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

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended September 30, 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 001-36714

JAGUAR HEALTH, INC.
(Exact name of registrant as specified in its charter)

Delaware	**46-2956775**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

200 Pine Street, Suite 400
San Francisco, California 94104
(Address of principal executive offices, zip code)

(415) 371-8300
(Registrant's telephone number, including area code)

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

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

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

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

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

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

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

Title of each class:	**Trading Symbol(s)**	**Name of each exchange on which registered:**
Common Stock, Par Value $0.0001 Per Share	JAGX	The NASDAQ Capital Market

As of November 6, 2020 there were 69,441,067 shares of voting common stock, par value $0.0001 per share, outstanding, 21,821,410 shares of non-voting common stock, par value $0.0001 per share, outstanding (convertible into 20,782 shares of voting common stock), 6,559 shares of Series B-2 convertible preferred stock, par value $0.0001 per share, outstanding (convertible into 1,246,210 shares of voting common stock, subject to certain restrictions as provided in the Certificate of Designation for the Series B-2 convertible preferred stock), 571,600 shares of Series C perpetual preferred stock, par value $0.0001 per share, outstanding, and 853,771 shares of Series D perpetual preferred stock, par value $0.0001 per share, outstanding.

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PART I. — FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

JAGUAR HEALTH, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands, except share and per share data)	September 30, 2020	December 31, 2019
Assets	**(unaudited)**	
Current assets:		
Cash	$ 1,349	$ 3,495
Restricted cash	—	388
Accounts receivable	1,505	1,692
Accounts receivable - pledged	3,150	—
Other receivable	3	2
Inventory	2,219	2,129
Operating lease - right-of-use asset	—	553
Prepaid expenses and other current assets	2,497	1,263
Total current assets	10,723	9,522
Property and equipment, net	686	710
Intangible assets, net	24,759	26,024
Other assets	66	154
Total assets	$ 36,234	$ 36,410
Liabilities, convertible preferred stock and stockholders' equity		
Current liabilities:		
Accounts payable	$ 5,456	$ 5,352
Accrued liabilities	6,975	2,922
Warrant liability	126	3
Operating lease liability	—	337
Notes payable, net of discount	6,781	6,778
Series D perpetual preferred stock: $0.0001 par value; 977,300 and zero shares authorized at September 30, 2020 and December 31, 2019, respectively; 848,117 and zero shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively; (redemption amount of $6,785 and zero at September 30, 2020 and December 31, 2019, respectively; liquidation preference of $6,785 and zero at September 30, 2020 and December 31, 2019, respectively)	6,430	—
Total current liabilities	25,768	15,392
Notes payable long term	2,660	450
Total liabilities	28,428	15,842
Commitments and contingencies (See Note 6)		
Series A redeemable convertible preferred stock: $0.0001 par value, zero and 5,524,926 shares authorized at September 30, 2020 and December 31, 2019, respectively; zero and 5,524,926 shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively; (redemption amount of zero and $12,739 at September 30, 2020 and December 31, 2019, respectively; liquidation preference of zero and $9,199 at September 30, 2020 and December 31, 2019, respectively)	—	9,895
Stockholders' equity		
Series B convertible preferred stock: $0.0001 par value, zero and 11,000 shares authorized at September 30, 2020 and December 31, 2019, respectively; zero and 1,971 shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively	—	476
Series B-2 convertible preferred stock: $0.0001 par value, 10,165 shares authorized at September 30, 2020 and December 31, 2019; 7,534 and 10,165 shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively	916	1,236
Series C perpetual preferred stock: 1,011,000 and zero shares authorized at September 30, 2020 and December 31, 2019, respectively; 849,521 and zero shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively; (redemption amount of $6,796 and zero at September 30, 2020 and December 31, 2019, respectively; liquidation preference of $6,796 and zero at September 30, 2020 and December 31, 2019, respectively)	4,773	—
Common stock - voting: $0.0001 par value, 150,000,000 shares authorized at September 30, 2020 and December 31, 2019; 48,862,970 and 14,273,061 shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively	5	1
Common stock - non-voting: $0.0001 par value, 50,000,000 shares authorized at September 30, 2020 and December 31, 2019; 40,301,237 shares issued and outstanding at September 30, 2020 and December 31, 2019	4	4
Additional paid-in capital	160,238	142,046
Accumulated deficit	(158,130)	(133,090)
Total stockholders' equity	7,806	10,673
Total liabilities, convertible preferred stock and stockholders' equity	$ 36,234	$ 36,410

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

JAGUAR HEALTH, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(Unaudited)

(In thousands, except share and per share data)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Product revenue	$ 2,773	$ 973	$ 6,809	$ 4,268
Total revenue	2,773	973	6,809	4,268
Operating expenses				
Cost of product revenue	784	948	2,491	3,073
Research and development	1,522	1,307	4,509	4,426
Sales and marketing	1,529	1,698	4,728	5,436
General and administrative	4,313	3,107	11,218	9,817
Settlement of Tempesta Royalty License Agreement	—	640	—	640
Impairment of indefinite-lived intangible assets	—	—	—	4,000
Series B convertible preferred stock inducement expense	—	—	1,647	—
Series 3 warrants inducement expense	—	—	3,696	—
Total operating expenses	8,148	7,700	28,289	27,392
Loss from operations	(5,375)	(6,727)	(21,480)	(23,124)
Interest expense	(581)	(1,353)	(1,259)	(5,557)
Other income, net	194	29	190	49
Change in fair value of financial instruments	(2,104)	842	(2,491)	1,003
Loss on extinguishment of debt	—	(336)	—	(4,941)
Loss before income tax	(7,866)	(7,545)	(25,040)	(32,570)
Income tax expense	—	(10)	—	(10)
Net loss and comprehensive loss	(7,866)	(7,555)	(25,040)	(32,580)
Deemed dividend attributable to accretion of Series A redeemable convertible preferred stock	(349)	—	(1,332)	—
Deemed dividend attributable to Series B preferred stock	—	(3,876)	—	(3,876)
Stock dividend attributable to Series C perpetual preferred stock	(56)	—	(56)	—
Deemed dividend attributable to the Series 1 warrant modification	—	(252)	—	(252)
Deemed dividend attributable to Series 1, Series 2 and Bridge warrant holders	—	—	(856)	—
Net loss attributable to common shareholders	$ (8,271)	$ (11,683)	$ (27,284)	$ (36,708)
Net loss per share, basic and diluted	$ (0.21)	$ (2.00)	$ (1.03)	$ (13.37)
Weighted-average common shares outstanding, basic and diluted	40,218,324	5,841,790	26,467,423	2,746,523

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

JAGUAR HEALTH, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES
IN CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)

(Unaudited)

(In thousands, except share data)	Series A Convertible Preferred Stock		Series B Convertible Preferred Stock		Series B-2 Convertible Preferred Stock		Series C Perpetual Preferred Stock		Common Stock - voting		Common Stock - non-voting		Additional	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	paid-in capital	deficit	Equity
Balances as of June 30, 2020	5,524,926	$ 10,878	—	$ —	7,534	$ 916	—	$ —	32,408,421	$ 3	40,301,237	$ 4	$ 150,885	$ (150,264)	$ 1,544
Shares issued on exercise of Series 3 warrants	—	—	—	—	—	—	—	—	8,248,330	1	—	—	5,992	—	5,993
Shares issued on exercise of Series 1 and Series 2 warrants	—	—	—	—	—	—	—	—	1,154,266	—	—	—	565	—	565
Series A convertible preferred stock redeemed and Series C perpetual preferred issued under the exchange transaction	(5,524,926)	(11,227)	—	—	—	—	842,500	4,717	—	—	—	—	150	—	4,867
Stock dividend attributable to Series C perpetual preferred stock of $8 per share	—	—	—	—	—	—	7,021	56	—	—	—	—	(56)	—	—
Shares issued to third party for services	—	—	—	—	—	—	—	—	2,289,474	—	—	—	879	—	879
Shares issued in exchange of CVP Exchange Notes	—	—	—	—	—	—	—	—	4,761,904	1	—	—	1,497	—	1,498
Accretion to redemption value of redeemable preferred stock	—	349	—	—	—	—	—	—	—	—	—	—	(349)	—	(349)
Fractional shares	—	—	—	—	—	—	—	—	20	—	—	—	—	—	—
Shares issued upon exercise of stock options	—	—	—	—	—	—	—	—	555	—	—	—	—	—	—
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—	675	—	675
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	(7,866)	(7,866)
Balances as of September 30, 2020	—	$ —	—	$ —	7,534	$ 916	849,521	$ 4,773	48,862,970	$ 5	40,301,237	$ 4	$ 160,238	$ (158,130)	$ 7,806

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

JAGUAR HEALTH, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES
IN CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT) (continued)

(Unaudited)

(In thousands, except share data)	Series A Convertible Preferred Stock		Series B Convertible Preferred Stock		Series B-2 Convertible Preferred Stock		Series C Perpetual Preferred Stock		Common Stock - voting		Common Stock - non-voting		Additional	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	paid-in capital	deficit	Equity
Balances as of June 30, 2019	5,524,926	$ 9,000	—	$ —	—	$ —	—	$ —	1,799,381	$ 1	40,301,237	$ 4	$ 117,925	$ (119,576)	$ (1,646)
Issuance of Series B convertible preferred stock, net	—	—	10,787	2,241	—	—	—	—	—	—	—	—	—	—	2,241
Beneficial conversion feature of the Series B convertible preferred stock	—	—	—	(3,876)	—	—	—	—	—	—	—	—	3,876	—	—
Deemed dividend on the Series B convertible preferred stock	—	—	—	3,876	—	—	—	—	—	—	—	—	(3,876)	—	—
Issuance of common stock in Class A Units, net	—	—	—	—	—	—	—	—	2,886,500	—	—	—	1,201	—	1,201
Issuance of Series 1 warrants in Class A and B Units	—	—	—	—	—	—	—	—	—	—	—	—	5,305	—	5,305
Issuance of Series 2 warrants in Class A and B Units	—	—	—	—	—	—	—	—	—	—	—	—	5,305	—	5,305
Modification of Series 1 warrants	—	—	—	—	—	—	—	—	—	—	—	—	252	—	252
Deemed dividend attributable to Series 1 warrant modification	—	—	—	—	—	—	—	—	—	—	—	—	(252)	—	(252)
Bridge warrant reclassification from liability to equity	—	—	—	—	—	—	—	—	—	—	—	—	4,259	—	4,259
LOC warrant reclassification from liability to equity	—	—	—	—	—	—	—	—	—	—	—	—	71	—	71
Issuance of common stock upon conversion of Series B convertible preferred stock	—	—	(8,816)	(1,831)	—	—	—	—	4,408,000	—	—	—	1,831	—	—
Shares issued in exchange of CVP Exchange Notes	—	—	—	—	—	—	—	—	301,577	—	—	—	1,089	—	1,089
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—	1,110	—	1,110
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	(7,555)	(7,555)
Balances as of September 30, 2019	5,524,926	$ 9,000	1,971	$ 410	—	$ —	—	$ —	9,395,458	$ 1	40,301,237	$ 4	$ 138,096	$ (127,131)	$ 11,380

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

JAGUAR HEALTH, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES
IN CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT) (continued)

(Unaudited)

(In thousands, except share data)	Series A Convertible Preferred Stock		Series B Convertible Preferred Stock		Series B-2 Convertible Preferred Stock		Series C Perpetual Preferred Stock		Common Stock - voting		Common Stock - non-voting		Additional paid-in capital	Accumulated deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balances as of January 1, 2020	5,524,926	$ 9,895	1,971	$ 476	10,165	$ 1,236	—	$ —	14,273,061	$ 1	40,301,237	$ 4	$ 142,046	$ (133,090)	$ 10,673
Shares issued on exercise of Series 1, Series 2, and 2019 Bridge Note warrants	—	—	—	—	—	—	—	—	548,962	—	—	—	392	—	392
Shares issued on exercise of Series 2 warrants and inducement offer conversion of Series B-1 convertible preferred stock	—	—	—	—	—	—	—	—	1,250,000	1	—	—	2,340	—	2,341
Shares issued on exercise of Series 1, Series 2, and 2019 Bridge Note warrants, net of issuance costs of $461; May 2020	—	—	—	—	—	—	—	—	8,670,852	1	—	—	3,787	—	3,788
Shares issued on conversion of Series 1, Series 2, and 2019 Bridge Note warrants; June 2020	—	—	—	—	—	—	—	—	732,315	—	—	—	359	—	359
Shares issued on exercise of Series 3 warrants	—	—	—	—	—	—	—	—	8,248,330	1	—	—	5,992	—	5,993
Shares issued on exercise of Series 1 and Series 2 warrants	—	—	—	—	—	—	—	—	1,154,266	—	—	—	565	—	565
Issuance of common stock in PIPE financing, net of issuance costs of $51	—	—	—	—	—	—	—	—	1,714,283	—	—	—	668	—	668
Shares issued in Underwriter settlement agreement	—	—	—	—	—	—	—	—	100,000	—	—	—	45	—	45
Warrants issued in Underwriter settlement agreement	—	—	—	—	—	—	—	—	—	—	—	—	31	—	31
Underwriter settlement offering cost	—	—	—	—	—	—	—	—	—	—	—	—	(185)	—	(185)
Conversion of Series B-2 convertible preferred stock into common stock	—	—	—	—	(2,631)	(320)	—	—	499,890	—	—	—	320	—	—
Conversion of Series B convertible preferred stock into common stock	—	—	(1,971)	(476)	—	—	—	—	4,423,251	—	—	—	476	—	—
Shares issued to Oasis as consideration under the March 2020 equity purchase agreement	—	—	—	—	—	—	—	—	68,807	—	—	—	33	—	33
Shares issued to Oasis under the March 2020 equity purchase agreement, put option exercise, net of issuance costs of $13	—	—	—	—	—	—	—	—	52,000	—	—	—	10	—	10
Series A convertible preferred stock redeemed and Series C perpetual preferred issued under the exchange transaction	(5,524,926)	(11,227)	—	—	—	—	842,500	4,717	—	—	—	—	150	—	4,867
Stock dividend attributable to Series C perpetual preferred stock of $8 per share	—	—	—	—	—	—	7,021	56	—	—	—	—	(56)	—	—
Shares issued to third party for services	—	—	—	—	—	—	—	—	2,364,474	—	—	—	916	—	916
Shares issued in exchange of CVP Exchange Notes	—	—	—	—	—	—	—	—	4,761,904	1	—	—	1,497	—	1,498
Accretion to redemption value of redeemable preferred stock	—	1,332	—	—	—	—	—	—	—	—	—	—	(1,332)	—	(1,332)
Fractional shares	—	—	—	—	—	—	—	—	20	—	—	—	—	—	—
Shares issued upon exercise of stock options	—	—	—	—	—	—	—	—	555	—	—	—	—	—	—
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—	2,184	—	2,184
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	(25,040)	(25,040)
Balances as of September 30, 2020	—	$ —	—	$ —	7,534	$ 916	849,521	$ 4,773	48,862,970	$ 5	40,301,237	$ 4	$ 160,238	$ (158,130)	$ 7,806

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

JAGUAR HEALTH, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES
IN CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT) (continued)

(Unaudited)

(In thousands, except share data)	Series A Convertible Preferred Stock		Series B Convertible Preferred Stock		Series B-2 Convertible Preferred Stock		Series C Perpetual Preferred Stock		Common Stock - voting		Common Stock - non-voting		Additional	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	paid-in capital	deficit	Equity
Balances as of January 1, 2019	5,524,926	$ 9,000	—	$ —	—	$ —	—	$ —	351,472	$ —	40,301,237	$ 4	$ 99,930	$ (94,551)	$ 5,383
Issuance of common stock, net of offering costs	—	—	—	—	—	—	—	—	195,319	—	—	—	2,602	—	2,602
Issuance of common stock, net of offering costs, March 2019	—	—	—	—	—	—	—	—	19,019	—	—	—	266	—	266
Issuance of common stock in exchange of notes payable and accrued interest	—	—	—	—	—	—	—	—	395,970	1	—	—	8,223	—	8,224
Issuance of common stock in exchange of accrued interest, January 2019	—	—	—	—	—	—	—	—	19,752	—	—	—	447	—	447
Issuance of common stock in exchange of CVP Exchange Notes	—	—	—	—	—	—	—	—	1,119,440	—	—	—	6,673	—	6,673
Issuance of Series B convertible preferred stock, net	—	—	10,787	2,241	—	—	—	—	—	—	—	—	—	—	2,241
Beneficial conversion feature of the Series B convertible preferred stock	—	—	—	(3,876)	—	—	—	—	—	—	—	—	3,876	—	—
Deemed dividend on the Series B convertible preferred stock	—	—	—	3,876	—	—	—	—	—	—	—	—	(3,876)	—	—
Issuance of common stock in Class A Units, net	—	—	—	—	—	—	—	—	2,886,500	—	—	—	1,201	—	1,201
Issuance of Series 1 warrants in Class A and B Units	—	—	—	—	—	—	—	—	—	—	—	—	5,305	—	5,305
Issuance of Series 2 warrants in Class A and B Units	—	—	—	—	—	—	—	—	—	—	—	—	5,305	—	5,305
Modification of Series 1 warrants	—	—	—	—	—	—	—	—	—	—	—	—	252	—	252
Deemed dividend attributable to Series 1 warrant modification	—	—	—	—	—	—	—	—	—	—	—	—	(252)	—	(252)
Bridge warrant reclassification from liability to equity	—	—	—	—	—	—	—	—	—	—	—	—	4,259	—	4,259
LOC warrant reclassification from liability to equity	—	—	—	—	—	—	—	—	—	—	—	—	71	—	71
Issuance of common stock upon conversion of Series B convertible preferred stock	—	—	(8,816)	(1,831)	—	—	—	—	4,408,000	—	—	—	1,831	—	—
Fractional shares	—	—	—	—	—	—	—	—	(14)	—	—	—	—	—	—
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—	1,983	—	1,983
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	(32,580)	(32,580)
Balances as of September 30, 2019	5,524,926	$ 9,000	1,971	$ 410	—	$ —	—	$ —	9,395,458	$ 1	40,301,237	$ 4	$ 138,096	$ (127,131)	$ 11,380

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

JAGUAR HEALTH, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)

(in thousands)	Nine Months Ended September 30, 2020	Nine Months Ended September 30, 2019
Cash flows from operating activities		
Net loss	$ (25,040)	$ (32,580)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	1,296	1,305
Impairment of indefinite-lived intangible assets	—	4,000
Loss on assignment of receivables	30	—
Loss on extinguishment of debt	—	4,941
Amortization of operating lease right-of-use-assets	553	554
Expense on modification of warrants	86	—
Series B convertible preferred stock inducement expense	1,647	—
Series 3 warrants issued as an inducement to exercise equity-classified Series 1, Series 2 and Bridge warrants	3,696	—
Stock-based compensation	2,184	1,983
Issuance of common stock in exchange for services	916	—
Issuance of warrants and common stock in Underwriter settlement agreement	76	—
Issuance of common stock as consideration paid under the Oasis Capital Equity Purchase Agreement	33	—
Amortization of debt issuance costs and debt discount	693	5,032
Change in fair value of financial instruments	2,491	(1,003)
Changes in assets and liabilities		
Accounts receivable	(2,963)	(598)
Other receivable	(1)	6
Inventory	(90)	1,020
Prepaid expenses and other current assets	(1,061)	(466)
Other non-current assets	88	—
Operating lease liabilities	(337)	(347)
Accounts payable	4	(662)
Accrued expenses	4,482	(502)
Total cash used in operating activities	(11,217)	(17,317)
Cash flows from investing activities		
Purchase of equipment	(7)	—
Total cash used in investing activity	(7)	—
Cash flows from financing activities		
Proceeds from issuance of notes payable, net of issuance costs and debt discount	350	—
Proceeds from insurance premium financing	776	—
Proceeds from sale of receivables, net of debt discount and issuance costs of $640	4,542	—
Proceeds from issuance of short-term notes payable	—	5,050
Repayment of short-term notes payable	—	(5,050)
Repayment of notes payable	(3,140)	(100)
Proceeds from issuance of common stock	—	2,869
Proceeds from the issuance of common stock in Class A Units, net of issuance costs, July 2019	—	2,074
Payment of underwriting discounts, commissions and other associated offering costs for Class A Units	—	(875)
Proceeds from the issuance of Series 1 Warrants in Class A and B Units, July 2019	—	5,305
Proceeds from the issuance of Series 2 Warrants in Class A and B Units, July 2019	—	5,305
Proceeds from the Issuance of Series B convertible preferred stock, net of issuance costs, July 2019	—	3,876
Payment of underwriting discounts, commissions and other associated offering costs for Class B Units	—	(1,635)
Proceeds from issuance of common stock in PIPE financing, net of issuance costs	668	—
Proceeds from shares issued on exercise of 2019 Bridge warrants; February 2020	173	—
Proceeds from shares issued on exercise of Series 1 warrants; February 2020	144	—
Proceeds from shares issued on exercise of Series 2 warrants; March 2020	708	—
Issuance costs of Ionic Series 2 Warrants; March 24, 2020	(25)	—
Shares issued on exercise of Series 1, Series 2, and 2019 Bridge Note warrants, net of issuance costs of $461; May 2020	3,752	—
Shares issued on conversion of Series 1, Series 2, and 2019 Bridge Note warrants; June 2020	359	—
Shares issued on exercise of Series 1 and Series 2 warrants	565	—
Issuance costs from shares issued on Underwriter settlement agreement	(185)	—
Proceeds from shares issued on exercise of Oasis Capital an Equity Purchase Agreement put options, net of issuance costs of $13	10	—
Payments of deferred offering costs	(7)	—
Total cash provided by financing activities	8,690	16,819
Net decrease in cash	(2,534)	(498)
Cash at beginning of period	3,883	2,568
Cash at end of period	$ 1,349	$ 2,070

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

JAGUAR HEALTH, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)

(Unaudited)

	Nine Months Ended	
	September 30, 2020	September 30, 2019
Supplemental schedule of cash flow information		
Cash paid for interest	$ 343	$ —
Supplemental schedule of non-cash financing and investing activities		
Common stock issued as redemption of notes payable and related interest	$ 1,498	$ 15,345
Deemed dividend attributable to modification of Series 1 warrants	$ —	$ 252
Deemed dividend attributable to Series B convertible preferred stock	$ —	$ 3,876
Common stock issued upon conversion of Series B convertible preferred stock	$ —	$ 1,831
Issuance of warrants with Notes Payable	$ —	$ 5,006
Reclassification of Bridge Note warrants from liability to equity	$ —	$ 4,259
Issuance of March 2019 letter of credit warrant	$ —	$ 116
Reclassification of March 2019 LOC warrants from liability to equity	$ —	$ 71
Accretion to redemption value of Series A contingently redeemable convertible preferred stock	$ 1,332	$ —
Offering costs included in accounts payable and accrued expenses	$ 166	$ —
Conversion of Oasis Series B-2 convertible preferred stock into common stock	$ 320	$ —
Shares issued on exercise of Series B convertible preferred shares	$ 476	$ —
Extinguishment of Series A redeemable convertible preferred stock	$ 11,227	$ —
Issuance of Series C perpetual preferred stock	$ 4,717	$ —
Issuance of Series D perpetual preferred stock	$ 6,359	$ —
Extinguishment of Series A redeemable convertible preferred stock	$ 150	$ —
Shares issued on exercise of Series 3 warrants; July and August 2020	$ 5,993	$ —
Stock dividend attributable to Series C perpetual preferred stock	$ 56	$ —
Deemed dividend attributable to Series 1, Series 2 and Bridge warrant holders	$ 856	$ —

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

JAGUAR HEALTH, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Business

Jaguar Health, Inc. (“Jaguar”, “we” or the “Company”), formerly known as Jaguar Animal Health, Inc., was incorporated on June 6, 2013 (inception) in Delaware. The Company was a majority-owned subsidiary of Napo Pharmaceuticals, Inc. (“Napo” or the “Former Parent”) until the close of the Company's initial public offering on May 18, 2015. The Company was formed to develop and commercialize first-in-class gastrointestinal products for companion and production animals and horses. The Company's first commercial product, Neonorm Calf, was launched in 2014 and Neonorm Foal was launched in the first quarter of 2016. The Company's activities are subject to significant risks and uncertainties, including failing to secure additional funding in order to timely complete the development and commercialization of products.

On July 31, 2017, Jaguar completed a merger with Napo pursuant to the Agreement and Plan of Merger dated March 31, 2017 by and among Jaguar, Napo, Napo Acquisition Corporation (“Merger Sub”), and Napo's representative (the “Merger Agreement”). In accordance with the terms of the Merger Agreement, upon the completion of the merger, Merger Sub merged with and into Napo, with Napo surviving as the Company’s wholly-owned subsidiary (the “Merger” or “Napo Merger”). Immediately following the Merger, Jaguar changed its name from “Jaguar Animal Health, Inc.” to “Jaguar Health, Inc.” Napo now operates as a wholly-owned subsidiary of Jaguar focused on human health and the ongoing commercialization of Mytesi, a Napo drug product approved by the U.S. Food and Drug Administration (“FDA”) for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy.

The Company manages its operations through two segments—human health and animal health and is headquartered in San Francisco, California.

Nasdaq Communication and Compliance

Minimum Stockholders’ Equity Requirement

On August 17, 2020, the Company received a letter from the Staff of the Listing Qualifications Department (the “Staff”) of The Nasdaq Stock Market LLC (“Nasdaq”) notifying the Company that it no longer complies with Nasdaq Listing Rule 5550(b)(1) due to the Company’s failure to maintain a minimum of $2,500,000 in stockholders’ equity (or meet the alternatives of market value of listed securities of $35 million or net income from continuing operations). The Company reported stockholders’ equity of $1,544,000 in its Form 10-Q for the fiscal quarter ended June 30, 2020. Under Nasdaq Listing Rule 5810(c)(2), the Company had 45 calendar days, or until October 1, 2020, to submit a plan to regain compliance.

On September 9, 2020, the Company received a letter from Nasdaq stating that, based on the Company’s Current Report on Form 8-K filed on September 2, 2020, the Staff has determined that the Company complied with Nasdaq Listing Rule 5550(b)(1). However, if the Company failed to evidence compliance with Nasdaq Listing Rule 5550(b)(1) upon filing its next periodic report, the Company may be subject to delisting.

Minimum Bid Price Requirement

On September 11, 2020, the Company received written notice from Nasdaq indicating that, based upon the Company’s continued non-compliance with the minimum $1.00 bid price requirement for continued listing on The Nasdaq Capital Market (the “Rule”), as set forth in Nasdaq Listing Rule 5550(a)(2), as of September 11, 2020, and notwithstanding the Company’s compliance with the quantitative criteria necessary to obtain a second 180-day period within which to evidence compliance with the Rule, as set forth in Nasdaq Listing Rule 5810(c)(3)(A), Nasdaq determined to delist the Company’s securities from Nasdaq unless the Company timely requested a hearing before the Nasdaq Hearings Panel (the “Panel”).

The Company submitted a compliance plan to Nasdaq before the October 1, 2020 deadline.

On October 22, 2020, the hearing was held with the Panel. On October 28, 2020, the Company received formal notice that the Panel granted the Company an extension through December 23, 2020 to evidence compliance with the Rule. In order to comply with the Rule, the Company must have a closing bid price of at least $1.00 per share for a minimum of ten consecutive business days by December 23, 2020.

The Company seeks to obtain approval through a special shareholders meeting to be held on December 9, 2020 to effect a reverse split of the Company's issued and outstanding voting common stock at a ratio not less than 1-for-2 and not greater than 1-for-20 that would result in a per share price that will comply with the Rule. The Company plans to take steps to timely evidence compliance; however, there can be no assurance that it will be able to do so.

Liquidity and Going Concern

The accompanying unaudited condensed consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of business. The Company, since its inception, has incurred recurring operating losses and negative cash flows from operations and has an accumulated deficit of $158.1 million as of September 30, 2020. The Company expects to incur substantial losses and negative cash flows in future periods. Further, the Company's future operations are dependent on the success of the Company's ongoing development and commercialization efforts, as well as securing of additional financing and generating positive cash flows from operations. There is no assurance that the Company will have adequate cash balances to maintain its operations. In addition, as a result of the recent outbreak of novel COVID-19, the Company may experience disruptions in fiscal year 2020 until November 2021 that could severely impact its supply chain, ongoing and future clinical trials and commercialization of Mytesi.

Although the Company plans to finance its operations and cash flow needs through equity and/or debt financing, collaboration arrangements with other entities, license royalty agreements, as well as revenue from future product sales, the Company does not believe its current cash balances are sufficient to fund its operating plan through one year from the issuance of these unaudited condensed consolidated financial statements. The Company has an immediate need to raise cash. There can be no assurance that additional funding will be available to the Company on acceptable terms, or on a timely basis, if at all, or that the Company will generate sufficient cash from operations to adequately fund operating needs. If the Company is unable to obtain an adequate level of financing needed for short-term operations and the long-term development and commercialization of its products, the Company will need to curtail planned activities and reduce costs. Doing so will likely have an adverse effect on the Company's ability to execute on its business plan; accordingly, there is substantial doubt about the ability of the Company to continue in existence as a going concern. The accompanying unaudited condensed consolidated financial statements do not include any adjustments that might result from the outcome of these uncertainties.

2. Summary of Significant Accounting Policies

Basis of Presentation

The unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") for interim financial information and on a basis consistent with the annual consolidated financial statements, and in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary for a fair presentation of the periods presented. These interim financial results are not necessarily indicative of the results to be expected for the year ending December 31, 2020, or for any other future annual or interim period. These unaudited condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto contained in the Annual Report on Form 10-K for the year ended December 31, 2019. The condensed consolidated balance sheet at December 31, 2019 has been derived from the audited consolidated financial statements at that date, but does not include all disclosures, including notes, required by U.S. GAAP for complete financial statements.

There has been no material change to the Company's significant accounting policies during the three and nine months ended September 30, 2020, as compared to the significant accounting policies described in Note 2 of the “Notes to Consolidated Financial Statements” in the Company's Annual Report on Form 10-K for the year ended December 31, 2019.

Except as noted above, the unaudited condensed consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, reflect all adjustments of a normal recurring nature considered necessary to present fairly the financial position as of September 30, 2020, results of operations for the three and nine months ended September 30, 2020 and 2019, changes in convertible preferred stock and stockholders' equity for the three and nine months ended September 30, 2020 and 2019, and cash flows for the nine months ended September 30, 2020 and 2019. The interim results are not necessarily indicative of the results for any future interim periods or for the entire year.

Principles of Consolidation

The unaudited interim condensed consolidated financial statements have been prepared in accordance with U.S. GAAP and applicable rules and regulations of the Securities and Exchange Commission (“SEC”) and include the accounts of the Company and its wholly-owned subsidiary. All inter-company transactions and balances have been eliminated in consolidation.

Use of Estimates

The preparation of the unaudited condensed consolidated financial statements in conformity with U.S. GAAP requires the Company’s management to make judgments, assumptions and estimates that affect the amounts reported in its unaudited condensed consolidated financial statements and the accompanying notes. The accounting policies that reflect the Company’s more significant estimates and judgments and that the Company believes are the most critical to aid in fully understanding and evaluating its reported financial results are the valuation of stock options, valuation of Series C perpetual preferred stock and Series D perpetual preferred stock, valuation of warrant liabilities, acquired in-process research and development (“IPR&D"), and useful lives assigned to long-lived assets; valuation adjustments for excess and obsolete inventory; allowance for doubtful accounts; deferred taxes and valuation allowances on deferred tax assets; evaluation and measurement of contingencies; and recognition of revenue, including estimates for product returns. Those estimates could change, and as a result, actual results could differ materially from those estimates.

The full extent to which the COVID-19 pandemic will directly or indirectly impact the Company’s business, results of operations and financial condition, including sales, expenses, reserves and allowances, manufacturing, research and development costs and employee-related amounts, will depend on future developments that are highly uncertain, including as a result of new information that may emerge concerning COVID-19 and the actions taken to contain or treat COVID-19, as well as the economic impact on local, regional, national and international customers, markets and economies.

Cash and Restricted Cash

Our cash on deposit may exceed United States federally insured limits at certain times during the year. We maintain cash accounts with certain major financial institutions in the United States. Restricted cash represents cash not available to us for immediate and general use.

Accounts Receivable

Accounts receivable is recorded net of allowances for discounts for prompt payment and credit losses. The Company estimates an allowance for credit losses by considering factors such as historical experience, credit quality, the age of the accounts receivable balances, and current economic conditions that may affect a customer’s ability to pay. The corresponding expense for the credit loss allowance is reflected in general and administrative expenses. The credit loss allowance was immaterial as of September 30, 2020.

Concentrations

Cash is the financial instrument that potentially subjects the Company to a concentration of credit risk as cash is deposited with a bank and cash balances are generally in excess of Federal Deposit Insurance Corporation insurance limits.

For the three and nine months ended September 30, 2020 and 2019, substantially all of the Company's revenue has been derived from the sale of Mytesi. For the three and nine months ended September 30, 2020, the Company earned Mytesi revenue primarily from one pharmaceutical distributor in the United States. Revenue earned from each as a percentage of total net revenue is as follows:

	Three Months Ended September 30, (unaudited)		Nine Months Ended September 30, (unaudited)	
	2020	2019	2020	2019
Customer 1	100 %	100 %	100 %	90 %

The Company is subject to credit risk from its accounts receivable related to its sales. The Company generally does not perform evaluations of customers' financial condition and generally does not require collateral. The Company's significant pharmaceutical distributors and their related accounts receivable balance as a percentage of total accounts receivable were as follows:

	September 30, 2020 (unaudited)	December 31, 2019
Customer 1	100 %	99 %

No other customer represented more than 10% of the Company's accounts receivable balances as of those dates.

The Company is subject to concentration risk from its suppliers. The Company sources raw material used to produce the active pharmaceutical ingredient in Mytesi from two suppliers and is dependent on a single third-party contract manufacturer, both for the supply of the active pharmaceutical ingredient in Mytesi, as well as for the supply of finished products for commercialization.

Fair Value

The Company's financial instruments include accounts receivable, accounts payable, accrued expenses, preferred stock, warrant liabilities, derivative assets and liabilities, equity-linked financial instruments and debt. The recorded carrying amount of accounts receivable, accounts payable, and accrued expenses reflect their fair value due to their short-term nature. The carrying value of the interest-bearing debt approximates fair value based upon the borrowing rates currently available to the Company for bank loans with similar terms and maturities. See Note 3 for the fair value measurements.

Inventory

Inventory is stated at the lower of cost or net realizable value. Cost is initially recorded at the invoiced amount of raw materials or active pharmaceutical ingredient, including the sum of qualified expenditures and charges in bringing the inventory to its existing condition and location. The Company calculates inventory valuation adjustments when conditions indicate that net realizable value is less than cost due to physical deterioration, usage, obsolescence, reductions in estimated future demand or reduction in selling price. Inventory write-downs are measured as the difference between the cost of inventory and net realizable value.

Land, Property and Equipment

Land is stated at cost, reflecting the fair value of the property at July 31, 2017, the date of the Napo merger. Equipment is stated at cost, net of accumulated depreciation. Equipment begins to be depreciated when it is placed into service. Depreciation is calculated using the straight-line method over estimated useful lives ranging between 3 to 10 years.

Expenditures for repairs and maintenance of assets are charged to expense as incurred. Costs of major additions and betterments are capitalized and depreciated on a straight-line basis over their estimated useful lives. Upon retirement or sale, the cost and related accumulated depreciation of assets disposed of are removed from the accounts and any resulting gain or loss is included in the unaudited condensed consolidated statements of operations.

Long-lived Assets

The Company regularly reviews the carrying value and estimated lives of all of its long-lived assets, including property and equipment, to determine whether indicators of impairment may exist that warrant adjustments to carrying values or estimated useful lives. The determinants used for this evaluation include management's estimate of the asset's ability to generate positive income from operations and positive cash flow in future periods as well as the strategic significance of the assets to the Company's business objectives.

Definite-lived intangible assets are amortized on a straight-line basis over the estimated useful lives of intangible assets and are reviewed when appropriate for possible impairment.

Indefinite-lived Intangible Assets

Acquired IPR&D are intangible assets acquired in the July 2017 Napo merger. Under ASC 805, IPR&D are initially recognized at fair value and classified as indefinite-lived assets until the successful completion or abandonment of the associated research and development efforts. During the development period, these assets will not be amortized as charges to earnings; instead, these assets will be tested for impairment on an annual basis or more frequently if impairment indicators are identified. An impairment loss is measured based on the excess of the carrying amount over the asset's fair value. There were no impairment charges recorded in the three and nine months ended September 30, 2020. The Company recorded an impairment of zero and $4,000,000 in the three and nine months ended September 30, 2019, respectively.

Leases

ASC 842, *Leases*, requires lessees to recognize right-of-use assets and lease liabilities for all leases with a term of greater than 12 months regardless of their classification on the balance sheet and to provide expanded disclosures about leasing arrangements. The Company adopted ASC 842 on January 1, 2019 using the optional transition method with no restatements of comparative periods. There was no effect on accumulated deficit at adoption.

The Company elected to adopt the package of practical expedients to (i) not reassess whether expired or existing contracts are or contain leases, (ii) not reassess the lease classification for any expired or existing leases and (iii) not reassess the accounting for initial direct costs.

The adoption of the new leases standard resulted in the following adjustments to the condensed consolidated balance sheet as of January 1, 2019:

(in thousands)	December 31, 2018	Adoption Impact	January 1, 2019
Operating lease right-of-use assets	$ —	$ 1,111	$ 1,111
Operating leases liabilities, current portion	—	337	337
Operating leases liabilities, long term	—	395	395
Deferred rent	380	(380)	—

At the inception of an arrangement, the Company determines whether the arrangement is or contains a lease based on the unique facts and circumstances present. Operating lease liabilities and their corresponding right-of-use assets are recorded based on the present value of lease payments over the expected lease term. Because the interest rate implicit in lease contracts is typically not readily determinable, the Company utilizes its incremental borrowing rate, which is the rate incurred to borrow on a collateralized basis over a similar term, an amount equal to the lease payments in a similar economic environment. Certain adjustments to the right-of-use asset may be required for items such as initial direct costs paid or incentives received.

Operating Lease

The Company had a non-cancelable operating lease with CA-Mission Street Limited Partnership for its offices in San Francisco, California, through September 30, 2020. The lease agreement called for monthly base rents between $38,000 and $41,000 over the term of the lease.

The Company entered into a sublease agreement with Peacock Construction Inc., a California corporation, for office space located at 200 Pine Street, Suite 400, San Francisco, California. The term of the sublease began on August 31, 2020 and will expire on May 31, 2021, unless earlier terminated in accordance with the contract. The rent under the sublease is $15,000 per month beginning October 1, 2020, which includes operating expenses and taxes. On October 1, 2020, the Company transitioned its operations from its existing premises at 201 Mission Street, Suite 2375, San Francisco, California to the sublease premises, which the Company expects will serve as its principal administrative headquarters.

Research and Development Expense

Research and development expense consist of expenses incurred in performing research and development activities including related salaries, clinical trials and related drug and non-drug product costs, contract services and other outside service expenses. Research and development expense is charged to operating expense in the period incurred.

Revenue Recognition

The Company recognizes revenue in accordance with ASC Topic 606, *Revenue from Contracts with Customers* (“ASC 606”).

Practical Expedients, Elections, and Exemptions

The Company recognizes revenue in accordance with the core principle of ASC 606 or when there is a transfer of control of promised goods or services to customers in an amount that reflects the consideration that the Company expects to be entitled to in exchange for those goods or services.

The Company also elected a practical expedient available under ASC 606-10-32-18 that permits it to not adjust the amount of consideration for the effects of a significant financing component if, at contract inception, the expected period between the transfer of promised goods or services and customer payment is one year or less.

The Company has elected to treat shipping and handling activities as fulfillment costs.

Additionally, the Company elected to record revenue net of sales and other similar taxes.

Contracts - Cardinal Health

Effective January 16, 2019, Napo engaged Cardinal Health as its exclusive third-party logistics distribution agent for commercial sales for the Company’s Mytesi product and to perform certain other services which include, without limitation, storage, distribution, returns, customer support, financial support, Electronic Data Interchange (“EDI”) and system access support (the “Exclusive Distribution Agreement”).

In addition to the terms and conditions of the Exclusive Distribution Agreement, Cardinal Health's purchase of products, and assumption of title therein, is set forth in the Title Model Addendum. The Title Model Addendum states that upon receipt of product at the 3PL Facility (Cardinal Health in La Vergne, Tennessee) from the Company, title and risk of loss for the Mytesi product purchased by Cardinal Health (excluding consigned inventory) shall pass to Cardinal Health, and title and risk of loss for consigned inventory shall remain with the Company until purchased by Cardinal Health in accordance with the Title Model Addendum. Napo considers Cardinal Health the Company's exclusive customer for Mytesi products per the Exclusive Distribution Agreement.

Jaguar's Neonorm and botanical extract products are primarily sold to distributors, who then sell the products to the end customers. Since 2014, the Company has entered into several distribution agreements with established distributors such as Animart, Vedco, VPI, RJ Matthews, Henry Schein, and Stockmen Supply to distribute the Company's products in the United States, Japan, and China. The distribution agreements and the related purchase orders together meet the contract existence criteria under ASC 606-10-25-1. Jaguar sells directly to its customers without the use of an agent.

Performance obligations

For animal products sold by Jaguar Health, the single performance obligation identified above is the Company's promise to transfer the Company's animal products to distributors based on specified payment and shipping terms in the arrangement. Product warranties are assurance type warranties that do not represent a performance obligation. For the Company's human product, Mytesi, which is sold by Napo, the single performance obligation identified above is the Company's promise to transfer Mytesi to Cardinal Health, the Company's exclusive distributor for the product, based on specified payment and shipping terms as outlined in the Exclusive Distribution Agreement.

Transaction price

For contracts with Cardinal Health, for both Jaguar and Napo, the transaction price is the amount of consideration to which the Company expects to collect in exchange for transferring the promised goods or services to a customer. The transaction price of Mytesi and Neonorm is the Wholesaler Acquisition Cost ("WAC"), net of discounts, returns, and price adjustments.

Allocate transaction price

For contracts with Cardinal Health, for both Napo and Jaguar, the entire transaction price is allocated to the single performance obligation contained in each contract.

Revenue recognition

For contracts with Cardinal Health, for both Napo and Jaguar, a single performance obligation is satisfied at a point in time, upon the free on board ("FOB") terms of each contract when control, including title and all risks, has transferred to the customer.

Disaggregation of Product Revenue

Human

Sales of Mytesi are recognized as revenue when the products are delivered to the wholesaler. Net revenues from the sale of Mytesi were $2.8 million and $1.0 million for the three months ended September 30, 2020 and 2019, respectively. Revenues from the sale of Mytesi were $6.7 million and $4.2 million for the nine months ended September 30, 2020 and 2019, respectively.

Out of period adjustment - During the period ended September 30, 2019, the Company identified a prior period product donation incorrectly recorded as revenue. The adjustment, totaling $337,000 related to revenue and accounts receivable, was corrected within the current quarter. The impact of the adjustment was an increase to net loss of

$337,000. This adjustment does not affect Mytesi revenue associated with sales in the nine months ended September 30, 2019. Management has determined that this out of period correcting adjustment is not material to any prior period consolidated financial statements impacted by the adjustment and has therefore recorded it in the three months ended September 30, 2019.

Animal

The Company recognized Neonorm revenues of $13,000 and $16,000 for the three months ended September 30, 2020 and 2019, respectively. Revenues from the sale of Neonorm were $61,000 and $83,000 for the nine months ended September 30, 2020 and 2019, respectively. Revenues are recognized upon shipment, which is when title and control is transferred to the buyer. Sales of Neonorm Calf and Foal to distributors are made under agreements that may provide distributor price adjustments and rights of return under certain circumstances.

Contracts - Atlas Sciences

Effective April 15, 2020, the Company entered into a patent purchase agreement with Atlas Sciences, LLC ("Atlas"), pursuant to which Atlas agreed to purchase certain patents and patent applications relating to Napo's NP-500 drug product candidate (the "Patent Rights") for an upfront cash payment of $1,500,000.

Concurrent with the Patent Rights sale, the Company entered into a license agreement with Atlas (the "License Agreement"), pursuant to which Atlas granted the Company an exclusive 10-year license to use the Patent Rights and improvements thereon to develop and commercialize NP-500 in all territories worldwide except Greater China (i.e., China, Hong Kong, Taiwan and Macau), inclusive of the right to sublicense NP-500 development and commercialization rights ("the License"). Except for the License retained by the Company, Atlas retains all rights, title and interest in and to the Patent Rights, including all improvements and enhancements to the Patent Rights made or created by the Company under the License Agreement or made or created by or on behalf of Atlas during the term of the License Agreement.

Included in the arrangement with Atlas, the Company is obligated to initiate a proof of concept Phase 2 study of NP-500 under an investigational new drug ("IND") application with the U.S. Food and Drug Administration or an IND-equivalent dossier under appropriate regulatory authorities (the "Phase 2 study") within nine months of April 15, 2020. The Company will incur a trial delay fee if the Company fails to initiate the Phase 2 study by this date, for any reason, including the timely receipt of adequate funding to initiate the Phase 2 study. Atlas has the right to terminate the License in the event that the Company (i) fails to complete the Phase 2 study within five years of April 15, 2020 or (ii) has not timely initiated the Phase 2 study and thereafter fails to make three or more consecutive Trial Delay Payments.

As of September 30, 2020, the Company determined not to proceed with the scheduled proof of concept of the Phase 2 study and incurred and recorded a liability for a trial delay fee. See Note 15 for a description of the trial delay fee settlement agreement entered into by the Company.

Performance obligations

The Patent Rights sale to Atlas and the Phase 2 study to be performed by the Company, identified above, represent a single transaction with two separate performance obligations; with the sale of the Patent Rights, the Company transferred control of the internally generated Patent Rights to Atlas at the date of sale.

As of September 30, 2020, the Company determined not to proceed with the Phase 2 study, which will result in the Company having no performance obligation to transfer the services to Atlas.

Transaction price

For the contract with Atlas, the upfront payment of $1,500,000 from Atlas as consideration for the Patent Rights sale and the Phase 2 study, is variable consideration that is fully constrained due to the potential incurrence of a Trial Delay Fee of $2,515,000 if the Phase 2 study had not been initiated by January 15, 2021. The Company's method for estimating the variable consideration was to use the most likely amount method. The Company fully constrained the value of the variable consideration based on inherent uncertainty of timing of clinical trials. Accordingly, at inception, the total transaction price of $1,500,000 is deferred and the transaction price is zero.

As of September 30, 2020, the total deferred transaction price of $1,500,000 will be derecognized as a result of the non-performance of the Company's obligation to initiate the Phase 2 study.

Allocate transaction price

For the contract with Atlas, the transaction price of $1,500,000 is allocated as follows: (i) $1,196,000 was allocated to the Phase 2 study using the cost-plus margin approach based on the price quoted by a third-party contract research organization, and (ii) $583,000 was allocated to the Patent sale using the Residual method.

As of September 30, 2020, the allocated deferred transaction price of $1,500,000 will be derecognized as a result of the non-performance of the Company's obligation to initiate the Phase study.

Revenue recognition

For the contract with Atlas, control of the Patent Rights transferred to Atlas on the date of sale (at a point-in-time); and with the Phase 2 study, the services were to be transferred to Atlas over the estimated 13.2 months of the study, which was set to run between October 2020 and November 2021.

As of September 30, 2020, the Company made the decision not to initiate the Phase 2 study and intended to negotiate the payment of the Trial Delay Fee of $2.5 million and terminate this obligation in the contract. Because of this decision, the allocated transaction price for that performance obligation will not be recognized as revenue. Likewise, the allocated transaction price for the Patent sale will not be recognized as revenue, as its recognition was dependent on initiating the Phase 2 study on or before January 15, 2021.

The Company derecognized $1.5 million in deferred revenue and the excess of the Trial Delay Fee was recognized in "General and Administrative Expenses" in the unaudited condensed consolidated statement of operations. The authoritative guidance treats consideration payable to a customer as a reduction of the transaction price and, therefore, an adjustment to revenues unless the payment is for a distinct good or service received from the customer. In some cases, a payment to a customer that is not in exchange for a distinct good or service could exceed the transaction price for the current contract. This is a case of a payment to a customer that is not in exchange for a distinct good or service. Accounting for the excess payment ("negative revenue") requires judgment as the standard does not explicitly address whether it is appropriate to reclassify revenue to expense.

The Company evaluated the nature of the consideration payable to the customer and the rights and obligations in the related contract and concluded that the excess payment or loss should be presented as part of the "General and Administrative Expenses" due to the following factors:

- No revenue has been recognized from the transaction as performance obligations were not satisfied.
- The Company settled the Trial Delay Fee in full in October 2020, which constitutes termination of the customer relationship considering that Atlas cannot compel the Company or has no recourse to force the Company to initiate the Phase 2 Study. The Company does not anticipate future revenue contract with Atlas.

- The trial delay fee is a penalty in its economic term, subject to accounting for contingencies and provisions under relevant authoritative guidance.

The Company recorded the excess loss amount of $1.0 million in the three and nine months ended September 30, 2020.

Disaggregation of Patent Sales and Clinical Trial Services

Patent Rights Sale

Patent Rights sales are recognized when control of the Patent Rights is transferred to the purchaser (at a point-in-time). However, due to the failure of the Company to initiate the Phase 2 study, which put the full constraint on the variable consideration of $1,500,000, no revenue was recognized from the sale of Patent Rights to Atlas for the three and nine months ended September 30, 2020.

Clinical Trials

Revenue from clinical trials is recognized over time, as the services are performed, as the Company's performance enhances the Patent Rights asset that Atlas controls. The Phase 2 study to be performed under the Atlas License was expected to begin in October 2020 and run through November 2021. The expected first patient dose in the study was expected to occur in December 2020, at which point revenue from the Phase 2 study would begin to be recognized.

As of September 30, 2020, the Company determined not to proceed with the Phase 2 study and incurred a trial delay fee of $2,515,000. Refer to Note 6 for a description of the contingent liability recorded. Due to the Company abandoning the Phase 2 study, the arrangement with Atlas to perform the clinical trial is terminated and the deferred revenue recorded for the variable consideration of $1,500,000 was derecognized.

Contracts – Glenmark Life Sciences

On September 3, 2020, Napo entered into a manufacturing and supply agreement (the “Agreement”) with Glenmark Life Sciences Limited (“Glenmark”), pursuant to which Glenmark will continue to serve as Napo’s manufacturer of crofelemer for use in Mytesi, the Company and Napo’s human prescription drug product approved by the U.S. Food and Drug Administration, and for other crofelemer-based products manufactured by Napo or its affiliates for human or animal use. The term of the Agreement is approximately 2.5 years (i.e., until March 31, 2023) and may be extended for successive two-year renewal terms upon mutual agreement between the parties thereto. Pursuant to the terms of the Agreement, Glenmark will supply crofelemer to Napo and its affiliates. The Agreement contains provisions regarding the rights and responsibilities of the parties with respect to manufacturing specifications, forecasting and ordering, delivery arrangements, payment terms, confidentiality and indemnification, as well as other customary provisions. The Agreement includes a commitment for the purchase from Glenmark of a minimum quantity of 300 kilograms of crofelemer per year, pro-rated for partial years, where the Company may be obligated to pay any shortfall. Either party may terminate the Agreement for any reason with 12 months prior written notice to the other party. In addition, either party may terminate the Agreement upon written notice as a result of a material breach of the Agreement that remains uncured for a period of 90 days. If the Company terminates the Agreement as a result of a material breach caused by Glenmark, the Company will not be obligated to pay for any minimum quantity shortfall.

