposed updated or amended plan to the JDC for review, discussion, and approval, including the protocols of all Clinical Trials of the Product to be conducted by Ji Xing in the Territory and all investigator-sponsored and investigator-initiated trials of the Product in the Territory, in each case prior to any patient enrollment. Once approved by the JDC, the updated or amended Development Plan shall become effective. From time to time at its discretion, [*] may propose updates or amendments to the Development Plan if it reasonably believes that the then effective Development Plan is insufficient or may have an adverse effect on [*].

4.4. Technology Transfer. As of the Effective Date, the Parties have agreed to an initial Technology Transfer Plan, which is attached hereto as **Exhibit C** (the "**Technology Transfer Plan**"), for Cytokinetics to provide and transfer to Ji Xing [*]. As promptly as practicable, but no later than [*] following the Effective Date, the Parties shall coordinate in good faith to review and revise the Technology Transfer Plan if necessary. Upon Ji Xing's reasonable request, Cytokinetics shall also provide Ji Xing with reasonable technical assistance in connection with such technology transfer, including reasonable access to Cytokinetics' technical personnel involved in the research and Development of the Compound and Product. [*].

4.5. Development Collaboration.

(a) Cytokinetics shall keep the JDC reasonably informed on its plans (including any updates and amendment thereto) for the global Development of the Product in sufficient detail for Ji Xing to conform the Development of the Product in the Field in the Territory to the Global Development Plan (the "**Global Development Plan"**). Except as expressly agreed [*].

(b) The Parties shall collaborate with respect to the Development of the Product across their territories, and may agree to collaborate in the conduct of Clinical Trials designed to obtain and maintain Regulatory Approval of the Product in multiple countries and jurisdictions, both in and outside the Territory, through the conduct of Clinical Trials in multiple sites in such countries and jurisdictions as part of one unified Clinical Trial or separately but concurrently in accordance with a common Clinical Trial protocol (such Clinical Trial, a "**Multi-Region Trial**"). [*].

(c) [*].

(d) [*].

4.6. Development in Other Indications. As of the Effective Date, the Parties intend to focus the Development of the Product in the Territory for HCM [*].

4.7. Development Cost. Ji Xing shall be solely responsible for all the costs and expenses to Develop the Product in the Territory.

4.8. Data Exchange and Use. In addition to its adverse event and safety data reporting obligations pursuant to Section 5.5, each Party shall promptly provide the other Party with copies of all data and results and all supporting documentation (e.g. protocols, CRFs, analysis plans) generated from its Development of the Product. Subject to Section 4.5(d), Ji Xing shall have the right to use the data provided by Cytokinetics for the purpose of obtaining and maintaining Regulatory Approval for and Commercializing the Product in the Field in the Territory. Cytokinetics shall have the right to use the data provided by Ji Xing for the purpose of obtaining and maintaining Regulatory Approval for and Commercializing the Product outside the Territory.

4.9. Development Records. Ji Xing shall maintain complete, current and accurate records of all Development activities conducted by or on behalf of Ji Xing hereunder, and all data and other information resulting from such activities. Such records shall fully and properly reflect all work done and results achieved in the performance of the Development activities in good scientific manner appropriate for regulatory and patent purposes. Ji Xing shall document all non-clinical studies and Clinical Trials in formal written study reports according to Applicable Laws and national and international guidelines (e.g., ICH, GCP, GLP, and cGMP). Cytokinetics shall have the right to review and copy such records maintained by Ji Xing at reasonable times and to use such records and obtain access to the original for its research and development activities and regulatory and patent purposes or for other legal proceedings.

4.10. Development Reports. Ji Xing shall keep Cytokinetics reasonably informed as to the progress and results of its and its Affiliates' and sublicensees' Development of the Product. Without limiting the foregoing, the status, progress and results of the Development of the Product in the Territory shall be discussed at meetings of the JDC. At least [*] before each regularly scheduled JDC meeting, Ji Xing shall provide the JDC with a written report summarizing its Development activities and the results thereof, covering subject matter at a level of detail reasonably required by Cytokinetics and sufficient to enable Cytokinetics to determine Ji Xing's compliance with its diligence obligations pursuant to Section 4.2. In addition, Ji Xing shall make available to Cytokinetics such additional information about its Development activities as may be reasonably requested by Cytokinetics from time to time.

ARTICLE 5
REGULATORY

5.1. General.

(a) The Development Plan shall set forth the regulatory strategy for seeking Regulatory Approvals of the Product in the Field in each Market in the Territory. Ji Xing shall be responsible for all regulatory activities necessary for obtaining and maintaining Regulatory Approvals of the Product in the Field in the Territory, which regulatory activities shall be performed at Ji Xing's own cost and expense and in accordance with the regulatory strategy set forth in the Development Plan. Through the JDC, Ji Xing shall keep Cytokinetics informed of regulatory developments related to the Product in the Territory, including any decision by any Regulatory Authority in the Territory regarding the Product and Cytokinetics shall keep Ji Xing informed of regulatory developments related to the Product outside the Territory, including any decision by any Regulatory Authority outside the Territory regarding the Product.

(b) [*].

(c) After the completion of technology transfer under Section 7.5 [*], Ji Xing shall apply for Regulatory Approvals (as domestic product) of the Product that is manufactured domestically in Mainland China in Ji Xing SH's name and, to the extent permitted by Applicable Laws, the Parties shall cooperate in good faith to [*].

5.2. Regulatory Materials. Ji Xing shall provide Cytokinetics with drafts in English of all Regulatory Materials in a reasonable time (in any event no less than [*] for Regulatory Materials other than an NDA or other application for Regulatory Approval, which shall be drafted and reviewed based on a schedule to be agreed by the Parties) prior to submission for review and comment, and shall consider in good faith any comments received from Cytokinetics, which shall be provided within [*] of receipt. For clarity, [*]. In addition, Ji Xing shall notify Cytokinetics of any Regulatory Materials submitted to or received from any Regulatory Authority in the Territory and shall provide Cytokinetics with copies thereof within [*] after submission or receipt, and shall notify Cytokinetics of any other material communication with any Regulatory Authority in the Territory within [*] after such communication. If any such Regulatory Material is not in the English language, Ji Xing shall also, [*] provide Cytokinetics with an English summary at the time of provision and a true, complete, accurate and certified English translation thereof as soon as practicable. If necessary, Cytokinetics shall assist Ji Xing in addressing any additional requirements requested by any Regulatory Authority in the Territory within a reasonable time (depending on the events), including providing existing supplementary data or documentation.

5.3. Regulatory Meetings. Ji Xing shall provide Cytokinetics with advance notice for any meeting or discussion to be requested with any Regulatory Authority in the Territory related to the Product in accordance with Section 5.2 and shall notify Cytokinetics in writing promptly, but in any event within [*], after its receipt of written notice of any meeting or discussion with any Regulatory Authority in the Territory related to the Product. Ji Xing shall participate in such meeting or discussion as Cytokinetics' representative, provided however that [*].

5.4. Right of Reference. Each Party hereby grants to the other Party the right of reference to all Regulatory Materials pertaining to the Product in the Field submitted by or on behalf of such Party. Subject to Section 4.5(d), Ji Xing may use such right of reference to Cytokinetics' Regulatory Materials in the Field for the purpose of obtaining and maintaining Regulatory Approval of the Product solely for indications in the Development Plan in the Territory, applying for pricing for and admission of the Product to the NRDL and satisfying other Commercialization related regulatory obligations for the Product in the Field in the Territory. Cytokinetics may use such right of reference to Ji Xing's Regulatory Materials in the Field solely for the purpose of obtaining and maintaining Regulatory Approval of the Product outside the Territory.

5.5. Adverse Events Reporting; Quality. At least [*] prior to the expected initiation of the first Clinical Trial under this Agreement, the Parties shall enter into a pharmacovigilance and adverse event reporting agreement setting forth the worldwide pharmacovigilance procedures for the Parties with respect to the Product, such as safety data sharing, adverse events reporting and prescription events monitoring (the "**Pharmacovigilance Agreement**"). Such procedures shall be in accordance with, and enable the Parties to fulfill, local and national regulatory reporting obligations under Applicable Laws. Cytokinetics shall establish and maintain the global safety database for the Product and conduct overall signal detection and benefit risk evaluation of the Product. Each Party shall hold the primary responsibility for reporting quality complaints, adverse events and safety data related to the Product in its territory to such database and to the applicable Regulatory Authorities in its territory, as well as responding to safety issues and to all requests of Regulatory Authorities in its territory related to the Product, in each case at its own cost and to the extent required by the Applicable Laws. Cytokinetics agrees to support Ji Xing on safety issues or safety request related to the Product when output from global safety database is required. At least [*] prior to the expected initiation of the first Clinical Trial under this Agreement, the Parties shall enter into a clinical quality agreement for the Territory (the "**Clinical Quality Agreement**"). Each Party agrees to comply with its respective obligations under the Pharmacovigilance Agreement and Clinical Quality Agreement and to cause its Affiliates, licensees and sublicensees to comply with such obligations.

5.6. Regulatory Audits and Inspection. Upon [*] notification, Cytokinetics or its representatives shall be entitled to conduct an audit of the regulatory and safety/pharmacovigilance systems, procedures and practices of Ji Xing, its Affiliates, sublicensees or subcontractors (including clinical trial sites) relating to the Development, Manufacture, and Commercialization of and Medical Affairs Activities for the Product in the Field in the Territory. Ji Xing shall provide Cytokinetics with prompt advance notice of any inspection of Ji Xing, its Affiliates, sublicensees or subcontractors by any Regulatory Authority within [*] of being notified of such an inspection by the Regulatory Authority and shall provide Cytokinetics with all information pertinent thereto (including all copies of all notices, filings and correspondences received from or submitted to the Regulatory Authority in connection therewith relating to the Compound or Product). [*]. To the extent required by Applicable Laws, Cytokinetics shall promptly provide Ji Xing with existing documented evidence or materials owned by holder of Regulatory Approvals that are requested by inspectors or otherwise assist Ji Xing with such regulatory inspections. [*].

5.7. No Harmful Actions. If Cytokinetics believes that Ji Xing is taking or intends to take any action with respect to the Compound or Product that could have a material adverse impact upon the regulatory status of the Compound or Product outside the Territory, Cytokinetics shall have the right to bring the matter to the attention of the JDC and the Parties shall promptly meet to discuss in good faith to resolve such concern. Without limiting the foregoing, unless the Parties otherwise agree: (a) Ji Xing shall not communicate with any Regulatory Authority having jurisdiction outside the Territory, unless so ordered by such Regulatory Authority, in which case Ji Xing shall immediately notify Cytokinetics of such order; and (b) Ji Xing shall not submit any Regulatory Materials or seek Regulatory Approvals for the Compound or Product outside the Territory.

5.8. Remedial Actions. Each Party shall notify the other immediately, and promptly confirm such notice in writing, if it obtains information indicating that any Product may be subject to any recall, corrective action or other regulatory action by any Governmental Authority or Regulatory Authority (a "**Remedial Action**"). The Parties shall assist each other in gathering and evaluating such information as is necessary to determine the necessity of conducting a Remedial Action. Ji Xing shall have sole discretion with respect to any matters relating to any Remedial Action in the Territory, including the decision to commence such Remedial Action and the control over such Remedial Action, provided that Ji Xing shall provide advance notice to Cytokinetics and consider in good faith Cytokinetics' comments regarding such Remedial Action. The cost and expenses of any Remedial Action in the Territory shall be borne [*]. Ji Xing shall, and shall ensure that its Affiliates and sublicensees will, maintain adequate records to permit Ji Xing to trace the distribution, sale and use of the Product in the Territory.

ARTICLE 6
MEDICAL AFFAIRS ACTIVITIES

6.1. General. Subject to the terms and conditions of this Agreement, Ji Xing shall be responsible for conducting Medical Affairs Activities for the Product in the Field in the Territory, at Ji Xing's own cost and expense.

6.2. Medical Affairs Plan. Ji Xing shall conduct all Medical Affairs Activities for the Product in the Field in the Territory pursuant to a written Medical Affairs Activities plan that set forth the timeline and details of all Medical Affairs Activities to be conducted by or on behalf of Ji Xing for the Product in the Field in the Territory (the "**Medical Affairs Plan**"), which plan shall, [*]. No later than [*] before the planned initiation of the first Clinical Trial of the Product in the Field in the Territory, Ji Xing [*]. Thereafter, from time to time, but at least [*], Ji Xing shall prepare updates or amendments to the Medical Affairs Plan [*].

6.3. Coordination of Medical Affairs Activities.

(a) Cytokinetics shall keep the JDC reasonably informed on its plans (including any updates and amendment thereto) for the global Medical Affairs Activities for the Product (the "**Global Medical Affairs Plan**") in sufficient detail [*].

(b) The Parties shall collaborate with respect to Medical Affairs Activities for the Product across their territories. If the Parties agree to jointly conduct any specific Commercialization activities for the benefit of the Product in both Parties' territories, the Parties shall negotiate and agree on the details of such activities, including allocation of responsibilities, budget and cost sharing. [*]. For clarity, Ji Xing shall not conduct any Medical Affairs Activities for the Product outside the Field or Territory without Cytokinetics' express prior written consent.

6.4. Medical Affairs Activities Reports. Ji Xing shall keep Cytokinetics informed of its, its Affiliates' and sublicensees' Medical Affairs Activities with respect to the Product. Without limiting the foregoing, at each regularly scheduled JDC meeting, Ji Xing shall provide the JDC with a reasonably detailed report summarizing the Medical Affairs Activities performed by or on behalf of Ji Xing for the Product in the Field in the Territory. In addition, Ji Xing shall make available to Cytokinetics such additional information about its Medical Affairs Activities as may be reasonably requested by Cytokinetics from time to time.

ARTICLE 7
MANUFACTURE AND SUPPLY

7.1. Supply by Cytokinetics. Except as provided in Section 7.5 below, Cytokinetics shall, either by itself or through its Affiliates or Third Party contract manufacturers (each a "**CMO**"), Manufacture and supply to Ji Xing, and Ji Xing shall purchase from Cytokinetics, [*].

7.2. Purchase Price. Ji Xing shall pay Cytokinetics for the Product supplied by Cytokinetics at a price [*] (the "**Purchase Price**"). The Purchase Price does [*]. Cytokinetics shall deliver the Product to [*] and shall invoice Ji Xing for the Purchase Price upon such delivery. Ji Xing shall pay the invoiced Purchase Price within [*] after the date of the invoice.

7.3. Supply Agreements.

(a) As soon as reasonably practicable after the Effective Date, the Parties shall negotiate and execute a separate development supply agreement (the "**Development Supply Agreement**") setting forth the mutually agreed terms for the Manufacture and supply of the Product to Ji Xing for Development use in the Territory. The Development Supply Agreement shall be consistent with the terms and conditions of this Agreement.

(b) [*]. The API Supply Agreement shall be consistent with the terms and conditions of this Agreement and shall include mutually agreed and customary terms for such supply agreement, including a detailed forecast and ordering mechanism. In addition, the API Supply Agreement shall also provide mechanisms to address Cytokinetics' CMO's failure to supply (to be defined in the API Supply Agreement).

(c) The Parties agree that, following the Effective Date, they shall negotiate and enter into a separate manufacturing quality agreement (the "**Manufacturing Quality Agreement**").

7.4. [*].

7.5. Domestic Manufacture.

(a) [*].

(b) [*].

(c) [*].

(d) [*].

(e) [*].

ARTICLE 8
COMMERCIALIZATION

8.1. General. Subject to the terms and conditions of this Agreement, Ji Xing shall, either by itself or through its Affiliates, sublicensees or Third Party contractor(s), be solely responsible for the Commercialization of the Product in the Field in the Territory, at Ji Xing's own cost and expense, including developing and executing a commercial launch plan, product marketing and promotional efforts, market access and pricing strategies, speaker programs, negotiating with applicable Governmental Authorities regarding the price and reimbursement mechanisms, booking sales, product distribution, providing customer and product support (including handling medical queries), and performing other related functions.

8.2. Commercialization Diligence. Ji Xing shall use Diligent Efforts to Commercialize the Product [*]. Without limiting the foregoing, Ji Xing shall use Diligent Efforts to [*].

8.3. Commercialization Plan. No later than [*] before the anticipated date of the submission of the first NDA for the Product in the Field in the Territory, Ji Xing shall submit to the JCC for review and discussion a written Commercialization plan that sets the timeline and details of all major Commercialization activities planned for the Product in the Territory (the "**Commercialization Plan**"). Thereafter, from time to time, but at least [*], Ji Xing shall prepare updates or amendments to the Commercialization Plan to reflect changes in such plans, including those in response to changes in the marketplace, relative success of the Product, and other relevant factors influencing such plan and activities, and submit such updated or amended plan to JCC for review and discussion before such updates and amendments become effective. Except as expressly agreed by Cytokinetics in writing or to the extent required by the applicable Regulatory Authority or to address specific operational requirements in the Territory, the Commercialization Plan shall be [*] for the Product, and the Commercialization of the Product in the Territory shall be conducted in accordance with the Commercialization Plan as amended from time to time.

8.4. Coordination of Commercialization Activities.

(a) Cytokinetics shall keep the JCC reasonably informed on its plans (including any updates and amendment thereto) for the global Commercialization of the Product (the "**Global Commercialization Plan**") in sufficient detail in order for Ji Xing to [*] the Commercialization of the Product in the Field in the Territory [*].

(b) The Parties recognize that they may benefit from the coordination of certain activities in support of the Commercialization of the Product across their territories. As such, the Parties may coordinate such activities where appropriate, including scientific and medical communication, health economics and product positioning. Ji Xing shall submit to the JCC for review and comment prior to use materials proposed to be used in connection with the promotion and other Commercialization of the Product, and Ji Xing shall consider in good faith Cytokinetics' comments and suggestions regarding such materials[*]. If the Parties agree to jointly conduct any specific Commercialization activities for the benefit of the Product in both Parties' territories, the Parties shall negotiate and agree on the details of such activities, including allocation of responsibilities, budget and cost sharing. [*]. For clarity, Ji Xing shall not conduct any Commercialization of the Product outside the Field or Territory without Cytokinetics' express prior written consent.

8.5. [*].

8.6. Commercialization Reports. Ji Xing shall keep Cytokinetics informed of its, its Affiliates' and sublicensees' Commercialization activities with respect to the Product. Without limiting the foregoing, Ji Xing shall update the JCC at each regularly scheduled JCC meeting regarding the Commercialization activities with respect to the Product in the Territory. Each such update shall be in a form to be agreed by the JCC and shall summarize Ji Xing's, its Affiliates' and sublicensees' significant Commercialization activities with respect to the Product in the Territory, covering subject matter at a level of detail reasonably required by Cytokinetics and sufficient to enable Cytokinetics to determine Ji Xing's compliance with its diligence obligations pursuant to **Section 8.2**. In addition, Ji Xing shall make available to Cytokinetics such additional information about its Commercialization activities as may be reasonably requested by Cytokinetics from time to time. Ji Xing shall [*].

ARTICLE 9
PAYMENTS AND MILESTONES

9.1. Upfront Payment. In partial consideration of the rights granted by Cytokinetics to Ji Xing hereunder, Ji Xing shall pay to Cytokinetics a one-time, non-refundable and non-creditable upfront payment of twenty five million Dollars ($25,000,000) within [*] of the Effective Date.

9.2. Development Milestones Payments.

(a) **Milestone Events**. Subject to the remainder of this Section 9.2, Ji Xing shall pay to Cytokinetics the following one-time, non-refundable and non-creditable Development milestone payments set forth in the table below upon the first achievement of the corresponding milestone event:

	Development Milestone Event	**Milestone Payment**
1)	[*]	[*]
2)	[*]	[*]
3)	[*]	[*]
4)	[*]	[*]
5)	[*]	[*]
6)	[*]	[*]
7)	[*]	[*]
8)	[*]	[*]
9)	[*]	[*]
10)	[*]	[*]
11)	[*]	[*]
12)	[*]	[*]
13)	[*]	[*]
	Total	**[*]**

(b) **Milestone Conditions**.

(i) Each milestone payment set forth above shall be due and payable only once, regardless of how many times such milestone event is achieved. The aggregate milestone payments under this **Section 9.2** for oHCM, nHCM and [*] shall not exceed [*]. Prior to the inclusion of any additional indication (other than [*]) in the Development Plan, the Parties will agree on milestone payments for such indication, taking into consideration [*].

(ii) Each milestone payment set forth above shall be due and payable irrespective of whether such milestone event is achieved by Cytokinetics, Ji Xing, their Affiliates, licensee or sublicensee.

(iii) As used herein, [*] of a Clinical Trial means the [*] such Clinical Trial (as applicable).

(iv) If a [*] of a clinical or regulatory requirement that would have satisfied a milestone (e.g., for [*]) is sought from and granted by the relevant Regulatory Authority (i.e. [*]), then the milestone shall be deemed achieved upon such grant of such [*].

(v) In the event that any milestone event has not been achieved for a particular Market and/or indication at the time of achievement of a milestone event having a [*] for such Market and/or indication [*], then each [*] for such Market and/or indication shall be deemed [*] at the time of achievement of the [*] for such Market and/or indication.

(c) **Notice and Payment**. For milestones set forth above to be achieved [*] after the first achievement of such milestone. For milestones set forth above to be achieved [*] after the first achievement of such milestone, provided, however that in each case, [*]. Ji Xing shall pay to Cytokinetics the corresponding milestone payment within [*] after the delivery or receipt of the notice for the achievement of such milestone.

9.3. Sales Milestone Payments.

(a) **Milestone Events**. Subject to the remainder of this **Section 9.3**, Ji Xing shall pay to Cytokinetics the following one-time, non-refundable and non-creditable sales milestone payments set forth in the table below when the aggregated Net Sales of all Products sold in the Territory in a Calendar Year first reach the corresponding threshold value indicated below.

First Calendar Year in which Aggregate Net Sales of Product in the Territory Exceed	**Milestone Payment**
1. [*]	[*]
2. [*]	[*]
3. [*]	[*]
4. [*]	[*]
Total	[*]

(b) **Milestone Conditions**. Each sales milestone payment set forth above shall be due and payable only once, regardless of how many times such milestone event is achieved. The aggregate milestone payments under this **Section 9.3** shall not exceed [*]. For clarity, the sales milestone payments in this Section 9.3 are [*], then the milestone payments for [*] shall be payable.

(c) **Notice and Payment**. As [*]**,** Ji Xing shall provide written notice to Cytokinetics if the aggregated Net Sales of the Product in the Territory first reach any threshold value set forth in **Section 9.3(a)** above during the time period to which such report pertains. Ji Xing shall pay to Cytokinetics the corresponding milestone payments [*].

9.4. Royalty Payments.

(a) **Royalty Rates**. Subject to the remainder of this **Section 9.4**, Ji Xing shall make quarterly non-refundable royalty payments to Cytokinetics on the Net Sales of all Products sold in the Territory, as calculated by multiplying the applicable royalty rate set forth in the table below by the corresponding amount of incremental, aggregated annual Net Sales of all Products sold in the Territory in the applicable Calendar Year.

For that portion of annual Net Sales of the Product in the Territory		**Royalty Rate**
1) less than	[*]	[*]
2) equal to or greater than and less than	[*] [*]	[*]
3) equal to or greater than and less than	[*] [*]	[*]
4) equal to or greater than	[*]	[*]

(b) **Royalty Term**. Royalties shall be paid on aggregate annual Net Sales of the Product (with sales of all versions, strengths and SKUs of the Product consolidated) in the Territory. Ji Xing's obligation to pay royalties pursuant to this **Section 9.4** shall continue [*] (the "**Royalty Term**").

(c) **Royalty Reductions**.

(i) If a Product is generating Net Sales in a Market during the applicable Royalty Term at a time when a Generic Product with respect to such Product is being sold in such Market, and such Generic Product(s) [*], then the royalty rates applicable to Net Sales of such Product in such Market shall be reduced to [*] of the royalty rates set forth in the table in **Section 9.4(a)**, but only for so long as the Generic Product with respect to such Product is being sold in such Market with such [*].

(ii) If a Product is generating Net Sales in a Market during the applicable Royalty Term at a time when: (A) there is [*], then the royalty rates applicable to Net Sales of such Product in such Market shall be reduced by [*] for so long as the conditions in this **Section 9.4(c)(ii)** are met.

(iii) If at any time during the Royalty Term the [*], then the royalty rates applicable to Net Sales of such Product in such Market shall be reduced by [*].

(iv) If it is necessary for Ji Xing to obtain a license from a Third Party to any Patent owned by such Third Party in order to sell the Product in a Market in the Territory and Ji Xing obtains such a license (and Cytokinetics had not obtained a license to such Patent pursuant to **Section 2.7(b)** Ji Xing shall have the right to deduct, from the royalty payment that would otherwise have been due pursuant to this **Section 9.4** with respect to Net Sales of such Product in such Market in a particular Calendar Quarter, an amount equal to [*] of all payments by Ji Xing to such Third Party pursuant to such license on account of the sale of such Product in such Market during such Calendar Quarter. Payments made by Ji Xing to Cytokinetics pursuant to Section 2.7(b) shall not be a basis for royalty reduction under this **Section 9.4(c)(iv)**.

(v) Notwithstanding the foregoing, in no event shall the operation of Sections 9.4(c)(i), (ii), (iii) or (iv), individually or in combination, reduce the royalties paid to Cytokinetics with respect to the Net Sales of any Product in any Market in the Territory in any Calendar Quarter to less than [*] of the amount that would otherwise have been due pursuant to Section 9.4(a) with respect to such Net Sales; provided that [*].

(d) **Basis for Royalty**. This Section 9.4 is intended to provide for payments to Cytokinetics equal to the percentages of Net Sales set forth in this Section 9.4 for the duration of the Royalty Term. In establishing this payment structure, the Parties recognize, and Ji Xing acknowledges, the substantial value of the various actions and investments undertaken by Cytokinetics prior to the Effective Date and that Cytokinetics will undertake under this Agreement, and that the value of the Cytokinetics Licensed IP licensed to Ji Xing hereunder resides substantially in Cytokinetics Know-How. As a result, the Parties attribute such value to Cytokinetics' leading proprietary knowledge in the subject matter, including trade secrets, preclinical and clinical data pertaining to the Compound and Product, and regulatory filings made by Cytokinetics prior to the Effective Date, in each case created or generated by Cytokinetics through the expenditure of significant resources and as a result of Cytokinetics' unique innovative capabilities. The Parties agree that because Cytokinetics is not separately compensated under this Agreement for such additional benefits, the royalties set forth above are appropriate for the duration of the Royalty Term. The Parties have agreed to the payment structure set forth herein as a convenient and fair mechanism for both Parties in order to compensate Cytokinetics for these additional benefits as part of the overall consideration for Cytokinetics to enter into this Agreement.

(e) **Royalty Report and Payment**. Within [*] after the end of each Calendar Quarter, commencing with the first Calendar Quarter in which there is any sale of the Product anywhere in the Territory, Ji Xing shall provide Cytokinetics with a report that contains the following information for the applicable Calendar Quarter, on a Market-by-Market basis: (i) the amount of gross sales of the Product, (ii) an itemized calculation of Net Sales showing separately each type of deduction provided for in the definition of "Net Sales," (iii) a calculation of the royalty payment due on such sales in Dollars, including the exchange rate and any reduction under Section 9.4(c), and (iv) the aggregate Net Sales of the past twelve (12) months and whether any sales milestone has been achieved. Concurrent with the delivery of the applicable quarterly report, Ji Xing shall pay to Cytokinetics in Dollars the royalties owed with respect to Net Sales for such Calendar Quarter.

9.5. Currency; Exchange Rate; Blocked Currency. All payments to be made by Ji Xing to Cytokinetics under this Agreement shall be made in Dollars by bank wire transfer in immediately available funds to a bank account designated by written notice from Cytokinetics. The rate of exchange to be used in computing the amount of currency equivalent in Dollars shall be made at the average of the closing exchange rates reported in The Wall Street Journal (U.S., Eastern Edition) for the first, middle and last Business Days of the applicable reporting period for the payment due. In the event that, by reason of Applicable Laws in any country or region in the Territory, it becomes impossible or illegal for Ji Xing to transfer, or have transferred on its behalf, payments owed to Cytokinetics hereunder, Ji Xing will promptly notify Cytokinetics of the conditions preventing such transfer and such payments will be deposited in local currency in the relevant country to the credit of Cytokinetics in a recognized banking institution designated by Cytokinetics or, if none is designated by Cytokinetics within a period of [*] days, in a recognized banking institution selected by Ji Xing, as the case may be, and identified in a written notice given to Cytokinetics.

9.6. Late Payments. Time is of the essence in respect of all payment obligations under Sections 9.1, 9.2, 9.3, and 9.4 above. In addition, if Cytokinetics does not receive undisputed payment of any sum due to it on or before the due date therefor, simple interest shall thereafter accrue on the sum due to Cytokinetics from the due date until the date of payment at a per-annum rate of [*] or the maximum rate allowable by Applicable Laws, whichever is less.

9.7. Financial Records and Audits. Ji Xing shall (and shall ensure that its Affiliates and sublicensees will) maintain complete and accurate records in accordance with GAAP and in sufficient detail for [*] from the creation of such individual records to permit Cytokinetics to confirm the accuracy of Net Sales reported by Ji Xing and amounts payable under this Agreement. Upon no less than [*] prior notice, such records shall be open for examination, during regular business hours, for a period of [*] from the creation of individual records, and not more often than once each Calendar Year, by an independent certified public accountant selected by Cytokinetics and reasonably acceptable to Ji Xing, for the sole purpose of verifying for Cytokinetics the accuracy of the Net Sales and royalty reports provided by Ji Xing under this Agreement. Any such auditor shall not disclose Ji Xing's or its Affiliates' or sublicensees' Confidential Information, except to the extent such disclosure is necessary to verify the accuracy of Net Sales reported by Ji Xing and amounts payable under this Agreement. Cytokinetics shall bear the cost of such audit [*]. Ji Xing shall pay to Cytokinetics any undisputed underpayment discovered by such audit within [*] after the accountant's report, plus interest (as set forth in Section 9.6) from the original due date. Any overpayment by Ji Xing revealed by an audit shall be fully-creditable against future payment owed by Ji Xing to Cytokinetics (and if no further payments are due, shall be refunded by Cytokinetics at the request of Ji Xing). Ji Xing shall include in each relevant sublicense granted by it a provision requiring the sublicensee to maintain records of sales of the Product made pursuant to such sublicense and to grant access to such records to the same extent and under the same obligations as required of Ji Xing under this Agreement.

9.8. Taxes.

(a) **Taxes on Income**. [*], including applicable withholding taxes, VAT, stamp duty or other taxes required by Applicable Laws. In particular, with respect to any [*].

(b) **Tax Cooperation**. The Parties agree to cooperate with one another and use reasonable efforts to avoid or reduce tax withholding or similar obligations in respect of royalties, milestone payments, and other payments made under this Agreement. To the extent Ji Xing is obligated to deduct and withhold taxes on any payment to Cytokinetics, [*]. Cytokinetics shall provide Ji Xing any [*] under an applicable bilateral income tax treaty between the applicable countries within the Territory and the U.S. and countries in which Cytokinetics has operations. Cytokinetics shall use reasonable efforts to provide [*]. At the request of Cytokinetics, Ji Xing shall provide reasonable assistance and cooperation to enable the recovery, to the extent permitted by Applicable Laws, of withholding taxes or similar obligations resulting from payments made under this Agreement.

(c) **Tax Status**. [*].

(d) **[***].

ARTICLE 10
INTELLECTUAL PROPERTY

10.1. Arising Product IP.

(a) Except as set forth in Section 10.1(b) below, ownership of all Arising Product IP shall be based on inventorship, as determined in accordance with the rules of inventorship under United States patent laws. Each Party shall solely own any Arising Product IP made solely by its and its Affiliates' employees, agents, or independent contractors. The Parties shall jointly own any Arising Product IP that are made jointly by employees, agents, or independent contractors of one Party and its Affiliates together with by employees, agents, or independent contractors of the other Party and its Affiliates. Except to the extent either Party is restricted by the licenses granted to the other Party under this Agreement, each Party shall be entitled to practice, license, assign and otherwise exploit any Arising Product IP jointed owned by the Parties (including any Patent claiming such jointly owned Arising Product IP), without a duty of accounting or seeking consent from the other Party.

(b) Notwithstanding Section 10.1(a), Cytokinetics shall [*]. Ji Xing shall [*]. For clarity, [*].

(c) Each Party shall promptly disclose to the other Party all Arising Product IP invented or generated by or on behalf of such Party under this Agreement, including any invention disclosures, or other similar documents, submitted to it by its employees, agents or independent contractors describing such Arising Product IP, and shall promptly respond to reasonable requests from the other Party for additional information relating to such Arising Product IP.

10.2. Patent Prosecution.

(a) As between the Parties, Cytokinetics shall have the first right to file, prosecute and maintain all Cytokinetics Patents and Patents claiming any Arising Product IP (including jointly owned Patents) (collectively, the "**Cytokinetics Prosecuted Patents**") throughout the world. Cytokinetics shall be responsible for the cost and expenses of filing, prosecuting and maintaining the Cytokinetics Prosecuted Patents both inside and outside the Territory.

(b) Cytokinetics shall consult with Ji Xing and keep Ji Xing reasonably informed of the status of the Cytokinetics Prosecuted Patents in the Field in the Territory and shall promptly provide Ji Xing with all material correspondence received from any patent authority in the Territory in connection therewith. In addition, Cytokinetics shall promptly provide Ji Xing with drafts of all proposed material filings and correspondence to any patent authority in the Territory with respect to the Cytokinetics Prosecuted Patents in the Field for Ji Xing's review and comment prior to the submission of such proposed filings and correspondences. Cytokinetics shall confer with Ji Xing and [*] Ji Xing's comments prior to submitting such filings and correspondences in the Territory, provided that Ji Xing shall provide such comments within [*] of receiving the draft filings and correspondences from Cytokinetics.

(c) Ji Xing shall provide Cytokinetics all reasonable assistance and cooperation in the patent prosecution efforts under this Section 10.2 at its own expense, including providing any necessary powers of attorney and executing any other required documents or instruments for such prosecution.

(d) If Cytokinetics intends to abandon or cease prosecution or maintenance of any Cytokinetics Prosecuted Patent in the Territory, Cytokinetics shall provide prior notice to Ji Xing of such intention (which notice must be given at least [*] in advance of the next deadline to take any action in the relevant patent office necessary to maintain existing rights in any such Cytokinetics Prosecuted Patent). Upon Ji Xing's written election provided no later than [*] after such notice from Cytokinetics, Cytokinetics shall either (i) continue prosecution and maintenance of such Cytokinetics Prosecuted Patent at Ji Xing's direction and expense or (ii) permit Ji Xing to assume prosecution and maintenance of such Cytokinetics Prosecuted Patent at its own expense and using patent counsel of its choosing. If Cytokinetics decides to abandon or cease prosecution or maintenance and Ji Xing elects to assume prosecution or maintenance of any Cytokinetics Prosecuted Patent in accordance with this **Section 10.2**, for the avoidance of doubt, such Cytokinetics Prosecuted Patent shall no longer be a Cytokinetics Patent for the purposes of royalty payment provisions under **Section 9.4** of this Agreement.

(e) Each Party shall, and shall cause its Affiliates and Representatives to, provide all reasonable assistance and cooperation in connection with prosecution and maintenance activities under this Section 10.2, including by making its employees, agents, and independent contractors reasonably available and executing any necessary documents or instruments, including powers of attorney.