Collaboration Revenue

On September 24, 2018, the Company entered into a Distribution, License and Supply Agreement (“License Agreement”) with Knight Therapeutics ("Knight"). The License Agreement has a term of 15 years (with automatic renewals) and provides Knight with an exclusive right to commercialize current and future Jaguar human health products (including Crofelemer, Lechlemer, and any product containing a proanthocyanidin or with an anti-secretory mechanism) in Canada and Israel. Knight forfeited its right of first negotiation for expansion to Latin America. Under the License Agreement, Knight is responsible for applying for and obtaining necessary regulatory approvals in the territory of Canada and Israel, as well as marketing, sales and distribution of the licensed products. Knight will pay a transfer price for all licensed products, and upon achievement of certain regulatory and sales milestones, Jaguar may receive payments from Knight in an aggregate amount of up to approximately $18 million payable throughout the initial 15-year term of the agreement. The Company did not have any collaboration revenues for the three and nine months ended September 30, 2020 and 2019.

Modifications to Equity-classified Instruments

In the nine months ended September 30, 2020, the Company modified certain equity-classified warrants (see Note 8). It is the Company’s policy to determine the impact of modifications to equity-classified warrants by analogy to the share-based compensation guidance of ASC 718, *Compensation - Stock Compensation* (“ASC 718”). The model for a modified share-based payment award that is classified as equity and remains classified in equity after the modification is addressed in ASC 718-20-35-3. Pursuant to that guidance, the incremental fair value from the modification is recognized as an expense in the statements of operations to the extent the modified instrument has a higher fair value; however, in certain circumstances, such as when an entire class of warrants are modified, the measured increase in fair value may be more appropriately recorded as a deemed dividend, depending upon the nature of the warrant modification.

In the nine months ended September 30, 2020, the Company modified the terms of its Series B convertible preferred stock, and Series 1, 2 and Bridge warrants (see Note 9). For amendments to preferred stock, it is the Company’s policy to measure the impact by analogy to ASC 470-50 in determining if such an amendment is an extinguishment or a modification. If the amendment results in an extinguishment, the Company follows the SEC staff guidance in ASC 260-10-S99-2 and ASC 470-20. If the amendment results in a modification, the Company follows the model in either ASC 718 or ASC 470-50, depending on the nature of the amendment.

Stock-based Compensation

The Company's Stock Incentive Plans (see Note 12) provide for the grant of stock options, restricted stock and restricted stock unit awards.

The Company measures stock awards granted to employees, non-employees and directors at fair value on the date of grant and recognizes the corresponding compensation expense of the awards, net of estimated forfeiture over the requisite service periods, which correspond to the vesting periods of the awards. The Company issues stock awards with only service-based vesting conditions, and records compensation expense for these awards using the straight-line method.

The Company uses the grant date fair market value of its common stock to determine the grant date fair value of options granted to employees, non-employees and directors.

Income Taxes

The Company uses the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial reporting and the tax bases of

assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized.

Comprehensive Loss

For all periods presented, the comprehensive loss was equal to the net loss; therefore, a separate statement of comprehensive loss is not included in the accompanying unaudited condensed consolidated financial statements.

Recent Accounting Pronouncements

In August 2018, the FASB issued ASU 2018-13, Fair Value Measurement (Topic 820): *Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement*. The primary focus of the standard is to improve the effectiveness of the disclosure requirements for fair value measurements. The changes affect all companies that are required to include fair value measurement disclosures. The standard requires the use of the prospective method of transition for disclosures related to changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop fair value measurements categorized within Level 3 of the fair value hierarchy, and narrative description of measurement uncertainty. All other amendments in the standard are required to be adopted retrospectively. We adopted the standard on January 1, 2020. The adoption of this standard did not have a material effect on the Company's unaudited condensed consolidated financial statements and related disclosures.

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 provides guidance on how to assess whether certain transactions between collaborative arrangement participants should be accounted for within the revenue recognition standard. The standard also provides more comparability in the presentation of revenue for certain transactions between collaborative arrangement participants. The standard is to be applied retrospectively to the date of the initial application of Topic 606 which also requires recognition of the cumulative effect of applying the amendments as an adjustment to the opening balance of retained earnings of the later or the earliest annual period presented and the annual period inclusive of the initial application of Topic 606. We adopted the standard on January 1, 2020. The adoption of this standard did not have a material effect on the Company's unaudited condensed consolidated financial statements and related disclosures.

In December 2019, the FASB issued ASU 2019-12, Income Taxes (Topic 740): *Simplifying the Accounting for Income Taxes*, which is intended to simplify various aspects related to accounting for income taxes. The standard also removes certain exceptions to the general principles in Topic 740 and clarifies and amends existing guidance to improve consistent application. The pronouncement is effective for the Company beginning January 1, 2021 with early adoption permitted. The Company is still evaluating the impact of the adoption of this standard.

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*, which simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity's own equity. The pronouncement is effective for the Company beginning January 1, 2022 with early adoption permitted. The Company is still evaluating the impact of the adoption of this standard.

3. Fair Value Measurements

ASC 820 "Fair Value Measurements" defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles and enhances disclosures about fair value measurements. Fair value is defined under ASC 820 as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value under ASC 820 must maximize the use of

observable inputs and minimize the use of unobservable inputs. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

- Level 1— Observable inputs such as quoted prices (unadjusted) for identical instruments in active markets.
- Level 2— Observable inputs such as quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, or model derived valuations whose significant inputs are observable.
- Level 3— Unobservable inputs that reflect the reporting entity's own assumptions.

The following tables set forth the fair value of the Company's financial instruments that were measured at fair value on a recurring basis as of September 30, 2020 and December 31, 2019.

	September 30, 2020 (unaudited)			
(in thousands)	Level 1	Level 2	Level 3	Total
Warrant liability	$ —	$ —	$ 126	$ 126
Series D perpetual preferred stock liability	—	—	6,430	6,430
Total fair value	$ —	$ —	$ 6,556	$ 6,556

	December 31, 2019			
(in thousands)	Level 1	Level 2	Level 3	Total
Warrant liability	$ —	$ —	$ 3	$ 3
Total fair value	$ —	$ —	$ 3	$ 3

The Series D perpetual preferred stock liability represents 848,117 of 8% cumulative perpetual preferred shares. The shares are redeemable at $8.00 per share on December 31, 2024, the date in which contractual cash outflows of the Exchange Note 2 (See Note 7) require the entire settlement or redemption of the Series D perpetual preferred stock liability. The shares are entitled to stock dividends at the rate of 8% per annum, compounded monthly for twenty-four consecutive calendar months, based on the outstanding number of shares, including any dividend in arrears. Since the shares are mandatorily redeemable on a specified date they are recognized as liabilities.

The fair value of the Series D perpetual preferred stock liability amounting to $6,430,000 as of September 30, 2020 was based on weighted discounted cash flows representing the settlement value of the shares and cumulative dividends issued using a current borrowing rate adjusted for counterparty. They were classified as level 3 fair values in the fair value hierarchy due to the use of unobservable inputs, including the Company's own credit risk.

The Company determined and performed the valuations of the Series D perpetual preferred stock liability with the assistance of an independent valuation service provider. On a quarterly basis, the Company considers the main level 3 inputs used derived as follows:

- Discount rates for Series D perpetual preferred stock were determined using comparison of various effective yields on investments as of the valuation date.
- Weighted probability of cash outflows was estimated based on the entity's knowledge of the business and how the current economic environment is likely to impact the timing of the cash outflows.

The following table summarizes the quantitative information about the significant unobservable inputs used in level 3 fair value measurements:

Unobservable Inputs	Range of inputs (probability-weighted average) 2020	2019	Relationship of unobservable inputs to fair value
Risk Adjusted Discount Rate	12%-15% (14%)	N/A	Lower discount rate (-200 basis points (bps)) would increase FV by $103,000; Higher discount rate (+100 bps) would decrease FV by $117,000
Timing of Cash Flows: Settlement on September 30, 2021	60%-90% (90%)	N/A	If expected cash flows determined by Management would consider a mix of 70%, 15%, and 15% for the respective scenarios, FV would have decreased by $38,000. If expected cash flows determined by Management would consider a mix of 60%, 20%, and 20% for the respective scenarios, FV would have decreased by $57,000.
Timing of Cash Flows: Settlement on December 30, 2021	5%-20% (5%)	N/A	If expected cash flows determined by Management would consider a mix of 70%, 15%, and 15% for the respective scenarios, FV would have decreased by $38,000. If expected cash flows determined by Management would consider a mix of 60%, 20%, and 20% for the respective scenarios, FV would have decreased by $57,000.
Timing of Cash Flows: Settlement on August 31, 2022	5%-20% (5%)	N/A	If expected cash flows determined by Management would consider a mix of 70%, 15%, and 15% for the respective scenarios, FV would have decreased by $38,000. If expected cash flows determined by Management would consider a mix of 60%, 20%, and 20% for the respective scenarios, FV would have decreased by $57,000.

The change in the estimated fair value of Level 3 liabilities is summarized below:

	Nine Months Ended September 30, 2020	
(in thousands)	Warrant Liability (unaudited)	Series D perpetual preferred stock liability (unaudited)
Beginning fair value of Level 3 liability	$ 3	$ —
Additions	3,696	6,359
Exercises	(5,993)	—
Change in fair value	2,420	71
Ending fair value of Level 3 liability	$ 126	$ 6,430

Warrant Liability

The warrants associated with the Level 3 warrant liability were the November 2016 Series A Warrants, the October 2018 Underwriter Warrants and the May 2020 Series 3 Warrants, which, at September 30, 2020, were valued at zero, $1,000 and $125,000 respectively, in the Company's condensed consolidated balance sheets. The warrants associated with the Level 3 warrant liability activity for the year ended December 31, 2019 were the November 2016 Series A Warrants, the October 2018 Underwriter Warrants, the March 2019 LOC Warrants and the Bridge Warrants, which at December 31, 2019 were valued at zero, $3,000, zero and zero, respectively in the Company's condensed consolidated balance sheets.

The November 2016 Series A Warrants

The Series A warrant valuation of zero at September 30, 2020 was computed using the Black-Scholes-Merton pricing model using a stock price of $0.29, a strike price of $787.50 per share, an expected term of 1.70 years, volatility of 148% and a risk-free discount rate of 0.13%. The Series A warrant valuation of zero at December 31, 2019 was computed using the Black-Scholes-Merton pricing model using a stock price of $0.65, a strike price of $787.50 per share, an expected term of 2.41 years, volatility of 143.41% and a risk-free discount rate of 1.62%. The net decrease in the fair value of the warrants of zero for the three and nine months ended September 30, 2020, was recorded as a gain in the change in fair value of financial instruments in the unaudited condensed consolidated statements of operations.

The October 2018 Underwriter Warrants

The October 2018 Underwriter Warrants valuation of $1,000 at September 30, 2020 was computed using the Black-Scholes-Merton pricing model using a stock price of $0.29, a strike price of $52.50 per share, an expected term of 3.00 years, volatility of 156% and a risk-free discount rate of 0.16%. The October 2018 Underwriter Warrants valuation of $3,000 at December 31, 2019 was computed using the Black-Scholes-Merton pricing model using a stock price of $0.65, a strike price of $52.50 per share, an expected term of 3.76 years, volatility of 143.41% and a risk-free discount rate of 1.69%. The net decrease in the fair value of the warrants of $1,000 and $3,000 for the three and nine months ended September 30, 2020, respectively, was recorded as a gain in the change in fair value of financial instruments in the unaudited condensed consolidated statements of operations.

The May 2020 Series 3 Warrants

The May 2020 Series 3 Warrants valuation of $123,000 at September 30, 2020 was computed using the Black-Scholes-Merton pricing model using a stock price of $0.29, a strike price of $0.00 per share, an expected term of 5.14 years, volatility of 142% and a risk-free discount rate of 0.28%. The May 2020 Series 3 Warrants valuation of $3,696,000 at issuance on May 22, 2020 was computed using the Black-Scholes-Merton pricing model using a stock price of $0.44, a strike price of $0.05 per share, an expected term of 5.50 years, volatility of 143% and a risk-free discount rate of 0.34%. The net increase in the fair value of the warrants of $2,034,000 and $2,422,000 for the three and nine months ended September 30, 2020, respectively, was recorded as a loss in the change in fair value of financial instruments in the unaudited condensed consolidated statements of operations.

4. Balance Sheet Components

Inventory

Inventory at September 30, 2020 and December 31, 2019 consisted of the following:

(in thousands)	September 30, 2020 (unaudited)	December 31, 2019
Raw Material	$ 604	$ 457
Work in Process	542	1,211
Finished Goods	1,073	461
Inventory	$ 2,219	$ 2,129

Property and Equipment

Property and equipment at September 30, 2020 and December 31, 2019 consisted of the following:

(in thousands)	September 30, 2020 (unaudited)	December 31, 2019
Land	$ 396	$ 396
Lab equipment	418	411
Clinical equipment	65	65
Software	63	63
Total property and equipment at cost	942	935
Accumulated depreciation	(256)	(225)
Property and equipment, net	$ 686	$ 710

Depreciation expense was $11,000 and $31,000 in the three and nine months ended September 30, 2020. Depreciation expense was $10,000 and $40,000 for the three and nine months ended September 30, 2019, respectively.

Intangible Assets

Intangible assets at September 30, 2020 and December 31, 2019 consisted of the following:

(in thousands)	September 30, 2020 (unaudited)	December 31, 2019
Developed technology	$ 25,000	$ 25,000
Accumulated developed technology amortization	(5,278)	(4,028)
Developed technology, net	19,722	20,972
In-process research and development	4,800	8,800
Impairment	—	(4,000)
In process research and development, net	4,800	4,800
Trademarks	300	300
Accumulated trademark amortization	(63)	(48)
Trademarks, net	237	252
Total intangible assets, net	$ 24,759	$ 26,024

In June 2019, the Company determined that in-process research and development was impaired and recorded an impairment loss of zero and $4,000,000 in the statements of operations for the three and nine months ended September 30, 2019, respectively. Amortization expense was $422,000 and $1,265,000 for the three and nine months ended September 30, 2020 and 2019, respectively.

5. Related Party Transactions

Management Services Agreement

In March 2018, concurrent with the issuance of the Company's Series A convertible preferred stock to Sagard Capital Partners, L.P. ("Sagard Capital"), the Company entered into a Management Services Agreement with Sagard Capital. Under the agreement, Sagard Capital will provide consulting and management advisory service to the Company from March 2018 through March 2021. These services include assistance with strategic planning regarding the Company's commercial strategy, research and due diligence regarding human resource activities, and strategic advice in financial matters. In consideration for such services, the Company will pay Sagard Capital an annual fee of $450,000, with total fees over the term of the agreement not to exceed $1,350,000. On September 1, 2020, in concurrence with other transactions by and between the Company, Chicago Venture Partners, L.P. ("CVP" or "Chicago Venture Partners") and its affiliates, and Sagard Capital, the Company and Iliad Research and Trading, L.P., an affiliate of CVP, agreed to issue 2,289,474 shares of the Company's Common Stock to Sagard Capital pursuant to the Stock Plan Agreement for termination of the Management Services Agreement in lieu of payment of $1,087,500 in accrued consulting and management fees. For the three and nine months ended September 30, 2020, total fees incurred were $112,500 and $337,500, respectively. As of September 30, 2020, the Company had zero balance due to Sagard Capital.

Letter of Credit

In August 2018, to satisfy a letter of credit requirement in the Company's office lease agreement (see Note 6), Pacific Capital Management, LLC, one of the Company's existing shareholders, caused its financial institution to issue a letter of credit in the amount of $475,000 on behalf of the Company. In consideration of the letter of credit, in August 2018, the Company issued to Pacific Capital Management, LLC a warrant (see Note 8) to purchase 9,580 shares of the Company's voting common stock. As additional consideration, a payment of $45,000 was made to Pacific Capital Management, LLC in November 2019.

On March 24, 2020, the Company entered into a letter of credit agreement with Dr. Charles Conte, the brother of Lisa Conte, the Company's President, CEO and member of the Company's board of directors, pursuant to which the Company will, subject to CA-Mission Street Partnership's consent, replace the existing letter of credit in the amount of $475,000 entered into on August 28, 2018 by the Company with CA-Mission Street Partnership to satisfy the letter of credit requirement in the Company's office lease agreement with a new letter of credit in the amount of $475,000. In consideration of the new letter of credit, the Company will pay Dr. Conte an amount equal to $10,000 per month and reimburse up to $7,500 for reasonable out-of-pocket expenses incurred. The letter of credit will expire no earlier than December 31, 2020, provided, however that the Company, at no additional cost, may replace it on an earlier date. For the three and nine months ended September 30, 2020, total fees incurred were $30,000 and $65,000, respectively. In October 2020, CA-Mission Street Partnership released the letter of credit agreement with Dr. Conte pursuant to the expiration and termination of the office lease agreement between the Company and CA-Mission Street Partnership on September 30, 2020. As of September 30, 2020, the Company had zero balance due to Dr. Conte. In October 2020, the Company paid Dr. Conte a prorated amount due through the effective date of the release of the letter of credit of $7,000.

2019 Bridge Notes

Between March 18, 2019 and June 26, 2019, three members of the Board of Directors of the Company entered into short-term Promissory Note Purchase Agreements with the Company: (i) Lisa Conte, the Company's CEO & President, purchased a short-term Promissory Note of $100,000 which the Company settled in July 2019. In consideration for the short-term financing, the Company issued Ms. Conte a warrant that became exercisable into 37,500 shares of the Company's common stock at an exercise price of $0.49 per share; (ii) James Bochnowski, purchased a short-term Promissory Note of $350,000 which the Company settled in July 2019. In consideration for the short-term financing, the Company issued Mr. Bochnowski a warrant that became exercisable into 218,750 shares of the Company's common stock at an exercise price of $0.49 per share; and (iii) Jonathan Siegel DBA JBS Healthcare Ventures, purchased a short-term Promissory Note of $75,000 which the Company settled in July 2019. In consideration for the short-term financing, the Company issued Mr. Siegel a warrant that became exercisable into 34,375 shares of the Company's common stock at an exercise price of $0.49 per share.

In addition, Sagard Capital purchased a short-term Promissory Note of $500,000, which the Company settled in July 2019. In consideration for the short-term financing, the Company issued Sagard Capital a warrant that became exercisable into 187,500 shares of the Company's common stock at an exercise price of $0.49 per share; and Jonathan Glaser, an existing shareholder, purchased short-term Promissory Notes of $500,000 which the Company settled in July 2019. In consideration for the short-term financing, the Company issued Mr. Glaser warrants that became exercisable into 250,000 shares of the Company's common stock at an exercise price of $0.49 per share.

6. Commitments and Contingencies

Commitments

Leases

On August 28, 2018, the Company entered into an office lease extension agreement for approximately 6,311 square feet of office space in San Francisco, CA. The term of the lease began on September 1, 2018 and expired on September 30, 2020. The monthly base rent under the lease was as follows: $38,000 for the first twelve months, $40,000 for the subsequent twelve months, and $41,000 for the final month. The Company also paid an additional monthly amount for the Company's proportionate share of the building's operating charges. An existing shareholder provided a standby letter of credit in the amount of $475,000 to the lessor as collateral for the full performance by the Company of all of its obligations under the lease. In consideration of the Letter of Credit, the Company issued the shareholder a five-year warrant (see Note 8) to purchase 9,580 shares of the Company's voting common stock. The $494,000 fair value of the Warrant was classified in stockholders' equity with an offset to deferred rent. With the Company's adoption of ASC 842 on January 1, 2019, the offset to the deferred balance was classified as a right-of-use asset. Each month, $20,000 of

this deferred balance was recognized as non-cash lease expense during the term of the lease, which expired on September 30, 2020.

In December 2018, the Company did not meet a covenant per the terms of the $475,000 Letter of Credit, the result of which required the Company to issue a Letter of Credit of $122,000 to the shareholder who issued the original $475,000 letter of credit. In March 2019, the Company canceled the $122,000 letter of credit in lieu of issuing the shareholder a promissory note for that amount in April 2019, as well as issuing the shareholder a warrant (see Note 8).

On August 31, 2020, the Company entered into an office sublease of approximately 5,263 square feet of office space in San Francisco. The term of the sublease will expire on May 31, 2021. The rent sublease is $15,000 per month beginning on October 1, 2020, which includes operating expenses and taxes.

The Company recognizes rent expense on a straight-line basis over the non-cancelable lease period. Rent expense was $191,000 and $588,000 for the three and nine months ended September 30, 2020, respectively, and $153,000 and $554,000 for the three and nine months ended September 30, 2019, respectively. Rent expense is included in general and administrative expenses in the unaudited condensed consolidated statements of operations.

Angel Pond Agreement

In October 2019, the Company engaged Angel Pond Capital LLC to explore potential licensing agreements and collaborations for Mytesi in China. In consideration of these services, the Company compensated Angel Pond Capital LLC with $140,000, paid via the issuance of 166,667 shares of the Company’s common stock, for the initial four-month term of the agreement. The Company had the option to extend the agreement term for two months for $30,000 payable in shares of the Company’s common stock. As of September 30, 2020, no qualifying amounts were raised in China and no amounts are owed to Angel Pond as compensation. The Company did not extend the agreement with Angel Pond Capital LLC and it has expired.

Asset transfer and transition commitment

On September 25, 2017, Napo entered into the Termination, Asset Transfer and Transition Agreement dated September 22, 2017 with Glenmark Pharmaceuticals Ltd. (“Glenmark”). As a result of the agreement, Napo now controls commercial rights for Mytesi for all indications, territories and patient populations globally, and also holds commercial rights to the existing regulatory approvals for crofelemer in Brazil, Ecuador, Zimbabwe and Botswana. In exchange, Napo agrees to pay Glenmark 25% of any payment it receives from a third party to whom Napo grants a license or sublicense or with whom Napo partners in respect of, or sells or otherwise transfers any of the transferred assets, subject to certain exclusions, until Glenmark has received a total of $7.0 million. No payments have been made to date.

Revenue sharing commitment

On December 14, 2017, the Company announced its entry into a collaboration agreement with Seed Mena Businessmen Services LLC (“SEED”) for Equilevia™, the Company's non-prescription, personalized, premium product for total gut health in equine athletes. According to the terms of the Agreement, the Company will pay SEED 15% of total revenue generated from any clients or partners introduced to the Company by SEED in the form of fees, commissions, payments or revenue received by the Company or its business associates or partners, and the agreed-upon revenue percentage increases to 20% after the first million dollars of revenue. In return, SEED will provide the Company access to its existing United Arab Emirates (“UAE”) network and contacts and assist the Company with any legal or financial requirements. The agreement became effective on December 13, 2017 and will continue indefinitely until terminated by either party pursuant to the terms of the Agreement. No payments have been made to date.

Legal Proceedings

On July 20, 2017, a putative class action complaint was filed in the United States District Court, Northern District of California, Civil Action No. 3:17 cv 04102, by Tony Plant (the “Plaintiff”) on behalf of shareholders of the

Company who held shares on April 12, 2017 and were entitled to vote at the 2017 Special Shareholders Meeting, against the Company and certain individuals who were directors as of the date of the vote (collectively, the "Defendants"), in a matter captioned Tony Plant v. Jaguar Animal Health, Inc., et al., making claims arising under Section 14(a) and Section 20(a) of the Exchange Act and Rule 14a 9, 17 C.F.R. § 240.14a 9, promulgated thereunder by the SEC. The claims alleged false and misleading information provided to investors in the Joint Proxy Statement/Prospectus on Form S-4 (File No. 333 217364) declared effective by the Commission on July 6, 2017 related to the solicitation of votes from shareholders to approve the merger and certain transactions related thereto. The Company accepted service of the complaint and summons on behalf of itself and the United States-based director Defendants on November 1, 2017. The Company has not accepted service on behalf of, and Plaintiff has not yet served, the non-U.S.-based director Defendants.

On October 3, 2017, Plaintiff filed a motion seeking appointment as lead plaintiff and appointment of Monteverde & Associates PC as lead counsel. That motion was granted. Plaintiff filed an amended complaint against the Company and the United States based director Defendants on January 10, 2018. The Defendants filed a motion to dismiss on March 12, 2018, for which oral arguments were held on June 14, 2018. The court dismissed the amended complaint on September 20, 2018. Plaintiff was entitled to amend that complaint within 20 days from the date of dismissal. On October 10, 2018, Plaintiff filed a second amended complaint to focus on the Company's commercial strategy in support of Equilevia and the related disclosure statements in the Form S-4 described above. On November 6, 2018, the Defendants moved to dismiss the second amended complaint. The Defendants argue in their motion that the second amended complaint fails to state a claim upon which relief can be granted because the omissions and misrepresentations alleged in the complaint are immaterial as a matter of law. The court denied the Defendants' motion to dismiss on June 28, 2019. The Company answered the second amended complaint on August 2, 2019; the answer denied the material allegations of the second amended complaint.

Following the exchange of documents, the parties engaged in a mediation. As a result of the mediation process, the parties have agreed in principle to a payment of $2,600,000 to members of a settlement class consisting of all record and beneficial holders of Jaguar Animal Health, Inc. common stock who purchased, sold, or held such stock during the period from and including June 30, 2017 through and including July 31, 2017, the date the Merger closed, including any and all of their respective predecessors, successors, trustees, executors, administrators, estates, legal representatives, heirs, assigns and transferees (the "Settlement Class"). The following persons are excluded from the Settlement Class: (a) defendants; (b) members of the immediate families of each defendant; (c) any entity in which any defendant has a controlling interest; (d) the legal representatives, heirs, successors, administrators, executors, and assigns of each defendant; and (e) any persons or entities who properly exclude themselves by filing a valid and timely request for exclusion.

The proposed settlement will not become effective unless and until it is approved by the district court, subject to rulings upon any objections and any appeals to the court of appeals. Assuming that the proposed settlement is approved by the district court and becomes effective, the settlement consideration will be paid by the Company's directors and officers liability insurer.

Settlement of Underwriter Fee

In August 2018, the Company entered into an agreement with an underwriter pursuant to which the underwriter would aid the Company in identifying certain financing transactions, in exchange for a percentage fee of any such financing and warrants. In the first quarter of 2020, the Company and the underwriter agreed on a final settlement for the underwriter services comprised of a cash payment, warrants and common stock. The cash payment amount totaled $386,560, of which $201,650 had been paid in September 2019, and $184,910 was accrued in March 2020 and was paid in April 2020. The total warrant issuance payment consisted of the Company issuing 1,096 equity-classified warrants to the underwriter in August 2018 and, in April 2020, issuing an additional 100,780 equity-classified warrants (see Note 8) to the underwriter to purchase shares of common stock at an exercise price of $2.50 per share. The common stock issuance payment consisted of the Company, in April 2020, issuing 100,000 shares of the Company's common stock to the underwriter with a fair value of $44,900. The Company classified the cash payments, warrant and commons stock issuance payments as issuance costs in the condensed consolidated statements of changes in convertible preferred stock and stockholders' equity.

Contingencies

From time to time, the Company may be involved in legal proceedings (other than those noted above) arising in the ordinary course of business. The Company believes there is no litigation pending that could have, individually or in the aggregate, a material adverse effect on the financial position, results of operations or cash flows.

7. Debt

Convertible Debt

December 2017 Note

On June 29, 2017, the Company issued a secured convertible promissory note to Chicago Venture Partners, in the aggregate principal amount of $2,155,000 less an original issue discount of $425,000 and less $30,000 to cover the lender's legal fees for net cash proceeds of $1,700,000 (the “June 2017 Note”). Interest on the outstanding balance will be paid 8% per annum from the purchase price date until the balance is paid in full.

The Company computed fair values at the date of issuance of $15,000 and $5,000 for the repayment and the interest rate increase feature, respectively, using the Binomial Lattice Model, which was based on the generalized binomial option pricing formula. The $20,000 combined fair value was carved out and was included as a derivative liability on the Balance Sheet. At September 30, 2018, the derivatives were determined to have a de-minimis fair value and were written-off.

On August 2, 2018, the Company and CVP agreed to an amendment extending the maturity date to August 26, 2019, and limiting the aggregate amount that CVP is permitted to redeem on a monthly basis to $500,000, which is the maximum aggregate redemption amount for all notes outstanding with CVP. This amendment resulted in the Company accounting for the transaction as a troubled debt restructuring, under which the carrying amount of the note payable remained unchanged but interest expense is computed using a new effective rate that equates the present value of the future cash payments specified by the new terms with the carrying amount of the note.

Between October 2018 and December 2018, the Company and CVP renegotiated the terms of the June 2017 Note agreement such that CVP agreed not to make any redemptions of the June 2017 Note until March 2019. In consideration of this standstill arrangement, the Company paid CVP a total standstill fee of $499,000 for all four CVP Notes (collectively, the June 2017 CVP Note, The December 2017 CVP Note, the February 2018 Note and the March 2018 Note). The standstill fee allocated to the June 2017 Note was $63,000, of which $37,000 increased the principal balance and $26,000 was paid in cash. These restructurings in whole represented four separate restructurings of the June 2017 Convertible Note agreement, resulting in two troubled debt restructurings accounted for under ASC 470-60 and two modifications accounted for under ASC 470-50. For the two modifications resulting in troubled debt restructurings, the changes were accounted for prospectively and a new effective interest rate was determined that equated the present value of the future cash payments specified by the new terms with the carrying amount of the June 2017 Note. For the two modifications that resulted in modification accounting, a new effective rate was determined at the date of modification that equated the revised cash flows to the carrying amount of the Note.

In May 2019, the Company and CVP amended the June 2017 Note agreement such that the Company made three separate exchanges of principal and related accrued interest for shares of the Company’s common stock. The first two exchanges of principal and accrued interest for common stock were not considered a substantial change to the June 2017 Note and therefore resulted in modification accounting and the determination of a new effective interest rate; the third exchange on May 29, 2019 resulted in the extinguishment of the entire June 2017 Note with a corresponding extinguishment loss of $8,000. At December 31, 2019, the June 2017 Note had been fully extinguished.

Napo Convertible Notes

March 2017 Convertible Debt

In March 2017, Napo entered into an exchangeable Note Purchase Agreement with two lenders for the funding of face amount of $1,312,000 in two $525,000 tranches of face amount $656,000. The notes bore interest at 3% and had an original maturity date of December 1, 2017. The Company assumed the notes at fair value of $1,313,000 as part of the Napo Merger.

First Amendment to Note Purchase Agreement and Notes

In December 2017, Napo amended the exchangeable note purchase agreement to extend the maturity of the first tranche and second tranche of notes to February 15, 2018 and April 1, 2018, respectively, increase the principal amount by 12%, and reduce the conversion price from $39.20 per share to $14.00 per share. The Company also issued 166,139 shares of common stock to the lenders in connection with this amendment to partially redeem $299,000 from the first tranche of the notes. The amended face value of the notes was $1,171,000. This amendment resulted in the Company treating the notes as having been extinguished and replaced with new notes for accounting purposes due to meeting the 10% cash flow test. The conversion option in the notes was bifurcated and accounted for as a conversion option liability at its fair value.

Second Amendment to Note Purchase Agreement and Notes

On February 16, 2018, Napo amended the exchangeable note purchase agreement to extend the maturity date of the Second Tranche Notes from April 1, 2018 to May 1, 2018. In addition, the Company also issued 3,603 shares of common stock to the Purchasers as repayment of the remaining $436,000 aggregate principal amount and $18,000 in accrued and unpaid interest thereon. On March 23, 2018, the Company paid off the remaining $735,000 of principal and $21,000 in interest due on the second tranche debt in cash with proceeds from the March 23, 2018 equity financing. The fair value of the conversion option liability was again revalued at March 23, 2018 using the Black-Scholes-Merton model using the following criteria: stock price of $14.70 per share, expected life of 0.11 years, volatility of 288.16%, risk-free rate of 1.69% and dividend rate of 0%, resulting in an increase of $175,000 to the fair value of the conversion option liability and included in the change in fair value of warrants and conversion option liability in the statements of operations. The underlying debt was paid off in March of 2018 and the $287,000 conversion option liability was written off to loss from operations in the unaudited condensed consolidated statements of operations.

December 2016 Convertible Debt

In December 2016, Napo entered into a note purchase agreement which provided for the sale of up to $12,500,000 face amount of notes and issued convertible promissory notes (the “Napo December 2016 Notes”) in the aggregate face amount of $2,500,000 to three lenders and received proceeds of $2,000,000 which resulted in $500,000 of original issue discount. In July 2017, Napo issued convertible promissory notes (the “Napo July 2017 Notes”) in the aggregate face amount of $7,500,000 to four lenders and received proceeds of $6,000,000 which resulted in $1,500,000 of original issue discount. The Napo December 2016 Notes and the Napo July 2017 Notes mature on December 30, 2019 and bear interest at 10% with interest due each six-month period after December 30, 2016. On June 30, 2017, the accrued interest of $125,000 was added to principal of the Napo December Notes, and the new principal balance became $2,625,000. Interest may be paid in cash or in the stock of Jaguar per terms of the note purchase agreement. In each one year period beginning December 30, 2016, up to one-third of the principal and accrued interest on the notes may be converted into the common stock of the merged entity at a conversion price of $64.75 per share. The Company assumed these convertible notes at fair value of $11,161,000 as part of the Napo Merger. The $1,036,000 difference between the fair value of the notes and the principal balance was being amortized over the twenty-nine (29) month period from July 31, 2017 to December 31, 2019. Interest expense is paid every nine months through the issuance of common stock. On March 16, 2018, $535,000 of interest accrued through January 31, 2018 and $170,000 of certain legal expenses were paid through the issuance of 4,081 shares of the Company's common stock. In August 2018, the Company paid $480,000 of accrued interest through July 31, 2018 with the issuance of 4,582 shares of the Company’s common stock. In January 2019, $447,000 of accrued interest was paid through the issuance of 19,751 shares of the Company's common stock.

Extinguishment and Exchange of the Napo Convertible Notes

In May 2019, in a restructuring of the Notes, CVP acquired the Napo December 2016 and Napo July 2017 Notes, as well as all rights thereof, and immediately extinguished the two Notes; in their place, the Company issued to CVP a new note ("Exchange Note 1"). The collective carrying amount of the Napo December 2016 and Napo July 2017 Note immediately before the exchange was $10,376,000, or principal of $10,125,000 and unamortized premium of $251,000. The new Exchange Note 1 had an opening principal balance of $10,536,000, consisting of the $10,125,000 principal balance of the extinguished notes plus $411,000 in accrued but unpaid interest from the Napo December 2016 and Napo July 2017 Notes. At September 30, 2020 and December 31, 2019, the balance of the Napo December 2016 and Napo July 2017 Notes was zero.

Concurrent with the restructuring, CVP also entered into security agreements with Jaguar (the "Jaguar Security Agreement") and Napo (the "Napo Security Agreement", and together with the Jaguar Security Agreement, the "Security Agreements"), pursuant to which CVP will receive (i) a security interest in substantially all of the Company's assets as security for the Company's obligations under Exchange Note 2 and (ii) a security interest in substantially all of Napo's assets as security for Napo's obligations under Exchange Note 1 and Exchange Note 2. Notwithstanding the foregoing, (a) the amount owing under Exchange Note 2 will not be considered part of the obligations secured by the Napo Security Agreement until such time as Jaguar receives permission from a third party and (b) the security interest granted under the Jaguar Security Agreement will be automatically terminated and released upon Jaguar's receipt of a waiver from such third party.

Notes Payable

Notes payable at September 30, 2020 and December 31, 2019 consist of the following:

(in thousands)	September 30, 2020 (unaudited)	December 31, 2019
2019 Exchange Note 1	$ 3,381	$ 4,381
2019 Exchange Note 2	2,524	2,297
Insurance Premium Financing	582	—
Tempesta Note Payable	450	550
Royalty Interest	217	—
Oasis Secured Borrowing	2,619	—
	9,773	7,228
Less: unamortized discount and debt issuance costs	(332)	—
Note payable, net of discount	$ 9,441	$ 7,228
Notes payable - non-current, net	$ 2,660	$ 450
Notes payable - current, net	$ 6,781	$ 6,778

December 2017 Note

On December 8, 2017, the Company entered into a securities purchase agreement with CVP pursuant to which the Company issued a promissory note (the "December 2017 Note") in the aggregate principal amount of $1,588,000 for an aggregate purchase price of $1,100,000. The December 2017 Note carried an original issue discount of $463,000, and the initial principal balance also included $25,000 to cover CVP's transaction expenses. The Company used the proceeds for general corporate purposes. The December 2017 Note bore interest at the rate of 8% per annum and had an original maturity date of August 26, 2019.

On August 2, 2018, the Company and CVP amended the December 2017 Note agreement, extending the maturity date from September 8, 2018 to August 26, 2019, and limiting the aggregate amount that CVP is permitted to redeem on a monthly basis to $500,000, which amount was the maximum aggregate amount for the Notes collectively. This amendment resulted in the Company accounting for the transaction as a troubled debt restructuring, under which

the carrying amount of the note payable remained unchanged but interest expense was computed using a new effective rate that equates the present value of the future cash payments specified by the new terms with the carrying amount of the note.

Between October 2018 and December 2018, the Company and CVP renegotiated the terms of the December 2017 Note agreement such that CVP agreed not to make any redemptions of the Note until March 2019. In consideration of this standstill arrangement, the Company paid CVP a total standstill fee of $499,000 for all four CVP Notes. The standstill fee allocated to the December 2017 Note was $142,000, of which $86,000 increased the principal balance and was paid in cash. These modifications in whole represented four separate restructurings of the December 2017 Note agreement, resulting in two troubled debt restructurings accounted for under ASC 470-60 and two modifications accounted for under ASC 470-50. For the two restructurings resulting in troubled debt restructurings, the changes were accounted for prospectively and a new effective interest rate was determined that equated the present value of the future cash payments specified by the new terms with the carrying amount of the Note. For the two modifications that resulted in modification accounting, a new effective rate was determined at the date of modification that equated the revised cash flows to the carrying amount of the Note.

In March 2019, the Company and CVP amended the December 2017 Note agreement such that the Company prepaid principal and accrued interest of $811,000 and $179,000, respectively, in shares of the Company’s common stock. The exchange of debt for common stock was considered a substantial change to the Note and therefore, the exchange resulted in extinguishment accounting and a corresponding extinguishment loss of $243,000.

In April 2019, the Company and CVP amended the December 2017 Note agreement such that the Company made two separate exchanges of principal and related accrued interest for shares of the Company’s common stock. The first exchange resulted in changes to cash flows that were considered substantial, resulting in extinguishment accounting with an extinguishment loss of $100,000; the second exchange on April 17, 2019 resulted in the extinguishment of the entire December 2017 Note with a corresponding extinguishment loss of $19,000. At December 31, 2019, the December 2017 Note had been fully extinguished.

February 2018 Note

On February 26, 2018, the Company entered into a securities purchase agreement with CVP, pursuant to which the Company issued to CVP a promissory note in the aggregate principal amount of $2,241,000 for an aggregate purchase price of $1,560,000. The Note carried an original issue discount of $656,000, and the initial principal balance also included $25,000 to cover CVP's transaction expenses. The Company used the proceeds for general corporate purposes and working capital. The Note bore interest at the rate of 8% per annum and had an original maturity date of August 26, 2019.

Between October 2018 and December 2018, the Company and CVP renegotiated the terms of the February 2018 Note agreement such that CVP agreed not to make any redemptions of the Note until March 2019. In consideration of this standstill arrangement, the Company paid CVP a total standstill fee of $499,000 for all four CVP Notes. The standstill fee allocated to the February 2018 Note was $199,000, of which $119,000 increased the principal balance and $80,000 was paid in cash. These modifications in whole represented four separate restructurings of the February 2018 Note agreement, resulting in a debt extinguishment accounted for under ASC 470-50, two troubled debt restructurings accounted for under ASC 470-60 and a debt modification accounted for under ASC 470-50. For the debt extinguishment, the Company recorded an extinguishment loss of $102,000. For the two troubled debt restructurings, the changes were accounted for prospectively and a new effective interest rate was determined that equated the present value of the future cash payments specified by the new terms with the carrying amount of the Note. For the modification that resulted in modification accounting, a new effective rate was determined at the date of modification that equated the revised cash flows to the carrying amount of the Note.

In March 2019, the Company and CVP amended the February 2018 Note agreement such that the Company prepaid principal and accrued interest of $2,045,000 and $204,000, respectively, in shares of the Company’s common stock. The exchange of debt for common stock was considered a substantial change to the Note and therefore, the exchange resulted in extinguishment accounting and a corresponding extinguishment loss of $488,000.

In April 2019, the Company and CVP amended the February 2018 Note agreement such that the Company made a single exchange of principal and related accrued interest for shares of the Company's common stock. The first exchange on April 16, 2019 resulted in the extinguishment of the entire February 2018 Note with a corresponding extinguishment loss of $38,000. At December 31, 2019, the February 2018 Note had been fully extinguished.

March 2018 Note

On March 21, 2018, the Company entered into a securities purchase agreement with CVP, pursuant to which the Company issued to CVP a promissory note in the aggregate principal amount of $1,090,000 for an aggregate purchase price of $750,000. The Note carried an original issue discount of $315,000, and the initial principal balance also included $25,000 to cover CVP's transaction expenses. The Company used the proceeds to fully repay certain prior secured and unsecured indebtedness. The Note bore interest at the rate of 8% per annum and had an original maturity date of September 21, 2019.

Between October 2018 and December 2018, the Company and CVP renegotiated the terms of the March 2018 Note agreement such that CVP agreed not to make any redemptions of the Note until March 2019. In consideration of this standstill arrangement, the Company paid CVP a total standstill fee of $499,000 for all four CVP Notes. The standstill fee allocated to the March 2018 Note was $96,000, of which $58,000 increased the principal balance and $38,000 was paid in cash. These modifications in whole represented four separate restructurings of the March 2018 Note agreement, resulting in a debt extinguishment accounted for under ASC 470-50, two troubled debt restructurings accounted for under ASC 470-60, and a debt modification accounted for under ASC 470-50. For the debt extinguishment, the Company recorded an extinguishment loss of $224,000. For the two troubled debt restructurings, the changes were accounted for prospectively and a new effective interest rate was determined that equated the present value of the future cash payments specified by the new terms with the carrying amount of the Note. For the modification that resulted in modification accounting, a new effective rate was determined at the date of modification that equated the revised cash flows to the carrying amount of the Note

Between January 2019 and March 2019, the Company and CVP amended the March 2018 Note agreement such that the Company prepaid principal and accrued interest of $1,050,000 and $86,000, respectively, in shares of the Company's common stock. These exchanges in whole represented four separate prepayments of principal and accrued interest, resulting in three debt extinguishments and one debt modification. For the debt extinguishments, the Company recorded an aggregate extinguishment loss of $1,211,000. For the modification, a new effective rate was determined at the date of modification that equated the revised cash flows to the carrying amount of the Note. At December 31, 2019, the March 2018 Note had been fully extinguished.

2019 Exchange Notes

In May 2019, the Company and CVP entered into an Exchange Agreement whereby CVP purchased the two outstanding Napo convertible notes and all rights thereof from the current debt holders. Subject to the terms of the Exchange Agreement, CVP and the Company agreed to exchange the two Napo convertible notes for a single CVP Note ("CVP Exchange Note 1"). At the Exchange date, the principal balance of the two Napo convertible notes was $10,125,000, or $10,536,000 inclusive of accrued but unpaid interest of $411,000. The beginning principal balance of CVP Exchange Note 1 was $10,536,000, or equal to the principal balance of the two Napo convertible notes and accrued interest thereon. The maturity date of CVP Exchange Note 1 was December 31, 2020, with an interest rate of 10%. Per the terms of the Exchange Agreement, CVP agreed to extend the maturity date of CVP Exchange Note 1 from December 31, 2019 (the same maturity date carried over from the two Napo convertible notes) to December 31, 2020; in consideration of this extension, the Company issued CVP Exchange Note 2 with a principal balance of $2,297,000. The maturity date of CVP Exchange Note 2 is December 31, 2020, with an interest rate of 10%.

Between May 2019 and July 2019, the Company and CVP entered into note exchange agreements pursuant to which the Company made prepayments of principal and related accrued interest of $6,154,000 and $90,000, respectively, in lieu of making cash payments to CVP on Exchange Note 1, by issuing 1,119,440 shares of the Company's common stock to CVP.

In September 2020, the Company and CVP entered into note exchange agreements pursuant to which the Company made prepayments of principal and related accrued interest of an aggregate amount of $1,500,000, in lieu of making cash payments to CVP on Exchange Note 1, by issuing 1,428,571 shares and 3,333,333 shares of the Company's common stock to CVP, on September 23, 2020 and September 25, 2020, respectively. At September 30, 2020 and December 31, 2019, the carrying value of the Exchange Note 1 is $3,381,000 and $4,381,000, respectively.

In September 2020, the Company and CVP also entered into a global amendment agreement, pursuant to which the maturity date of the Exchange Note 2 is extended to December 31, 2021. In consideration of CVP's grant of extension, together with the related fees and other accommodation set forth, principal debt is increased equal to 5% of the Outstanding Balance of the Exchange Note 2, which was $2,611,000 as of the global amendment date. The global amendment requires no principal payment shall be made to the Exchange Note 2 until the redemption of Series D Perpetual Preferred Shares. See Note 10 for further discussion. The Company determined the incremental value of cash flows amounting to $228,000 with the assistance of an independent valuation service provider, based on weighted probability assumptions of various settlement conditions and penalties stipulated in the contract therein.

The global amendment agreement was accounted for as a modification; hence a new effective rate was determined at the date of modification that equated the revised cash flows to the carrying amount of the Note. At September 30, 2020 and December 31, 2019, the carrying value of the Exchange Note 2 was $2,310,000 and $2,297,000 respectively.

2019 Tempesta Note

In October 2019, the Company entered into a License Termination and Settlement Agreement with Dr. Michael Tempesta, pursuant to which certain royalty payment disputes between Napo and Tempesta were settled. Per the terms of the Agreement, Tempesta received $50,000 in cash, an unsecured promissory note issued by the Company in the aggregate principal amount of $550,000 and 40,000 shares of the Company's common stock in exchange for the cessation of all royalty payments by Napo to Dr. Tempesta under the License Agreements. The $550,000 promissory note bears interest at the rate of 2.5% per annum and matures on March 1, 2025. The promissory note provides for the Company to make semi-annual payments equal to $50,000 plus accrued interest beginning on March 1, 2020 until the Note is paid in full. At September 30, 2020, the net carrying value of the Tempesta note was $450,000.

Sale of Future Royalty Interest

In March 2020, the Company entered into a royalty interest purchase agreement (the "Purchase Agreement") with Iliad, pursuant to which the Company sold to Iliad a royalty interest entitling Iliad to receive $500,000 of future royalties on sales of Mytesi and certain up-front license fees and milestone payments from licensees and/or distributors (the "Royalty Repayment Amount") for an aggregate purchase price of $350,000.

Until such time as the Royalty Repayment Amount has been paid in full, the Company will pay Iliad ten percent (10%) of the Company's Net Sales on Included Products and ten percent (10%) of worldwide revenues related to upfront licensing fees and milestone payments from licensees and/or distributors, but specifically excluding licensing fees and/or milestone payments that are reimbursements of clinical trial expenses (the "Royalty Payments"). Beginning on the six-month anniversary of the Purchase Price Date and continuing until the 12-month anniversary of the Purchase Price Date, the monthly Royalty Payment shall be the greater of (a) $25,000, and (b) the actual Royalty Payment amount Investor is entitled to for such month. Beginning on the 12-month anniversary of the Purchase Price Date and continuing until the Revenue Repayment Amount has been paid in full, the monthly Royalty Payment shall be the greater of (a) $43,750, and (b) the actual Royalty Payment amount Investor is entitled to for such month.

The Royalty Interest amount of $500,000 (or $350,000 in cash received) is classified as debt, net of a $150,000 discount. Under ASC 470-10-35-3, royalty payments to Iliad will be amortized under the interest method per ASC 835-30. Because there is no set interest rate, and because the royalty payments are variable, the discount rate is variable. After each royalty payment, the Company will use a prospective method to determine a new discount rate based on the revised estimate of remaining cash flows. The new rate is the discount rate that equates the present value of the revised estimate of remaining cash flows with the carrying amount of the debt, and it will be used to recognize interest expense

for the remaining periods. At issuance, based on projected cash outflows from future revenue streams, the discount rate was 105%.

On July 10, 2020, the Company and Iliad entered into an amendment to the Purchase Agreement to which the parties agreed that no royalty payments or other payment will be due prior to December 10, 2020. The Royalty Payments shall resume as of December 10, 2020, which Royalty Payment will cover Net Sales on Included Products and licensing fees and milestone payments for the month of November. In consideration of the amendment, the balance of the Royalty Repayment Amount as of July 10, 2020 was increased by 10%. All other terms remain unchanged. This amendment resulted in the Company accounting for the transaction as a troubled debt restructuring, under which the carrying amount of the debt remained unchanged but interest expense is computed using a new effective rate that equates the present value of future cash payments specified by the new terms with the carrying amount of the debt. The Company has paid $283,000 of the $500,000 Royalty Interest amount and the remaining amount is outstanding as of September 30, 2020. No Royalty Payments are due until December 10, 2020.

Oasis Secured Borrowing

The Purchase Agreement

In May 2020, the Company, entered into a one-year Accounts Receivable Purchase Agreement (the "Purchase Agreement") with Oasis Capital ("Oasis"), pursuant to which Oasis may from time to time at its discretion purchase accounts receivable of the Company on a recourse basis, at a purchase price equal to 37.5% of the face amount of the first purchase, and at a purchase price equal to 42.5% for subsequent purchased accounts ("Purchase Price"). With respect to purchased accounts, in the event that Oasis receives more than an amount equal to the sum of (i) the face amount of such purchased account multiplied by 0.0545 and (ii) the Purchase Price (such amount, the "Threshold Price") from collection on such purchased accounts, then Oasis will return any such excess overage amount (the "Overage") to the Company, as applicable, within five days after Oasis's receipt thereof.

In the event Oasis does not receive at least the Threshold Price for a purchased account on or before such account becomes due and payable, the Company will, at Oasis's election, be obligated to either (i) pay the difference between the Threshold Price and the amount received by Oasis for such account (the "Shortfall") within 30 days thereof, or (ii) assign or transfer to Oasis additional accounts receivable with a Purchase Price equal to (A) the Shortfall plus (B) an amount equal to 25% of the Shortfall (the "Additional Amount").

The initial term of the Purchase Agreement is one year, which will automatically renew for successive one-year periods unless notice of non-renewal is provided by the Company at least 30 days prior to the expiration of a term. Notwithstanding the foregoing, either Oasis or the Company may terminate the Purchase Agreement on 60 days' prior written notice. Under the Purchase Agreement, Oasis is entitled to a transaction fee of $25,000 and may be entitled to additional transaction fees to the extent Oasis acquires additional accounts receivable under the Purchase Agreement, which fees will not exceed $5,000 per transaction.

Per the Purchase Agreement, the Company will service and administer the purchased accounts receivable for Oasis. Oasis appointed the Company to be its agent and servicer for monitoring and collecting the Accounts Receivable subject to the terms of the Purchase Agreement. The Company will perform its duties in a commercially reasonable manner and agrees that Company will not commence any legal action with respect to such servicing and collection efforts and shall not terminate, discharge, discount or write off any accounts receivable without Oasis's prior written consent.

The Company, having determined that it did not meet the criteria per ASC 860-10-40-5 to account for the transactions under the Purchase Agreement as sales, accounts for such transactions as secured borrowings in accordance with ASC 860-30, "*Transfers – Secured Borrowings and Collateral*."

May 2020 Oasis Secured Note - Tranche #1

In May 2020, for the first sale under the terms of the Purchase Agreement, the Company received cash proceeds of $1,007,000 from Oasis, or $1,032,000 less a $25,000 transaction fee (the "Tranche #1 Secured Note"). Oasis

purchased accounts receivable with a carrying value of $1,674,000, or gross accounts receivable of $2,754,000 net of chargebacks and discounts of $1,080,000. The purchase was effectuated pursuant to an Assignment Agreement, dated May 12, 2020, between the Company and Oasis. The Maturity Date, by which date Oasis must collect the $1,182,000 Threshold Price, is on or before July 10, 2020.

The Company recorded the sale as a short-term secured borrowing with a principal amount of $1,007,000, or $1,182,000 net of a $175,000 discount. Though there was no stated interest rate, the effective interest rate was 147.9%. The Tranche #1 Secured Note had a maturity date of July 10, 2020, or earlier if the Threshold amount was received by Oasis prior to that date (payment of the Threshold amount was the maturity date). Accordingly, during the term of the Tranche #1 Secured Note, the effective interest rate was variable, dependent on the amount of any principal payment and payment dates.

On June 30, 2020, the Company made its final required payment to Oasis under the Tranche #1 Secured Note, with total payments equaling the $1,182,000 Threshold amount, and the Tranche #1 Secured Note was extinguished.

June 2020 Oasis Secured Note - Tranche #2

In June 2020, for its second sale under the terms of the Purchase Agreement, the Company received cash proceeds of $1,215,000 from Oasis (the “Tranche #2 Secured Note”). Oasis purchased accounts receivable with a carrying value of $1,738,000, or gross accounts receivable of $2,859,000 net of chargebacks and discounts of $1,121,000. The purchase was effectuated pursuant to an amended Assignment Agreement, effective June 26, 2020, between Napo and Oasis. The Maturity Date, by which date Oasis must collect the $1,371,000 Threshold Price plus the transaction fee of $10,000, was September 2, 2020.

The Company recorded the sale to Oasis as a short-term secured borrowing with a principal amount of $1,215,000, or $1,371,000 net of a $156,000 discount. Though there was no stated interest rate, the effective interest rate at issuance was 77.7%. The Tranche #2 Secured Note had a maturity date of September 2, 2020, or earlier if the Threshold amount was received by Oasis prior to that date (payment of the Threshold amount is the maturity date). Accordingly, during the term of the Tranche #2 Secured Note, the effective interest rate is variable, dependent on the amount of any principal payment and payment dates.

In September 2020, the Company made its final required payment to Oasis under the Tranche #2 Secured Note, with total payments equaling the $1,381,000 Threshold amount plus the transaction fee, and the Tranche #2 Secured Note was extinguished.

August 2020 Oasis Secured Note - Tranche #3

In August 2020, for its third sale under the terms of the Purchase Agreement, the Company received cash proceeds of $1,335,000 from Oasis (the “Tranche #3 Secured Note”). Oasis purchased accounts receivable with a carrying value of $1,908,000, or gross accounts receivable of $3,153,000 net of chargebacks and discounts of $1,245,000. The purchase was effectuated pursuant to an amended Assignment Agreement, effective August 13, 2020, between Napo and Oasis. The Maturity Date, by which date Oasis must collect the $1,512,000 Threshold Price, was October 13, 2020. The secured borrowing gross balance remaining to be paid is $1,512,000 as of September 30, 2020.

The Company recorded the sale to Oasis as a short-term secured borrowing with a principal amount of $1,335,000, or $1,512,000 net of a $177,000 discount. Though there was no stated interest rate, the effective interest rate at issuance was 125.6%. The Tranche #3 Secured Note had a maturity date of October 13, 2020, or earlier if the Threshold amount was received by Oasis prior to that date (payment of the Threshold amount is the maturity date). Accordingly, during the term of the Tranche #3 Secured Note, the effective interest rate is variable, dependent on the amount of any principal payment and payment dates.

The Company has collected cash proceeds of $2,332,000 of the gross receivables pledged to Oasis under the Tranche #3 Secured Note as of September 30, 2020. The pledged balance remaining in the Company’s gross accounts receivables is $821,000 as of September 30, 2020. The Company will be obligated any Shortfall by the maturity date of

October 12, 2020, otherwise it will be obligated, at Oasis's election, to either (i) pay the Shortfall amount within 30 days thereof, or (ii) assign or transfer to Oasis additional accounts receivable with a Purchase Price equal to (A) the Shortfall plus (B) an amount a 25% Additional Amount.

September 2020 Oasis Secured Note - Tranche #4

In September 2020, for its third sale under the terms of the Purchase Agreement, the Company received cash proceeds of $985,000 from Oasis (the "Tranche #4 Secured Note"). Oasis purchased accounts receivable with a carrying value of $1,410,000, or gross accounts receivable of $2,330,000 net of chargebacks and discounts of $920,000. The purchase was effectuated pursuant to an amended Assignment Agreement, effective September 9, 2020, between Napo and Oasis. The Maturity Date, by which date Oasis must collect the $1,117,000 Threshold Price, was November 12, 2020. The secured borrowing gross balance remaining to be paid is $1,117,000 as of September 30, 2020.

The Company recorded the sale to Oasis as a short-term secured borrowing with a principal amount of $985,000, or $1,117,000 net of a $132,000 discount. Though there was no stated interest rate, the effective interest rate at issuance was 98.4%. The Tranche #4 Secured Note had a maturity date of November 12, 2020, or earlier if the Threshold amount was received by Oasis prior to that date (payment of the Threshold amount is the maturity date). Accordingly, during the term of the Tranche #4 Secured Note, the effective interest rate is variable, dependent on the amount of any principal payment and payment dates.

The secured borrowing gross balance remaining to be paid is $1,117,000 as of September 30, 2020. The pledged balance remaining in accounts receivables is $2,330,000 as of September 30, 2020. The pledged balance remaining in the Company's gross accounts receivables is $2,330,000 as of September 30, 2020.

Insurance Premium Financing

In May 2020, the Company entered into a financing agreement for $873,000 for a portion of the Company's annual insurance premiums. The balance is due in monthly installments over nine (9) months with an annual interest rate of 4.15% and total installment paid is $193,000 as of September 30, 2020. The financing balance was $582,000 as of September 30, 2020.

8. Warrants

The following table summarizes information about warrants outstanding and exercisable into shares of the Company's common stock for the nine months ended September 30, 2020 and for the year ended December 31, 2019:

	September 30, 2020 (unaudited)	December 31, 2019
Warrants outstanding, beginning balance	19,421,892	34,682
Issuances	8,771,632	20,637,761
Exercises	(20,852,665)	(1,250,000)
Expirations and cancelations	(323)	(551)
Warrants outstanding, ending balance	7,340,536	19,421,892

May 2020 Series 3 Warrants

In May 2020, concurrent with the May 2020 modification of the exercise price of the Series 1, Series 2 and Bridge Warrants and inducement offer, the Company issued unregistered Series 3 Warrants to purchase 8,670,852 shares of common stock. The Series 3 Warrants have an exercise price of $0.53 per share and are exercisable beginning the earlier of (i) six months from their May 22, 2020 issuance date and (ii) receipt of the requisite Stockholder Approval (defined below), and expire five years thereafter. In addition to the fixed settlement method at $0.53 per warrant share, the Series 3 Warrants have two contingent settlement methods: (i) if at the time of exercise there is no effective registration statement, then the holders of the 8,670,852 warrants may exercise the warrants in a "cashless exercise,"

under which the holders will receive the aggregate warrants less the number of warrants equal to the exercise price; or (ii) a cashless exercise feature wherein, regardless if there is an effective registration agreement, following the requisite Stockholder Approval, each such Series 3 Warrant will be exercisable into one share of common stock for no consideration (the "Alternate Cashless Exercise").

The Series 3 Warrants were initially valued at $3,696,000 using the Black-Scholes option pricing model as follows: probability-weighted exercise price of $0.05 per share, stock price of $0.44 per share, expected life of 5.50 years, volatility of 141%, and a risk-free rate of 0.34%. The Series 3 Warrants were classified as liabilities on the Company's condensed consolidated balance sheets.

A Special Meeting of Stockholders was held on July 21, 2020, whereupon a proposal to approve the "Alternate Cashless Exercise" settlement method for the Series 3 Warrants was approved. The Series 3 Warrants and their underlying common shares were registered per the registration statement on Form S-3 on June 5, 2020.

In July 2020, certain holders of the Series 3 Warrants agreed to exercise 7,695,500 shares for a 1-for-1 exchange of common shares in an Alternate Cashless Exercise. The aggregate fair value of the common stock issued upon the exercise of the Series 3 Warrants as of the exercise date was $5,687,000.

In August 2020, certain holders of the Series 3 Warrants agreed to exercise 552,830 shares for a 1-for-1 exchange of common shares in an Alternate Cashless Exercise. The aggregate fair value of the common stock issued upon the exercise of Series 3 Warrants as of the exercise date is $306,000.

As of September 30, 2020, the remaining Series 3 Warrants are valued at $123,000 using the Black-Scholes option pricing model with inputs as follows: probability-weighted exercise price of $0 per share, stock price of $0.29 per share, expected life of 5.14 years, volatility of 142%, and a risk-free rate of 0.28%. The Series 3 Warrants are classified as liabilities on the Company's condensed consolidated balance sheets.

The April 2020 Underwriter Warrants

In April 2020, in consideration of the settlement of a dispute regarding underwriting fees (see Note 6), the Company issued warrants to purchase 100,780 shares of common stock at an exercise price of $2.50 per common share. The warrants were valued at $32,000 using the Black-Scholes option pricing model as follows: exercise price of $2.50 per share, stock price of $0.45 per share, expected life of 4.25 years, volatility of 141%, and a risk-free rate of 0.29%. The warrants were equity classified in the condensed consolidated statements of changes in convertible preferred stock and stockholders' equity.

March 2019 Ladenburg Warrants

In March 2019, in consideration of services provided in the Company's March 2019 public offering of 19,019 common shares, the Company issued to Ladenburg Thalmann & Co. warrants to purchase an aggregate of 761 shares of common stock at an exercise price of $17.50 per common share. The warrants were valued at $13,000 using the Black-Scholes option pricing model as follows: exercise price of $17.50 per share, stock price of $18.90 per share, expected life of five years, volatility of 146%, and a risk-free rate of 2.21%. The warrants were equity classified in the condensed consolidated statements of changes in convertible preferred stock and stockholders' equity.

March 2019 LOC Warrant

In March 2019, in consideration of a letter of credit cancelation related to the Company's office lease, the Company issued a warrant to purchase warrant shares equal to a fixed principal amount divided by a variable exercise price. The warrants were initially classified as liabilities pursuant to ASC 480-10 due to their debt-like nature. On July 23, 2019, upon the exercise price of the warrants becoming fixed, the warrants became exercisable into 45,750 shares of the Company's common stock and were reclassified to additional paid-in-capital with a fair value of $71,000.

2019 Bridge Note Warrants

Between March 18, 2019 and June 26, 2019, concurrent to the Company entering into Promissory Notes of $5,050,000, the Company issued twenty-one warrants to purchase warrant shares equal to a fixed principal amount divided by a variable exercise price. The warrants for all twenty-one Bridge Notes were initially liability classified pursuant to ASC 480-10 due to their debt-like nature. On July 23, 2019, upon the exercise price of the warrants becoming fixed, the warrants became exercisable into 2,781,250 shares of the Company's common stock and were reclassified to additional paid-in-capital with a fair value of $4,259,000.

February 2020 Modification of Certain 2019 Bridge Note Warrants

In February 2020, the Company entered into a warrant exercise agreement with a holder of its Bridge warrants, pursuant to which the holder agreed to exercise 250,000 Bridge warrants in consideration of the Company lowering the exercise price of the 250,000 warrants from $2.00 to $0.692. Upon exercise of the warrants, the Company received cash proceeds of $173,000 and, in turn, issued 250,000 common shares. It is the Company's policy to determine the impact of modifications to equity-classified warrants by analogy to the share-based compensation guidance per ASC 718, *Compensation – Stock Compensation*. Pursuant to that guidance, and due to the modification being applicable only to a single holder of the Bridge warrants, the incremental increase of $9,000 in fair value of the modified warrants was recorded as an expense in the unaudited condensed consolidated statements of operations for the nine months ended September 30, 2020.

May 2020 Modification of the 2019 Bridge Note Warrants and Inducement Offer

In May 2020, the Company reduced the exercise price of all outstanding 2019 Bridge Warrants from $2.00 per share to $0.49 per share. The Company determined the impact of this modification to be an increase in the fair value of the warrants of $166,000. Because the modification applied to the entire class of Bridge Warrant holders, the increase in fair value represented a deemed dividend to the entire class of Bridge Warrant holders. The modification did not result in the reclassification of the equity-classified Bridge warrants from additional paid-in-capital to liability classification.

In May 2020, concurrent with the reduction of the exercise price of the Bridge Warrant, the Company entered into a warrant exercise inducement offer with certain holders of the Bridge Warrants, pursuant to which such holders agreed to exercise for cash Bridge Warrants to purchase 93,750 shares of common stock, in exchange for the Company's issuing to the exercising holders new unregistered Series 3 Warrants to purchase 93,750 shares of common stock.

July 2019 Series 1 Warrants

In July 2019, the Company entered into an underwriting agreement, relating to a public offering, which was comprised of (1) 2,886,500 Class A Units, priced at $2.00 per unit, with each unit consisting of (i) one share of the Company's voting common stock, (ii) one Series 1 warrant to purchase one share of common stock, and (iii) one Series 2 warrant to purchase one share of common stock, and (2) 10,787 Class B Units, priced at a price of $1,000 per unit, with each unit consisting of (i) one share of Series B convertible preferred stock, convertible into 500 shares of common stock, (ii) 500 Series 1 Warrants and (iii) 500 Series 2 Warrants.

The Series 1 Warrants had an exercise price of $2.00 and expire on the earlier of (a) 5 years from the date of issuance and (b) 30 calendar days following the public announcement of Positive Interim Results related to the diarrhea results from the HALT-D investigator-initiated trial, if and only if certain trading benchmarks are achieved during such 30 calendar day period.

In the offering, the Company sold (i) 2,886,500 Class A Units, which included Series 1 warrants to purchase 2,886,500 shares of the Company's common stock and (ii) 10,787 Class B Units, which included Series 1 warrants to purchase 5,393,500 shares of the Company's common stock. In total, 8,280,000 Series 1 warrants were issued, with an initial valuation of $5,025,000 computed using the Black-Scholes-Merton pricing model using a stock price of $1.73, a strike price of $2.00, an expected term of 5.0 years, volatility of 109.25% and a risk-free discount rate of 1.83%. Upon issuance, the Series 1 warrants were classified in additional paid-in-capital.

September 2019 Modification of the July 2019 Series 1 Warrants

In September 2019, the Company reduced the exercise price of all 8,280,000 Series 1 Warrants from $2.00 to $1.40. The Company determined the impact of this modification to be an increase in the fair value of the warrants of $522,000. Because the modification applied to the entire class of Series 1 Warrant holders, the increase in fair value represented a deemed dividend to the entire class of Series 1 Warrant holders. The modification did not result in the reclassification of the equity-classified Series 1 warrants from additional paid-in-capital to liability classification.

February 2020 Modification of the July 2019 Series 1 Warrants

In February 2020, the Company entered into a warrant exercise agreement with a holder of its Series 1 Warrants, pursuant to which the holder agreed to exercise 208,022 Series 1 Warrants in consideration of the Company lowering the exercise price of the 208,022 warrants from $2.00 to $0.6920. Upon exercise of the warrants, the Company received cash proceeds of $144,000 and, in turn, issued 208,022 common shares. It is the Company's policy to determine the impact of modifications to equity-classified warrants by analogy to share-based compensation guidance per ASC 718, *Compensation – Stock Compensation*. Pursuant to that guidance, and due to the modification being applicable only to a single holder of the Series 1 Warrants, the incremental increase of $6,000 in fair value of the modified warrants was recorded as an expense in the unaudited condensed consolidated statements of operations for the nine months ended September 30, 2020.

May 2020 Modification of the July 2019 Series 1 Warrants and Inducement Offer

In May 2020, the Company reduced the exercise price of all outstanding Series 1 Warrants from $1.40 per share to $0.49 per share. The Company determined the impact of this modification to be an increase in the fair value of the warrants of $284,000. Because the modification applied to the entire class of Series 1 Warrant holders, the increase in fair value represented a deemed dividend to the entire class of Series 1 Warrant holders. The modification did not result in the reclassification of the equity-classified Series 1 Warrants from additional paid-in-capital to liability classification.

In May 2020, concurrent with the reduction of the exercise price of the Series 1 Warrants, the Company entered into a warrant exercise inducement offer with certain holders of the Series 1 Warrants, pursuant to which such holders agreed to exercise for cash Series 1 Warrants to purchase 4,572,040 shares of common stock, in exchange for the Company's issuing to the exercising holders new unregistered Series 3 Warrants to purchase 4,572,040 shares of common stock.

July 2019 Series 2 Warrants

The Series 2 Warrants have an exercise price of $2.00 and expire on the first date on the earlier of (a) 5 years from the date of issuance and (b) 30 calendar days following the public announcement by the Company that a pivotal phase 3 clinical trial using crofelemer (Mytesi, or the same or similar product with a different name) for the treatment of cancer therapy-related diarrhea in humans has met its primary endpoint in accordance with the protocol, if and only if certain trading benchmarks are achieved during such 30 calendar day period. In addition, each Series 2 Warrant has an embedded call option that allows the Company to redeem any unexercised warrants if certain contingencies are met.

In the July 2019 offering, the Company sold (i) 2,886,500 Class A Units, which included Series 2 warrants to purchase 2,886,500 shares of the Company's common stock and (ii) 10,787 Class B Units, which included Series 2 warrants to purchase 5,393,500 shares of the Company's common stock. In total, 8,280,000 Series 2 warrants were issued, with an initial valuation of $5,026,000 computed using the Black-Scholes-Merton pricing model using a stock price of $1.73, a strike price of $2.00, an expected term of 5.0 years, volatility of 109.25% and a risk-free discount rate of 1.83%. Upon issuance, the Series 2 Warrants were classified in additional paid-in-capital.

March 5, 2020 Modification of the July 2019 Series 2 Warrants

On March 5, 2020, the Company entered into a warrant exercise agreement with a holder of its Series 2 Warrants, pursuant to which the holder agreed to exercise 90,940 Series 2 Warrants in consideration of the Company

lowering the exercise price of the 90,940 warrants from $2.00 to $0.6050. Upon exercise of the warrants, the Company received cash proceeds of $55,000 and, in turn, issued 90,940 common shares. It is the Company's policy to determine the impact of modifications to equity-classified warrants by analogy to share-based compensation guidance per ASC 718, *Compensation – Stock Compensation*. Pursuant to that guidance, and due to the modification being applicable only to a single holder of the Series 2 Warrants, the incremental increase of $6,000 in fair value of the modified warrants was recorded as an expense in the unaudited condensed consolidated statements of operations for the nine months ended September 30, 2020.

March 23, 2020 Modification of the July 2019 Series 2 Warrants

On March 23, 2020, the Company entered into a Warrant Exercise and Preferred Stock Amendment Agreement (see Note 9) with a holder of its Series 2 Warrants, pursuant to which the holder agreed to exercise in cash its Series 2 Warrants to purchase an aggregate of 1,250,000 shares of common stock, in consideration of the Company reducing the Series 2 Warrant exercise price from $2.00 to $0.5227 per share, for gross proceeds to the Company of approximately $653,000, or $628,000 net of $25,000 of issuance costs. The Company determined the impact of this modification to be an increase in the fair value of the warrants of $65,000. Because the modification applied to a sole holder of Series 2 Warrants, the $65,000 increase in fair value was recorded as an expense in the unaudited condensed consolidated statements of operations for the nine months ended September 30, 2020. The modification did not result in the reclassification of the equity-classified Series 2 Warrants from additional paid-in-capital to liability classification.

May 2020 Modification of the July 2019 Series 2 Warrants and Inducement Offer

In May 2020, the Company reduced the exercise price of all outstanding Series 2 Warrants from $2.00 per share to $0.49 per share. The Company determined the impact of this modification to be an increase in the fair value of the warrants of $406,000. Because the modification applied to the entire class of Series 2 Warrant holders, the increase in fair value represented a deemed dividend to the entire class of Series 2 Warrant holders. The modification did not result in the reclassification of the equity-classified Series 2 Warrants from additional paid-in-capital to liability classification.

In May 2020, concurrent with the reduction of the exercise price of the Series 2 Warrants, the Company entered into a warrant exercise inducement offer with certain holders of the Series 2 Warrants, pursuant to which such holders agreed to exercise for cash Series 2 Warrants to purchase 4,033,562 shares of common stock, in exchange for the Company's issuing to the exercising holders new unregistered Series 3 Warrants to purchase 4,005,062 shares of common stock.

As of September 30, 2020, the total of 6,367,635 Series 2 Warrants have been exercised.

December 2019 PIPE Financing Warrants

In December 2019, the Company entered into a securities purchase agreement with certain investors pursuant to which the Company, in a Private Placement, sold (i) an aggregate of 2,500,000 unregistered shares of the Company's common stock, and (ii) warrants to purchase up to an aggregate of approximately 1,250,000 shares of common stock, for an aggregate purchase price of $1,500,000 (see Note 11). The warrants have an exercise price of $0.78 per share and became exercisable on June 24, 2020 (6 months after their issuance date) and have a five-year term.

The warrants were valued at $686,000 using the Black-Scholes option pricing model as follows: exercise price of $0.78 per share, stock price of $0.62 per share, expected life of five years, volatility of 143%, and a risk-free rate of 2.42%. As the common stock and warrants were issued in a unit structure, the aggregate proceeds of $1,500,000 were allocated to the two securities using the relative fair value method, resulting in the common stock and warrants being allocated $1,035,000 and $465,000, respectively. The warrants were classified in stockholders' equity.

9. Preferred Stock

At September 30, 2020, preferred stock consisted of the following:

(in thousands, except share data) Series	Shares Authorized	Issued and Outstanding	Carrying Value	Liquidation Preference per Share
B-2	10,165	7,534	$ 916	$ —
C	1,011,000	849,521	4,773	8.00
Total	1,021,165	857,055	$ 5,689	

At December 31, 2019, preferred stock consisted of the following:

(in thousands, except share data) Series	Shares Authorized	Issued and Outstanding	Carrying Value	Liquidation Preference per Share
A	5,524,926	5,524,926	$ 9,895	$ 1.665
B	11,000	1,971	476	—
B-1	63	—	—	—
B-2	10,165	10,165	1,236	—
Total	5,546,154	5,537,062	$ 11,607	

Series A Redeemable Convertible Preferred Stock

In March 2018, the Company entered into a stock purchase agreement with Sagard Capital pursuant to which the Company, in a private placement, agreed to issue and sell to Sagard Capital 5,524,926 shares of the Company's Series A convertible preferred stock, $0.0001 par value per share, for gross proceeds of $9,199,000, or $9,000,000 net of issuance costs. The preferred stock is convertible into approximately 473,565 shares of common stock at the option of the holder at an effective conversion price of $194.25 per share. Subject to certain limited exceptions, the shares of Preferred Stock could not be offered, pledged or sold by Sagard Capital for one year from the date of issuance. The conversion price is subject to certain adjustments in the event of any stock dividend, stock split, reverse stock split, combination or other similar recapitalization.

Holders of the Series A shares are entitled to participate equally and ratably with the holders of shares of common stock in all dividends paid and distributions made to the holders of the common stock as if, immediately prior to each record date of the common stock, the shares of Series A then outstanding were converted into shares of common stock.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company or deemed liquidation event, the holders of Series A shares then outstanding shall be entitled to be paid in cash out of the assets of the Company before any payment shall be made to the holders of common stock or shares of any series or class of preferred or other capital stock then outstanding that by its terms is junior to the Series A in respect of the preferences as to distributions and payments upon such liquidation event by reason of their ownership, an amount per share of Series A equal to one times the Series A original issue price.

The Series A convertible preferred shares are redeemable by Sagard Capital upon a Redemption Event that is not solely within the control of the Company. If a Redemption Event were to occur as of the Measurement Date (the later of April 30, 2021 and the date on which the Company files its Form 10-Q for the three months ending March 31, 2021, but in no event later than September 30, 2021), the holders of at least a majority of the shares of Series A convertible preferred stock then outstanding may require the Company to redeem all Series A shares for cash at a per share purchase price equal to $2.3057. Anyone of the following conditions can result in a Redemption Event: (i) revenue

attributable to the Mytesi product for the six-month period ended March 31, 2021 is less than $22.0 million; (ii) the daily volume weighted average price (“VWAP”) of the Company's common stock on Nasdaq for the 30 days prior to a Measurement Date is less than $105.00; (iii) the Company fails to file with the SEC on or before June 30, 2021, its Form 10-Q for the three months ending March 31, 2021.

In March 2019, the Company and Sagard Capital amended certain terms of the agreement, such that the effective conversion price was adjusted to $19.425 per share.

The preferred stock has been classified outside of stockholders' equity in accordance with authoritative guidance for the classification and measurement of potentially redeemable securities at the option of the holder.

During the three months ended December 31, 2019, the Company determined that a Redemption Event was probable as of July 1, 2019. The Company is accreting the carrying value to the redemption amount of $12,738,822.

In September 2020, the Company and Sagard Capital entered into an exchange agreement, by which the remaining Series A convertible preferred shares were exchanged for (i) 842,500 shares of the Company’s Series C perpetual preferred shares, and (ii) 842,500 shares of the Company’s Series D perpetual preferred shares, all issued to Iliad Research and Trading, L.P. (“Iliad”).

The exchange agreement was entered into to effect a share-for-share exchange transaction. The Series A convertible preferred shares were canceled upon surrender, and the Company issued Iliad the Series C and Series D perpetual preferred shares. The exchange agreement was treated as an extinguishment of the Series A convertible preferred shares. As of the exchange date, the related extinguishment required recording derecognition of the Series A accreted value and recording Series C and Series D at fair value. The related excess of the carrying value over the fair value of the new instruments of $150,000 was recorded to additional paid-in-capital and increased earnings available to common stockholders.

On September 4, 2020, the Company filed a certificate with the Secretary of State of Delaware effecting the retirement and cancellation of the Series A convertible preferred stock. As of September 30, 2020, there were no Series A convertible preferred shares authorized or outstanding.

Series B Convertible Preferred Stock

In July 2019, the Company entered into an underwriting agreement relating to the public offering comprised of (1) 2,886,500 Class A Units, priced at a public offering price of $2.00 per unit, with each unit consisting of (i) one share of the Company’s voting common stock, (ii) one Series 1 warrant to purchase one share of common stock and (2) 10,787 Class B Units, priced at a public offering price of $1,000 per unit, with each Class B unit consisting of (i) one share of Series B convertible preferred stock with a stated value of $1,000 and convertible into 500 shares of common stock, (ii) 500 Series 1 Warrants and (iii) 500 Series 2 Warrants, at a public offering price of $1,000 per Class B Unit.

The Company sold 10,787 Class B Units, comprised of 10,787 shares of Series B convertible preferred stock, Series 1 warrants to purchase 5,393,500 shares of common stock and Series 2 warrants to purchase 5,393,500 shares of common stock. The total gross proceeds to the Company from the offering of the Class B Units were $10,787,000, of which $4,240,000 was allocated to the Series B convertible preferred stock, $3,274,000 to the Series 1 Warrants and $3,274,000 to the Series 2 Warrants. Issuance costs of $1,635,000 were allocated to the Class B Units.

Holders of the Series B shares are entitled to participate equally and ratably with the holders of shares of common stock in all dividends paid and distributions made to the holders of the common stock as if, immediately prior to each record date of the common stock, the shares of Series B then outstanding were converted into shares of common stock. With certain exceptions, the shares of Series B convertible preferred stock have no voting rights. However, as long as any shares of Series B convertible preferred stock remain outstanding, the Company shall not, without the affirmative vote of holders of a majority of the then outstanding shares of Series B Convertible Preferred Stock, (a) alter or change adversely the powers, preferences or rights given to the Series B convertible preferred stock or alter or amend the Series B Certificate of Designation or (b) enter into any agreement with respect to any of the foregoing. Each share

of Series B convertible preferred stock is convertible at any time at the holder's option into 500 shares of common stock, which conversion ratio will be subject to adjustment for stock splits, stock dividends, distributions, subdivisions and combinations and other similar transactions.

On the July 23, 2019 issuance date, the effective conversion price per share was less than the fair value of the underlying common stock. As a result, the Company determined that there was a Beneficial Conversion Feature of $4,240,000.

Because the Company's Series B convertible preferred stock does not have a stated conversion date and was immediately convertible at the issuance date, the Company recorded a deemed dividend charge of $4,240,000 for the accretion of the discount on the Series B Convertible Preferred Stock.

The preferred stock has been classified in stockholders' equity in accordance with authoritative guidance.

During July and August 2019, certain investors converted 8,816 Series B convertible preferred shares into 4,408,000 shares of the Company's common stock at the stated conversion ratio. There were zero and 1,971 shares of Series B convertible preferred stock outstanding as of September 30, 2020 and December 31, 2019, respectively.

In March 2020, the Company entered into a Warrant Exercise and Preferred Stock Amendment Agreement ("Amendment Agreement") with a holder of its Series 2 Warrants, pursuant to which the holder agreed to exercise in cash its Series 2 Warrants to purchase an aggregate of 1,250,000 shares of common stock, in consideration of the Company reducing the warrant exercise price from $2.00 to $0.5227 per share, for gross proceeds to the Company of approximately $653,000 (see Note 8). As a further inducement to enter into the Amendment Agreement, the Company agreed to reduce the conversion price of the Company's Series B convertible preferred stock from $2.00 to $0.4456, resulting in the application of accounting per ASC 260-10-S99-2. Because the reduction to the conversion price was an inducement, the Company applied the guidance in ASC 470-20, resulting in the recording of an inducement charge of $1,647,000 in the unaudited condensed consolidated statements of operations for the nine months ended September 30, 2020.

On September 4, 2020, the Company filed a certificate with the Secretary of State of Delaware effecting the retirement and cancellation of the Series B convertible preferred stock. As of September 30, 2020, there were no Series B convertible preferred shares authorized or outstanding.

Series B-1 Convertible Preferred Stock

In October 2019, the Company entered into a Warrant Exercise Agreement with the sole remaining holder of the Series B convertible preferred stock (the "Exercising Holder"), who owned Series 1 Warrants exercisable for 1,250,000 shares of common stock. Pursuant to the terms of the Warrant Exercise Agreement, the Company had the right (a purchased put option) to require the Exercising Holder to exercise all or a portion of its Series 1 Warrants in accordance with the existing terms of the Series 1 Warrants, in exchange for the Company's agreement to issue to the Exercising Holder a number of shares of the Company's Series B-1 Convertible Preferred Stock, with a stated value of $12,000, in an amount equal to one Series B-1 Preferred Share for every 19,841 Series 1 Warrant Shares issued by the Company to the Exercising Holder. The purpose of the Company entering into the agreement was to enable the Company to monetize the remaining Series 1 Warrants. To the extent that all Series 1 Warrants held by the Exercising Holder were exercised at their $1.40 exercise price, the Company would receive aggregate gross proceeds of approximately $1,750,000 and, in turn, have issued 63 shares of Series B-1 Preferred Stock to the Exercising Holder.

On October 3 and October 9, 2019, in two separate transactions, the Company exercised its purchased put option (see Note 3) to require the Exercising Holder to exercise all of its 1,250,000 Series 1 Warrants (see Note 8), upon which the Company issued 1,250,000 common shares to the Exercising Holder in return for aggregate gross proceeds of $1,750,000. In consideration (the strike price) of the exercising the warrants, the Company issued 63 shares of Series B-1 convertible preferred stock to the Exercising Holder.

On the October 3, 2019 issuance date, the effective conversion price was less than the fair value of the underlying common stock. As a result, the Company determined that there was a Beneficial Conversion Feature of $146,000. Because the Company's Series B-1 convertible preferred stock does not have a stated conversion date and was immediately convertible at the issuance date, the Company recorded a deemed dividend charge of $146,000 for the accretion of the discount on the Series B-1 Convertible Preferred Stock.

On the October 9, 2019 issuance date, the effective conversion price was less than the fair value of the underlying common stock. As a result, the Company determined that there was a Beneficial Conversion Feature of $385,000. Because the Company's Series B-1 Preferred Stock does not have a stated conversion date and was immediately convertible at the issuance date, the Company recorded a deemed dividend charge of $385,000 for the accretion of the discount on the Series B-1 Preferred Stock.

The Series B-1 Preferred Stock was classified in stockholders' equity in accordance with authoritative guidance.

In December 2019, the sole investor in the Series B-1 Preferred Stock converted its entire holding of 63 shares of the Series B-1 Preferred Stock into 630,063 shares of the Company’s common shares at the stated conversion ratio. As of December 31, 2019, there were no shares of the Series B-1 Preferred Stock outstanding.

On September 4, 2020, the Company filed a certificate with the Secretary of State of Delaware effecting the retirement and cancellation of the Series B-1 convertible preferred stock. As of September 30, 2020, there were no Series B-1 convertible preferred shares authorized or outstanding.

Series B-2 Convertible Preferred Stock

In December 2019, the Company entered into an exchange agreement with Oasis Capital, LLC (“Oasis Capital”), pursuant to which Oasis Capital gave up (i) its remaining unexercised Prepaid Forward contracts (see Note 11) exercisable for 1,236,223 shares of the Company’s common stock and (ii) 695,127 common shares held as an investment by Oasis Capital, in exchange for 10,165 shares of the Company’s newly authorized Series B-2 Convertible Preferred Stock.

The holders of the Series B-2 convertible preferred stock are entitled to receive dividends on shares of Series B-2 convertible preferred stock equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends actually paid on shares of the common stock when, as and if such dividends are paid on shares of the common stock. No other dividends shall be paid on shares of the Series B-2 Convertible Preferred Stock.

The shares of Series B-2 convertible preferred stock have no voting rights. However, as long as any shares of Series B-2 convertible preferred stock remain outstanding, the Company shall not, without the affirmative vote of holders of a majority of the then outstanding shares of Series B-2 Convertible Preferred Stock, (a) alter or change adversely the powers, preferences or rights given to the Series B-2 convertible preferred stock or alter or amend the Series B-2 Certificate of Designation or (b) enter into any agreement with respect to any of the foregoing.

Upon any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary, the holders of the Series B-2 convertible preferred stock are entitled to receive out of the assets, whether capital or surplus, of the Company the same amount that a holder of common stock would receive if the Series B-2 convertible preferred stock were fully converted to common stock which amounts shall be paid *pari passu* with all holders of common stock.

Each share of Series B-2 convertible preferred stock is convertible at any time at the holder’s option into 190 shares of common stock, as determined by dividing the $153.90 stated value of each Series B-2 Convertible Preferred Share by the $0.81 conversion price ($153.90 divided by 0.81 = 190 conversion ratio), and which conversion ratio is subject to adjustment for stock splits, stock dividends, distributions, subdivisions and combinations and other similar transactions as specified in the Series B-2 Certificate of Designation.

The Series B-2 convertible preferred stock was classified in stockholders' equity in accordance with authoritative guidance.

In January 2020, a holder of the Series B-2 convertible preferred stock converted 2,631 preferred shares into 499,890 shares of common stock.

Series C Perpetual Preferred Stock

In September 2020, the Company entered into an exchange agreement with Iliad pursuant to which the Company agreed to issue 842,500 shares of the Company's Series C perpetual preferred shares, $0.0001 par value per share, for a non-cash exchange of equity instruments, contemporaneously entered with the issuance of Series D perpetual preferred shares, in exchange of remaining Series A convertible preferred shares totaling to 5,524,926 shares, and accreted value of $11,227,000 as of the exchange date, and entered into an amendment agreement of the Exchange Note 2, with issuance value of $2,296,926 and carrying value of $2,610,677 as of the exchange date, to extend maturity from December 31, 2020 to December 31, 2021, in consideration of 5% increase in the outstanding balance.

Holders of the Series C perpetual preferred shares are not entitled to voting rights. However, as long as any Series C perpetual preferred share is outstanding, the Company is restricted to alter, change, or enter into agreement to alter or change adversely the powers, preferences, or rights given to the shareholders.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company or deemed liquidation event, the holders of Series C perpetual preferred shares then outstanding shall be entitled to be paid in cash out of the assets of the Company before any payment shall be made to the holders of common stock or shares of any series or class of preferred or other capital stock then outstanding that by its terms is junior to the Series C perpetual preferred shares in respect of the preferences as to distributions and payments upon such liquidation event by reason of their ownership, an amount per share of Series C equal to one times the Series C original issue price.

The Series C perpetual preferred shares are redeemable upon the option or discretion of the Company.

The Series C perpetual preferred shares are entitled to receive 10% cumulative stock dividends, to be payable in arrears on a monthly basis for 24 consecutive months. Dividends payable on the Series C perpetual preferred shares shall be payable through the Company’s issuance of Series C perpetual preferred share by delivering to each record holder the calculated number of payment-in-kind (“PIK”) dividend shares.

The Series C perpetual preferred shares are initially measured at fair value using the income approach, which considered the weighted probability of discounted cash flows at various scenarios of redemption by the Company or liquidation event and perpetual holding of the shares. As of the date of exchange, total fair value of the Series C perpetual preferred shares amounted to $4,717,000.

The preferred stock has been classified as permanent stockholders' equity in accordance with authoritative guidance for the classification and measurement of perpetual shares without mandatory redemption period because the redemption option is ultimately in the control of the Company.

10. Series D Perpetual Preferred Stock

In September 2020, the Company entered into an exchange agreement with Iliad pursuant to which the Company agreed to issue 842,500 shares of the Company's Series D perpetual preferred shares, $0.0001 par value per share, for a non-cash exchange of equity instruments, contemporaneously entered with the issuance of Series C perpetual preferred shares, in exchange of remaining Series A convertible preferred shares totaling to 5,524,926 shares, and accreted value of $11,227,000 as of the exchange date, and entered into an amendment agreement of the Exchange Note 2, with issuance value of $2,296,926 and carrying value of $2,610,677 as of the exchange date, to extend maturity from December 31, 2020 to December 31, 2021, in consideration of 5% increase in the outstanding balance.

Holders of the Series D perpetual preferred shares are not entitled to voting rights. However, as long as any Series D perpetual preferred share is outstanding, the Company is restricted to alter, change, or enter into agreement to alter or change adversely the powers, preferences, or rights given to the shareholders.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company or deemed liquidation event, the holders of Series D perpetual preferred shares then outstanding shall be entitled to be paid in cash out of the assets of the Company before any payment shall be made to the holders of common stock or shares of any series or class of preferred or other capital stock then outstanding that by its terms is junior to the Series D perpetual preferred shares in respect of the preferences as to distributions and payments upon such liquidation event by reason of their ownership, an amount per share of Series D equal to one times the Series D original issue price.

The Series D perpetual preferred shares are redeemable upon the option or discretion of the Company.

The Series D perpetual preferred shares are entitled to receive 8% cumulative stock dividends, to be payable in arrears on a monthly basis for 24 consecutive months. Dividends payable on the Series D perpetual preferred shares shall be payable through the Company's issuance of Series D perpetual preferred share by delivering to each record holder the calculated number of PIK dividend shares.

The Series D perpetual preferred shares is measured at fair value using the income approach, which considered the weighted probability of discounted cash flows at various scenarios of redemption and perpetual holding of the shares (see Note 3). The Company determined the fair value with the assistance of an independent valuation service provider to be based on discounted cash flows representing the settlement value of the shares and cumulative dividends issued using an effective borrowing rate of 12% to 15% adjusted for counterparty and a maturity date of September 30, 2021. For the three and nine months ended September 30, 2020, total change in fair value of the Series D perpetual preferred shares was $71,000.

In consideration of the Exchange Note 2 global amendment agreement (see Note 7), no principal payment shall be made to the Exchange Note 2 until the redemption of Series D Perpetual Preferred Shares. Due to the restrictive nature of the timing of cash outflows in response to the settlement of the Exchange Note 2, Series D perpetual preference shares are implicitly deemed to be mandatorily redeemable upon the ultimate settlement of the outstanding balance of Exchange Note 2. The shares are redeemable at $8.00 per share on December 31, 2024, the date in which contractual cash outflows of the Exchange Note 2 (See Note 7) require the entire settlement or redemption of the Series D perpetual preferred shares.

The preferred stock has been classified as liabilities in accordance with authoritative guidance for the classification and measurement of perpetual shares with mandatory redemption period corresponding to the timing of contractual cash outflows for the settlement of Exchange Note 2.

11. Stockholders' Equity

Common Stock

As of September 30, 2020 and December 31, 2019, the Company had reserved shares of common stock for issuance as follows:

	September 30, 2020 (unaudited)	December 31, 2019
Options issued and outstanding	4,483,106	3,902,675
Inducement options issued and outstanding	33,392	74
Options available for grant under stock option plans	651,739	479,829
Restricted stock unit awards issued and outstanding	5,613	5,613
Warrants issued and outstanding	7,340,536	19,421,892
Series A convertible preferred stock	—	473,565
Series B convertible preferred stock	—	985,500
Series B-2 convertible preferred stock	1,431,460	1,931,350
Total	13,945,846	27,200,498

The holders of common stock are entitled to one vote for each share of common stock held. The common stockholders are also entitled to receive dividends whenever funds and assets are legally available and when declared by the Board of directors.

The holders of non-voting common stock are not entitled to vote, except on an as converted basis with respect to any change of control of the Company that is submitted to the stockholders of the Company for approval. Shares of the Company's non-voting common stock have the same rights to dividends and other distributions and are convertible into shares of the Company's common stock on a 1,050-for-one basis upon transfers to non-affiliates of Nantucket ("former creditor of Napo"), upon the release from escrow of certain non-voting shares held by the former creditors of Napo to the legacy stockholders of Napo under specified conditions and at any time on or after April 1, 2018 at the option of the respective holders thereof.

The Company is authorized to issue a total number of 204,475,074 shares, of which 150,000,000 shares are common stock, 50,000,000 are non-voting common stock and 4,475,074 are preferred stock.

Reverse stock-splits

On June 3, 2019, the Company filed the Certificate of Fifth Amendment to its Third Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware to effect a 1-for-70 reverse stock split of the Company’s issued and outstanding shares of voting common stock, effective June 7, 2019. The reverse split has been retroactively reflected in all voting common stock, warrants, and common stock option shares disclosed in these unaudited condensed consolidated financial statements. The non-voting common stock and the convertible preferred stock were excluded from the reverse split.

Transactions with Oasis Capital

January 2019 SPA

On January 7, 2019, Jaguar entered into a common stock purchase agreement with Oasis Capital, relating to an offering of an aggregate of up to 76,190 shares of common stock via an equity line of credit. Under the terms of the purchase agreement, the Company has the right to "put," or sell, up to 76,190 shares of common stock to Oasis Capital for an amount equal to the product of (i) the number of shares set forth on the applicable put notice (minus the deposit and clearing fees associated with such purchase) and (ii) a fixed price of $52.50 per share or such other price agreed upon between the Company and Oasis Capital. Jaguar had the option to increase the equity line of credit by an additional 114,286 shares of common stock by notifying Oasis Capital at any time after the effective date of the purchase agreement. In March 2019, Jaguar exercised this option. As of March 31, 2019, the Company had sold all of the 76,190 shares of common stock of the equity line and all 114,286 shares of common stock from the option to Oasis Capital, or a total of 190,476 shares.

March 2019 SPA

In March 2019, Jaguar entered into a securities purchase agreement with Oasis Capital pursuant to which Jaguar agreed to issue and sell, in a registered public offering by Jaguar directly to Oasis, an aggregate of 19,019 shares of common stock at an offering price of $14.00 for gross proceeds of approximately $266,000. Between March 24, 2019, the date of the March CSPA, and March 31, 2020, the Company sold an aggregate of 19,019 shares of common stock pursuant to the CSPA for aggregate gross proceeds of approximately $266,000.

March 2020 ELOC (Equity Line of Credit)

In March 2020, the Company entered into an equity purchase agreement (the “March 2020 ELOC”) with Oasis Capital, which provides that Oasis Capital is committed to purchase up to an aggregate of $2.0 million shares of the Company’s common stock over the 36-month term of the March 2020 ELOC.

Pursuant to the terms and conditions of the March 2020 ELOC, on any trading day selected by the Company (such date the "Put Date"), after the SEC has declared effective the registration statement registering the sale of the shares of common stock that may be issued to Oasis Capital under the March 2020 ELOC, the Company has the right, in its sole discretion, to present to Oasis Capital with a purchase notice (each a "Put Notice"), directing Oasis Capital to purchase up to the lesser of (i) 200,000 shares of common stock or (ii) 20% of the average trading volume of common stock in the 10 trading days immediately preceding the date of such Put Notice, at a per share price equal to $0.436 (each an "Option 1 Put"), provided that the aggregate of all Option 1 Puts and Option 2 Puts (described below) does not exceed $2.0 million.

In addition, on any date on which Oasis Capital receives shares of common stock in connection with a Put Notice (the "Clearing Date"), the Company also has the right, in its sole discretion, to present to Oasis Capital with a Put Notice (each an "Option 2 Put") directing Oasis Capital to purchase an amount of common stock equal to the lesser of (i) such amount that equals 10% of the daily trading volume of the common stock on the date of such Put Notice and (ii) $200,000, provided that the aggregate amount of the Option 1 Put and Option 2 Put on any Put Date or Clearing Date does not exceed $500,000 and the aggregate amount of all Option 1 Puts and Option 2 Puts does not exceed $2.0 million. The purchase price per share pursuant to such Option 2 Put is equal to $0.436. The Threshold Price (defined later) and the Purchase Price will be adjusted for any reorganization, recapitalization, non-cash dividend, stock split, reverse stock split or other similar transaction occurring during the period used to compute the Threshold Price or the Purchase Price.

On April 15, 2020, the SEC declared effective the registration statement registering the sale of the shares of common stock issued to Oasis Capital under the March 2020 ELOC. The Company will control the timing and amount of sales of common stock to Oasis Capital. Oasis Capital has no right to require any sales by the Company but is obligated to make purchases from the Company as directed by the Company in accordance with the March 2020 ELOC.

In connection with the equity line, the Company agreed to pay Oasis Capital a commitment fee and in April 2020, in settlement of the commitment fee, the Company issued to Oasis Capital 68,807 shares of common stock. At issuance, the 68,807 shares of common stock had a fair value of $33,027, and were expensed as an issuance cost in the Company's unaudited condensed consolidated statements of operations.

Per the terms of the equity purchase agreement, the Option Put 1 and Option Put 2 may be exercised only at a price that is always above the trading price of the underlying common stock at the exercise date, thereby rendering any exercise by the Company being out-of-the-money. At inception of the equity line on March 24, 2020, the Put Options were classified as derivative assets with a fair value of zero, and upon an effective registration statement on April 15, 2020, were reclassified to stockholders' equity with a fair value of zero.

In April 2020, the Company exercised a single Put Option Put 1 under which the Company sold 52,000 common shares to Oasis for gross proceeds of $22,627. As of September 30, 2020, the Company had not exercised any further put options to require Oasis Capital to purchase common stock under the equity purchase agreement.

March 2020 PIPE Financing

In March 2020, Company entered into a securities purchase agreement (the "PIPE Purchase Agreement") with certain investors, pursuant to which the Company agreed to issue and sell to the Investors in a private placement an aggregate of 1,714,283 shares of the Company's common stock, for an aggregate purchase price of approximately $720,000, or $668,578 net of $51,422 of issuance costs.

12. Stock Incentive Plans

2013 Equity Incentive Plan

Effective November 1, 2013, the Company's board of directors and sole stockholder adopted the Jaguar Health, Inc. 2013 Equity Incentive Plan (the "2013 Plan"). The 2013 Plan allows the Company's board of directors to grant stock options, restricted stock awards and restricted stock unit awards to employees, officers, directors and

consultants of the Company. Following the effective date of the IPO and after effectiveness of any grants under the 2013 Plan that were contingent on the IPO, no additional stock awards will be granted under the 2013 Plan. Outstanding grants continue to be exercisable; however, any unissued shares under the plan and any forfeitures of outstanding options do not rollover to the 2014 Stock Incentive Plan. As of September 30, 2020, there were 384 options outstanding.

2014 Stock Incentive Plan

Effective May 12, 2015, the Company adopted the Jaguar Health, Inc. 2014 Stock Incentive Plan ("2014 Plan"). The 2014 Plan provides for the grant of options, restricted stock and restricted stock units to eligible employees, directors and consultants to purchase the Company's common stock. The 2014 Plan that provides for automatic share increases on the first day of each fiscal year in the amount of 5% of the outstanding number of shares of the Company's common stock on the last day of the preceding calendar year. The 2014 Plan replaced the 2013 Plan except that all outstanding options under the 2013 Plan remain outstanding until exercised, canceled or expired.

As of September 30, 2020, there were 4,482,722 options outstanding and 185,057 options available for grant.

2020 New Employee Inducement Award Plan

Effective June 16, 2020, the Company adopted the Jaguar Health, Inc. New Employee Inducement Award Plan ("2020 Inducement Award Plan") and, subject to the adjustment provisions of the Inducement Award Plan, reserved 500,000 shares of the Company's common stock for issuance pursuant to equity awards granted under the Inducement Award Plan. The 2020 Inducement Award Plan provides for the grant of nonstatutory stock options, restricted stock units, restricted stock, and performance shares. The 2020 Inducement Award Plan was adopted without stockholder approval pursuant to Rule 5635(c)(4) of the Nasdaq Listing Rules. The terms and conditions of the 2020 Inducement Award Plan are substantially similar to the Company's 2014 Stock Incentive Plan, but with such other terms and conditions intended to comply with the Nasdaq inducement award rules. In accordance with Rule 5635(c)(4) of the Nasdaq Listing Rules, the only persons eligible to receive grants of equity awards under the Inducement Award Plan are individuals who were not previously an employee or director of the Company, or following a bona fide period of non-employment, as an inducement material to such persons entering into employment with the Company.

As of September 30, 2020, there were 33,318 options outstanding and 466,682 options available for grant.

Stock Options and Restricted Stock Units ("RSUs")

The following table summarizes incentive plan activity for the nine months ended September 30, 2020 (*unaudited*):

(in thousands, except share and per share data)	Shares Available for Grant	Stock Options Outstanding	RSUs Outstanding	Weighted Average Stock Option Exercise Price	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value*
Outstanding at December 31, 2019	479,829	3,902,675	5,613	$ 5.20	9.56	$ —
Additional shares authorized	786,229	—	—	—	—	—
Options granted	(953,318)	953,318	—	0.44	—	—
Option exercise	—	(555)	—	0.45	—	—
Options canceled	338,999	(338,999)	—	4.11	—	—
Options canceled not rolled back into the 2013 Plan	—	(15)	—	—	—	—
Outstanding at September 30, 2020	651,739	4,516,424	5,613	$ 4.28	8.97	$ —
Exercisable at September 30, 2020		1,870,808		$ 8.14	8.86	$ —
Vested and expected to vest at September 30, 2020		4,170,443		$ 4.53	8.96	$ —

* Fair market value of JAGX common stock on September 30, 2020 was $0.29 per share.

The intrinsic value is calculated as the difference between the exercise price of the underlying options and the fair market value of the Company's common stock for options that were in-the-money.

Five hundred fifty-five (555) options were exercised in the nine months ended September 30, 2020.

The weighted average grant date fair value of stock options granted was $0.39 and $1.57 per share during the nine months ended September 30, 2020 and 2019, respectively.

The number of options that vested in the nine months ended September 30, 2020 and 2019 was 1,065,190 and 496,467, respectively. The grant date weighted average fair value of options that vested in the nine months ended September 30, 2020 and 2019 was $2.12 and $132.26, respectively.

Stock-Based Compensation

The following table summarizes stock-based compensation expense related to stock options, inducement stock options and RSUs for the three and nine months ended September 30, 2020 and 2019, and are included in the unaudited condensed consolidated statements of operations as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
(in thousands)	(unaudited)		(unaudited)	
Research and development expense	$ 175	$ 333	$ 580	$ 549
Sales and marketing expense	54	41	167	87
General and administrative expense	446	736	1,437	1,347
Total	$ 675	$ 1,110	$ 2,184	$ 1,983

As of September 30, 2020, the Company had $3,173,000 of unrecognized stock-based compensation expense for options, inducement options and restricted stock units outstanding, which is expected to be recognized over a weighted-average period of 1.44 years.