10.3. Patent Enforcement.

(a) Each Party shall promptly notify the other Party if it becomes aware of any alleged or threatened infringement by a Third Party of any of the Cytokinetics Patents, which infringement adversely affects or is expected to adversely affect the Product in the Field in the Territory, and any related declaratory judgment, opposition, or similar action alleging the invalidity, unenforceability or non-infringement of any of the Cytokinetics Patents in the Territory (collectively "**Product Infringement**").

(b) As between the Parties, Ji Xing shall have the first right to bring and control any legal action in connection with such Product Infringement in the Territory at its own expense as it reasonably determines appropriate. If Ji Xing does not bring such legal action within [*] after the notice provided pursuant to Section 10.3(a), Cytokinetics shall have the right to bring and control any legal action in connection with such Product Infringement in the Territory at its own expense as it reasonably determines appropriate.

(c) At the request and expense of the Party bringing an action under Section 10.3(b) above, the other Party shall provide reasonable assistance in connection therewith, including by executing reasonably appropriate documents, cooperating in discovery and joining as a party to the action if required by Applicable Laws to pursue such action. In connection with any such enforcement action, the enforcing Party shall keep the other Party reasonably informed on the status of such action and shall not enter into any settlement admitting the invalidity or non-infringement of, or otherwise impairing the other Party's rights in the Cytokinetics Patents without the prior written consent of the other Party. The non-enforcing Party shall be entitled to separate representation in such enforcement action by counsel of its own choice and at its own expense.

(d) Any recoveries resulting from enforcement action relating to a claim of Product Infringement in the Territory shall be first applied against payment of each Party's costs and expenses in connection therewith. Any such recoveries in excess of such costs and expenses shall be retained by the enforcing Party, provided that if Ji Xing is the enforcing Party, then such excess recoveries shall be [*].

(e) Cytokinetics shall have the exclusive right to bring and control any legal action to enforce the Cytokinetics Patents against any infringement that is not a Product Infringement or is outside the Territory, in each case at its own expense and as it reasonably determines appropriate, and shall have the right to retain all recoveries.

10.4. Infringement of Third Party Rights.

(a) Each Party shall notify the other Party of any allegations it receives from a Third Party that the Development, Manufacture or Commercialization of any Product in the Field in the Territory under this Agreement infringes the intellectual property rights of such Third Party. Such notice shall be provided promptly, but in no event after more than [*] following receipt of such allegations. Such notice shall include a copy of any summons or complaint (or the equivalent thereof) received regarding the foregoing. Thereafter, the Parties shall promptly meet to consider the claim or assertion and the appropriate course of action and may, if appropriate, agree on and enter into a "common interest agreement" wherein the Parties agree to their shared, mutual interest in the outcome of such potential dispute. Each Party shall assert and not waive the joint defense privilege with respect to all communications between the Parties.

(b) Ji Xing shall be solely responsible for the defense of any such infringement claims brought against Ji Xing, at Ji Xing's own cost and expense; provided, however, that the provisions of Section 10.3 shall govern the right of Ji Xing to assert a counterclaim of infringement of any Cytokinetics Patents; and provided further that Ji Xing shall [*]. Ji Xing shall keep Cytokinetics informed on the status of such defense action, and Cytokinetics shall have the right, but not the obligation, to participate and be separately represented in such defense action at its sole option and at its own expense. Cytokinetics shall also have the right to control the defense of any infringement claim brought against Cytokinetics, at Cytokinetics' own cost and expense.

10.5. Patents Licensed From Third Parties. Each Party's rights under this Article 10 with respect to the prosecution and enforcement of any Cytokinetics Patent that is licensed by Cytokinetics from a Third Party shall be subject to the rights of such Third Party to prosecute and enforce such Patent.

10.6. Patent Marking. Ji Xing shall mark the Product sold in the Territory in accordance with the applicable patent marking laws, and shall require all of its Affiliates and sublicensees to do the same. To the extent permitted by Applicable Laws, Ji Xing shall indicate on the product packaging and trade dress, advertisement and promotional materials that the Product is in-licensed from Cytokinetics, and shall display Cytokinetics' corporate name and logo on the product packaging and trade dress, advertisement and promotional materials in addition to Ji Xing's own corporate name and logo.

10.7. Trademarks.

(a) Subject to Section 10.7(b) below, Ji Xing shall have the right to brand the Product sold in the Territory using any trademarks and trade names it determines appropriate for the Product, which may vary by Market or within a Market (the "**Product Marks**"); provided that Ji Xing shall, through the JCC, consult with Cytokinetics and seek to obtain mutual agreement in writing regarding the selection of the Product Marks, and Ji Xing shall not select any mark or China approved drug name that is confusingly similar to any Global Brand Element as a Product Mark. Ji Xing shall own all rights in the Product Marks in the Territory and shall register and maintain the Product Marks in the Territory that it determines reasonably necessary, at Ji Xing's own cost and expense.

(b) Ji Xing acknowledges that Cytokinetics may develop a global branding strategy for the Product and adopt the key distinctive colors, logos, images, symbols, and trademarks to be used in connection with the Commercialization of the Product throughout the world (such branding elements, collectively, the "**Global Brand Elements**"). Cytokinetics shall own all rights in the Global Brand Elements and shall register and maintain the Global Brand Elements in any country in the world as it determines reasonably necessary, at Cytokinetics' own cost and expense. Subject to the terms and conditions of this Agreement (including Section 11.5(a)), Cytokinetics hereby grants Ji Xing an exclusive, royalty free license, with the right to sublicense pursuant to Section 2.2 solely to use the then-current Global Brand Elements in Commercializing the Product in the Field in the Territory. Ji Xing shall Commercialize the Product in the Territory using the Global Brand Elements [*].

ARTICLE 11
CONFIDENTIALITY

11.1. Confidentiality. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Parties, each Party agrees that, for the Term and for a period of [*] years thereafter, it shall keep confidential and shall not publish or otherwise disclose and shall not use for any purpose other than as provided for in this Agreement (which includes the exercise of any rights or the performance of any obligations hereunder) any Confidential Information of the other Party pursuant to this Agreement.

11.2. Exceptions. The foregoing confidentiality and non-use obligations shall not apply to any portion of the Confidential Information that the receiving Party can demonstrate by competent written proof:

(a) was already known to the receiving Party, other than under an obligation of confidentiality, at the time of disclosure by the other Party;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;

(c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party in breach of this Agreement;

(d) is subsequently disclosed to the receiving Party by a Third Party who has a legal right to make such disclosure; or

(e) is subsequently independently discovered or developed by the receiving Party without the aid, application, or use of the disclosing Party's Confidential Information, as evidenced by a contemporaneous writing.

11.3. Authorized Disclosure. Notwithstanding the obligations set forth in Section 11.1, a Party may disclose the other Party's Confidential Information and the terms of this Agreement to the extent:

(a) such disclosure is reasonably necessary: (i) for the filing or prosecution of Patents as contemplated by this Agreement; (ii) in connection with regulatory filings for the Product; or (ii) for the prosecuting or defending litigation as contemplated by this Agreement;

(b) such disclosure is reasonably necessary: (i) to such Party's directors, attorneys, independent accountants or financial advisors for the sole purpose of enabling such directors, attorneys, independent accountants or financial advisors to provide advice to the receiving Party, provided that in each such case on the condition that such directors, attorneys, independent accountants and financial advisors are bound by confidentiality and non-use obligations consistent with those contained in this Agreement; or (ii) to actual or potential investors, acquirors, licensors, licensees, collaborators or other business or financial partners (including royalty financing partners) solely for the purpose of evaluating or carrying out an actual or potential investment, acquisition, license, collaboration, financing or other business transaction; provided that in each such case on the condition that such disclosees are bound by confidentiality and non-use obligations consistent with those contained in the Agreement; or

(c) such disclosure is required by judicial or administrative process, provided that in such event such Party shall promptly inform the other Party such required disclosure and provide the other Party an opportunity to challenge or limit the disclosure obligations. Confidential Information that is disclosed by judicial or administrative process shall remain otherwise subject to the confidentiality and non-use provisions of this Article 11, and the Party disclosing Confidential Information pursuant to law or court order shall take all steps reasonably necessary, including seeking of confidential treatment or a protective order to ensure the continued confidential treatment of such Confidential Information.

Notwithstanding any other provision hereof, a Party who discloses the other Party's Confidential Information or the terms of this Agreement to a Third Party pursuant to Section 11.3(b) shall be liable to the other Party if such Third Party violates the terms of its confidentiality obligation or any of the terms set forth in this Agreement as if such Third Party was a party hereto.

11.4. Scientific Publication. Except to the extent required by Applicable Laws, Ji Xing shall not publish any peer-reviewed manuscripts, or give other forms of public disclosure such as abstracts and presentations, relating to the Product, including the data and results of the Development of the Product, without Cytokinetics' review and approval, which approval shall not be unreasonably withheld, delayed or conditioned. Ji Xing shall deliver to Cytokinetics for review and approval a copy in English of any proposed scientific publication or presentation relating to the Product at least [*] before its intended submission for publication. Cytokinetics shall have the right to require modifications of the proposed publication or presentation to protect Cytokinetics' Confidential Information and for trade secret reasons [*]. Cytokinetics may also delay the submission of the proposed publication or presentation for an additional [*] as may be reasonably necessary to seek patent protection for the information disclosed in such proposed publication or presentation. Ji Xing agrees to acknowledge the contribution of Cytokinetics and Cytokinetics' employees in all publication as scientifically appropriate.

11.5. Publicity.

(a) The Parties may each issue a press release announcing this Agreement in a form approved in writing by the other Party ahead of the announcement. Subject to the rest of this Section 11.5, no disclosure of the terms of this Agreement may be made by either Party, and no Party shall use the name, trademark, trade name or logo of the other Party, its Affiliates or their respective employee(s) in any publicity, promotion, news release or disclosure relating to this Agreement or its subject matter, without the prior express written permission of the other Party, except as may be required by Applicable Laws.

(b) A Party may disclose this Agreement and its terms in securities filings with the Securities Exchange Commission ("**SEC**") (or equivalent foreign agency) to the extent required by Applicable Laws after complying with the procedure set forth in this Section 11.5. In such event, the Party seeking such disclosure will prepare a draft confidential treatment request and proposed redacted version of this Agreement to request confidential treatment for this Agreement, and the other Party agrees to promptly (and in any event, no less than [*] after receipt of such confidential treatment request and proposed redactions) give its input in a reasonable manner in order to allow the Party seeking disclosure to file its request within the time lines proscribed by applicable SEC regulations. The Party seeking such disclosure shall exercise commercially reasonable efforts to obtain confidential treatment of the Agreement from the SEC as represented by the redacted version reviewed by the other Party.

(c) Each Party acknowledges that the other Party may be legally required to make public disclosures (including in filings with the SEC or other agency) of certain material developments or material information generated under this Agreement and agrees that each Party may make such disclosures as required by Applicable Laws, *provided* that the Party seeking such disclosure first provides the other Party a copy of the proposed disclosure, and provided further that (except to the extent that the Party seeking disclosure is required to disclose such information to comply with Applicable Laws) if the other Party demonstrates to the reasonable satisfaction of the Party seeking disclosure, within [*] of such Party's providing the copy, that the public disclosure of previously undisclosed information will materially adversely affect the development and/or commercialization of a Product being developed and/or commercialized, the Party seeking disclosure will remove from the disclosure such specific previously undisclosed information as the other Party shall reasonably request to be removed.

(d) Other than the initial press release as described in Section 11.5(a) above and any public disclosure made pursuant to Section 11.5(c), the Parties agree that the portions of any other news release or other public announcement relating solely and specifically to the Development or Commercialization of the Product in the Territory that would disclose information other than that already in the public domain, shall first be reviewed and approved by both Parties (with such approval not to be unreasonably withheld or delayed); provided, however, that notwithstanding the foregoing, each Party shall have the right to disclose publicly (including on its website): (i) the fact that it has entered into this Agreement; (ii) the commencement, progress, status, completion and key results of each clinical trials conducted by the Parties under this Agreement; (iii) the receipt of any milestone or royalty payments from Ji Xing under this Agreement; (iv) Regulatory Approval of any Product in the Territory; and (v) the First Commercial Sale of any Product in the Territory. For each such disclosure, unless a Party otherwise has the right to make such disclosure under this Article 11, such Party shall provide the other Party with a draft of such disclosure at least [*] prior to its intended release for such other Party's review and comment, and shall consider such other Party's comments in good faith. If the disclosing Party does not receive comments from the other Party within [*], the disclosing Party shall have the right to make such disclosure without further delay. The Parties shall use reasonable efforts to coordinate the timing of such disclosures to be outside the trading hours of the NASDAQ, provided that Cytokinetics shall not be required to so delay such a disclosure where such delay would reasonably be expected to give rise to liability for or sanctions upon Cytokinetics in Cytokinetics' sole judgment.

(e) The Parties agree that after a disclosure pursuant to Section 11.5(b), a press release (including the initial press release) or other public announcement pursuant to Section 11.5(a), 11.5(c) or 11.5(d) has been reviewed and approved by the other Party, either Party may make subsequent public disclosures reiterating such information without having to obtain the other Party's prior consent or approval.

11.6. Prior CDA. This Agreement supersedes the Mutual Non-Disclosure Agreement between Cytokinetics and Ji Xing's Affiliate, Ji Xing Pharmaceuticals (Shanghai) Co., Ltd., dated [*] (the "**Prior CDA**") with respect to information disclosed thereunder. All information exchanged between the Parties under the Prior CDA shall be deemed Confidential Information of the disclosing Party and shall be subject to the terms of this Article 11. This Section 11.6 is without prejudice to any accrued rights under the Prior CDA and shall not be deemed to have released or discharged any accrued liabilities of any Party under the Prior CDA.

11.7. Equitable Relief. Each Party acknowledges that a breach of this Article 11 cannot reasonably or adequately be compensated in damages in an action at law and that such a breach shall cause the other Party irreparable injury and damage. By reason thereof, each Party agrees that the other Party shall be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to preliminary and permanent injunctive and other equitable relief to prevent or curtail any breach of the obligations relating to Confidential Information set forth herein.

11.8. Attorney-Client Privilege. Neither Party is waiving, nor shall be deemed to have waived or diminished, any of its attorney work product protections, attorney-client privileges or similar protections and privileges or the like as a result of disclosing information pursuant to this Agreement, or any of its Confidential Information (including Confidential Information related to pending or threatened litigation) to the other Party, regardless of whether the disclosing Party has asserted, or is or may be entitled to assert, such privileges and protections. The Parties: (a) share a common legal and commercial interest in such disclosure that is subject to such privileges and protections; (b) are or may become joint defendants in proceedings to which the information covered by such protections and privileges relates; (c) intend that such privileges and protections remain intact should either Party become subject to any actual or threatened proceeding to which the disclosing Party's Confidential Information covered by such protections and privileges relates; and (d) intend that after the Effective Date both the receiving Party and the disclosing Party shall have the right to assert such protections and privileges.

ARTICLE 12
REPRESENTATIONS AND WARRANTIES

12.1. Representations and Warranties of Each Party. Each Party represents, warrants, and covenants (as applicable) to the other Party that:

(a) it is a company or corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated, and is duly licensed or qualified to do business and is in corporate good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in corporate good standing has not and would not reasonably be expected to have, either individually or in the aggregate, a material adverse effect on the business of such Party;

(b) it has the corporate power and authority to enter into this Agreement and perform its obligations hereunder, it has taken all necessary corporate action on its part required to authorize the execution and delivery of the Agreement and the performance of its obligations hereunder, and this Agreement has been duly executed and delivered on behalf of such Party, and constitutes a valid and binding obligation of such Party that is enforceable against it in accordance with its terms;

(c) it is not a party to, and will not enter into during the Term, any agreement that would prevent it from granting the rights granted to the other Party under this Agreement or performing its obligations under the Agreement; and

(d) in the course of performing its obligations or exercising its rights under this Agreement, it shall comply with all Applicable Laws, in including as applicable, cGMP, GCP, and GLP standards, and shall not employ or engage any person or entity who has been debarred by any Regulatory Authority or otherwise excluded by any Governmental Authority from participating in any program sponsored or administered by a Governmental Authority, or, to such Party's knowledge, is the subject of debarment or exclusion proceedings or investigation by a Regulatory Authority or other Governmental Authority.

12.2. Representations and Warranties of Cytokinetics. Cytokinetics represents, warrants, and covenants (as applicable) to Ji Xing that:

(a) it has the right under the Cytokinetics Licensed IP to grant the licenses to Ji Xing as purported to be granted under Section 2.1 of this Agreement;

(b) it has not granted, and will not grant during the Term, any license or other right under the Cytokinetics Licensed IP that is inconsistent with the license granted to Ji Xing under Section 2.1;

(c) Cytokinetics has delivered to Ji Xing a complete list of all Cytokinetics Patents as of the Effective Date (the "**Existing Patents**"). The Existing Patents (i) disclose and claim the Compound and the Product, (ii) as of the Effective Date, are pending and not abandoned, (iii) are solely and exclusively owned by Cytokinetics, free of any encumbrance, lien or claim of ownership by any Third Party, and, (iv) have been and will continue to be properly maintained and diligently prosecuted in the respective patent offices in the Territory in accordance with Applicable Laws, except as provided in Section 10.2(d). [*] all fees applicable as of the Effective Date, if any, for prosecuting or maintaining the Existing Patents have been fully and timely paid. For all PCT applications existing within the Cytokinetics Patents as of the Effective Date, if any, Cytokinetics has filed or will timely file, for each PCT application, a national stage application in each PCT contracting state within the Territory and a corresponding patent application in Taiwan;

(d) All inventor assignments with respect to inventions claimed in the Existing Patents have been or will be properly executed, recorded and perfected as necessary at each respective patent office in the Territory in accordance with Applicable Law;

(e) there are no pending or, to Cytokinetics' Knowledge, alleged or threatened, (a) inter partes reviews, post-grant reviews, interferences, re-examinations or oppositions involving the Existing Patents that are in or before any patent authority (or other governmental authority performing similar functions) or (b) any inventorship challenges involving the Existing Patents that are in or before any patent or other governmental authority;

(f) Cytokinetics or its Affiliates own all Cytokinetics Licensed IP and none of Cytokinetics Licensed IP is in-licensed from a Third Party;

(g) no claim or litigation has been brought or asserted (and Cytokinetics has no Knowledge of any claim, whether or not brought or asserted) by any Third Party alleging that (i) the Existing Patents are invalid or unenforceable or (ii) the conception, development, reduction to practice, disclosing, copying, making, assigning or licensing of the Existing Patents or the Cytokinetics Know-How (including the existing Regulatory Materials) or the exploitation of a Compound or Product as contemplated herein, violates, infringes, constitutes misappropriation or otherwise conflicts or interferes with or would violate, infringe or otherwise conflict or interfere with, any intellectual property or proprietary right of any Third Party and (b) nor, to Cytokinetics' Knowledge, do any facts or circumstances exist that would to give rise to any such claims;

(h) [*] the conception, development, and reduction to practice of the Existing Patents and Cytokinetics Know-How existing as of the Effective Date have not constituted or involved the misappropriation of trade secrets or other rights or property of any Third Party;

(i) [*] no Third Party is infringing or threatening to infringe or misappropriating or threatening to misappropriate the Existing Patents or the Cytokinetics Know-How;

(j) it has not received any written notice from any Third Party asserting or alleging that the Development of the Compound or Product prior to the Effective Date infringed or misappropriated the intellectual property rights of such Third Party;

(k) there is no pending or, to Cytokinetics' Knowledge, threatened (in writing), adverse actions, investigations, suits or proceedings against Cytokinetics or any of its Affiliates involving the Cytokinetics Licensed IP, Compound or Product; and

(l) neither Cytokinetics nor any of its Affiliates, nor any employee, agent or supplier thereof that have been or will be involved in any Clinical Trial in connection to the Product, is, or has been, debarred or disqualified by any Regulatory Authority nor will any of them be debarred or disqualified by any Regulatory Authority in Developing the Compound and Product or at any time throughout the Term.

12.3. Representations and Warranties of Ji Xing. Ji Xing represents, warrants, and covenants (as applicable) to Cytokinetics that:

(a) it has not granted, and will not grant during the Term, any license or other right under the Ji Xing Licensed IP that is inconsistent with the license granted to Cytokinetics under Section 2.4;

(b) there is no pending or, to Ji Xing's Knowledge, threatened (in writing), adverse actions, claims, suits or proceedings against Ji Xing or any of its Affiliate that involve any antitrust, anti-competition, anti-bribery or corruption violations or that may reasonably be expected to adversely affect Ji Xing's ability to perform its obligations under this Agreement;

(c) neither Ji Xing nor any of its Affiliates, nor any employee, agent or supplier thereof that will be involved in any Clinical Trial in connection to the Product, is, or has been, debarred or disqualified by any Regulatory Authority nor will any of them be debarred or disqualified by any Regulatory Authority at any time throughout the Term;

(d) it has or will have sufficient financial wherewithal to (i) perform all of its obligations pursuant to this Agreement, and (ii) meet all of its obligations that come due in the ordinary course of business; and

(e) none of its outstanding capital stock or shares, or rights to acquire the same, is owned (whether of record or beneficially) by (i) any government or government controlled entity; or (ii) any person or entity sanctioned by any Governmental Authority, including the U.S. Office of Foreign Assets Control; and

(f) it will have expertise, resources, experience and skill reasonably required to perform its obligations under this Agreement.

12.4. NO OTHER WARRANTIES. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR NON-MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, ARE MADE OR GIVEN BY OR ON BEHALF OF A PARTY. ALL REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED. Ji Xing acknowledges and agrees that the Product is the subject of ongoing clinical research and development and that Cytokinetics cannot assure the safety, usefulness or successful Development or Commercialization of the Product.

ARTICLE 13
INDEMNIFICATION

13.1. Indemnification by Ji Xing. Ji Xing shall indemnify, defend and hold harmless Cytokinetics, its Affiliates, and their directors, officers, employees and agents (individually and collectively, the "**Cytokinetics Indemnitee(s)**") from and against all losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) incurred in connection with any claims, demands, actions or other proceedings by any Third Party (individually and collectively, "**Losses**") to the extent arising from:

(a) the Development and Commercialization of the Product in the Territory by Ji Xing or any of its Affiliates or sublicensee, including [*]; or

(b) the [*] misconduct or breach of this Agreement (including any representations, warranty or covenant of Ji Xing) by any Ji Xing Indemnitee.

except in each case to the extent such Losses arise out of the [*] misconduct or breach of this Agreement by any Cytokinetics Indemnitee.

13.2. Indemnification by Cytokinetics. Cytokinetics shall indemnify, defend and hold harmless Ji Xing, its Affiliates, and their directors, officers, employees and agents (individually and collectively, the "**Ji Xing Indemnitee(s)**") from and against all Losses to the extent arising from:

(a) the Development and Commercialization of the Product outside the Territory by Cytokinetics or any of its Affiliates, licensees or sublicensee, including product liability claims relating to the Product outside the Territory; or

(b) the [*] misconduct or breach of this Agreement (including any representations, warranty or covenant of Cytokinetics) by any Cytokinetics Indemnitee;

except in each case to the extent such Losses arise out of the [*] misconduct or breach of this Agreement by any Ji Xing Indemnitee.

13.3. Indemnification Procedure. If either Party is seeking indemnification under Sections 13.1 or 13.2 (the "**Indemnified Party**"), it shall inform the other Party (the "**Indemnifying Party**") of the claim giving rise to the obligation to indemnify pursuant to such Section within [*] after receiving notice of the claim (it being understood and agreed, however, that the failure or delay by an Indemnified Party to give such notice of a claim shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been prejudiced as a result of such failure or delay to give notice). The Indemnifying Party shall have the right to assume the defense of any such claim for which it is obligated to indemnify the Indemnified Party. The Indemnified Party shall cooperate with the Indemnifying Party and the Indemnifying Party's insurer as the Indemnifying Party may reasonably request, and at the Indemnifying Party's cost and expense. The Indemnified Party shall have the right to participate, at its own expense and with counsel of its choice, in the defense of any claim that has been assumed by the Indemnifying Party. Neither Party shall have the obligation to indemnify the other Party in connection with any settlement made without the Indemnifying Party's written consent, which consent shall not be unreasonably withheld or delayed. If the Parties cannot agree as to the application of Section 13.1 or 13.2 as to any claim, pending resolution of the dispute pursuant to Article 15, the Parties may conduct separate defenses of such claims, with each Party retaining the right to claim indemnification from the other Party in accordance with Section 13.1 or 13.2 upon resolution of the underlying claim.

13.4. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL (WHICH SHALL BE DEEMED TO INCLUDE, WITHOUT LIMITATION, ALL DAMAGES CONSTITUTING LOSS OF PROFIT, LOSS OF REVENUE AND LOSS OF GOODWILL), INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 13.5 IS INTENDED TO OR SHALL LIMIT OR RESTRICT THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER SECTION 13.1 OR 13.2, OR DAMAGES AVAILABLE FOR A PARTY'S BREACH OF SECTION 2.9 OR ARTICLE 11.

13.5. Insurance. Each Party shall procure and maintain insurance, including product liability insurance, with respect to its activities hereunder and which is consistent with normal business practices of prudent companies similarly situated in the applicable territory at all times during which any Product is being clinically tested in human subjects or commercially distributed or sold. Each Party shall provide the other Party with evidence of such insurance upon request and shall provide the other Party with written notice at least [*] prior to the cancellation, non-renewal or material changes in such insurance. Such insurance shall not be construed to create a limit of either Party's liability under this Agreement.

ARTICLE 14
TERM AND TERMINATION

14.1. Term. The term of this Agreement shall commence upon the Effective Date and continue in full force and effect, on a Market-by-Market basis, until the expiration of the Royalty Term for the Product in such Market, unless earlier terminated as set forth in Section 14.2 below (the "**Term**"). Upon expiration of the Royalty Term with respect to the Product in a particular Market, the license granted by Cytokinetics to Ji Xing under Section 2.1 with respect to the Product in such Market shall continue and shall become non-exclusive, fully paid-up, royalty-free, perpetual and irrevocable.

14.2. Termination.

(a) **Termination by Ji Xing for Convenience**. At any time, Ji Xing may terminate this Agreement in its entirety by providing written notice of termination to Cytokinetics, which notice includes an effective date of termination at least [*] after the date of the notice.

(b) **Termination for Material Breach**. If either Party believes that the other is in material breach of its obligations hereunder or material breach of any representation or warranty set forth in this Agreement, then the non-breaching Party may deliver notice of such breach to the other Party. For all breaches other than a failure to make a payment as set forth in this Agreement, the allegedly breaching Party shall have [*] from such notice to cure such breach. For any breach arising from a failure to make a payment set forth in this Agreement, the allegedly breaching Party shall have [*] from the receipt of the notice to cure such breach. If the Party receiving notice of breach fails to cure that breach within the applicable period set forth above, then the Party originally delivering the notice of breach may terminate this Agreement in its entirety immediately upon written notice to the other Party. Notwithstanding the foregoing, if the breaching Party disputes the existence of material breach or the failure to cure such material breach, the Party shall not have the right to terminate this Agreement in accordance with this **Section 14.2(b)** unless and until the relevant dispute has been resolved pursuant to **Article 15**. During the pendency of such dispute, the applicable cure period shall be tolled, all the terms of this Agreement shall remain in effect, and the Parties shall continue to perform all of their respective obligations hereunder. [*].

(c) **Termination for Insolvency**. Each Party shall have the right to terminate this Agreement in its entirety immediately upon written notice to the other Party in the event that (i) such other Party files in any court or agency pursuant to any statute or regulation of any jurisdiction a petition in bankruptcy or insolvency or for reorganization or similar arrangement for the benefit of creditors or for the appointment of a receiver or trustee of such other Party or its assets, (ii) such other Party is served with an involuntary petition against it in any insolvency proceeding and such involuntary petition has not been stayed or dismissed within [*] of its filing, or (iii) such other Party makes an assignment of substantially all of its assets for the benefit of its creditors.

(d) **Termination for Certain Change of Control**. Ji Xing shall [*].

(e) **Termination for Patent Challenge**. [*].

(f) **Termination due to Force Majeure.** If a Party's failure or delay in performing its obligations (other than payment obligation) under this Agreement is due to a force majeure event (as set forth in **Section 16.1**) and such event continues exceeding [*], then the other Party shall have the right to terminate this Agreement in its entirety immediately upon written notice to the Party affected by the force majeure event. For clarity, **Section 14.2(b)** (and not this Section 14.2(f)) shall apply to termination for failure to make payment when due.

14.3. Effect of Termination. Upon any termination of this Agreement under **Section 14.2** (but not by reason of [*]):

(a) **License to Ji Xing**. [*].

(b) **License to Cytokinetics**. [*].

(c) **Regulatory Materials**. For any Regulatory Materials and Regulatory Approvals for the Product that are held by Ji Xing or its Affiliate or sublicensees, Ji Xing shall (and shall cause its Affiliates and sublicensees to), [*].

(d) **Regulatory Assistance**. Upon Cytokinetics' request, Ji Xing shall provide Cytokinetics with reasonable assistance and cooperation regarding any inquiries and correspondence with Regulatory Authorities relating to the Product.

(e) **Data**. Ji Xing shall (and shall cause its Affiliates and sublicensees to) [*].

(f) **Trademarks**. Ji Xing shall [*] all Product Marks (excluding any such mark that includes, in whole or in part, any corporate name or logos of Ji Xing or its Affiliates or sublicensees).

(g) **Inventory**. Cytokinetics shall have the right (but not the obligation) to [*] the inventory of the Product held by Ji Xing or its Affiliates or sublicensees as of the date of termination at a price equal to [*].

(h) **Transition Assistance**. Ji Xing shall (and shall cause its Affiliates and sublicensees to) reasonably cooperate with Cytokinetics to facilitate orderly transition of the Development, Manufacture and Commercialization of and Medical Affairs Activities for the Product to Cytokinetics, [*].

(i) **Ongoing Clinical Trials**. If at the time of such termination, any Clinical Trials for the Product are being conducted by or on behalf of Ji Xing, its Affiliates or sublicensees, then, at Cytokinetics' election on a trial-by-trial basis: [*].

(j) **Return of Confidential Information**. Ji Xing shall (and shall cause its Affiliates and sublicensees to) promptly return or destroy (at Cytokinetics' election) all tangible materials comprising, bearing or containing any Confidential Information of Cytokinetics that are in Ji Xing's or its Affiliates' or sublicensees' possession or control.

(k) **Termination Press Releases**. Subject to the provisions of Section 11.5, the Parties shall cooperate in good faith to coordinate public disclosure of the termination of this Agreement and the reasons therefor, and neither Party shall, except to the extent required by Applicable Laws, disclose any such information without the prior approval of the other Party. The principles to be observed in such disclosures shall be accuracy, compliance with Applicable Laws and regulatory guidance documents, and reasonable sensitivity to potential negative investor reaction to such news.

(l) [*]

(i) [*]:

(1) [*];

(2) [*]; and

(3) [*].

[*].

(ii) [*].

14.4. Survival. Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing prior to such expiration or termination. Without limiting the foregoing, the following provisions shall survive the termination or expiration of this Agreement for any reason: Article 1 (DEFINITIONS), Section 2.4 (License Grant to Cytokinetics), Section 2.6 (Exclusion of Acquiror's IP), Section 2.9 (Non-Compete) (for the time period set forth therein), Sections 9.5 through 9.8 (solely to the extent applicable with respect to a payment obligation that accrued prior to expiration or termination), Section 10.1 (Arising Product IP), Article 11 (CONFIDENTIALITY), Section 12.4 (No Other Warranties), Article 13 (INDEMNIFICATION), the last sentence of Section 14.1 (solely in the event of expiration as set forth in that sentence and not in the event of earlier termination), Section 14.3 (Effect of Termination), Section 14.4 (Survival), Section 14.5 (Termination Not Sole Remedy), Article 15 (DISPUTE RESOLUTION) and ARTICLE 16 (MISCELLANEOUS).

14.5. Termination Not Sole Remedy. Termination is not the sole remedy under this Agreement and, whether or not termination is effected and notwithstanding anything contained in this Agreement to the contrary, all other remedies shall remain available except as agreed to otherwise herein.

ARTICLE 15
DISPUTE RESOLUTION

15.1. Disputes. The Parties recognize that disputes as to certain matters may from time to time arise during the Term which relate to either Party's rights and/or obligations hereunder. It is the objective of the Parties to establish procedures to facilitate the resolution of disputes arising under this Agreement in an expedient manner. To accomplish this objective, the Parties agree to follow the procedures set forth in this Article 15 to resolve any controversy or claim arising out of, relating to or in connection with any provision of this Agreement, if and when a dispute arises under this Agreement.

15.2. Internal Resolution. With respect to all disputes arising between the Parties under this Agreement, including, without limitation, any alleged breach under this Agreement or any issue relating to the interpretation or application of this Agreement, if the Parties are unable to resolve such dispute within [*] after such dispute is first identified by either Party in writing to the other, the Parties shall refer such dispute to the JSC for attempted resolution by good faith negotiations within [*] after such notice is received. If the Parties fail to resolve the dispute through escalation to the JSC under this Section 15.2, then such dispute shall be resolved in accordance with Section 15.3 or 15.4 as applicable. Until such dispute is resolved as set forth below, the Parties shall continue to perform their obligations under this Agreement in good faith, including making all applicable undisputed payments accordingly.

15.3. Dispute Resolution by [*] for Certain Disputes.

(a) The dispute resolution mechanism set forth below in this Section 15.3 shall apply only to unresolved disputes regarding [*].

(b) Within [*] after the end of the [*] period set forth in Section 15.2 above, each Party shall propose a list of [*] individuals, each of whom has at least [*] years of significant relevant experience in the pharmaceutical industry, and none of whom is or has been affiliated with either Party or with either Party's Affiliates, licensees, sublicensees or business partners, or otherwise has any interest in the resolution of the issue to be submitted by the Parties for resolution (the foregoing requirements, the "**Requirements**"). Within [*] after the Parties exchange such lists, the Parties shall either agree upon one of such proposed individuals to resolve the disputed matter, or if the Parties fails to agree on the selection of such individual within such period of time, each Party shall select [*].

(c) Within [*] after selection of [*], each Party shall submit to the other Party and to [*] a detailed written proposal setting forth its proposed terms for the resolution of such dispute (the "**Proposed Terms**" of such Party) and a memorandum in support thereof. Each Party shall then have [*] to submit a written rebuttal to the other Party's submission (and any amendment to its own Proposed Terms) to the other Party and to [*]. [*] shall have the discretion to interview the Parties' officers and employees to obtain further information relating to the matters in issue and to hear oral argument, on such schedule and following such procedure as [*] may determine, provided, however, that following the engagement of [*] neither Party shall have *ex parte* communication with [*] except with the prior written consent of the other Party (and if there is any such consented communication, in accordance with any conditions specified). Each Party shall reasonably cooperate with [*].

(d) Within [*] after the selection of [*] shall select [*] as the resolution of such dispute. [*] determination shall be final, binding and unappealable, and shall be given retroactive effect. For clarity, [*] must select, as the only method to resolve such dispute, [*] or award any other relief or take any other action to resolve the dispute.

(e) The Parties shall share all fees and expenses of [*] incurred pursuant to this Section 15.3 equally regardless of which Party's Proposed Terms were selected.

15.4. Dispute Forum.

(a) Except as provided in Section 15.3 above and subject to the remainder of this Section 15.4, all disputes in connection with this Agreement that are not resolved in accordance with Section 15.2 shall be resolved in the courts of the State of New York and the courts of the United States of America located in the Borough of Manhattan of New York City, which shall have exclusive jurisdiction for the resolution of any such disputes. Each Party irrevocably consents to the personal jurisdiction of said courts in connection to any disputes in connection to this agreement and agrees not to challenge said jurisdiction on the grounds of inconvenient forum or lack of personal or subject matter jurisdiction. Each Party agrees to receipt of service of process by delivery or process in accordance with Section 16.4 below.

(b) Notwithstanding Section 15.4(a) above, each Party shall be permitted to seek and obtain interlocutory relief against the other Party or any Affiliate or licensee thereof and to enforce any judgment obtained in any of the courts contemplated in Section 15.4(a) above in any forum located in any jurisdiction.

(c) EACH PARTY HERETO WAIVES ITS RIGHT TO TRIAL BY JURY OF ANY ISSUE RELATING TO ANY DISPUTE ARISING HEREUNDER.

(d) Notwithstanding Section 15.4(a) above, in the event of a dispute with respect to the validity, scope, enforceability or ownership of any Patent or other intellectual property rights, and such dispute is not resolved in accordance with Section 15.2, then such dispute shall be resolved in a court of competent jurisdiction in any country in which such rights apply.

ARTICLE 16
MISCELLANEOUS

16.1. Force Majeure. Neither Party shall be held liable to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in performing any obligation under this Agreement other than a payment obligation to the extent such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party, including embargoes, war, acts of war (whether war be declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, epidemic or pandemic, fire, floods, or other acts of God or any other deity, or acts, omissions or delays in acting by any Governmental Authority. Such excuse from liability shall be effective only to the extent and duration of the event(s) causing the failure or delay in performance and provided that the Party has not caused such event(s) to occur. The affected Party shall notify the other Party of such force majeure circumstances as soon as reasonably practical, and shall promptly undertake all reasonable efforts necessary to cure such force majeure circumstances.

16.2. Assignment.

(a) Except as provided in Section 16.2(b) below, this Agreement may not be assigned or otherwise transferred, nor may any right or obligation hereunder be assigned or transferred, by either Party without the prior written consent of the other Party. Any attempted assignment not in accordance with the foregoing shall be null and void and of no legal effect. Any permitted assignee shall assume all assigned obligations of its assignor under this Agreement. The terms and conditions of this Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respected successors and permitted assigns.

(b) [*].

(c) [*].

16.3. Severability. If any one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affects the substantive rights of the Parties. The Parties shall in such an instance use their best efforts to remove or replace the invalid, illegal or unenforceable provision(s) with valid, legal and enforceable provision(s) which, insofar as practical, implement the purposes of this Agreement.

16.4. Notices. All notices which are required or permitted hereunder shall be in writing and sufficient if delivered personally, sent by facsimile (and promptly confirmed by personal delivery, registered or certified mail or overnight courier), sent by nationally-recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Cytokinetics:

Cytokinetics, Inc.
280 East Grand Avenue
South San Francisco, CA 94080
USA
Attn: President
Fax: 650-624-3010
Copy to: General Counsel

with a copy to:

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304, USA
Attn: Robert L. Jones, Esq.
Fax: [*]

If to Ji Xing:

Ji Xing Pharmaceuticals Limited
c/o Ji Xing Pharmaceuticals (Shanghai) Co., Ltd
Suite 2801, Level 28, Plaza 66 Tower 2
1266 W. Nanjing Road, Jing'an District
Shanghai, China 200040

Attn: [*]
Fax: [*]

with a copy to:

Ji Xing Pharmaceuticals Limited
c/o RTW Investments, LP
40 10th Avenue, Floor 7
New York, NY 10014

Attn: [*]
Fax: [*]

and:

Goodwin Procter (Hong Kong) LLP 38th Floor, Edinburgh Tower The Landmark 15 Queen's Road Central Hong Kong Attn: Dr. Wenseng “Wendy” Pan Fax: [*]	Goodwin Procter LLP 100 Northern Avenue Boston, Massachusetts 02210 USA Attn: Dr. Kingsley L. Taft Fax: [*]

or to such other address as the Party to whom notice is to be given may have furnished to the other Party in writing in accordance herewith. Any such notice shall be deemed to have been given: (a) when delivered if personally delivered or sent by facsimile on a Business Day; (b) on the Business Day after dispatch if sent by nationally-recognized overnight courier; or (c) on the fifth Business Day following the date of mailing if sent by mail.

16.5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, U.S., without giving effect to any choice of law principles that would require the application of the laws of a different jurisdiction. The application of the U.N. Convention on Contracts for the International Sale of Goods is excluded.

16.6. Foreign Corrupt Practices Act Compliance.

(a) **Compliance with FCPA**. The U.S. government imposes and enforces prohibitions on the payment or transfer of anything of value to governments, government officials, political parties or political party officials (or relatives or associates of such officials) (“**FCPA Covered** Person”) for the purpose of illegally influencing them, whether directly or indirectly, to obtain or retain business. This U.S. law is referred to as the Foreign Corrupt Practices Act (“**FCPA**”), and it can have application to conduct of a U.S. corporation’s foreign subsidiaries, employees, agents and distributors. A summary of the law and related information can be found at http://www.justice.gov/criminal/fraud/fcpa. By signing this Agreement, Ji Xing represents, warrants and covenants (as applicable) to Cytokinetics that:

(i) it is familiar with the provisions and restrictions contained in the OECD Convention and FCPA;

(ii) it shall comply with the FCPA in the Development and Commercialization of the Product under this Agreement;

(iii) it shall not, in the course of its duties under the Agreement, offer, promise, give, demand, seek or accept, directly or indirectly, any gift or payment, consideration or benefit in kind to any FCPA Covered Person that would or could be construed as an illegal or corrupt practice;

(iv) it is not an FCPA Covered Person or affiliated with any FCPA Covered Person; and

(v) it shall immediately notify Cytokinetics of any attempt by any FCPA Covered Person to directly or indirectly solicit, ask for, or attempt to extort anything of value from Ji Xing, its Affiliates or sublicensees, and shall refuse any such solicitation, request or extortionate demand except a facilitating payment as expressly permitted under the FCPA.

(d) **Compliance Certificate**. From time to time upon request from Cytokinetics, Ji Xing shall submit a compliance certificate in the form reasonably requested by Cytokinetics that (i) it fully understands its obligations under this Section 16.6 and any other Applicable Laws mentioned herein or as may come into existence from time to time after the Effective Date; (ii) it has been complying with this Section 16.6 and any other Applicable Laws mentioned herein or as may come into existence from time to time after the Effective Date; and (iii) it shall continue to comply with this Section 16.6 and any other Applicable Laws mentioned herein or as may come into existence from time to time after the Effective Date.

(e) **No Action**. In no event shall any Party be obligated under the Agreement to take any action or omit to take any action that such Party believes, in good faith, would cause it to be in violation of any Applicable Laws, including the anti-bribery laws referenced in this Section 16.6.

(f) **Due Diligence**. Cytokinetics shall have the right to visit the offices of Ji Xing from time to time during the term of the Agreement on an "as needed" basis and conduct due diligence in relation to Ji Xing's business related to performance of its obligations under this Section 16.6 and may do so in the way it deems necessary, appropriate or desirable so as to ensure that Ji Xing complies with this Section 16.6 and any other Applicable Laws in its business operations. Ji Xing shall make every effort to cooperate fully with Cytokinetics in any such due diligence.

(g) **Audit**. In the event that Cytokinetics has reason to believe that a breach of any obligation of Ji Xing under this Section 16.6 has occurred or may occur, Cytokinetics shall have the right to select an independent third party to conduct an audit of Ji Xing and review relevant books and records of Ji Xing, to satisfy itself that no breach has occurred. Unless otherwise required under Applicable Laws or by order of a competent court or regulatory authority, Cytokinetics shall ensure that the selected independent third party shall keep confidential all audited matters and the results of the audit. Cytokinetics does reserve the right to disclose to the U.S. or foreign government, its agencies and/or any other government or non-government party, information relating to a possible violation by Ji Xing of any Applicable Law, including a violation of the FCPA or any other applicable anti-bribery law.

16.7. Entire Agreement; Amendments. The Agreement, together with the Exhibits attached hereto, contains the entire understanding of the Parties with respect to the subject matter hereof. All express or implied agreements and understandings, either oral or written, with regard to the subject matter hereof (including the licenses granted hereunder) are superseded by the terms of this Agreement. Neither Party is relying on any representation, promise, nor warranty not expressly set forth in this Agreement. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by authorized representatives of both Parties hereto.

16.8. Headings. The captions to the several Sections hereof are not a part of this Agreement, but are merely for convenience to assist in locating and reading the Sections of this Agreement.

16.9. Independent Contractors. It is expressly agreed that Cytokinetics and Ji Xing shall be independent contractors and that the relationship between the two Parties shall not constitute a partnership, joint venture or agency. Neither Cytokinetics nor Ji Xing shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior written consent of the other Party.

16.10. Waiver. The waiver by either Party of any right hereunder, or the failure of the other Party to perform, or a breach by the other Party, shall not be deemed a waiver of any other right hereunder or of any other breach or failure by such other Party whether of a similar nature or otherwise.

16.11. Cumulative Remedies. No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to in this Agreement or otherwise available under law.

16.12. Waiver of Rule of Construction. Each Party has had the opportunity to consult with counsel in connection with the review, drafting and negotiation of this Agreement. Accordingly, the rule of construction that any ambiguity in this Agreement shall be construed against the drafting Party shall not apply.

16.13. Business Day Requirements. In the event that any notice or other action or omission is required to be taken by a Party under this Agreement on a day that is not a Business Day then such notice or other action or omission shall be deemed to be required to be taken on the next occurring Business Day.

16.14. Translations. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this Agreement, and any dispute proceeding related to or arising hereunder, shall be in the English language. If there is a discrepancy between any translation of this Agreement and this Agreement, this Agreement shall prevail.

16.15. Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as necessary or appropriate in order to carry out the purposes and intent of this Agreement.

16.16. Construction. Except where the context expressly requires otherwise, (a) the use of any gender herein shall be deemed to encompass references to either or both genders, and the use of the singular shall be deemed to include the plural (and vice versa), (b) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation", (c) the word "will" shall be construed to have the same meaning and effect as the word "will", (d) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (e) any reference herein to any person shall be construed to include the person's successors and assigns, (f) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (g) all references herein to Sections, Schedules, or Exhibits shall be construed to refer to Sections, Schedules or Exhibits of this Agreement, and references to this Agreement include all Schedules and Exhibits hereto, (h) the word "notice" means notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other written communications contemplated under this Agreement, (i) provisions that require that a Party, the Parties or any committee hereunder "agree", "consent" or "approve" or the like shall require that such agreement, consent or approval be specific and in writing, whether by written agreement, letter, approved minutes or otherwise (but excluding e-mail and instant messaging), (j) references to any specific law, rule or regulation, or Section, section or other division thereof, shall be deemed to include the then-current amendments thereto or any replacement or successor law, rule or regulation thereof, and (k) the term "or" shall be interpreted in the inclusive sense commonly associated with the term "and/or."

16.17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Each Party shall be entitled to rely on the delivery of executed facsimile copies of counterpart execution pages of this Agreement and such facsimile copies shall be legally effective to create a valid and binding agreement among the Parties.

{Signature Page Follows}

In Witness Whereof, the Parties intending to be bound have caused this License and Collaboration Agreement to be executed by their duly authorized representatives as of the Effective Date.

Cytokinetics, Incorporated		**Ji Xing Pharmaceuticals Limited**	
By:	/s/ Robert Blum	By:	/s/ Roderick Wong
Name:	Robert I. Blum	Name:	Roderick Wong, M.D.
Title:	President & Chief Executive Officer	Title:	Director
Date:	July 14, 2020	Date:	July 14, 2020

List of Exhibits

Exhibit A: **Alliance Managers and Committee Representatives**
Exhibit B: **Initial Development Plan**
Exhibit C: **Tech Transfer Plan**

Exhibit 10.2

[*] = CERTAIN INFORMATION IN THIS DOCUMENT HAS BEEN EXCLUDED PURSUANT TO REGULATION S-K, ITEM 601(B)(10). SUCH EXCLUDED INFORMATION IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED.

Funding Agreement

By and Between

Cytokinetics, Incorporated

and

Dolya Holdco 19 Designated Activity Company

Dated as of July 14, 2020

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FUNDING AGREEMENT

This Funding Agreement, dated as of July 14, 2020, (this "***Agreement***"), is made and entered into by and between **Dolya Holdco 19 Designated Activity Company**, a designated activity company incorporated under the laws of Ireland under company under 669527 (the "***Buyer***"), and **Cytokinetics, Incorporated**, a Delaware corporation (the "***Seller***").

W I T N E S E T H:

Whereas, the Buyer desires to acquire the Acquired Intangibles from the Seller in exchange for payment of the Purchase Price, and the Seller desires to sell the Acquired Intangibles to the Buyer in exchange for the Buyer's payment of the Purchase Price, in each case on the terms and conditions set forth in this Agreement;

Now Therefore, in consideration of the representations, warranties, covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Seller and the Buyer hereby agree as follows:

ARTICLE 1

PURCHASE, SALE AND ASSIGNMENT OF THE ACQUIRED INTANGIBLES

Section 1.1 Purchase, Sale and Assignment. At the First Tranche Funding Date upon the payment of the First Tranche Purchase Price, and upon the terms and subject to the conditions of this Agreement, the Seller shall sell, transfer, assign and convey to the Buyer, and the Buyer shall purchase, acquire and accept from the Seller, the Acquired Intangibles free and clear of all Liens (other than Liens created by Buyer and Permitted Liens). For the avoidance of doubt, the Acquired Intangibles do not represent any right, title or interest in the Intellectual Property Rights.

Section 1.2 No Assumed Obligations, Etc. Notwithstanding any provision in this Agreement to the contrary or any other agreement between the parties or their Affiliates, the Buyer is only agreeing, on the terms and conditions set forth in this Agreement, to purchase, acquire and accept the Acquired Intangibles and is not assuming any liability or obligation of the Seller of whatever nature, whether presently in existence or arising or asserted hereafter.

ARTICLE 2

CLOSING

Section 2.1 Closing. The closing and each Funding Date shall take place on the date hereof subject to the conditions set forth in Article 4 have been satisfied, or at such other place, time and date as the parties hereto may mutually agree.

Section 2.2 Payment of Purchase Price.

(a) Payment of First Tranche Purchase Price. Upon the Seller's election, in its sole discretion, to require the funding of the First Tranche, subject to the conditions precedent set forth in Section 4.3, on the First Tranche Funding Date, the Buyer shall pay to the Seller the First Tranche Purchase Price by wire transfer of immediately available funds to the account designated by the Seller.

(b) Payment of Second Tranche Purchase Price. Upon the Seller's election, in its sole discretion, to require the funding of the Second Tranche, subject to the conditions precedent set forth in Section 4.4, on the Second Tranche Funding Date, the Buyer shall pay to the Seller the Second Tranche Purchase Price by wire transfer of immediately available funds to the account designated by the Seller.

Section 2.3 Additional Tranche Purchase Price. In the event that the Seller intends to develop the Product in any Other Indication, at the election of the Seller, in its sole discretion, the Seller and the Buyer shall negotiate in good faith any additional funding commitments by the Buyer (the payment of which shall be the "***Additional Tranche Purchase Price***") with respect to the development of the Product in such Other Indication and amend this Agreement to provide any additional amounts payable to the Buyer in consideration for such additional funding commitments and enter into additional documentation as the Seller and the Buyer may negotiate in good faith, which shall include an agreement with respect to the Additional Tranche Purchase Price on substantially the same terms as the document attached as Schedule 2.3.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

Section 3.1 Seller's Representations and Warranties. The Seller represents and warrants to the Buyer that as of the date hereof:

(a) Existence; Good Standing. The Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Seller is duly licensed or qualified to do business and is in corporate good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in corporate good standing has not and would not reasonably be expected to have, either individually or in the aggregate, a material adverse effect on (i) the ability of the Seller to enter into and to perform its obligations under this Agreement, (ii) the Seller's rights in or to the Product or the existing Patent Rights or (iii) after the Initial Closing Date, the Buyer's rights with respect to, or the timing, amount or duration of, the Acquired Intangibles.

(b) Authorization. The Seller has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary corporate action on the part of the Seller.

(c) Enforceability. This Agreement has been duly executed and delivered by an authorized officer of the Seller and constitutes the valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except as may be limited by applicable Bankruptcy Laws or by general principles of equity (whether considered in a proceeding in equity or at law).

(d) No Conflicts. The execution, delivery and performance by the Seller of this Agreement and the consummation of the transactions contemplated hereby do not and will not (i) contravene or conflict with the certificate of incorporation or bylaws of the Seller, (ii) contravene or conflict with or constitute a default under any law or Judgment binding upon or applicable to the Seller except for such contraventions, conflicts, breaches or defaults that, individually or in the aggregate, would not reasonably be expected to have a material adverse effect on (A) the ability of the Seller to enter into and to perform its material obligations under this Agreement, (B) the Seller's rights in or to the Product or the existing Patent Rights or (C) after the Initial Closing Date, the Buyer's rights with respect to, or the timing,

amount or duration of, the Acquired Intangibles, or (iii) contravene or conflict with or constitute a material default under any material agreement binding upon or applicable to the Seller.

(e) Consents. Except for the consents that have been obtained on or prior to the Initial Closing Date or filings required by the federal securities laws or stock exchange rules, no consent, approval, license, order, authorization, registration, declaration or filing with or of any Governmental Entity or other Person is required to be done or obtained by the Seller in connection with (i) the execution and delivery by the Seller of this Agreement, (ii) the performance by the Seller of its obligations under this Agreement or (iii) the consummation by the Seller of any of the transactions contemplated by this Agreement.

(f) No Litigation. There is no action, suit, investigation or proceeding pending, or, to the Knowledge of the Seller, threatened (in writing) before any Governmental Entity to which the Seller is a party that, individually or in the aggregate would, if determined adversely to the Seller, reasonably be expected to prevent or materially and adversely affect (i) the ability of the Seller to enter into and to perform its obligations under this Agreement, (ii) the Seller's rights in or to the Product or its existing Patent Rights or (iii) after the Initial Closing Date, the Buyer's rights with respect to, or the timing, amount or duration of, the Acquired Intangibles.

(g) Compliance.

(i) All applications, submissions, information and data related to the Product submitted or utilized as the basis for any request to any Regulatory Authority by or on behalf of the Seller were true and correct in all material respects as of the date of such submission or request, and any material updates, changes, corrections or modification to such applications, submissions, information or data required under applicable laws or regulations have been submitted to the necessary Regulatory Authorities.

(ii) The Seller has not committed any act, made any statement or failed to make any statement in respect of the Product that would reasonably be expected to provide a basis for the FDA to invoke its policy with respect to "***Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities***", or any other Regulatory Authority to invoke similar policies, set forth in any applicable laws or regulations.

(h) Licenses.

(i) In-Licenses. There are no In-Licenses.

(ii) Out-Licenses. There are no Out-Licenses (other than the Collaboration Agreement).

(i) No Liens; Title to Acquired Intangibles. As of the date hereof, none of the property or assets, in each case, that specifically relate to the Product, nor any of the Intellectual Property Rights, of the Seller is subject to any Lien, except for Permitted Liens. Upon the First Tranche Funding Date and the payment of the First Tranche Purchase Price by the Buyer, the Buyer will have acquired, subject to the terms and conditions set forth in this Agreement, good and marketable title to the Acquired Intangibles, free and clear of all Liens (other than Liens created by the Buyer).

(j) Intellectual Property.

(i) Schedule 3.1(j)(i) of the Disclosure Schedule lists all of the currently existing Patents included within the Patent Rights. Except as set forth on Schedule 3.1(j)(i) of the Disclosure Schedule, the Seller is the sole and exclusive owner of all of the existing Patent Rights. Schedule 3.1(j)(i)

of the Disclosure Schedule specifies as to each listed patent or patent application the jurisdictions by or in which each such patent has issued as a patent or such patent application has been filed, including the respective patent or application numbers. Schedule 3.1(j)(i) of the Disclosure Schedule specifies any Person other than the Seller owning or having an interest in such Patent Right, including the nature of such interest.

(ii) As of the date hereof, there are no issued Patents within the Patent Rights.

(iii) The Seller has not received any written notice from any Third Party challenging the inventorship or ownership of the rights of the Seller in and to, or the patentability, validity or enforceability of, any of the existing Patent Rights, or asserting or alleging that the development, manufacture or importation of the Product prior to the date hereof infringed or misappropriated the intellectual property rights of such Third Party or that the development, manufacture, importation, sale, offer for sale or use of the Product will infringe, misappropriate or otherwise violate the intellectual property rights of such Third Party. To the Knowledge of the Seller, the discovery, development, manufacture, importation, sale, offer for sale or use of the Product, including following the issuance of a Marketing Approval, has not and will not, infringe, misappropriate or otherwise violate any Patents or other intellectual property rights owned by any Third Party.

(iv) The Seller has not received any written notice that there is any, and, to the Knowledge of the Seller, there is no, Person who is or claims to be an inventor under any of the existing Patent Rights who is not a named inventor thereof.

(v) To the Knowledge of the Seller, no Person has infringed, misappropriated or otherwise violated, or is infringing, misappropriating or otherwise violating, any of the existing Patent Rights.

(vi) There is no pending or, to the Knowledge of the Seller, threatened (in writing), adverse actions, claims, suits or proceedings against the Seller or any of its Affiliates involving the Intellectual Property Rights or the Product. The Seller is not a party to any pending and, to the Knowledge of the Seller, there is no threatened in writing, litigation, interference, reexamination, opposition or like procedure involving any of the existing Patent Rights.

(k) UCC Representation and Warranties. The Seller's exact legal name is, and for the immediately preceding ten years has been, "***Cytokinetics, Incorporated***". The Seller is, and for the prior ten years has been, incorporated in the State of Delaware.

(l) Brokers' Fees. There is no investment banker, broker, finder, financial advisor or other intermediary who has been retained by or is authorized to act on behalf of the Seller who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

(m) Public Company Reporting Obligations. The Seller has filed or furnished (as applicable) with or to the SEC all registration statements, forms, reports, certifications and other documents required to be filed or furnished by the Seller with or to the SEC (all such registration statements, forms, reports, certifications and other documents (including those that the Seller may file or furnish after the date hereof until the Initial Funding Date) are referred to herein as the "***Seller SEC Documents***"). The Seller's financial statements included within the Seller SEC Documents have been prepared in accordance with accounting principles generally accepted in the United States and such financial statements fairly present in all material respects the financial condition and operating results of the Seller as of the dates, and for the periods, indicated therein, subject in the case of the unaudited financial statements to normal year-end audit adjustments and the absence of footnotes.

(n) Provision of Information. All written information made available by or on behalf of the Seller, as redacted to remove highly confidential information such as chemical, manufacturing and patient details, to the Buyer or its Affiliates in connection with this Agreement was (when provided) and is (as of the Initial Closing Date), to the Seller's Knowledge, true and accurate in all material respects; and the Seller has not knowingly or negligently failed to disclose to the Buyer any information related to the Product or the Intellectual Property Rights in its or its Affiliates' control or possession, or of which the Seller is aware, that would be reasonably necessary to make any information related to the Product or the Intellectual Property Rights, as applicable, that has been disclosed to the Buyer prior to the Initial Closing Date not misleading in any material respect.

Section 3.2 Buyer's Representations and Warranties. The Buyer represents and warrants to the Seller that as of the date hereof:

(a) Existence; Good Standing. The Buyer is a designated activity company duly incorporated, validly existing and in good standing under the laws of Ireland. [*]. The Buyer is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in good standing has not and would not reasonably be expected to have, either individually or in the aggregate, a material adverse effect on the business of the Buyer or the ability of the Buyer to enter into and to perform its obligations under this Agreement.

(b) Authorization. The Buyer has the requisite right, power and authority to execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary action on the part of the Buyer.

(c) Enforceability. This Agreement has been duly executed and delivered by an authorized person of the Buyer and constitutes the valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, except as may be limited by applicable Bankruptcy Laws or by general principles of equity (whether considered in a proceeding in equity or at law).

(d) No Conflicts. The execution, delivery and performance by the Buyer of this Agreement do not and will not (i) contravene or conflict with the organizational documents of the Buyer, (ii) contravene or conflict with or constitute a default under or violation of any law or Judgment binding upon or applicable to the Buyer except for such contraventions, conflicts, defaults or violations that, individually or in the aggregate, would not reasonably be expected to result in a material adverse effect on the business of the Buyer or the ability of the Buyer to enter into and to perform its obligations under this Agreement or (iii) contravene or conflict with, constitute a breach of, or constitute a default under any material agreement binding upon or applicable to the Buyer.

(e) Consents. No consent, approval, license, order, authorization, registration, declaration or filing with or of any Governmental Entity or other Person is required to be done or obtained by the Buyer in connection with (i) the execution and delivery by the Buyer of this Agreement, (ii) the performance by the Buyer of its obligations under this Agreement or (iii) the consummation by the Buyer of any of the transactions contemplated by this Agreement.

(f) No Litigation. There is no action, suit, investigation or proceeding pending or, to the knowledge of the Buyer, threatened (in writing) before any Governmental Entity to which the Buyer is a party that would, if determined adversely to the Buyer, reasonably be expected to prevent or materially and adversely affect the ability of the Buyer to perform its obligations under this Agreement.

(g) **Financing**. The Buyer has or will have sufficient cash on hand or binding and enforceable commitments to provide it with funds sufficient to pay the entire Purchase Price. The Buyer has no reason to believe, and has not been provided with any notice (whether written or otherwise), that any of the Persons providing the commitments referred to above are unable or are not required or do not intend, for any reason, to satisfy their obligations under such commitments. The Buyer acknowledges that its obligations under this Agreement are not contingent on obtaining financing.

(h) **Brokers' Fees**. There is no investment banker, broker, finder, financial advisor or other intermediary who has been retained by or is authorized to act on behalf of the Buyer who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

(i) **Access to Information**. The Buyer acknowledges that it has (a) reviewed Seller's documents and information relating to the Product (including any relevant Seller SEC Documents) and (b) had the opportunity to ask such questions of, and to receive answers from, representatives of the Seller concerning the Product, in each case, as it deemed necessary to make an informed decision to enter into this Agreement. The Buyer has such knowledge, sophistication and experience in financial and business matters that it is capable of evaluating the risks and merits of entering into the transaction contemplated by this Agreement.

Section 3.3 **No Implied Representations and Warranties; Reservation of Rights**. THE BUYER ACKNOWLEDGES AND AGREES THAT, OTHER THAN THE EXPRESS REPRESENTATIONS AND WARRANTIES OF THE SELLER SPECIFICALLY CONTAINED IN THIS ARTICLE 3, (A) THERE ARE NO REPRESENTATIONS OR WARRANTIES OF THE SELLER EITHER EXPRESSED OR IMPLIED WITH RESPECT TO THE PATENT RIGHTS, THE ROYALTIES OR OTHERWISE AND THAT THE BUYER DOES NOT RELY ON, AND SHALL HAVE NO REMEDIES IN RESPECT OF, ANY REPRESENTATION OR WARRANTY NOT SPECIFICALLY SET FORTH IN THIS ARTICLE 3, AND ALL OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, AND (B) NOTHING CONTAINED HEREIN GUARANTEES THAT THE SELLER OR ANY OF ITS AFFILIATES WILL RECEIVE MARKETING APPROVAL AND/OR ANY OTHER APPROVALS NECESSARY FOR THE SALE OR COMMERCIALIZATION OF ANY PRODUCT, THAT THE SELLER WILL ACHIEVE ANY SALES OF THE PRODUCT OR THAT SALES OF THE PRODUCT OR THE AGGREGATE ROYALTIES DUE TO THE BUYER WILL ACHIEVE ANY SPECIFIC AMOUNT. EXCEPT FOR THE ACQUIRED INTANGIBLES AND BUYER'S RIGHTS UNDER SECTION 5.5, THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT NO LICENSES, ASSIGNMENTS, OR OTHER RIGHTS UNDER ANY ASSETS (INCLUDING THE PATENT RIGHTS OR ANY OTHER INTELLECTUAL PROPERTY RIGHTS) OF THE SELLER AND ITS AFFILIATES OR RIGHTS RELATED THERETO ARE GRANTED PURSUANT TO THIS AGREEMENT, INCLUDING BY IMPLICATION, ESTOPPEL, EXHAUSTION OR OTHERWISE.

ARTICLE 4

CONDITIONS TO CLOSING; CONDITIONS TO FIRST AND SECOND TRANCHES

Section 4.1 **Conditions to the Buyer's Obligations**. The obligations of the Buyer to consummate the transactions contemplated hereunder on the date hereof (the "***Initial Closing Date***") are subject to the satisfaction or waiver, at or prior to the Initial Closing Date, of each of the following conditions precedent:

(a) The Seller shall have performed and complied in all material respects with all agreements, covenants, obligations and conditions required to be performed and complied with by it under

this Agreement at or prior to the Initial Closing Date, and the Buyer shall have received a certificate executed by a duly authorized officer of the Seller on the Initial Closing Date certifying on behalf of the Seller to the effect of the foregoing.

(b) The Seller shall have delivered to the Buyer the duly executed Transaction Agreements (other than the Seller Security Agreement).

(c) The Buyer shall have received a certificate of the Secretary or an Assistant Secretary of the Seller, dated the Initial Closing Date, certifying as to (i) the incumbency of each officer of each such Seller executing this Agreement and (ii) the attached thereto copies of (A) the Seller's certificate of incorporation, (B) bylaws and (C) resolutions adopted by the Seller's Board of Directors authorizing the execution and delivery and performance by the Seller of this Agreement and the consummation by the Seller of the transactions contemplated hereby.

(d) There shall not have been issued and be in effect any Judgment of any Governmental Entity enjoining, preventing or restricting the consummation of the transactions contemplated by this Agreement.

(e) There shall not have been instituted or be pending any action or proceeding by any Governmental Entity or any other Person (i) challenging or seeking to make illegal, to delay materially or otherwise directly or indirectly to restrain or prohibit the consummation of the transactions contemplated hereby, (ii) seeking to obtain material damages in connection with the transactions contemplated hereby or (iii) seeking to restrain or prohibit the Buyer's purchase, or the Seller's sale, of the Acquired Intangibles.

Section 4.2 Conditions to the Seller's Obligations. The obligations of the Seller to consummate the transactions contemplated hereunder on the Initial Closing Date are subject to the satisfaction or waiver, at or prior to the Initial Closing Date, of each of the following conditions precedent:

(a) The Buyer shall have performed and complied in all material respects with all agreements, covenants, obligations and conditions required to be performed and complied with by it under this Agreement at or prior to the Initial Closing Date, and the Seller shall have received a certificate executed by a duly authorized representative of the Buyer on the Initial Closing Date certifying on behalf of the Buyer to the effect of the foregoing.

(b) The Seller shall have received, as applicable, either (i) a valid, properly executed Internal Revenue Service Form W-9 certifying that the Buyer is exempt from U.S. "backup" withholding Tax or (ii) a valid, properly executed Internal Revenue Service Form W-8BEN-E (or other applicable W-8, with any necessary accompanying attachments) certifying that the Buyer is exempt from U.S. federal withholding Tax under a United States income Tax treaty with respect to royalties and other income.

(c) The Seller shall have received a certificate of an authorized person of the Buyer, dated the Initial Closing Date, certifying as to the incumbency of the officers executing this Agreement on behalf of the Buyer.

(d) The Buyer shall have delivered to the Seller the duly executed Transaction Agreements (other than the Seller Security Agreement).

(e) There shall not have been issued and be in effect any Judgment of any Governmental Entity enjoining, preventing or restricting the consummation of the transactions contemplated by this Agreement.

(f) There shall not have been instituted or be pending any action or proceeding by any Governmental Entity or any other Person (i) challenging or seeking to make illegal, to delay materially or otherwise directly or indirectly to restrain or prohibit the consummation of the transactions contemplated hereby, (ii) seeking to obtain material damages in connection with the transactions contemplated hereby or (iii) seeking to restrain or prohibit the Buyer's purchase, or the Seller's sale, of the Acquired Intangibles.

Section 4.3 Conditions to the First Tranche. The obligations of the Buyer to pay the First Tranche Purchase Price on the First Tranche Funding Date are subject to the satisfaction or waiver, at or prior to the First Tranche Funding Date, of each of the following conditions precedent:

(a) Either (i) the oHCM Trial Condition shall have occurred by the applicable Sunset Date or (ii) the nHCM Trial Condition shall have occurred by the applicable Sunset Date.

(b) The Seller shall have delivered a Funding Request with regards to the First Tranche.

(c) The Seller shall have executed and delivered to the Buyer the Seller Security Agreement.

(d) The Seller shall have delivered to the Buyer evidence reasonably satisfactory to Buyer that any Liens on the Product Assets (other than Permitted Liens) or on the Acquired Intangibles shall have been, or concurrently with payment of the First Tranche Purchase Price will be, released and terminated, or, in the case of Liens securing Permitted Secured Indebtedness, subject to an Acceptable Intercreditor Agreement (as defined in the Seller Security Agreement).

(e) After giving effect to the purchase of the Acquired Intangibles by the Buyer and the payment of First Tranche Purchase Price pursuant to Section 2.2(a) and the use of proceeds thereof, the Seller shall be in compliance with Section 5.10.

For the avoidance of doubt, nothing herein shall obligate the Seller to deliver a Funding Request with respect to the First Tranche.

Section 4.4 Conditions to the Second Tranche. The obligations of the Buyer to pay the Second Tranche Purchase Price on the Second Tranche Funding Date are subject to the satisfaction or waiver, at or prior to the Second Tranche Funding Date, of each of the following conditions precedent:

(a) The Initial Funding Date shall have occurred.

(b) Each of the oHCM Trial Condition and the nHCM Trial Condition shall have occurred prior to the applicable Sunset Date.

(c) The Seller shall have delivered a Funding Request with regards to the Second Tranche.

For the avoidance of doubt, nothing herein shall obligate the Seller to deliver a Funding Request with respect to the Second Tranche.

Section 4.5 Termination of Second Tranche Obligation. If (a) the First Tranche Purchase Price has previously been paid and (b) (i) the oHCM Trial Condition has not occurred prior to the applicable Sunset Date (in the case where the First Tranche was funded upon the occurrence of the nHCM Trial Condition) or (ii) the nHCM Trial Condition has not occurred prior to the applicable Sunset Date (in the

case where the First Tranche was funded upon the occurrence of the oHCM Trial Condition), then the obligations of the Buyer under Section 2.2(b) and Section 4.4 shall terminate.

ARTICLE 5

COVENANTS

Section 5.1 Reporting.

(a) At all times after the Initial Funding Date, the Seller shall, subject to this Section 5.1, provide the Buyer, promptly following the end of each calendar quarter, but in any event no later than [*] calendar days after the end of such calendar quarter, a reasonably detailed report (the "***Update Report***") setting forth, with respect to such calendar quarter, the Intellectual Property Updates, Regulatory Updates, Clinical Updates and Commercial Updates. The Seller shall also provide the Buyer with such additional information regarding the updates included in each Update Report as the Buyer may reasonably request from time to time. The Seller shall prepare and maintain, shall cause its Affiliates (if applicable) to prepare and maintain, and use Diligent Efforts to include in any Out-License a provision requiring any counterparty to any Out-License of the Seller or the Seller's Affiliates to prepare and maintain, reasonably complete and accurate records of the information to be disclosed in each Update Report and to disclose such information to Seller to enable the disclosures of such information in each Update Report, as contemplated herein. The parties understand and agree that if the Seller is unable to obtain any of the foregoing information from any counterparty to any Out-License, the Seller will not be obligated to provide such information unless and until Seller is in possession and control of such information; provided that the Seller shall use Diligent Efforts to obtain in a timely manner from each such counterparty any information to be disclosed in each Update Report, consistent with the terms of the applicable Out-License(s). All Update Reports, and the Confidential Information contained therein, shall be the Confidential Information of Seller and subject to the obligations of confidentiality set forth in Article 8.