The estimated grant-date fair value of stock option grants for the nine months ended September 30, 2020 and 2019 was calculated using the Black-Scholes - Merton option-pricing model using the following range of weighted-average assumptions:

	Nine Months Ended September 30,	
	2020	2019
	(unaudited)	
Weighted-average volatility	150.1 - 172.4 %	142.9 - 145.9 %
Weighted-average expected term (years)	1.0 - 5.0	5.6 - 5.8
Risk-free interest rate	0.1 - 0.5 %	1.5 - 1.9 %
Expected dividend yield	—	—

401(k) Plan

The Company sponsors a 401(k) defined contribution plan covering all employees. There were no employer contributions to the plan from plan inception through September 30, 2020.

13. Net Loss Per Share

The following table presents the calculation of basic and diluted net loss per share of common stock for the periods indicated:

(In thousands, except share and per share data)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
	(unaudited)		(unaudited)	
Net loss attributable to common shareholders (basic and diluted)	$ (8,271)	$ (11,683)	$ (27,284)	$ (36,708)
Shares used to compute net loss per common share, basic and diluted	40,218,324	5,841,790	26,467,423	2,746,523
Net loss per share attributable to common shareholders, basic and diluted	$ (0.21)	$ (2.00)	$ (1.03)	$ (13.37)

Basic net loss per share is calculated by dividing net loss by the weighted-average number of common shares outstanding during the period. Diluted net loss per share is computed by dividing net loss by the weighted-average number of common shares and common share equivalents outstanding for the period. Common stock equivalents are only included when their effect is dilutive. The Company's potentially dilutive securities which include stock options, convertible preferred stock, Series 3 warrants and common stock warrants have been excluded from the computation of diluted net loss per share as they would be anti-dilutive. For all periods presented, there is no difference in the number of shares used to compute basic and diluted shares outstanding due to the Company's net loss position.

The following outstanding common stock equivalents have been excluded from diluted net loss per common share for the three and nine months ended September 30, 2020 and 2019 because their inclusion would be anti-dilutive.

	September 30,	
	2020	2019
	(unaudited)	
Options issued and outstanding	4,483,106	3,821,690
Inducement options issued and outstanding	33,392	906
Restricted stock units issued and outstanding	5,613	5,613
Warrants issued and outstanding	7,340,536	19,421,892
Series A convertible preferred stock	—	473,565
Series B convertible preferred stock	—	985,500
Series B-2 convertible preferred stock	1,431,460	—
Total	13,294,107	24,709,166

As of November 6, 2020 there were 20,578,097 shares of common stock issued after the balance sheet date. Including these shares will have a material effect on the diluted net loss per common share in future periods.

14. Segment Information

The Company has two reportable segments-human health and animal health. The animal health segment is focused on developing and commercializing prescription and non-prescription products for companion and production animals. The human health segment is focused on developing and commercializing of human products and the ongoing commercialization of Mytesi, which is approved by the U.S. FDA for the symptomatic relief of non-infectious diarrhea in adults with HIV/AIDS on antiretroviral therapy.

The Company's reportable segments net revenues and net loss for the three and nine months ended September 30, 2020 and 2019 consisted of:

(in thousands)	Three Months Ended September 30, 2020	Three Months Ended September 30, 2019	Nine Months Ended September 30, 2020	Nine Months Ended September 30, 2019
	(unaudited)		(unaudited)	
Revenue from external customers				
Human Health	$ 2,760	$ 957	$ 6,748	$ 4,185
Animal Health	13	16	61	83
Consolidated Totals	$ 2,773	$ 973	$ 6,809	$ 4,268
Segment net loss				
Human Health	$ (1,912)	$ (3,955)	$ (6,721)	$ (16,586)
Animal Health	(5,954)	(3,600)	(18,319)	(15,994)
Consolidated Totals	$ (7,866)	$ (7,555)	$ (25,040)	$ (32,580)

The Company's reportable segments assets consisted of the following:

(in thousands)	September 30, 2020	December 31, 2019
	(unaudited)	
Segment assets		
Human Health	$ 33,930	$ 32,432
Animal Health	69,466	68,169
Total	$ 103,396	$ 100,601

The reconciliation of segments assets to the consolidated assets is as follows:

(in thousands)	September 30, 2020	December 31, 2019
	(unaudited)	
Total assets for reportable segments	$ 103,396	$ 100,601
Less: Investment in subsidiary	(29,241)	(29,241)
Less: Intercompany loan	(37,921)	(34,950)
Consolidated Totals	$ 36,234	$ 36,410

15. Subsequent Events

ATM Program

On October 5, 2020, the Company entered into an At The Market Offering Agreement (the “ATM Agreement”) with Ladenburg Thalmann & Co. Inc., as agent (“Ladenburg”). The Company registered on its Form S-3 the sale of up to $7 million worth of shares of common stock. The Company will pay Ladenburg a commission of up to three percent (3.0%) of the gross sales proceeds of any Shares sold through Ladenburg. The Company has not issued any shares under the ATM.

Phase 3 Clinical Trial for Cancer-therapy related Diarrhea

On October 5, 2020, Napo entered into a Master Services Agreement for clinical research organization services and a service order with Integrium, LLC (“Integrium”). The Service Order covers Napo’s planned pivotal Phase 3 clinical trial for cancer-therapy related diarrhea. Napo will pay Integrium a total amount of up to approximately $12.4 million over the term of the engagement, based on the achievement of certain milestones.

On October 6, 2020, the Company entered into a Stock Plan Agreement for Payment of Contracted Research Fees with PoC Capital, LLC ("PoC"). The Company issued 1,333,333 shares of common stock to PoC at par value of $0.0001 per share in consideration for PoC's assumption of $0.4 million obligations of Napo under the Service Order with Integrium. The effective offering price of common stock is at $0.30 per share, which is the Minimum Price as defined under Nasdaq Listing Rule 5635(d).

3(a)(9) Exchanges

On October 6, 2020, the Company issued 3,350,000 shares of common stock to a noteholder in exchange for a $1.0 million reduction in the outstanding balance of CVP Exchange Note 1.

On the same date, the Company issued 500,186 shares of common stock to a holder of the Company's Series B-2 convertible preferred stock in exchange for 975 shares of Series B-2 Convertible Preferred Stock.

Preferred Stock Exchange

On October 8, 2020, the Company entered into an exchange agreement with Iliad, pursuant to which the Company and Iliad agreed to exchange the 285,000 shares Series C Perpetual Preferred Stock (see Note 9) for (i) 250,000 shares of Common Stock and (ii) Pre-Funded warrants to purchase 7,057,692 shares of Common Stock. Each Pre-Funded Warrant represents the right to purchase one share of Common Stock at an exercise price of $0.0001 per share. As of November 6, 2020, Iliad exercised 6,700,000 Pre-funded Warrants for $1,000.

Fee Settlement Agreement

On October 7, 2020, the Company entered into a fee settlement agreement with Atlas pursuant to which the Company will issue to Atlas 2,000,000 shares of common stock and pre-funded warrants to purchase 6,218,954 shares of common stock as complete settlement and satisfaction of a trial delay fee of $2.5 million that the Company expects to incur pursuant to its license agreement with Atlas dated April 15, 2020. As of October 23, 2020, the shares of common stock have all been issued and the pre-funded warrants have all been exercised. Refer to Note 2 for further discussion.

Royalty Transaction

On October 8, 2020, the Company entered into another Purchase Agreement with Iliad, pursuant to which the Company sold to Iliad a royalty interest (the "Royalty Interest") entitling Iliad to receive $12 million Royalty Repayment Amount for an aggregate purchase price of $6 million. Interest will accrue on the Royalty Repayment Amount at a rate of 10% per annum, compounding quarterly. The Company will be obligated to make minimum royalty payments on a monthly basis beginning on May 10, 2021 in an amount equal to the greater of (i) $250,000 (which increases to $400,000 beginning on October 9, 2021, $600,000 beginning on April 9, 2022, and $750,000 beginning on October 9, 2022) and (ii) 10% of the Company's net sales of Mytesi and 10% of worldwide revenues related to upfront licensing fees and milestone payments from licensees and/or distributors, but specifically excluding licensing fees and/or milestone payments that are reimbursements of clinical trial expenses. If the weekly volume weighted average price of the Company's Common Stock ("VWAP") is not equal to or greater than the Minimum VWAP ($0.3035) at least twice during each calendar month during the six-month period beginning on November 1, 2020, then the Royalty Repayment Amount will automatically be increased by $6,000,000 at the end of such six-month period. Upon mutual agreement the parties may agree to consummate additional royalty financings of approximately $5 million and $6 million in February 2021 and July 2021, respectively. Under the Purchase Agreement, the Company is subject to certain covenants, for which the Company's failure to comply may be subject to certain liquidated damages, including a right for Iliad to increase the Royalty Repayment Amount by 15%.

Fourth Amendment to Accounts Receivable Purchase Agreement with Oasis Capital, LLC

On October 9, 2020, for its fifth sale under the terms of the Purchase Agreement, the Company received cash proceeds of $900,097 from Oasis (the "Tranche #5 Secured Note"). Oasis purchased accounts receivable with a carrying value of 900,000, or gross accounts receivable of $2,118,000 net of chargebacks and discounts of $1,218,000. The

purchase was effectuated pursuant to an amended Assignment Agreement, effective October 9, 2020, between Napo and Oasis.

Per the terms of the agreement, Oasis will receive a fee of 5.45% (the "Fee") of the $2,118,000 gross accounts receivable. The Maturity Date, by which date Oasis must collect the $1,015,000 Threshold Price, was December 16, 2020. Oasis will return to the Company within five days any amounts collected that exceeds the sum of the Purchase Price and the Fee. As with all Mytesi gross sales, the accounts receivable will be reduced by Medicare, ADAP 340B chargebacks, returns, and wholesale distribution fees based on historical trends to determine net sales.

Under the agreement, Oasis is entitled to a transaction fee of $5,000 and may be entitled to additional transaction fees to the extent Oasis purchases additional accounts receivable under the agreement, which fees will not exceed $5,000 per transaction.

The initial term of the agreement is one year, during which period Oasis, can purchase additional receivables. The agreement will automatically renew for successive one-year periods unless notice of non-renewal is provided by the Company at least 30 days prior to the expiration of a term. Notwithstanding the foregoing, either Oasis or the Company may terminate the agreement on 60 days' prior written notice.

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

The following discussion and analysis of financial condition and results of operations should be read together with the condensed consolidated financial statements and the related notes included in Item 1 of Part I of this Quarterly Report on Form 10-Q, and with our audited consolidated financial statements and the related notes included in our Annual Report on Form 10-K for the year ended December 31, 2019.

The discussion and analysis below includes certain forward-looking statements related to our research and development and commercialization of our products in the U.S., our future financial condition and results of operations and potential for profitability, the sufficiency of our cash resources, our ability to obtain additional equity or debt financing or other means of accelerating the payment of accounts receivable, if needed, possible partnering or other strategic opportunities for the development of our products, as well as other statements related to the progress and timing of product development, present or future licensing, collaborative or financing arrangements or that otherwise relate to future periods, which are all forward-looking statements as defined by the Private Securities Litigation Reform Act of 1995. These statements represent, among other things, the expectations, beliefs, plans and objectives of management and/or assumptions underlying our judgments concerning the future financial performance and other matters discussed in this document. The words "may," "will," "should," "plan," "believe," "estimate," "intend," "anticipate," "project," and "expect" and similar expressions are intended to connote forward-looking statements. All forward-looking statements involve certain risks, uncertainties and other factors described in our Annual Report on Form 10-K, that could cause our actual commercialization efforts, financial condition and results of operations, and business prospects and opportunities to differ materially from these expressed in, or implied by, those forward-looking statements. We caution investors not to place significant reliance on the forward-looking statements contained in this report. These statements, like all statements in this report, speak only as of the date of this report (unless another date is indicated), and we undertake no obligation to update or revise forward-looking statements.

Overview

We are a commercial stage pharmaceuticals company focused on developing novel, sustainably derived gastrointestinal products on a global basis. Our wholly-owned subsidiary, Napo Pharmaceuticals, Inc. ("Napo"), focuses on developing and commercializing proprietary human gastrointestinal pharmaceuticals for the global marketplace from plants used traditionally in rainforest areas. Our Mytesi ("Crofelemer") product is approved by the U.S. Food and Drug Administration for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy.

Jaguar was founded in San Francisco, California as a Delaware corporation on June 6, 2013. Napo formed Jaguar to develop and commercialize animal health products. Effective as of December 31, 2013, Jaguar was a wholly-owned subsidiary of Napo, and Jaguar was a majority-owned subsidiary of Napo until the close of the Company's initial public offering on May 18, 2015. On July 31, 2017, the merger of Jaguar Animal Health, Inc. and Napo became effective, at which point Jaguar Animal Health's name changed to Jaguar Health, Inc. and Napo began operating as a wholly-owned subsidiary of Jaguar focused on human health and the ongoing commercialization of, and development of follow-on indications for, Mytesi. Most of the activities of the Company are now focused on the commercialization of Mytesi and development of follow-on indications for crofelemer and a second-generation anti-secretory product, lechlemer. In the field of animal health, we have limited activities which are focused on developing and commercializing first-in-class gastrointestinal products for dogs, dairy calves, foals, and high value horses.

We believe Jaguar is poised to realize a number of synergistic, value adding benefits—an expanded pipeline of potential blockbuster human follow-on indications, a second-generation anti-secretory agent, as well as a pipeline of important animal indications for crofelemer —upon which to build global partnerships. As previously announced, Jaguar, through Napo, now holds extensive global rights for Mytesi, and crofelemer manufacturing is being conducted at a multimillion-dollar commercial manufacturing facility that has been FDA-inspected and approved. Additionally, several of the drug product candidates in Jaguar's Mytesi pipeline are backed by what we believe are strong Phase 2 and proof of concept evidence from completed human clinical trials.

Mytesi is a novel, first-in-class anti-secretory agent which has a basic normalizing effect locally on the gut, and this mechanism of action has the potential to benefit multiple disorders. Mytesi is in development for multiple possible follow-on indications, including cancer therapy-related diarrhea; orphan-drug indications for infants and children with congenital diarrheal disorders and short bowel syndrome (SBS); supportive care for inflammatory bowel disease (IBD); irritable bowel syndrome (IBS); and for idiopathic/functional diarrhea. In addition, a second-generation anti-secretory agent, lechlemer, is in development for cholera. Mytesi previously received orphan-drug designation for SBS.

Financial Operations Overview

On a consolidated basis, we have not yet generated enough revenue to date to achieve break even or positive cash flow, and we expect to continue to incur significant research and development and other expenses. Our net loss was $25.0 million and $32.6 million for the nine months ended September 30, 2020 and 2019, respectively. As of September 30, 2020, we had a total stockholders' equity of $7.8 million, an accumulated deficit of $158.1 million, and cash of $1.3 million. We expect to continue to incur losses and experience increased expenditures for the foreseeable future as we expand our product development activities, seek necessary approvals for our product candidates, conduct species-specific formulation studies for our non-prescription products, establish API manufacturing capabilities and begin additional commercialization activities.

Revenues

Our product and collaboration revenue consist of the following:

- Revenues from the sale of our human drug Mytesi, which is sold through distributors and wholesalers.
- Revenues from the sale of our animal products branded as Neonorm Calf and Neonorm Foal. Our Neonorm and botanical extract products are primarily sold to distributors, who then sell the products to the end customers.

See “Results of Operations” below for more detailed discussion on revenues

Cost of Revenue

Cost of revenue consists of direct drug substance and drug product materials expense, direct labor, distribution fees, royalties and other related expenses associated with the sale of our products.

Research and Development Expense

Research and development expenses consist primarily of clinical and contract manufacturing expense, personnel and related benefits expense, stock-based compensation expense, employee travel expense, and reforestation expenses. Clinical and contract manufacturing expense consists primarily of costs to conduct stability, safety and efficacy studies, and manufacturing startup at an outsourced API provider in Italy. It also includes expenses with a third-party provider for the transfer of the Mytesi manufacturing process, and the related feasibility and validation activities.

We typically use our employee and infrastructure resources across multiple development programs. We track outsourced development costs by prescription drug product candidate and non-prescription product and we track personnel or other internal costs related to development to specific programs or development compounds.

The timing and amount of our research and development expenses will depend largely upon the outcomes of current and future trials for our prescription drug product candidates as well as the related regulatory requirements, the outcomes of current and future species-specific formulation studies for our non-prescription products, manufacturing costs and any costs associated with the advancement of our line extension programs. We cannot determine with certainty the duration and completion costs of the current or future development activities.

The duration, costs and timing of trials, formulation studies and development of our prescription drug and non-prescription products will depend on a variety of factors, including:

- the scope, rate of progress, and expense of our ongoing, as well as any additional clinical trials, formulation studies and other research and development activities;
- future clinical trial and formulation study results;
- potential changes in government regulations; and
- the timing and receipt of any regulatory approvals.

A change in the outcome of any of these variables with respect to the development of a prescription drug product candidate or non-prescription product could mean a significant change in the costs and timing associated with our development activities.

We expect research and development expense to increase due to the start-up costs associated with our clinical trials for other indications.

Sales and Marketing Expense

Sales and marketing expenses consist of personnel and related benefits expense, stock-based compensation expense, direct sales and marketing expense, employee travel expense, and management consulting expense. We currently incur sales and marketing expenses to promote Mytesi. We do not currently have any marketing or promotional expenses related to Neonorm Calf or Neonorm Foal in the nine months ended September 30, 2020.

We expect sales and marketing expense to increase going forward as we focus on expanding our market access activities and commercial partnerships for the development of follow-on indications of Mytesi and Crofelemer.

General and Administrative Expense

General and administrative expenses consist of personnel and related benefits expense, stock-based compensation expense, employee travel expense, legal and accounting fees, rent and facilities expense, and management consulting expense.

In the near term, we expect general and administrative expense to remain flat as we focus on our pipeline development and market access expansion. This will include efforts to grow the business.

Interest Expense

Interest expense consists primarily of non-cash and cash interest costs related to our borrowings.

Critical Accounting Policies and Significant Judgments and Estimates

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles, or U.S. GAAP, requires the use of estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures in the consolidated financial statements. Critical accounting policies are those accounting policies that may be material due to the levels of subjectivity and judgment necessary to account for highly uncertain matters or the susceptibility of such matters to change, and that have a material impact on financial condition or operating performance. While we base our estimates and judgments on our experience and on various other factors that we believe to be reasonable under the circumstances, actual results may differ from these estimates under different assumptions or conditions. We believe the following critical accounting policies used in the preparation of our consolidated financial statements require significant judgments and estimates. For additional information relating to these and other accounting policies, see Note 2 to our audited consolidated financial statements and the related notes included in our Annual Report on Form 10-K for the year ended December 31, 2019.

Revenue Recognition

The Company recognizes revenue in accordance with ASC Topic 606, *Revenue from Contracts with Customers* (“ASC 606”), which was adopted on January 1, 2018, using the modified retrospective method, which was elected to apply to all active contracts as of the adoption date. Application of the modified retrospective method did not impact amounts previously reported by the Company, nor did it require a cumulative effect adjustment upon adoption, as the Company's method of recognizing revenue under ASC 606 yielded similar results to the method utilized immediately prior to adoption. Accordingly, there was no effect to each financial statement line item as a result of applying the new revenue standard.

Practical Expedients, Elections, and Exemptions

We recognize revenue in accordance with the core principle of ASC 606 or when there is a transfer of control of promised goods or services to customers in an amount that reflects the consideration that we expect to be entitled to in exchange for those goods or services.

We used a practical expedient available under ASC 606-10-65-1(f)4 that permits us to consider the aggregate effect of all contract modifications that occurred before the beginning of the earliest period presented when identifying satisfied and unsatisfied performance obligations, transaction price, and allocating the transaction price to the satisfied and unsatisfied performance obligations.

We also used a practical expedient available under ASC 606-10-32-18 that permits us not to adjust the amount of consideration for the effects of a significant financing component if, at contract inception, the expected period between the transfer of promised goods or services and customer payment is one year or less.

We have elected to treat shipping and handling activities as fulfillment costs.

Additionally, we have elected to record revenue net of sales and other similar taxes.

Contracts - Cardinal Health

Effective January 16, 2019, Napo engaged Cardinal Health as its exclusive third party logistics distribution agent for commercial sales for the Company’s Mytesi product and to perform certain other services which include,

without limitation, storage, distribution, returns, customer support, financial support, Electronic Data Interchange ("EDI") and system access support (the "Exclusive Distribution Agreement").

In addition to the terms and conditions of the Exclusive Distribution Agreement, Cardinal Health's purchase of products, and assumption of title therein, is set forth in the Title Model Addendum. The Title Model Addendum states that upon receipt of product at the 3PL Facility (Cardinal Health in La Vergne, Tennessee) from the Company, title and risk of loss for the Mytesi product purchased by Cardinal Health (excluding consigned inventory) shall pass to Cardinal Health, and title and risk of loss for consigned inventory shall remain with the Company until purchased by Cardinal Health in accordance with the Title Model Addendum. Napo considers Cardinal Health the Company's exclusive customer for Mytesi products per the Exclusive Distribution Agreement.

Jaguar's Neonorm and botanical extract products are primarily sold to distributors, who then sell the products to the end customers. Since 2014, the Company has entered into several distribution agreements with established distributors such as Animart, Vedco, VPI, RJ Matthews, Henry Schein, and Stockmen Supply to distribute the Company's products in the United States, Japan, and China. The distribution agreements and the related purchase orders together meet the contract existence criteria under ASC 606-10-25-1. Jaguar sells directly to its customers without the use of an agent.

Performance obligations

For animal products sold by Jaguar Health, the single performance obligation identified above is the Company's promise to transfer the Company's animal products to distributors based on specified payment and shipping terms in the arrangement. Product warranties are assurance type warranties that do not represent a performance obligation. For the Company's human product, Mytesi, which is sold by Napo, the single performance obligation identified above is the Company's promise to transfer Mytesi to Cardinal Health, the Company's exclusive distributor for the product, based on specified payment and shipping terms as outlined in the Exclusive Distribution Agreement.

Transaction price

For contracts with Cardinal Health, for both Jaguar and Napo, the transaction price is the amount of consideration to which the Company expects to collect in exchange for transferring the promised goods or services to a customer. The transaction price of Mytesi and Neonorm is the Wholesaler Acquisition Cost ("WAC"), net of discounts, returns, and price adjustments.

Allocate transaction price

For contracts with Cardinal Health, for both Napo and Jaguar, the entire transaction price is allocated to the single performance obligation contained in each contract.

Revenue recognition

For contracts with Cardinal Health, for both Napo and Jaguar, a single performance obligation is satisfied at a point in time, upon the free on board ("FOB") terms of each contract when control, including title and all risks, has transferred to the customer.

Disaggregation of Product Revenue

Human

Sales of Mytesi are recognized as revenue when the products are delivered to the wholesaler. Net revenues from the sale of Mytesi were $2.8 million and $1.0 million for the three months ended September 30, 2020 and 2019, respectively. Revenues from the sale of Mytesi were $6.7 million and $4.2 million for the nine months ended September 30, 2020 and 2019, respectively.

Animal

The Company recognized Neonorm revenues of $13,000 and $16,000 for the three months ended September 30, 2020 and 2019, respectively. Revenues from the sale of Neonorm were $61,000 and $83,000 for the nine months ended September 30, 2020 and 2019, respectively. Revenues are recognized upon shipment which is when title and control is transferred to the buyer. Sales of Neonorm Calf and Foal to distributors are made under agreements that may provide distributor price adjustments and rights of return under certain circumstances.

Contracts - Atlas Sciences

Effective April 15, 2020, the Company entered into a patent purchase agreement with Atlas Sciences, LLC ("Atlas"), pursuant to which Atlas agreed to purchase certain patents and patent applications relating to Napo's NP-500 drug product candidate (the "Patent Rights") for an upfront cash payment of $1,500,000.

Concurrent with the Patent Rights sale, the Company entered into a license agreement with Atlas (the "License Agreement"), pursuant to which Atlas granted the Company an exclusive 10-year license to use the Patent Rights and improvements thereon to develop and commercialize NP-500 in all territories worldwide except Greater China (i.e., China, Hong Kong, Taiwan and Macau), inclusive of the right to sublicense NP-500 development and commercialization rights ("the License"). Except for the License retained by the Company, Atlas retains all rights, title and interest in and to the Patent Rights, including all improvements and enhancements to the Patent Rights made or created by the Company under the License Agreement or made or created by or on behalf of Atlas during the term of the License Agreement.

Included in the arrangement with Atlas, the Company is obligated to initiate a proof of concept Phase 2 study of NP-500 under an investigational new drug ("IND") application with the U.S. Food and Drug Administration or an IND-equivalent dossier under appropriate regulatory authorities (the "Phase 2 study") within nine months of April 15, 2020. The Company will incur a trial delay fee if the Company fails to initiate the Phase 2 study by this date, for any reason, including the timely receipt of adequate funding to initiate the Phase 2 study. Atlas has the right to terminate the License in the event that the Company (i) fails to complete the Phase 2 study within five years of April 15, 2020 or (ii) has not timely initiated the Phase 2 study and thereafter fails to make three or more consecutive Trial Delay Payments.

As of September 30, 2020, the Company determined not to proceed with the scheduled proof of concept of the Phase 2 study and incurred and recorded a liability for a trial delay fee. See Note 15 for a description of the trial delay fee settlement agreement entered into by the Company.

Performance obligations

The Patent Rights sale to Atlas and the Phase 2 study to be performed by the Company, identified above, represent a single transaction with two separate performance obligations; with the sale of the Patent Rights, the Company transferred control of the internally generated Patent Rights to Atlas at the date of sale.

As of September 30, 2020, the Company determined not to proceed with the Phase 2 study, which will result in the Company having no performance obligation to transfer the services to Atlas.

Transaction price

For the contract with Atlas, the upfront payment of $1,500,000 from Atlas as consideration for the Patent Rights sale and the Phase 2 study, is variable consideration that is fully constrained due to the potential incurrence of a Trial Delay Fee of $2,515,000 if the Phase 2 study had not been initiated by January 15, 2021. Accordingly, at inception, the total transaction price of $1,500,000 is deferred and the transaction price is zero.

Allocate transaction price

For the contract with Atlas, the transaction price of $1,500,000 is allocated as follows: (i) $1,196,000 was allocated to the Phase 2 study using the cost-plus margin approach, and (ii) $583,000 was allocated to the Patent sale using the Residual method.

As of September 30, 2020, the allocated deferred transaction price of $1,500,000 will be derecognized as a result of the non-performance of the Company's obligation to initiate the Phase study.

Revenue recognition

For the contract with Atlas, control of the Patent Rights transferred to Atlas on the date of sale (at a point-in-time); and with the Phase 2 study, the services were to be transferred to Atlas over the estimated 13.2 months of the study, which was set to run between October 2020 and November 2021.

As of September 30, 2020, the Company made the decision not to initiate the Phase 2 study and intended to negotiate the payment of the Trial Delay Fee of $2.5 million and terminate the contract. Because of this decision, the allocated transaction price for that performance obligation will not be recognized as revenue. Likewise, the allocated transaction price for the Patent sale will not be recognized as revenue, as its recognition was dependent on initiating the Phase 2 study on or before January 15, 2021.

The Company derecognized $1.5 million in deferred revenue and the excess of the Trial Delay Fee was recognized in "General and Administrative Expenses" in the condensed consolidated statement of operations. The authoritative guidance treats consideration payable to a customer as a reduction of the transaction price and, therefore, an adjustment to revenues unless the payment is for a distinct good or service received from the customer. In some cases, a payment to a customer that is not in exchange for a distinct good or service could exceed the transaction price for the current contract. This is a case of a payment to a customer that is not in exchange for a distinct good or service. Accounting for the excess payment ("negative revenue") requires judgment as the standard does not explicitly address whether it is appropriate to reclassify revenue to expense.

The Company evaluated the nature of the consideration payable to the customer and the rights and obligations in the related contract and concluded that the excess payment or loss should be presented as part of the general and administrative expenses due to the following factors:

- No revenue has been recognized from the transaction as performance obligations were not satisfied.
- The Company settled the Trial Delay Fee in full in October 2020, which constitutes termination of the customer relationship considering that Atlas cannot compel the Company or has no recourse to force the Company to initiate the Phase 2 Study. The Company does not anticipate future revenue contract with Atlas.
- The trial delay fee is a penalty in its economic term, subject to accounting for contingencies and provisions under relevant authoritative guidance.

The Company recorded the excess loss amount of $1.0 million in the three and nine months ended September 30, 2020

Disaggregation of Patent Sales and Clinical Trial Services

Patent Rights Sale

Patent Rights sales are recognized when control of the Patent Rights is transferred to the purchaser (at a point-in-time). Due to the full constraint on the variable consideration of $1,500,000, there was no revenue recognized from the sale of Patent Rights to Atlas for the three and nine months ended September 30, 2020 and 2019.

Clinical Trials

Revenue from clinical trials are recognized over time, as the services are performed, as the Company's performance enhances the Patent Rights asset that Atlas controls. The Phase 2 study to be performed under the Atlas License was expected to begin in October 2020 and run through November 2021. The expected first patient dose in the study was expected to occur in December 2020, at which point revenue from the Phase 2 study would begin to be recognized.

As of September 30, 2020, the Company determined to not proceed with the Phase 2 study and incurred a trial delay fee of $2,515,000. Refer to Note 6 for a description of the contingent liability recorded. Due to the Company abandoning the Phase 2 study, the arrangement with Atlas to perform the clinical trial is terminated and the deferred revenue recorded for the variable consideration of $1,500,000 was derecognized.

Indefinite-lived Intangible Assets

Acquired IPR&D are intangible assets initially recognized at fair value and classified as indefinite-lived assets until the successful completion or abandonment of the associated research and development efforts. During the development period, these assets will not be amortized as charges to earnings; instead these assets will be tested for impairment on an annual basis or more frequently if impairment indicators are identified. In connection with each annual impairment assessment and any interim impairment assessment in which indicators of impairment have been identified, we compare the fair value of the asset as of the date of the assessment with the carrying value of the asset on the condensed consolidated balance sheets. If impairment is indicated by this test, the intangible asset is written down by the amount by which the discounted cash flows expected from the intangible asset exceeds its carrying value. Fair value determinations require considerable judgement and are sensitive to changes in underlying assumptions, estimates regarding our future plans, as well as industry and economic conditions. These assumptions and estimates include projected revenues and income growth rates, terminal growth rates, competitive and consumer trends, market-based discount rates, and other factors. If current expectations of growth rates are not met or market factors outside of our control, such as discount rates, change significantly, this may lead to a further impairment in the future. We recorded no impairment in the three and nine months ended September 30, 2020. The Company recorded an impairment of zero and $4 million in the three and nine months ended September 30, 2019, respectively. The impairment loss is measured based on the excess of the carrying amount over the asset’s fair value. Definite-lived intangible assets are amortized on a straight-line basis over the estimated periods benefited and are reviewed when appropriate for possible impairment.

Accrued Research and Development Expenses

As part of the process of preparing our unaudited condensed consolidated financial statements, we are required to estimate accrued research and development expenses. Estimated accrued expenses include fees paid to vendors and clinical sites in connection with our clinical trials and studies. Clinical and contract manufacturing expense consists primarily of costs to conduct stability, safety and efficacy studies, and manufacturing startup at an outsourced API provider in Italy. It also includes expenses with a third-party provider for the transfer of the Mytesi manufacturing process, and the related feasibility and validation activities.

We review new and open contracts and communicate with applicable internal and vendor personnel to identify services that have been performed on our behalf and estimate the level of service performed and the associated costs incurred for the service when we have not yet been invoiced or otherwise notified of the actual cost for accrued

expenses. The majority of our service providers invoice us monthly in arrears for services performed or as milestones are achieved in relation to our contract manufacturers. We make estimates of our accrued expenses as of each reporting date.

We base our accrued expenses related to clinical trials and studies on our estimates of the services received and efforts expended pursuant to contracts with vendors, our internal resources, and payments to clinical sites based on enrollment projections. The financial terms of the vendor agreements are subject to negotiation, vary from contract to contract and may result in uneven payment flows. Payments under some of these contracts depend on factors such as the successful enrollment of animals and the completion of development milestones. We estimate the time period over which services will be performed and the level of effort to be expended in each period. If the actual timing of the performance of services or the level of effort varies from our estimate, we adjust the related expense accrual accordingly on a prospective basis. If we do not identify costs that have been incurred or if we underestimate or overestimate the level of services performed or the costs of these services, our actual expenses could differ from our estimates. To date, we have not made any material adjustments to our estimates of accrued research and development expenses or the level of services performed in any reporting period presented.

The Company expenses the total cost of a certain long-term manufacturing development contract ratably over the estimated life of the contract, or the total amount paid if greater.

Results of Operations

Comparison of the Nine Months Ended September 30, 2020 and 2019

The following table summarizes the Company's results of operations with respect to the items set forth in such table for the nine months ended September 30, 2020 and 2019 together with the change in such items in dollars and as a percentage.

	Nine Months Ended September 30,			
(in thousands)	2020	2019	Variance	Variance %
Product revenue	$ 6,809	$ 4,268	$ 2,541	59.5 %
Total revenue	6,809	4,268	2,541	59.5 %
Operating Expenses				
Cost of product revenue	2,491	3,073	(582)	(18.9)%
Research and development	4,509	4,426	83	1.9 %
Sales and marketing	4,728	5,436	(708)	(13.0)%
General and administrative	11,218	9,817	1,401	14.3 %
Settlement of Tempesta Royalty Settlement Agreement	—	640	(640)	(100.0)%
Impairment of indefinite-lived intangible assets	—	4,000	(4,000)	(100.0)%
Series B convertible preferred stock inducement expense	1,647	—	1,647	100.0 %
Series 3 warrants inducement expense	3,696	—	3,696	100.0 %
Total operating expenses	28,289	27,392	897	3.3 %
Loss from operations	(21,480)	(23,124)	1,644	(7.1)%
Interest expense	(1,259)	(5,557)	4,298	(77.3)%
Other income, net	190	49	141	287.8 %
Change in fair value of financial instruments	(2,491)	1,003	(3,494)	(348.4)%
Loss on extinguishment of debt	—	(4,941)	4,941	(100.0)%
Loss before income tax	(25,040)	(32,570)	7,530	(23.1)%
Income tax expense	—	(10)	10	(100.0)%
Net loss and comprehensive loss	(25,040)	(32,580)	7,540	(23.1)%
Deemed dividend attributable to accretion of Series A redeemable convertible preferred stock	(1,332)	—	(1,332)	100 %
Deemed dividend attributable to Series B preferred stock	—	(3,876)	3,876	(100)%
Stock dividend attributable to Series C perpetual preferred stock	(56)	—	(56)	100 %
Deemed dividend attributable to the Series 1 warrant modification	—	(252)	252	(100)%
Deemed dividend attributable to Series 1, Series 2 and Bridge warrant holders	(856)	—	(856)	100 %
Net loss attributable to common shareholders	$ (27,284)	$ (36,708)	$ 9,424	(25.7)%

Revenue

Sales and Allowances

Due to the Company's arrangements, including elements of variable consideration, gross product sales are reduced in order to reflect the expected consideration to arrive at net product sales. Deductions to reduce gross product sales to net product sales in the nine months ended September 30, 2020 and 2019 were as follows:

	Nine Months Ended September 30,			
(in thousands)	2020	2019	Variance	Variance %
Gross product sales				
Mytesi	$ 13,895	$ 6,054	$ 7,841	129.5 %
Neonorm	61	83	(22)	(26.5)%
Total gross product sales	13,956	6,137	7,819	127.4 %
Medicare rebates	(1,248)	(368)	(880)	239.1 %
Sales discounts	(4,307)	(1,055)	(3,252)	308.2 %
Sales returns	(203)	(89)	(114)	128.1 %
Wholesaler fee	(1,389)	(357)	(1,032)	289.1 %
Net product sales	$ 6,809	$ 4,268	$ 2,541	59.5 %

Product Revenue

Our gross product revenues were $14.0 million and $6.1 million for the nine months ended September 30, 2020 and 2019, respectively. These periods reflect revenue from the sale of our human drug Mytesi and our animal products branded as Neonorm Calf and Neonorm Foal.

Human

Sales of Mytesi are recognized as revenue when the products are delivered to the wholesalers. Our gross revenues from the sale of Mytesi were $13.9 million and $6.1 million in the nine months ended September 30, 2020 and 2019, respectively. The increase in sales of Mytesi is due to an increase in the wholesaler demand, mostly due to the list price adjustment of Mytesi that occurred in April 2020.

Sales discounts were $4.3 million and $1.1 million for the nine months ended September 30, 2020 and 2019, respectively, an increase of $3.3 million. Sales discounts include discounts for prompt payments from customers and an estimated allowance for chargebacks on sales. Of the total sales discounts, allowances for chargebacks were $4.1 million and $0.9 million for the nine months ended September 30, 2020 and 2019, respectively. These allowances for chargebacks were approximately 30% and 15% on Mytesi gross product sales for the nine months ended September 30, 2020 and 2019, respectively. The increase in allowance is mostly due to the increase in list price of Mystesi.

Animal

Our Neonorm product revenues were $61,000 and $83,000 for the nine months ended September 30, 2020 and 2019, respectively. Focus on sales and marketing for Neonorm products had decreased during 2020.

Cost of Product Revenue

(in thousands)	Nine Months Ended September 30, 2020	2019	Variance	Variance %
Cost of Product Revenue				
Material cost	$ 1,412	$ 1,625	$ (213)	(13.1)%
Direct labor	501	435	66	15.2 %
Distribution fees	331	407	(76)	(18.7)%
Royalties	32	(11)	43	(390.9)%
Other	215	617	(402)	(65.2)%
Total	$ 2,491	$ 3,073	$ (582)	(18.9)%

Cost of product revenue decreased $582,000 from $3,073,000 in the nine months ended September 30, 2019 to $2,491,000 for the same period in 2020. The decrease in cost of product revenue period over period was due to non-recurring costs incurred in the nine months ended September 30, 2019, including the write-off of non-conforming inventory of $273,000, campaign batch cancellation fee of $161,000, higher fees of $132,000 from the Company's former distributor, offset by the reversal of $189,000 of accrued royalties related to the termination of a royalty agreement. Additionally, a year end contractual credit of $93,000 was received from the Company's contract manufacturer and $112,000 less in inventory costs in the nine months ended September 30, 2020.

Research and Development

The following table presents the components of research and development ("R&D") expense for the nine months ended September 30, 2020 and 2019 together with the change in such components in dollars and as a percentage:

(in thousands)	Nine Months Ended September 30, 2020	2019	Variance	Variance %
Research and Development:				
Personnel and related benefits	$ 1,270	$ 1,383	$ (113)	(8.2)%
Materials expense and tree planting	57	95	(38)	(40.0)%
Travel, other expenses	42	138	(96)	(69.6)%
Clinical and contract manufacturing	1,002	1,105	(103)	(9.3)%
Stock-based compensation	580	549	31	5.6 %
Other	1,558	1,156	402	34.8 %
Total	$ 4,509	$ 4,426	$ 83	1.9 %

Research and development expense increased $83,000 from $4,426,000 in the nine months ended September 30, 2019 to $4,509,000 for the nine months ended September 30, 2020 due primarily to:

- Other expenses increased $402,000 from $1,156,000 in the nine months ended September 30, 2019 to $1,558,000 in the same period in 2020 consisting primarily of consulting, formulation and regulatory fees. Consulting expenses increased due to an increase in clinical trial consultants, which is consistent with the increased activity in development of multiple follow-on indications for Mytesi. Direct R&D testing costs also increased due to an increase in R&D work.

- Clinical and contract manufacturing expense decreased $103,000 from $1,105,000 in the nine months ended September 30, 2019 to $1,002,000 in the same period in 2020 primarily due to a decrease in contract manufacturing costs for enhanced manufacturing process improvements.

- Personnel and related benefits decreased $113,000 from $1,383,000 in the nine months ended September 30, 2019 to $1,270,000 in the same period in 2020 due to changes in headcount and related salaries.

We expect research and development expense to increase due to the start-up costs associated with our clinical trials for other indications.

Sales and Marketing

The following table presents the components of sales and marketing ("S&M") expense for the nine months ended September 30, 2020 and 2019 together with the change in such components in dollars and as a percentage:

(in thousands)	Nine Months Ended September 30, 2020	2019	Variance	Variance %
Sales and Marketing:				
Personnel and related benefits	$ 2,485	$ 3,514	$ (1,029)	(29.3)%
Stock-based compensation	167	87	80	92.0 %
Direct marketing fees and expense	1,467	1,460	7	0.5 %
Other	609	375	234	62.4 %
Total	$ 4,728	$ 5,436	$ (708)	(13.0)%

Sales and marketing expense decreased $708,000 from $5,436,000 in the nine months ended September 30, 2019 to $4,728,000 for the nine months ended September 30, 2020.

- Personnel and related benefits decreased $1,029,000 from $3,514,000 in the nine months ended September 30, 2019 to $2,485,000 in the same period in 2020 due to sales force reduction.

- Other expenses increased $234,000 from $375,000 in the nine months ended September 30, 2019 to $609,000 in the same period in 2020 largely due to additional marketing consulting costs of $139,000, partially offset by reduced travel as a result of the COVID-19 pandemic.

General and Administrative

The following table presents the components of general and administrative expense for the nine months ended September 30, 2020 and 2019 together with the change in such components in dollars and as a percentage:

(in thousands)	Nine Months Ended September 30, 2020	2019	Variance	Variance %
General and Administrative:				
Personnel and related benefits	$ 1,366	$ 1,372	$ (6)	(0.4)%
Audit, tax and accounting services	399	542	(143)	(26.4)%
Third-party consulting services	747	1,718	(971)	(56.5)%
Legal services	1,882	1,295	587	45.3 %
Travel, other expenses	31	175	(144)	(82.3)%
Stock-based compensation	1,437	1,347	90	6.7 %
Rent and lease expense	632	554	78	14.1 %
Public company expense	803	650	153	23.5 %
Other	3,921	2,164	1,757	81.2 %
Total	$ 11,218	$ 9,817	$ 1,401	14.3 %

General and administrative expenses increased $1,401,000 from $9,817,000 in the nine months ended September 30, 2019 to $11,218,000 for the same period in 2020 primarily due to increases in legal services, public company expense, stock-based compensation, and other expenses, partially offset by a decrease in third-party consulting services, travel expenses, and audit, tax and accounting services:

- Legal services increased $587,000 from $1,295,000 in the nine months ended September 30, 2019 to $1,882,000 in the same period in 2020 primarily due to $218,000 increase in fees related to legal proceedings, $243,000 increase in fees related to addressing a congressional inquiry, and $59,000 increase in promotional material compliance review to support increase in marketing programs for Mytesi, and $70,000 increase in patent related legal fees.

- Stock-based compensation expense increased $90,000 from $1,347,000 in the nine months ended September 30, 2019 to $1,437,000 in the same period in 2020 due to an increase in the volume of option grants.

- Other general and administrative expenses increased $1,757,000 from $2,164,000 for the nine months ended September 30, 2019 to $3,921,000 in the same period in 2020 largely due to $1,015,000 charge for Atlas trial delay penalty, an increase in Delaware state taxes of $125,000, an increase in state business and manufacturing licenses of $90,000, and $306,000 increase of D&O liability insurance.

- Third-party consulting services fees decreased $971,000 from $1,718,000 in the nine months ended September 30, 2019 to $747,000 in the same period in 2020, due to the switch to fulltime employees instead of consultants in the Finance department.

- Audit, tax and accounting services fees decreased $143,000 from $542,000 in the nine months ended September 30, 2019 to $399,000 in the same period in 2020, mostly due to change in the timing of services received.

- Travel expenses decreased $144,000 from $175,000 in the nine months ended September 30, 2019 to $31,000 in the same period in 2020 as a result of the COVID-19 pandemic.

In the near term, we expect general and administrative expense to remain the same as we focus on other areas of operations. This will include efforts to grow the business without adding headcount or increasing facilities.

Settlement of Tempesta Royalty License Agreement

A royalty license agreement settlement liability decreased $640,000 in the nine months ended September 30, 2019 to zero in the same period in 2020. In October 2019, the Company and Tempesta settled the dispute, pursuant to which Tempesta received $50,000 in cash, an unsecured promissory note issued by the Company in the aggregate principal amount of $550,000 and 40,000 shares of the Company's common stock in exchange for the cessation of all royalty payments by Napo to Dr. Tempesta under the License Agreements.

Series B Convertible Preferred Stock Inducement Expense

On March 24, 2020, the Company entered into a Warrant Exercise and Preferred Stock Amendment Agreement with a holder of its Series 2 warrants previously issued in the Company's registered public offering on July 23, 2019, pursuant to which the holder agreed to exercise in cash its warrants to purchase an aggregate of 1,250,000 shares of common stock, at a reduced exercise price of $0.5227 per share for gross proceeds to the Company of approximately $653,000. As further inducement to enter into the Amendment Agreement, the Company agreed to reduce the conversion price of the Company's Series B convertible preferred stock from $2.00 to $0.4456, which is equal to the Minimum Price plus $0.01. The modification of the conversion price of the Series B convertible preferred shares were qualitatively considered an extinguishment and the Company followed the guidance in ASC 260-10-S99-2 and recorded an expense of $1,647,000 and derecognizing the Series B convertible preferred shares.

Impairment of Indefinite-lived Intangible Assets

Acquired IPR&D are intangible assets initially recognized at fair value and classified as indefinite-lived assets until the successful completion or abandonment of the associated research and development efforts. During the

development period, these assets will not be amortized as charges to earnings; instead these assets will be tested for impairment on an annual basis or more frequently if impairment indicators are identified. We recorded an impairment of $4,000,000 in the nine months ended September 30, 2019. There were no impairment charges recorded in the nine months ended September 30, 2020. The impairment loss is measured based on the excess of the carrying amount over the asset's fair value.

Series 3 Warrants Inducement Expense

In May 2020, concurrent with the May 2020 modification of the exercise price of the Series 1, Series 2 and Bridge Warrants and inducement offer, the Company issued unregistered Series 3 Warrants to purchase 8,670,852 shares of common stock. The Series 3 Warrants have an exercise price of $0.53 per share and are exercisable beginning the earlier of (i) six months from their May 22, 2020 issuance date and (ii) receipt of the requisite Stockholder Approval (defined below), and expire five years thereafter. In addition to the fixed settlement method at $0.53 per warrant share, the Series 3 Warrants have two contingent settlement methods: (i) if at the time of exercise there is no effective registration statement, then the holders of the 8,670,852 warrants may exercise the warrants in a "cashless exercise," under which the holders will receive the aggregate warrants less the number of warrants equal to the exercise price; or (ii) a cashless exercise feature wherein, regardless if there is an effective registration agreement, following the requisite Stockholder Approval, each such Series 3 Warrant will be exercisable into one share of common stock for no consideration (the "Alternate Cashless Exercise").

The Series 3 Warrants were initially valued at $3,696,000 using the Black-Scholes option pricing model as follows: probability-weighted exercise price of $0.05 per share, stock price of $0.44 per share, expected life of 5.50 years, volatility of 141%, and a risk-free rate of 0.34%. The Series 3 Warrants were classified as liabilities on the Company's condensed consolidated balance sheets.

A Special Meeting of Stockholders was held on July 21, 2020, whereupon a proposal to approve the "Alternate Cashless Exercise" settlement method for the Series 3 Warrants was approved. The Series 3 Warrants and their underlying common shares were registered per the registration statement on Form S-3 on June 5, 2020.

In July 2020, certain holders of the Series 3 Warrants agreed to exercise 7,695,500 shares for a 1-for-1 exchange of common shares in an Alternate Cashless Exercise. Aggregate fair value of the common stock issued by the exercise of the Series 3 Warrants as of the exercise date was $5,687,000.

In August 2020, certain holders of the Series 3 Warrants agreed to exercise 552,830 shares for a 1-for-1 exchange of common shares in an Alternate Cashless Exercise. Aggregate fair value of the common stock issued by the exercise of Series 3 Warrants as of the exercise date is $306,000.

As of September 30, 2020, the remaining Series 3 Warrants are valued at $123,000 using the Black-Scholes option pricing model with inputs as follows: probability-weighted exercise price of $0 per share, stock price of $0.29 per share, expected life of 5.14 years, volatility of 142%, and a risk-free rate of 0.28%. The Series 3 Warrants are classified as liabilities on the Company's condensed consolidated balance sheets.

Interest Expense

Interest expense decreased $4,298,000 from $5,557,000 in the nine months ended September 30, 2019 to $1,259,000 for the same period in 2020 primarily due to interest expense incurred on the March 2019 Bridge Notes and interest expense incurred on warrants issued concurrently.

Change in Fair Value of Financial Instruments

Change in fair value of financial instruments losses increased $3,494,000 from a gain of $1,003,000 in the nine months ended September 30, 2019 to a loss of $2,491,000 for the same period in 2020 primarily due to losses incurred on the change in fair value of liability classified warrants.

Loss on Extinguishment of Debt

Loss on extinguishment of debt decreased from $4,941,000 in the nine months ended September 30, 2019 to zero for the same period in 2020 is due to the following:

- $2,558,000 extinguishment losses from exchanges of principal and related accrued interest for shares of the Company's common stock,
- $2,047,000 extinguishment loss from the exchange of the two outstanding Napo convertible notes for Exchange Note 1 and Exchange Note 2,
- $336,000 extinguishment loss from paying off twenty-one Bridge Notes prior to maturity.

Deemed Dividend Attributable to Accretion of Series A Redeemable Convertible Preferred Stock

The Company recorded a deemed dividend charge of $1,332,000 in the nine months ended September 30, 2020 for the accretion of the redemption amount and carrying value of the Series A convertible preferred stock.

Deemed Dividend Attributable to Series B Preferred Stock

On the July 23, 2019 issuance date, the effective conversion price per share was less than the fair value of the underlying common stock. As a result, the Company determined that there was a Beneficial Conversion Feature of $3,876,000. Because the Company's Series B Preferred Stock does not have a stated conversion date and was immediately convertible at the issuance date, the Company recorded a deemed dividend charge of $3,876,000 for the accretion of the discount on the Series B Preferred Stock.

Stock Dividend Attributable to Series C Perpetual Preferred Stock

The Company recorded a $56,000 stock dividend attributable to the Series C perpetual preferred stock in the nine months ended September 30, 2020. The Series C perpetual preferred shares are entitled to receive 10% cumulative stock dividends, to be payable in arrears on a monthly basis for 24 consecutive months. Dividends payable on the Series C perpetual preferred shares shall be payable through the Company's issuance of Series C perpetual preferred share by delivering to each record holder the calculated number of payment-in-kind dividend shares.

Deemed Dividend Attributable to the Series 1 Warrant Modification

The Company recorded a deemed dividend of $252,000 in the nine months ended September 30, 2020 that resulted from the modification of the Series 1 Warrants in September 2019.

Deemed Dividend Attributable to Series 1, Series 2 and Bridge Warrant Holders

The Company recorded a deemed dividend of $856,000 in the nine months ended September 30, 2020 that resulted from the modification of the Series 1, Series 2 and Bridge Warrants in May 2020.

Comparison of the Three Months Ended September 30, 2020 and 2019

The following table summarizes the Company's results of operations with respect to the items set forth in such table for the three months ended September 30, 2020 and 2019 together with the change in such items in dollars and as a percentage.