(b) The Seller may redact or otherwise exclude from any Update Report (i) any information, the redaction or exclusion of which is reasonably required to comply with applicable laws (including those related to patient information and privacy laws) and (ii) any information that does not relate to the Acquired Intangibles, the Patent Rights or the Product; provided that the Seller shall provide to the Buyer a reasonable summary of any information that is redacted, to the extent permitted by applicable law and, solely in the case of information falling under clause (ii) above, to the extent permitted by any obligations of confidentiality to any Third Party.

(c) Thirty (30) calendar days prior to the Initial Funding Date, and thereafter, promptly following the end of each calendar year, the Seller shall provide the Buyer with a schedule of the then-existing Patent Rights, including setting forth any new patents issued or patent applications filed covering the Product.

Section 5.2 Royalties; Royalty Reports.

(a)

(i) From and after the Royalty Commencement Date and for the duration of the Term, the Seller shall pay to the Buyer the Royalty, for such calendar quarter promptly, but in any event no later than (i) forty-five (45) calendar days after the end of each of the first three calendar quarters in each

calendar year and (ii) sixty (60) calendar days after the end of the last calendar quarter in each calendar year.

(ii) [*].

(b) If any amounts payable by the Seller shall be overdue for five (5) Business Days (other than any such unpaid amounts arising as a result of late or improper reporting or late payment by a Permitted Licensee or are otherwise subject to a good faith dispute), the Seller obligated to make such payment shall additionally pay to the party to whom such payment is owed simple interest on the sum outstanding at the rate per annum equal to the lesser of (i) the sum of [*]% and the prime rate for the date that payment was due, as published by The Wall Street Journal, Eastern U.S. edition and (ii) the highest rate permitted by law shall apply. The payment of such interest shall not prevent the Buyer from exercising any other rights it may have as a consequence of the lateness of any payment.

(c)

(i) Concurrently with the payment of each Royalty, the Seller shall deliver a written report setting forth in reasonable detail, (i) the calculation of the Royalty payable to the Buyer for the prior calendar quarter identifying, on a country-by-country basis of those countries in the Royalty Purchase Territory, the number of units of the Product sold by the Seller and its Affiliates and, to the extent available, each counterparty to any Out-License, gross sales generated by or on behalf of the Seller and any of its Subsidiaries and each counterparty to any Out-License, foreign currency exchange rates used (which shall be rates of exchange determined in a manner consistent with the Seller's method for calculating rates of exchange in the preparation of the Seller's annual financial statements in accordance with accounting principles generally accepted in the United States), and a detailed break-down of all permitted deductions from gross sales used to determine Net Sales and the Royalty due to the Buyer and (ii) the cumulative year-to-date aggregate Net Sales for the Product through the end of the prior calendar quarter (the "***Royalty Report***"); [*]. The Royalty Report shall be in a form agreed by the parties and reasonable acceptable to the Buyer and the Seller and, to the extent permitted under any applicable confidentiality or disclosure obligations, shall also have attached copies of any royalty reports received by the Seller from Permitted Licensees pursuant to any Out-Licenses.

(ii) The Seller shall use Diligent Efforts to include in each Out-License a provision requiring the counterparty to such Out-License to prepare and maintain reasonably complete and accurate records of the information to be disclosed in each Royalty Report, and to disclose such information to the Seller to enable the disclosures of such information in each Royalty Report, as contemplated herein. The Seller shall use Diligent Efforts to obtain in a timely manner from each such counterparty any information to be disclosed in each Royalty Report, consistent with the terms of the applicable Out-License(s).

(d) The Seller shall be permitted to make prepayments of the Royalties hereunder which shall be credited to future Royalty payments in such order as directed by the Seller in connection with any such prepayment.

Section 5.3 Disclosures; Public Announcement. The parties shall agree upon the Press Release to be issued announcing this Agreement and the other Transaction Agreements. Except for the Press Release, the Seller's Current Report on Form 8-K describing the material terms of this Agreement, the other Transaction Agreements and the transactions contemplated by this Agreement and the other Transaction Agreements or any other public announcement using substantially the same disclosure as such Press Release or Form 8-K, neither the Buyer nor the Seller shall, and each party hereto shall cause its respective Representatives, Affiliates and Affiliates' Representatives not to, issue a press release or other

public announcement or otherwise make any public disclosure with respect to this Agreement or the subject matter hereof without the prior written consent of the other party hereto (which consent shall not be unreasonably withheld or delayed), except as may be required by applicable law, regulation or stock exchange rule (in which case the party hereto required to make the press release or other public announcement or disclosure shall allow the other party hereto reasonable time to comment on such press release or other public announcement or disclosure in advance of such issuance); provided that (a) no review or consent shall be required with respect to disclosures by either party hereto otherwise previously approved pursuant to this Section 5.3 and (b) notwithstanding anything herein to the contrary, each party hereto may, without the review or consent of the other party hereto, disclose (and nothing herein shall be construed to restrict either party hereto from disclosing) the Purchase Price and the amount and nature of the Acquired Intangibles (and related accounting disclosures of the transactions contemplated hereby) in such party's periodic reports and financial statements.

Section 5.4 Inspections and Audits of the Seller. From and after the Royalty Commencement Date and for the duration of the Term, upon at least [*] Business Days written notice and during normal business hours, no more frequently than [*] per calendar year, the Buyer may cause an inspection and/or audit by an independent public accounting firm reasonably acceptable to the Seller to be made of the Seller's books of account for the purpose of determining the correctness of Royalties made under this Agreement. Upon the Buyer's reasonable request not more than [*] in any calendar year while any Out-License remains in effect, the Seller shall exercise any rights it may have under any Out-License relating to the Product to cause an inspection and/or audit by an independent public accounting firm to be made of the books of account of any counterparty thereto for the purpose of determining the correctness of Royalties paid under this Agreement. All of the expenses of any inspection or audit requested by the Buyer hereunder (including the fees and expenses of such independent public accounting firm designated for such purpose) shall be borne by the Buyer, unless the independent public accounting firm determines that Royalties previously paid were incorrect by an amount greater than five percent (5%) of the Royalties actually paid, in which case such expenses shall be borne by the Seller. The terms on which any such independent public accounting firm is engaged shall provide that such independent public accounting firm may not disclose the confidential information of the Seller or any such counterparty to any Out-License relating to the Product to the Buyer, except to the extent such disclosure is either necessary to determine the correctness of Royalties or such confidential information otherwise would be included in a Royalty Report. All information obtained by the Buyer as a result of any such inspection or audit shall be Confidential Information of the Seller subject to Article 8 and the independent public accounting firm shall be considered a Representative of Buyer for purposes of Article 8. Any payment owed by one party to another as a result of the audit shall be made within [*] Business Days of receipt of the audit report. No royalty period will be subject to an audit more than once.

Section 5.5 Intellectual Property Matters. At all times after the Initial Funding Date and prior to the Royalty Termination Date with respect to any country in the Royalty Purchase Territory, if the Seller recovers monetary damages from a Third Party in an action brought for such Third Party's infringement of any Patent Rights in connection with the exploitation of any product, therapy or service intended for use, or actually used, in the Applicable Indications, and that actually or prospectively competes with the Product, where such damages (whether in the form of judgment or settlement) are awarded for such infringement of such Patent Rights relating to the Product, (i) such damages will be allocated first to the reimbursement of any expenses incurred by the Seller in bringing such action (including reasonable attorney's fees) not already reimbursed from other damages awarded under the same action, then (ii) any remaining amount of such damages will be reduced, if applicable, to comply with allocation of recovered damages with licensors of such Patent Rights required under any In-Licenses or Permitted Licensees of such Patent Rights under any Out-Licenses, if any, and (iii) any residual amount of such damages after application of (i) and (ii) will be treated as Net Sales of the Product for purposes of Royalties under this Agreement.

Section 5.6 Efforts to Complete Clinical Trials and Commercialize the Product. After the Initial Funding Date, the Seller shall (directly or indirectly through an Affiliate or Permitted Licensee) use Diligent Efforts to seek Marketing Approval in the Royalty Purchase Territory for the Product in (a) prior to the Second Tranche Funding Date, the Applicable Indication that was the subject of the First Tranche or (b) following the Second Tranche Funding Date, each of the Applicable Indications. Following the issuance of any Marketing Approval of the Product in any country in the Royalty Purchase Territory, the Seller (or its Affiliates or Permitted Licensees) shall use Diligent Efforts to Commercialize the Product in the indication(s) for which the Product has received Marketing Approval in each such country where it has received such Marketing Approval. Unless otherwise agreed pursuant to Section 2.3, the Seller shall have no obligation to research, develop or commercialize the Product for any Other Indications.

Section 5.7 Further Assurances. After the Initial Closing Date, the Seller and the Buyer agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be reasonably necessary in order to give effect to the transactions contemplated by this Agreement. Notwithstanding the foregoing, nothing herein shall obligate the Seller to send a Funding Request with respect to either the First Tranche or the Second Tranche.

Section 5.8 Out-Licenses.

(a) Subject to compliance with this Section 5.8, the Seller may grant, at its sole discretion, licenses, covenants not to sue, or other similar rights to any Affiliate or Third Party (each, a "***Permitted Licensee***") with respect to all or a portion of the Intellectual Property Rights including to develop, manufacture, promote, market, use, sell, offer for sale or import any Product in all or any portion of the world [*] (any agreement granting any of the foregoing rights, a "***Permitted License***").

(b) The Seller will cause to be included in all Out-Licenses provisions (i) permitting the Seller to audit such counterparty on terms and conditions consistent in all material respects with the Buyer's rights to audit the Seller set forth in Section 5.4 and (ii) requiring the counterparty to any Out-License to keep books and records in accordance in all material respects with the requirements of the Seller and its Affiliates set forth in Section 5.4. The Seller shall use Diligent Efforts to include in all Out-Licenses provisions (i) requiring the counterparty to any Out-License to provide the Seller with notice of any infringement of the Patent Rights and (ii) requiring the counterparty to any Out-License to provide the requisite information regarding its Net Sales of any Product to allow the calculation of such Net Sales in accordance with the definition of Net Sales contained in this Agreement.

(c) The Seller shall provide the Buyer prompt written notice within [*] Business Days of any counterparty's material breach of its obligations under any Out-License of which any of the individuals named in the definition of "***Knowledge of the Seller***" becomes aware, to the extent such material breach is directly related to the Buyer's rights or Seller's obligations to Buyer under this Agreement.

(d) The Seller shall provide the Buyer with written notice following the termination of any Out-License.

(e) [*] calendar days prior to the Initial Funding Date, and thereafter, promptly (and in any event within [*] calendar days), the Seller shall provide the Buyer with (i) true, correct and complete copies of each Out-License executed after the Initial Closing Date, and (ii) true, correct and complete copies of each material amendment, supplement, modification to, or written waiver under, an Out-License. In addition, [*] calendar days prior to the Initial Funding Date, and thereafter, promptly (and in any event within [*] Business Days), the Seller shall provide the Buyer true, correct and complete copies of any material reports provided by the Seller to the Permitted Licensee to any Out-License or provided to the Seller by the Permitted Licensee to any Out-License, to the extent that such reports relate to the Acquired

Intangibles, the Product or the Patent Rights. All materials delivered by the Seller to the Buyer pursuant to this Section 5.8(e) shall be the Confidential Information of Seller and subject to the obligations of confidentiality set forth in Article 8. The Seller may redact or otherwise exclude from any of the foregoing any information, the redaction or exclusion of which is reasonably required to comply with applicable laws (including those related to patient information and privacy laws) or in the case of any information that does not relate to the Acquired Intangibles, the Patent Rights or the Product, to the extent required by any obligations of confidentiality to any Third Party; provided that the Seller shall provide to the Buyer a reasonable summary of any information that is redacted to the extent permitted by applicable law or such obligation.

Section 5.9 **Use of Proceeds**. [*].

Section 5.10 **Negative Pledge; Preservation of Assets**. Effective from and after the Initial Funding Date and prior to the date that the Total Net Payments paid to the Buyer equals or exceeds [*]% of the amounts funded by the Buyer pursuant to Section 2.2, the Seller shall not, and shall not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien on the Acquired Intangibles or any of the Product Assets, except for (i) the security interest created by Buyer or granted to the Buyer under this Agreement and (ii) Permitted Liens. For the avoidance of doubt, nothing herein shall restrict the Seller or any of its Subsidiaries from incurring unsecured Indebtedness or Indebtedness secured by assets that are not Product Assets or Acquired Intangibles.

ARTICLE 6

INDEMNIFICATION

Section 6.1 **General Indemnity**. Subject to Section 6.3, from and after the Initial Closing Date:

(a) The Seller hereby agrees to indemnify, defend and hold harmless the Buyer and its Affiliates and its and their directors, partners, managers, trustees, officers, agents and employees (the "***Buyer Indemnified Parties***") from, against and in respect of all Loss suffered or incurred by the Buyer Indemnified Parties to the extent arising out of or resulting from (i) any breach of any of the representations or warranties (in each case, when made) of the Seller provided in this Agreement or (ii) any breach of any of the covenants or agreements of the Seller in this Agreement.

(b) The Buyer hereby agrees to indemnify, defend and hold harmless the Seller and its Affiliates and their directors, officers, agents and employees (the "***Seller Indemnified Parties***") from, against and in respect of all Loss suffered or incurred by the Seller Indemnified Parties to the extent arising out of or resulting from (i) any breach of any of the representations or warranties (in each case, when made) of the Buyer provided in this Agreement or (ii) any breach of any of the covenants or agreements of the Buyer in this Agreement.

Section 6.2 **Notice of Claims**. If either a Buyer Indemnified Party, on the one hand, or a Seller Indemnified Party, on the other hand (such Buyer Indemnified Party on the one hand and such Seller Indemnified Party on the other hand being hereinafter referred to as an "***Indemnified Party***"), has suffered or incurred any Loss for which indemnification may be sought under this Article 6, the Indemnified Party shall so notify the other party from whom indemnification is sought under this Article 6 (the "***Indemnifying Party***") promptly (and in any case within fourteen (14) calendar days after such party has knowledge that such Loss has been suffered or incurred by the Indemnified Party) in writing describing such Loss, the amount or estimated amount thereof, if known or reasonably capable of estimation, and the method of computation of such Loss, all with reasonable particularity and containing a reference to the provisions of

this Agreement in respect of which such Loss shall have occurred. If any claim, action, suit or proceeding is asserted or instituted by a Third Party (a "***Third Party Claim***") with respect to which an Indemnified Party intends to claim any Loss under this Article 6, such Indemnified Party shall promptly (and in any case within five (5) calendar days) notify the Indemnifying Party of such claim, action, suit or proceeding and tender to the Indemnifying Party the defense of such claim, action, suit or proceeding. A failure by an Indemnified Party to give timely notice of such claim, action, suit or proceeding in a timely manner pursuant to this Section 6.2 shall not limit the obligation of the Indemnifying Party under this Article 6, except to the extent such Indemnifying Party is actually prejudiced thereby.

Section 6.3 Limitations on Liability. The indemnification provided for in this Article 6 shall be subject to the following limitations:

(a) The Seller's maximum liability pursuant to Section 6.1(a) shall not exceed an amount equal to [*].

(b) The Buyer's maximum liability pursuant to Section 6.1(b) shall not exceed [*].

(c) Notwithstanding anything to the contrary in this Agreement, neither party hereto shall be liable under this Agreement for any Loss suffered or incurred by the other party that result from any inaccuracy in or breach of any representation or warranty in this Agreement if the party seeking indemnification for such Loss (whether under this Article 6 hereof or otherwise) had knowledge of such inaccuracy or breach at the time of Closing.

(d) For the avoidance of doubt, no party hereto shall be liable for any lost profits or revenue, lost opportunity or consequential, punitive, special or incidental damages (and no claim for indemnification hereunder shall be asserted) as a result of any breach or violation of any covenant or agreement of such party (including under this Article 6) in or pursuant to this Agreement.

Section 6.4 Third Party Claims. Upon providing notice to an Indemnifying Party by an Indemnified Party pursuant to Section 6.2 of the commencement of any Third Party Claim with respect to which such Indemnified Party intends to claim any Loss under this Article 6, such Indemnifying Party shall have the right to defend such claim, at such Indemnifying Party's expense and with counsel of its choice reasonably satisfactory to the Indemnified Party. If the Indemnifying Party assumes the defense of such claim, the Indemnified Party shall, at the request of the Indemnifying Party, use commercially reasonable efforts to cooperate in such defense; provided, that the Indemnifying Party shall bear the Indemnified Party's reasonable out-of-pocket costs and expenses incurred in connection with such cooperation. So long as the Indemnifying Party is conducting the defense of such claim as provided in this Section 6.4, the Indemnified Party may retain separate co-counsel at its expense and may participate in the defense of such claim. Neither the Indemnified Party nor the Indemnifying Party shall consent to the entry of any Judgment or enter into any settlement with respect to such claim without the prior written consent of the other; provided that the consent of the Indemnified Party shall not be required if such Judgment or settlement (a) provides for the payment by the Indemnifying Party of money as sole relief (if any) for the claimant (other than customary and reasonable confidentiality obligations relating to such claim, Judgment or settlement), (b) results in the full and general release of the Indemnified Party from all liabilities arising out of, relating to or in connection with such claim and (c) does not involve a finding or admission of any violation of any law, rule, regulation or Judgment, or the rights of any Person, and has no effect on any other claims that may be made against the Indemnified Party. Any party's assumption of the defense of any Third Party Claim can be made with a reservation of the right to contest the right of Indemnified Party to be indemnified with respect to such claim under this Agreement, and a party's consent to any settlement of a Third Party Claim shall not be used as evidence of the truth of the allegations in any Third Party Claim or the merits of such Third Party Claim. Furthermore, the existence of any Third Party Claim shall not create a presumption

of any breach by a party to this Agreement of any of its representations, warranties or covenants set forth in this Agreement.

Section 6.5 **Exclusive Remedy**. Except as set forth in Section 9.13, from and after Initial Closing Date, the rights of the parties hereto pursuant to (and subject to the conditions of) this Article 6 shall be the sole and exclusive remedy of the parties hereto and their respective Affiliates with respect to any Loss (whether based in contract, tort or otherwise) resulting from or relating to any breach of the representations, warranties covenants and agreements made under this Agreement or any certificate, document or instrument delivered hereunder, and each party hereto hereby waives, to the fullest extent permitted under applicable law, and agrees not to assert after the Initial Closing Date, any other claim or action in respect of any such breach. Notwithstanding the foregoing, claims for common law fraud shall not be waived or limited in any way by this Article 6.

ARTICLE 7

TERMINATION

Section 7.1 **Mutual Termination**. This Agreement may be terminated by mutual written agreement of the Buyer and the Seller.

Section 7.2 **Automatic Termination**. Unless earlier terminated pursuant to Section 7.1, Section 7.3 or Section 7.4, this Agreement shall continue in full force and effect until the earlier of:

(a) sixty (60) days after such time as the Seller is no longer obligated to pay any Royalties under this Agreement, at which point this Agreement shall automatically terminate, except with respect to any rights that shall have accrued prior to such termination and survive pursuant to Section 7.5 herein; or

(b) the Sunset Date applicable to the nHCM Trial Condition, if the nHCM Trial Condition has not occurred on or prior to such date.

Section 7.3 **[*]**

Section 7.4 **Termination Upon Funding Failure or Product Failure**.

(a) The Seller may terminate this Agreement if the Buyer fails to pay the First Tranche Purchase Price when required pursuant to Section 2.2 and such failure is not cured within [*] calendar days; and

(b) Either the Seller or the Buyer may terminate this Agreement upon [*] Business Days' prior written notice upon the occurrence of a Product Failure prior to First Commercial Sale of the Product.

Section 7.5 **Survival**. Notwithstanding anything to the contrary in this Article 7, the following provisions shall survive termination of this Agreement: Section 5.3 (Disclosures), Article 6 (Indemnification), Section 7.5 (Survival), Article 8 (Confidentiality) and Article 9 (Miscellaneous). Termination of this Agreement shall not relieve any party of liability in respect of breaches under this Agreement by any party on or prior to termination. Notwithstanding anything in this Agreement, Section 9.14 (Relationship of the Parties), Section 9.16 (Withholding) and Section 9.17 (Tax Treatment) shall survive until thirty (30) days after the expiration of the applicable statute of limitations.

ARTICLE 8

CONFIDENTIALITY

Section 8.1 Confidentiality. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the parties, the parties hereto agree that, for the term of this Agreement and for ten (10) years thereafter, each party (the "***Receiving Party***") shall keep confidential and shall not publish or otherwise disclose or transfer and shall not use for any purpose other than as provided for in this Agreement (which includes the exercise of any rights or the performance of any obligations hereunder) any information furnished to it by or on behalf of the other party (the "***Disclosing Party***") directly relating to the Product, the Acquired Intangibles, the Royalty or the transaction contemplated hereunder and delivered pursuant to this Agreement (such information, "***Confidential Information***" of the Disclosing Party), except for that portion of such information that:

(a) was already known to the Receiving Party at the time of disclosure by the Disclosing Party on a non-confidential basis;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party;

(c) became generally available to the public or otherwise part of the public domain after its disclosure, other than through any act or omission of the Receiving Party or its Representatives in breach of this Agreement;

(d) is independently developed by the Receiving Party or any of its Affiliates without the use of the Confidential Information;

(e) was disclosed to the Receiving Party, other than under an obligation of confidentiality by a Third Party who had no obligation to the Disclosing Party not to disclose such information to others; or

(f) is subsequently disclosed to the Receiving Party on a non-confidential basis by a Third Party without obligations of confidentiality with respect thereto.

Section 8.2 Authorized Disclosure. Either party may disclose Confidential Information to the extent such disclosure is reasonably necessary in the following situations:

(a) prosecuting or defending litigation;

(b) complying with applicable laws and regulations, including regulations promulgated by a global stock market or securities exchanges;

(c) complying with a valid order of a court of competent jurisdiction or other Governmental Entity;

(d) for regulatory, Tax or customs purposes;

(e) for audit purposes, provided that each recipient of Confidential Information must be bound by customary obligations of confidentiality and non-use prior to any such disclosure;

(f) disclosure to its Affiliates and Representatives on a need-to-know basis, provided that each of such recipients of Confidential Information must be bound by customary obligations of confidentiality and non-use prior to any such disclosure;

(g) upon the prior written consent of the Disclosing Party; or

(h) disclosure to actual and potential licensees, acquirors, investors and other sources of funding, including underwriters, debt financing, royalty financing partners, or co-investors, and their respective accountants, financial advisors and other professional representatives ("***Financial Advisors***"), provided, that such disclosure shall be made only to the extent customarily required to consummate such investment or financing transaction and that each recipient of Confidential Information must be bound by customary obligations of confidentiality and non-use prior to any such disclosure;

provided that, in the event the Receiving Party is required to make a disclosure of the Disclosing Party's Confidential Information pursuant to Sections 8.2(a), (b), (c) or (d), it will, except where impracticable, give reasonable advance written notice to the Disclosing Party of such disclosure and use reasonable efforts to secure confidential treatment of such information. In any event, the Buyer shall not file or assist any Third Party in filing any patent application based upon or using the Confidential Information of the Seller provided hereunder.

The Buyer hereby acknowledges that the Seller may from time to time provide the Buyer with information that may constitute material non-public information with respect to itself and Permitted Licensees. Seller makes no representation or warranty and assumes no duty to inform Buyer whether any information delivered to Buyer pursuant to this Agreement constitutes material non-public information. The Buyer hereby agrees that it shall not, and shall cause its Affiliates or Representatives to not, trade any securities of the Seller or any Permitted Licensee while in possession of any information received by it from the Seller pursuant to this Agreement in violation of securities laws.

Notwithstanding any other provision hereunder, the Receiving Party shall be liable to the Disclosing Party for any breach by its Affiliate and Representatives in the case of any disclosure made by a Receiving Party under Section 8.2(f) and any of its Financial Advisors in the case of any disclosure made by a Receiving Party under Section 8.2(h), if any such Person violates the terms of its confidentiality obligation or any of the terms set forth in this Agreement as if such Person was a party hereto.

ARTICLE 9

MISCELLANEOUS

Section 9.1 **Definitions**. As used in this Agreement, the following terms shall have the following meanings:

"***Additional Tranche Purchase Price***" is defined in Section 2.3.

"***Affiliate***" means, with respect to any Person, any other Person, directly or indirectly, controlling, controlled by or under common control with such Person. For purposes of this definition, the term "control" (including the correlative terms "controlling," "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For clarity, the Buyer shall not be considered an Affiliate of the Seller for the purpose of this Agreement.

"***Agreement***" is defined in the preamble.

"***Acquired Intangibles***" means the right to receive the Royalties for the term of this Agreement subject to the terms and conditions set forth herein.

"***Applicable Indications***" means nHCM and oHCM.

"***Bankruptcy Laws***" means, collectively, in any jurisdiction, bankruptcy, insolvency, examinership, reorganization, moratorium, fraudulent conveyance, fraudulent transfer or other similar laws affecting the enforcement of creditors' rights generally.

"***Bundled Product***" is defined in the definition of Net Sales.

"***Business Day***" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions located in New York are permitted or required by applicable law or regulation to remain closed.

"***Buyer***" is defined in the preamble.

"***Buyer Indemnified Parties***" is defined in Section 6.1(a).

"***Change of Control***" means, with respect to the Seller: (a) a transaction or series of related transactions that results in the sale or other disposition of all or substantially all of the Seller's assets (other than any such sale or other disposition to a Subsidiary of the Seller); or (b) a merger or consolidation as a result of which the shareholders of the Seller immediately prior to the consummation of such merger or consolidation do not, immediately after consummation of such merger or consolidation, possess, directly or indirectly through one or more intermediaries, a majority of the voting power of all of the surviving entity's outstanding stock and other securities and the power to elect a majority of the members of the Seller's board of directors; or (c) a transaction or series of related transactions (which may include a tender offer for the Seller's stock or the issuance, sale or exchange of stock of the Seller) if the shareholders of the Seller immediately prior to the initial such transaction do not, immediately after consummation of such transaction or any of such related transactions, possess, directly or indirectly through one or more intermediaries, a majority of the voting power of all of the Seller's or its successor's outstanding stock and other securities and the power to elect a majority of the members of the Seller's or its successor's board of directors.

"***Clinical Trial***" means a human clinical trial intended to support the Marketing Approval of the Product within the Royalty Purchase Territory.

"***Clinical Updates***" means a summary of any material updates with respect to the Clinical Trials conducted by or on behalf of the Seller or a counterparty to any Out-License, including (a) the progress of each Clinical Trial for the Product (including the number of patients currently enrolled in each such Clinical Trial, the number of sites conducting each such Clinical Trial, and any material modifications to each such Clinical Trial, and any serious adverse events attributed to the Product), and (b) the Seller's then-existing plans to start new Clinical Trials.

"***Co-Packaged Product***" is defined in the definition of Net Sales.

"***Collaboration Agreement***" means that certain License and Collaboration Agreement, dated as of the date hereof, between Ji Xing and the Seller.

"***Commercial Updates***" means a summary of material updates with respect to the Seller's and its Affiliates' and any Permitted Licensee's sales and marketing activities and commercial manufacturing matters with respect to the Product in the Royalty Purchase Territory.

"***Commercialization***" means any and all reasonable activities directed to the commercial manufacture, distribution, marketing, detailing, promotion, selling and securing of reimbursement of the Product whether before or after Marketing Approval has been obtained (including the making, using, importing, selling and offering for sale of the Product), and shall include post-Marketing Approval studies, post-launch marketing, promoting, detailing, marketing research, distributing, customer service, selling the Product, importing, exporting or transporting the Product for sale, and regulatory compliance with respect to the foregoing. When used as a verb, "***Commercialize***" means to engage in Commercialization.

"***Confidential Information***" is defined in Section 8.1.

"***Diligent Efforts***" means [*].

"***Disclosing Party***" is defined in Section 8.1.

"***Disclosure Schedule***" means the Disclosure Schedule delivered in connection with a side letter, dated as of the date hereof, delivered to the Buyer (or to its counsel) by the Seller concurrently with the execution of this Agreement.

"***EMA***" means the European Medicines Agency, or any successor agency thereto.

"***FDA***" means the U.S. Food and Drug Administration, or any successor agency thereto.

"***Financial Advisors***" is defined in Section 8.2.

"***First Commercial Sale***" means, the first sale for use or consumption by the general public of the Product, as applicable, in any country in the Royalty Purchase Territory after Marketing Approval of the Product has been granted, or such marketing and sale is otherwise permitted, by the Regulatory Authority of such country for an Applicable Indication or, if the Additional Tranche Purchase Price is paid by the Buyer to the Seller pursuant to Section 2.3, for an Other Indication. For clarity, First Commercial Sale shall not include any sale or transfer of the Product prior to receipt of Marketing Approval, such as so-called "treatment IND sales," "named patient sales" and "compassionate use sales."

"***First Tranche***" means the commitment and obligation of the Buyer to pay the First Tranche Purchase Price pursuant to Section 2.2(a).

"***First Tranche Purchase Price***" means FORTY-FIVE MILLION U.S. DOLLARS ($45,000,000).

"***First Tranche Funding Date***" means a Business Day no later than the 30th day following the delivery of a Funding Request by the Seller in respect of the First Tranche.

"***Funding Date***" means each of the First Tranche Funding Date and the Second Tranche Funding Date.

"***Funding Failure***" means the failure by the Buyer to pay the Second Tranche Purchase Price when required pursuant to Section 2.2(b), which failure is not cured by the Buyer within thirty (30) calendar days.

"***Funding Request***" means a request from the Seller to the Buyer for payment of the Purchase Price substantially in the form attached hereto as Exhibit A.

"***GAAP***" means generally accepted accounting principles in the United States in effect from time to time.

"***Governmental Entity***" means any: (a) nation, principality, republic, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or other entity and any court, arbitrator or other tribunal); (d) multi-national organization or body; or (e) individual, body or other entity exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

[*]

"***Indebtedness***" of any Person means any indebtedness for borrowed money, obligation evidenced by a note, bond, debenture or similar instrument, or guarantee of any of the foregoing.

"***In-License***" means any license, settlement agreement or other agreement between the Seller or any of its Affiliates and any Third Party pursuant to which the Seller or any of its Affiliates obtains a license, a covenant not to sue or similar grant of rights to any Patents or other intellectual property rights of such Third Party that is or was reasonably necessary for the manufacture, use or Commercialization of the Product.

"***Initial Closing Date***" is defined in Section 4.1.

"***Initial Funding Date***" means the date that the Seller receives the First Tranche Purchase Price from the Buyer.

"***Initiation***" of a clinical trial means the [*] such clinical trial (as applicable).

"***Intellectual Property Rights***" means any and all of the following as they exist throughout the world at any time and as they are owned or controlled by the Seller or any Subsidiary or under which the Seller or any Subsidiary may become empowered to grant licenses: (a) the Patent Rights; (b) rights in registered and unregistered trademarks, service marks, trade names, trade dress, logos, packaging design, slogans and Internet domain names, and registrations and applications for registration of any of the foregoing, in each case, used in the marketing and promotion of the Product; (c) copyrights in both published and unpublished works, including all compilations, databases and computer programs, manuals and other documentation and all copyright registrations and applications, and all derivatives, translations, adaptations and combinations of the above, in each case, as specifically related to the Product; (d) rights in research in progress, algorithms, data, databases, data collections, chemical and biological materials (including any compounds, DNA, RNA, clones, vectors, cells and any expression product, progeny, derivatives or improvements thereto), and the results of experimentation and testing, including samples, in each case, as specifically directly related to the Product; and (e) rights in all Know-How directly related to the Product that is reasonably necessary for the manufacture, use or Commercialization of the Product.

"***Intellectual Property Updates***" means any new Patents issued or filed relating to the Product in the Royalty Purchase Territory, or any abandonments or other termination of prosecution with respect to any of the Patent Rights, and any other material information or developments with respect to the Intellectual Property Rights. For the avoidance of doubt, the Seller shall not be required to include any trade secrets or attorney client privileged information in any Intellectual Property Update.

"***Ji Xing***" means Ji Xing Pharmaceuticals Limited, a limited liability company organized and existing under the laws of the Cayman Islands.

"***Judgment***" means any judgment, order, writ, injunction, citation, award or decree of any nature.

"***Know-How***" means any and all proprietary or confidential information, know-how and trade secrets, including processes, formulae, models and techniques (but excluding rights in research in progress, algorithms, data, databases, data collections, chemical and biological materials and the results of experimentation and testing).

"***Knowledge of the Seller***" means the [*].

"***Lien***" means any mortgage, lien, pledge, charge, adverse claim, security interest, encumbrance or restriction of any kind, in each case to secure payment of a debt or performance of an obligation.

"***Loss***" means any and all Judgments, damages, losses, claims, costs, liabilities and expenses, including reasonable fees and out-of-pocket expenses of counsel; provided, however, that "***Loss***" shall not include any lost profits or revenue, lost opportunity or consequential, punitive, special or incidental damages.

"***Market Capitalization***" means, as of any time of determination, the total number of outstanding shares of the Seller's common stock *multiplied by* the closing price per share of such common stock as of the most recent trading day ending immediately prior to such time.

"***Marketing Approval***" means, with respect to the Product in any Royalty Purchase Territory, approval from the applicable Regulatory Authority sufficient for the promotion and sale of the Product in such jurisdiction in accordance with applicable law, including, without limitation, a U.S. New Drug Application.

"***Net Sales***" means the [*] on sales of the Product by the Seller, its Affiliates or licensees, including Permitted Licensees, for sale of the Product to a Third Party in the Royalty Purchase Territory, less the following deductions, to the extent allocable to sales of the Product:

(a) [*];

(b) [*];

(c) [*];

(d) [*]; and

(e) [*].

Each of the amounts set forth above shall be determined from the books and records of the Seller, its Affiliate or licensee, maintained in accordance with GAAP consistently applied. For the avoidance of doubt, if a single item falls into more than one of the categories set forth in clauses (a)-(e) above, such item may not be deducted more than once. With respect to sales of the Product invoiced in U.S. dollars, Net Sales shall be determined in U.S. dollars. With respect to sales of the Product invoiced in a currency other than U.S. dollars, Net Sales shall be determined by converting the currencies at which the sales are made into U.S. dollars, at rates of exchange determined in a manner consistent with the Seller's method for calculating rates of exchange in the preparation of the Seller's or such Permitted Licensee's annual financial statements in accordance with generally accepted accounting principles consistently applied.

With respect to any sale of the Product [*].

Sales between the Seller and its Affiliates and licensees shall be disregarded for purposes of calculating Net Sales except if such purchaser is a distributor, a pharmacy or an end user. Net Sales also exclude any sale or transfer of the Product for free or below cost in early access, compassionate use or named patient programs.

Notwithstanding the foregoing, Net Sales shall not include amounts (whether actually existing or deemed to exist for purposes of calculation) for Product distributed for use in clinical trials or pre-clinical trials.

If the Product is (a) sold co-packaged with one or more other pharmaceutical product(s) that is not the Product ("***Co-Packaged Product***"), or (b) is sold together with other products of the selling party or Affiliates in which the joint selling price provides a discount (e.g., as part of a "bundled" or joint or combined discount arrangement) from the list price of the Product ("***Bundled Product***"), then the Net Sales for the Product contained in such Co-Packaged Product or Bundled Product shall be calculated [*].

Notwithstanding the foregoing, in the case of any sales by a Permitted Licensee, Net Sales will be calculated based on the corresponding definition of net sales in the applicable license agreement permitting such sales, provided that such definition is commercially reasonable.

"***nHCM***" means non-obstructive hypertrophic cardiomyopathy.

"***nHCM Trial Condition***" means [*].

"***oHCM***" means obstructive hypertrophic cardiomyopathy.

"***oHCM Trial Condition***" means [*].

"***Other Indications***" means [*] or any human therapeutic indication [*] than oHCM and nHCM.

"***Out-License***" means any license or other agreement between the Seller or any of its Affiliates and any Third Party (including any Permitted License with a Third Party) pursuant to which the Seller or any of its Affiliates grants to such Third Party a license or sublicense of, covenant not to sue under, or other similar rights under any Intellectual Property Right that is reasonably necessary for the manufacture, use or Commercialization of the Product in any Applicable Indication in the Royalty Purchase Territory in order for such Third Party to manufacture, use or Commercialize the Product; provided, however, that "***Out-License***" shall not include (a) any research licenses; (b) licenses to distributors, without any other right to Commercialize the Product; (c) agreements granting non-exclusive rights to Intellectual Property Rights that do not grant any right to market, distribute, sell, or promote the Product, including, but not limited to, manufacturing agreements, material transfer agreements and consulting agreements.

"***Patent Rights***" means any and all existing or future Patents in the Royalty Purchase Territory that are owned, exclusively in-licensed or otherwise controlled by the Seller or any Subsidiary or under which the Seller or any Subsidiary is or may become empowered to grant licenses, the subject matter of which is necessary or used for the development, manufacture, use, marketing, promotion, sale or distribution of the Product.

"***Patents***" means any and all patents and patent applications existing as of the date of this Agreement and all patent applications filed hereafter, including any continuation, continuation-in-part, division, provisional or any substitute applications, or any patent application claiming priority thereto, including patent applications filed under the Patent Cooperation Treaty or any patent application claiming priority under the Paris Convention, any patent issued with respect to any of the foregoing patent

applications, any certificate, reissue, reexamination, renewal or patent term extension or adjustment (including any supplementary protection certificate) of any such patent or other governmental actions which extend any of the subject matter of a patent, and any substitution patent, confirmation patent or registration patent or patent of addition based on any such patent, and all foreign counterparts of any of the foregoing.

"***Permitted License***" is defined in Section 5.8(a).

"***Permitted Licensee***" is defined in Section 5.8(a).

"***Permitted Liens***" means (a) Liens for Taxes not yet delinquent or Liens for Taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been established; (b) banker's liens for collection or rights of set off or similar rights and remedies as to deposit accounts or other funds maintained with depositary institutions; (c) any interest or title of a Permitted Licensee under a Permitted License, (d) Liens in the nature of right of setoff in favor of counterparties to contractual agreements with the Seller in the ordinary course of business; (e) Liens securing Permitted Secured Indebtedness to the extent, at any time following the payment of the First Tranche Purchase Price, such Liens are subject to an Acceptable Intercreditor Agreement (as defined in the Seller Security Agreement), and (f) any interest of a licensor under any In-License.

"***Permitted Secured Indebtedness***" means Indebtedness that is secured by a Lien on the Product Assets in an aggregate principal amount not to exceed $100,000,000 at any time outstanding (including, for the avoidance of doubt, any such Indebtedness incurred under the Senior Loan Agreement).

"***Person***" means any individual, firm, corporation, company, partnership, limited liability company, trust, joint venture, association, estate, trust, Governmental Entity or other entity, enterprise, association or organization.

"***Pivotal Clinical Trial***" means any human Clinical Trial of the Product that is intended (as of the time of Initiation of such clinical trial) to obtain the results and data to support the filing of a New Drug Application (NDA) (including label expansion but excluding the data that may be necessary to support the pricing and/or reimbursement approval), including so called Phase 2/3 trials and any human Clinical Trial that would satisfy the requirements of 21 § CFR 312.21(c) or corresponding foreign regulations. [*].

"***Press Release***" means one or more press releases describing this Agreement and the transactions contemplated by this Agreement issued individually by the Buyer and/or the Seller in form reasonably satisfactory to the other party.

"***Product***" means any pharmaceutical that contains the Seller's proprietary small molecule cardiac myosin inhibitor product, referred to as CK-274, and any [*], in any strength, form, formulation, administration or delivery route.

"***Product Assets***" means the Seller's and its Subsidiaries' rights, title and interests in the Product Rights owned, licensed or otherwise held by the Seller or any of its Subsidiaries and any proceeds thereof, including all accounts receivable resulting from the sale, license or other disposition of Product by the Seller or its Permitted Licensees; provided, however, that, upon a Change of Control of the Seller or any Subsidiaries, no Product Rights owned, in-licensed or otherwise held by the acquiring entity (or any of its Affiliates existing prior to such Change of Control or acquired after such Change of Control) as of immediately prior to the closing of such Change of Control (or in the case of an acquired Subsidiary, as of immediately prior to the closing of such acquisition) or any Patents claiming priority to any Patent Rights included therein or other intellectual property rights will be deemed "owned, licensed or otherwise held"

for the purposes of this definition. Notwithstanding the foregoing, "Product Assets" shall not include raw materials, inventory, work in progress, cash or cash equivalents.

"***Product Failure***" means, with respect to the Product, the occurrence of: (i) (A) the Seller's drug safety committee; (B) the FDA or the EMA; or (C) at Buyer's or Seller's option and request, an independent third-party reasonably agreed upon between the Parties to review the Clinical Trials data and results, making a reasonable and good faith determination that the Product presents in oHCM and nHCM a risk of death, a life-threatening condition, or such serious safety or health risks to patients such that, based on then-available data, the Seller cannot ethically and in good faith continue to administer the Product to patients; or (ii) any material adverse development, occurrence or event with respect to the clinical development of the Product, as a result of which the Seller, in consultation with Buyer, may reasonably make a good faith determination to cease continued development of the Product, including, for example, if the Product (A) fails as a result of the manufacturing thereof due to failure to achieve a purified yield required to commercialize the Product, or because a manufacturing process cannot be established according to GMP manufacturing guidelines to produce sufficient material for Commercialization or (B) is otherwise not reasonably suited for the continuation of Clinical Trials (in the case of preclinical or clinical stage trials, toxicities that would trigger the stoppage of further development, *e.g.*, as may be reported as adverse events, serious adverse events, or clinical laboratory abnormalities), or (C) fails to meet its primary endpoint of any Clinical Trial.

"***Product Rights***" means any and all of the following, solely for or to the extent related to the Applicable Indications as they exist in the Royalty Purchase Territory: (a) Intellectual Property Rights, (b) regulatory filings, submissions and approvals with or from any Regulatory Authorities specifically related to the Product, (c) In-Licenses, and (d) Out-Licenses.

"***Product Royalty Rate***" means, with respect to the Product in a country in the Royalty Purchase Territory: (a) prior to the applicable Royalty Termination Date for such country, (i) from and after the Royalty Commencement Date, two percent (2%) and (ii) from and after the payment of the Second Tranche Purchase Price pursuant to Section 2.2(b), four percent (4%), and (b) on or after the Royalty Termination Date for such country, zero percent (0%); [*]:

(i) [*];

(ii) [*];

(iii) [*]; and

(iv) [*].

"***Prohibited Transfer***" is defined in Section 9.6.

"***Purchase Price***" means the First Tranche Purchase Price, the Second Tranche Purchase Price and any Additional Tranche Purchase Price.

"***Receiving Party***" is defined in Section 8.1.

"***Regulatory Authority***" means any national or supranational governmental authority, including, without limitation, the FDA or EMA, or any successor agency thereto, that has responsibility in granting a Marketing Approval.

"***Regulatory Updates***" means a summary of material information and developments that would reasonably be expected to materially impact the Product with respect to any regulatory filings or submissions made to the FDA and EMA (or, to the extent the EMA is not applicable, the Regulatory Authority for any country within the Royalty Purchase Territory).

"***Representative***" means, with respect to any Person, (a) any direct or indirect stockholder, member or partner of such Person and (b) any manager, director, officer, employee, agent, advisor or other representative (including attorneys, accountants, consultants, bankers, financial advisors and actual and potential lenders and investors) of such Person.

"***Royalty***" means for each calendar quarter during the Term, an amount payable to the Buyer equal to the sum of the product of Net Sales of the Product during such calendar quarter in each country in the Royalty Purchase Territory multiplied by the Product Royalty Rate.

"***Royalty Commencement Date***" means the date that is the later of (i) the First Commercial Sale and (ii) the Initial Funding Date.

"***Royalty Purchase Agreement***" means that certain Royalty Purchase Agreement, dated as of the date hereof, between the Buyer and the Seller.

"***Royalty Purchase Territory***" means each of the United States, each member within the European Union, each member of the European Economic Area (to the extent such member is not a member of the European Union), Switzerland and the United Kingdom.

"***Royalty Termination Date***" means, with respect to the Product in a country in the Royalty Purchase Territory, the date that is the later of (a) the last patent expiration that includes a valid claim for such country [*] in such country, and (b) the expiration of all regulatory exclusivities for the Product in such country.

"***Royalty Report***" is defined in Section 5.2(b).

"***SEC***" means the Securities and Exchange Commission.

"***Second Tranche***" means the commitment and obligation of the Buyer to pay the Second Tranche Purchase Price pursuant to Section 2.2(b).

"***Second Tranche Funding Date***" means a Business Day occurring no later than the 30th day following the delivery of a Funding Request by the Seller in respect of the Second Tranche.

"***Second Tranche Purchase Price***" means FORTY-FIVE MILLION U.S. DOLLARS ($45,000,000).

"***Seller***" is defined in the preamble.

"***Seller Indemnified Parties***" is defined in Section 6.1(b).

"***Seller SEC Documents***" is defined in Section 3.1(m).

"***Seller Security Agreement***" means that certain Security Agreement to be dated as of the First Tranche Funding Date executed in favor of the Buyer by the Seller substantially in the form attached hereto as Exhibit B (or such other form as reasonably acceptable to the Buyer and the Seller).

"***Selling Party***" is defined in the definition of Net Sales.

"***Senior Lender***" is defined in the definition of Senior Loan Agreement.

"***Senior Loan Agreement***" means that certain Loan and Security Agreement, dated as of May 17, 2019, by and among Oxford Finance, LLC, as collateral agent and as lender thereunder, Silicon Valley Bank, as lender thereunder, the other lenders party thereto from time to time (collectively and individually, "***Senior Lender***") and the Seller, as amended by the First Amendment to Loan and Security Agreement dated as of November 6, 2019 and the Second Amendment to Loan and Security Agreement dated as of November 7, 2019, and as may be further amended, restated, supplemented or otherwise modified from time to time.

"***Stock Purchase Agreement***" means that certain Stock Purchase agreement, dated as of the date hereof, between the Seller and the Buyer.

"***Subsidiary***" means with respect to the Seller any and all corporations, partnerships, limited liability companies, joint ventures, associations and other entities controlled (by contract or otherwise) by the Seller directly or indirectly through one or more intermediaries.

"***Sunset Date***" means, with respect to oHCM Trial Condition, the date that is two years and six months following the Initial Closing Date, and with respect to the nHCM Trial Condition, the date that is three years and six months following the Initial Closing Date.

"***Tax***" or "***Taxes***" means any present or future U.S. federal, state, local or non-U.S. income, gross receipts, license, payroll, employment, excise, severance, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, abandoned property, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

"***Term***" means the period commencing on the date hereof, and ending upon termination of this Agreement pursuant to Article 7.

"***Third Party***" means any Person other than the parties hereto (or an Affiliate of such parties).

"***Third Party Claim***" is defined in Section 6.2.

"***Total Net Payments***" means as of any date of determination:

(a) the aggregate amount of all payments remitted to, or otherwise received by, Buyer pursuant to this Agreement as of such date (including any payments made pursuant to Section 5.5), *less*

(b) all overpayments of Royalties under this Agreement required to be, and actually, reimbursed by the Buyer to the Seller pursuant to Section 5.4 but only to the extent that such overpayments have been included in the calculation of the under the immediately preceding clause (a), and provided that no prepayment made by the Seller pursuant to Section 5.2(c) shall be deemed an overpayment of Royalties or other payments due to the Buyer hereunder provided such credit occurs.

"***Transaction Agreements***" means the Collaboration Agreement, the Royalty Purchase Agreement, the Stock Purchase Agreement and the Seller Security Agreement.

"***Value Added Tax***" means any sales, use, value-added, excise and other similar Taxes (excluding withholding and income Taxes).

"***UCC***" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"***Update Report***" is defined in Section 5.1(a).

Section 9.2 Certain Interpretations. Except where expressly stated otherwise in this Agreement, the following rules of interpretation apply to this Agreement:

(a) "either" and "or" are not exclusive and "include," "includes" and "including" are not limiting and shall be deemed to be followed by the words "without limitation;"

(b) "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase does not mean simply "if;"

(c) "hereof," "hereto," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) references to a Person are also to its permitted successors and assigns;

(e) definitions are applicable to the singular as well as the plural forms of such terms;

(f) unless otherwise indicated, references to an "***Article***", "***Section***" or "***Exhibit***" refer to an Article or Section of, or an Exhibit to, this Agreement, and references to a "***Schedule***" refer to the corresponding part of the Disclosure Schedule;

(g) references to "$" or otherwise to dollar amounts refer to the lawful currency of the United States;

(h) references to an agreement or other document include references to any annexes, exhibits and schedules attached thereto; and

(i) references to a law include any amendment or modification to such law and any rules and regulations issued thereunder, whether such amendment or modification is made, or issuance of such rules and regulations occurs, before or after the date of this Agreement.

Section 9.3 Headings. The table of contents and the descriptive headings of the several Articles and Sections of this Agreement and any Exhibits and Schedules are for convenience only, do not constitute a part of this Agreement and shall not control or affect, in any way, the meaning or interpretation of this Agreement.

Section 9.4 Notices. All notices and other communications under this Agreement shall be in writing and shall be by email with PDF attachment, facsimile, courier service or personal delivery to the

following addresses, or to such other addresses as shall be designated from time to time by a party hereto in accordance with this Section 9.4:

If to the Seller, to it at:

Cytokinetics, Incorporated
280 East Grand Avenue
South San Francisco, CA 94080
Attn: General Counsel
Telephone: 650-624-3000
Facsimile: 650-624-3010
Email: mschlossberg@cytokinetics.com

with a copy to:

Cooley LLP
101 California Street,
San Francisco, CA 94111
Attention: Gian-Michele a Marca
Telephone: 415-693-2000
Facsimile: 415-693-2222
Email: gmamarca@cooley.com

If to the Buyer, to it at:

Dolya Holdco 19 Designated Activity Company (in the process of changing its name to RTW Royalty Holdings Designated Activity Company)
[*]
Attention: The Directors
Telephone: [*]
Email: [*]
Fax: [*]

with a copy to:

RTW Investments, LP
40 10th Avenue, Floor 7
New York, NY 10014
Attention: Roderick Wong and Alice Lee
Telephone: [*]
Email: [*]

with a copy to:

Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
Attention: Kingsley L. Taft and Shane Albright
Telephone: [*]
Email: [*]

All notices and communications under this Agreement shall be deemed to have been duly given (i) when delivered by hand, if personally delivered, (ii) when received by a recipient, if sent by email, (iii) when sent, if sent by facsimile, with an acknowledgement of sending being produced by the sending facsimile machine or (iv) one Business Day following sending within the United States by overnight delivery via commercial one-day overnight courier service.

Section 9.5 **Expenses**. Except as otherwise provided herein, all fees, costs and expenses (including any legal, accounting and banking fees) incurred in connection with the preparation, negotiation, execution and delivery of this Agreement and to consummate the transactions contemplated hereby shall be paid by [*].

Section 9.6 **Assignment**. The Seller shall not sell, convey, assign, dispose, pledge, hypothecate or otherwise transfer this Agreement, any of its rights or obligations hereunder, without the Buyer's prior written consent, except in connection with the sale, license or transfer of all or substantially all of the Seller's business or assets related to the Product (including this Agreement), whether by merger, sale of assets, license, reorganization or otherwise; provided that, in each case upon closing of any such transaction, the Seller causes such Affiliate or Third Party, as applicable, to deliver a writing to the Buyer in which it assumes all of the obligations of the Seller to the Buyer under this Agreement; provided that nothing herein shall restrict the grant or incurrence of Permitted Liens. [*]. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of and be enforceable by, the parties hereto and their respective permitted successors and assigns. Any purported sale, conveyance, assignment, disposition, pledge, hypothecation or transfer in violation of this Section 9.6 shall be null and void. Notwithstanding anything else contained in this Section 9.6, the Buyer may at any time sell, convey, assign, dispose, pledge, hypothecate or otherwise transfer any portion of this Agreement or any rights to the Acquired Intangibles to (a) any Affiliate of the Buyer or (b) to the extent necessary in order to bring the Buyer in compliance with any applicable concentration limits to which it is subject or to an Affiliate of the Buyer (provided that the Buyer provides prior written notice of such transfer to the Seller) [*].

Section 9.7 **Amendment and Waiver**.

(a) This Agreement may be amended, modified or supplemented only in a writing signed by each of the parties hereto. Any provision of this Agreement may be waived only in a writing signed by the party hereto granting such waiver.

(b) No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No course of dealing between the parties hereto shall be effective to amend, modify, supplement or waive any provision of this Agreement.

Section 9.8 **Entire Agreement**. This Agreement, the Exhibits annexed hereto and the Disclosure Schedule constitute the entire understanding between the parties hereto with respect to the subject matter hereof and supersede all other understandings and negotiations with respect thereto.

Section 9.9 **No Third Party Beneficiaries**. This Agreement is for the sole benefit of the Seller and the Buyer and their permitted successors and assigns and nothing herein expressed or implied shall give or be construed to give to any Person, other than the parties hereto and such successors and assigns, any legal or equitable rights hereunder.

Section 9.10 **Governing Law**. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

Section 9.11 **JURISDICTION; VENUE**.

(a) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS RESPECTIVE PROPERTY AND ASSETS, TO THE EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE COURT OR FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN NEW YORK COUNTY, NEW YORK, AND ANY APPELLATE COURT THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, AND THE BUYER AND THE SELLER HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREE THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. THE BUYER AND THE SELLER HEREBY AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE LAW. EACH OF THE BUYER AND THE SELLER HEREBY SUBMITS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF SUCH NEW YORK STATE AND FEDERAL COURTS. THE BUYER AND THE SELLER AGREE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THAT PROCESS MAY BE SERVED ON THE BUYER OR THE SELLER IN THE SAME MANNER THAT NOTICES MAY BE GIVEN PURSUANT TO SECTION 9.4 HEREOF.

(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY NEW YORK STATE OR FEDERAL COURT. EACH OF THE BUYER AND THE SELLER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 9.12 **Severability**. If any term or provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any situation in any jurisdiction, then, to the extent that the economic and legal substance of the transactions contemplated hereby is not affected in a manner that is materially adverse to either party hereto, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect and the enforceability and validity of the offending term or provision shall not be affected in any other situation or jurisdiction.

Section 9.13 **Specific Performance**. Each of the parties acknowledges and agrees that the other party may be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the parties agrees that, without posting bond or other undertaking, the other party will be entitled to seek an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to seek to enforce specifically this Agreement and the terms and provisions hereof in any action, suit or other proceeding instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter in addition to any other remedy to which it may be entitled, at law or in equity.

Section 9.14 Relationship of Parties. The relationship between the Buyer and the Seller is solely that of purchaser and seller, and neither the Buyer nor the Seller has any fiduciary or other special relationship with the other party or any of its Affiliates. This Agreement is not a partnership or similar agreement, and nothing contained herein shall be deemed to constitute the Buyer and the Seller as a partnership, an association, a joint venture or any other kind of entity or legal form for any purposes, including any Tax purposes. The Buyer and the Seller agree that they shall not take any inconsistent position with respect to such treatment in a filing with any Governmental Entity.

Section 9.15 Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Copies of executed counterparts transmitted by telecopy, facsimile or other similar means of electronic transmission, including "***PDF,***" shall be considered original executed counterparts, provided receipt of such counterparts is confirmed.

Section 9.16 Withholding.

(a) The Seller shall be entitled to deduct and withhold from the payments otherwise required pursuant to this Agreement any such Taxes as the Seller may be required to deduct and withhold with respect to any such payments under applicable law (it being understood that, solely with respect to U.S. federal withholding Tax, the Seller shall not make any such deduction or withholding if the Seller has received, as applicable, either (i) a valid, properly executed Internal Revenue Service Form W-9 certifying that the Buyer or the relevant assignee, as applicable, is exempt from U.S. "backup" withholding Tax or (ii) a valid, properly executed Internal Revenue Service Form W-8BEN-E (or other applicable W-8, with any necessary accompanying attachments) certifying that the Buyer or the relevant assignee, as applicable, is exempt from U.S. federal withholding Tax under a United States income Tax treaty with respect to royalties and other income). If the Seller is required by applicable law to deduct and withhold any Taxes from any such payment, the Seller shall pay the full amount deducted or withheld to the relevant Governmental Entity in accordance with applicable law. To the extent that amounts are so deducted or withheld and paid to the relevant Governmental Entity, except as set forth in the following sentence such deducted and withheld amounts will be treated for all purposes of this Agreement as having been paid to the Buyer. Notwithstanding this Section 9.16(a), if, as a result of a Withholding Action by the Seller (including any assignee or successor), withholding is required by applicable law and the amount of such withholding exceeds the amount of withholding that would have been required if the Seller had not committed the Withholding Action, then the Seller shall pay an additional amount to the Buyer such that, after withholding from the payment contemplated by this Agreement and such additional amount, the Buyer receives the same amount as it would have received from the Seller absent such Withholding Action by the Seller. For the avoidance of doubt, if as a result of a Withholding Action by the Buyer (including any assignee or successor) the amount of withholding under the law of the applicable jurisdiction exceeds the amount of such withholding that would have been required in the absence of such Withholding Action by the Buyer, the Seller shall be required to pay an additional amount only to the extent that the Seller would be required to pay any additional amount to the Buyer pursuant to the preceding sentence if the Buyer had not committed such Withholding Action. For purposes of this Section 9.16(a), "Withholding Action" by a party means (i) a permitted assignment or sublicense of this Agreement (in whole or in part) by such party to an Affiliate or a Third Party in a different jurisdiction; (ii) the exercise by such party of its rights under this Agreement (in whole or in part) through an Affiliate or Third Party in a different jurisdiction (or the direct exercise of such rights by an Affiliate of such party outside of the applicable jurisdiction); (iii) a redomiciliation of such party, an assignee or a successor to a jurisdiction outside of the applicable jurisdiction; and (iv) any action taken after the date of this Agreement by such party that causes this Agreement or any payment contemplated by this Agreement to become subject to tax (including by virtue of withholding or deduction) in any additional jurisdictions after the date of this Agreement.

(b) If any taxes are imposed, the Buyer and the Seller hereby agree to cooperate in good faith to mitigate the amount of any of such Taxes which the Seller must withhold or deduct pursuant to this Section 9.16, provided, however, that the Buyer shall determine in its sole discretion whether, or the extent to which, its investors shall be involved or be required to be involved in connection with the foregoing.

(c) Notwithstanding anything herein to the contrary, (i) the parties hereunder shall make all payments required to be made pursuant to this Agreement in U.S. dollars by wire transfer of immediately available funds to the bank account designated in writing from time to time by the other party, and (ii) any such payments made by the Buyer shall be made so long as the Seller have provided to the Buyer a valid, properly executed Internal Revenue Service Form W-9, W-8BEN-E or other applicable form, without set-off, reduction or deduction, or withholding for or on account of any U.S. federal withholding taxes.

Section 9.17 Tax Treatment. The Buyer and the Seller agree to treat, for U.S. federal income and other applicable tax purposes, (i) the transactions contemplated by this Agreement as a contractual arrangement between the Buyer and the Seller and not as indebtedness of the Seller or the sale of any assets by the Seller, (ii) Buyer's payment of the Purchase Price as received by the Seller in a taxable transaction, (iii) the Seller's payment of the Royalty as received by the Buyer in a taxable transaction and (iv) this Agreement as not giving rise to a partnership or similar arrangement, and nothing contained herein shall be deemed to constitute the Buyer and the Seller as a partnership, an association, a joint venture or any other kind of entity. Each of the Buyer and the Seller shall file all applicable Tax returns consistent with this Section 9.17. If there is an inquiry by any Governmental Entity of the Buyer or the Seller related to this Section 9.17, the Buyer and the Seller shall cooperate with each other in responding to such inquiry in a commercially reasonable manner consistent with this Section 9.17. The Buyer and the Seller agree that, if either determines in good faith that any provision hereunder is inconsistent with such treatment, the Buyer and Seller shall substitute, by mutual consent, provisions consistent with such intended tax treatment for such inconsistent provision, and such provisions shall be effective as of the date such substitution is made.

Section 9.18 [*].

(a) [*].

(b) [*].

(c) [*]

[**Signature Page Follows**]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective representatives thereunto duly authorized as of the date first above written.

SELLER:

CYTOKINETICS, INCORPORATED

By: /s/ Robert I. Blum
Name: Robert I. Blum
Title: President & Chief Executive Officer

BUYER:

Signed by a duly authorised attorney of **DOLYA HOLDCO 19 DESIGNATED ACTIVITY COMPANY** (in the process of changing its name to **RTW ROYALTY HOLDINGS DESIGNATED ACTIVITY COMPANY)**

By: /s/ Roderick Wong
Name: Roderick Wong, M.D.
Title: Authorised Attorney

Exhibit 10.3

[*] = CERTAIN INFORMATION IN THIS DOCUMENT HAS BEEN EXCLUDED PURSUANT TO REGULATION S-K, ITEM 601(B)(10). SUCH EXCLUDED INFORMATION IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED.

Royalty Purchase Agreement

By and Between

Cytokinetics, Incorporated

and

Dolya Holdco 19 Designated Activity Company
(in the process of changing its name to RTW Royalty Holdings Designated Activity Company)

Dated as of July 14, 2020

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ROYALTY PURCHASE AGREEMENT

This **Royalty Purchase Agreement**, dated as of July 14, 2020 (this "***Agreement***"), is made and entered into by and between **Cytokinetics, Incorporated**, a Delaware corporation (the "***Seller***"), on the one hand, and **Dolya Holdco 19 Designated Activity Company** (in the process of changing its name to **RTW Royalty Holdings Designated Activity Company**), a designated activity company incorporated under the laws of Ireland under company number 669527 and whose registered office is at [*] (the "***Buyer***"), on the other hand.

W I T N E S S E T H:

Whereas, pursuant to the License Agreement, the Seller has assigned certain rights and granted certain licenses to the Licensee, and the Licensee, in partial consideration therefor, agreed to pay the Royalty and other payments to the Seller;

Whereas, the Buyer desires to purchase the Royalty from the Seller, and the Seller desires to sell the Royalty to the Buyer.

Now Therefore, in consideration of the representations, warranties, covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Seller and the Buyer hereby agree as follows:

ARTICLE 1

PURCHASE AND SALE OF THE ROYALTY

Section 1.1 **Purchase and Sale**. Upon the terms and subject to the conditions of this Agreement, at the Closing, the Seller shall sell, transfer and convey to the Buyer, and the Buyer shall purchase, acquire and accept from the Seller, free and clear of all liens and encumbrances (other than those contemplated by this Agreement), all of the Seller's right, title and interest in and to the Royalty.

Section 1.2 **Purchase Price**. The purchase price to be paid to the Seller for the sale, transfer and conveyance of the Seller's right, title and interest in and to the Royalty to the Buyer is EIGHTY-FIVE MILLION DOLLARS ($85,000,000) (the "*Purchase Price*").

Section 1.3 **No Assumed Obligations, Etc**. Notwithstanding any provision in this Agreement to the contrary, (a) the Buyer is purchasing, acquiring and accepting solely the Royalty, (b) the sale, transfer and conveyance to the Buyer of the Royalty pursuant to this Agreement shall not in any way subject the Buyer to, or transfer, affect or modify, any obligation or liability of the Seller under the License Agreement and (c) the Buyer expressly does not assume or agree to become responsible for any obligation or liability of the Seller whatsoever, except to the extent expressly contemplated by Section 5.5 or Article 8. Except as specifically set forth herein in respect of the Royalty purchased, transferred, conveyed, acquired and accepted hereunder, the Buyer does not, by such purchase, transfer, conveyance, acquisition and acceptance, acquire any other contract rights, title and interest of the Seller under the License Agreement or any other assets of the Seller.

Section 1.4 **True Sale**. It is the intention of the parties hereto that the sale, transfer and conveyance as contemplated by this Agreement be, and is, a true, complete, absolute and irrevocable sale by the Seller to the Buyer of all the Seller's right, title and interest in and to the Royalty and provides the Buyer with the full benefits of ownership of the Royalty, subject to the terms and conditions set forth in the License Agreement and in this Agreement. Neither the Seller nor the Buyer intends the transactions contemplated by this Agreement to be, or for any purpose characterized as, a loan from the Buyer to the Seller or a pledge, a security interest, a financing transaction or a borrowing. Accordingly, the Seller shall treat the sale, transfer and conveyance of the Royalty as a sale of an "account" or a "payment intangible" (as appropriate) in accordance with the UCC, and the Seller hereby authorizes the Buyer (at the Buyer's cost and expense) to file financing statements (and continuation statements with respect to such financing statements when applicable) naming the Seller as the seller and the Buyer as the purchaser in respect

of the Royalty as may be necessary to perfect such sale (the "***Specified Financing Statements***"). Not in derogation of the foregoing statement of the intent of the parties hereto in this regard, and for the purpose of providing additional assurance to the Buyer in the event that, despite the intent of the parties hereto, the sale, transfer and conveyance contemplated hereby is held not to be a sale, this Agreement shall constitute a security agreement and the Seller does hereby grant to the Buyer, as security for the obligations of the Seller hereunder, a first priority security interest in all right, title and interest of the Seller in, to and under the Royalty and any "proceeds" (as such term is defined in the UCC) thereof, and the Seller does hereby authorize the Buyer, from and after the Closing, to file such financing statements (and continuation statements with respect to such financing statements when applicable) as may be necessary to perfect such security interest. Following the termination of this Agreement, upon the Seller's request, the Buyer shall, at the expense of the Seller, file or authorize and empower the Seller to file, a UCC-3 termination statement terminating the security interest granted in this Section 1.4. For sake of clarification, the foregoing statements in this Section 1.4 shall not bind either party regarding the reporting of the transactions contemplated hereby for GAAP or securities law reporting purposes. Each of the Seller and the Buyer hereby waives, to the maximum extent permitted by applicable law, any right to contest or otherwise assert that this Agreement does not constitute a true, complete, absolute and irrevocable sale by the Seller to the Buyer of all of the Seller's right, title and interest in and to the Royalty under applicable law, which waiver shall, to the maximum extent permitted by applicable law, be enforceable against the Seller in any bankruptcy or insolvency proceeding relating to the Seller.

ARTICLE 2

CLOSING

Section 2.1 **Closing**. The Closing shall take place on the third Business Day after the date on which the conditions set forth in Article 4 have been satisfied (or waived by the Buyer or the Seller, as applicable, in accordance with Section 9.7), or at such other place, time and date as the parties hereto may mutually agree. Subject to the provisions of Article 7, failure to consummate the sale, transfer and conveyance of the Royalty as provided in this Article 2 on the date and at the place determined pursuant to this Section 2.1 shall not result in a termination of this Agreement and shall not relieve either party hereto of any of its respective obligations hereunder. The date on which the Closing occurs is referred to in this Agreement as the "***Closing Date***".

Section 2.2 **Payment of Purchase Price**. At the Closing, the Buyer shall deliver (or cause to be delivered) payment of the Purchase Price to the Seller by wire transfer of immediately available funds to one or more accounts specified by the Seller in writing to the Buyer at least three (3) Business Days prior to the Closing Date.

Section 2.3 **Officer's Certificates**.

(a) **Seller's Officer's Certificate**. On the date hereof, the Seller shall deliver to the Buyer a certificate of the Secretary or an Assistant Secretary of the Seller, dated the date hereof, certifying as to (i) the incumbency of the officer of the Seller executing this Agreement on behalf of the Seller and the officer of the Seller who will execute the Bill of Sale and the Royalty Payment Instruction on behalf of the Seller and (ii) the attached copies of the Seller's organizational documents and resolutions adopted by the Seller's board of directors authorizing the execution and delivery by the Seller of this Agreement, the Bill of Sale and the Royalty Payment Instruction and the consummation by the Seller of the transactions contemplated hereby and thereby.

(b) **Buyer's Officer's Certificate**. On the date hereof, the Buyer shall deliver to the Seller a certificate of an authorized Person of the Buyer, dated the date hereof, certifying as to (i) the incumbency of the representative executing this Agreement on behalf of the Buyer and the representative of the Buyer who will execute the Bill of Sale and the Royalty Payment Instruction on behalf of the Buyer and (ii) the copies of the Buyer's organizational documents and resolutions adopted by the Buyer's board of directors (or other applicable governing body of the Buyer) authorizing the execution and delivery by the Buyer of this Agreement, the Bill of Sale and the Royalty Payment Instruction and the consummation by the Buyer of the transactions contemplated hereby and thereby.

Section 2.4 **Bill of Sale**. At the Closing, the Seller and the Buyer shall each deliver to the other party hereto a duly executed counterpart to the bill of sale evidencing the sale, transfer and conveyance of the Royalty, substantially in the form attached hereto as Exhibit A (the "***Bill of Sale***").

Section 2.5 **[Intentionally Omitted.]**

Section 2.6 **Licensee Letter Agreement**. Prior to the Closing, the Seller shall have delivered to the Buyer a duly executed agreement from the Licensee, in form and substance satisfactory to the Buyer, consenting to the sale of the Royalty pursuant to this Agreement and certain other matters (the "***Licensee Letter Agreement***"), it being understood that a letter agreement in the form of the letter agreement attached hereto as Exhibit C shall be satisfactory to the Buyer.

Section 2.7 **Lender Consent**. Prior to the Closing, the Seller shall have delivered to the Buyer a duly executed agreement or consent from the Lender, in form and substance satisfactory to the Buyer, consenting to the sale of the Royalty pursuant to this Agreement and the grant of the Buyer's security interest under Section 1.4 and terminating Lender's security interest in the Royalty and the related account or payment intangible (the "***Lender Consent***").

Section 2.8 **Lien Searches**. Prior to the Closing, the Buyer shall have received (a) the results of a recent search in the state of Delaware of all effective financing statements made against the Seller, together with copies of all such filings disclosed by such search and (b) termination statements and amendment statements, as applicable, in each case in form and substance satisfactory to the Buyer to be filed with the Secretary of State of the State of Delaware as may be necessary to terminate or amend, as applicable, any effective financing statements that involve or relate to the Royalty or the License Agreement that are disclosed by the search referred to in the immediately preceding clause (a) or as otherwise in existence (including, without limitation, any effective financing statements in favor of the Lender that involve or relate to the Royalty or the License Agreement), which termination statements and amendment statements, as applicable, shall be filed concurrently with the consummation of the Closing (the items referred to in clauses (a) and (b) of this Section 2.8, collectively, the "***Lien Release Documents***").

Section 2.9 **Royalty Payment Instruction**. As soon as practicable (and in any event within one Business Day) after the Closing, the Seller and the Buyer shall deliver to the Licensee the duly executed Royalty Payment Instruction.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

Section 3.1 **Seller's Representations and Warranties**. The Seller represents and warrants to the Buyer that as of the date hereof and as of the Closing Date (as contemplated by Section 4.1(b)):

(a) **Existence; Good Standing**. The Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Seller is duly licensed or qualified to do business and is in corporate good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in corporate good standing has not and would not reasonably be expected to have, either individually or in the aggregate, a Seller Material Adverse Effect.