	Three Months Ended September 30,			
	2020	2019	Variance	Variance %
(in thousands)				
Product revenue	$ 2,773	$ 973	$ 1,800	185.0 %
Total revenue	2,773	973	1,800	185.0 %
Operating expenses				
Cost of product revenue	784	948	(164)	(17.3)%
Research and development	1,522	1,307	215	16.4 %
Sales and marketing	1,529	1,698	(169)	(10.0)%
General and administrative	4,313	3,107	1,206	38.8 %
Settlement of Tempesta Royalty License Agreement	—	640	(640)	(100.0)%
Total operating expenses	8,148	7,700	448	5.8 %
Loss from operations	(5,375)	(6,727)	1,352	(20.1)%
Interest expense	(581)	(1,353)	772	(57.1)%
Other income, net	194	29	165	569.0 %
Change in fair value of financial instruments	(2,104)	842	(2,946)	(349.9)%
Loss on extinguishment of debt	—	(336)	336	(100.0)%
Loss before income tax	(7,866)	(7,545)	(321)	4.3 %
Income tax expense	—	(10)	10	(100.0)%
Net loss and comprehensive loss	(7,866)	(7,555)	(311)	4.1 %
Deemed dividend attributable to accretion of Series A redeemable convertible preferred stock	(349)	—	(349)	100 %
Deemed dividend attributable to Series B preferred stock	—	(3,876)	3,876	(100)%
Stock dividend attributable to Series C perpetual preferred stock	(56)	—	(56)	100 %
Deemed dividend attributable to the Series 1 warrant modification	—	(252)	252	(100)%
Net loss attributable to common shareholders	$ (8,271)	$ (11,683)	3,412	(29.2)%

Revenue

Sales and Allowances

Due to the Company's arrangements, including elements of variable consideration, gross product sales are reduced in order to reflect the expected consideration to arrive at net product sales. Deductions to reduce gross product sales to net product sales in the three months ended September 30, 2020 and 2019 were as follows:

	Three Months Ended September 30,			
(in thousands)	2020	2019	Variance	Variance %
Gross product sales				
Mytesi	$ 6,303	$ 1,897	$ 4,406	232.3 %
Neonorm	13	16	(3)	(18.8)%
Total gross product sales	6,316	1,913	4,403	230.2 %
Adjustment for product donations	—	(337)	337	(100.0)%
Medicare rebates	(588)	(99)	(489)	493.9 %
Sales discounts	(2,218)	(318)	(1,900)	597.5 %
Sales returns	(107)	(31)	(76)	245.2 %
Wholesaler fees	(630)	(155)	(475)	306.5 %
Net product sales	$ 2,773	$ 973	$ 1,800	185.0 %

Product Revenue

Our gross product revenues were $6.3 million and $1.9 million for the three months ended September 30, 2020 and 2019, respectively. These periods reflect revenue from the sale of our human drug Mytesi and our animal products branded as Neonorm Calf and Neonorm Foal.

Human

Sales of Mytesi are recognized as revenue when the products are delivered to the wholesalers. Our gross revenues from the sale of Mytesi were $6.3 million and $1.9 million in the three months ended September 30, 2020 and 2019, respectively. The increase in sales of Mytesi is due to an increase in the wholesaler demand, mostly due to the list price adjustment of Mytesi that occurred in April 2020.

Sales discounts were $2.2 million and $0.3 million for the three months ended September 30, 2020 and 2019, respectively, an increase of $1.9 million. Sales discounts include discounts for prompt payments from customers and an estimated allowance for chargebacks on sales. Of the total sales discounts, allowances for chargebacks were $2.1 million and $0.3 million for the three months ended September 30, 2020 and 2019, respectively. These allowances for chargebacks were approximately 33% and 16% on Mytesi gross product sales for the three months ended September 30, 2020 and 2019, respectively. The increase in allowance is mostly due to the increase in list price of Mystesi.

Animal

Our Neonorm product revenues were $13,000 and $16,000 for the three months ended September 30, 2020 and 2019, respectively. Focus on sales and marketing for Neonorm products had decreased during 2020.

Cost of Product Revenue

(in thousands)	Three Months Ended September 30, 2020	2019	Variance	Variance %
Cost of Product Revenue				
Material cost	$ 402	$ 576	$ (174)	(30.2)%
Direct labor	154	139	15	10.8 %
Distribution fees	193	252	(59)	(23.4)%
Royalties	5	(115)	120	(104.3)%
Other	30	96	(66)	(68.8)%
Total	$ 784	$ 948	$ (164)	(17.3)%

Cost of product revenue decreased $164,000 from $948,000 in the three months ended September 30, 2019 to $784,000 for the same period in 2020. The decrease in cost of product revenue period over period was due to non-recurring write-off of non-conforming inventory and campaign batch cancellation fees in the three months ended September 30, 2019.

Research and Development

The following table presents the components of research and development expense for the three months ended September 30, 2020 and 2019 together with the change in such components in dollars and as a percentage:

(in thousands)	Three Months Ended September 30, 2020	2019	Variance	Variance %
Research and Development:				
Personnel and related benefits	$ 458	$ 412	$ 46	11.2 %
Materials expense and tree planting	10	29	(19)	(65.5)%
Travel, other expenses	1	48	(47)	(97.9)%
Clinical and contract manufacturing	398	273	125	45.8 %
Stock-based compensation	175	333	(158)	(47.4)%
Other	480	212	268	126.4 %
Total	$ 1,522	$ 1,307	$ 215	16.4 %

Research and development expense increased $215,000 from $1,307,000 in the three months ended September 30, 2019 to $1,522,000 for the three months ended September 30, 2020 due primarily to:

- Clinical and contract manufacturing expense increased $125,000 from $273,000 in the three months ended September 30, 2019 to $398,000 in the same period in 2020 primarily due to increase in contract manufacturing costs for enhanced manufacturing process improvements.

- Other expenses, consisting primarily of consulting, formulation and regulatory fees, increased $268,000 from $212,000 in the three months ended September 30, 2019 to $480,000 in the same period in 2020. Consulting expenses increased due to an increase in clinical trial consultants, which is consistent with the increased activity in development of multiple follow-on indications for Mytesi. Direct R&D testing costs increased due to an increase in R&D work.

- Stock-based compensation expense decreased $158,000 from $333,000 in the three months ended September 30, 2019 to $175,000 in the same period in 2020 due to higher prior year expense incurred for options granted with upfront vesting to existing employees

We expect research and development expense to increase due to the pivotal Phase 3 clinical trial for cancer-therapy related diarrhea that commenced in the third quarter of 2020.

Sales and Marketing

The following table presents the components of sales and marketing expense for the three months ended September 30, 2020 and 2019 together with the change in such components in dollars and as a percentage:

(in thousands)	Three Months Ended September 30, 2020	2019	Variance	Variance %
Sales and Marketing:				
Personnel and related benefits	$ 812	$ 1,002	$ (190)	(19.0)%
Stock-based compensation	54	41	13	31.7 %
Direct marketing fees and expense	512	467	45	9.6 %
Other	151	188	(37)	(19.7)%
Total	$ 1,529	$ 1,698	$ (169)	(10.0)%

Sales and marketing expense decreased $169,000 from $1,698,000 in the three months ended September 30, 2019 to $1,529,000 for the three months ended September 30, 2020. The components of S&M expense for the years ended are:

- Personnel and related benefits decreased $190,000 from $1,002,000 in the three months ended September 30, 2019 to $812,000 in the same period in 2020 due to sales force reduction and reduced travel as a result of the COVID-19 pandemic.

General and Administrative

The following table presents the components of general and administrative expense for the three months ended September 30, 2020 and 2019 together with the change in such components in dollars and as a percentage:

(in thousands)	Three Months Ended September 30, 2020	2019	Variance	Variance %
General and Administrative:				
Personnel and related benefits	$ 452	$ 474	$ (22)	(4.6)%
Audit, tax and accounting services	127	181	(54)	(29.8)%
Third-party consulting services	171	414	(243)	(58.7)%
Legal services	497	181	316	174.6 %
Travel, other expenses	5	76	(71)	(93.4)%
Stock-based compensation	446	736	(290)	(39.4)%
Rent and lease expense	220	153	67	43.8 %
Public company expense	384	248	136	54.8 %
Other	2,011	644	1,367	212.3 %
Total	$ 4,313	$ 3,107	$ 1,206	38.8 %

General and administrative expenses increased $1,206,000 from $3,107,000 in the three months ended September 30, 2019 to $4,313,000 for the same period in 2020 primarily due to increases in legal services, public company expense, and other expenses, partially offset by a decrease in third-party consulting services and stock-based compensation:

- Legal services increased $316,000 from $181,000 in the three months ended September 30, 2019 to $497,000 in the same period in 2020 primarily due to a $93,000 increase in fees related to addressing a congressional inquiry, $81,000 increase in fees related to timing of patent license fees, $217,000 increase in public company and financing related legal services, partially offset by $57,000 decrease in fees related to legal proceedings.

- Public company expense increased $136,000 from $248,000 in the three months ended September 30, 2019 to $384,000 in the three months ended September 30, 2020 due to increased spend on communication and public affairs.

- Other general and administrative expenses increased $1,367,000 from $644,000 for the three months ended September 30, 2019 to $2,011,000 in the same period in 2020 largely due to $1,015,000 charge for Atlas trial delay penalty, $27,000 increase of Delaware state taxes, and $142,000 increase of D&O liability insurance.

- Third-party consulting services decreased $243,000 from $414,000 in the three months ended September 30, 2019 to $171,000 in the same period in 2020, due to the switch to fulltime employees instead of consultants in the Finance department.

- Stock-based compensation expense decreased $290,000 from $736,000 in the three months ended September 30, 2019 to $446,000 in the same period in 2020 due to higher prior year expense incurred for options granted with upfront vesting to existing employees.

In the near term, we expect general and administrative expense to remain the same as we focus on other areas of operations. This will include efforts to grow the business without adding headcount or increasing facilities.

Settlement of Tempesta Royalty License Agreement

A royalty license agreement settlement liability decreased $640,000 from $640,000 in the three months ended September 30, 2019 to zero in the same period in 2020. In October 2019, the Company and Tempesta settled the dispute, pursuant to which Tempesta received $50,000 in cash, an unsecured promissory note issued by the Company in the aggregate principal amount of $550,000 and 40,000 shares of the Company's common stock in exchange for the cessation of all royalty payments by Napo to Dr. Tempesta under the License Agreements.

Interest Expense

Interest expense decreased $772,000 from $1,353,000 in the three months ended September 30, 2019 to $581,000 for the same period in 2020 primarily due to interest expense incurred on the March 2019 Bridge Notes and interest expense incurred on warrants issued concurrently.

Change in Fair Value of Financial Instruments

Change in fair value of financial instruments losses increased $2,946,000 from a gain of $842,000 in the three months ended September 30, 2019 to a loss of $2,104,000 for the same period in 2020 primarily due to losses incurred on the change in fair value of liability classified warrants.

Loss on Extinguishment of Debt

Loss on extinguishment of debt decreased from $336,000 in the three months ended September 30, 2019 to zero for the same period in 2020 is due to the following:

- $336,000 extinguishment loss from paying off twenty-one Bridge Notes prior to maturity.

Deemed Dividend Attributable to Accretion of Series A Redeemable Convertible Preferred Stock

The Company recorded a deemed dividend charge of $349,000 in the three months ended September 30, 2020 for the accretion of the redemption amount and carrying value of the Series A convertible preferred stock.

Deemed Dividend Attributable to Series B Preferred Stock

On the July 23, 2019 issuance date, the effective conversion price per share was less than the fair value of the underlying common stock. As a result, the Company determined that there was a Beneficial Conversion Feature of $3,876,000. Because the Company's Series B Preferred Stock does not have a stated conversion date and was immediately convertible at the issuance date, the Company recorded a deemed dividend charge of $3,876,000 for the accretion of the discount on the Series B Preferred Stock.

Stock Dividend Attributable to Series C Perpetual Preferred Stock

The Company recorded a $56,000 stock dividend attributable to the Series C perpetual preferred stock in the three months ended September 30, 2020. The Series C perpetual preferred shares are entitled to receive 10% cumulative stock dividends, to be payable in arrears on a monthly basis for 24 consecutive months. Dividends payable on the Series C perpetual preferred shares shall be payable through the Company's issuance of Series C perpetual preferred share by delivering to each record holder the calculated number of payment-in-kind dividend shares.

Deemed Dividend Attributable to the Series 1 Warrant Modification

The Company recorded a deemed dividend of $252,000 in the three months ended September 30, 2020 that resulted from the modification of the Series 1 Warrants in September 2019.

Liquidity and Capital Resources

Sources of Liquidity

We have incurred net losses since our inception. For the nine months ended September 30, 2020 and 2019, we had net losses of $25.0 million and $32.6 million, respectively. We expect to incur additional losses in the near-term future. At September 30, 2020, we had an accumulated deficit of $158.1 million. To date, we have generated only limited revenue, and we may never achieve revenue sufficient to offset our expenses.

We had cash of $1.3 million as of September 30, 2020. We do not believe our current capital is sufficient to fund our operating plan through one year from the issuance of these unaudited condensed consolidated financial statements. Our independent registered public accounting firm has included an explanatory paragraph in its audit report included in our Annual Report on Form 10-K for the year ended December 31, 2019 regarding our assessment of substantial doubt about our ability to continue as a going concern. Our unaudited condensed consolidated financial statements do not include any adjustments that may result from the outcome of this uncertainty.

We have funded our operations primarily through the issuance of equity and debt financing, in addition to sales of our commercial products. Our funding activities in the nine months ended September 30, 2020 were as follows:

- On February 24, 2020, the Company entered into a warrant exercise agreement with a holder of Series 1 Warrants previously issued in the Company's registered public offering on July 23, 2019 and its warrants previously issued in private placements in March through June of 2019 ("Bridge Warrants"), pursuant to which the Holder agreed to exercise in cash its warrants to purchase an aggregate of 458,022 shares of the Company's common stock, par value $0.0001 per share, at a reduced exercise price of $0.692 per share, which is the Minimum Price (as defined under Nasdaq Listing Rule 5635(d)) as of the date of such Exercise Agreement, for gross proceeds to the Company of approximately $317,000.
- On March 4, 2020, entered into a royalty interest purchase agreement with Iliad Research and Trading, L.P., a Utah limited partnership affiliated with Chicago Venture Partners, pursuant to which the Company sold a royalty interest entitling Purchaser to receive $500,000 of future royalties on sales of Mytesi and certain up-front license fees and milestone payments from licensees and/or distributors for an aggregate purchase price of $350,000.

- On March 5, 2020, the Company entered into a warrant exercise agreement with a holder of Series 2 Warrants previously issued in registered public offering on July 23, 2019, pursuant to which the Holder agreed to exercise in cash its warrants to purchase an aggregate of 90,940 shares of the Company's common stock, par value $0.0001 per share, at a reduced exercise price of $0.605 per share, which is the Minimum Price (as defined under Nasdaq Listing Rule 5635(d)) as of the date of such Exercise Agreement, for gross proceeds to the Company of approximately $55,000.

- On March 23, 2020, the Company entered into a Private Investment in Public Equity ("PIPE") with certain investors, pursuant to which the Company agreed to issue and sell to the Investors in a private placement an aggregate of 1,714,283 unregistered shares for an aggregate purchase price of approximately $719,000.

- On March 24, 2020, Jaguar and Ionic Ventures LLC ("Ionic") entered into a Warrant Exercise and Preferred Stock Amendment Agreement with a holder of Series 2 Warrants previously issued in the Company's registered public offering on July 23, 2019, pursuant to which the Holder agreed to exercise in cash its warrants to purchase an aggregate of 1,250,000 shares of common stock, at a reduced exercise price of $0.5227 per share, which is a 20% premium to the Minimum Price (as defined under Nasdaq Listing Rule 5635(d)) as of the date of such Amendment Agreement, for gross proceeds of approximately $653,000. As further inducement to enter into the Amendment Agreement, the Company agreed to reduce the conversion price of the Company's Series B convertible preferred stock from $2.00 to $0.4456, which is equal to the Minimum Price plus $0.01.

- On May 12, 2020, the Company entered into an accounts receivable purchase agreement ("Purchase Agreement") with Oasis Capital, pursuant to which Oasis Capital may from time to time in its discretion purchase accounts receivable of the Company on a recourse basis at a purchase price equal to 37.5% of the face amount of each of the purchased accounts. Under the terms of the Purchase Agreement, Oasis Capital initially purchased certain accounts receivable with a face amount of $2,754,000 for a purchase price of $1,032,000.

- On May 22, 2020, the Company entered into warrant exercise inducement offer letters with certain holders of Series 1 Warrants, Series 2 Warrants, and Bridge Warrants ("Exercising Holders") pursuant to which such holders agreed to exercise for cash Series 1 Warrants to purchase 4,572,040 shares of common stock, Series 2 Warrants to purchase 4,005,062 shares of common stock, and Bridge Warrants to purchase 93,750 shares of common stock in exchange for the Company's agreement to issue new Series 3 Warrants to purchase up to 8,670,852 shares of common stock ("Series 3 Warrants") to such holders as an inducement for the exercise of the Series 1 Warrants, Series 2 Warrants and Bridge Warrants by such holders ("Warrant Exercise Transaction"). The Company received aggregate gross proceeds of $4.25 million from the exercise of the Original Warrants and the Bridge Warrants by such holders.

- On June 29, 2020, the Company entered into an amendment to the accounts receivable purchase agreement with Oasis Capital pursuant to which Oasis Capital purchased certain accounts receivable with a face amount of $2,859,000 for a purchase price of $1,215,000.

- In July and August 2020, the Company received proceeds of $566,000 from holders of Series 1 Warrants, Series 2 Warrants, and Bridge Warrants who exercised warrants to purchase 1,154,266 shares of common stock.

- On August 13, 2020, the Company entered into an amendment to the accounts receivable purchase agreement with Oasis Capital pursuant to which Oasis Capital purchased certain accounts receivable with a face amount of $3,153,000 for a purchase price of $1,335,000.

- On September 9, 2020, the Company entered into an amendment to the accounts receivable purchase agreement with Oasis Capital pursuant to which Oasis Capital purchased certain accounts receivable with a face amount of $2,330,000 for a purchase price of $985,000.

We expect our expenditures will continue to increase as we continue our efforts to develop our products and continue development of our pipeline in the near term. We do not believe our current capital is sufficient to fund our operating plan through one year from the issuance of these unaudited condensed consolidated financial statements. We will need to seek additional funds through public or private equity or debt financings or other sources, such as strategic collaborations. Such financing may result in dilution to stockholders, imposition of debt covenants and repayment obligations or other restrictions that may affect our business. In addition, we may seek additional capital due to favorable market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. We may also not be successful in entering into partnerships that include payment of upfront licensing fees for our products and product candidates for markets outside the United States, where appropriate. If we do not generate upfront fees from any anticipated arrangements, it would have a negative effect on our operating plan. We plan to finance our operations and capital funding needs through equity and/or debt financing as well as revenue from future product sales. However, there can be no assurance that additional funding will be available to us on acceptable terms on a timely basis, if at all, or that we will generate sufficient cash from operations to adequately fund operating needs or ultimately achieve profitability. If we are unable to obtain an adequate level of financing needed for the long-term development and commercialization of our products, we will need to curtail planned activities and reduce costs. Doing so will likely have an adverse effect on our ability to execute on our business plan. These matters raise substantial doubt about the ability of the Company to continue in existence as a going concern within one year after issuance date of the unaudited condensed consolidated financial statements.

Cash Flows for the Nine Months Ended September 30, 2020 Compared to the Nine Months Ended September 30, 2019

The following table shows a summary of cash flows for the nine months ended September 30, 2020 and 2019:

(in thousands)	Nine Months Ended September 30, 2020	2019
Total cash used in operating activities	$ (11,217)	$ (17,317)
Total cash used in investing activities	(7)	—
Total cash provided by financing activities	8,690	16,819
Net decrease in cash	$ (2,534)	$ (498)

Cash Used in Operating Activities

During the nine months ended September 30, 2020, net cash used in operating activities of $11,217,000 resulted from our net loss of $25,040,000 adjusted by an increase in fair value of financial instruments of $2,491,000, expense on modifications of warrants of $86,000, depreciation and amortization expenses of $1,296,000, amortization of debt discounts and debt issuance costs of $693,000, stock-based compensation of $2,184,000, other stock payments of $1,025,000, amortization of operating lease right-of-use assets of $553,000, inducement charge of $1,647,000 on the modification of Series B convertible preferred shares, $3,696,000 charge for Series 3 Warrants issued as an inducement to exercise equity-classified Series 1, Series 2 and Bridge warrants, loss on assignment of receivables of $30,000, and changes in operating assets and liabilities of $122,000.

During the nine months ended September 30, 2019, net cash used in operating activities of $17,317,000 resulted from our net loss of $32,580,000 adjusted for an impairment charge of $4,000,000 associated with our indefinite-lived intangible assets, reduction in the fair value of warrants, conversion option and derivative liability of $1,003,000, amortization of debt discounts and debt issuance costs of $5,032,000, stock-based compensation of $1,983,000, depreciation and amortization expenses of $1,305,000, amortization of operating lease right-of-use assets of $554,000, loss on the extinguishment of debt of $4,941,000 and of changes in operating assets and liabilities of $1,549,000.

Cash Used in Investing Activities

During the nine months ended September 30, 2020, cash used in investing activities was $7,000. During the nine months ended September 30, 2019 no cash was used in investing activities.

Cash Provided by Financing Activities

During the nine months ended September 30, 2020, net cash provided by financing activities of $8,690,000 consisted of $668,000 in net proceeds received from 1,714,283 shares of common stock issued via a PIPE financing, $350,000 in net proceeds received from issuance of a note payable, $776,000 in insurance premium financings, $4,542,000 received from borrowings secured by the Company's trade receivables, $5,676,000 in net proceeds received from 12,356,395 shares of common stock issued on exercise of Series 1, Series 2, and 2019 Bridge Note warrants, and $10,000 in net proceeds received from issuance of other shares of common stock, offset by $3,140,000 in principal payments of the note payable and secured borrowings, $185,000 in issuance costs from shares issued as part of the underwriter settlement agreement, and $7,000 other payments of issuance costs.

During the nine months ended September 30, 2019, net cash provided by financing activities of $16,819,000 consisted of $2,603,000 in net proceeds received from 195,319 shares of common stock issued to Oasis Capital via an option to increase the equity line of credit, $266,000 in net proceeds received from 19,019 shares issued in a registered direct public offering to Oasis Capital, $14,050,000 in net proceeds received from the July 2019 public offering, offset by $100,000 in repayments of notes payable.

JOBS Act

In April 2012, the JOBS Act was enacted. Section 107 of the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this extended transition period, and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

Our management, Chief Executive Officer and Principal Financial and Accounting Officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2020. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Principal Financial and Accounting Officer, as appropriate, to allow timely decisions regarding required disclosure. Based on this evaluation, our Chief Executive Officer and Principal Financial and Accounting Officer concluded that our disclosure controls and procedures were not effective at the reasonable assurance level as of September 30, 2020. This conclusion was based on the material weaknesses in our internal control over financial reporting as further described below.

Material Weaknesses

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements will not be prevented or detected and corrected on a timely basis.

In connection with the preparation of our annual financial statements for the year ended December 31, 2019, we identified a material weakness in our internal control over financial reporting related to staff turnover in our accounting department. We did not maintain a sufficient complement of internal personnel with appropriate knowledge, experience and/or training commensurate with our financial reporting requirements. We relied on outside consulting technical experts and did not maintain adequate internal qualified personnel to properly supervise and review the information provided by the outside consulting technical experts to ensure certain significant complex transactions and technical matters were properly accounted for. In addition, we identified inadequate internal technical staffing levels and expertise to properly supervise and review the information of the outside consulting technical experts to properly apply ASC 815-40 for liability classification of certain warrants and ASC 470-50 and ASC 470-60 to properly reflect the accounting impact to multiple modifications of the Company’s debt instruments. We did not have adequate policies and procedures in place to ensure the timely, effective review of assumptions used in measuring the fair value of certain financial instruments. We did not have adequate policies and procedures in place to ensure the timely, effective review of

compliance with contractual covenants in certain financial instruments. This material weakness has not been remediated as of September 30, 2020.

In connection with preparation of our interim financial statements for the three months ended September 30, 2020, we identified a material weakness in our internal control over financial reporting related to our financial statement preparation and review process. The primary factors contributing to the material weaknesses were as follows:

- We did not have adequate policies and procedures in place to ensure the timely and effective preparation and review of the financial statements.
- We did not have sufficient resources with appropriate knowledge, experience and/or training commensurate with our financial reporting requirements to assist us in our timely and efficient preparation and review over our financial reporting.

Remediation Efforts to Address Material Weaknesses

We have prepared a preliminary remediation plan to address the underlying causes of the material weaknesses described above. The preliminary remediation plan includes:

- Reassessing the design and operation of internal controls over financial reporting and review procedures over the preparation of our financial statements:
- Hiring and training of permanent accounting personnel or using consultants to provide support during our quarterly and annual preparation, review, and reporting of our financial statements.
- Maintain adequate internal qualified personnel to properly supervise and review the information provided by the outside consulting technical experts to ensure certain significant complex transactions and technical matters were properly accounted for.

We cannot assure you that the measures we may take in response to these material weaknesses will be sufficient to remediate such material weaknesses or to avoid potential future material weaknesses.

Internal Control over Financial Reporting

Based on their evaluation as of the end of the period covered by this Quarterly Report on Form 10-Q, our Chief Executive Officer and Principal Financial and Accounting Officer have concluded that, as of such date, our disclosure controls and procedures were not effective due to the existence of material weaknesses in the design of our internal controls over financial reporting relating (i) to staff turnover in our accounting department, and (ii) to inadequate policies and procedures in place to ensure the timely and effective preparation and review of the financial statements.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements will not be prevented or detected on a timely basis. We plan to enhance existing controls and design and implement new controls applicable to staff, to ensure that our staff is accurately trained to properly understand and review financial transactions. We plan to devote significant time and attention to remediate the above material weaknesses as soon as reasonably possible. As we continue to evaluate our controls, we will make the necessary changes to improve the overall design and operation of our controls. We believe these actions will be sufficient to remediate the identified material weaknesses and strengthen our internal control over financial reporting; however, there can be no guarantee that such remediation will be sufficient. We will continue to monitor the effectiveness of our controls and will make any further changes management determines appropriate.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting that occurred during the period covered by this Quarterly Report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. — OTHER INFORMATION

Item 1. Legal Proceedings

July 2017 Complaint Relating to the Merger

On July 20, 2017, a putative class action complaint was filed in the United States District Court, Northern District of California, Civil Action No. 3:17 cv 04102, by Tony Plant (the "Plaintiff") on behalf of shareholders of the Company who held shares on April 12, 2017 and were entitled to vote at the 2017 Special Shareholders Meeting, against the Company and certain individuals who were directors as of the date of the vote (collectively, the "Defendants"), in a matter captioned Tony Plant v. Jaguar Animal Health, Inc., et al., making claims arising under Section 14(a) and Section 20(a) of the Exchange Act and Rule 14a 9, 17 C.F.R. § 240.14a 9, promulgated thereunder by the SEC. The claims alleged false and misleading information provided to investors in the Joint Proxy Statement/Prospectus on Form S-4 (File No. 333 217364) declared effective by the Commission on July 6, 2017 related to the solicitation of votes from shareholders to approve the merger and certain transactions related thereto. The Company accepted service of the complaint and summons on behalf of itself and the United States-based director Defendants on November 1, 2017. The Company has not accepted service on behalf of, and Plaintiff has not yet served, the non-U.S.-based director Defendants.

On October 3, 2017, Plaintiff filed a motion seeking appointment as lead plaintiff and appointment of Monteverde & Associates PC as lead counsel. That motion was granted. Plaintiff filed an amended complaint against the Company and the United States-based director Defendants on January 10, 2018. The Defendants filed a motion to dismiss on March 12, 2018, for which oral arguments were held on June 14, 2018. The court dismissed the amended complaint on September 20, 2018. Plaintiff was entitled to amend that complaint within 20 days from the date of dismissal. On October 10, 2018, Plaintiff filed a second amended complaint to focus on the Company's commercial strategy in support of Equilevia and the related disclosure statements in the Form S-4 described above. On November 6, 2018, the Defendants moved to dismiss the second amended complaint. The Defendants argued in their motion that the second amended complaint failed to state a claim upon which relief can be granted because the omissions and misrepresentations alleged in the complaint were immaterial as a matter of law. The court denied the Defendants' motion to dismiss on June 28, 2019. The Company answered the second amended complaint on August 2, 2019; the answer denied the material allegations of the second amended complaint.

Following the exchange of documents, the parties engaged in a mediation. As a result of the mediation process, the parties have agreed in principle to a payment of $2,600,000 to members of a settlement class consisting of all record and beneficial holders of Jaguar Animal Health, Inc. common stock who purchased, sold, or held such stock during the period from and including June 30, 2017 through and including July 31, 2017, the date the Merger closed, including any and all of their respective predecessors, successors, trustees, executors, administrators, estates, legal representatives, heirs, assigns and transferees (the "Settlement Class"). The following persons are excluded from the Settlement Class: (a) defendants; (b) members of the immediate families of each defendant; (c) any entity in which any defendant has a controlling interest; (d) the legal representatives, heirs, successors, administrators, executors, and assigns of each defendant; and (e) any persons or entities who properly exclude themselves by filing a valid and timely request for exclusion.

The proposed settlement will not become effective unless and until it is approved by the district court, subject to rulings upon any objections and any appeals to the court of appeals. Assuming that the proposed settlement is approved by the district court and becomes effective, the settlement consideration will be paid by the Company's directors and officers liability insurer.

May 2020 Letter from the Committee on Oversight and Reform of the U.S. House of Representatives

On May 4, 2020, Jaguar Health, Inc. received a letter from the Committee on Oversight and Reform of the U.S. House of Representatives (the "Committee") regarding the list price adjustment of Mytesi. Among other things, the Committee expressed an interest in understanding whether the price adjustment was connected to the Company's expectation that it could market crofelemer to treat coronavirus patients given the Company's submission of a request to the U.S. Food and Drug Administration for Emergency Use Authorization ("EUA") for crofelemer for the symptomatic

relief of diarrhea and other gastrointestinal symptoms in patients with COVID-19 and for patients with COVID-19 who have diarrhea associated with certain antiviral treatments, which submission was denied by the FDA on April 7 as previously disclosed.

The Company intends to cooperate with the Committee's inquiry and has prepared a public statement regarding the price adjustment, which is available on the Company's website at https://jaguarhealth.gcs-web.com/company-statement. In its statement, the Company explains that the decision to adjust the price for crofelemer was made in December 2019 as part of expanding the Company's comprehensive patient access program, and had the Company received EUA, it would have deferred the price adjustment until after the emergency use period ended.

Other than as described above, there are currently no claims or actions pending against us, the ultimate disposition of which could have a material adverse effect on our results of operations, financial condition or cash flows.

Item 1A. Risk Factors

The following discussion of risk factors contains forward-looking statements. These risk factors may be important to understanding other statements in this Quarterly Report on Form 10-Q, including "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our unaudited condensed consolidated financial statements and related notes, before making a decision to invest in our common stock. The risks and uncertainties described below are not the only ones we face. Additional risk and uncertainties not presently known to us or that we presently deem less significant may also impair our business operations. If any of the events or circumstances described in the following risk factors actually occur, our business, operating results, financial condition, cash flows, and prospects could be materially and adversely affected. In that event, the market price of our common stock could decline, and you could lose part or all of your investment.

The business, financial condition and operating results of the Company can be affected by a number of factors, whether currently known or unknown, including but not limited to those described below, any one or more of which could, directly or indirectly, cause the Company's actual financial condition and operating results to vary materially from past, or from anticipated future, financial condition and operating results. Any of these factors, in whole or in part, could materially and adversely affect the Company's business, financial condition, operating results, and stock price.

Because of the following factors, as well as other factors affecting the Company's financial condition and operating results, past financial performance should not be considered to be a reliable indicator of future performance, and investors should not use historical trends to anticipate results or trends in future periods.

The novel coronavirus global pandemic could adversely impact our business, including our supply chain, clinical trials and commercialization of Mytesi.

We are subject to risks and uncertainties as a result of the current COVID-19 pandemic. The COVID-19 pandemic has presented a substantial public health and economic challenge around the world and is affecting our employees, communities and business operations, as well as the U.S. economy and other economies worldwide. The full extent to which the COVID-19 pandemic will directly or indirectly impact our business, results of operations and financial condition will depend on future developments that are highly uncertain and cannot be accurately predicted, including the duration and severity of the pandemic and the extent and severity of the impact on our customers, new information that may emerge concerning COVID-19, the actions taken to contain it or treat its impact and the economic impact on local, regional, national and international markets.

To date, we have been able to continue the supply of Mytesi to our customer. However, we are dependent on our manufacturing and logistics partners and consequently, disruptions in operations of our partners and customer may affect our ability to supply Mytesi. Furthermore, our ability and that of our third-party contract research organizations ("CRO") to provide future research and development ("R&D") services will continue to be disrupted as a result of local shelter-in-place orders and any disruptions or delays in operations with whom we collaborate. We are unable to fully

determine and quantify the extent to which delays in our R&D projects will be affected by the COVID-19 pandemic. We are continuing to assess the potential impact of the COVID-19 pandemic on our business and operations, including our product sales, expenses, and manufacturing.

In the U.S., the impact of COVID-19, including governmental orders governing the operation of non-essential businesses during the pandemic, has caused the temporary closure of our office and halted visits of our salesforce to clinics and healthcare providers. Our employees have been working from home since mid-March 2020, while ensuring essential staffing levels in our operations remain in place.

Our future results of operations and liquidity could be adversely impacted by delays in supply chain disruptions and uncertain demand, and the impact of any initiatives or programs that we may undertake to address financial and operations challenges faced by our customer. As of the date of issuance of these condensed consolidated financial statements, the extent to which the COVID-19 pandemic may materially impact our financial condition, liquidity, or results of operations is uncertain.

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

Similar to other companies in our industry, we face substantial cybersecurity risk. Despite the implementation of security measures, our internal computer systems and those of our current and future CROs and other contractors, collaborators and consultants may fail and are vulnerable to damage from computer viruses and unauthorized access. While we have not, to our knowledge, experienced any such material system failure or security breach to date, if such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our development programs and our business operations. For example, the loss of clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. Likewise, we rely on third parties for the manufacture of our product candidates, to analyze clinical trial samples and to conduct clinical trials, and similar events relating to their computer systems could also have a material adverse effect on our business.

Substantially all of our revenue for recent periods has been received from a single customer.

Substantially all of our revenue has been derived from one customer. Except for the shelter-in-place mandate, we have not been made aware by our customer if they have experienced other issues arising due to COVID-19 that may materially impact our financial condition, liquidity or results of operations. We will continue to have dialogues with our customer.

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

Other than equity securities issued in transactions disclosed on our Current Reports on Form 8-K filed with the SEC on September 2, 2020 and September 28, 2020, there were no unregistered sales of equity securities during the period.

Item 3. Defaults upon senior securities

None.

Item 4. Mine safety disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

Exhibit No.	Description
3.1	Third Amended and Restated Certificate of Incorporation of Jaguar Health, Inc. (f/k/a Jaguar Animal Health, Inc.) (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (No. 001-36714) filed on August 1, 2017).
3.2	Certificate of Second Amendment of the Third Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Form 8-K of Jaguar Health, Inc. filed June 1, 2018, File No. 001-36714).
3.3	Certificate of Third Amendment of the Third Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to the Form 8-K of Jaguar Health, Inc. filed June 1, 2018, File No. 001-36714).
3.4	Certificate of Designation of Preferences, Rights, and Limitations of Series B-2 Preferred Stock (incorporated by reference to Exhibit 3.1 to the Form 8-K of Jaguar Health, Inc. filed December 26, 2019, File No. 001-36714).
3.5	Certificate of Designation of Preferences, Rights and Limitations of Series C Perpetual Preferred Stock (incorporated by reference to Exhibit 3.1 to the Form 8-K of Jaguar Health, Inc. filed September 2, 2020, File No. 001-36714).
3.6	Certificate of Designation of Preferences, Rights and Limitations of Series D Perpetual Preferred Stock (incorporated by reference to Exhibit 3.2 to the Form 8-K of Jaguar Health, Inc. filed September 2, 2020, File No. 001-36714).
3.7	Certificate of Retirement of Series A Convertible Participating Preferred Stock, Series B Convertible Preferred Stock and Series B-1 Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Form 8-K of Jaguar Health, Inc. filed September 9, 2020, File No. 001-36714).
4.1	Global Amendment, dated September 1, 2020, by and among Jaguar Health, Inc., Napo Pharmaceuticals, Inc. and Chicago Venture Partners, L.P. (incorporated by reference to Exhibit 4.1 to the Form 8-K of Jaguar Health filed September 2, 2020, File No. 001-36714).
10.1	First Amendment to Royalty Interest Purchase Agreement and Related Documents, dated July 10, 2020, by and between Jaguar Health, Inc. and Iliad Research and Trading, L.P. (incorporated by reference to Exhibit 10.1 to the Form 8-K of Jaguar Health, Inc. filed July 14, 2020, File No. 001-36714).
10.2	Exchange Agreement, dated September 1, 2020, by and between Jaguar Health, Inc. and Iliad Research and Trading, L.P. (incorporated by reference to Exhibit 10.1 to the Form 8-K of Jaguar Health, Inc. filed September 2, 2020, File No. 001-36714).
10.3	Stock Plan Agreement for Payment of Consulting Services, dated September 1, 2020, by and between Jaguar Health, Inc. and Sagard Capital Partners Management Corp. (incorporated by reference to Exhibit 10.2 to the Form 8-K of Jaguar Health, Inc. filed September 2, 2020, File No. 001-36714).
10.4*#	Office Sublease Agreement, dated August 31, 2020, by and between Jaguar Health, Inc. and Peacock Construction, Inc.
10.5*	Consent to Sublease Agreement, dated August 31, 2020, by and among M&E, LLC, Jaguar Health, Inc., and Peacock Construction, Inc.
10.6*#	Manufacturing and Supply Agreement, dated September 3, 2020, by and between Glenmark Life Sciences Limited and Napo Pharmaceuticals, Inc.
31.1*	Principal Executive Officer's Certification Pursuant to Section 302 of the Sarbanes- Oxley Act of 2002.
31.2*	Principal Financial Officer's Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification Pursuant to 18 U.S.C. § 1350 (Section 906 of Sarbanes-Oxley Act of 2002).
32.2**	Certification Pursuant to 18 U.S.C. § 1350 (Section 906 of Sarbanes-Oxley Act of 2002).
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

* Filed herewith.

** In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release No. 34 47986, the certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Form 10 Q and will not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 (the "Exchange Act") or deemed to be incorporated by reference into any filing under the Exchange Act or the Securities Act of 1933 except to the extent that the registrant specifically incorporates it by reference.

Portions of this exhibit have been omitted pursuant to Item 601 of Regulation S-K promulgated under the Securities Act because the information (i) is not material and (ii) would be competitively harmful if publicly disclosed.

SIGNATURE

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

Date: November 16, 2020

JAGUAR HEALTH, INC.

By: /s/ Carol R. Lizak
Principal Financial and Accounting Officer

Exhibit 10.4

Certain information marked as [****] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

OFFICE SUBLEASE AGREEMENT

THIS OFFICE SUBLEASE AGREEMENT (this "***Sublease***") is made and entered into as of August 31, 2020 by and between Peacock Construction Inc., a California corporation ("***Sublandlord***"), and Jaguar Health, Inc., a Delaware corporation ("***Subtenant***"). Sublandlord and Subtenant (each a "***Party***" and collectively the "***Parties***") hereby agree as follows:

Recitals. This Sublease is made with reference to the fact that M&E, LLC, a California limited liability company, as "Landlord" ("***Master Landlord***"), and Sublandlord, as "Tenant," are parties to that certain 200 Pine Street Office Lease dated as of June 7, 2011, as amended by that certain First Extension of Lease made on January 26, 2018 (collectively, the "***Master Lease***"), with respect to those certain premises consisting of approximately five thousand two hundred sixty-three (5,263) rentable square feet described therein (the "***Master Premises***") located at 200 Pine Street, Suite 400, San Francisco, California. A copy of the Master Lease, with economic terms redacted, is attached hereto as Exhibit A and is incorporated herein by reference. Capitalized terms used and not defined herein shall have the meaning ascribed to them in the Master Lease.

Subleased Premises. Subject to the terms and conditions of this Sublease, Sublandlord hereby subleases to Subtenant, and Subtenant hereby subleases from Sublandlord, the entire Master Premises (hereinafter the "***Subleased Premises***").

Term.

Term. The term (the "***Term***") of this Sublease shall commence on the date the Master Landlord consents to this Sublease, as provided in Section 26 below (the "***Commencement Date***"), and shall end at 11:59 P.M. on May 31, 2021, unless this Sublease is sooner terminated pursuant to its terms or the Master Lease is sooner terminated pursuant to its terms (the "***Expiration Date***"). Promptly following the determination of the Commencement Date, the Parties shall acknowledge such date by reasonably and mutually agreeable written acknowledgment, provided, however, the determination of such Commencement Date shall not be conditioned upon such written acknowledgment.

Early Access. Notwithstanding the foregoing, provided Subtenant has delivered to Sublandlord proof of insurance as provided in Section 17 below, Subtenant shall be permitted access to the Subleased Premises, without the obligation to pay Rent (defined below), beginning on the Commencement Date so that Subtenant may move in and prepare to open for business in the Subleased Premises.

No Option to Extend. Notwithstanding anything to the contrary in this Sublease or in the Master Lease, Subtenant shall not have any option to extend or renew the Term of this Sublease.

Rent. Commencing on October 1, 2020 (the "***Rent Commencement Date***") and continuing each month throughout the Term of this Sublease, Subtenant shall pay to Sublandlord as rent ("***Rent***")

for the Subleased Premises, in monthly installments, the sum of Fourteen Thousand Nine Hundred Eleven and 83/100 Dollars ($14,911.83) per month. Tenant shall pay Rent for the first month of the Term on or before the Rent Commencement Date. For each month of the Term thereafter, Tenant shall pay such Rent on or before the first (1st) day of each such month during the Term. Rent for any period during the Term which is for less than one (1) month of the Term shall be a pro rata portion of the monthly installment based on a thirty (30) day month. Rent shall be payable without notice or demand and without any deduction, offset, or abatement, in lawful money of the United States of America. Rent shall be paid by Subtenant to Sublandlord at 3421 Golden Gate Avenue, Lafayette, California 94549, Attention: Kyle Peacock, or to such other address as may be designated in writing by Sublandlord. Subtenant shall be solely responsible for the timely payment to Master Landlord of the cost of any supplementary services (as provided in Section 10.2 of the Master Lease).

Security Deposit.

Upon execution of this Sublease, Subtenant shall deposit with Sublandlord the sum of Fourteen Thousand Nine Hundred Eleven and 83/100 Dollars ($14,911.83) as security for Subtenant's performance of its obligations under this Sublease, and not as a prepayment of rent (the "***Security Deposit***"). If Subtenant defaults under this Sublease, Sublandlord may apply all or any part of the Security Deposit for the payment of any Rent or other sum in default, the repair of any damage to the Subleased Premises caused by Subtenant or the payment of any other amount which Sublandlord may spend or become obligated to spend by reason of Subtenant's default or to compensate Sublandlord for any other loss or damage which Sublandlord may suffer by reason of Subtenant's default to the full extent permitted by law. Subtenant hereby waives any restriction on the use or application of the Security Deposit by Sublandlord as set forth in California Civil Code Section 1950.7. To the extent any portion of the Security Deposit is used, Subtenant shall within five (5) business days after demand from Sublandlord restore the Security Deposit to its full amount. Sublandlord may keep the Security Deposit in its general funds and shall not be required to pay interest to Subtenant on the deposit amount.

If Subtenant shall perform all of its obligations under this Sublease and return the Subleased Premises to Sublandlord at the end of the Term in the condition required by this Sublease, Sublandlord shall return all of the remaining Security Deposit to Subtenant within thirty (30) days after the end of the Term. The Security Deposit shall not serve as an advance payment of Rent or a measure of Sublandlord's damages for any default under this Sublease. Subtenant covenants and agrees that it shall not assign or encumber or attempt to assign or encumber the Security Deposit and neither Sublandlord nor its successors or assigns shall be bound by any such agreement, encumbrance, attempted assignment or attempted encumbrance.

Late Charge. If Subtenant fails to pay Sublandlord any amount due under this Sublease on or before the day such payment is due, Subtenant shall pay to Sublandlord upon demand a late charge equal to ten percent (10%) of the delinquent amount. Sublandlord shall waive such late charge one (1) time during the Term provided Subtenant is not more than five (5) days late in making such payment. The Parties agree that the foregoing late charge represents a reasonable estimate of the cost and expense which Sublandlord will incur in processing each delinquent payment. Sublandlord's acceptance of any interest or late charge shall not waive Subtenant's default in failing to pay the delinquent amount.

Holdover. Subtenant acknowledges it is critical Subtenant surrender the Subleased Premises on or before the expiration or earlier termination of the Sublease in accordance with the terms of this Sublease. Accordingly, Subtenant shall indemnify, defend and hold harmless Sublandlord from and against all losses, costs, claims, liabilities and damages resulting from Subtenant's failure to surrender the Subleased Premises on or before the expiration or earlier termination of this Sublease in the condition required under the terms of this Sublease (including, without limitation, any liability or damages sustained by Sublandlord as a result of a holdover of the Master Premises by Sublandlord occasioned by the holdover of the Subleased Premises by Subtenant). In addition, Subtenant shall pay Sublandlord holdover rent equal to Thirty-two Thousand Eight Hundred Ninety-three and 76/100 Dollars ($32,893.76) per month and Tenant's Proportionate Share of Excess Operating Costs and Tenant's Proportionate Share of Excess Taxes under the Master Lease for any period from the Expiration Date through the date Subtenant surrenders the Subleased Premises in the condition required hereunder.

"AS IS" Condition; Master Landlord's Obligations. The Parties acknowledge and agree that Subtenant is subleasing the Subleased Premises on an "AS IS" basis, and that Sublandlord has made no representations or warranties, express or implied, whatsoever, with respect to the Subleased Premises, including, without limitation, any representation or warranty as to the suitability of the Subleased Premises for Subtenant's intended use or any representation or warranty made by Master Landlord under the Master Lease. Sublandlord shall have no obligation whatsoever to make or pay the cost of any alterations, improvements or repairs to the Subleased Premises, including, without limitation, any improvement or repair required to comply with any law, regulation, building code or ordinance (including the Americans with Disabilities Act of 1990, as may be amended). In addition, Sublandlord shall have no obligation to perform any repairs or any other obligation of Master Landlord required to be performed by Master Landlord under the terms of the Master Lease (including, without limitation, Master Landlord's obligations under Sections 12, 19 and 20 of the Master Lease and Master Landlord's obligation to comply with laws and carry building insurance). Sublandlord shall, however, request performance of the same in writing to Master Landlord promptly after being requested to do so by Subtenant, and shall use Sublandlord's reasonable efforts (not including the payment of monies, the incurring of any liabilities, or the institution of legal proceedings) to obtain Master Landlord's performance. Subtenant hereby expressly waives the provisions of subsection 1 of Section 1932 and Sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of Sublandlord as provided in Section 1942 of said Civil Code. Notwithstanding the foregoing, Sublandlord represents that pursuant to Section 13 of the Master Lease all Alterations to the Subleased Premises have been made with Master Landlord's consent and do not require removal nor restoration of the Subleased Premises to the same condition as on the Commencement Date upon the expiration or earlier termination of the Master Lease. Further, Subtenant shall not be required to perform any restoration work to the Subleased Premises, including without limitation decommissioning of IT and cabling (to the extent not installed by Subtenant), except as to such minor repairs, other than ordinary wear and tear, caused by Subtenant's occupancy of the Subleased Premises, and, to the extent Subtenant does anything in the Leased Premises that, in the reasonable opinion of Sublandlord or in the opinion of Master Landlord, constitutes an Alteration under the Master Lease, Subtenant shall be responsible for the performance of any resulting restoration required in compliance with applicable provisions of the Master Lease, at Subtenant's sole expense.

Right to Cure Defaults. If Subtenant fails to pay any sum of money to Sublandlord, or fails to perform any other act on its part to be performed hereunder, then Sublandlord may, but shall not be obligated to, make such payment or perform such act. All such sums paid, and all reasonable costs and expenses of performing any such act, shall be deemed Rent payable by Subtenant to Sublandlord upon demand, together with interest thereon at the lesser of (i) ten percent (10%) per annum or (ii) the maximum rate allowable under law (the "***Interest Rate***") from the date of the expenditure until repaid.

Indemnity. Except to the extent caused by the gross negligence or willful misconduct of Sublandlord, its agents, employees or contractors, Subtenant shall indemnify, defend with counsel reasonably acceptable to Sublandlord, protect and hold harmless Sublandlord and Master Landlord, and their respective agents, employees, directors, shareholders, contractors and representatives from and against any and all losses, claims, liabilities, judgments, causes of action, damages, costs and expenses (including, without limitation, reasonable attorneys' and experts' fees), caused by or arising in connection with: (a) the use, occupancy, operation or condition of the Subleased Premises; (b) the negligence or willful misconduct of Subtenant or its agents, employees, contractors or invitees; and (c) a breach of Subtenant's obligations under this Sublease or the provisions of the Master Lease. Subtenant's covenants under this Section 10 shall survive termination of this Sublease.

Assignment and Sub-Subletting. Subtenant may not assign any interest in this Sublease (by operation of law or otherwise), sub-sublet all or any portion of the Subleased Premises, transfer any interest of Subtenant therein or permit any use of the Subleased Premises by another party (collectively, "***Transfer***"), without the prior written consent of Sublandlord, which consent shall not be unreasonably withheld, and of Master Landlord, to the extent required under Section 16 of the Master Lease. As a condition of obtaining such consent, Subtenant must comply with all of the requirements for such consent, as provided under Section 16 of the Master Lease. Subtenant shall reimburse Sublandlord for all costs and fees Sublandlord incurs under the Master Lease in requesting such consent, as assessed by Master Landlord thereunder. Sublandlord's consent shall not be unreasonably withheld, provided, however, Sublandlord's withholding of consent shall in all events be deemed reasonable if for any reason Master Landlord's consent is not obtained. A consent to one Transfer shall not be deemed to be a consent to any subsequent Transfer. Any Transfer without such consent shall be void and, at the option of Sublandlord, shall be a material default under this Sublease. Sublandlord's waiver or consent to any assignment or sub-subletting shall be ineffective unless set forth in writing, and Subtenant shall not be relieved from any of its obligations under this Sublease. If Sublandlord and Master Landlord consent to a Transfer proposed by Subtenant, Subtenant may enter into such Transfer, and if Subtenant does so, the following shall apply:

If Subtenant assigns its interest in this Sublease, then Subtenant shall pay to Sublandlord all profit resulting from such assignment that Sublandlord would be obligated to pay to Master Landlord under Section 16.4(h) of the Master Lease. The amount of such profit so owed shall be paid to Sublandlord on the same basis, whether periodic or in lump sum, that such profit is paid to Subtenant by the assignee.

If Subtenant sub-sublets all or any portion of the Subleased Premises, then with respect to the space so sub-subleased, Subtenant shall pay to Sublandlord all profit resulting from such sub-subletting

that Sublandlord would be obligated to pay to Master Landlord under Section 16.4(h) of the Master Lease. The amount of such profit so owed shall be paid to Sublandlord on the same basis, whether periodic or in lump sum, that such profit is paid to Subtenant by the sub-subtenant.

As used in this Paragraph 11 of this Sublease, the term "***profit***" shall mean any consideration of any kind received, or to be received, by Subtenant as a result of the Transfer.

Notwithstanding anything to the contrary herein, if, as a result of Subtenant's request for consent to a Transfer, Master Landlord elects to exercise its option to terminate the Master Lease or to recapture any portion of the Subleased Premises, as provided in Section 16.2 of the Master Lease, Subtenant acknowledges and agrees this Sublease shall be terminated as well.

Use.

Subtenant may use the Subleased Premises for general office purposes and for no other purpose whatsoever without Sublandlord's prior written consent, as determined in Sublandlord's sole and subjective discretion.

Subtenant shall not use, store, keep, handle, manufacture, transport, release, discharge, emit or dispose of any Hazardous Materials in, on, under, about, to or from the Subleased Premises or the building in which the Subleased Premises are located (the "***Building***") during the Term of this Sublease by Subtenant or its agents, employees, contractors or invitees. As used herein, "***Hazardous Materials***" shall mean any material or substance that is now or hereafter designated by any governmental authority to be radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment.

Subtenant shall comply with all rules and regulations promulgated from time to time by Master Landlord in accordance with the Master Lease with regard to the use and occupancy of the Subleased Premises or any portion of the Building.