(b) **Authorization**. The Seller has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, the Bill of Sale and the Royalty Payment Instruction. The execution, delivery and performance of this Agreement, the Bill of Sale and the Royalty Payment Instruction and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action on the part of the Seller.

(c) **Enforceability**. This Agreement has been, and the Bill of Sale and the Royalty Payment Instruction when executed and delivered will be, duly executed and delivered by an authorized officer of the Seller. This Agreement constitutes, and the Bill of Sale and the Royalty Payment Instruction when executed and delivered will constitute, the valid and binding obligation of the Seller, enforceable against the Seller in accordance with their respective terms, except as may be limited by applicable Bankruptcy Laws or by general principles of equity (whether considered in a proceeding in equity or at law).

(d) **No Conflicts**. The execution, delivery and performance by the Seller of this Agreement, the Bill of Sale and the Royalty Payment Instruction and the consummation of the transactions contemplated hereby and thereby do not and will not (i) contravene or conflict with the certificate of incorporation or bylaws of the Seller, (ii) contravene or conflict with or constitute a default under or violation of any law or Judgment binding upon or applicable to the Seller except for such contraventions, conflicts, defaults or violations that, individually or in the aggregate, would not reasonably be expected to result in a Seller Material Adverse Effect, (iii) contravene or conflict with, constitute a breach of, or constitute a default under the License Agreement or the Loan Agreement or (iv) except for such contraventions, conflicts, breaches or defaults that, individually or in the aggregate, would not reasonably be expected to result in a Seller Material Adverse Effect, contravene or conflict with, constitute a breach of, or constitute a default under any material agreement (other than the License Agreement or the Loan Agreement) binding upon or applicable to the Seller.

(e) **Consents**. Except for (i) the consents that have been obtained on or prior to the Closing, (ii) filings required by the federal securities laws or stock exchange rules, (iii) the Royalty Payment Instruction and (iv) the filing of the Specified Financing Statements with the Secretary of State of the State of Delaware, no consent, approval, license, permit, notice, order, authorization, registration, declaration or filing with or of any Governmental Entity or other Person is required to be done or obtained by the Seller in connection with (A) the execution and delivery by the Seller of this Agreement, the Bill of Sale and the Royalty Payment Instruction, (B) the performance by the Seller of its obligations under this Agreement, the Bill of Sale or the Royalty Payment Instruction or (C) the consummation by the Seller of any of the transactions contemplated by this Agreement, the Bill of Sale or the Royalty Payment Instruction.

(f) **No Litigation**. There is no action, suit, investigation or proceeding pending, or, to the Knowledge of the Seller, threatened (in writing), before any Governmental Entity, court or arbitrator to which the Seller is a party that, individually or in the aggregate, would, if determined adversely to the Seller, reasonably be expected to result in a Seller Material Adverse Effect.

(g) **Compliance with Laws**. The Seller has not violated, is not in violation of, has not been given written notice that it has violated, and, to the Knowledge of the Seller, the Seller is not under investigation with respect to its violation of, nor has the Seller been threatened (in writing) to be charged with any violation of, any law or Judgment applicable to the Seller, which violation would reasonably be expected to result in a Seller Material Adverse Effect.

(h) **License Agreement**. A true, correct and complete copy of the License Agreement has been delivered by the Seller to the Buyer. [*].

(i) **No Other Agreements; Amendments**. The License Agreement is the only agreement, instrument, arrangement, waiver or understanding between the Seller (or any predecessor or Affiliate thereof), on the one hand, and the Licensee (or any predecessor or Affiliate thereof), on the other hand, relating to the Royalty, and there are no other agreements, instruments, arrangements, waivers or understandings between the Seller (or any predecessor or any Affiliate thereof), on the one hand, and the Licensee (or any predecessor or Affiliate thereof), on the other hand, that relate to the Royalty or that would reasonably be expected to result in a Seller Material Adverse Effect. [*].

(ii) **Validity and Enforceability of Agreements**. The License Agreement is a valid and binding obligation of the Seller and, to the Knowledge of the Seller, the Licensee. The License Agreement is enforceable against each of the Seller and, to the Knowledge of the Seller, the Licensee in accordance with its terms, in each case except as may be limited by applicable Bankruptcy Laws or by general principles of equity (whether considered in a proceeding in equity or at law). [*].

(iii) **No Liens or Assignments by the Seller**. Except for (x) Liens that have been or will be terminated on or prior to, or concurrently with, the Closing, (y) Liens contemplated hereby and (z) Liens on the License Agreement contemplated to remain outstanding pursuant to the Lender Consent, the Seller has not conveyed, assigned or in any other way transferred or granted any Liens upon or security interests with respect to all or any portion of its right, title and interest in and to the Royalty or the License Agreement.

(iv) **No Termination**. The Seller has not (A) given the Licensee any written notice of termination of the License Agreement (whether in whole or in part) or any written notice expressing any intention or desire to terminate the License Agreement or (B) received from the Licensee any written notice of termination of the License Agreement (whether in whole or in part) or any written notice expressing any intention or desire to terminate the License Agreement. To the Knowledge of the Seller, no event has occurred that would give rise to the expiration of the License Agreement.

(v) **No Breaches**. There is and has been no material breach under any provision of the License Agreement by the Seller (or any predecessor thereof), and, to the Knowledge of the Seller, there is no event that upon notice or the passage of time, or both, would reasonably be expected to give rise to any material breach by the Seller under any provision of the License Agreement. To the Knowledge of the Seller, there is and has been no material breach under any provision of the License Agreement relating to or otherwise affecting the Royalty by the Licensee (or any predecessor thereof), and, to the Knowledge of the Seller, there is no event that upon notice or the passage of time, or both, would reasonably be expected to give rise to any such material breach by the Licensee.

(vi) **Payments Made**. To the Knowledge of the Seller, the Licensee has paid the full amount of (A) the payments due and payable to the Seller in respect of Relevant Products, (B) the payments for FTEs (as such term is defined in the License Agreement) due and payable to the Seller pursuant to Section 5 of the License Agreement, (C) the payments for milestones due and payable to the Seller pursuant to Section 7(a) of the License Agreement and (D) the payments for transfer of materials and reimbursement of costs due and payable to the Seller. Other than such payments, to the Knowledge of the Seller, the Seller has received no other payments under the License Agreement.

(vii) **No Assignments by Licensee**. The Seller has not consented to, and the Seller has not been notified in writing of, any sublicense, assignment or other transfer by the Licensee of the License Agreement or of any of the Licensee's rights or obligations under the License Agreement. To the Knowledge of the Seller, the Licensee has not sublicensed, assigned or otherwise transferred the License Agreement or any of its rights or obligations under the License Agreement to any Person.

(viii) **No Indemnification Claims**. The Seller has not notified the Licensee or any other Person of any claims for indemnification under the License Agreement nor has the Seller received any claims in writing for indemnification under the License Agreement by the Licensee, whether pursuant to Section 10 thereof or otherwise.

(ix) **No Royalty Reductions**. To the Knowledge of the Seller, the amount of the Royalty is not subject to any outstanding claim against the Seller pursuant to any right of set-off, counterclaim, credit, reduction or deduction by contract or otherwise against such Royalty (a "***Royalty Reduction***"). To the Knowledge of the Seller, no event or condition exists that, upon notice or passage of time or both, would reasonably be expected to permit the Licensee to claim, or have the right to claim, a Royalty Reduction. The Seller has not received any written notice from the Licensee expressing an intention by the Licensee to claim or apply any Royalty Reduction.

(x) **Audits**. The Seller has not initiated, pursuant to Section 7(c) of the License Agreement or otherwise, any inspection or audit of books of accounts or other records pertaining to Net Sales, the calculation of royalties or other amounts payable to the Seller under the License Agreement.

(xi) **Research Term**. The Seller and the Licensee have terminated the Research Plan (as defined under the License Agreement) and the Research Term (as defined under the License Agreement) has expired.

(xii) **[*]**.

(xiii) **No Waivers or Releases**. The Seller has not granted any material waiver under the License Agreement and has not released the Licensee, in whole or in part, from any of its material obligations under the License Agreement.

(xiv) **No Disputes**. The Seller has not (i) received any written notice of any dispute from the Licensee pursuant to the License Agreement or (ii) given any written notice of any dispute to the Licensee pursuant to the License Agreement.

(i) **Title to Royalty**. Except for any Liens to be released upon the Closing, the Seller has good and valid title to the Royalty free and clear of all Liens. Upon payment of the Purchase Price by the Buyer and the filing of the Specified Financing Statements, the Buyer will have acquired, subject to the terms and conditions set forth in this Agreement, good and valid title to the Royalty, free and clear of all Liens (other than Liens created by the Buyer, if any). Upon the filing by the Buyer of the Specified Financing Statements with the Secretary of State of the State of Delaware and to the extent the Royalty constitutes an asset of the Seller that has not been sold as contemplated by the foregoing provisions of this Section 3.1(i), the security interest in the Royalty granted by the Seller to the Buyer pursuant to Section 1.4 shall be perfected and prior to all other Liens thereon to the extent that such security interest in the Royalty can be perfected under the UCC by the filing of the Specified Financing Statements in such filing office.

(j) **UCC Representation and Warranties**. The Seller's exact legal name is, and for the immediately preceding ten years has been, "Cytokinetics, Incorporated". The Seller is, and for the prior ten years has been, incorporated in the State of Delaware. Notwithstanding that an abbreviated version of the Seller's name is used in the License Agreement (i.e., "Cytokinetics, Inc."), the Seller is the party to the License Agreement opposite the Licensee.

(k) **Taxes**. No deduction or withholding for or on account of any tax has been made from any payment by the Licensee to the Seller under the License Agreement. The Seller has filed (or caused to be filed) all material tax returns and material tax reports required to be filed under applicable law and has paid all material taxes required to be paid, except for any such taxes that are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles applicable to the Seller, as in effect from time to time.

(l) **Brokers' Fees**. There is no investment banker, broker, finder, financial advisor or other intermediary who has been retained by or is authorized to act on behalf of the Seller who might be entitled to any fee or commission from the Buyer in connection with the transactions contemplated by this Agreement.

Section 3.2 Buyer's Representations and Warranties. The Buyer represents and warrants to the Seller that as of the date hereof and as of the Closing Date (as contemplated by Section 4.2(b)):

(a) **Existence; Good Standing**. The Buyer is a designated activity company duly incorporated, validly existing and in good standing under the laws of Ireland. [*]. The Buyer is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in good standing has not and would not reasonably be expected to have, either individually or in the aggregate, a Buyer Material Adverse Effect.

(b) **Authorization**. The Buyer has the requisite organizational power and authority to execute, deliver and perform its obligations under this Agreement, the Bill of Sale and the Royalty Payment Instruction. The execution, delivery and performance of this Agreement, the Bill of Sale and the Royalty Payment Instruction and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary organizational action on the part of the Buyer.

(c) **Enforceability**. This Agreement has been, and the Bill of Sale and the Royalty Payment Instruction when executed and delivered will be, duly executed and delivered by an authorized Person of the Buyer. This Agreement constitutes, and the Bill of Sale and the Royalty Payment Instruction when executed and delivered will constitute, the valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with their respective terms, except as may be limited by applicable Bankruptcy Laws or by general principles of equity (whether considered in a proceeding in equity or at law).

(d) **No Conflicts**. The execution, delivery and performance by the Buyer of this Agreement, the Bill of Sale and the Royalty Payment Instruction do not and will not (i) contravene or conflict with the organizational documents of the Buyer, (ii) contravene or conflict with or constitute a default under or violation of any law or Judgment binding upon or applicable to the Buyer except for such contraventions, conflicts, defaults or violations that, individually or in the aggregate, would not reasonably be expected to result in a Buyer Material Adverse Effect or (iii) except for such contraventions, conflicts, breaches or defaults that, individually or in the aggregate, would not reasonably be expected to result in a Buyer Material Adverse Effect, contravene or conflict with, constitute a breach of, or constitute a default under any material agreement binding upon or applicable to the Buyer.

(e) **Consents**. Except for (i) the consents that have been obtained on or prior to the Closing, (ii) filings required by the federal securities laws or stock exchange rules, (iii) the Royalty Payment Instruction and (iv) the filing of the Specified Financing Statements with the Secretary of State of the State of Delaware, no consent, approval, license, permit, notice, order, authorization, registration, declaration or filing with or of any Governmental Entity or other Person is required to be done or obtained by the Buyer in connection with (A) the execution and delivery by the Buyer of this Agreement, the Bill of Sale and the Royalty Payment Instruction, (B) the performance by the Buyer of its obligations under this Agreement, the Bill of Sale or the Royalty Payment Instruction or (C) the consummation by the Buyer of any of the transactions contemplated by this Agreement, the Bill of Sale or the Royalty Payment Instruction.

(f) **No Litigation**. There is no action, suit, investigation or proceeding pending, or, to the knowledge of the Buyer, threatened (in writing), before any Governmental Entity, court or arbitrator to which the Buyer is a party that, individually or in the aggregate, would, if determined adversely to the Buyer, reasonably be expected to result in a Buyer Material Adverse Effect.

(g) **Financing**. The Buyer will have, as of the Closing Date, sufficient cash on hand to pay the entire Purchase Price. The Buyer acknowledges that its obligations under this Agreement are not contingent on obtaining financing. [*].

(h) **Compliance with Laws**. The Buyer has not violated, is not in violation of, has not been given written notice that it has violated, and, to the knowledge of the Buyer, the Buyer is not under investigation with respect to its violation of, nor has the Buyer been threatened (in writing) to be charged with any violation of, any law or Judgment applicable to the Buyer, which violation would reasonably be expected to result in a Buyer Material Adverse Effect.

(j) **Brokers' Fees**. There is no investment banker, broker, finder, financial advisor or other intermediary who has been retained by or is authorized to act on behalf of the Buyer who might be entitled to any fee or commission from the Seller in connection with the transactions contemplated by this Agreement.

(k) **Access to Information**. The Buyer has such knowledge, sophistication and experience in financial and business matters that it is capable of evaluating the risks and merits of entering into the transactions contemplated by this Agreement.

Section 3.3 No Implied Representations and Warranties. THE BUYER ACKNOWLEDGES AND AGREES THAT, OTHER THAN THE EXPRESS REPRESENTATIONS AND WARRANTIES OF THE SELLER SPECIFICALLY CONTAINED IN THIS ARTICLE 3, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF THE SELLER EITHER EXPRESSED OR IMPLIED WITH RESPECT TO THE LICENSE AGREEMENT, THE ROYALTY OR THE TRANSACTIONS CONTEMPLATED HEREBY, AND THAT THE BUYER DOES NOT RELY ON, AND SHALL HAVE NO REMEDIES IN RESPECT OF, ANY REPRESENTATION OR WARRANTY NOT SPECIFICALLY SET FORTH IN THIS ARTICLE 3, AND ALL OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE 4

CONDITIONS TO CLOSING

Section 4.1 Conditions to the Buyer's Obligations. The obligations of the Buyer to consummate the transactions contemplated hereunder on the Closing Date are subject to the satisfaction (or waiver by the Buyer in accordance with Section 9.7), at or prior to the Closing, of each of the following conditions precedent:

(a) The Seller shall have performed and complied in all respects with all agreements, covenants, obligations and conditions required to be performed and complied with by it under this Agreement at or prior to the Closing Date, and the Buyer shall have received a certificate executed by a duly authorized officer of the Seller on the Closing Date certifying on behalf of the Seller to the effect of the foregoing.

(b) The representations and warranties of the Seller contained in Section 3.1 shall be true and correct in all respects as of the Closing Date as though made at and as of the Closing Date (with such changes to such representations and warranties as shall be requested by the Seller and agreed to in writing by the Buyer in the Buyer's sole discretion), and the Buyer shall have received a certificate executed by a duly authorized officer of the Seller on the Closing Date certifying on behalf of the Seller to the effect of the foregoing.

(c) There shall not have been issued and be in effect any Judgment of any Governmental Entity, court or arbitrator enjoining, preventing or restricting the consummation of the transactions contemplated by this Agreement.

(d) There shall not have been instituted or be pending any action or proceeding by or before any Governmental Entity, court, arbitrator or any other Person (i) challenging or seeking to make illegal, to delay materially or to otherwise directly or indirectly restrain or prohibit the consummation of the transactions contemplated hereby, (ii) seeking to obtain material damages in connection with the transactions contemplated hereby or (iii) seeking to restrain or prohibit the Buyer's receipt of the Royalty.

(e) The Buyer shall have received from the Seller the Lender Consent duly executed by the Lender and the Seller.

(f) The Buyer shall have received from the Seller the Licensee Letter Agreement duly executed by the Licensee and the Seller.

(g) The Buyer shall have received the officer's certificate of the Seller as provided in Section 2.3(a).

(h) The Buyer shall have received the duly executed counterpart of the Seller to the Bill of Sale.

(i) The Buyer shall have received the Lien Release Documents.

Section 4.2 Conditions to the Seller's Obligations. The obligations of the Seller to consummate the transactions contemplated hereunder on the Closing Date are subject to the satisfaction (or waiver by the Seller in accordance with Section 9.7), at or prior to the Closing, of each of the following conditions precedent:

(a) The Buyer shall have performed and complied in all respects with all agreements, covenants, obligations and conditions required to be performed and complied with by it under this Agreement at or prior to the Closing Date, and the Seller shall have received a certificate executed by a duly authorized representative of the Buyer on the Closing Date certifying on behalf of the Buyer to the effect of the foregoing.

(b) The representations and warranties of the Buyer contained in Section 3.2 shall be true and correct in all respects as of the Closing Date as though made at and as of the Closing Date (with such changes to such

representations and warranties as shall be requested by the Buyer and agreed to in writing by the Seller in the Seller's sole discretion), and the Seller shall have received a certificate executed by a duly authorized representative of the Buyer on the Closing Date certifying on behalf of the Buyer to the effect of the foregoing.

(c) There shall not have been issued and be in effect any Judgment of any Governmental Entity, court or arbitrator enjoining, preventing or restricting the consummation of the transactions contemplated by this Agreement.

(d) There shall not have been instituted or be pending any action or proceeding by or before any Governmental Entity, court, arbitrator or any other Person (i) challenging or seeking to make illegal, to delay materially or to otherwise directly or indirectly restrain or prohibit the consummation of the transactions contemplated hereby, (ii) seeking to obtain material damages in connection with the transactions contemplated hereby or (iii) seeking to restrain or prohibit the Buyer's receipt of the Royalty.

(e) The Seller shall have received the officer's certificate of the Buyer as provided in Section 2.3(b).

(f) The Seller shall have received the Lender Consent duly executed by the Lender (which Lender Consent shall not contain any provisions that would reasonably be expected to have a material adverse effect on the business, financial position or results of operations of the Seller).

(g) The Seller shall have received the Licensee Letter Agreement duly executed by the Licensee [*].

(h) The Seller shall have received the duly executed counterpart of the Buyer to the Bill of Sale.

ARTICLE 5

COVENANTS

Section 5.1 Disclosures. The parties shall agree upon the Press Release to be issued announcing this Agreement and the other Transaction Agreements. Except for (i) the Press Release, (ii) the Seller's Current Report on Form 8-K describing the material terms of this Agreement, the other Transaction Agreements and the transactions contemplated by this Agreement and the other Transaction Agreements or (iii) any other public announcement (including any periodic reports filed with the SEC) using substantially the same disclosure as such Press Release or Form 8-K, neither the Buyer nor the Seller shall, and each party hereto shall cause its respective Representatives, Affiliates and Affiliates' Representatives not to, issue a press release or other public announcement or otherwise make any public disclosure with respect to this Agreement or the subject matter hereof without the prior written consent of the other party hereto (which consent shall not be unreasonably withheld or delayed), except as may be required by applicable law, regulation, or stock exchange rule (in which case the party hereto required to make the press release or other public announcement or disclosure shall (x) allow the other party hereto reasonable time to comment on such press release or other public announcement or disclosure in advance of such issuance and (y) if such press release, public announcement or disclosure involves a public disclosure of a copy of this Agreement or any exhibit or schedule hereto, the party hereto making such disclosure shall first redact from such copy of this Agreement or such exhibit or schedule, as the case may be, such portions as reasonably requested by the other party hereto before making such public disclosure; provided that such redactions are consistent with applicable law, regulation or stock exchange rule); provided that (a) no review or consent shall be required with respect to disclosures by either party hereto otherwise previously approved pursuant to this Section 5.1 and (b) notwithstanding anything herein to the contrary, each party hereto may, without the review or consent of the other party hereto, disclose (and nothing herein shall be construed to restrict either party hereto from disclosing) the Purchase Price and the amount and nature of the Royalty (and related accounting disclosures of the transactions contemplated hereby) in such party's periodic reports and financial statements.

Section 5.2 Payments Received by Seller; Interest Payments.

(a) [Intentionally Omitted.]

(b) If, notwithstanding the Royalty Payment Instruction [*], any payment of the Royalty is made to the Seller, the Seller shall pay over to the Buyer, promptly (and in any event within five (5) Business Days) after the receipt thereof, the amount of such payment received by wire transfer to an account designated in writing by the Buyer. The Seller agrees that, in the event any payment of the Royalty is paid to the Seller, the Seller shall (i) until paid to the Buyer, hold such payment received in trust for the benefit of the Buyer and (ii) have no right, title or interest in such payment. If a sum payable by either the Seller or the Buyer under this Agreement shall be overdue for five (5) or more Business Days, the party obligated to make such payment shall additionally pay to the party to whom such payment is owed interest (compounded quarterly) on the sum outstanding for each day from (and including) the date that is the fifth (5th) Business Day after the date such payment was due to (but excluding) the date of payment thereof at the rate equal to the lesser of (i) the sum of [*] per annum for the date that payment was due, as published by The Wall Street Journal, Eastern U.S. edition and (ii) the highest rate permitted by law; provided that a delay in payment by the Licensee of any payment to the Buyer (other than a delay as a result of any act or failure to act by the Seller) shall not be deemed an overdue payment by the Seller to the Buyer. The payment of such interest shall not prevent the party to whom such payment is made from exercising any other rights it may have as a consequence of the lateness of any payment.

(c) [Intentionally Omitted.]

(d) The Seller shall be entitled to deduct and withhold from the payment by the Seller pursuant to Section 5.2(b) of the Royalty to the Buyer or its assignee any withholding taxes that the Seller is required to deduct and withhold with respect to any such payments under applicable law; provided that the Seller shall not make any such deduction or withholding if the Seller has received, as applicable, either (i) a valid, properly executed Internal Revenue Service Form W-9 certifying that the Buyer or the relevant assignee, as applicable, is a U.S. person or (ii) a valid, properly executed Internal Revenue Service Form W-8BEN-E (or other applicable W-8, with any necessary accompanying attachments) certifying that the Buyer or the relevant assignee, as applicable, is exempt from U.S. withholding tax; and provided, further, that the Seller shall not backup withhold any amounts in respect of any payments of the Royalty if the Buyer or relevant assignee, as applicable, furnishes the Seller a valid, properly executed Internal Revenue Service Form W-9 certifying that the Buyer or the relevant assignee, as applicable, is exempt from backup withholding or a valid, properly executed Internal Revenue Service Form W-8BEN-E (or other applicable W-8, with any necessary accompanying attachments) certifying that the Buyer or the relevant assignee is not a U.S. person. If the Seller is required by applicable law to deduct and withhold any withholding taxes from any such payment, the Seller shall timely pay over the full amount deducted or withheld to the relevant Governmental Entity in accordance with applicable law. Any amounts of U.S. withholding tax so deducted or withheld and timely paid over to the relevant Governmental Entity shall be treated for all purposes of this Agreement as having been paid to the Buyer; provided, however, that if (x) non-U.S. withholding tax is required to be withheld and deducted or (y) U.S. withholding tax is required to be withheld as a result of a Withholding Action by the Seller (including any assignee or successor) and the amount of such U.S. withholding exceeds the amount of U.S. withholding that would have been required if the Seller had not committed the Withholding Action, then the Seller shall pay an additional amount to the Buyer such that, after withholding from the payment contemplated by this Agreement and such additional amount, the Buyer receives the same amount as it would have received from the Seller absent such non-U.S. withholding or, in the case of U.S. withholding tax, such Withholding Action by the Seller, as applicable. For the avoidance of doubt, if as a result of a Withholding Action by the Buyer (including any assignee or successor) the amount of withholding under the law of the applicable jurisdiction exceeds the amount of such withholding that would have been required in the absence of such Withholding Action by the Buyer, the Seller shall be required to pay an additional amount only to the extent that the Seller would be required to pay any additional amount to the Buyer pursuant to the preceding sentence if the Buyer had not committed such Withholding Action. For purposes of this Section 5.2(d), "***Withholding Action***" by a party means (i) a permitted assignment or sublicense of this Agreement (in whole or in part) by such party to an Affiliate or a Third Party tax resident in a different country; (ii) the exercise by such party of its rights under this Agreement (in whole or in part) through an Affiliate or Third Party in a different country; (iii) a change of tax residency of such party, an assignee or a successor to a country other than the country of tax residency at the time of entering into this Agreement (in the case of the Buyer or successor of the Buyer), time of assignment (in the case

of any assignee or successor of any assignee), or time the Seller committed a Withholding Action; and (iv) any other action taken after the date of this Agreement by such party that causes this Agreement or any payment contemplated by this Agreement to become subject to withholding tax in any country other than the United States.

Section 5.3 **Royalty Reduction**. If the Licensee exercises any Royalty Reduction against any payment of the Royalty as a result of any amount owing from the Seller to the Licensee arising from or in connection with any matter other than the Royalty, such Royalty Reduction shall not reduce the applicable amount of the Royalty otherwise payable to the Buyer, and if such Royalty Reduction reduces the Royalty payable under the License Agreement to less than the full amount of the Royalty otherwise due and payable, then the Seller shall [*] following the date on which the Seller becomes aware of such Royalty Reduction (including the amount and the nature thereof), make a true-up payment to the Buyer (by wire transfer to an account designated in writing by the Buyer) such that the Buyer receives the full amount of such Royalty payments that would have been payable had such Royalty Reduction not occurred (as full and final settlement of any issues regarding such Royalty Reduction).

Section 5.4 **Royalty Reports; Other Information; Notices**.

(a) [*].

(b) [*].

(c) [*].

(d) [*].

(e) [*].

Section 5.5 **Inspections and Audits of Licensee**.

(a) [*].

(b) [*].

(c) [*].

Section 5.6 **Amendment of License Agreement**. The Seller shall provide the Buyer a copy of any proposed Modification (as defined below) of any provision of the License Agreement as soon as practicable (and in any event not less than five (5) Business Days) prior to the date the Seller proposes to execute such Modification. The Seller shall not, without the Buyer's prior written consent, execute or agree to execute any alteration, amendment, waiver, change or addition (a "***Modification***") of or to any provision of the License Agreement if such Modification would reasonably be expected to result in a Seller Material Adverse Effect (it being understood and agreed that any proposed Modification to the provisions of the License Agreement governing the amount or calculation of the Royalty or the procedures for payment of the Royalties shall be deemed, for purposes of this Section 5.6, to have such an effect). Subject to the foregoing, promptly, and in any event within five (5) Business Days, following receipt by the Seller of a fully executed Modification to the License Agreement, the Seller shall furnish a copy of such Modification to the Buyer.

Section 5.7 **Maintenance of License Agreement**. The Seller shall comply with and perform all of its obligations under the License Agreement that are material to the interests of the Buyer hereunder. [*].

Section 5.8 Enforcement of License Agreement.

(a) [*].

(b) [*].

(c) [*].

Section 5.9 Termination of License Agreement. The Seller shall not exercise any right to terminate the License Agreement, or agree with the Licensee to terminate the License Agreement, except with the prior written consent of the Buyer.

Section 5.10 Preservation of Rights; Approval of Assignments of License Agreement.

(a) The Seller shall not hereafter sell, transfer, hypothecate, delegate, assign or in any manner convey or mortgage, pledge or grant a security interest or other encumbrance of any kind in any of its rights, title or interest in and to, or duties under, all or any portion of the License Agreement without the prior written consent of the Buyer (such consent not to be unreasonably withheld or delayed); provided that no such consent shall be required in connection with any assignment, sale or transfer (in whole or in part) of, or the granting of Permitted Liens on, the Seller's right, title and interest in and to the Excluded Assets or the delegation of any of the Seller's duties with respect to the Excluded Assets so long as, in each case, such assignment, sale, transfer, granting of Permitted Liens or delegation would not reasonably be expected to result in a Seller Material Adverse Effect.

(b) Promptly (and in any event within five (5) Business Days) following receipt by the Seller of a written request from the Licensee for consent to assign the License Agreement (in whole or in part) pursuant to Section 12(f) of the License Agreement, the Seller shall provide notice thereof to the Buyer. The Seller and the Buyer shall consult with each other regarding whether to grant such consent. In any event, the Seller shall not grant or withhold such consent without the prior written consent of the Buyer (such consent of the Buyer not to be unreasonably withheld or delayed).

(c) Promptly (and in any event no later than five (5) Business Days) following the Seller's receipt of any fully executed assignment of the License Agreement by the Licensee or the Seller (other than any assignment, sale, transfer, granting of Permitted Liens or delegation that is described in the proviso to Section 5.10(a)), the Seller shall furnish a copy of such assignment to the Buyer.

Section 5.11 Efforts to Consummate Transactions. Subject to the terms and conditions of this Agreement, each of the Seller and the Buyer shall [*]. Each of the Buyer and the Seller agrees to execute and deliver such other documents (including the Specified Financing Statements, other financing statements and continuation statements in respect thereof), certificates, agreements and other writings and to take such other actions as may be reasonably necessary in order to consummate the transactions contemplated by this Agreement.

Section 5.12 Further Assurances. After the Closing, the Seller and the Buyer agree to execute and deliver such other documents (including all financing statements and continuation statements in respect thereof), certificates, agreements and other writings and to take such other actions as may be reasonably necessary in order to give effect to the transactions contemplated by this Agreement.

Section 5.13 Payment Instructions. Prior to the termination of this Agreement pursuant to Article 7, except as specifically contemplated by Section 2.9, the Seller shall not, without the Buyer's prior written consent, deliver any further directions to the Licensee regarding the payment of the Royalty of the type referred to in the Royalty Payment Instruction.

Section 5.14 [*].

Section 5.15 Buyer Consent Rights. [*].

ARTICLE 6

INDEMNIFICATION

Section 6.1 **General Indemnity**. Subject to Section 6.3, from and after the date hereof:

(a) The Seller hereby agrees to indemnify, defend and hold harmless the Buyer and its Affiliates and its and their directors, partners, managers, trustees, officers, agents and employees (the "***Buyer Indemnified Parties***") from, against and in respect of all Loss suffered or incurred by the Buyer Indemnified Parties to the extent arising out of or resulting from (i) any breach of any of the representations or warranties [*] (in each case, when made, including, without limitation, when made as of the date hereof and when made pursuant to the certificate delivered on the Closing Date pursuant to Section 4.1(b)) of the Seller provided in this Agreement, [*], or (iii) any breach of any of the covenants or agreements of the Seller in this Agreement or the Bill of Sale.

(b) The Buyer hereby agrees to indemnify, defend and hold harmless the Seller and its Affiliates and their directors, officers, agents and employees (the "***Seller Indemnified Parties***") from, against and in respect of all Loss suffered or incurred by the Seller Indemnified Parties to the extent arising out of or resulting from (i) any breach of any of the representations or warranties (in each case, when made, including, without limitation, when made pursuant to the certificate delivered on the Closing Date pursuant to Section 4.2(b)) of the Buyer provided in this Agreement or (ii) any breach of any of the covenants or agreements of the Buyer in this Agreement or the Bill of Sale.

Section 6.2 **Notice of Claims**. If either a Buyer Indemnified Party, on the one hand, or a Seller Indemnified Party, on the other hand (such Buyer Indemnified Party on the one hand and such Seller Indemnified Party on the other hand being hereinafter referred to as an "***Indemnified Party***"), has suffered or incurred any Loss for which indemnification may be sought under this Article 6, the Indemnified Party shall so notify the other party from whom indemnification is sought under this Article 6 (the "***Indemnifying Party***") promptly (and in any case within fourteen (14) calendar days after such Loss has been suffered or incurred by the Indemnified Party) in writing describing such Loss, the amount or estimated amount thereof, if known or reasonably capable of estimation, and the method of computation of such Loss, all with reasonable particularity and containing a reference to the provisions of this Agreement in respect of which such Loss shall have occurred; *provided*, *however*, that a failure to by an Indemnified Party to give timely notice of a Loss in a timely manner pursuant to this Section 6.2 shall not limit or otherwise affect the indemnification obligation of the Indemnifying Party under this Article 6, except to the extent such Indemnifying Party is actually prejudiced thereby. If any claim, action, suit or proceeding is asserted or instituted by the Licensee or a Third Party (a "***Third Party Claim***") with respect to which an Indemnified Party intends to claim any Loss under this Article 6, such Indemnified Party shall promptly (and in any case within five (5) calendar days after the Indemnified Party's receipt of notice of the commencement of such Third Party Claim) notify the Indemnifying Party of such claim, action, suit or proceeding. A failure by an Indemnified Party to give timely notice of a Third Party Claim in a timely manner pursuant to this Section 6.2 shall not limit or otherwise affect the indemnification obligation of the Indemnifying Party under this Article 6, except to the extent such Indemnifying Party is actually prejudiced thereby.

Section 6.3 **Limitations on Liability**. The indemnification provided for in this Article 6 shall be subject to the following limitations:

(a) The aggregate amount of all Loss for which Seller shall be liable hereunder pursuant to Section 6.1(a)(i) shall not exceed an amount equal to [*].

(b) For the avoidance of doubt, no party hereto shall be liable (including under Section 6.1) for any lost opportunity or any consequential, punitive, special or incidental damages (and no claim for indemnification hereunder in respect of such damages shall be asserted) as a result of any breach or violation of any covenant or agreement of such party (including under this Article 6) in or pursuant to this Agreement.

Section 6.4 **Third Party Claims**. Upon providing notice to an Indemnifying Party by an Indemnified Party pursuant to Section 6.2 of the commencement of any Third Party Claim with respect to which such Indemnified

Party intends to claim any Loss under this Article 6, such Indemnifying Party shall have the right to defend such claim, at such Indemnifying Party's expense and with counsel of its choice reasonably satisfactory to the Indemnified Party. If the Indemnifying Party assumes the defense of such claim, the Indemnified Party shall, at the request of the Indemnifying Party, use commercially reasonable efforts to cooperate in such defense; provided, that the Indemnifying Party shall bear the Indemnified Party's reasonable out-of-pocket costs and expenses incurred in connection with such cooperation. So long as the Indemnifying Party is conducting the defense of such claim as provided in this Section 6.4, the Indemnified Party may retain separate co-counsel at its expense and may participate in the defense of such claim. Neither the Indemnified Party nor the Indemnifying Party shall consent to the entry of any Judgment or enter into any settlement with respect to such claim without the prior written consent of the other; provided that the consent of the Indemnified Party shall not be required if such Judgment or settlement (a) provides for the payment by the Indemnifying Party of money as sole relief (if any) for the claimant (other than customary and reasonable confidentiality obligations relating to such claim, Judgment or settlement), (b) results in the full and general release of the Indemnified Party from all liabilities arising out of, relating to or in connection with such claim and (c) does not involve a finding or admission of any violation of any law, rule, regulation or Judgment, or the rights of any Person, and has no effect on any other claims that may be made against the Indemnified Party. Any party's assumption of the defense of any Third Party Claim can be made with a reservation of the right to contest the right of Indemnified Party to be indemnified with respect to such claim under this Agreement, and a party's consent to any settlement of a Third Party Claim shall not be used as evidence of the truth of the allegations in any Third Party Claim or the merits of such Third Party Claim. Furthermore, the existence of any Third Party Claim shall not create a presumption of any breach by a party to this Agreement of any of its representations, warranties or covenants set forth in this Agreement. The Indemnifying Party shall be liable for the reasonable out-of-pocket costs and expenses of counsel employed by the Indemnified Party in the defense of a Third Party Claim (which shall all be considered a Loss for purposes of this Agreement) for any period during which the Indemnifying Party has not assumed the defense thereof (other than during the period prior to the time the Indemnified Party shall have notified the Indemnifying Party of such Third Party Claim).

Section 6.5 **Exclusive Remedy**. Except as set forth in Section 9.13, the rights of the parties hereto pursuant to (and subject to the conditions of) this Article 6 shall be the sole and exclusive remedy of the parties hereto and their respective Affiliates with respect to any Loss (whether based in contract, tort or otherwise) resulting from or relating to any breach of the representations, warranties, covenants and agreements made under this Agreement or any certificate, document or instrument delivered hereunder, and each party hereto hereby waives, to the fullest extent permitted under applicable law, and agrees not to assert after Closing, any other claim or action in respect of any such breach. Notwithstanding the foregoing, claims for common law fraud shall not be waived or limited in any way by this Article 6.

Section 6.6 **Survival of Representations and Warranties**. For purposes of Section 6.1, the representations and warranties of each of Seller and Buyer in Article 3 shall survive the execution and delivery of this Agreement and shall continue to survive until [*]. No party hereto shall have any liability or obligation of any nature with respect to any representation or warranty after the expiration of the survival period applicable to such representation or warranty, unless the other party hereto shall have delivered a notice to such party claiming such a liability or obligation under Section 6.1 prior to such expiration.

ARTICLE 7

TERMINATION

Section 7.1 **Grounds for Termination**. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written agreement of the Buyer and the Seller;

(b) [*]; or

(c) by either the Buyer or the Seller upon notice in writing to the other party if the Closing shall not have been consummated on or before the Outside Date due to the failure to satisfy any of the conditions

precedent applicable to such party's obligations to consummate the transactions contemplated hereunder set forth in Article 4. For purposes of this Section 7.1, "***Outside Date***" means October 12, 2020; *provided*, *however*, that if requested by the Seller or the Buyer and agreed to in writing by the other party in such other party's sole discretion (exercised reasonably) on or before such aforementioned date, the Outside Date shall instead be November 11, 2020.

Section 7.2 **Automatic Termination**. Unless earlier terminated as provided in Section 7.1, this Agreement shall continue in full force and effect until sixty (60) days after such time as the Licensee (or any other applicable Third Party) is no longer obligated to make any payments of the Royalty, at which point this Agreement shall automatically terminate, except with respect to any rights, obligations or claims of either party hereto that shall have accrued prior to such termination.

Section 7.3 **Survival**. Notwithstanding anything to the contrary in this Article 7 (but subject to the provisions of the immediately succeeding sentence), the following provisions shall survive termination of this Agreement: Section 1.4 (True Sale), Section 5.1 (Disclosures), Article 6 (Indemnification), Section 7.3 (Survival), Article 8 (Confidentiality) and Article 9 (Miscellaneous). In the event of a termination of this Agreement pursuant to Section 7.1, this Agreement shall be of no further force or effect without liability of any party hereto to the other party hereto; provided that (x) the termination of this Agreement pursuant to Section 7.1 shall not relieve any party of liability (including, without limitation, indemnification obligations under Article 6) in respect of a breach of any representation and warranty [*], or any covenant or agreement, under this Agreement by any party on or prior to termination and (y) the provisions of Article 6 (Indemnification), Section 7.3 (Survival), Article 8 (Confidentiality) and Article 9 (Miscellaneous) shall survive.

ARTICLE 8

CONFIDENTIALITY

Section 8.1 **Confidentiality**. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the parties, the parties hereto agree that, for the term of the License Agreement and for ten (10) years thereafter, each party (the "***Receiving Party***") shall keep confidential and shall not publish or otherwise disclose or transfer and shall not use for any purpose other than as provided for in this Agreement (which includes the exercise of any rights or the performance of any obligations hereunder) any information furnished to it by or on behalf of the other party (the "***Disclosing Party***") directly relating to any Relevant Product or the transactions contemplated hereunder and delivered pursuant to this Agreement, including any and all information provided by the Licensee pursuant to the License Agreement (such information, "***Confidential Information***" of the Disclosing Party), except for that portion of such information that (which information shall not constitute "Confidential Information"):

(a) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party;

(b) became generally available to the public or otherwise part of the public domain after its disclosure, other than through any act or omission of the Receiving Party or its Representatives in breach of this Agreement;

(c) is independently developed by the Receiving Party or any of its Affiliates without the use of the Confidential Information;

(d) was disclosed to the Receiving Party, other than under an obligation of confidentiality by a Third Party who had no obligation to the Disclosing Party not to disclose such information to others; or

(e) is subsequently disclosed to the Receiving Party on a non-confidential basis by a Third Party without obligations of confidentiality with respect thereto.

Section 8.2 Authorized Disclosure. Either party may disclose Confidential Information to the extent such disclosure is reasonably necessary in the following situations:

(a) prosecuting or defending litigation;

(b) complying with applicable laws and regulations, including regulations promulgated by a global stock market or securities exchanges;

(c) complying with a valid order of a court of competent jurisdiction or other Governmental Entity;

(d) for regulatory, tax or customs purposes;

(e) for audit purposes, provided that each recipient of Confidential Information must be bound by customary obligations of confidentiality and non-use prior to any such disclosure;

(f) disclosure to its Affiliates and Representatives on a need-to-know basis, provided that each of such recipients of Confidential Information must be bound by customary obligations of confidentiality and non-use prior to any such disclosure;

(g) upon the prior written consent of the Disclosing Party; or

(h) disclosure to actual and potential licensees, acquirors, investors and other sources of funding, including underwriters, debt financing or co-investors, and their respective accountants, financial advisors and other professional representatives ("***Financial Advisors***"), provided, that (in the case of potential licensees, acquirors, investors and other sources of funding) such disclosure shall be made only to the extent customarily required to consummate such investment or financing transaction and that each recipient of Confidential Information must be bound by customary obligations of confidentiality and non-use prior to any such disclosure;

provided that, in the event the Receiving Party is required to make a disclosure of the Disclosing Party's Confidential Information pursuant to Section 8.2(a), (b), (c) or (d), it will, except where impracticable, give reasonable advance written notice to the Disclosing Party of such disclosure and use reasonable efforts to secure confidential treatment of such information. In any event, the Buyer shall not file or assist any Third Party in filing any patent application based upon or using the Confidential Information of the Seller provided hereunder. Notwithstanding any other provision hereunder, the Receiving Party shall be liable to the Disclosing Party for any breach by its Affiliate and Representatives in the case of any disclosure made by a Receiving Party under Section 8.2(f) and any of its Financial Advisors in the case of any disclosure made by a Receiving Party under Section 8.2(h), if any such Person violates the terms of its confidentiality obligation or any of the terms set forth in this Agreement as if such Person was a party hereto. Notwithstanding the foregoing, neither party hereto shall be restricted from disclosing the Purchase Price and the amount and nature of the Royalty in such party's periodic reports and financial statements or disclosing the terms of the transactions contemplated by this Agreement in accordance with Section 5.1.

The Buyer hereby acknowledges that the Seller may from time to time provide the Buyer with information that may constitute material non-public information with respect to itself and the Licensee. Seller makes no representation or warranty and assumes no duty to inform Buyer whether any information delivered to Buyer pursuant to this Agreement constitutes material non-public information. The Buyer hereby agrees that it shall not, and shall cause its Representatives and Affiliates to not, trade any securities of the Seller or the Licensee while in possession of any information received by it from the Seller pursuant to this Agreement in violation of securities laws.

[*].

ARTICLE 9

MISCELLANEOUS

Section 9.1 **Definitions**. As used in this Agreement, the following terms shall have the following meanings:

"***Affiliate***" means, with respect to any Person, any other Person, directly or indirectly, controlling, controlled by or under common control with such Person. For purposes of this definition, the term "control" (including the correlative terms "controlling," "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For clarity, the Buyer shall not be considered an Affiliate of the Seller for the purpose of this Agreement.

"***Agreement***" is defined in the preamble.

"***Bankruptcy Laws***" means, collectively, in any jurisdiction, bankruptcy, insolvency, examinership, reorganization, moratorium, fraudulent conveyance, fraudulent transfer or other similar laws affecting the enforcement of creditors' rights generally.

"***Bill of Sale***" is defined in Section 2.4.

"***Business Day***" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions located in New York, USA [*] are permitted or required by applicable law or regulation to remain closed.

"***Buyer***" is defined in the preamble.

"***Buyer Indemnified Parties***" is defined in Section 6.1(a).

"***Buyer Material Adverse Effect***" means [*].

"***Closing***" means the closing of the sale, transfer and conveyance of the Royalty hereunder.

"***Closing Date***" is defined in Section 2.1.

"***Collaboration Agreement***" means that certain License and Collaboration Agreement, dated as of the date hereof, between Ji Xing and the Seller.

"***Confidential Information***" is defined in Section 8.1.

"***Disclosing Party***" is defined in Section 8.1.

"***Excluded Assets***" means collectively:

(a) any and all amounts payable by the Licensee pursuant to [*] of the License Agreement with respect to Net Sales of any Product (as defined in the License Agreement), except with respect to Net Sales of the Relevant Products;

(b) any and all milestone payments payable by the Licensee pursuant to [*] of the License Agreement; and

(c) any and all other rights of the Seller under or in respect of the License Agreement (other than (i) the Royalty, and (ii) Proceeds payable to the Seller in respect of any unpaid Royalty or to which the Buyer is otherwise entitled pursuant to Section 5.8(c)).

"***Financial Advisors***" is defined in Section 8.2.

"***Fundamental Representations***" means [*].

"***Funding Agreement***" means that certain Funding Agreement dated as of the date hereof between the Buyer and the Seller.

"***GAAP***" means generally accepted accounting principles in the United States in effect from time to time.

"***Governmental Entity***" means any: (a) nation, principality, republic, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or other entity and any court, arbitrator or other tribunal); (d) multi-national organization or body; or (e) individual, body or other entity exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

"***Indemnified Party***" is defined in Section 6.2.

"***Indemnifying Party***" is defined in Section 6.2.

"***Ji Xing***" means Ji Xing Pharmaceuticals Limited, a limited liability company organized and existing under the laws of Cayman Islands.

"***Judgment***" means any judgment, order, writ, injunction, citation, award or decree of any nature.

"***Knowledge of the Seller***" means the [*].

"***Lender***" is defined in the definition of Loan Agreement.

"***License Agreement***" means that certain Research Collaboration Agreement by and between the Licensee and the Seller dated August 24, 2012, as amended by that certain Amendment No. 1 to Research Collaboration Agreement effective as of July 8, 2013 and as may be further amended, restated, supplemented or otherwise modified from time to time [*].

"***Licensee***" means MyoKardia, Inc., a Delaware corporation.

"***Licensee Proprietary Information***" means Proprietary Information (as defined in the License Agreement) of the Licensee.

"***Lien***" means any mortgage, lien, pledge, charge, adverse claim, security interest, encumbrance or restriction of any kind, in each case to secure payment of a debt or performance of an obligation.

"***Loan Agreement***" means that certain Loan and Security Agreement, dated as of May 17, 2019, by and among Oxford Finance, LLC, as collateral agent and as lender thereunder, Silicon Valley Bank, as lender thereunder, the other lenders party thereto from time to time (collectively and individually, "***Lender***") and the Seller, as amended by the First Amendment to Loan and Security Agreement dated as of November 6, 2019 and the Second Amendment to Loan and Security Agreement dated as of November 7, 2019, and as may be further amended, restated, supplemented or otherwise modified from time to time.

"***Loss***" means any and all Judgments, damages, losses, claims, costs, liabilities and expenses, including reasonable fees and out-of-pocket expenses of counsel.

"***Mavacamten***" means [*].

"***Marketing Approval***" means with respect to Mavacamten in any regulatory jurisdiction, approval from the applicable regulatory authority sufficient for the promotion and sale of Mavacamten in such jurisdiction in accordance with applicable law, including, without limitation, a U.S. New Drug Application.

"***Modification***" is defined in Section 5.6.

"***Net Sales***" shall have the meaning assigned such term in [*] of the License Agreement.

"***Permitted Liens***" means (a) Liens for taxes not yet delinquent or Liens for taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been established; (b) statutory Liens such as claims or Liens in respect of property or assets imposed by law which were incurred in the ordinary course of business, such as supplier's, carriers', warehousemen's, distributors', wholesaler's, materialmen's and mechanic's Liens and other similar Liens arising in the ordinary course of business; (c) Liens granted by the Seller to secure financing obligations (including the financing obligations under the Loan Agreement); and (d) banker's liens for collection or rights of set off or similar rights and remedies as to deposit accounts or other funds maintained with depositary institutions.

"***Person***" means any individual, firm, corporation, company, partnership, limited liability company, trust, joint venture, association, estate, trust, Governmental Entity or other entity, enterprise, association or organization.

"***Press Release***" means one or more press releases describing this Agreement and the other Transaction Agreements and the transactions contemplated by this Agreement and the other Transaction Agreements issued individually by the Buyer and/or the Seller in a form reasonably satisfactory to the other party.

[*].

"***Proceeds***" means any amounts actually recovered by the Seller as a result of any settlement or resolution of any actions, suits, proceedings, claims or disputes contemplated by Section 5.8(a).

"***Purchase Price***" is defined in Section 1.2.

"***Relevant Products***" means [*]

"***Representative***" means, with respect to any Person, (a) any direct or indirect stockholder, member or partner of such Person and (b) any manager, director, officer, employee, agent, advisor or other representative (including attorneys, accountants, consultants, bankers, financial advisors and actual and potential lenders and investors) of such Person.

"***Royalty***" means all amounts payable by the Licensee pursuant to [*] of the License Agreement with respect to Net Sales of Relevant Products.

"***Royalty Payment Instruction***" means the irrevocable direction to the Licensee under the License Agreement in form and substance satisfactory to the Buyer [*].

"***Royalty Reduction***" is defined in Section 3.1(h)(ix).

"***Royalty Reports***" means the quarterly reports deliverable by the Licensee pursuant to [*] of the License Agreement in respect of Net Sales of Relevant Products.

"***SEC***" means the Securities and Exchange Commission.

"***Seller***" is defined in the preamble.

"***Seller Indemnified Parties***" is defined in Section 6.1(b).

"***Seller Material Adverse Effect***" means [*].

"***Specified Financing Statements***" is defined in Section 1.4.

"***Stock Purchase Agreements***" means those certain Common Stock Purchase Agreements, dated as of the date hereof, between the Seller and each of RTW Master Fund, Ltd., RTW Innovation Master Fund, Ltd. and RTW Venture Fund Limited.

"***Third Party***" means any Person other than the parties hereto (or an Affiliate of such parties).

"***Third Party Claim***" is defined in Section 6.2.

"***Transaction Agreements***" means the Collaboration Agreement, the Funding Agreement and Stock Purchase Agreements.

"***UCC***" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

Section 9.2 Certain Interpretations. Except where expressly stated otherwise in this Agreement, the following rules of interpretation apply to this Agreement:

(a) "either" and "or" are not exclusive and "include," "includes" and "including" are not limiting and shall be deemed to be followed by the words "without limitation;"

(b) "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase does not mean simply "if;"

(c) "hereof," "hereto," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) references to a Person are also to its permitted successors and assigns;

(e) definitions are applicable to the singular as well as the plural forms of such terms;

(f) unless otherwise indicated, references to an "***Article***", "***Section***", "***Schedule***" or "***Exhibit***" refer to an Article or Section of, or a Schedule or Exhibit to, this Agreement;

(g) references to "$" or otherwise to dollar amounts refer to the lawful currency of the United States;

(h) references to a contract, license, indenture, instrument or agreement mean such contract, license, indenture, instrument or agreement as from time to time amended, modified or supplemented, in each case to the extent not prohibited thereby or by this Agreement;

(i) references to an agreement or other document include references to any annexes, exhibits and schedules attached thereto; and

(j) references to a law include any amendment or modification to such law and any rules and regulations issued thereunder, whether such amendment or modification is made, or issuance of such rules and regulations occurs, before or after the date of this Agreement.

Section 9.3 Headings. The table of contents and the descriptive headings of the several Articles and Sections of this Agreement and any Exhibits and Schedules are for convenience only, do not constitute a part of this Agreement and shall not control or affect, in any way, the meaning or interpretation of this Agreement.

Section 9.4 **Notices**. All notices and other communications under this Agreement shall be in writing and shall be by email with PDF attachment, facsimile, courier service or personal delivery to the following addresses, or to such other addresses as shall be designated from time to time by a party hereto in accordance with this Section 9.4:

If to the Seller, to it at:

Cytokinetics, Incorporated
280 East Grand Avenue
South San Francisco, CA 94080
Attn: General Counsel
Telephone: 650-624-3000
Facsimile: 650-624-3010
Email: mschlossberg@cytokinetics.com

with a copy to:

Cooley LLP
101 California Street,
San Francisco, CA 94111
Attention: Gian-Michele a Marca
Telephone: 415-693-2000
Facsimile: 415-693-2222
Email: gmamarca@cooley.com

If to the Buyer, to it at:

[*]

All notices and communications under this Agreement shall be deemed to have been duly given (i) when delivered by hand, if personally delivered, (ii) when received by a recipient, if sent by email, (iii) when sent, if sent by facsimile, with an acknowledgement of sending being produced by the sending facsimile machine or (iv) one (1) Business Day following sending within the United States by overnight delivery via commercial one-day overnight courier service.

Section 9.5 **Expenses**. Except as otherwise provided herein, all fees, costs and expenses (including any legal, accounting and banking fees) incurred in connection with the preparation, negotiation, execution and delivery of this Agreement and to consummate the transactions contemplated hereby shall be paid by the party hereto incurring such fees, costs and expenses.

Section 9.6 **Assignment**.

(a) The Seller shall not sell, convey, assign, dispose, pledge, hypothecate or otherwise transfer all or any portion of its interest in this Agreement to any Third Party or the Licensee by operation of law, merger, change of control, or otherwise without the prior written consent of the Buyer (provided that such consent shall not be unreasonably withheld, conditioned or delayed), unless in connection therewith, if such Person acquires all of the Seller's interest in the License Agreement (in compliance with Section 5.10 hereof) and this Agreement, prior to closing any such transaction, the Seller causes such Person to deliver a writing to the Buyer in which (i) if such Person is not the Licensee, such Person assumes all of the obligations of the Seller to the Buyer under this Agreement, and (ii) if such Person is the Licensee, the Licensee assumes all of the obligations of the Seller to the Buyer hereunder and agrees to pay the Royalty directly to the Buyer notwithstanding any subsequent termination of the License Agreement by the Licensee.

(b) The Buyer shall not sell, convey, assign, dispose, pledge, hypothecate or otherwise transfer any portion of this Agreement or any rights to the Royalty to any Person [*]

(c) Subject to the foregoing Sections 9.6(a) and 9.6(b), this Agreement shall be binding upon, inure to the benefit of and be enforceable by, the parties hereto and their respective permitted successors and assigns. Any purported sale, conveyance, assignment, disposition, pledge, hypothecation or transfer in violation of Section 9.6(a) or Section 9.6(b) shall be null and void.

Section 9.7 Amendment and Waiver.

(a) This Agreement may be amended, modified or supplemented only in a writing signed by each of the parties hereto. Any provision of this Agreement may be waived only in a writing signed by the party hereto granting such waiver.

(b) No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No course of dealing between the parties hereto shall be effective to amend, modify, supplement or waive any provision of this Agreement.

Section 9.8 Entire Agreement. This Agreement and any Schedules and Exhibits annexed hereto constitute the entire understanding between the parties hereto with respect to the subject matter hereof and supersede all other understandings and negotiations with respect thereto.

Section 9.9 No Third Party Beneficiaries. This Agreement is for the sole benefit of the Seller and the Buyer and their permitted successors and assigns and nothing herein expressed or implied shall give or be construed to give to any Person, other than the parties hereto and such successors and assigns, any legal or equitable rights hereunder.

Section 9.10 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

Section 9.11 JURISDICTION; VENUE.

(a) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS RESPECTIVE PROPERTY AND ASSETS, TO THE EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE COURT OR FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN NEW YORK COUNTY, NEW YORK, AND ANY APPELLATE COURT THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, AND THE BUYER AND THE SELLER HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREE THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. THE BUYER AND THE SELLER HEREBY AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE LAW. EACH OF THE BUYER AND THE SELLER HEREBY SUBMITS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF SUCH NEW YORK STATE AND FEDERAL COURTS. THE BUYER AND THE SELLER AGREE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THAT PROCESS MAY BE SERVED ON THE BUYER OR THE SELLER IN THE SAME MANNER THAT NOTICES MAY BE GIVEN PURSUANT TO SECTION 9.4 HEREOF.

(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY NEW YORK STATE OR FEDERAL COURT. EACH OF THE BUYER AND THE SELLER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN

INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 9.12 **Severability**. If any term or provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any situation in any jurisdiction, then, to the extent that the economic and legal substance of the transactions contemplated hereby is not affected in a manner that is materially adverse to either party hereto, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect and the enforceability and validity of the offending term or provision shall not be affected in any other situation or jurisdiction.

Section 9.13 **Specific Performance**. Each of the parties acknowledges and agrees that the other party may be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the parties agrees that, without posting bond or other undertaking, the other party will be entitled to seek an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to seek to enforce specifically this Agreement and the terms and provisions hereof in any action, suit or other proceeding instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter in addition to any other remedy to which it may be entitled, at law or in equity.

Section 9.14 **Relationship of Parties**. The relationship between the Buyer and the Seller is solely that of purchaser and seller, and neither the Buyer nor the Seller has any fiduciary or other special relationship with the other party or any of its Affiliates. This Agreement is not a partnership or similar agreement, and nothing contained herein shall be deemed to constitute the Buyer and the Seller as a partnership, an association, a joint venture or any other kind of entity or legal form for any purposes, including any tax purposes. The Buyer and the Seller agree that they shall not take any inconsistent position with respect to such treatment in a filing with any Governmental Entity.

Section 9.15 **Counterparts**. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Copies of executed counterparts transmitted by telecopy, facsimile or other similar means of electronic transmission, including "PDF," shall be considered original executed counterparts, provided receipt of such counterparts is confirmed.

Section 9.16 **[***]

(a) [*]

(b) [*]

(c) [*]

(d) [*]

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Royalty Purchase Agreement to be executed and delivered by their respective representatives thereunto duly authorized as of the date first above written.

SELLER:

CYTOKINETICS, INCORPORATED

By: /s/ Robert I. Blum
Name: Robert I. Blum
Title: President & CEO

BUYER:

Dolya Holdco 19 Designated Activity Company (in the process of changing its name to **RTW Royalty Holdings Designated Activity Company**)

By: /s/ Roderick Wong
Name: Roderick Wong, M.D.
Title: Authorized Attorney

[Signature Page to Royalty Purchase Agreement]

[*] = CERTAIN INFORMATION IN THIS DOCUMENT HAS BEEN EXCLUDED PURSUANT TO REGULATION S-K, ITEM 601(B)(10). SUCH EXCLUDED INFORMATION IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED.

CYTOKINETICS, INCORPORATED

COMMON STOCK PURCHASE AGREEMENT

THIS COMMON STOCK PURCHASE AGREEMENT (the "**Agreement**") is made as of July 14, 2020 (the "**Closing Date**") by and between Cytokinetics, Incorporated, a Delaware corporation (the "**Company**"), and [•], with a business address located at [•] (the "**Investor**").

RECITALS

WHEREAS, the Company and certain Affiliates (as defined below) of the Investor have entered into the License and Collaboration Agreement, the Royalty Purchase Agreement and the Funding Agreement (together, the "**Transaction Agreements**"), each of even date herewith;

WHEREAS, the Company desires to sell to the Investor, and the Investor desires to purchase from the Company, shares of the Company's common stock, par value $0.001 per share (the "**Common Stock**");

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1

Purchase and Sale of Shares

1.1 ***Sale of Shares***. Subject to the terms and conditions hereof, the Company will issue and sell to the Investor, and the Investor will purchase from the Company, at the Closing, [•] shares of common stock of the Company (hereafter referred to as the "**Shares**") in consideration of a cash payment of [•] ($[•]) (the "**Aggregate Purchase Price**").

1.2 ***Closing***. The purchase and sale of the Shares shall take place at a closing (the "**Closing**") to be held at the offices of Cooley LLP, 3175 Hanover Street, Palo Alto, California 94304-1130, on the Closing Date. At the Closing, the Company will deliver or cause to be delivered to the Investor in book entry form a certificate or certificates representing the Shares that the Investor is purchasing and, concurrently, the Investor shall pay the Aggregate Purchase Price by (a) check payable to the Company, (b) wire transfer in accordance with the Company's instructions, or (c) any combination of the foregoing.

1.3 ***Tax Treatment***. For U.S. federal income and other applicable tax purposes, the Investor and the Company agree to treat the issuance and sale of the Shares by the Company, and the

purchase of the Shares by the Investor, in accordance with the terms hereof as separate and independent from any transactions entered into by the Company and the Investor or its Affiliates, other than those contemplated by this Agreement, and to report the transactions contemplated by this Agreement on U.S. federal income tax and other applicable tax returns in accordance with this Section 1.3 unless otherwise required by applicable law.

SECTION 2

Representations and Warranties of the Company

Except as set forth on the Schedule of Exceptions attached hereto as Schedule B, the Company hereby represents and warrants the following as of the Closing Date:

2.1 ***Organization and Good Standing and Qualifications***. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease, operate and occupy its properties and to carry on its business as now being conducted. Except as set forth in the Commission Documents (as defined below), the Company does not own more than 50% of the outstanding capital stock of or control any other business entity. The Company is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the business conducted or property owned or leased by it makes such qualification necessary, other than those in which the failure so to qualify or be in good standing would not have a Material Adverse Effect. For purposes of this Agreement, "**Material Adverse Effect**" shall mean any event or condition that would reasonably be likely to have a material adverse effect on the business, operations, properties or financial condition of the Company and its consolidated subsidiaries, taken as a whole; provided, that none of the following shall constitute a "Material Adverse Effect": the effects of conditions or events that are generally applicable to the capital, financial, banking or currency markets and the biotechnology industry, and changes in the market price of the Common Stock.

2.2 ***Authorization***. (i) The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement; (ii) the execution and delivery of this Agreement by the Company, the consummation by the Company of the transactions contemplated hereby and thereby and the issuance, sale and delivery of the Shares have been duly authorized by all necessary corporate action and no further consent or authorization of the Company or its Board of Directors or stockholders is required; and (iii) this Agreement has been duly executed and delivered and constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, securities, insolvency, or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies, or indemnification or by other equitable principles of general application.

2.3 ***Valid Issuance of Shares***. The issuance of the Shares has been duly authorized by all requisite corporate action. When the Shares are issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, the Shares will be duly and validly issued and outstanding, fully paid, and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under this Agreement and under applicable state and federal securities laws and, except as otherwise set forth herein, the Investor shall be entitled to all rights accorded to a holder of shares of Common Stock. The Company has reserved a sufficient number of shares of Common Stock for issuance to the Investor in accordance with the Company's obligations under this Agreement.

2.4 ***No Conflict***. The execution, delivery and performance of this Agreement, and any other document or instrument contemplated hereby, by the Company and the consummation by the Company of the transactions contemplated hereby, do not: (i) violate any provision of the Certificate or Bylaws, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, mortgage, deed of trust, indenture, note, bond, license, lease agreement, instrument or obligation to which the Company is a party where such default or conflict would constitute a Material Adverse Effect, (iii) create or impose a lien, charge or encumbrance on any property of the Company under any agreement or any commitment to which the Company is a party or by which the Company is bound, which would constitute a Material Adverse Effect, (iv) result in a violation of any federal, state, local or foreign statute, rule, regulation, order, writ, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or any of its subsidiaries or by which any property or asset of the Company are bound or affected where such violation would constitute a Material Adverse Effect, or (v) require any consent of any third party that has not been obtained pursuant to any material contract to which the Company is subject or to which any of its assets, operations or management may be subject where the failure to obtain any such consent would constitute a Material Adverse Effect. The Company is not required under federal, state or local law, rule or regulation to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its

obligations under this Agreement or issue and sell the Shares in accordance with the terms hereof (other than any filings that may be required to be made by the Company with the Securities and Exchange Commission (the "**Commission**"), Financial Industry Regulatory Authority, The Nasdaq Stock Market LLC or state securities commissions subsequent to the Closing); provided that, for purposes of the representation made in this sentence, the Company is assuming and relying upon the accuracy of the relevant representations and agreements of the Investor herein.

2.5 ***Compliance***. The Company is not, and the execution and delivery of this Agreement and the consummation of the transactions contemplated herewith will not cause the Company to be, (i) in material violation or default of any provision of any instrument, mortgage, deed of trust, loan, contract, or commitment filed with the Commission Documents, (ii) in violation of any provision of any judgment, decree, order or obligation to which it is a party or by which it or any of its properties or assets are bound, or (iii) in violation of any federal, state or, to its knowledge, local statute, rule or governmental regulation, in the case of each of clauses (ii) and (iii), which would have a Material Adverse Effect.

2.6 ***Capitalization***. As of March 31, 2020 (the "**Reference Date**"), a total of 59,458,852 shares of Common Stock were issued and outstanding, increased as set forth in the next sentence. Other than in the ordinary course of business, the Company has not issued any capital stock since the Reference Date other than pursuant to (i) employee benefit plans disclosed in the Commission Documents, (ii) grants to directors, officers and employees in the ordinary course and consistent with past practice or as otherwise disclosed in the Commission Documents (including any Form 4 filings by the relevant grantee) and (iii) outstanding warrants, options or other securities disclosed in the Commission Documents. The outstanding shares of capital stock of the Company have been duly and validly issued and are fully paid and nonassessable, were not issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities, and in material compliance with all federal and state securities laws. Except as set forth in the Commission Documents, there are no outstanding rights (including, without limitation, preemptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any unissued shares of capital stock or other equity interest in the Company, or any contract, commitment, agreement, understanding or arrangement of any kind to which the Company is a party and relating to the issuance or sale of any capital stock of the Company, any such convertible or exchangeable securities or any such rights, warrants or options. Without limiting the foregoing, no preemptive right, co-sale right, right of first refusal, registration right, or other similar right exists with respect to the Shares or the issuance and sale thereof. Except as disclosed in the Commission Documents, there are no shareholder agreements, voting agreements or other similar agreements with respect to the voting of the Shares to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's shareholders.

2.7 ***Commission Documents, Financial Statements***. The Company's Common Stock is registered pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and during the past twelve (12) months the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the Commission pursuant to the reporting requirements of the Exchange Act, including material filed pursuant to Section 13(a) or 15(d) of the Exchange Act (all of the foregoing, including filings incorporated by reference therein, being referred to herein as the "**Commission Documents**"). The Company's Common Stock is currently listed or quoted on the Nasdaq Global Select Market. The Company is not in violation of the listing requirements of the Nasdaq Global Select Market and has no knowledge of any facts that would reasonably lead to delisting or suspension of its common stock from The Nasdaq Stock Market LLC in the foreseeable future. Each Commission Document filed within the past twelve (12) months complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission promulgated thereunder applicable to such document, and, as of its date, after giving effect to the information disclosed and incorporated by reference therein, no such Commission Document filed within the past twelve (12) months contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of their respective dates, to the Company's knowledge, the financial statements of the Company included in the Commission Documents filed with the Commission during the past twelve months complied as to form and substance in all material respects with applicable accounting requirements and the published rules and regulations of the Commission or other applicable rules and regulations with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles ("**GAAP**") applied on a consistent basis during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes or may be condensed or summary statements), and fairly present in all material respects the financial position of the Company as of the dates thereof and the

results of operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

2.8 ***Internal Controls and Procedures.*** The Company maintains disclosure controls and procedures as such terms are defined in, and required by, Rule 13a-15 and Rule 15d-15 under the Exchange Act. Such disclosure controls and procedures are effective as of the latest date of management's evaluation of such disclosure controls and procedures as set forth in the Commission Documents to ensure that all material information required to be disclosed by the Company in the reports that it files or furnishes under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Commission. The Company maintains a system of internal controls over financial reporting sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; and (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP.

2.9 ***No Undisclosed Liabilities***. To the Company's knowledge, neither the Company nor any of its subsidiaries has any liabilities, obligations, claims or losses (whether liquidated or unliquidated, secured or unsecured, absolute, accrued, contingent or otherwise) that would be required to be disclosed on a balance sheet of the Company or any of its subsidiaries (including the notes thereto) in conformity with GAAP and are not disclosed in the Commission Documents, other than those incurred in the ordinary course of the Company's business since March 31, 2020 or which, individually or in the aggregate, do not or would not have a Material Adverse Effect on the Company.

2.10 ***No Undisclosed Events or Circumstances***. Except for the transactions contemplated by this Agreement and the other Transaction Agreements, no event or circumstance has occurred or exists with respect to the Company, its subsidiaries, or their respective businesses, properties, operations or financial condition, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed and which, individually or in the aggregate, would have a Material Adverse Effect on the Company.

2.11 ***Actions Pending***. There is no action, suit, claim, investigation or proceeding pending or, to the knowledge of the Company, threatened against the Company or any subsidiary which questions the validity of this Agreement or the transactions contemplated hereby or any action taken or to be taken pursuant hereto. Except as set forth in the Commission Documents or as previously disclosed in writing to the Investor, there is no action, suit, claim, investigation or proceeding pending or, to the knowledge of the Company, threatened, against or involving the Company, any subsidiary, or any of their respective properties or assets that could be reasonably expected to have a Material Adverse Effect on the Company. Except as set forth in the Commission Documents or as previously disclosed to the Investor in writing, no judgment, order, writ, injunction or decree or award has been issued by or, to the knowledge of the Company, requested of any court, arbitrator or governmental agency which could be reasonably expected to result in a Material Adverse Effect.

2.12 ***Compliance with Law***. The businesses of the Company and its subsidiaries have been and are presently being conducted in accordance with all applicable federal, state and local governmental laws, rules, regulations and ordinances, except as set forth in the Commission Documents or such that would not reasonably be expected to cause a Material Adverse Effect. Except as set forth in the Commission Documents, the Company and each of its subsidiaries have all franchises, permits, licenses, consents and other governmental or regulatory authorizations and approvals necessary for the conduct of its business as now being conducted by it, except for such franchises, permits, licenses, consents and other governmental or regulatory authorizations and approvals, the failure to possess which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

2.13 ***Exemption from Registration, Valid Issuance***. Subject to, and in reliance on, the representations, warranties and covenants made herein by the Investor, the issuance and sale of the Shares in accordance with the terms and on the bases of the representations and warranties set forth in this Agreement, may and shall be properly issued pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "**Securities Act**"), Regulation D promulgated pursuant to the Act ("**Regulation D**") and/or any other applicable federal and state securities laws. The sale and issuance of the Shares pursuant to, and the Company's performance of its obligations under, this Agreement will not (i) result in the creation or imposition of any liens, charges, claims or other encumbrances upon the Shares or any of the assets of the Company, or (ii) entitle the holders of any outstanding shares of capital stock of the Company to preemptive or other rights to subscribe to or acquire the Shares or other securities of the Company.