Effect of Conveyance. As used in this Sublease, the term "Sublandlord" means the holder of the Tenant's interest under the Master Lease. In the event of any assignment or transfer of the Tenant's interest under the Master Lease, which assignment or transfer may occur at any time during the Term hereof in Sublandlord's sole discretion, Sublandlord shall be and hereby is entirely relieved of all covenants and obligations of Sublandlord hereunder, and it shall be deemed and construed, without further agreement between the Parties, that any transferee has assumed and shall carry out all covenants and obligations thereafter to be performed by Sublandlord hereunder. Sublandlord shall transfer and deliver any security deposit of Subtenant to the transferee of the Tenant's interest under the Master Lease, and thereupon Sublandlord shall be discharged from any further liability with respect thereto.

Delivery and Acceptance. Sublandlord shall deliver the Subleased Premises in its "AS IS" condition. This Sublease shall not be void or voidable, nor shall Sublandlord be liable to Subtenant for any loss or damage, by reason of delays in the Commencement Date or delays in Sublandlord delivering the Subleased Premises to Subtenant for any reason whatsoever; provided, however, that if delivery of the Subleased Premises occurs after the Rent Commencement Date, Rent shall abate until Sublandlord delivers possession of the Subleased Premises to Subtenant. Subtenant has fully inspected the Subleased Premises and is satisfied with the condition thereof By taking

possession of the Subleased Premises, Subtenant conclusively shall be deemed to have accepted the Subleased Premises in its then-existing, "AS IS" condition, without any representation or warranty whatsoever from Sublandlord with respect thereto.

Improvements. Subtenant shall not make any alterations or improvements to the Subleased Premises without the prior written consent of both Master Landlord (pursuant to Section 13 of the Master Lease) and Sublandlord. Sublandlord's consent shall not be unreasonably withheld, provided, however, Sublandlord's withholding of consent shall in all events be deemed reasonable if for any reason Master Landlord's consent is not obtained.

Release and Waiver of Subrogation. Notwithstanding anything to the contrary in this Sublease, the Parties release each other and their respective agents, employees, successors and assigns from all liability for damage to any property that is actually covered by property insurance in force or which would normally be covered by full replacement value "Special Form" property insurance, without regard to the negligence or willful misconduct of the entity so released. Each Party shall cause each insurance policy it obtains to include a waiver of subrogation regarding the liabilities released hereby. Sublandlord shall not be liable to Subtenant, nor shall Subtenant be entitled to terminate this Sublease or to abate Rent for any reason, including, without limitation, (a) failure or interruption of any utility system or service or (b) failure of Master Landlord to maintain the Subleased Premises as may be required under the Master Lease. Notwithstanding the foregoing and subject to Section 24(a)(ii) below, if Sublandlord abates any Base Rent owing under the Master Lease during the Term of this Sublease for any reason, including, without limitation, (x) failure or interruption of any utility system or service or (y) failure of Master Landlord to maintain the Subleased Premises as may be required under the Master Lease, on the express condition that Master Landlord does not object to or in any way contest such abatement, Subtenant shall be entitled to abate the Rent owing by Subtenant under this Sublease for the period of such abatement by Sublandlord under the Master Lease. Sublandlord will notify Subtenant of any such abatement within ten (10) business days thereof.

Insurance. Subtenant shall obtain and keep in full force and effect, at Subtenant's sole cost and expense, during the Term, the insurance required to be carried by the "Tenant" under the Master Lease, as provided in Section 22 therein. Subtenant shall include Sublandlord and Master Landlord as an additional insured in any policy of insurance carried by Subtenant in connection with this Sublease and shall provide Sublandlord with certificates of insurance prior to taking occupancy of the Subleased Premises and upon Sublandlord's written request.

Default. Subtenant shall be in material default of its obligations under this Sublease if any of the following events occur:

Subtenant fails to pay any Rent within five (5) days after the due date therefor; or

Subtenant fails to perform any term, covenant or condition of this Sublease (except those requiring payment of Rent) and fails to cure such breach within fifteen (15) days after delivery of a written notice from Sublandlord specifying the nature of the breach; or

the bankruptcy or insolvency of Subtenant, transfer by Subtenant in fraud of creditors, an assignment by Subtenant for the benefit of creditors, or the commencement of any proceedings of

any kind by or against Subtenant under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act unless, in the event any such proceedings are involuntary, Subtenant is discharged from the same within thirty (30) days thereafter;

the appointment of a receiver for a substantial part of the assets of Subtenant, which receiver is not discharged within thirty (30) days;

the levy upon this Sublease or any estate of Subtenant hereunder by any attachment or execution and the failure within thirty (30) days thereafter to have such attachment or execution vacated or such other action taken with respect thereto so as to put Sublandlord at no risk of having an unconsented transfer of this Sublease;

Subtenant abandons the Subleased Premises; or

Subtenant commits any other act or omission which could constitute a default under the Master Lease.

Remedies. In the event of any default by Subtenant, Sublandlord shall have all remedies provided to the "Landlord" under Section 26.2 of the Master Lease as if a "default" had occurred thereunder and all other rights and remedies otherwise available at law and in equity. Sublandlord may resort to its remedies cumulatively or in the alternative. Without limiting the generality of the foregoing, Sublandlord shall have the remedy described in California Civil Code Section 1951.4 (Sublandlord may continue the Sublease in effect after Subtenant's breach and abandonment and recover rent as it becomes due, if Subtenant has right to sublet or assign, subject only to reasonable limitations).

Surrender. On or before the Expiration Date or any sooner termination of this Sublease, subject to Section 8 hereof, Subtenant shall remove all of its trade fixtures, personal property and all alterations constructed by Subtenant after the Commencement Date in the Subleased Premises which are required to be removed under the terms the Master Lease and shall surrender the Subleased Premises to Sublandlord in good condition, order and repair, reasonable wear and tear and damage by casualty or condemnation excepted. Subtenant shall repair any damage to the Subleased Premises caused by Subtenant's removal of its personal property, furnishings and equipment. If the Subleased Premises are not so surrendered, then Subtenant shall be liable to Sublandlord for all costs incurred by Sublandlord in returning the Subleased Premises to the required condition, plus interest thereon at the Interest Rate.

Furniture, Fixtures and Equipment. Subtenant shall purchase from Sublandlord all of Sublandlord's furniture, fixtures and equipment (collectively, "***Sublandlord's FF&E***") located in the Subleased Premises as of the Commencement Date, for the purchase price of Ten Dollars ($10.00), to be paid with Subtenant's execution and delivery of this Sublease to Sublandlord, in addition to all other payments Subtenant is obligated to make under this Sublease at such time. Sublandlord hereby represents and warrants to Subtenant that Sublandlord owns all of Sublandlord's FF&E, free and clear of any liens or other interests of any other third parties. Subtenant shall accept all of Sublandlord's FF&E upon the Commencement Date in substantially the same "as-is" "where-is" condition as exists on the date of Subtenant's execution and delivery of this Sublease.

Brokers. Sublandlord and Subtenant each represent to the other that they have dealt with no real estate brokers, finders, agents or salesmen in connection with this transaction other than TRI Commercial, representing Sublandlord, and Recreate, representing Subtenant. Subtenant agrees to indemnify and hold Sublandlord harmless from and against all claims for brokerage commissions, finder's fees or other compensation made by any other agent, broker, salesman or finder as a consequence of Subtenant's actions or dealings with such other agent, broker, salesman, or finder.

Notices. Unless at least five (5) days' prior written notice is given in the manner set forth in this Section, the address of each Party for all purposes connected with this Sublease shall be that address set forth below their signatures at the end of this Sublease. All notices, demands or communications in connection with this Sublease shall be properly addressed and delivered as follows: (a) personally delivered; or (b) submitted to an overnight courier service, charges prepaid; or (c) deposited in the mail (certified, return-receipt requested, and postage prepaid). Notices shall be deemed delivered upon receipt, if personally delivered, one (1) business day after being so submitted to an overnight courier service and two (2) business days after deposit in the United States mail, if mailed as set forth above. All notices given to Master Landlord under the Master Lease shall be considered received only when delivered in accordance with the Master Lease.

Other Sublease Terms.

Incorporation by Reference. Except as set forth below and except as otherwise provided in this Sublease, the terms and conditions of this Sublease shall include all of the terms of the Master Lease and such terms are incorporated into this Sublease as if fully set forth herein, except that: (i) each reference in such incorporated sections to "Lease" shall be deemed a reference to this "Sublease"; (ii) each reference to the "Premises" shall be deemed a reference to the "Subleased Premises"; (iii) each reference to "Landlord" shall be deemed a reference to "Sublandlord" and each reference to "Tenant" shall be deemed a reference to "Subtenant", except as otherwise expressly set forth herein; (iv) with respect to work, services, utilities, electricity, repairs (or damage caused by Master Landlord), restoration, insurance, indemnities, reimbursements, representations, warranties or the performance of any other obligation of "Landlord" under the Master Lease, whether or not incorporated herein, the sole obligation of Sublandlord shall be to request the same in writing from Master Landlord as and when requested to do so by Subtenant, and to use Sublandlord's reasonable efforts (not including the payment of money, the incurring of any liabilities, or the institution of legal proceedings) to obtain Master Landlord's performance; (v) with respect to any obligation of Subtenant to be performed under this Sublease, wherever the Master Lease grants to "Tenant" a specified number of days to perform its obligations under the Master Lease (including, without limitation, curing any defaults), except as otherwise provided herein, Subtenant shall have three (3) fewer days to perform the obligation or one-half the time period permitted under the Master Lease, which ever allows Sublandlord the greater amount of time; (vi) with respect to any approval required to be obtained from the "Landlord" under the Master Lease, such approval must be obtained from both Master Landlord and Sublandlord, and Sublandlord's withholding of approval shall in all events be deemed reasonable if for any reason Master Landlord's approval is not obtained; (vii) in any case where the "Landlord" reserves or is granted the right to manage, supervise, control, repair, alter, regulate the use of, enter or use the Premises or any areas beneath, above or adjacent thereto, such reservation or grant of right of entry shall be deemed to be for the benefit of both Master Landlord and Sublandlord; (viii) in any case where "Tenant" is to indemnify, release or waive claims against "Landlord", such indemnity,

release or waiver shall be deemed to run from Subtenant to both Master Landlord and Sublandlord; (ix) in any case where "Tenant" is to execute and deliver certain documents or notices to "Landlord", such obligation shall be deemed to run from Subtenant to both Master Landlord and Sublandlord; and (x) the following modifications shall be made to the Master Lease as incorporated herein:

The following provisions of the Master Lease are not incorporated herein: Sections 1.1, 1.2, 1.4, 1.7, 1.15, 1.16, 1.17, 3.2 and 4.1, Articles 5, 6, 7 and 8 and Sections 1 and 2 of the Addendum to Standard Office Lease included therein; and

Subtenant will not have a right to abate rent through incorporation of the provisions of the Master Lease in the event of a casualty or condemnation where Sublandlord is not entitled to abate rent under the Master Lease with respect to the Subleased Premises.

Assumption of Obligations. This Sublease is and at all times shall be subject and subordinate to the Master Lease and the rights of Master Landlord thereunder. Subtenant hereby expressly assumes and agrees: (i) to comply with all provisions of the Master Lease; and (ii) to perform all the obligations on the part of the "Tenant" to be performed under the terms of the Master Lease with respect to the Subleased Premises during the term of this Sublease. In the event the Master Lease is terminated for any reason whatsoever, this Sublease shall terminate simultaneously with such termination without any liability of Sublandlord to Subtenant. In the event of a conflict between the provisions of this Sublease and the Master Lease, as between Sublandlord and Subtenant, the provisions of this Sublease shall control.

Right to Contest. If Sublandlord does not have the right to contest any matter in the Master Lease due to expiration of any time limit that may be set forth therein or for any other reason, then notwithstanding any incorporation of any such provision from the Master Lease in this Sublease, Subtenant shall also not have the right to contest any such matter.

Conditions Precedent. Notwithstanding anything to the contrary in this Sublease, this Sublease and Sublandlord's obligations hereunder are conditioned upon Sublandlord's receipt of the written consent of Master Landlord to this Sublease. If Sublandlord does not receive such consent within thirty (30) days after execution of this Sublease by Sublandlord, then Sublandlord may terminate this Sublease by giving Subtenant written notice thereof, and upon such termination, Sublandlord shall return to Subtenant all prepaid Rent, the Security Deposit and the purchase price for Sublandlord's FF&E, and Subtenant shall return to Sublandlord the bill of sale for Sublandlord's FF&E.

Amendment. This Sublease may not be amended except by the written agreement of both Parties.

Signage. To the extent permitted by Master Landlord, Subtenant shall be entitled to the signage rights available to Sublandlord under Section 31 of the Master Lease.

No Drafting Presumption. The Parties acknowledge that: (a) this Sublease has been agreed to by both Parties, (b) both Sublandlord and Subtenant have consulted with attorneys with respect to the terms of this Sublease, and (c) no presumption shall be created against Sublandlord because Sublandlord drafted this Sublease.

OFAC List Representation. Subtenant hereby represents and warrants to Sublandlord that neither Subtenant nor any of its officers, directors, shareholders, partners, members or affiliates is or will be an entity or person: (a) that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order 13224 issued on September 24, 2001 ("***EO 13224***"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("***OFAC***") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various media including, but not limited to, the OFAC website, *http:www.treas.gov/ofac.t11.pdf*); (iii) who commits or threatens to commit or supports "terrorism," as that term is defined in EO 13224; or (iv) who is otherwise affiliated with any entity or person listed above.

CASp Notification. Sublandlord hereby makes the following disclosure pursuant to California Civil Code Section 1938(e):

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Subtenant agrees that if Subtenant orders a CASp inspection of the Subleased Premises, then Subtenant shall be responsible for payment of the fee for the CASp inspection, and in the event that Subtenant makes modifications, additions, or upgrades to the Subleased Premises in order to comply with the applicable accessibility laws, Subtenant agrees to make any such necessary or required alterations in compliance with the terms of this Sublease and at no cost or liability to Sublandlord or Master Landlord. Subtenant further agrees to notify Sublandlord if Subtenant orders a CASp inspection or makes alterations to the Subleased Premises that might impact accessibility under the applicable accessibility laws. Subtenant shall promptly provide Sublandlord a copy of the CASp inspection reports and, except to perform alterations necessary or required to provide accessibility, shall keep the results of any CASp inspection confidential and shall not disclose anything contained therein to any other parties without the express written consent of Sublandlord and Master Landlord.

Subtenant shall during the Term of this Sublease indemnify, defend, protect and hold Sublandlord and Master Landlord harmless from any and all claims, liabilities, costs, expenses, attorneys' fees or consultant fees arising from or due to Subtenant's noncompliance with, or violation of, any applicable accessibility laws in any way related to or connected with Subtenant's use or occupancy of the Subleased Premises.

Disability Access Obligations Notice. Sublandlord and Subtenant have read and shall execute and deliver with the execution and delivery of this Sublease the Disability Access Obligations

Notice Pursuant to San Francisco Administrative Code Chapter 38 that is attached hereto as Exhibit B and hereby incorporated herein.

Entire Agreement. This Sublease constitutes the entire agreement between the Parties with respect to the subject matter herein, and there are no binding agreements or representations between the Parties except as expressed herein. No subsequent change or addition to this Sublease shall be binding unless in writing and signed by all Parties.

Execution and Delivery. This Sublease may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument, and shall be effective upon execution and delivery of one or more of such counterparts by each of the Parties. Execution and delivery of this Sublease may be effected via facsimile signatures, email scanned signatures, or signatures obtained via electronic means such as DocuSign, which shall be deemed of equal force and effect as original signatures.

IN WITNESS WHEREOF, the Parties have executed this Sublease as of the day and year first above written.

SUBLANDLORD:
Peacock Construction Inc.,
a California corporation

By: /s/ Kyle Peacock
Print Name: Kyle Peacock
Title: CEO

Address:
3421 Golden Gate Way
Lafayette, California 94549
Attention: Kyle Peacock

SUBTENANT:
Jaguar Health, Inc.,
a Delaware corporation

By: /s/ Lisa A. Conte
Print Name: Lisa A. Conte
Title: President and CEO

Current Address:
201 Mission St, Suite 2375
San Francisco, CA 94105
Attention: Jon Wolin

Address after October 1, 2020
200 Pine Street, Suite 400
San Francisco, CA 94104

EXHIBIT A

MASTER LEASE

*[See attached redacted **200 Pine Street Office Lease**, dated June 7, 201, and attached redacted **First Extension of Lease 200 Pine Street**, dated January 26, 2018]*

200 PINE STREET OFFICE LEASE

This Lease is made and entered into as of June 7th, 2011, by and between M & E, LLC , a California Limited Liability Company ("Landlord"), and Peacock Construction Inc., a California Corporation ("Tenant"), who agree as follows:

1. DEFINITIONS.

As used in this Lease, the following terms shall have the following meanings specified below:

1.1. Base Rent: [****] per month, subject to the following adjustments:

Months	Monthly Base Rent	Annual Rental Rate
[****]	[****]	[****]

1.2. Base Year: The calendar year of 2011.

1.3. Building: The building and other improvements on the real property located at 200 Pine Street, San Francisco, California.

1.4. Commencement Date: The date determined in accordance with Section 3.2 below.

1.5. Common Areas: The Building common corridors and hallways, restrooms, stairways, patios, elevators and other generally understood public or common areas. Landlord shall have the right to regulate or restrict the use of the Common Areas.

1.6. Expiration Date: May 31, 2018, unless sooner terminated in accordance with the provisions of this Lease.

1.7. First Adjustment Date: June 22, 2012

1.8. Guarantor: None.

1.9. Index: Intentionally deleted.

1.10. Interest Rate: A per annum rate of interest equal to ten percent (10%) or, if a higher rate is legally permissible, at the highest rate legally permitted.

1.11. Landlord's Notice Address: c/o Colliers International, 50 California Street, 19th Floor, San Francisco, California 94111, Attn: Property Management, or such other address as Landlord shall designate from time to time.

1.12. Premises: That portion of the Building containing approximately 5,263 square feet of Rentable Area, shown by diagonal lines on Exhibit "A," located on the Fourth (4th) floor of the Building and known as Suite 400.

1.13. Real Estate Brokers: Cal Nakanishi, Colliers International - Tenant's Broker; James Sobel, Colliers International - Landlord's Broker.

1.14. Rentable Area: As to both the Premises and the Building, the respective measurements of floor area as may from time to time be subject to lease by Tenant and all tenants of the Building, respectively, as determined by Landlord and applied on a consistent basis throughout the Building.

1.15. Scheduled Commencement Date: June 22, 2011.

1.16. Security Deposit: [****]

1.17. Tenant's Notice Address: Prior to Commencement Date: 303 Sacramento Street, Suite # 2, San Francisco, CA 94111. After Commencement Date: 200 Pine Street, Suite 400 San Francisco, CA 94104.

1.18. Tenant's Proportionate Share: 12.87%. Such share is a fraction, the numerator of which is the Rentable Area of the Premises, and the denominator of which is the Rentable Area of the Building, as determined by Landlord from time to time. The Building contains a total Rentable Area of approximately 40,882 square feet.

1.19. Tenant's Use: General office use.

1.20. Term: The period commencing on the Commencement Date and expiring at midnight on the Expiration Date.

2. LEASE OF PREMISES.

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the Term and subject to the terms and provisions contained in this Lease. The Premises are located within the Building. Tenant shall have the non-exclusive right (unless otherwise provided herein) to the use of the Common Areas in common with Landlord, other tenants and occupants of the Building and other parties entitled to use the Common Areas, subject to the provisions of this Lease and to the Building rules and regulations.

3. TERM.

3.1. Delivery of Possession. This Lease shall become effective upon execution by Landlord and Tenant. The term of this Lease ("Term") shall commence on the Commencement Date and shall continue until the Expiration Date, unless earlier terminated in accordance with this Lease or unless extended as hereinafter provided. If for any reason Landlord cannot deliver possession of the Premises to Tenant on the Scheduled Commencement Date, Landlord shall not be subject to any liability for such failure, the Expiration Date shall not change and the validity of this Lease shall not be impaired, but Base Rent shall be abated until delivery of possession.

3.2. Commencement Date. The Commencement Date shall be the earlier of (a) June 22, 2011, or (b) substantial completion of Tenant Improvements. At such time as the

Commencement Date has been established, Landlord and Tenant shall execute a written acknowledgment of the Commencement Date.

4. RENT.

4.1. Payment of Base Rent. Tenant shall pay to Landlord throughout the Term the Base Rent for the Premises. The Base Rent shall be payable in advance beginning on the Commencement Date and on the first day of each calendar month of the Term thereafter. If the Term begins (or ends) on other than the first (or last) day of a calendar month, the Base Rent for the partial month shall be prorated on a per diem basis on the basis of a thirty (30) day month. Tenant shall pay Landlord the first (1st) month's Base Rent when Tenant executes the Lease. This is a payment of [****] and will be applied to Base Rent beginning month 1.

4.2. Adjusted Base Rent. Intentionally deleted.

4.3. Definition of Rent. All costs and expenses which Tenant assumes or agrees to pay to Landlord under this Lease shall be deemed additional rent (which, together with the Base Rent, are sometimes referred to herein as the "Rent"). The Rent shall be paid to Landlord, the Building manager or such other person, and at such place, as Landlord may from time to time designate in writing, without any prior notice or demand therefore and without deduction, offset or counterclaim, in lawful money of the United States of America.

5. BUILDING OPERATING COSTS.

5.1. Tenant's Obligation. During each calendar year during the Term, Tenant shall pay to Landlord, as additional rent and in addition to the Base Rent and all other payments due under this Lease, an amount equal to Tenant's Proportionate Share of increases in Building Operating Costs in the manner provided below.

5.2. Definition. The term "Building Operating Costs" means all costs and expenses paid or incurred by Landlord in the ownership, management, operation, repair, replacement and maintenance of the Building, including, without limitation, the following:

a) Costs of electricity, water, gas, steam and other utilities and services furnished to or consumed within the Building, and all utility taxes thereon;

b) Costs of all supplies and materials used by Landlord in connection with the Building;

c) Premiums and other charges for insurance, including, without limitation, all risk, commercial general liability, property damage, worker's compensation, employer's liability, earthquake, flood and such other insurance in such forms of coverage and in such amounts as Landlord, in its sole discretion, shall elect to maintain with respect to the Building or shall be obligated to maintain with respect to the Building by any mortgagee or lender;

d) Costs of, and all amounts payable under, service, maintenance and inspection contracts for janitorial, window-cleaning, garbage removal, extermination, elevator, escalator, plumbing, electrical and mechanical equipment, heating, ventilating and air-conditioning ("HVAC") equipment, security protection, landscape maintenance and costs of purchasing or renting equipment, supplies, tools, materials and uniforms;

e) Compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the operation, maintenance or repair of the Building, and equipment, improvements and facilities located within the Building, including, without limitation, engineers, janitors, painters, floor waxers, window washers and security personnel (but excluding persons performing services not uniformly available to or performed for substantially all Building tenants);

f) Costs of the operation and maintenance of a room, if any, for delivery and distribution of mail to tenants of the Building (including, without limitation, an amount equal to the fair market rental value of the mail room premises);

g) Fees and costs of management of the Building, whether managed by Landlord, an affiliate of Landlord or an independent contractor (including, without limitation, an amount equal to the fair market value of any on-site manager's office);

h) Rental expenses for (or a depreciation allowance on) personal property used in the maintenance, operation or repair of the Building;

i) License, permit and inspection fees; costs of complying with applicable statutes, ordinances, rules and regulations of governmental authorities, including, without limitation, repairs, maintenance, alterations, additions or improvements required in connection therewith; attorneys', accountants' and consultants' fees;

j) The costs of any capital improvements made to the Building by Landlord in order to reduce Building Operating Costs; made to the Building by Landlord after the date of this Lease that are required under any governmental law or regulation that was not applicable to the Building at the time it was constructed; or made by Landlord in order to repair, replace or improve the Building or portions or components thereof. The costs shall be amortized over such period, as shall reasonably be determined by Landlord, and the amortization expense shall include interest on the unamortized balance of the cost of such capital improvement at the rate of ten percent (10%) per annum or such higher rate as may have been paid by Landlord on funds borrowed for the purpose of constructing or installing such capital improvements; and

k) Other costs and expenses which are of a type generally reimbursed by Tenants of comparable office buildings in San Francisco, California.

l) Notwithstanding anything in the Lease to the contrary, the following shall not be included within Operating Expenses;

i. Leasing commissions, attorneys' fees, costs, disbursements, and other expenses incurred in connection with negotiations or disputes with tenants, or in connection with marketing, leasing, renovating, or improving space for tenants or other occupants or prospective tenants or other occupants of the Building, or in connection with the maintenance or operation of the entity which constitutes Lessor, as distinguished from the cost of the operation of the Building.

ii. The cost of any service sold to any tenant (including Lessee) or other occupant for which Lessor is entitled to be reimbursed as an additional charge or rental over and above the Basic Rent and escalations payable under the Lease with the tenant.

iii. Any depreciation or amortization on the Building and any fixed assets therein.

iv. Costs of a capital nature, other than those expressly set forth in Lease Section 5.2(j).

v. Expenses in connection with services or other benefits of a type that are not provided to Lessee but which are provided to another tenant or occupant of the Building Costs incurred due to Lessor's violation of any terms or conditions of this Lease or any other Lease relating to the Building.

vi. Overhead profit increments paid to Lessor's subsidiaries or affiliates for management or other services on or to the Building or for supplies or other materials to the extent that the cost of the services, supplies, or materials exceeds the cost that would have been paid had the services, supplies, or materials been provided by unaffiliated parties on the competitive basis.

vii. All interest, principal, loan fees, and other costs related to any mortgage or deed of trust or related to any capital item, and all rental and other payable due under any ground or underlying lease, or any lease for any equipment ordinarily considered to be of a capital nature (except janitorial equipment which is not affixed to the Building).

viii. Any compensation paid to clerks, attendants, or other persons in commercial concessions operated by Lessor.

ix. Cost of repairs and other work occasioned by fire, windstorm, or other casualty which are required to be covered by insurance.

x. Any costs, fines, or penalties incurred due to violations by Lessor of-any Applicable Law, this Lease, any other lease in the Building or any other obligation due, or otherwise due to Lessor's negligence or willful misconduct.

xi. Management fees to the extent they exceed competitive management costs charged for similar office buildings in the area.

xii. Wages, salaries, or other compensation paid to any executive employees above the grade of building manager or otherwise, except as set forth in Section 5.2 (e) and 5.2 (g).

xiii. The cost of correcting any building code, Applicable Law or other violations which were violations prior to the Commencement Date or were required to be corrected prior to the Commencement Date.

xiv. The cost of testing for, containing, removing, or otherwise remediating any contamination (including the underlying land and ground water) by any Hazardous Materials (as defined below) or mold where such contamination existed as of the Commencement Date or was not caused by Lessee.

xv. The costs of selling, syndicating, financing, mortgaging or hypothecating any part of or interest in the Building and any bad debt loss, rent loss or reserves of any kind.

xvi. Any costs resulting from the negligence or willful misconduct of Lessor or its officers, directors, representatives, invitees, licensees, agents, contractors or employees (each, a "Lessor Party" and collectively, the "Lessor Parties").

xvii. Any of the following: political, charitable or other contributions, subscriptions or membership fees; late fees or penalties; reimbursed costs; costs for art; reserves of any kind; and any other expense which, under generally accepted accounting principles and practice, would not be considered a normal maintenance and operating expense.

Building Operating Costs shall not include Real Property Taxes which shall be governed by Article 6 below.

5.3. Payment. Tenant's Proportionate Share of increases in Building Operating Costs shall be payable by Tenant to Landlord as follows:

a) Beginning with the calendar year following the Base Year and for each calendar year thereafter (each, a "Comparison Year"), Tenant shall pay to Landlord an amount equal to Tenant's Proportionate Share of the amount by which the Building Operating Costs paid or incurred by Landlord in the Comparison Year exceeds the Building Operating Costs paid or incurred by Landlord for the Base Year. This excess is referred to as the "Excess Operating Costs." The Building Operating Costs for both the Base Year and each Comparison Year in which less than ninety-five percent (95%) of the Rentable Area of the Building has been occupied for the entire Computation Year shall be determined by adjusting the actual Building Operating Costs to equal Landlord's reasonable estimate of what the Building Operating Costs would have been if ninety-five percent (95%) of the Rentable Area of the Building had been fully occupied for such entire Comparison Year.

b) To provide for current payments of Excess Operating Costs, Tenant shall, at Landlord's request, pay as additional rent during each Comparison Year an amount

equal to Tenant's Proportionate Share of the Excess Operating Costs payable during such Comparison Year, as estimated by Landlord from time to time. During December of the Base Year and December of each subsequent calendar year, or as soon thereafter as practical, Landlord shall notify Tenant of the amount which Landlord reasonably estimates to be the monthly installments of Tenant's Proportionate Share of Excess Operating Costs for any Comparison Year. Tenant shall make such monthly installments commencing on the first day of each month during the ensuing calendar year. If such notice is not given in December Tenant shall continue to pay on the basis of the prior year's estimate until the month after such notice is given.

c) On or before April 1 of each Comparison Year after the first Comparison Year (or as soon thereafter as is practicable), Landlord shall deliver to Tenant a statement setting forth the actual amount of Tenant's Proportionate Share of Excess Operating Costs for the preceding Comparison Year. If the actual amount of Tenant's Proportionate Share of Excess Operating Costs for the preceding Comparison Year exceeds the total of the estimated monthly payments made by Tenant for such year, Tenant shall pay Landlord the amount of the deficiency within thirty (30) days of the receipt of the statement. If the total of the estimated monthly payments made by Tenant for such year exceeds the actual amount of Tenant's Proportionate Share of Excess Operating Expenses for such Comparison Year, then Landlord shall credit against Tenant's next ensuing monthly installments of Tenant's Proportionate Share of Excess Operating Costs an amount equal to the difference until the credit is exhausted. If a credit is due from Landlord on the Expiration Date, Landlord shall pay Tenant the amount of the credit. In no event shall Landlord's failure to provide Tenant with a timely statement of the amount due relieve Tenant of Tenant's responsibility to reimburse Landlord for Operating Costs. The obligations of Tenant and Landlord to make payments required under this Section 5 shall survive the Expiration Date.

d) Tenant's Proportionate Share of Excess Operating Costs in any Comparison Year having less than 365 days shall be appropriately prorated.

e) Landlord shall, upon Tenant's reasonable request, within the first three (3) months of each calendar year, or within 30 days after receipt of Landlord's actual reconciliation statements, whichever comes first, make available to Tenant or any Accountants (hereinafter defined) at the office of Landlord, Landlord's books and records as shall be necessary for Tenant to verify, at Tenant's cost and expense, actual Operating Expenses and actual Property Taxes for (i) any of the then most recent three (3) calendar years of the Term or (ii) once during the Term, the Base Expense Year and the Base Tax Year; provided that, if any Audit (hereinafter defined) shows that the aggregate amount of Operating Expenses or Property Taxes paid by Tenant in the applicable period was overstated by Landlord pursuant to the reports described above by more than five percent (5%), Landlord shall reimburse Tenant for the reasonable, out-of-pocket costs and expenses incurred by Tenant in connection with such Audit. Tenant may retain an independent, certified public accounting firm reasonably acceptable to Landlord (the "Accountants") on an

hourly rate basis, to inspect such books and records of Landlord (an "Audit"). Tenant shall (and it shall cause its employees, agents and consultants and the Accountants to) keep the results of any such Audit strictly confidential. If such Audit shows that the amount of Operating Expenses and Property Taxes paid by Tenant to Landlord exceeds the amount to which Landlord is entitled hereunder, Landlord shall, at Tenant's option, either credit the amount of such excess toward the next monthly installment(s) of Basic Rental due hereunder or pay Tenant the net overpayment within thirty (30) days. If such Audit shows that the amount paid by Tenant to Landlord was less than the amount owing, Tenant shall pay such shortfall within thirty (30) days after demand therefor by Landlord.

6. REAL PROPERTY TAXES.

6.1. Tenant's Obligation. During each calendar year during the Term, Tenant shall pay to Landlord, as additional rent and in addition to the Base Rent and all other payments due under this Lease, an amount equal to Tenant's Proportionate Share of increases in Real Property Taxes in the manner provided below.

6.2. Definition. The term "Real Property Taxes" means all taxes, assessments, water and sewer charges and other similar governmental charges (including costs and expenses of contesting the amount or validity thereof by appropriate administrative or legal proceedings) levied on or attributable to the Building or its operation, including, without limitation, all real property taxes and general and special assessments; charges, fees, levies and assessments for transit, housing, police, fire or other governmental services or purported benefits to the Building; service payments in lieu of taxes; environmental surcharges; excise taxes; gross receipts taxes; gross income taxes; rent taxes; sales and/or use taxes; employee taxes; water and sewer taxes and charges; any tax, fee or excise on the act of entering into this Lease, on the use or occupancy of the Building or any part thereof, or upon or measured by the rent payable under any lease or in connection with the business of renting space in the Building; and all other governmental impositions of any kind or nature whatsoever, regardless of whether or not customary or within the contemplation of the parties hereto and regardless of whether resulting from increased rate and/or valuation, or whether extraordinary or ordinary, general or special, foreseen or unforeseen, or similar or dissimilar to any of the foregoing, which may now or hereafter be levied or assessed against Landlord by the United States of America, the State of California, the City and County of San Francisco or any political subdivision, public corporation, district or other political or public entity, and any other tax, fee or other excise, however described, levied or assessed as a substitute for, or as an addition to (in whole or in part), any other such taxes. Notwithstanding the foregoing, "Real Property Taxes" shall not include any net income, franchise, capital stock, estate or inheritance taxes. Landlord represents that the Building does not have a 2011 Prop 8 Real Property Tax reduction.

6.3. Payment. Tenant's Proportionate Share of increases in Real Property Taxes shall be payable by Tenant to Landlord as follows:

a) Beginning with the year following the Base Year and for each calendar year thereafter (each, a "Comparison Year"), Tenant shall pay to Landlord an amount equal to Tenant's Proportionate Share of the amount by which the Real Property Taxes paid or incurred by Landlord in the Comparison Year exceeds the Real Property Taxes paid or incurred by Landlord for the Base Year. This excess is referred to as the "Excess Taxes."

b) To provide for current payments of Excess Taxes, Tenant shall, at Landlord's request, pay as additional rent during each Comparison Year an amount equal to Tenant's Proportionate Share of the Excess Taxes payable during such Comparison Year, as estimated by Landlord from time to time. During December of the Base Year and December of each subsequent calendar year, or as soon thereafter as practical, Landlord shall notify Tenant of the amount which Landlord reasonably estimates to be the monthly installments of Tenant's Proportionate Share of Excess Taxes for any Comparison Year. Tenant shall make such monthly installments commencing on the first day of each month during the ensuing calendar year. If such notice is not given in December Tenant shall continue to pay on the basis of the prior year's estimate until the month after such notice is given.

c) On or before April 1 of each Comparison Year (or as soon thereafter as is practicable), Landlord shall deliver to Tenant a statement setting forth the actual amount of Tenant's Proportionate Share of Excess Taxes for the preceding Comparison Year. In no event shall Landlord's failure to provide Tenant with a timely statement of the amount due relieve Tenant of Tenant's responsibility to reimburse Landlord for Taxes due. If the actual amount of Tenant's Proportionate Share of Excess Taxes for the preceding Comparison Year exceeds the total of the estimated monthly payments made by Tenant for such year, Tenant shall pay Landlord the amount of the deficiency with ten (10) days of the receipt of the statement. If the total of the estimated monthly payments made by Tenant for such year exceeds the actual amount of Tenant's Proportionate Share of Excess Taxes for such Comparison Year, then Landlord shall credit against Tenant's next ensuing monthly installments of Tenant's Proportionate Share of Excess Taxes an amount equal to the difference until the credit is exhausted. If a credit is due from Landlord on the Expiration Date, Landlord shall pay Tenant the amount of the credit. The obligations of Tenant and Landlord to make payments required under this Section 6 shall survive the Expiration Date.

d) Tenant's Proportionate Share of Excess Taxes in any Comparison year having less than 365 days shall be appropriately prorated.

6.4. Taxes Payable by Tenant. In addition to the Rent and any other amounts to be paid by Tenant hereunder, Tenant shall reimburse Landlord upon demand for any and all taxes, levies, assessments, surcharges, fees and other charges payable by Landlord which are not otherwise reimbursable under this Lease, whether or not now customary or within the contemplation of the parties, where such taxes, levies, assessments, surcharges, fees and other charges are upon, measured by or reasonably attributable to (a) the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in

the Premises, or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, regardless of whether title to such improvements is held by Tenant or Landlord; (b) the gross or net Rent payable under this Lease, including, without limitation, any rental or gross receipts tax levied by any taxing authority with respect to the receipt of the Rent hereunder such as the San Francisco Business Tax or any similar tax; (c) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (d) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. If it shall be unlawful for Tenant to reimburse Landlord for any additional taxes as required under this Lease, the Base Rent shall be revised to net Landlord the same net Rent after imposition of any tax or other charge upon Landlord as would have been payable to Landlord but for the reimbursement being unlawful.

7. LATE CHARGES AND INTEREST.

Tenant acknowledges that the late payment of any Base Rent or other amount which Tenant is obligated to pay under this Lease will cause Landlord to lose the use of that money and incur costs and expenses not contemplated under this Lease, including, without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which are extremely difficult to ascertain. Therefore, if any such installment or other amount is not received by Landlord when due, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such installment or other amount. Landlord shall waive such late charge one (1) time in any twelve (12) month period provided Tenant is not more than five (5) days late. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from such late payment by Tenant. In addition, if Tenant fails to pay when due any Rent or other amount which Tenant is obligated to pay under the terms of this Lease and such failure shall continue for ten (10) days, the unpaid amount shall bear interest at the Interest Rate from the date on which such payment was due until the date on which Landlord receives such payment. Acceptance of any late charge and/or interest shall not constitute a waiver of Tenant's default with respect to such late payment by Tenant or prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease.

8. SECURITY DEPOSIT.

Upon execution of this Lease, Tenant shall deposit with Landlord as the Security Deposit the amount set forth in Article 1 above as security for Tenant's faithful performance of its obligations under this Lease. Landlord may commingle the Security Deposit with funds of Landlord, and Landlord shall have no obligation or liability to pay interest on the Security Deposit. Tenant shall not pledge, assign, transfer or encumber the Security Deposit and any attempt by Tenant to do so shall be void, without force or effect, and shall not be binding upon Landlord.

If Tenant fails to pay any Rent or other amount when due and payable under this Lease, or fails to perform any of the other terms hereof, Landlord may apply or use all or any portion

of the Security Deposit for Rent payments or any other amount then due and unpaid, for payment of any amount for which Landlord has become obligated as a result of Tenant's default or breach, and for any loss or damage sustained by Landlord as a result of Tenant's default or breach, and Landlord may so apply or use the Security Deposit without prejudice to any other remedy Landlord may have by reason of Tenant's default or breach. If Landlord so applies or uses any of the Security Deposit, Tenant shall, within ten (10) days after written demand therefore, restore the Security Deposit to the full amount originally deposited. Tenant's failure to do so shall constitute a default hereunder, and Landlord shall have the right to exercise any remedy provided for in this Lease. If Tenant shall not be in default under this Lease, Landlord shall return the Security Deposit, or any balance thereof not applied or used in accordance with the provisions of this Lease, to Tenant within thirty (30) days following the later of the expiration of the Term or the date on which Tenant surrenders the Premises to Landlord in the condition required under this Lease. If Landlord transfers its interest in the Premises, Landlord may deliver the Security Deposit to the transferee of Landlord's interest and thereupon be relieved of any further liability or obligation with respect to the Security Deposit.

9. TENANT'S USE OF THE PREMISES.

9.1. Use. Tenant shall use the Premises solely for the purposes set forth as Tenant's Use in Article 1 above. Tenant, at its sole cost and expense, shall obtain any and all licenses, permits, authorizations and approvals of governmental authorities required in order to enable Tenant lawfully to conduct its business in the Premises. Nothing contained in this Lease shall grant to Tenant the exclusive right to conduct within the Building or the Premises the business to be conducted by Tenant in the Premises, or otherwise limit the right of Landlord to lease space within the Building to such tenants and for such purposes as Landlord, in its sole discretion, shall deem appropriate. Tenant shall conduct Tenant's business on the Premises in a lawful manner, reasonably and in good faith, and shall not do any act tending to injure the reputation of the Building as determined by Landlord. Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the Building and/or the property located therein, and shall comply with all rules, orders, regulations, requirements and recommendations of the Insurance Service Office or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord for any additional premiums charged for any such insurance policy by reason of Tenant's failure to comply with the provisions of this Article.

9.2. Nuisance or Waste. Tenant shall not do or permit to be done in or about the Premises anything which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or injure or annoy them or use or allow the Premises to be used for any improper, immoral or objectionable purpose, and Tenant not cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer the commission of any waste in, on or about the Premises. Tenant shall not use or operate any equipment, machinery or apparatus within the Premises which will (a) injure, vibrate or shake the Premises or the Building, (b) overload existing electrical systems or other utilities or equipment servicing the Premises or the Building, or (c)

impair the efficient operation of the sprinkler system (if any) or the HVAC equipment (if any) within or servicing the Premises or the Building. All noises or odors generated by Tenant's use of the Premises shall be muffled or contained in such manner that they do not interfere with the use or occupancy of other tenants or occupants of the Building.

9.3. Compliance with Law. Tenant shall not use or occupy the Premises or permit anything to be done in, on or about the Premises which will in any way conflict with (a) any statute, ordinance, rule or regulation of governmental authorities now in force or which may hereafter be enacted or promulgated, (b) any covenant, condition or restriction affecting the Building or (c) the certificate of occupancy issued for the Premises or any other portion of the Building, and shall, upon notice from Landlord, immediately discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy. Tenant, at Tenant's own cost and expense, shall comply with all statutes, ordinances, regulations, rules and/or any directions of any governmental authorities having jurisdiction, including, without limitation, the Americans with Disabilities Act, Title 24 or any other handicap accessibility laws, which shall, by reason of the nature of Tenant's use or occupancy of the Premises, or by reason of any alteration, addition or improvement made by Tenant in the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or its use or occupancy, or with respect to any other portion of the Building. A judgment of any court of competent jurisdiction or the admission by Tenant in any action or proceeding against Tenant that Tenant has violated any such laws, ordinances, regulations, rules and/or directions in the use of the Premises shall be deemed to be a conclusive determination of that fact as between Landlord and Tenant.

9.4. Hazardous Materials. Without limiting the generality of the provisions of this Article 9, Tenant, at its sole cost and expense, shall comply with all statutes, ordinances, rules and regulations of governmental authorities relating to the storage, use, transportation, release and/or disposal of radioactive materials, hazardous waste, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances" , "hazardous waste", "hazardous materials" or "toxic substances" under applicable federal, state and local environmental statutes, ordinances, rules or regulations (collectively, "Hazardous Materials"). Tenant shall not store, use, transport, release or dispose of any Hazardous Materials in, on, from or about the Premises without the prior written consent of Landlord. Tenant shall be solely responsible for and shall indemnify, defend and hold Landlord and its officers, directors, shareholders, partners, members, agents, employees, contractors, invitees, representatives, successors and assigns harmless from and against any and all losses, costs, claims, damages, liabilities and causes of action, including attorneys' fees, arising out of or in connection with the storage, use, transportation, release or disposal of Hazardous Materials by Tenant, its employees, agents, contractors or invitees, including any claims for the clean-up or remediation of any Hazardous Materials. Tenant shall give to Landlord written notice of any communication received by Tenant from any governmental authority or other party alleging the existing of Hazardous Materials in, on, under or about the Premises or the Building, or any alleged violation of environmental laws with respect to the Premises or the Building. Without limiting any other provision of this Lease, Tenant shall provide Landlord with access to the Premises

during all reasonable times in order to enable Landlord to conduct any inspection, monitoring, remediation, removal or repair relating to the presence or alleged presence of Hazardous Materials in, on under or about the Premises or the Building. Notwithstanding the above, Tenant's obligation to comply with environmental laws does not apply to any pre-existing contamination, including remediation of any existing asbestos. And Landlord will defend and indemnify Tenant against any claims related to pre-existing contamination and contamination caused by any Landlord-related party.

10. SERVICES AND UTILITIES.

10.1. General. Provided that Tenant is not in default hereunder, Landlord shall

a) Operate or cause the operation of the HVAC system (if any) serving the Premises on generally recognized business days and during hours determined by Landlord in its sole discretion, subject to the Building rules and regulations, as required in Landlord's judgment for the comfortable use and occupancy of the Premises, or as may be permitted or controlled by applicable statutes, ordinances, rules and regulations of governmental authorities. If Tenant desires HVAC service at any other time, Landlord shall use reasonable efforts to furnish such service upon reasonable written notice from Tenant, and Tenant shall pay on demand the charges established by Landlord therefore from time to time (including any administrative fee imposed by Landlord). Tenant agrees to cooperate fully with Landlord at all times and to abide by all regulations and requirements which Landlord may prescribe for the proper functioning and protection of the HVAC system, and Landlord shall not be responsible for the failure of the HVAC system to perform its function due to Tenant's failure to abide by such regulations and requirements. If Tenant uses heat-generating machines or equipment in the Premises which affect the temperature otherwise maintained by the HVAC system, Landlord shall have the right to install supplementary air-conditioning units in the Premises, and the cost thereof, including the cost of installation, operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord;

b) Make customary arrangements with public utilities and/or governmental authorities to furnish electric current to the Premises in amount sufficient for normal lighting by overhead florescent fixtures and for normal desktop office equipment and copying equipment. Tenant shall not, without the prior written consent of Landlord, use any apparatus or device in the Premises, including, without limitation, electronic data processing equipment, special communications equipment, special lighting or any other electrical equipment, which consumes more electricity than is usually furnished or supplied for the use of premises as general office space, as determined by Landlord. Tenant shall not connect any apparatus or device with electric current except through existing electrical outlets in the Premises. Landlord shall have no obligation to install dedicated circuits or other special circuitry or wiring. Tenant shall advise Landlord prior to execution of this Lease and thereafter within five (5) days after written request therefore from Landlord of the nature and quantity of all lights, equipment and machines using electricity in the Premises. If Landlord determines that Tenant is using excessive electricity, Landlord shall have the right

to install an electric current meter in or with respect to the Premises in order to measure the amount of electricity consumed on the Premises. The cost of any such meter, any conduits, wiring, panels and other equipment required in connection with such meter, and the installation, maintenance and repair thereof, shall be paid by Tenant to Landlord promptly upon demand, together with the cost of any excessive electricity consumed by Tenant. If Landlord shall not install a separate meter, the excessive electricity shall be determined by Landlord or, at Landlord's option, established by an estimate by a utility company or an electrical engineer retained by Landlord at Tenant's expense;

c) Provide access to water in the restrooms on each floor for drinking and lavatory purposes only; if Tenant requires, uses or consumes water for any purposes in addition to ordinary drinking and lavatory purposes, or in excess Of the amount thereof usually furnished or supplied for the use of premises as general office space, as determined by Landlord, Landlord shall have the right to install a separate water meter in or with respect to the Premises in order to measure the amount of water consumed by Tenant. The cost of any such meter, and the installation, maintenance, and repair thereof, shall be paid by Tenant to Landlord promptly upon demand, together with the cost of any excessive water consumed by Tenant. If Landlord shall not install a separate meter, the excessive water shall be determined by Landlord or, at Landlord's option, established by an estimate by a utility company or a consultant retained by Landlord at Tenant's expense;

d) Maintain and keep lighted the common stairs, common entries and restrooms in the Common Areas of the Building;

e) Furnish elevator service, lighting replacement for building standard lights, restroom supplies, window washing and janitorial service to the extent and in such manner as such services are customarily furnished to comparable office buildings in San Francisco, California.

f) General hours of operation for the Building are 7:00 AM — 6:00 PM, Monday through Friday, holidays excepted. The current charge for after-hours HVAC (subject to change throughout the lease term) is estimated at $200 per hour).

10.2. Supplementary Services. Tenant shall pay to Landlord upon demand, at the charges established by Landlord from time to time, the cost of all supplementary services provided by Landlord to Tenant at Tenant's request, which services are in addition to those which Landlord is obligated to provide under this Lease, together with an administrative fee payable to Landlord in the amount established by Landlord from time to time. Such supplementary services shall include, without limitation, maintenance, repair, janitorial, cleaning and other services provided during hours other than ordinary business hours and/or in amounts reasonably considered by Landlord to be in excess of the normal and customary usage thereof for the use of the Premises authorized by this Lease.

10.3. Interruption of Services. Landlord shall not be in default under this Lease or liable for any damages directly or indirectly resulting from (a) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services; or (b) the failure to furnish or delay in furnishing any such services, where such failure is caused by any act of God or the elements; a shortage or unavailability of necessary materials, supplies or labor; a shortage or interruption in transportation facilities; riots; civil disturbances; insurrection; war; court order; public enemy; accidents; breakage; strikes, lockouts or other labor disputes; the making of repairs, replacements, alterations, additions or improvements to the Premises or the Building; the inability to obtain an adequate supply of fuel, gas, steam, water, electricity or other utilities or services; or any other condition beyond Landlord's reasonable control, and Tenant shall not be entitled to any damages resulting from such failure or to any diminution or abatement in any Rent or other amounts payable by Tenant hereunder. In no event shall such failure be construed as a constructive or other eviction of Tenant. If any governmental authority promulgates or revises any statute, ordinance or building, fire or other code, or imposes mandatory controls or guidelines on Landlord or the Building or any part thereof related to the use or conservation of energy, water, gas, steam, light or electricity or the provision of any other utility or service provided under this Lease, Landlord may, in its sole discretion, comply with such mandatory controls or guidelines. If at any time, the owners of a significant number of buildings in San Francisco, California comparable to the Building have elected to comply voluntarily with any request or guideline of any applicable governmental authority, Landlord may also comply with such request or guideline. Such compliance shall in no event entitle Tenant to any damages, or any diminution or abatement in any Rent or other amounts payable by Tenant under this Lease, or constitute or be construed as a constructive or other eviction of Tenant. Tenant shall comply with all rules, regulations and requirements of applicable governmental authorities or utility companies concerning the use of utility services, including any rationing, limitation or other control on the quantity of utilities used or consumed.

11. CONDITION OF THE PREMISES.

Tenant acknowledges that Tenant is fully informed independently of Landlord as to the character, construction and structure of the Building and the Premises. Tenant's taking possession of the Premises (whether before or after the Scheduled Commencement Date) shall constitute Tenant's acceptance of the Premises and acknowledgment that any Tenant Improvements were constructed in accordance with the provisions of this Lease and that the Premises are in good order and satisfactory condition. Tenant shall accept the Premises subject to all applicable statutes, ordinances, rules and regulations of governmental authorities governing and regulating the use or occupancy of the Premises, including, without limitation, all applicable zoning, planning, environmental and land use statutes, ordinances, rules and regulations. Tenant acknowledges that neither Landlord nor Landlord's employees, agents or contractors have made any representation or warranty as to the suitability of the Premises for the conduct of Tenant's business or the consistency of Tenant's proposed use of the Premises with any applicable zoning, planning, environmental or land use statutes, ordinances, rules or regulations. No promise of Landlord to alter, remodel, repair or improve the Premises or the Building, and no

representation or warranty, express or implied, with respect to any matter or thing relating to the Premises, the Building or this Lease (including, without limitation, the condition of the Premises or the Building) has been made to Tenant by Landlord or its agents, employees or contractors other than as may be contained herein.

12. REPAIRS AND MAINTENANCE.

12.1. Landlord's Obligation. Subject to the provisions of Section 12.2, Landlord shall repair and maintain in good order, condition and repair (i) the structural portions of the Building, (ii) the mechanical, plumbing and electrical equipment servicing the Building, and (iii) the Common Areas, in reasonably good order and condition, except for damage occasioned by the negligence of intentional acts of Tenant, which damage shall be repaired at Tenant's expense.