2.14 ***Transfer Taxes***. All stock transfer or other taxes (other than income taxes) which are required to be paid in connection with the sale and transfer of the Shares to be sold to Investor hereunder will be, or will have been, fully paid or provided for by the Company and all laws imposing such taxes will be or will have been fully complied with.

2.15 ***Investment Company***. The Company is not and, after giving effect to the offering and sale of the Shares, will not be an "investment company" as defined in the Investment Company Act of 1940, as amended.

2.16 ***Brokers***. Except as expressly set forth in this Agreement or the other Transaction Agreements, no brokers, finders or financial advisory fees or commissions will be payable by the Company or any of its subsidiaries in respect of the transactions contemplated by this Agreement or the other Transaction Agreements.

SECTION 3

Representations and Warranties of the Investor

The Investor hereby represents and warrants the following as of the Closing Date:

3.1 ***Experience***. The Investor is experienced in evaluating companies such as the Company, has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of the Investor's prospective investment in the Company, and has the ability to bear the economic risks of the investment.

3.2 ***Investment***. The Investor is acquiring the Shares for investment for the Investor's own account and not with the view to, or for resale in connection with, any distribution thereof. The Investor understands that the Shares have not been and will not be registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent as expressed herein. The Investor acknowledges and agrees that the Shares purchased by the Investor, until disposition of such Shares in accordance with the provisions of this Agreement, shall remain at all times within the Investor's control. The Investor further represents that it does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participation to any third person with respect to any of the Shares.

3.3 ***Rule 144***. The Investor acknowledges that the Shares must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available. The Investor is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions. In connection therewith, the Investor acknowledges that the Company will make a notation on its stock books regarding the restrictions on transfers set forth in this Section 3 and will transfer the Shares on the books of the Company only to the extent not inconsistent therewith.

3.4 ***Access to Information***. The Investor has received and reviewed information about the Company and has had an opportunity to discuss the Company's business, management and financial affairs with its management and to review the Company's facilities. The Investor has had a full opportunity to ask questions of and receive answers from the Company, or any person or persons acting on behalf of the Company, concerning the terms and conditions of an investment in the Shares. The Investor is not relying upon, and has not relied upon, any statement, representation or warranty made by any person, except for the statements, representations and warranties contained in this Agreement and the other Transaction Agreements.

3.5 ***Authorization***. This Agreement when executed and delivered by the Investor will constitute a valid and legally binding obligation of the Investor, enforceable in accordance with its terms, subject to: (i) judicial principles respecting election of remedies or limiting the availability of specific performance, injunctive relief, and other equitable remedies; and (ii) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect generally relating to or affecting creditors' rights.

3.6 ***Investor Status***. The Investor acknowledges that it is either (i) an institutional "accredited investor" as defined in Rule 501(a) of Regulation D of the Securities Act (an "**Institutional Accredited Investor**") or (ii) a "qualified institutional buyer" as defined in Rule 144A of the Securities Act, as indicated on Schedule A hereto, and the Investor shall submit to the Company such further assurances of such status as may be reasonably requested by the Company.

3.7 ***No Inducement***. The Investor was not induced to participate in the offer and sale of the Shares by the filing of any registration statement in connection with any public offering of the Company's securities, and the Investor's decision to purchase the Shares hereunder was not influenced by the information contained in any such registration statement.

SECTION 4

Conditions to Investor's Obligations at Closing

The obligations of the Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions, any of which may be waived in writing by the Investor (except to the extent not permitted by law):

4.1 ***No Injunction, etc***. No preliminary or permanent injunction or other binding order, decree or ruling issued by a court or governmental agency shall be in effect which shall have the effect of preventing the consummation of the transactions contemplated by this Agreement. No action or claim shall be pending before any court or quasi-judicial or administrative agency of any federal, state, local or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling or charge would be reasonably likely to (i) prevent consummation of any of the transactions contemplated by this Agreement, (ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation or (iii) have the effect of making illegal the purchase of, or payment for, any of the Shares by the Investor.

4.2 ***Representations and Warranties***. The representations and warranties of the Company contained in Section 2 shall have been true and correct in all material respects (except for such representations and warranties that are qualified by materiality which shall be true and correct in all respects) on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date.

4.3 ***Performance***. The Company shall have performed and complied with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing Date.

4.4 ***Compliance Certificate***. A duly authorized officer of the Company shall deliver to the Investor at the Closing a certificate stating that the conditions specified in Sections 4.2 and 4.3 have been fulfilled and certifying and attaching the Company's Certificate of Incorporation, Bylaws and authorizing Board of Directors resolutions with respect to this Agreement, the other Transaction Agreements and the transactions contemplated hereby and thereby.

4.5 ***Securities Laws***. The offer and sale of the Shares to the Investor pursuant to this Agreement shall be exempt from the registration requirements of the Securities Act and the registration and/or qualification requirements of all applicable state securities laws.

4.6 ***Transaction Agreements.*** The Company shall have delivered to the Investor the duly executed Transaction Agreements.

4.7 ***Authorizations***. All authorizations, approvals or permits, if any, of any governmental authority or regulatory body that are required in connection with the lawful issuance and sale of the Shares pursuant to this Agreement shall have been duly obtained and shall be effective on and as of the Closing.

SECTION 5

Conditions to the Company's Obligations at Closing

The obligations of the Company to the Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions by the Investor:

5.1 ***Representations and Warranties***. The representations and warranties of the Investor contained in Section 3 shall be true and correct in all material respects (except for such representations and warranties that are qualified by materiality which shall be true and correct in all respects) on and as of the Closing with the same effect as though such representations and warranties had been made on and as of the Closing.

5.2 ***Securities Law Compliance***. The offer and sale of the Shares to the Investor pursuant to this Agreement shall be exempt from the registration requirements of the Securities Act and the registration and/or qualification requirements of all applicable state securities laws.

5.3 ***Transaction Agreements.*** The Investor shall have delivered to the Company the duly executed Transaction Agreements.

5.4 ***Authorization***. All authorizations, approvals or permits, if any, of any governmental authority or regulatory body that are required in connection with the lawful issuance and sale of the Shares pursuant to this Agreement shall have been duly obtained and shall be effective on and as of the Closing.

SECTION 6

Investor Covenants

6.1 ***Trading Restrictions***.

(a) Definitions.

(i) "**Active Ingredient**" means any clinically active material that provides pharmacological activity in any pharmaceutical product (excluding formulation components such as coatings, stabilizers, excipients or solvents, adjuvants or controlled release technologies).

(ii) "**Affiliate**" shall have the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act of 1934, as amended.

(iii) "**Compound**" means the Company's proprietary cardiac myosin inhibitor known as CK-3773274, which is the subject of U.S. IND [*], including any [*].

(iv) "**Initiation**" means, in respect of a Pivotal Clinical Trial, the [*] such Pivotal Clinical Trial (as applicable).

(v) "**NDA**" means a New Drug Application, as defined by the United States Food and Drug Administration, or equivalent application for approval (but not including pricing and reimbursement approvals) to market a pharmaceutical product in a country or jurisdiction outside of the United States of America.

(vi) "**Product**" means any pharmaceutical product that contains the Compound as an Active Ingredient, alone or in combination with other Active Ingredients (whether co-formulated or co-packaged, but not in combination with any Active Ingredient that is proprietary to Cytokinetics but that is not the Compound), in any formulation or dosage form and for any mode of administration.

(vii) "**Pivotal Clinical Trial**" means any human clinical trial of the Product that is intended (as of the time such clinical trial is Initiated) to obtain the results and data to support the filing of an NDA (including label expansion but excluding the data that may be necessary to support the pricing and/or reimbursement approval), including so called Phase 2/3 trials and any human clinical trial that would satisfy the requirements of 21 § CFR 312.21(c) or corresponding foreign regulations. [*].

(viii) "**Restriction Period**" shall mean the period commencing on the Closing Date and continuing until the date that is two (2) years from such date; provided, however, that if the Initiation of a Pivotal Clinical Trial of a Compound in obstructive hypertrophic cardiomyopathy or non-obstructive hypertrophic cardiomyopathy occurs prior to the expiry of such two (2) year period, the Restriction Period shall be extended until [*].

(ix) "**Significant Event**" shall mean any of the following not involving a violation of this Section 6: (A) the public announcement of a proposal or intention to acquire, or the acquisition, by any person or 13D Group of beneficial ownership of Voting Securities representing 15% or more of the then outstanding Voting Securities; (B) the public announcement of a proposal or intention to commence, or the commencement, by any person or 13D Group of a tender or exchange offer to acquire Voting Securities which, if successful, would result in such person or 13D Group owning, when combined with any other Voting Securities owned by such person or 13D Group, 15% or more of the then outstanding Voting Securities; or (C) the entry into by the Company, or the public announcement by the Company of an intention or determination to enter into, any merger, sale or other business combination transaction, or an agreement therefor, pursuant to which the outstanding shares of capital stock of the Company would be converted into cash, other consideration or securities of another person or 13D Group or 50% or more of the then outstanding shares of capital stock of the Company would be owned by persons other than the then current holders of shares of capital stock of the Company, or which would result in all or a substantial portion of the Company's assets being sold to any person or 13D Group.

(x) "**Voting Securities**" shall mean at any time shares of any class of capital stock of the Company which are then entitled to vote generally in the election of directors.

(xi) "**13D Group**" shall mean, with respect to the Voting Securities of the Company, any group of persons formed for the purpose of acquiring, holding, voting or disposing of such Voting Securities which would be required under Section 13(d) of the Exchange Act and the rules and regulations thereunder to file a statement on Schedule 13D with the Commission as a "person" within the meaning of Section 13(d)(3) of the Exchange Act if such group beneficially owned Voting Securities representing more than 5% of the total combined voting power of all such Voting Securities then outstanding.

(b) Restriction Period No Sell. The Investor agrees that during the Restriction Period, neither the Investor nor any of its Affiliates shall offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise dispose of in any manner, either directly or indirectly ("**Sale**" or "**Sell**"), any Shares, or any securities of the Company issued as a dividend or distribution on, or involving a recapitalization or reorganization with respect to, such Shares (collectively, "**Covenant Shares**"), other than transfers of securities between and among the Investor and any one or more of its Affiliates. The Company shall use commercially reasonable efforts to permit the Shares to be eligible for clearance and settlement through the facilities of The Depository Trust Company immediately following the termination of the Restriction Period.

(c) [*].

(d) Notwithstanding anything else contained in this Section 6.1, (x) the Investor and its Affiliates may at any time sell [*].

(e) Occurrence of Significant Event. The restrictions contained in Sections 6.1(b) and (c) shall be suspended and shall not apply to or otherwise restrict the Investor's actions in respect of the Company's securities for so long as a Significant Event has occurred and is continuing.

6.2 ***Invalid Transfers***. Any sale, assignment or other transfer of Covenant Shares by the Investor or any of its Affiliates, as applicable, contrary to the provisions of this Section 6 shall be null and void, and the transferee shall not be recognized by the Company as the holder or owner of the Covenant Shares sold, assigned, or transferred for any purpose

(including, without limitation, voting or dividend rights), unless and until the Investor or such Affiliate, as applicable, has satisfied the requirements of this Section 6 with respect to such sale. The Investor shall provide the Company with written evidence that such requirements have been met or waived, prior to it or its Affiliates consummating any sale, assignment or other transfer of securities, and no Covenant Shares shall be transferred on the books of the Company until such written evidence has been received by the Company from the Investor. The Company, or, at the instruction of the Company, the transfer agent of the Company, may place a legend on any certificate representing Covenant Shares stating that such shares are subject to the restrictions contained in this Agreement. Upon delivery by the Investor of the written evidence required above, the Company agrees to facilitate the timely preparation and delivery (but in no event longer than five (5) Business Days) of certificates representing the Covenant Shares to be sold by the Investor or any Affiliate free of any restrictive legends and in such denominations and registered in such names as the Investor or such Affiliate may request in connection with such sale.

6.3 ***Performance by Affiliates.*** The Investor shall remain responsible for and guarantee its Affiliates' performance in connection with this Agreement, and shall cause each such Affiliate to comply fully with the provisions of this Agreement in connection with such performance. The Investor hereby expressly waives any requirement that the Company exhaust any right, power or remedy, or proceed directly against such an Affiliate, for any obligation or performance hereunder, prior to proceeding directly against the Investor.

SECTION 7

Restricted Securities

7.1 ***Rule 144 Reporting***. With a view to making available to the Investor the benefits of certain rules and regulations of the Commission which may permit the sale of the Shares to the public without registration, the Company agrees that, as from the Closing Date until such date falling three hundred sixty-five (365) days thereafter, it shall use commercially reasonable efforts to:

(a) Make and keep public information available, as those terms are understood and defined in Rule 144 promulgated under the Securities Act;

(b) File with the Commission in a timely manner all reports and other documents required of the Company under the Exchange Act; and

(c) Furnish the Investor forthwith upon request (i) a written statement by the Company as to its compliance with the public information requirements of said Rule 144, (ii) a copy of the most recent annual or quarterly report of the Company, and (iii) such other reports and documents as may be reasonably requested in availing the Investor of any rule or regulation of the Commission permitting the sale of any such securities without registration.

7.2 ***Restrictive Legend***. The certificates representing the Shares, when issued, will bear a restrictive legend in substantially the following form:

"THE SECURITIES EVIDENCED OR CONSTITUTED HEREBY HAVE BEEN ISSUED WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") AND MAY NOT BE SOLD, OFFERED FOR SALE, TRANSFERRED, PLEDGED OR HYPOTHECATED WITHOUT REGISTRATION UNDER THE ACT UNLESS EITHER (i) THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL, IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY, TO THE EFFECT THAT REGISTRATION IS NOT REQUIRED IN CONNECTION WITH SUCH DISPOSITION OR (ii) THE SALE OF SUCH SECURITIES IS MADE PURSUANT TO SECURITIES AND EXCHANGE COMMISSION RULE 144."

7.3 ***Unlegended Shares***. Following completion of the Restriction Period, Investor may request that the Company remove, and the Company agrees to authorize the removal of, any legend from such Shares, (i) in connection with any sale (which for the avoidance of doubt includes any planned sale within a reasonable period of time) of such Shares pursuant to Rule 144 (*provided that* any legend would only be removed in connection with the consummation of any such sale) or (ii) following the time a legend is no longer required with respect to such Shares. If a legend is no longer

required pursuant to the foregoing, the Company will, no later than five (5) Business Days following the request by the Investor to the Company or the Company's transfer agent to remove such legends (along such other documents as the Company or the Company's transfer agent may reasonably request, including an opinion of counsel), deliver or cause to be delivered to the Investor in book-entry form or a certificate representing such Shares that is free from all restrictive legends. Certificates for Shares free from all restrictive legends may be transmitted by the Company's transfer agent to the Investor as directed by the Investor. The Company warrants that the Shares shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement.

SECTION 8

Indemnification

Each party (an "**Indemnifying Party**") hereby indemnifies and holds harmless the other party, such other party's respective officers, directors, employees, consultants, representatives and advisers, and any and all Affiliates (as defined in Section 6.1(a)) of the foregoing (each of the foregoing, an "**Indemnified Party**") from and against all losses, liabilities, costs, damages and expense (including reasonable legal fees and expenses) (collectively, "**Losses**") suffered or incurred by any such Indemnified Party to the extent arising from, connected with or related to (i) breach of any representation or warranty of such Indemnifying Party in this Agreement; and (ii) breach of any covenant or undertaking of any Indemnifying Party in this Agreement, except for such Losses determined in a final judgement by a court of competent jurisdiction to have arisen from the gross negligence or willful misconduct of the Indemnified Party or the Indemnified Party's breach of representation, warranty, covenant or undertaking under this Agreement. If an event or omission (including, without limitation, any claim asserted or action or proceeding commenced by a third party) occurs which an Indemnified Party asserts to be an indemnifiable event pursuant to this Section 8, the Indemnified Party will provide written notice to the Indemnifying Party, setting forth the nature of the claim and the basis for indemnification under this Agreement. The Indemnified Party will give such written notice to the Indemnifying Party immediately after it becomes aware of the existence of any such event or occurrence. Such notice will be a condition precedent to any obligation of the Indemnifying Party to act under this Agreement but will not relieve it of its obligations under the indemnity except to the extent that the failure to provide prompt notice as provided in this Agreement actually prejudices the Indemnifying Party with respect to the transactions contemplated by this Agreement and to the defense of the liability. In case any such action is brought by a third party against any Indemnified Party and it notifies the Indemnifying Party of the commencement thereof, the Indemnifying Party will be entitled to participate therein and, to the extent that it wishes, to assume the defense and settlement thereof with counsel reasonably selected by it and, after notice from the Indemnifying Party to the Indemnified Party of such election so to assume the defense and settlement thereof, the Indemnifying Party will not be liable to the Indemnified Party for any legal expenses of other counsel or any other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof, provided, however, that an Indemnified Party shall have the right to employ one separate counsel at the expense of the Indemnifying Party if (i) the employment thereof has been specifically authorized in writing by the Indemnifying Party; or (ii) representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interests between such parties (which such judgment shall be made in good faith after consultation with counsel). The Indemnified Party agrees to cooperate fully with (and to provide all relevant documents and records and make all relevant personnel available to) the Indemnifying Party and its counsel, as reasonably requested, in the defense of any such asserted claim at no additional cost to the Indemnifying Party. No Indemnifying Party will consent to the entry of any judgment or enter into any settlement with respect to any such asserted claim without the prior written consent of the Indemnified Party, not to be unreasonably withheld or delayed, (a) if such judgment or settlement does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a release from all liability in respect to such claim or (b) if, as a result of such consent or settlement, injunctive or other equitable relief would be imposed against the Indemnified Party or such judgment or settlement could materially and adversely affect the business, operations or assets of the Indemnified Party. No Indemnified Party will consent to the entry of any judgment or enter into any settlement with respect to any such asserted claim without the prior written consent of the Indemnifying Party, not to be unreasonably withheld or delayed. If an Indemnifying Party makes a payment with respect to any claim under the representations or warranties set forth herein and the Indemnified Party subsequently receives from a third party or under the terms of any insurance policy a sum in respect of the same claim, the receiving party will repay to the other party such amount that is equal to the sum subsequently received.

SECTION 9

Miscellaneous

9.1 ***Governing Law***. This Agreement shall be governed in all respects by the laws of the State of New York without application of any provisions thereof that would require the application of the laws of any other jurisdiction.

9.2 ***Survival***. The representations, warranties, covenants and agreements made herein shall survive any investigation made by the Investor and the Closing.

9.3 ***Successors, Assigns***. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. This Agreement may not be assigned by either party without the prior written consent of the other; except that either party may assign this Agreement to an Affiliate (as defined in Section 6.1(a)) of such party or to any third party that acquires all or substantially all of such party's business, whether by merger, sale of assets or otherwise.

9.4 ***Notices***. All notices and other communications required or permitted hereunder shall be in writing and shall be sent by facsimile (receipt confirmed) or mailed by registered or certified mail, postage prepaid, return receipt requested, or otherwise delivered by hand or by messenger, addressed

if to the Investor, at the following address:

RTW Investments, LP
40 10th Avenue, Floor 7
New York, NY 10014
Attention: Roderick Wong and Alice Lee
Telephone: [*]
Email:[*]

if to the Company, at the following address:

Cytokinetics, Incorporated
280 E Grand Ave
South San Francisco, CA 94080
Attention: General Counsel
Facsimile: [*]

or at such other address as one party shall have furnished to the other party in writing. All notices and communications under this Agreement shall be deemed to have been duly given (i) when delivered by hand, if personally delivered, (ii) when received by a recipient, if sent by email, (iii) when sent, if sent by facsimile, with an acknowledgement of sending being produced by the sending facsimile machine or (iv) one Business Day following sending within the United States by overnight delivery via commercial one-day overnight courier service.

9.5 ***Expenses***. Each of the Company and the Investor shall bear its own expenses and legal fees incurred on its behalf with respect to this Agreement and the transactions contemplated hereby.

9.6 ***Finder's Fees***. Each of the Company and the Investor shall indemnify and hold the other harmless from any liability for any commission or compensation in the nature of a finder's fee, placement fee or underwriter's discount (including the costs, expenses and legal fees of defending against such liability) for which the Company or the Investor, or any of its respective partners, employees, or representatives, as the case may be, is responsible.

9.7 ***Counterparts***. This Agreement may be executed in counterparts, each of which shall be enforceable against the party actually executing the counterpart, and all of which together shall constitute one instrument.

9.8 ***Severability***. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party.

9.9 ***Entire Agreement***. This Agreement and the other Transaction Agreements, including the exhibits and schedule attached hereto and thereto, constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and thereof. No party shall be liable or bound to any other party in any manner with regard to the subjects hereof or thereof by any warranties, representations or covenants except as specifically set forth herein or therein.

9.10 ***Waiver***. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party. None of the terms, covenants and conditions of this Agreement can be waived except by the written consent of the party waiving compliance.

IN WITNESS WHEREOF, the parties have executed this Common Stock Purchase Agreement as of the date first set forth above.

CYTOKINETICS, INCORPORATED	[•]
By:	By:
Name: Robert I. Blum	Name:
Title: President and CEO	Title:

Schedule A

The Investor is an institutional “accredited investor” as defined in Rule 501(a) of Regulation D of the Securities Act.

Schedule B

Schedule of Exceptions

None

Exhibit 10.5

THIRD AMENDMENT TO LOAN AND SECURITY AGREEMENT

THIS **THIRD AMENDMENT** to Loan and Security Agreement (this "**Amendment**") is entered into as of July 16, 2020, by and between **OXFORD FINANCE LLC**, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 ("**Oxford**"), as collateral agent (in such capacity, "**Collateral Agent**"), the Lenders listed on Schedule 1.1 of the Loan Agreement (as defined below) or otherwise party thereto from time to time (each a "**Lender**" and collectively, the "**Lenders**") including Oxford in its capacity as a Lender and **SILICON VALLEY BANK**, a California corporation with an office located at 3003 Tasman Drive, Santa Clara, CA 95054 ("**Bank**" or "**SVB**") (each a "**Lender**" and collectively, the "**Lenders**"), and **CYTOKINETICS, INCORPORATED**, a Delaware corporation with offices located at 280 East Grand Avenue, South San Francisco, CA 94080 ("**Borrower**").

RECITALS

A. Collateral Agent, Lenders and Borrower have entered into that certain Loan and Security Agreement dated as of May 17, 2019 (as amended by that certain First Amendment to Loan and Security Agreement, dated as of November 6, 2019, as further amended by that certain Second Amendment to Loan and Security Agreement, dated as of November 7, 2019, and as may be further amended from time to time, the "**Loan Agreement**").

B. Lenders have extended credit to Borrower for the purposes permitted in the Loan Agreement.

C. Borrower has requested that Collateral Agent and Lenders (i) modify Section 7.1 to permit Borrower to Transfer the Mavacamten Royalty (as defined below) and the Acquired Intangibles (as defined in the RTW Funding Agreement) (as defined below) and (ii) make certain other revisions to the Loan Agreement as more fully set forth herein.

D. Collateral Agent and Lenders have agreed to amend certain provisions of the Loan Agreement, but only to the extent, and subject to the terms and conditions and in reliance upon the representations and warranties, set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.

2. Amendments to Loan Agreement.

2.1 Section 7.1 (Dispositions). Section 7.1 of the Loan Agreement is hereby amended and restated in its entirety to read as follows:

"**7.1 Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn out, obsolete or surplus Equipment; (c) in connection with Permitted Liens, Permitted Investments and Permitted Licenses; (d) from any Subsidiary of Borrower to Borrower or between Loan Parties; (e) consisting of payments of taxes; (f) of cash and Cash Equivalents (i) in connection with transactions not prohibited hereunder, in the ordinary course of business and (ii) in connection with transactions that (A) are approved by Borrower's board of directors (to the extent Board approval is required by Borrower's policies or other organizational documents), (B) are customary for the Borrower's industry and (C) not otherwise prohibited hereunder; (g) of the Mavacamten Royalty pursuant to the terms of the RTW Royalty Purchase Agreement; (h) on the First Tranche Funding Date (as defined in the RTW Funding Agreement), the Acquired Intangibles (as defined in the RTW Funding Agreement) pursuant to the terms of the RTW Funding Agreement, and (i) other Transfers of property having a book value not exceeding Five Hundred Thousand Dollars ($500,000.00) in the aggregate during any fiscal year. Notwithstanding the foregoing, and for the avoidance of doubt, this Section 7.1 shall not prohibit the purchase of, and any unwind or settlement or other termination of any Permitted Call Spread Agreement."

2.2 Section 7.14. New Section 7.14 is hereby added to the Loan Agreement to read as follows:

"**7.14 RTW Royalty Purchase Agreement**. Amend or waive any terms of the RTW Royalty Purchase Agreement unless (a) Borrower provides the Collateral Agent and Lenders with not less than five (5) Business Days' written notice (or such shorter period as consented to by the Collateral Agent and the Lenders) and (b) the Collateral Agent and the Lenders provide their prior written consent if the amendment or waiver (i) is adverse to the Collateral Agent and the Lenders in any material respect, (ii) impairs the rights of the Collateral Agent and the Lenders under this Agreement in any material respect, or (iii) would otherwise result in an Event of Default under this Agreement."

2.3 Section 7.15. New Section 7.15 is hereby added to the Loan Agreement to read as follows:

"**7.15 RTW Funding Agreement**. (a) issue a Funding Request (as defined in the RTW Funding Agreement) to RTW pursuant to the RTW Funding Agreement unless (i) Borrower provides the Collateral Agent and Lenders with not less than five (5) Business Days' written notice (or such short period as consented to by the Collateral Agent and Lenders), and (ii) an Event of Default has not occurred and is continuing, (b) amend or waive any terms of the RTW Funding Agreement or the RTW Security Agreement, unless, in either case, (i) Borrower provides the Collateral Agent and Lenders with not less than five (5) Business Days' written notice (or such shorter period as consented to by the Collateral Agent and the Lenders) and (ii) the Collateral Agent and the Lenders provide their prior written consent if the amendment or waiver (A) is adverse to the Collateral Agent and the Lenders in any material respect, (B) impairs the rights of the Collateral Agent and the Lenders under this Agreement in any material respect, or (C) would otherwise result in an Event of Default under this Agreement, or (c) at all times after a Funding Request is issued, permit the proceeds of CK-274 Collateral to be comingled in a Collateral Account with other Collateral."

2.4 **Section 13.1 (Definitions)**. The following terms and their respective definitions hereby are added to Section 13.1 of the Loan Agreement as follows:

"**Acceptable Intercreditor Agreement**" means an Intercreditor Agreement between Collateral Agent and RTW, in form and substance reasonable satisfactory to Collateral Agent and the Lenders, to be entered into on the First Tranche Funding Date (as defined in the RTW Funding Agreement) pursuant to which the Lien of Collateral Agent on behalf of the Lenders in the CK-274 Collateral (other than the US IP Collateral) (as defined in the RTW Security Agreement) shall be a second priority Lien subordinated to the first priority Lien of RTW in the CK-274 Collateral and the exercise of remedies by Collateral Agent with respect to the CK-274 Collateral shall be subject to a customary standstill (subject to customary and reasonable exceptions thereto) prior to the Covenant Fall Away Date (as defined in the RTW Security Agreement). For the sake of clarity, the aforementioned standstill shall be limited to exercise of remedies by Collateral Agent with respect to the CK-274 Collateral and shall not apply to or impact Collateral Agent's exercise of remedies with respect to any other Collateral under this Agreement.

"**CK-274 Collateral**" means the Collateral (as defined in the RTW Security Agreement).

"**Mavacamten Collaboration Agreement**" means the License Agreement (as defined in the RTW Royalty Purchase Agreement).

"**Mavacamten Royalty**" means the Royalty (as defined in the RTW Royalty Purchase Agreement), including, for the avoidance of doubt, all amounts payable in respect thereof.

"**RTW**" means Dolya Holdco 19 Designated Activity Company (in the process of changing its name to RTW Royalty Holdings Designated Activity Company), a designated activity company incorporated under the laws of Ireland under company number 669527 and an Affiliate of RTW Investments, LP.

"**RTW Funding Agreement**" means that certain Funding Agreement, dated as of July 14, 2020, by and between Borrower and RTW, attached hereto as Annex I, and as amended to the extent permitted by Section 7.15.

"**RTW Royalty Purchase Agreement**" means that certain Royalty Purchase Agreement, dated as of July 14, 2020, by and between Borrower and RTW, attached hereto as Annex II, and as amended to the extent permitted by Section 7.14.

"**RTW Security Agreement**" means that certain Security Agreement, by and between Borrower and RTW, to be executed and delivered pursuant to Section 4.3 of the RTW Funding Agreement, in substantially the form attached hereto as Annex I, and as amended to the extent permitted by Section 7.15.

2.5 **Section 13.1 (Definitions)**. The defined term "Permitted Indebtedness" in Section 13.1 of the Loan Agreement is hereby amended by amending and restating subsection (j) thereof to read in its entirety as follows:

(j) (y) Indebtedness with respect to the RPI Royalty Purchase Agreement and the RTW Royalty Purchase Agreement and (z) to the extent an Acceptable Intercreditor Agreement has been executed and delivered by Collateral Agent and RTW, any Indebtedness under the RTW Funding Agreement, provided that in each case no Event of Default exists at the time of incurring such Indebtedness or would result after giving effect thereto;"

2.6 **Section 13.1 (Definitions)**. The defined term "Permitted Liens" in Section 13.1 of the Loan Agreement is hereby amended by: (i) deleting the word "and" at the end of clause (n) therein; (ii) amending and restating subsection (o) thereof to read in its entirety as follows; and (iii) adding new subsections (p) and (q) thereto to read in their entirety as follows:

(o) provided that an Acceptable Intercreditor Agreement has been executed and delivered by Collateral Agent and RTW, the Lien of RTW in the CK-274 Collateral pursuant to the RTW Security Agreement;

(p) subject to, and in accordance with, Section 1.4 of the RTW Royalty Purchase Agreement, Liens on the Mavacamten Royalty and any proceeds thereof; and

(q) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (p), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase; except as permitted under clause (m) of Permitted Indebtedness."

2.7 **Exhibit A (Description of Collateral); Security Interest Release**. Exhibit A of the Loan Agreement hereby is amended and restated in its entirety in the form of Exhibit A attached hereto. The Collateral Agent and the Lenders hereby (a) terminate and release in full all security interests and Liens granted by the Borrower pursuant to the Loan Agreement and any other Loan Document in and on (i) the Mavacamten Royalty and proceeds thereof and (ii) the rights of the Borrower under the Mavacamten Collaboration Agreement to the extent such rights relate to or otherwise affect the Mavacamten Royalty, and (b) agree to, promptly upon the request of the Borrower, file Uniform Commercial Code amendment statements to reflect the termination and release of such security interests and Liens described in the immediately preceding clause (a).

2.8 **Exhibit C (Compliance Certificate)**. Exhibit C of the Loan Agreement hereby is amended and restated in its entirety in the form of Exhibit C attached hereto.

3. Limitation of Amendment.

3.1 The amendments set forth in **Section 2** are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Collateral Agent or any Lender may now have or may have in the future under or in connection with any Loan Document.

3.2 This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

4. Representations and Warranties. To induce Collateral Agent and Lenders to enter into this Amendment, Borrower hereby represents and warrants to Collateral Agent and Lenders as follows:

4.1 Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

4.2 Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;

4.3 The organizational documents of Borrower delivered to Collateral Agent and Lenders on the Effective Date, or subsequent thereto, remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

4.4 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;

4.5 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;

4.6 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower; and

4.7 This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

5. Release. The Borrower hereby remises, releases, acquits, satisfies and forever discharges the Lenders and Collateral Agent, their agents, employees, officers, directors, predecessors, attorneys and all others acting or purporting to act on behalf of or at the direction of the Lenders and Collateral Agent ("Releasees"), of and from any and all manner of actions, causes of action, suit, debts, accounts, covenants, contracts, controversies, agreements, variances, damages, judgments, claims and demands whatsoever, in law or in equity, which any of such parties ever had, now has or, to the extent arising from or in connection with any act, omission or state of facts taken or existing on or prior to the date hereof, may have after the date hereof against the Releasees, for, upon or by reason of any matter, cause or thing whatsoever relating to or arising out of the Loan Agreement or the other Loan Documents on or prior to the date hereof and through the date hereof. Without limiting the generality of the foregoing, the Borrower waives and affirmatively agrees not to allege or otherwise pursue any defenses, affirmative defenses, counterclaims, claims, causes of action, setoffs or other rights they do, shall or may have as of the date hereof, including the rights to contest: (a) the right of Collateral Agent and each Lender to exercise its rights and remedies described in the Loan Documents; (b) any provision of this Amendment or the Loan Documents; or (c) any conduct of the Lenders or other Releasees relating to or arising out of the Loan Agreement or the other Loan Documents on or prior to the date hereof.

6. Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery by electronic transmission (e.g. ".pdf") of an executed counterpart of this Amendment shall be effective as a manually executed counterpart signature thereof.

7. Effectiveness. This Amendment shall be deemed effective upon the due execution and delivery to Collateral Agent and Lenders of this Amendment by each party hereto.

8. Condition Subsequent. As a condition subsequent to this Amendment, Borrower agrees to promptly pay all of Lenders' Expenses incurred in connection with this Amendment and that Collateral Agent and each Lender may debit (or ACH) any deposit accounts, maintained by Borrower or any Loan Party, including the Designated Deposit Account for such Lenders' Expenses in accordance with Section 2.3(d) of the Loan Agreement.

[*Balance of Page Intentionally Left Blank*]

In Witness Whereof, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

COLLATERAL AGENT AND LENDER:

OXFORD FINANCE LLC
By: /s/ Collette H. Featherly
Name:Colette H. Featherly
Title:Senior Vice President

LENDER:

SILICON VALLEY BANK
By:/s/ Kristina Peralta
Name:Kristina Peralta
Title:Vice President

BORROWER:

CYTOKINETICS, INCORPORATED
By:/s/ Ching Jaw
Name:Ching Jaw
Title:Chief Financial Officer

Exhibit 31.1

CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER
Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended

I, Robert I. Blum, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Cytokinetics, Incorporated;

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 the Exchange Act Rules 13a-15 (f) and 15d-15(f)) for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers 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 that 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.

Dated: November 6, 2020

By: /s/ Robert I. Blum
Robert I. Blum
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF THE CHIEF FINANCIAL OFFICER
Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended

I, Ching Jaw, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Cytokinetics, Incorporated;

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 the Exchange Act Rules 13a-15 (f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers 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 that 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.

Dated: November 6, 2020

By: /s/ Ching Jaw
Ching Jaw
Senior Vice President, Chief Financial Officer
(Principal Financial Officer)

Exhibit 31.3

CERTIFICATION OF THE CHIEF ACCOUNTING OFFICER
Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended

I, Robert Wong, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Cytokinetics, Incorporated;

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 the Exchange Act Rules 13a-15 (f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers 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 that 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.

Dated: November 6, 2020

By: /s/ Robert Wong
Robert Wong
Vice President, Chief Accounting Officer
(Principal Accounting Officer)

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER, AND CHIEF ACCOUNTING OFFICER
Pursuant to 18. U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that the Quarterly Report of Cytokinetics, Incorporated on Form 10-Q for the quarterly period ended September 30, 2020 fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m) and the that information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Cytokinetics, Incorporated.

Dated: November 6, 2020

/s/ Robert I. Blum
Robert I. Blum
President and Chief Executive Officer
(Principal Executive Officer)

/s/ Ching Jaw
Ching Jaw
Senior Vice President, Chief Financial Officer
(Principal Financial Officer)

/s/ Robert Wong
Robert Wong
Vice President, Chief Accounting Officer
(Principal Accounting Officer)