12.2. Tenant's Obligation.

a) Except as provided in Section 12.1 above, Tenant at Tenant's sole cost and expense, shall maintain and repair the Premises, keeping the same in good order, condition and repair, at all times during the Term and, upon expiration of the Term, surrender the same to Landlord in as good a condition as when leased, reasonable wear and tear, damage by fire, other insured casualty or the elements not caused by Tenant, its agents, employees, invitees, and licensees excepted. Tenant's obligations shall include, without limitation, (i) the obligation to maintain and when necessary repair the Premises interior surfaces of the ceilings, fixtures, walls, floors, doors, door locks, door-frames, entrances, windows, window frames, and plate glass, (ii) the obligation to maintain and repair the Premises from damage which results from or is caused by Tenant, its agents, employees, invitees and licensees. This includes the Premises portion of any utility outlets, any electrical, plumbing, sewer and other utility lines, equipment and systems, the HVAC system, whether installed or furnished by Landlord or Tenant, located in or serving the Premises; and all special items and equipment installed by or at the expense of Tenant. Notwithstanding the above, and excluding any damage caused by Tenant, its employees or invitee, Landlord will maintain and repair the Building HVAC, and other systems, serving the entire building as part of the general building maintenance costs of which Tenant has a prorate responsibility for increases each year

b) Tenant shall be responsible for all repairs and alterations in and to the Premises and Building and the facilities and systems thereof, the need for which arises out of (i) Tenant's use or occupancy of the Premises, (ii) the installation, removal, use or operation of any Alterations (as defined below) or any of Tenant's equipment, machinery, trade fixtures, furniture or other personal property in the Premises, (iii) the moving of Tenant's equipment, machinery, trade fixtures, furniture or other personal property into or out of the Building, or (iv) the negligent or willful act or omission of Tenant, its agents, contractors, employees or invitees.

c) If Tenant fails to repair and maintain the Premises in good order, condition and repair, then Landlord shall have the right to do such acts and expend such funds at

the expense of Tenant as are reasonably required to perform the work or repair and maintenance. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at the Interest Rate from the date of such work. Landlord shall have no liability to Tenant for any damage; inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work.

12.3. Compliance with Law. Landlord and Tenant shall each do all acts required to comply with all applicable statutes, ordinances, rules and regulations of any governmental authority relating to the performance of their respective repair and maintenance obligations as set forth herein.

12.4. Waiver by Tenant. Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair, including, without limitation, Sections 1932, 1941 and 1942 of the California Civil Code or any other, similar statute, ordinance, rule or regulation now or hereafter in effect.

12.5. Load and Equipment Limits. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry, as determined by Landlord or Landlord's structural engineer. The cost of any such determination made by Landlord's structural engineer shall be paid for by Tenant upon demand. Tenant shall not install machines or equipment which cause noise or vibration to such a degree as to be objectionable to Landlord or other Building tenant or occupant.

12.6. Landlord Not Liable. Except as otherwise expressly provided in this Lease, Landlord shall have no liability to Tenant, and Tenant's obligations under this Lease shall not be reduced or abated in any manner whatsoever, by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted by this Lease or by any other tenant's lease or required by law to make in or to any portion of Building or the Premises. Landlord shall nevertheless use reasonable efforts to minimize any interference with Tenant's business in the Premises to the extent reasonably possible. In no event shall Landlord be liable to Tenant for any consequential damages regardless of the cause of such damages.

12.7. Notice of Condition. Tenant shall give Landlord prompt notice of any damage to or defective condition in the Building's mechanical, electric, plumbing, HVAC or other systems serving or located in the Premises.

13. ALTERATIONS

13.1. General. Tenant shall not make any additions, alterations or improvements to the Premises (collectively, "Alterations"), including, without limitation, those required by Tenant in order to prepare the Premises for Tenant's occupancy or to enable Tenant to conduct its business therein, without obtaining the prior written consent of Landlord.

Subject to the terms, conditions and requirements below, Landlord will review and approve, or provide required revisions to, any improvement plans proposed by Tenant within five (5) business days following receipt and Landlords' consent to those plans will not be unreasonably withheld. In no event shall Tenant make any Alterations to the Premises which affect the structural integrity of the Building or the functioning of any Building systems, or which reduce the value of the Premises or the Building. In the event that Tenant shall desire to make any Alterations, Tenant shall submit to Landlord such information as Landlord may require prior to the commencement of construction or installation of such Alterations, including, without limitation, plans and specifications for the Alterations and the identity and qualifications of Tenant's proposed contractor. The plans and specifications for the Alterations, Tenant's proposed contractor and the time for performance of the Alterations shall be subject to Landlord's prior written approval. Tenant shall reimburse Landlord for Landlord's costs of considering Tenant's requests for approval of any such Alterations, including any cost or expense which Landlord may incur in electing to have architects and engineers review plans and specifications, and the administration by Landlord or its agent of the construction or installation of the Alteration. Subsequent to obtaining Landlord's consent and prior to commencement of construction or installation of the Alterations, Tenant shall deliver to Landlord copies of the building permit and executed construction contract covering the Alterations. Landlord's consent may be conditioned upon Tenant's removing any such Alterations upon the expiration or earlier termination of this Lease and restoring the Premises to the same condition as on the Commencement Date. All work with respect to any Alterations shall be done in a good and workmanlike manner by the contractor approved by Landlord, shall comply with all applicable statutes, ordinances, rules and regulations of governmental authorities having jurisdiction thereof, and shall be diligently prosecuted to completion. Notwithstanding the above, Tenant shall not be responsible for any ADA-triggered path of travel requirements outside of the Premises.

13.2. Construction Indemnity. Tenant shall pay the costs of any work done on the Premises pursuant to Section 13.1, and shall keep the Premises and Building free and clear of liens of any kind. Tenant shall indemnify, defend, hold Landlord harmless from and against any and all losses, costs, claims, damages, liabilities and causes of action (including attorneys' fees) arising out of or in any way connected with Tenant's performance of any work of construction, alteration, addition, improvement, repair or maintenance in the Premises, or claims for work or labor performed, or materials or supplies furnished, to or at the request of Tenant or in connection with the performance of any work done for the account of Tenant in the Premises or the Building, whether or not Tenant obtained Landlord's permission to have such work done, labor performed or materials or supplies furnished.

13.3. Notices. At least twenty (20) days prior to the actual commencement of any work for which a claim or lien may be filed, Tenant shall give Landlord written notice of the intended commencement date to enable Landlord to post and/or record notices of non-responsibility or any other notices which Landlord deems necessary for the proper protection of Landlord's interest in the Premises or the: Building, and Landlord shall have the right to enter the Premises and post such notices at any reasonable time.

13.4. Bonds. Landlord, at Landlord's option, shall have the right to require that Tenant provide to Landlord, at Tenant's expense, payment and/or performance bonds in an amount equal to at least one and one-half (1-1/2) times the total estimated costs of any Alterations to be made in or to the Premises to protect Landlord against any liability for mechanic's and materialmen's liens and to insure timely completion of the work. Nothing contained in this Section 13.4 shall relieve Tenant of its obligation under Section 13.2 to keep the Premises and the Building free of all liens.

13.5. Removal. Unless their removal is required by Landlord as provided in Section 13.1, all Alterations shall become the property of Landlord and shall be surrendered with the Premises upon the expiration of the Term or earlier termination of this Lease; provided, however, that Tenant's equipment, machinery and trade fixtures which can be removed without damage to the Premises shall remain the property of Tenant and may be removed by Tenant; provided, however, that if Tenant shall remove any such equipment, machinery or trade fixtures, Tenant shall promptly repair any damage to the Premises or to the Building resulting from such removal, and shall return the Premises and/or the Building to their condition prior to the installation of any such equipment, machinery or trade fixtures.

13.6. Common Area Provisions. Tenant shall not use any portion of the Common Areas or any other portion of Building other than the Premises in connection with the making of any Alterations without Landlord's prior written consent. If any Alterations that Tenant shall construct result in Tenant or Landlord being required to make any alterations, additions or improvements to the Premises, or in Landlord being required to make any alterations, additions or improvements to any other portions of the Building, in any case in order to comply with applicable statutes, ordinances, rules or regulations of governmental authorities, including, without limitation, the Americans with Disabilities Act, Title 24 or any regulations promulgated thereunder, or any similar state or local statutes, ordinances, rules or regulations, then Tenant shall be obligated to make all such alterations, additions or improvements, or, at Landlord's option, Tenant shall reimburse Landlord upon demand for all cost and expense incurred by Landlord making such alterations, additions or improvements.

14. RULES AND REGULATIONS.

Tenant shall comply with (and shall cause its agents, contractors, employees and invitees to comply with) the rules and regulations attached hereto as Exhibit "B" and with such modifications thereof and additions thereto as Landlord may from time to time make. Landlord shall not be responsible for any violation of such rules and regulations by other tenants or occupants of the Building. In the event of any conflict between such rules and regulations and the provisions of this Lease, the provisions of this Lease shall prevail and be controlling.

15. ENTRY BY LANDLORD.

Landlord shall have the right to enter the Premises at reasonable hours and after reasonable notice, except in the event of an emergency in which event no notice shall be required, to:

(a) inspect the Premises; (b) exhibit the same to prospective purchasers, lenders or tenants; (c) determine whether Tenant is complying with all of its obligations hereunder; (d) provide janitorial service and any other service to be provided by Landlord to Tenant hereunder; (e) post notices of non-responsibility; and (1) make repairs required of Landlord under the terms hereof or make repairs to any adjoining space or utility services (including checking, adjusting, calibrating or balancing the HVAC system) or make repairs, alterations or improvements to any other portion of the Building. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned by such entry, provided that Landlord takes reasonable steps to minimize the interference with Tenant's use and enjoyment of the Premises. Landlord shall at all times have and retain a key with which to unlock all of the doors in, on or about the Premises (including Tenant's vaults, safes and similar areas agreed upon in writing by Tenant and Landlord). Landlord shall have the right to use any and all means which Landlord may deem appropriate to open such doors in an emergency in order to obtain entry to the Premises, and no entry to the Premises obtained by Landlord by any of such means shall under any circumstance be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof

16. ASSIGNMENT AND SUBLEASE.

16.1. General. Tenant shall not, voluntarily, involuntarily or by operation of law, without the prior written consent of Landlord: (a) assign, mortgage, pledge, hypothecate, encumber or otherwise transfer Tenant's leasehold interest under this Lease; (b) permit the Premises or any part thereof to be used or occupied by anyone other than Tenant (whether as concessionaire, franchisee, licensee or otherwise); or (c) sublease or offer or market for sublease the Premises or any part thereof. Subject to the provisions of this Article 16, Landlord shall not unreasonably withhold its consent to a proposed assignment or sublease. Any of the foregoing acts done without Landlord's consent shall be void and shall, at the option of Landlord, terminate this Lease. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of twenty-five percent (25%) or more of the capital stock in Tenant, shall be deemed an assignment of this Lease by Tenant for which Landlord's written consent to assignment is required. If Tenant is a partnership or limited liability company, a withdrawal or change, voluntarily, involuntarily or by operation of law, of any general partner or any manager or managing member, as applicable, or any partner or partners or member or members, as applicable, owning a total of twenty-five percent (25%) or more of the partnership interest of such partnership or membership interest of such limited liability company, as applicable, or the dissolution of the partnership or limited liability company, shall be deemed an assignment of this Lease by Tenant for which Landlord's written consent is required.

Notwithstanding any provisions of this Article 16 to the contrary, Tenant shall have the right to assign this Lease or sublease the Premises or any portion thereof, without Landlord's consent and without allowing Landlord to exercise the rights set forth in Section 16.2 (a), (b) or (c) below, to any corporation which controls, is controlled by or is under common control with Tenant, or to any corporation

resulting from a merger or consolidation with Tenant, or to any person or entity which acquires all of the assets of Tenant's business as a going concern.

16.2. Notice and Procedure. If at any time or from time to time during the Term, Tenant desires to assign this Lease or sublease all or any part of the Premises, at least thirty (30) days prior to the date on which Tenant desires the assignment or sublease to be effective ("Transfer Date"), Tenant shall give written notice to Landlord setting forth the terms and provisions of the proposed assignment or sublease, the identity of the proposed assignee or subtenant and the space proposed to be assigned or subleased ("Subject Space"). Tenant shall promptly supply Landlord with such information concerning the business background and financial condition of such proposed assignee or subtenant, and such additional information concerning the proposed assignment or sublease, as Landlord may reasonably request, and Tenant's notice shall not be deemed to have been given until Landlord receives such information. Landlord shall have the option, exercisable by notice given to Tenant within thirty (30) days after Landlord's receipt of Tenant's notice (a) in the case of an assignment or sublease, to terminate this Lease as to the Subject Space as of the Transfer Date, (b) in the case of a sublease, to sublease the Subject Space from Tenant on the terms and provisions set forth in Tenant's notice, or (c) consent or decline to consent to the proposed assignment or sublease in accordance with the provisions of this Article 16.

16.3. Landlord's Consent. Landlord shall be entitled to consider any reasonable factor in determining whether or not to consent to a proposed assignment or sublease. Without limiting any other circumstances in which it may be reasonable for Landlord to withhold its consent to a proposed assignment or sublease, Tenant acknowledges and agrees that it shall be reasonable for Landlord to withhold its consent to a proposed assignment or sublease under any of the following circumstances:

a) The financial condition of the proposed assignee or subtenant shall not be equal to or greater than Tenant's financial condition as of the date hereof or shall not satisfy Landlord's then-current credit standards for tenants of the Building, or the proposed assignee or subtenant shall not otherwise have the financial capacity to perform all obligations under this Lease to be performed by Tenant;

b) The proposed use of the Premises by the proposed assignee or subtenant shall (i) not comply with the provisions of Article 9 hereof, (ii) not be consistent with the general character of businesses carried on by tenants of a first-class office building, (iii) increase the likelihood of damage or destruction to the Premises or Building, (iv) increase the density of occupancy of the Premises, (v) be likely to cause an increase in insurance premiums for insurance policies carried by Landlord with respect to the Building, or (vi) otherwise adversely impact the Premises, the Building or Landlord's interest therein; or

c) Any mortgagee or beneficiary under a deed of trust whose consent to the assignment or sublease is required shall not consent thereto.

d) If the subletting is of less than the entire Premises.

16.4. Conditions. If Landlord consents to an assignment or sublease in writing, Tenant shall be entitled to assign or sublease the Subject Space to the proposed assignee or subtenant, subject to the following conditions:

a) As of the effective date of such assignment or sublease, Tenant shall not be in default under this Lease;

b) The assignment or sublease shall be on the same terms set forth in Tenant's notice given to Landlord;

c) No assignment or sublease shall be valid and no assignee or subtenant shall take possession of the Premises or any portion thereof until an executed counterpart of such assignment or sublease has been delivered to Landlord;

d) No assignee or subtenant shall have a further right to assign or sublease;

e) Any proposed sublease would not result in more than two subleases of portions of the Premises being in effect during the term;

f) Any assignee shall have assumed in writing the obligations of Tenant under this Lease;

g) Any subtenant shall have agreed in writing to comply with all applicable terms and provisions of this Lease; and

h) Fifty Percent (50%) of any sums or other economic consideration received by Tenant as a result of such assignment or sublease, however denominated under the assignment or sublease, which exceed, in the aggregate, Base Rent which Tenant is obligated to pay Landlord under this Lease (prorated as to any sublease to reflect obligations allocable to that portion of the Premises subject to such sublease), shall be paid to the Landlord as additional rent under this Lease without affecting or reducing any other obligations of Tenant hereunder. At Landlord's request Tenant shall deliver to Landlord such evidence of the sums or other economic consideration received by Tenant as a result of the assignment or sublease as Landlord shall require from time to time.

16.5. Continuing Liability. Regardless of Landlord's consent, no sublease or assignment shall release Tenant from any of Tenant's obligations under this Lease, or alter, impair or diminish the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provisions hereof. Consent to one assignment or sublease shall not be deemed consent to any subsequent assignment or sublease. In the event of a default by an assignee or subtenant of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor. Landlord may consent to subsequent assignments of the Lease or subleases or amendments or modifications of the Lease with assignees of Tenant, without notifying Tenant or any

successor of Tenant, and without obtaining its or their consent thereto, and any such actions shall not relieve Tenant of liability under this Lease. If Tenant assigns the Lease or subleases the Premises or requests the consent of Landlord to any assignment or sublease, then Tenant shall, upon demand, pay Landlord an administrative fee of Five Hundred Dollars ($500) plus any attorneys' fees incurred by Landlord in connection with such act or request.

17. HOLDING OVER.

If after expiration of the Term or earlier termination of this Lease, Tenant remains in possession of the Premises with Landlord's express permission. Tenant shall become a tenant from month-to-month only, upon all the provisions of this Lease (except as to term and Base Rent), including the obligation to pay Tenant's Proportionate Share of Excess Operating Costs and Tenant' Proportionate Share of Excess Taxes, but the Rent payable by Tenant shall be increased to one hundred fifty percent (150%) of the Rent payable by Tenant at the expiration of the Term or earlier termination of this Lease. Such monthly Rent shall be payable in advance on or before the first day of each month. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, losses, liabilities, damages, costs and liabilities (including attorneys' fees) resulting from Tenant's failure to surrender possession, including, without limitation, any claims made by any succeeding tenant.

18. SURRENDER OF PREMISES.

At the expiration of the Term or upon earlier termination of this Lease, Tenant shall peaceably surrender possession the Premises to Landlord in broom-clean condition and in as good condition as when Tenant took possession, except for reasonable wear and tear. Tenant shall have the right to remove from the Premises any of Tenant's machinery, equipment, trade fixtures or furnishings which may be removed without causing damage to the Premises, and Tenant shall remove any Alterations and any other alterations, additions, improvements, machinery, equipment, trade fixtures or furnishings-which Landlord shall direct to be removed in accordance with the provisions of this Lase. Tenant shall promptly repair any damage to the Premises or the Building caused by any such removal. Any personal property of Tenant not removed from the Premises shall be deemed to have been abandoned by Tenant and, at Landlord's option, shall thereupon become the property of Landlord. If Landlord elects to remove all or any part of Tenant's personal property, the cost of removal, including the cost of repairing any damage to the Premises or the Building caused by such removal, and the cost of any storage shall be paid by Tenant. At the expiration of the Term or upon any earlier termination of this Lease, Tenant shall surrender all keys to the Premises to the Landlord. No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease.

19. DESTRUCTION OR DAMAGE.

19.1. Insured Casualty. If the Premises or the portion of the Building necessary for Tenant's occupancy are damaged by fire, earthquake, act of God, the elements or other casualty, and Landlord shall have received insurance proceeds sufficient to fully repair and restore the Premises and Building, Landlord shall, subject to the provisions of this Article, promptly repair the damage, if such repairs can, in Landlord's opinion, be completed within ninety (90) days after commencement of work. If Landlord determines that repairs can be completed within ninety (90) days after commencement of work, this Lease shall remain in full force and effect, except that if such damage is not the result of the negligence or willful misconduct of Tenant or Tenant's agents, employees, contractors, licensees or invitees, the Base Rent shall be abated to the extent Tenant's use of the Premises is impaired, commencing with the date of damage and continuing until completion of the repairs, but only to the extent of the rental loss insurance proceeds received by Landlord by reason of such damage. If, in Landlord's opinion, such repairs to the Premises or portion of the Building necessary for Tenant's occupancy cannot be completed within ninety (90) days after commencement of work, Landlord may elect, upon notice to Tenant given within thirty (30) days after the date of damage, to (a) repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be abated as provided above, or (b) terminate this Lease.

19.2. Uninsured Casualty. If the Premises or the portion of the Building necessary for Tenant's occupancy are damage by 'fire, earthquake; act of God, the elements or other casualty, and Landlord shall not have received insurance proceeds sufficient to fully repair and restore the Premises and Building, Landlord shall have the right to (a) repair the damage as soon as reasonably possible at Landlord's expense (unless the damage or destruction was caused by the negligence or willful misconduct of Tenant, its employees, agents, contractors or invitees, in which event Tenant shall pay all costs of repair), in which case this Lease shall continue in full force and effect, or (b) terminate this Lease, in which event Landlord shall give written notice to Tenant within thirty (30) days following the event of damage of Landlord's election to terminate this Lease as of the date of the event of damage, and if the damage was caused by the negligence or willful misconduct of Tenant, its employees, agents, contractors or invitees, Tenant shall be liable therefore to Landlord.

19.3. Building. If any other portion of the Building is damaged, Landlord may elect, upon notice to Tenant given within thirty (30) days after the date of such damage (but shall not be obligated), to repair such damage, in which event this Lease shall continue in full force and effect. If Landlord shall not elect to make such repairs, Landlord shall have the right to terminate this Lease as of the date of expiration of such thirty (30) day period.

19.4. Liability for Tenant's Property. In no event shall Landlord have any liability for, and in no event shall Landlord be required to repair or restore, any damage to or destruction of any Alterations or any machinery, equipment, trade fixtures, furniture or other property installed by or at the expense of Tenant or otherwise located in the

Premises. If Landlord shall not elect to terminate this Lease pursuant to this Article, Tenant shall promptly repair or restore all such property to the condition existing immediately prior to the event of damage. Landlord shall not be liable for any loss of business, inconvenience or annoyance arising from any repair or restoration of any portion of the Premises or Building as a result of any damage from fire or other casualty.

19.5. Waiver of Remedies. Landlord and Tenant acknowledge and agree that the rights and obligations of the parties in the event of the damage or destruction of the Premises shall be as set forth in this Article. Tenant hereby expressly waives any rights to terminate this Lease upon damage or destruction of the Premises or the Building, except as expressly provided by this Lease, including, without limitation, any rights pursuant to the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, as amended, or any other similar provisions of law.

20. EMINENT DOMAIN.

20.1. Taking. If the entire Building or Premises is taken by condemnation or in any other lawful manner for any public or quasi-public purpose, this Lease shall terminate as of the date of such taking, and Rent shall be prorated to such date. If less than the entire Building or Premises is so taken, this Lease shall be unaffected by such taking, provided that (a) Tenant shall have the right to terminate this Lease by notice to Landlord given within thirty (30) days after the date of such taking if twenty percent (20%) or more of the Premises is taken and the remaining area of the Premises is not reasonably sufficient for Tenant to continue operation of its business, and (b) Landlord shall have the right to terminate this Lease by notice to Tenant given within thirty (30) days after the date of such taking. If either Landlord or Tenant elects to terminate this Lease, the Lease shall terminate thirty (30) days after such notice. The Rent shall be prorated to the date of termination. If this Lease shall not be terminated upon such partial taking, the Base Rent and Tenant's Proportionate Share shall be equitably adjusted according to the remaining Rentable Area of the Premises and Building.

20.2. Temporary Taking. If the Premises shall be temporarily condemned or taken for governmental occupancy for a period of more than one year, this Lease shall terminate as of the date of taking, and Landlord shall be entitled to any and all compensation, damages, income, rent and awards in connection therewith. If the Premises shall be temporarily taken for a period of one year or less, this Lease shall remain in full force and effect, but any condemnation award as a result of such taking shall be payable to Tenant.

20.3. Condemnation Award. In the event of any taking, all of the proceeds of any award, judgment or settlement payable by the condemning authority shall be the exclusive property of Landlord, and Tenant hereby assigns to Landlord all of its right, title and interest in any award, judgment or settlement from the condemning authority. Tenant, however, shall have the right, to the extent that Landlord's award is not reduced or prejudiced, to claim from the condemning authority (but not from Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage to Tenant's personal property. In no event shall Tenant be entitled to

receive any award for any "bonus value" of this Lease or otherwise attributable to the value of Tenant's interest under this Lease or in or to the Premises. Each party hereby waives the provisions of California Code of Civil Procedure Sections 1265.120 and 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Premises.

20.4. Restoration. In the event of a partial taking of the Premises which does not result in a termination of this Lease, Landlord shall restore the remaining portion of the Premises as nearly as practicable to its condition prior to the condemnation or taking, but only to the extent of the portion of the condemnation award expressly made to Landlord for the purpose of making such restoration to the Premises. Tenant shall be responsible at its sole cost and expense for the repair, restoration and replacement of any Alterations or any of Tenant's machinery, equipment, trade fixtures, furniture or other personal property of Tenant.

21. INDEMNIFICATION; WAIVER.

21.1. Tenant's Indemnity. Tenant shall indemnify, defend and hold Landlord and Landlord's employees, agents or contractors harmless against and from losses, costs, claims, damages, liabilities or causes of action (including attorneys' fees) arising out of or in any way connected with: (a) Tenant's use or occupancy of the Premises or the conduct of Tenant's business thereon, or any work, activity or other things allowed or suffered by Tenant to be done in, on or about the Premises; (b) any breach or default by Tenant in any of Tenant's obligations under this Lease; (c) any negligent or willful act or omission of Tenant, its agents, employees, invitees or contractors; or (d) any damage to any property or injury, illness or death of any person occurring in, on or about the Premises, or any part thereof, arising at any time and from any cause whatsoever. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage or injury to any person or property in, on or about the Premises from any cause whatsoever.

21.2. Waiver. Neither Landlord or Landlord's agents, employees or contractors shall be liable for, and Tenant hereby waives all claims against Landlord and such other parties with respect to, any injury or damage which may be sustained by the person or property of Tenant, its employees, agents, invitees or customers, or any other person in or about the Premises, caused by or resulting from any cause whatsoever, including, without limitation, fire, steam, electricity, gas, water or rain which may leak or flow from or into any part of the Premises; the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air-conditioning or lighting fixtures; the interruption of any public utility or service; acts of the God or the elements, acts of public enemy, riot, strike, insurrection, war, court order or order of governmental authority; or explosion, fire or theft, in any case, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building or from other sources. Neither Landlord or Landlord's agents, employees or contractors shall be liable for any damages arising from any act or omission of any other tenant or occupant of the Building. In no event shall Landlord be liable or responsible in any way for any

loss of business by Tenant, lost profits of Tenant or any other consequential damages of Tenant or its employees, agents, invitees or customers, regardless of the cause therefore.

22. TENANT'S INSURANCE.

22.1. Throughout the Term, Tenant shall procure, pay for and maintain in effect commercial general liability insurance with respect to Tenant's construction of improvements on the Premises; the use, operation or condition of the Premises; and the operations of Tenant in, on or about the Premises, with a minimum coverage of not less than Three Million Dollars ($3,000,000) combined single limit for bodily injury, death and property damage liability.

22.2. Property Insurance. Throughout the Term, Tenant shall procure, pay for and maintain in effect a policy of "all risk" property insurance, with theft, vandalism and malicious mischief endorsements, covering any Alterations and Tenant's machinery, equipment, trade fixtures, furniture and other personal property from time to time in, on or about the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost from time to time. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. If this Lease shall terminate following a casualty as set forth herein, the proceeds of such insurance allocable to Alterations shall be paid to Landlord, and the proceeds of such insurance allocable to the other property set forth above shall be paid to Tenant.

22.3. Additional Insurance. Throughout the Term, Tenant shall procure, pay for and maintain an effect such additional insurance with such forms of coverage and in such amounts as Landlord shall reasonably require, including, without limitation, workers' compensation insurance and employers' liability insurance as required by law.

22.4. Requirements. All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies acceptable to Landlord and Landlord's lender and qualified to do business in the State of California. Each policy shall name Landlord, Landlord's agents and, at Landlord's request, any mortgagee of Landlord as an additional insureds, as their respective interests may appear. Each policy shall contain (a) a cross-liability endorsement, (b) a provision that such policy and the coverage evidenced thereby shall be primary and noncontributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance, and (c) a waiver by the insurer of any right of subrogation against Landlord to the extent required under Section 22.6 below. A copy of each paid up policy (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter within thirty (30) days after any demand by Landlord therefore. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancelable except after thirty (30) days' written notice to Landlord and Landlord's lender. Tenant shall furnish Landlord with renewals or "binders" of any such policy at least ten (10) days prior to the expiration thereof. Tenant agrees that if Tenant does not take out and maintain such insurance,

Landlord may (but shall not be required to) procure such insurance on Tenant's behalf and charge Tenant for the premiums together with interest thereon at the Interest Rate, payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Tenant, provided such blanket policies expressly afford coverage to the Premises, Landlord, Landlord's mortgagee and Tenant as required by this Lease.

22.5. Adjustments. Landlord shall have the right, periodically during the Term, but not more frequently than once each twelve (12) months, to require that Tenant increase the coverage amounts for the insurance that Tenant is obligated to carry under this Lease to amounts to equal to the then-prevailing coverage amounts required by prudent landlords of comparable office buildings in San Francisco, California, as determined by Landlord in its reasonable judgment.

22.6. Waiver of Subrogation. Landlord and Tenant each hereby waive all rights of recovery against the other party, on account of loss by or damage to the waiving party or its property or the property of others under its control, to the extent that such loss or damage is insured against under any property insurance policy which either may have in force at the time of the loss or damage. To the extent that such insurance endorsement is available at no or nominal additional premium charge and does not adversely affect the ability of such party to obtain such insurance, Landlord and Tenant each agree to obtain for the benefit of the other party in the insurance policies carried by the first party a waiver or any right of subrogation which any insurer of the party may acquire.

23. SUBORDINATION AND ATTORNMENT.

23.1. Subordination of Lease. This Lease shall be subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount now or hereafter encumbering Landlord's interest in the Premises or Building, all without the necessity of having further instruments executed on the part of Tenant in order to effectuate such subordination. Upon the written request of Landlord, Tenant shall execute, acknowledge and deliver to Landlord such further instruments evidencing the subordination of this Lease to the lien of any such mortgages or deeds of trust as may be required by Landlord, and Tenant shall attorn to any such mortgagee or beneficiary under any mortgage or deed of trust in the event of a foreclosure or a deed in lieu of foreclosure, or other purchaser or a grantee in respect thereof; provided, however, that each mortgagee or beneficiary under any such mortgage or deed of trust, or purchaser or grantee in respect thereof, shall agree not to terminate or disturb Tenant's possession of the Premises under this Lease in the event of a foreclosure of such mortgage or deed of trust or a deed in lieu thereof, as long as Tenant is not in default under this Lease at such time. Notwithstanding the foregoing, any mortgagee or beneficiary under a mortgage or deed of trust may at any time subordinate its mortgage or deed of trust to this Lease in all or in part, without Tenant's consent, by execution of a written instrument subordinating such mortgage or deed of trust to this Lease, in which case this Lease shall be deemed prior to such mortgage or deed of trust without regard to their respective dates of execution, delivery and/or recording.

23.2. Approval by Lenders. Tenant acknowledges that the provisions of this Lease may be subject to the approval of any lender that may hereafter make a loan secured by a mortgage or deed of trust on the Premises or Building. If such lender shall require, as a condition of such financing that modifications be made to this Lease, at Lender's request, Tenant agrees to execute appropriate amendments to this Lease to effect such modifications; provided, however, that such modifications shall not change the size, location or dimensions of the Premises or increase the amount of the Rent or the other amounts payable by Tenant under this Lease.

24. ESTOPPEL CERTIFICATES.

Within ten (10) days after written request from Landlord, Tenant shall execute and deliver to Landlord or Landlord's designee a written statement certifying (a) that this Lease is unmodified and in full force and effect, or is in full force and effect as modified and stating the modifications; (b) the amount of Base Rent and the date to which Base Rent and additional rent have been paid; (c) the amount of any Security Deposit made with Landlord; (d) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default; (e) that Tenant is not in default hereunder, or stating such defaults as Tenant shall specify; and (f) certifying as to such other matters as Landlord may reasonable require. Any such statement may be relied upon by a purchaser, assignee or lender. Tenant's failure to execute and deliver such statement within the time required shall, at Landlord's election, be a default under this Lease and shall also be conclusive upon Tenant as to the matters set forth in such statement.

25. TRANSFER OF LANDLORD'S INTEREST.

The term "Landlord" as used herein shall mean only the owner or owners at the times in question of title to the Premises or the Building. In the event of any sale or transfer by Landlord of the Premises or Building, Landlord shall be and is hereby entirely freed and relieved of any and all liability and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises, Building or Lease occurring after the consummation of such sale or transfer. If any Security Deposit has been made by Tenant, Landlord may transfer the Security Deposit to Landlord's successor and upon such transfer, Landlord shall be relieved of further liability with respect thereto. This Lease shall not affected by any such sale or transfer, and Tenant agrees to attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of Landlord or Tenant.

26. DEFAULT.

26.1. Tenant's Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

a) Tenant abandons or vacates the Premises and fails to pay Rent when due; or

b) Tenant fails to pay when due any Rent or in the case of any other amounts required to be paid by Tenant under this Lease within five (5) days after written receipt of notice; or

c) Tenant fails to perform any other covenant, agreement or obligation contained in this Lease, and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; or

d) A writ of attachment or execution is levied on Tenant's interest under this Lease; or

e) Tenant makes a general assignment for the benefit of creditor, or provides for an arrangement, composition, extension or adjustment with its creditors; or

f) Tenant files a voluntary petition for relief under the U.S. Bankruptcy Code or any other federal or state bankruptcy, insolvency or debtor relief laws (collectively, "Insolvency Laws"), or a petition for relief is filed against Tenant under any Insolvency Laws and not withdrawn or dismissed within forty-five (45) days thereafter; or

g) Appointment of a receiver, trustee, custodian or other person to take possession of all or substantially all of Tenant's assets; or

h) Commencement of proceedings for winding up or dissolving (whether voluntary or involuntary) Tenant, if Tenant is a corporation, partnership or limited liability company.

26.2. Remedies. In the event of Tenant's default hereunder, then in addition to any other rights or remedies Landlord may have under any law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to do the following:

a) Terminate this Lease and Tenant's right to possession of the Premises and reenter the Premises and take possession thereof, and Tenant shall have no further claim to the Premises or under this Lease;

b) Continue this Lease in effect, reenter and occupy the Premises for the account of Tenant, and collect any unpaid Rent or other charges which have or thereafter become due and payable; and/or

c) Reenter the Premises under the provisions of subparagraph (b), and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

If Landlord reenters the Premises under the provisions of subparagraphs (b) or (c) above, Landlord shall not be deemed to have terminated this Lease or the obligation of Tenant to pay any Rent or other amounts payable hereunder, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease: In the event of any reentry or retaking of possession by Landlord, Landlord shall have the right, but not the obligation, to remove all or any part of Tenant's

personal property in the Premises and to place such property in storage at a public warehouse at the expense and risk of Tenant. If Landlord elects to relet the Premises for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such reletting; third, to the payment of the cost of any alterations or repairs to the Premises; fourth, to the payment of Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If that portion of rent received from the reletting which is applied against the Rent due hereunder is less than the amount of the Rent due, Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as determined, any costs and expenses incurred by Landlord in connection with such reletting or in making alterations and repairs to the Premises, which are not covered by the rent received from the reletting.

If Landlord shall terminate this Lease under the provisions of subparagraphs (a) or (c) above, in addition to any of the rights and remedies to which Landlord may be entitled under applicable law, Landlord may recover as damages from Tenant the following:

(1) Past Rent. The worth at the time of the award of any unpaid Rent which had been earned at the time of termination; plus

(2) Rent Prior to Award. The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(3) Rent After Award. The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the rental loss that Tenant proves could be reasonably avoided; plus

(4) Proximately Caused Damages. Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses (including attorneys' fees), incurred by Landlord in (a) retaking possession of the Premises, (b) maintaining the Premises after Tenant's default, (c) preparing the Premises for reletting to a new tenant, including any repairs or alterations, and (d) reletting the Premises, including brokers' commissions.

"The worth at the time of the award" as used in subparagraphs (1) and (2) above is to be computed by allowing interest at the Interest Rate. "The worth at the time of the award" as used in subparagraph (3) above is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank situated nearest to the Premises at the time of the award plus one percent (1%).

The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than the failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

26.3. Landlord's Default. In no event shall Landlord be deemed to be in default under this Lease unless and until Landlord shall have defaulted in the performance of its obligations under this Lease and Tenant shall have given to Landlord written notice of the default and, within a reasonable period of time following Landlord's receipt of such notice, but in no event less than thirty (30) days following Landlord's receipt of such notice, Landlord shall not commence diligently to prosecute the cure of such default to completion. In the event of any alleged default on the part of Landlord under this Lease, Tenant shall give notice by registered mail to any beneficiary or mortgagee of a deed of trust or mortgage encumbering the Premises whose address shall have been furnished to Tenant, and shall offer such beneficiary or mortgagee a reasonable opportunity to cure the default, including time to obtain possession of the Premises by power of sale or judicial foreclosure, if such shall be necessary to effect a cure. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any amount against any payments of Rent or any other amounts due and payable under this Lease except as otherwise specifically provided herein. The liability of Landlord (including all persons and entities that comprise Landlord) under this Lease or otherwise in the connection with the Premises or the Building shall be limited to Landlord's interest in the Building, and in no event shall any other assets of Landlord or any assets of any constituent partner or member of Landlord be subject to any liability arising out of or in connection with this Lease, the Premises or the Building on behalf of itself and all persons claiming by, through, or under Tenant, Tenant expressly waives and releases Landlord from any personal liability for breach of this Lease.

27. BROKERS.

Tenant represents and warrants that Tenant has not dealt with any real estate broker, agent, finder or salesperson in connection with this Lease, except the real estate broker listed in Article 1. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all losses, costs, claims, damages, liabilities and cause of action (including attorneys' fees) arising out of or relating to any breach of the foregoing

representation warranty or arising out of or related to any claim made by any broker, agent, finder, or salesperson claiming to have dealt with Tenant.

28. NOTICES.

All notices and other communications permitted or required to be given under this Lease shall be in writing and deemed duly served or given when sent via facsimile, personally delivered or transmitted by a private nationally recognized overnight courier service, or forty-eight (48) hours after deposit in the United States mail, certified or registered, postage prepaid, and addressed as follows: (a) if to Landlord, to Landlord's Notice Address and to the Building manager, and (b) if to Tenant, to Tenant's Notice Address; provided, however, notices to Tenant shall be deemed duly served or given if delivered or mailed to Tenant at the Premises. Landlord and Tenant may from time to time by written notice to the other party designate another address for receipt of future notices.

29. QUIET ENJOYMENT.

Tenant, upon paying the Rent and performing all of its other obligations under this Lease, shall peaceably and quietly enjoy the Premises throughout the Term without any hindrance or interruption by Landlord or any person lawfully claiming by, through or under Landlord, subject to the terms of this Lease and to any mortgage, or deed of trust to which this Lease may be subordinate.

30. FORCE MAJEURE.

Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes, lockouts, other labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Notwithstanding the foregoing, in no event shall Tenant's obligation to pay Rent or other amounts payable under the Lease be excused or delayed.

31. SIGN CONTROL.

Tenant shall not place or cause to be placed, erected or maintained on any exterior door, wall, window or roof of the Premises or the Building, or on the glass of any window or door of the Premises, or on any sidewalk or other location outside of the Premises, any sign, plaque, decoration, light, lettering or other advertising material of any kind or description (collectively, "Signage") without Landlord's prior written consent. The size, content, design and/or location of any Signage shall be subject to Landlord's prior written approval, and shall comply with all applicable statutes, ordinances, rules and regulations of governmental authorities. If Tenant shall place or cause to be placed or shall maintain any Signage in violation of the foregoing provisions then, without limiting Landlord's other rights by reason thereof, Landlord shall have the right to cause the same to removed without notice to Tenant and without being liable to Tenant by reason of such removal.

Landlord shall have the right to charge the cost of removal to Tenant as additional rent hereunder, payable within ten (10) days of written demand by Landlord. Landlord shall have the right to place or cause to be placed and to maintain on the exterior of the Building such Signage as Landlord shall desire.

32. MISCELLANEOUS.

32.1. Accord and Satisfaction; Allocation of Payments. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than on account of the earliest due Rent. No endorsement or statement on any check or letter accompanying any check or payment made on account of Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right in its sole discretion to apply any payment received from Tenant to any amount owing by Tenant and then due and payable.

32.2. Attorneys' Fees. If any action or proceeding is brought by either party against the other pertaining to or arising out of this Lease, the prevailing party in such action or proceeding shall be entitled to recover all costs and expenses of such action or proceeding, including attorneys' fees, and costs.

32.3. Captions. The captions of Articles and Sections of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease. All references to Article and Section numbers refer to Articles and Sections in this Lease.

32.4. Governing Law. This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

32.5. Consent. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have no claim for, and hereby waives the right to any claim against Landlord for, money damages by reason of any refusal, withholding or delaying by Landlord of any consent or approval, and in such event Tenant's only remedies therefore shall be an action for specific performance, injunction or declaratory judgment to enforce any right of such consent or approval.

32.6. Authority. If either Tenant or Landlord executes this Lease as a corporation, partnership or limited liability company, each of the persons executing this Lease on behalf of the party does hereby covenant and warrant that it is a duly authorized and existing entity, that it has full right and authority to enter into this Lease, and that each of the persons executing this Lease on behalf of the party are authorized to do so. Upon request, either party shall provide the other with evidence reasonably satisfactory to the other confirming the foregoing covenants and warranties.

32.7. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Lease.

32.8. Execution of Lease; No Option. The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation of or option for Tenant to lease, or otherwise create any interest of Tenant in the Premises or any other premises within the Building. The execution of this Lease by Tenant and its return to Landlord shall not be binding on Landlord notwithstanding any time interval, until Landlord has in fact signed and delivered this Lease to Tenant.

32.9. Financial Statements. Tenant shall promptly furnish Landlord, from time to time, upon Landlord's written request, with financial statements reflecting Tenant's current financial condition. Tenant represents and warrants that all financial statements, records and information furnished by Tenant to Landlord in connection with this Lease are true, correct and complete in all respects.

32.10. Further Assurances. Each party shall promptly execute all documents and take such other and further acts as maybe reasonably requested by the other party in order to give effect to the provisions of this Lease.

32.11. Prior Agreements, Amendments. This Lease contains all of the agreements of the parties with respect to any matter covered in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. This Lease may not be amended except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

32.12. Recording. Tenant shall not record this Lease without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and acknowledge a "short form" or memorandum of this Lease for recording purposes.

32.13. Severability. If any provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

32.14. Successors and Assigns. Subject to the provisions of Article 16 of this Lease, this Lease shall be binding upon, and shall inure to the benefit of, the heirs, personal representatives, successors and assigns of the parties hereto.

32.15. Time of the Essence. Time is of the essence of this Lease and each and every provision hereof.

32.16. Waiver. No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant shall impair such right or remedy or be construed as a waiver of such default. The receipt and acceptance by Landlord of delinquent Rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular Rent payment involved. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any

subsequent act by Tenant. Any waiver by Landlord or any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

32.17. No Merger. A voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, either terminate any existing subleases or operate as an assignment to Landlord of any such subleases.

32.18. No Light, Air or View Easement. Nothing contained in this Lease shall grant to or confer upon Tenant any right to receive any particular amount or level of light, air or view from the Premises. Any diminution in or shutting off of light, air or view by any structure which is now or may hereafter be erected on property adjacent to the Building shall in no way affect this Lease or impose any liability upon Landlord. Noise, dust or vibration or other aspects of the new construction of improvements on property adjacent to the Building, whether or not owned by Landlord, shall in no way affect this Lease or impose any liability on Landlord.

32.19. No Representations or Warranties. Neither Landlord nor Landlord's officers, directors, shareholders, members, partners, employees, agents or contractors have made any representations or warranties with respect to the Premises, the Building or this Lease, except as expressly set forth herein.

32.20. Name. Tenant shall not use the name of the Building for any purpose other than as an address of the business to be conducted by Tenant in the Premises. Landlord shall have the right to change the name of the Building and/or the street address of the Building from time to time in Landlord's sole discretion.

32.21. Exhibits, Addendum. The exhibits listed below and the addendum, if any, listed below, are incorporated by reference into this Lease:

a) Exhibit "A" - Floor Plan of Premises

b) Exhibit "B" - Rules and Regulations

c) Exhibit "C" - Work Agreement

d) Addendum

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first set forth above.

LANDLORD	**TENANT**
M & E, LLC, a California Limited Liability	Peacock Construction, Inc., a California Corporation
By: /s/ Elsie Sze Its: Director Date: June 7, 2011	By: /s/ Kyle Peacock Its: Vice President Date: June 3, 2011

EXHIBIT "A"

FLOOR PLAN OF PREMISES

EXHIBIT "B"

RULES AND REGULATIONS

Unless otherwise defined herein, capitalized terms used in these Rules and Regulations have the meanings given to such terms in the Lease.

The sidewalks, halls, passages, exits, vestibules, entrances, public areas, elevators and stairways of the Building shall not be obstructed by any of the Tenants or used by them for any purpose other than ingress to and egress from their respective Premises. Building stairwells are to be used for emergency purposes only. The halls, passages, exits, entrances, elevators and stairways are not for the general public, and Landlord shall, in all cases, retain the right to control and prevent access thereto by all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation and interests of the Building and its Tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities or activities which interfere with the quiet enjoyment of other occupants of the Building. No Tenant and no employee or invitee of any Tenant shall go upon the roof of the Building. If the Premises are situated on the ground floor with direct access to the street, then Tenant shall, at Tenant's expense, keep the sidewalks and curbs directly in front of the Premises clean and free from dirt, refuse and other obstructions.

No sign, placard, picture, name, advertisement or notice visible from the exterior of any Tenant's Premises shall be inscribed, painted, affixed or otherwise displayed by any Tenant on any part of the Building without the prior written consent of Landlord. Landlord shall have the right to remove, at Tenant's expense and without notice or liability, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors, windows and walls shall be printed, painted, affixed or inscribed at the expense of the Tenant by a person or entity selected by Landlord, using materials of Landlord's choice and in a style and format approved by Landlord. Written material visible from outside the Building will not be permitted. Landlord shall place Tenant's name on the directory in the lobby of the Building and on the individual floor directory, if available. Landlord reserves the right to restrict the amount of directory space utilized by Tenant. Tenant shall not have the right to have additional names placed on the directory without Landlord's prior written consent. If such consent is given, the addition of such names shall be at Tenant's expense.

The Premises shall not be used for the storage of merchandise held for sale to the general public, for lodging or sleeping. No cooking shall be done or permitted by any Tenant on the Premises, except the use by the Tenant of Underwriter's Laboratory approved microwave oven or equipment for brewing coffee, tea, hot chocolate and other similar beverages which shall be permitted, provided that the power required by such equipment shall not exceed that amount which can be provided by a 30-amp circuit and that such use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations. Repair and maintenance of garbage disposals, dishwashers, icemakers and other similar equipment shall be at Tenant's expense. If the Premises or any part of the Building become infested with vermin as a result of Tenant's use, Tenant shall reimburse Landlord for the expense of extermination.

No Tenant shall employ any person or persons other than the janitor of Landlord for the purpose of cleaning the Premises, unless otherwise agreed to by Landlord in writing. Except with the written consent of Landlord, no person or persons other than those approved by Landlord shall be permitted to enter the Building for the purpose of cleaning the same. No Tenant shall cause any unnecessary labor by reason of such Tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall not be responsible to Tenant for any loss of or damage to property on its Premises, however occurring.

Landlord will furnish each Tenant with two keys to each door lock to its Premises and if reasonably required for access to the Premises, the Building, free of charge. Landlord may make a reasonable charge for any additional keys. No Tenant shall have keys made except by Landlord's designated locksmith. No Tenant shall alter any lock or install a new or additional lock or bolts on any door of its Premises without the prior written consent of Landlord. Tenant shall in each case furnish Landlord with a key for any such lock. Each Tenant, upon the termination of its tenancy, shall deliver to Landlord all keys to doors in the Building which shall have been furnished to Tenant. In the event of the loss of any key furnished to Tenant by Landlord, Tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such a charge.

The carrying in or out of freight, furniture or bulky material of any description must take place during such hours as Landlord may from time to time reasonably determine, which shall not include peak hours of elevator usage. Any damage caused by such activities shall be repaired by Landlord, at Tenant's expense. Landlord shall designate appropriate entrances and a "freight" elevator, if available, for deliveries or other transportation of goods to or from the Premises and Tenant shall not use any other entrances Or "elevators" for such purposes. The installation and moving of such freight, furniture or bulky material shall be made upon previous notice to the Building Manager and the persons employed by the Tenant for such work must be reasonably acceptable to Landlord. Tenant may, subject to the provisions of the immediately preceding sentence, move freight, furniture, bulky matter and other material into or out of the Premises after 6 p.m. and before 7 a.m., Monday through Friday and on Saturdays after 1:00 p.m. and anytime on Sundays; provided Tenant pays the additional costs, if any, incurred by Landlord for elevator operators, security guards and other expenses arising by reason of such move by Tenant. If, at least two days prior to such move, Landlord requests the Tenant to deposit with Landlord, as security for Tenant's obligation to pay such additional costs, a sum which Landlord reasonably estimates to be the amount of such additional costs, then Tenant shall deposit such sum with Landlord as security for such costs. Landlord shall have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building and placed in the Premises. Heavy objects, if considered necessary by Landlord, shall stand on wood strips of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such property from any cause and all damage done to the Building by moving or maintaining such property shall be repaired at the expense of Tenant. Business machines and other equipment shall be placed and maintained by Tenant at Tenant's expense in a setting sufficient, in Landlord's reasonable judgment, to absorb and prevent unreasonable vibration and prevent noise and annoyance.

No Tenant shall use or keep in the Premises or the Building any kerosene, gasoline or flammable or combustible fluid or material other than limited quantities thereof reasonably

necessary for the operation or maintenance of office equipment; or without Landlord's prior written approval, use any extension cords, method of heating or air conditioning, including, without limitation, portable floor heaters and fans, other than that supplied by Landlord. No Tenant shall use or keep or permit to be used or kept any hazardous or toxic materials or any foul or noxious gas or substance in the Premises or permit or suffer the Premises or the Building to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors, vibrations, or interfere in any way with other tenants or those having business therein.

Landlord shall have the right, exercisable without notice and without liability to any tenant, to change the name and street address of the Building.

Any Tenant and its employees, agents or associates or other persons entering or leaving the Building after ordinary business hours will be required to sign the Building Register, if any, and take reasonable measures to assure that the front door of the Building is closed and latches. The lobby attendant, if any, in charge reserves the right, on behalf of the Landlord, to refuse to admit Tenant or any of Tenant's employees, agents, or associates or any other person to the Building after ordinary business hours without prior notification from the Tenant or other satisfactory identification demonstrating such person's right to access to the Building. Each Tenant shall be responsible for all persons for whom it requests after-hours access and shall be liable to Landlord for all acts of such persons. Landlord shall, in no case, be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In the case of invasion, mob, riot, public excitement or other circumstances rendering such action advisable in Landlord's opinion, Landlord reserves the right to prevent access to the Building during the continuance of the same by such action as Landlord may deem appropriate including closing doors. Landlord also reserves the right to exclude or expel from the Building any person who, in Landlord's judgment, is not in an area of the Building permitted by such person, intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Building.

No curtains, draperies, blinds, shutters, shades, screens or other coverings hangings or decorations shall be attached to, hung or placed in, or used in connection with any window of the Building without the prior written consent of Landlord. No files, cabinets, boxes, containers or similar items shall be placed in, against or adjacent to any window of the Building so as to be visible from the outside of the Building. Tenant shall cooperate fully with Landlord in obtaining maximum effectiveness of the cooling system of the Building by closing draperies and other window coverings when the sun's rays fall upon windows of the Premises. Tenant shall not obstruct, alter or in any way impair the efficient operation of Landlord's heating, ventilating, air conditioning, electrical, fire safety or lighting systems, nor shall Tenant tamper with or change the setting of any thermostat or temperature control valves in the Building other than room thermostats installed for Tenant's use. Landlord reserves the right to install solar film on the windows of the Building to aid the efficiency of the HVAC system and to reduce energy costs. Tenant shall not remove solar film from any window. Tenant shall also cooperate with Landlord to comply with any governmental energy-saving rules, laws or regulations. No bottles, parcels or other articles may be placed in the halls or in any other part of the Building, nor shall any article be thrown out of the doors or windows of the Premises.

Each Tenant shall make reasonable efforts to secure its valuables, see that the doors of its Premises are closed and locked, that all water faucets, water apparatus, equipment, lights and other utilities are shut off before Tenant or Tenant's employees leave the Premises, so as to prevent waste or damage; and for any default or carelessness in this regard, Tenant shall make good all injuries sustained by other tenants or occupants of the Building or by Landlord. On multiple tenancy floors all Tenants shall keep the doors to the Building corridors closed at all times except for ingress and egress.

The lavatory rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed; no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees or invitees, shall have caused it. Landlord may require that all or some of the toilet rooms be locked. In such event, a reasonable number of keys shall be provided to Tenant. Tenant shall pay for all replacement keys and the cost of changing the lock or locks opened by such key if Landlord deems it necessary.

No Tenant shall install any radio or television antenna, loud speaker or other device on the roof or the exterior walls of the Building without the prior written consent of Landlord. No awnings, air conditioning units or other projections shall be attached to the outside walls or windowsills of the Building or otherwise project from the Building, without prior written consent of Landlord.

There shall not be used in any space or public halls of the Building, either by any Tenant or any others, any hand trucks except those-equipped with rubber tires and side guards or such other material-handling equipment as Landlord may approve. No other vehicles of any kind except wheelchairs or other similar devices shall be brought by any Tenant into the Building or kept in or about its Premises.

Each Tenant shall store all its trash and garbage within its Premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the city where the Building is located without being in violation of any law or ordinance governing such disposal. All garbage and refuse disposal shall be made only through entry ways and elevators provided for such purposes and at such times as Landlord shall designate.

Each Tenant shall participate in any recycling program for the Building, if any. Landlord shall provide information describing the Building's recycling program upon request. Tenant shall encourage participation in the recycling program by all employees. All recycling receptacles shall be retained in each Tenant's premises until pick-up by designated personnel at times and in the manner established by Landlord.

Canvassing, peddling, soliciting and distribution of handbills or any other written materials in the Building are prohibited and each Tenant shall cooperate to prevent the same.

Tenant and its authorized representative and invitees shall not make or permit any noise in the Building that is annoying, unpleasant or distasteful, interfering in any way with other tenants

or those having business with them, or bring into or keep within the Building or Common Areas any animal (except for seeing eye dogs), bird, bicycle or other vehicle except wheelchairs or other similar devices, or such vehicles as are permitted to park in the parking areas, if any, in accordance with the Rules and Regulations.

Tenant shall not mark, drive nails, screw or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof, except to install normal wall hangings. Tenant shall repair any damage resulting from non-compliance with this rule.

Landlord shall direct licensed electricians as to where and how telephone and electrical wires are to be introduced. No cutting or boring for wires shall be allowed without Landlord's consent. The location of telephones, call boxes and office equipment affixed to the Premises shall be subject to Landlord's approval. Neither Tenant, its subtenants, assignees, agents, employees nor contractors shall have access to or make any changes, alterations, additions, improvements, repairs or replacements (collectively, "work") to the telephone closets, telephone lines or any other communications facilities or equipment (collectively, the "telephone lines") within the Building without the prior written authorization of Landlord, which authorization may be withheld in Landlord's sole discretion. All contractors designated by Tenant to perform work on the telephone lines shall be licensed and shall be subject to Landlord's prior written approval, which approval may be withheld by Landlord in its sole discretion. Contractors performing work shall be required to provide evidence of insurance coverage satisfactory to Landlord, including, without limitation, naming Landlord as an additional insured on all liability policies. Any costs, expenses, and liabilities incurred by Landlord as a result of Tenant or Tenant's contractor performing work on the telephone lines shall be included in Tenant's indemnification obligations under the Lease.

The requirements of the Tenant will be attended to only upon appropriate application by an authorized individual to the office of the Building Manager by telephone, facsimile or in person. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord.

Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors and other means of entry to the Premises closed and locked when the Premises are unattended.

There shall be no smoking in the Building, which areas include, without limitation, the Tenant's premises, the lobby and the areas on individual floors in the Building devoted to corridors, fire vestibules, elevators, foyers, lobbies, electric and telephone closets, restrooms, mechanical and service rooms servicing the Building, janitor's closets, and other similar facilities for the benefit of all tenants and invitees. Tenant shall discourage its employees, agents, invitees and other person visiting Tenant from loitering outside the front of the Building and/or disposing of smoking equipment. Smoking shall mean carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or the lighting thereof or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind. Each Tenant shall cooperate to enforce this prohibition, including giving notice of such to its employees.

Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant or tenants, nor prevent Landlord from thereafter enforcing any such rules and regulations against any or all of the tenants of the Building.

These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease .of Premises in the Building. To the extent that these Rules and Regulations are inconsistent with any provision of the Lease, the provisions of the Lease shall control.

Landlord reserves the right to make such other reasonable Rules and Regulations as, in its judgment, may from time to time be needed for the safety, care and cleanliness of the Building, and for the preservation thereof.

Landlord shall not be responsible to Tenant or to any other person for the non-observance or violation of these Rules and Regulations by any other tenant or other person. Tenant shall be deemed to have read these rules and to have agreed to abide by them as a condition to its occupancy of the space leased.

ADDENDUM TO STANDARD OFFICE LEASE

THIS ADDENDUM TO STANDARD OFFICE LEASE shall constitute part of that certain Standard Office Lease dated May ___ 2011 ("Lease"), by and between M & E, LLC, a California Limited Liability Company ("Landlord") and Peacock Construction Inc., a California Corporation ("Tenant"), and the terms hereof shall for all purposes be deemed incorporated into the Lease and shall supersede any provisions of the Lease which are inconsistent herewith.

1. TENANT IMPROVEMENTS

Landlord shall deliver the Premises to Tenant in their as-is condition and Tenant shall be responsible for construction of all work within the premises, subject to the paragraph below.

Landlord, at Landlord's sole cost and expense shall provide Tenant with a Tenant Improvement allowance of [****] per rentable square foot ("TI Allowance") which shall be used to improve the Premises. Such TI Allowance shall be paid to Tenant within fifteen (15) days following completion of Tenant's work and receipt of all verifiable invoices and Lien Waivers. Tenant shall be responsible for all new improvements, including any ADA-triggered improvements within the Premises.

If necessary, Landlord is to be responsible for: Handicap code compliance for elevators and elevator accessories, restroom, drinking fountains, path of travel and any ADA-triggered improvements outside the Premises. Code compliance as it pertains to the Building, Building shell and Building common areas, including compliance with fire rules and regulations; any pre-existing structural work that may be required; yet not triggered by Tenant's improvements.

2. OPTION TO RENEW

Subject to the terms and conditions hereinafter set forth, Landlord hereby grants Tenant one (1) option to extend ("Option to Extend") the term of this Lease for one (1) five (5) year period, commencing immediately after the expiration of the initial term (the "Extension Term"). Tenant's election to exercise the above Option to Extend must be given to Landlord in writing not less than one hundred eighty (180) days or more than three hundred sixty five (365) days prior to expiration of the last lease year of the original Term.

Tenant's Option to Extend the term shall be upon the terms and conditions contained herein except as set forth below and except that there shall be no further option to extend the term beyond the Extension Term. If Tenant exercises the Option to Extend, the Base Expenses Year and Base Tax Year shall be changed from the date on the Lease Summary to the first year of the option period. This Option to Renew shall be deemed personal to Tenant and may not be exercised or assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant, including any permitted assignee or subtenant. Tenant shall continue possession of the Premises in its as is condition and Landlord shall have no obligation to do any work or otherwise to prepare the Premises for the Renewal Term. If Tenant exercises the Option to Extend, the Base Rent for the Premises during the Extension Term shall be ninety-five percent (95%) of the fair market rent for the Premises determined in the manner set forth in Paragraph 2 below; however, in no event will the Base Rent be less than the Base Rent as of the last month of the original lease term. As used herein, Fair Market Rent for the Premises shall mean the Basic Rental and all other monetary

payments and escalations, that Landlord could obtain from a third party desiring to lease the Premises, taking into account the size, location and floor level of the Premises, the quality of construction of the Building, the services provided under the terms of this Lease, the rental then being obtained for leases of space comparable to the Premises in the Building, and within the downtown San Francisco Financial District and all other factors that would be relevant to a willing third party desiring to lease the Premises and a willing Landlord desiring to let the Premises for the subject period of the lease term in determining the rental such party would be willing to pay or receive therefore provided that no allowance for the construction of Tenant improvements shall be taken into account in determining Fair market Rent.

Notwithstanding anything to the contrary contained herein, all option rights of Tenant pursuant to this Paragraph 2 shall automatically terminate without notice and be of no further force and effect whether or not Tenant has timely exercised the Option to Extend granted herein if an Event of Default exists at the time of exercise of the option or at the time of commencement of the Extension Term.

IN WITNESS WHEREOF, Tenant and Landlord have executed this Addendum to Standard Office lease as of the date of the Lease.

LANDLORD	**TENANT**
M & E, LLC, a California Limited Liability Company	Peacock Construction, Inc., a California Corporation
By: /s/ Elsie Sze Its: Manager Date: January 30, 2018	By: /s/ Kyle Peacock Its: President/CEO Date: January 29, 2018

FIRST EXTENSION OF LEASE
200 PINE STREET

This First Extension of Lease is made on January 26, 2018, by and between M&E LLC., a California Limited Liability Company, hereinafter called "Landlord", and Peacock Construction Inc., a California corporation, hereinafter called "Tenant".

RECITALS

A. The parties hereto made and entered into a written lease dated June 13, 2011, herein called "Lease". A copy of the Lease is attached hereto and marked Exhibit "B".

B. The parties wish to extend the Expiration Date of the Lease through May 31, 2021 and re-set the rent schedule beginning June 1, 2018.

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants herein, the parties agree as follows:

1. The parties agree to extend the term of the lease for an additional three (3) years from June 1, 2018 to May 31, 2021. The Expiration Date of the Lease shall be May 31, 2021

2. The following listed items of Paragraph 1. Definitions of said Lease are amended as follows:

a. Base Rent (for the First Extension Term)

[****]

The above stated rental amounts shall be effective as of June 1, 2018.

b. Base Year: The Calendar Year of 2018

c. Real Estate Brokers: Landlord: Colliers International Tenant: TRI Commercial

3. Tenant currently has a Security Deposit on file with Landlord in the amount of [****]. Concurrent with the execution of this First Amendment, Tenant shall increase its deposit to [****] by remitting [****] to Landlord,

4. Tenant acknowledges that the content of this Extension and any related documents are confidential information. Tenant shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Tenant's financial, legal, and office lease consultants.

5. Landlord and Tenant have read the attached Exhibit "A" regarding disability access and each parties' responsibilities therein.

6. Except as provided herein, all of the terms and conditions of the Lease between the parties hereto shall continue in full force and effect. Executed in San Francisco, California

LANDLORD	**TENANT**
M & E, LLC, a California Limited Liability Company	Peacock Construction, Inc., a California Corporation
By: /s/ Elsie Sze Its: Manager Date: January 30, 2018	By: /s/ Kyle Peacock Its: President/CEO Date: January 29, 2019

Exhibit A

DISABILITY ACCESS OBLIGATIONS NOTICE
PURSUANT TO SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 38.

Before you, as the Tenant, enter into a lease with Landlord for the following property consisting of premises located at the building located at 200 Pine Street, San Francisco, California ("Property"), please be aware of the following important information about the lease:

You May Be Held Liable for Disability Access Violations on the Property. Even though you are not the owner of the Property, you, as the tenant, as well as the Property owner. may still be subject to legal and financial liabilities if the leased Property does not comply with applicable Federal and State disability access laws. You may wish to consult with an attorney prior to entering this agreement to make sure that you understand your obligations under Federal and State disability access laws. The Landlord must provide you with a copy of the Small Business Commission Access Information Notice under Section 38.6 of the San Francisco Administrative Code in your requested language For more information about disability access laws applicable to small businesses, you may wish to visit the website of the Sari Francisco Office of Small Business or call 415-554-6134.

The Lease Must Specify Who Is Responsible for Making Any Required Disability Access Improvements to the Property. Under the law for the City and County of San Francisco, the lease must include a provision in which you, the Tenant, and the Landlord agree upon your respective obligations and liabilities for making and paying for required disability access improvements on the leased Property. The lease must also require you and the Landlord to use reasonable efforts to notify each other if they make alterations to the leased Property that might impact accessibility under federal and state disability access laws. You may wish to review those provisions with your attorney prior to entering this agreement to make sure that you understand your obligations under the lease.

PLEASE NOTE: The Property may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits.

By signing below I confirm that I have read and understood this Disability Access Obligations Notice.

LANDLORD

M&E, LLC
A California Limited Liability Company

Dated: January 30, 2018

By: /s/ Elsie Sze
Its: Manager

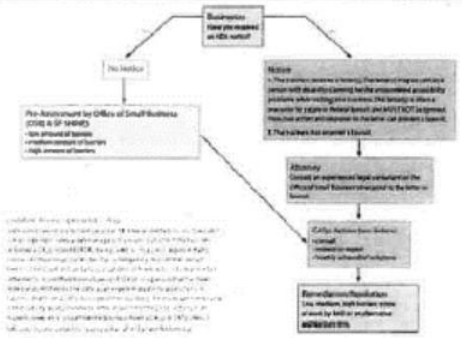
TENANT

Peacock Construction Inc.,
A California corporation

Dated: January 29, 2018

By: /s/ Kyle Peacock
Its: President/CEO

PROTECT YOUR BUSINESS FROM POTENTIAL ADA LAWSUITS



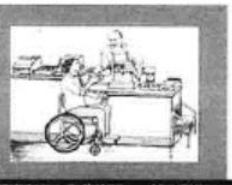
COMPLIANCE VS. LAWSUIT

BUSINESS RESOURCES

BUSINESS RESOURCES

A Guide to Disabled Accessibility Compliance

San Francisco



DISABLED ACCESSIBILITY

EXHIBIT B

DISABILITY ACCESS OBLIGATIONS NOTICE
PURSUANT TO SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 38

Before you, as the Subtenant, enter into a sublease with Sublandlord for the property consisting of premises located at the building located at 200 Pine Street, San Francisco, California (the "**Property**"), please be aware of the following important information about the sublease:

You May Be Held Liable for Disability Access Violations on the Property. Even though you are not the owner of the Property, you, as the subtenant, as well as the Property owner, may still be subject to legal and financial liabilities if the subleased Property does not comply with applicable Federal and State disability access laws. You may wish to consult with an attorney prior to entering into the sublease to make sure you understand your obligations under Federal and State disability access laws. The Sublandlord must provide you with a copy of the Small Business Commission Access Information Notice under Section 38.6 of the San Francisco Administrative Code in your requested language. For more information about disability access laws applicable to small businesses, you may wish to visit the website of the San Francisco Office of Small Business or call (415) 554-6134.

The Sublease Must Specify Who is Responsible for Makin Any Required Disability Access Improvements to the Property. Under the law for the City and County of San Francisco, the sublease must include a provision in which you, the Subtenant, and the Sublandlord agree upon your respective obligations and liabilities for making and paying for required disability access improvements on the subleased Property. The sublease must also require you and the Sublandlord to use reasonable efforts to notify each other if they make alterations to the subleased Property that might impact accessibility under Federal and State disability access laws. You may wish to review those provisions with your attorney prior to entering into the sublease to make sure that you understand your obligations under the sublease.

PLEASE NOTE: The Property may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits.

By signing below I confirm I have read and understand this Disability Access Obligations Notice.

SUBLANDLORD	**SUBTENANT**
Peacock Construction, Inc., a California Corporation	Jaguar Health, Inc, a Delaware corporation
By: Print Name: Title:	By: Print Name: Title:

PROTECT YOUR BUSINESS FROM POTENTIAL ADA LAWSUITS

Businesses
Have you received an ADA notice?

no → **No Notice**

Pre-Assessment by Office of Small Business (OSB) & SF SHINES
- low amount of barriers
- medium amount of barriers
- high amount of barriers

yes → **Notice**
1. The business receives a letter(s). The letter(s) may be sent by a person with disability claiming he/she encountered accessibility problems while visiting your business. This letter(s) is often a precursor to a state or federal lawsuit and MUST NOT be ignored. Proactive action and response to the letter can prevent a lawsuit.
2. The business has received a lawsuit.

Attorney
Contact an experienced legal consultant or the Office of Small Business to respond to the letter or lawsuit.

CASp Action (see below)
- consult
- inspection report
- "readily achievable" solutions

Remediation/Resolution
Low, medium, high barriers scope of work by AND or an alternative architecture firm.

Certified Access Specialist (CASp)
Signed into law on September 28, 2008, SB 1608 a Certified Access Specialist (CASp) report provides a defense against lawsuits, but only if the business obtained a CASp report BEFORE being sued. With a CASp report in hand, businesses may request a 90-day stay (a temporary stop) of the lawsuit filed in State Court, and an Early Evaluation Conference (EEC) to explore fair settlements. A Certified Access Specialist (CASp) is a person that has been tested and certified by the state as an expert in disability access laws. A business that hires a CASp to inspect their building helps ensure compliance with disability access standards. After inspection, the CASp writes up an inspection report as proof that the business hired a CASp. A CASp should help your business identify "readily achievable" barriers for removal.

COMPLIANCE VS. LAWSUIT

Compliance is a recommended investment as not only will your business be less vulnerable to drive-by lawsuits, but you gain a growing market of seniors, families with baby strollers, and persons with disabilities. Cost will depend on the type of alterations, and on what is affordable at the present and future. If you decide to do nothing and rely on "luck" that you will not be sued, consider the potential costs of being an "unlucky" defendant. The reality today is that more ADA lawsuits are targeting small ethnic and minority-owned businesses because they are likely to settle rather than incur the costs and risks of litigation. The average cost to comply with a plaintiff's requested barrier removal is less than $4,000, according to amicus curiae brief filed in the Ninth Circuit of Appeal, Jerry Doran v. Del Taco, Inc. Fighting a lawsuit including paying a settlement may cost around $35,000, according to OSB. Investing in Certified Access Inspection and "readily achievable" compliance before a lawsuit is the best way to protect your business from expensive lawsuits.

BUSINESS RESOURCES

Office of Small Business
City Hall, suite 110
1 Carlton B. Goodlett Place
San Francisco, CA 94102
415-554-6134, www.sfgov.org/osb

Certified Access Specialists
www.sfgov.org/osb

Asian Neighborhood Design
1245 Howard Street
San Francisco, CA 94103
415-575-0423, www.andnet.org

SF Shines – Office of Economic Workforce Development
City Hall, room 448
1 Carlton B. Goodlett Place
San Francisco, CA 94102
415-554-6969, www.oewd.org

San Francisco Bar Association
The Lawyer Referral and Information Service (LRIS) program offers businesses legal assistance from their panel of experienced lawyers.
www.sfbar.org/lawyerreferrals/index.aspx

BUSINESS RESOURCES

Department of Justice ADA Guide for Small Businesses
Business Briefs
www.ada.gov/business.htm#anchor-bbriefs

ADA Guide for Small Businesses
www.ada.gov/publicat.htm#Anchor-ADA-35324

DOJ toll-free ADA information line
800-514-0301

Department of Building Inspection – Technical Services Division
DBI staff persons are available to review state access requirements. Visit 1660 Mission Street, 4th floor to request a review of your business plans.
415-558-6084, www.sfgov.org/dbi

A Guide to Disabled Accessibility Compliance

San Francisco

Asian Neighborhood Design | Office of Small Business | SF Shines - Office of Economic Workforce Development

DISABLED ACCESSIBILITY

Two Sets of Access Laws
There are two different bodies of law in California that regulate disability access: a state building code, and a federal civil rights law. The state building code requirements for access are located in the California Code of Regulations, Title 24, Part 2, and are commonly referred to as Title 24.

The Americans with Disabilities Act of 1990 (ADA) is a sweeping federal civil rights law which prohibits discrimination against persons with disabilities. Specifically, Title III of the ADA requires public accommodations to provide goods and services to people with disabilities on an equal basis with the rest of the general public. The United States Department of Justice (DOJ) enforces the ADA.

Being compliant to the regulations of one law does not relieve your responsibilities to be compliant with the other set of laws.

Non Compliance
If the building is not compliant with California Title 24, the citizen complaint is routed to the Department of Building Inspection (DBI). DBI will send staff to visit the site and perform an inspection, and if necessary, the inspector will initiate actions to require the owner to correct the problem.

If the citizen's complaint is ADA driven, the plaintiff can take the business to civil court for remedy. The federal ADA does not have an "inspection" mechanism, and private lawsuits can be filed directly in federal courts by those who believe their civil rights have been violated.

Who is Required to Remove Barriers?
Barriers are defined by the ADA as obstacles to accessibility. Such obstacles make it difficult — sometimes impossible — for people with disabilities to do the things most of us take for granted — things like going shopping, working, dining in a restaurant or taking public transit. If your business provides goods and services to the public, you are required to remove barriers if doing so is "readily achievable." Such a business is called a public accommodation because it serves the public. If your business is not open to the public (no adjacent retail or open to tours), but is only a place of employment like a warehouse, manufacturing facility or office building, then there are fewer requirements to remove barriers. Such a facility is called a commercial facility. While the operator of a commercial facility has different requirements to remove barriers, you must comply with the ADA Standards for Accessible Design when you alter, renovate or expand your facility.

Readily Achievable
"Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. Determining if barrier removal is readily achievable is, by necessity, a case-by-case judgment. "Readily achievable" is based on factors including review of the overall nature of the business and its financial statements.

This document is intended as informal technical guidance.
It is NOT legal advice and does not replace the professional advice or guidance that an architect, CASp or attorney knowledgeable in ADA requirements can provide.

LOW BARRIERS

obstacles to accessibility that are minor, and most likely can be "readily achievable"

A. Service Counter Height and Visibility
A portion specified by local codes of the counter must be between 28"-34" above the floor.

B. Path of Travel Clearance
All aisles to public areas must be at least 36" wide and remain unobstructed.

C. Door Clearance
The pull-side of doors must have a clearance specified by local codes.

D. Door Hardware
All doors must be operable without action of pinching or grasping.

MEDIUM BARRIERS

obstacles that require more attention, and likely professional guidance

A. Step at Entrance
The entrance must be accessible for occupants in wheelchairs, with clearing and clearance requirements specified by local codes.

B. Restroom Vanity Clearance
The sink must provide knee clearance specified by local codes.

C. Undersized Path of Travel
All aisles to public areas must be at least 36" wide.

D. No Accessible Seating
A portion specified by local codes of seating must be accessible.

HIGH BARRIERS

obstacles that require a lot of attention, and definite professional guidance

A. Multiple Steps at Entrance
The entrance must be accessible for occupants in wheelchairs, with clearing and clearance requirements specified by local codes.

B. Step in Dining/Customer Space
Public zones must be accessible for occupants in wheelchairs, see note A

C. Undersized or Lack of Restroom
The correct number of accessible restrooms must be provided.

D. Ramp Exceeds Maximum Slope Allowed
Businesses must be accessible for occupants in wheelchairs, see note A.

ADA COMPLIANCE

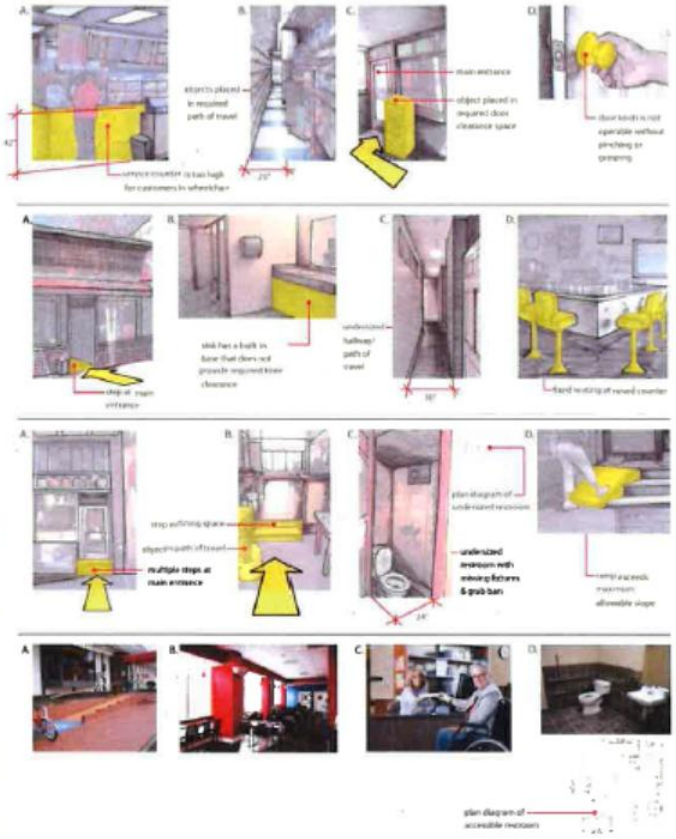
barriers are minimized or removed

A. Compliant Entry
The entrance is accessible by stairs and a compliant ramp.

B. Path of Travel Clearance
All aisles to public zones, including seating, restrooms, and food pick-up are at least 36" wide and remain unobstructed.

C. Compliant Counters
Service counter is between 28" - 34" above the floor.

D. Compliant Restroom
The accessible restroom has the required fixtures, dimensions and clearances.



COMMON MISCONCEPTIONS

I am exempt from compliance or "grandfathered"

The answer is **NO!** A place of public accommodation must remove barriers when it is "readily achievable" to do so. Although the facility may be "grandfathered" according to the local building code, the Federal ADA does not have a provision to "grandfather" a facility. While a local building authority may not require any modifications to bring a building "up to code" until a renovation or major alteration is done, the federal ADA requires that a **place of public accommodation** remove barriers that are readily achievable even when no alterations or renovations are planned. As a business you have an on-going obligation to bring your business into compliance.

I am exempt since my building has historic designation

Neither State nor Federal laws exempt historical buildings from compliance, but there are specific guidelines. In San Francisco, any building over 50 years old is considered as a potentially significant historical resource. Accessibility improvements to the entrance or exterior of these buildings may require additional review by Historic Preservation staff and may lengthen the **permitting process. Another common misconception is that City staff** will deny your application if the building is considered historic. This is extremely rare, though during the review process you will be required to find **alternatives that respect historic designs and materials while also providing** disabled access. Historically sensitive accessibility improvements may add cost to your project but are generally worth the investment over the long **run.**

Settling the lawsuit will relieve me of my responsibilities

Business owners need to know that the ADA is now a part of our society and that there is no limit to the number of times a business can be sued regarding accessible barriers. The best solution is to make the "readily achievable" physical changes and to understand that compliance is ongoing. If a business is sued over a physical barrier(s) to accessibility, they can still be sued for that same barrier in the future if it still exists.

Tenant vs. Landlord (Owner)

The federal ADA law states that any private entity who owns, leases, leases to, or operates a place of public accommodation shares **in the obligation to remove barriers. Tenants and property owners also share in the obligation, as often** times a negotiation must take place to determine who pays what costs, or percentage of costs for access compliance and/or litigation defense. Effective January 1, 2013, San Francisco law requires property owners of a commercial space of 7,200 square feet or less to provide a "Disabled Access Obligation Notice" before entering into or amending a lease. Effective July 1, 2013, State law requires a commercial property owner to state on a lease or rental agreement whether the property has undergone inspection by a certified access specialist (CASp). These two laws were passed to help assure businesses are informed of their ongoing obligation and aid in the prevention of lawsuits. There are also tax benefits that are available to each party in some cases to help pay for barrier removal.

Exhibit 10.5

CONSENT TO SUBLEASE AGREEMENT

This Consent to Sublease Agreement (this "Consent") is made by and among M&E, LLC ("Landlord"), Peacock Construction, Inc. ("Tenant") and Jaguar Health, Inc. ("Subtenant"), in connection with a certain sublease dated as of August 31, 2020 by and between Tenant and Subtenant (the "Sublease;" and the premises subleased thereby are referred to herein as the "Subleased Premises"). The Sublease is a sublease under a certain Office Lease dated as of June 7, 2011 by and between Tenant and Landlord as amended by that certain First Extension of Lease made on January 26, 2018, (the "Master Lease"). A copy of the Sublease is attached hereto as Exhibit A. Landlord hereby consents to the subletting by Tenant to Subtenant on the following terms and conditions:

1. Definitions. All capitalized terms used herein will have the meanings ascribed in the Sublease, or, if not defined therein, in the Master Lease.

2. Scope of this Consent. Nothing in this Consent or the Sublease shall: (i) constitute approval or ratification by Landlord of any of the provisions of the Sublease or any other agreement relating thereto (other than the actual demise of the Subleased Premises to Subtenant from Tenant) or constitute a representation or warranty on behalf of Landlord; (ii) waive or release Tenant from any of its obligations under the Master Lease or any other document affecting the Leased Premises or Subleased Premises, or waive any present or future default of Tenant under the Master Lease; (iii) modify, waive, amend or affect any provisions, covenants or conditions of the Master Lease or any rights or remedies of Landlord thereunder; or (iv) be construed as an acknowledgment of any obligation of Landlord to Subtenant under the Master Lease with respect to the Subleased Premises. This Consent is not assignable, and Landlord reserves the right to consent (or withhold consent) with respect to any other matter set forth in the Master Lease, including, without limitation, any further sublettings or occupancies of all or any portion of the Leased Premises, or assignments or other transfers of all or any portion of the Master Lease or any sublease or assignment. Landlord makes no representations or warranties of any kind in connection with the Sublease or this Consent, and Landlord takes no position as to whether any of the representations or warranties made by Tenant in the Sublease are true or correct.

3. Master Lease Superior. Subtenant acknowledges that any rights or remedies it has under the Sublease are derived from the Master Lease and, notwithstanding anything to the contrary contained herein or in the Sublease, Subtenant agrees to be bound by all of the terms and conditions of the Master Lease as fully and completely as if Subtenant were the original tenant under the Master Lease (except that Subtenant shall be obligated to pay the rental reserved under the Sublease with respect to the Subleased Premises).

4. Liability of Tenant. Tenant is and shall remain primarily liable for all charges incurred with respect to the Premises, including the Subleased Premises and for the full performance of all covenants and conditions set forth in the Master Lease (including, without limitation, all insurance and indemnity obligations (whether arising from any use of the Leased Premises or Subleased Premises by Tenant or Subtenant), the obligation to cure any default under or breach of the Master Lease (whether such default is caused by Tenant, Subtenant or

anyone claiming by, through or under either) and the obligation to make all payments under the Master Lease directly to Landlord).

5. Termination of Master Lease. If, at any time prior to the expiration or earlier termination of the term of the Sublease or Master Lease (or Subtenant's or Tenant's right to possession thereunder) or if the Master Lease or Sublease shall expire or be sooner terminated for any reason, then the Sublease shall simultaneously terminate. If such termination occurs, Subtenant shall vacate the Subleased Premises on or before the date of termination, and Subtenant hereby waives any right to receive any notice to quit in connection with such vacation or termination of its right to possess the Subleased Premises. Notwithstanding the foregoing, at Landlord's option and upon written demand from Landlord, Subtenant shall attorn to Landlord for the remainder of the term of the Sublease, such attornment to be upon all of the terms and conditions of the Master Lease (except that the Leased Premises shall be the Subleased Premises and the rent set forth in the Sublease shall be substituted for the annual Basic Rent and Tenant's Share of Basic Operating Cost set forth in the Master Lease). In no event, however, shall Landlord be (a) liable for any act or omission of Tenant, (b) subject to any offsets or defenses which Subtenant had or might have against Tenant, (c) bound by any rent or other payment paid by Subtenant to Tenant more than thirty (30) days in advance, (d) bound by any amendment to the Sublease not consented to in writing by Landlord; or (e) bound by any security deposit paid to Tenant unless such security deposit is actually received by Landlord. Subtenant agrees to execute from time to time documents reasonably satisfactory to Landlord in confirmation of said attornment. The provisions of this Paragraph shall be self-operative and shall apply notwithstanding the fact that, as a matter of law, the Sublease may otherwise terminate upon the termination of the Master Lease. Nothing contained in this Paragraph shall be construed to impair or modify any right otherwise exercisable by Landlord, whether under the Master Lease or any other agreement, at law or in equity, including, without limitation, the right to terminate Subtenant's right to occupy the Subleased Premises if Landlord elects not to recognize Subtenant. If Subtenant shall continue in possession of any portion of the Subleased Premises after the termination of the Master Lease without Landlord's express written permission, then such holdover shall be deemed to be an Event of Default under the Master Lease (for which no notice or cure period shall be applicable), entitling Landlord to all rights and remedies afforded to Landlord under the Master Lease, at law or in equity. Tenant shall immediately and vigorously pursue against Subtenant all rights and remedies available to Tenant under the Sublease, at law or in equity in order to remedy such holdover.

6. Indemnity. Subtenant shall indemnify, defend and protect Landlord and hold harmless of and from any and all claims, proceedings, loss, cost, damage, causes of action, liabilities, injury or expense arising out of or related to claims of injury to or death of persons, damage to property occurring or resulting directly or indirectly from the use or occupancy of the Subleased Premises or activities of Subtenant or its agents, employees, contractors or invitees in, on or about the Subleased Premises or Project, including claims arising out of Landlord's own negligence or intentional acts, except to the extent specifically covered under any indemnity of Landlord to Tenant under the Lease, such indemnity to include, but without limitation, the obligation to provide all costs of defense against any such claims. Notwithstanding anything to the contrary in the Master Lease and/or this Consent, Landlord has assumed no duty to directly indemnify Subtenant under the Sublease or Master Lease, and Landlord hereby expressly disclaims any such obligation.

7. Insurance. Subtenant hereby agrees, specifically for the benefit of Landlord that it shall maintain the insurance required to be maintained by Tenant under the Sublease, and further agrees that notwithstanding anything to the contrary contained in the Sublease, it shall name Landlord, Landlord's property manager from time to time and, if requested by Landlord, Landlord's lender as additional insureds tinder any policies of commercial liability insurance maintained by Subtenant. Subtenant shall, on or before the Effective Date, provide Landlord with a certificate of insurance or other evidence satisfactory to Landlord, that Subtenant has obtained the insurance required hereunder.

8. Notices.

(a) Subtenant shall simultaneously deliver a copy to Landlord of all notices sent to Tenant, in the manner set forth in the Master Lease to the address of Landlord set forth in the Master Lease, In addition, Tenant shall send to Landlord any notices sent to Subtenant under the Sublease. All notices to Subtenant shall be sent to the Subleased Premises.

(b) Landlord shall have no obligation to deliver to any other party copies of any notices under the Master Lease that are sent to Tenant or under the Sublease that are sent to Subtenant.

9. Ratification. By executing this Consent, each of Tenant and Subtenant acknowledges and agrees to be bound by all of the terms and conditions of this Consent, and each acknowledges that Landlord has agreed to execute this Consent based upon Tenant's, and Subtenant's acceptance of the terms and conditions hereof. As further inducement for Landlord to grant its consent to the Sublease, Tenant represents and warrants to Landlord, to the best of its knowledge as of the date hereof, that Tenant has no claims, counterclaims, defenses or set-offs against Landlord arising from or out of a breach or default by Landlord under the Master Lease, that neither Landlord nor Tenant is in default under any terms of the Master Lease, nor has any event occurred which, with the passage of time or giving of notice (or both), will constitute an Event of Default under the Master Lease, and that no fact or circumstance exists which would permit Tenant to terminate the Master Lease.

10. Broker. Tenant and Subtenant each represent and warrant that, no broker, agent, or finder is or might be entitled to a commission or compensation from Landlord in connection with the Sublease. Subtenant and Tenant, jointly and severally, each shall indemnify and hold harmless Landlord from and against any claims or causes of action for a commission or other form of compensation arising from the Sublease asserted by any person or entity. The provisions of this paragraph shall survive the termination or expiration of the Sublease and the Master Lease.

11. Effectiveness of Consent. This Consent shall not be effective unless and until (a) Landlord executes same and (b) Tenant reimburses to Landlord all fees of Landlord incurred in reviewing the Sublease, preparing this consent and all other matters related to the subleasing transaction referred to herein (which date shall be referred to as the "Effective Date"). It is expressly understood that Landlord shall have no obligation whatsoever to commence its review of the final Consent prior to execution thereof by Landlord, unless Landlord receives, (a) an original Consent signed by Tenant, and Subtenant and, (b) all payments required by this Consent

to be made to Landlord in connection with the execution hereof, and (c) all insurance certificates and other deliverables of Subtenant required under this Consent and the Sublease.

IN WITNESS WHEREOF, the parties hereto have executed this Consent to Sublease Agreement on this 31st day of August 2020.

LANDLORD:

M&E, LLC
a California Limited Liability Company

By: /s/ Elsie Sze
Name: Elsie Sze
Its: Director

TENANT:

Peacock Construction, Inc.
a California corporation

By: /s/ Kyle W. Peacock
Name: Kyle W. Peacock
Its: CEO

SUBTENANT:

Jaguar Health, Inc.
a Delaware corporation

By: /s/ Lisa A. Conte
Name: Lisa A. Conte
Its: President & CEO

Certain information marked as [****] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

MANUFACTURING AND SUPPLY AGREEMENT

This *Manufacturing and Supply Agreement* **("Agreement")** is entered into as of the 3rd September 2020 (the **"Effective Date")** between**:**

(i) **Glenmark Life Sciences Limited**, a company incorporated under the laws of India and having its registered office at Plot No 170-172, Chandramouli Industrial Estate, Mohol Bazarpeth Solapur-413 213, MH, India and having its corporate office at Glenmark House, B. D. Sawant Marg, Chakala, Andheri East, Mumbai 400099, India, **("Glenmark");** and

(ii) **Napo Pharmaceuticals, Inc.,** a wholly-owned subsidiary of Jaguar Health, Inc. ("Jaguar"), a Delaware corporation with its registered office at 201 Mission Street, Suite 2375, San Francisco, California 94105, USA **(**Napo Pharmaceuticals, Inc. and Jaguar are collectively referred to as **"Napo").**

"Glenmark" and **"Napo** may be referred to herein from time to time individually as a **"Party,"** and collectively as the **"Parties".**

RECITALS

***WHEREAS*,** subject to the terms and conditions set forth in this Agreement, Napo wishes to have Glenmark manufacture and supply to Napo and its Affiliates Crofelemer Final (as defined below) for the continued marketing of Napo's FDA-approved product, Mytesi®, and for any other Crofelemer-based product manufactured by NAPO or its Affiliates or any third party as appointed by NAPO for human use and/or veterinary use, and Napo has approached Glenmark for the manufacturing and fulfillment of Napo's needs for Crofelemer Final; and

***WHEREAS*,** Glenmark, itself or through one of its Affiliates, is willing to manufacture and supply Crofelemer Final for Napo from the Facility (as defined below), on the terms and conditions set forth below.

***NOW THEREFORE*,** in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "AAA" has the meaning set forth in Section 9.11C.

1.2 "Actual Cost" is defined in ***Appendix 1.2***

1.3 "Adulterated" is defined in under Section 501 of the FD&C Act.

1.4 "Affiliate" of a Party shall mean any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Party, as the case may be, but for only so long as such control exists. As used in this Section 1.4, "control" shall mean (a) direct or indirect beneficial ownership of at least 50% (or such lesser percentage which is the maximum allowed to

be owned by a foreign corporation in a particular jurisdiction) of the voting share capital or other equity interest in such Person or (b) the power to direct the management of such Person by contract or otherwise.

1.5 **"Agreement**" has the meaning set forth in the preamble hereto.

1.6 **"Applicable Law"** shall mean the applicable and then-effective provisions of any and all national, supranational, regional, state and local laws, treaties, statutes, rules, regulations, administrative codes, guidance, ordinances, judgments, decrees, directives, injunctions, orders, permits of or from any court, arbitrator, Regulatory Authority or Governmental Authority or other agency having jurisdiction over or related to subject matter of this Agreement.

1.7 [INTENTIONALLY LEFT BLANK]

1.8 **"Business Day"** means a day other than a Saturday or Sunday or any public holiday in San Francisco, California, USA or in Ankleshwar, Gujrat, India. For the avoidance of doubt, references in this Agreement to "days" shall mean calendar days.

1.9 **"cGMPs"** means the then-current good manufacturing practices required by the FDA, as set forth in the FD&C Act and in regulations promulgated at 21 C.F.R. Parts 210 and 211, and in other applicable FDA and other regulatory guidance and policy documents.

1.10 **"Chronicity"** means chronic failure to supply Crofelemer Final, in accordance with the terms of this Agreement, [****].

1.11 **"Confidentiality Agreement"** means the Confidentiality Agreement referenced in Section 6.1.

1.12 **"Crofelemer-Based Product"** means any therapeutic drug product developed, manufactured, marketed, or distributed by Napo or its Affiliates, for human or animal use, for the purposes of clinical study or commercial sale, containing Crofelemer as an active ingredient, including, for example, Mytesi.

1.13 **"Crofelemer Final"** means [****] of varying chain lengths with an average molecular weight of [****], as per the then current Specifications.

1.14 **"CPL"** means [****] that meets the Specification as mutually agreed by both Parties as per the Quality Agreement.

1.15 [INTENTIONALLY LEFT BLANK]

1.16 **"DAP"** means "Delivered At Place" as defined in the Incoterms 2010, published by the International Chamber of Commerce, to provide standardization of shipping terms and the responsibilities of buyers and sellers.

1.17 **"Delivery Readiness Date"** has the meaning set forth in Section 2.3E.

1.18 **"Dispute"** has the meaning set forth in Section 9.11.

1.19 **"Effective Date"** has the meaning set forth in the preamble hereto.

1.20 "**Ex-Works**" means ex-works, as defined in the Incoterms 2010, published by the International Chamber of Commerce, to provide standardization of shipping terms and the responsibilities of buyers and sellers.

1.21 **"Facility"** means [****].

1.22 "**Force Majeure**" has the meaning set forth in Section 9.4.

1.23 [INTENTIONALLY LEFT BLANK]

1.24 **"FDA"** shall mean the U.S. Food and Drug Administration or the equivalent Indian or other global regulatory authorities.

1.25 **"FD&C Act"** shall mean the United States Food, Drug and Cosmetic Act, as amended, and any regulations promulgated thereunder.

1.26 **"Financial Year"** means each successive period of twelve (12) consecutive calendar months commencing on April 1 and ending on March 31**.**

1.27 **"Glenmark Indemnitees"** has the meaning set forth in Section 7.2.

1.28 **"Glenmark Intellectual Property"** shall have the meaning set out in Section 3.6F(ii).

1.29 **"Governmental Authority"** shall mean any court, agency, department, authority or other instrumentality of any national, supranational state, county, city or other political subdivision.

1.30 **"Indemnified Party"** has the meaning set forth in Section 7.3A.

1.31 **"Indemnifying Party"** has the meaning set forth in Section 7.3A.

1.32 **"Invention"** means any discovery, improvement, process, formula, data, invention, know-how, trade secret, technique, procedure, device, or other intellectual property, whether or not patentable, including any enhancement in the manufacture, formulation, ingredients, preparation, presentation, means of delivery, dosage or packaging of Crofelemer Final or any Crofelemer-Based Product or any discovery or development of a new indication for Crofelemer Final or any Crofelemer-Based Product.

1.33 [INTENTIONALLY LEFT BLANK]

1.34 **"Losses"** has the meaning set forth in Section 7.1.

1.35 **"Manufacture" or "Manufactured"** or **"Manufacturing",** as the context requires, shall mean to process, manufacture, package, label, hold and/or store, warehouse, quality control testing and quality control analysis, release of the Crofelemer Final by Glenmark or by any of its Affiliates on behalf of Glenmark.

1.36 **"Manufacturing Instructions"** means those documents describing (i) the processing of CPL into Crofelemer Final and (ii) the testing of the materials, intermediates, and products of such processing.

1.37 **"Napo Indemnitees"** has the meaning set forth in Section 7.1.

1.38 **"Napo Intellectual Property"** means intellectual property (except Glenmark Intellectual Property) including (i) the Manufacturing IP, all Transferred Information, Transferred Regulatory Documents, and Batch Records (as those terms are defined in the Transfer Agreement), (ii) all Inventions, occurring before or after the Effective Date, that were not included in the Transferred Information and (iii) any other patents, trade secrets, copyrights and other technical information and know-how (whether or not patentable), including without limitation methods, processes, practices, formulae, instructions, skills, techniques, procedures, technical assistance, designs, assembly procedures, specifications, test methods, analytical

methods, and other material or information that: (i) relates to the development and/or Manufacturing of products containing Crofelemer Final, and (ii) is owned in whole or in part by Napo or its Affiliates.

1.39 "Napo-Supplied CPL" means the CPL supplied by Napo to Glenmark hereunder and used by Glenmark to Manufacture Crofelemer Final.

1.40 [INTENTIONALLY LEFT BLANK]

1.41 "Person" shall mean any individual, corporation, partnership, limited liability company, trust, governmental entity, or other legal entity of any nature whatsoever.

1.42 "Policies" means the insurance policies of both Parties described in Section 5.7C.

1.43 "Purchase Price" has the meaning set forth in Section 4.1A.

1.44 "Purchase Order" means with respect to Crofelemer Final, a written purchase order as set out in Section 2.3.

1.45 "Quality Agreement" means the Quality Agreement by and between Napo and Glenmark attached hereto as Exhibit 1.45 and incorporated herein by this reference, including any subsequent amendments or modifications that shall be mutually agreed to between the Parties from time to time (the "Quality Agreement").

1.46 "Recall" means, with respect to any product containing Crofelemer Final, any voluntary or involuntary recalls, market withdrawals, whole shipment returns, stop sales, field corrections or other related actions.

1.47 "Record of Analysis" has the meaning set forth in the Quality Agreement.

1.48 "Regulatory Authority" shall mean any international, national, regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity (a) whose review and/or approval is necessary (i) for the manufacture, packaging, labeling, use, storage, import, export, distribution, promotion, marketing, offer for sale and sale of Crofelemer Final and/or (ii) for reviewing regulatory filings for Crofelemer Final; and/or (b) having authority to review and enforce cGMPs and/or other Applicable Laws relating to Crofelemer Final or the manufacture, development, commercialization, use or sale thereof.

1.49 "Regulatory Requirements" shall mean (a) all specifications, methods of Manufacture, and other information in one or more regulatory submissions related in any way to Crofelemer Final, and (b) all laws, rules, regulations, applicable regulatory guidance documents, and other requirements of any Regulatory Authority that govern Crofelemer Final, including customs requirements and delivery.

1.50 "Specifications" shall mean, with respect to Crofelemer Final**,** those Crofelemer Final**-**related specifications, as provided to Glenmark by Napo and with respect to CPL, those CPLrelated specifications, as provided to Glenmark by Napo, all of which shall be set forth in the Quality Agreement.

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

1.52 "Third Party" shall mean any Person other than Glenmark, Napo and their respective Affiliates.

1.53 "Transfer Agreement" means that certain *Termination, Asset Transfer and Transition Agreement* dated September 22, 2017 by and between Napo and Glenmark, a copy of which is attached hereto as

Exhibit 1.53. The Transfer Agreement remains a standalone agreement and is not to be merged into this Agreement nor are any of the Transfer Agreement's obligations terminated by this Agreement.

1.54 **"U.S."** or **"United States"** means the United States of America.

ARTICLE 2

SUPPLY AND PURCHASE OF CROFELEMER FINAL

2.1 **Manufacture and Supply of Crofelemer Final.** Subject to the terms of this Agreement, during the Term and any renewal term, Glenmark shall Manufacture Crofelemer Final in accordance with the Manufacturing Instructions as approved by Napo and contained in the Specifications, and supply Crofelemer Final exclusively to Napo and its Affiliates. In consideration of Glenmark providing exclusivity to NAPO pursuant to Section 3.1B, Napo shall purchase from Glenmark no less than 300 kgs. of Crofelemer Final per Financial Year (pro-rated for that portion of the Financial Year during which this Agreement is in effect) during the Term pursuant to, and in accordance with, Section 2.3 (the "Minimum Purchase Quantity"). Subject to Section 8.3, if NAPO fails to purchase the Minimum Purchase Quantity in any Financial Year during the Term, (as such Minimum Purchase Quantity may be adjusted pursuant to Sections 2.1, 2.3G, 2.3H and 3.5D, NAPO shall pay an amount equal to a) the Purchase Price minus the cost of the CPL, multiplied by b) the adjusted Minimum Purchase Quantity for such Financial Year, as and by way of compensation to Glenmark for the exclusivity.

2.2 [INTENTIONALLY LEFT BLANK]

2.3 **Purchase Orders for Crofelemer Final.**

A. Subject to Section 2.3B, in [****]during the Term, [****], Napo shall provide Glenmark with a binding Purchase Order for the quantity of Crofelemer Final to be purchased during each such Financial Year, each Purchase Order for Crofelemer Final shall specify:

i. the quantity of Crofelemer Final to be ordered in the Purchase Order during the Financial Year for such Purchase Order (the quantity ordered shall be: aa) [****]; bb) in multiples of [****] (i.e., validated, milled and blended lots) of Crofelemer Final; and cc) no more than [****];

ii. the Purchase Price for the quantity of Crofelemer Final being purchased pursuant to such Purchase Order, which, except as set forth in this Agreement, including, without limitation, Section 2.3G, Section 2.3H, Section 3.5D, and Section 3.6E, will be non-changeable during the life of the Purchase Order;

iii. the required delivery date(s), the port of departure and terminal for Ex-works (the Facility) delivery as specified in Section 3.5 (Napo shall specify no more than four (4) delivery dates per year in a given Purchase Order); and

iv. any invoicing information and/or special instructions.

Provided, however, Napo shall have no obligation to provide Glenmark with a Purchase Order for a given Financial Year until after Glenmark has provided Napo with the Purchase Price for such given Financial Year. Further, if the Purchase Price [****], Glenmark will share the Actual Cost data with Napo and the Parties will use commercially reasonable efforts to reduce the Actual Costs.

In the event of any contradiction in the terms of any Purchase Order and this Agreement, the Parties agree that the terms of this Agreement shall prevail, unless otherwise specifically agreed by the Parties in writing.

B. Notwithstanding Section 2.3A, Napo shall be under no obligation to provide Glenmark with a new Purchase Order Pursuant to Section 2.3A until the Purchase Order for the immediately preceding Financial Year has been terminated either by agreement of the Parties or pursuant to Section 2.3G.

C. Glenmark shall submit each Purchase Order, within [****] of receipt thereof, to the appropriate Indian authority to obtain an export license for the full amount of Crofelemer Final stated on such Purchase Order.

D. Glenmark shall accept or reject, in writing within [****], each Purchase Order from Napo made in accordance with this Agreement and with ***Appendix 2.3D***. If Glenmark does not communicate acceptance or rejection of a Purchase Order within such fifteen [****], then the Purchase Order shall be deemed accepted. Once a Purchase Order is placed, Napo shall not amend or cancel such Purchase Order without Glenmark's prior consent. Such consent shall not be unreasonably withheld.

E. Subject to the terms of this Agreement, Glenmark shall then be obligated to deliver to Napo or its Affiliates, by the required delivery dates and pursuant to the delivery instructions as are set forth in each Purchase Order. Glenmark shall deliver not less than [****] nor more than [****] of the quantities specified in the Purchase Order applicable to each such delivery date. Each such delivery must be in accordance with any special instructions and/or invoicing information stated in the Purchase Order. Collection of the Crofelemer Final from the Facility shall be made by Napo within a period of [****] from the date of written notification by Glenmark to Napo that the Crofelemer Final is ready for delivery ("**Delivery Readiness Date**"). In no event will the Delivery Readiness Date be prior to the delivery date specified in any given Purchase Order for such Crofelemer Final. Except in case of Force Majeure event, in the event that Napo fails to collect the Crofelemer Final from the Facility on the Delivery Readiness Date and such failure to collect is for reasons directly attributable to Napo, Napo shall be liable to pay customary and reasonable warehousing charges starting from the Delivery Readiness Date and going until such time as the Crofelemer Final is collected by Napo. Glenmark shall have the right to store the Crofelemer Final with a third party or in its own warehouse if not collected within [****] from the Delivery Readiness Date. Subject to the quantity variations set forth in this Section 2.3E, each failure of Glenmark to have a Delivery Readiness Date for the quantities of Crofelemer Final ordered pursuant to a Purchase Order within [****] of the required delivery date as set forth in the Purchase Order shall be regarded hereunder as a failure to deliver for purposes of establishing Chronicity; provided, however this will not excuse NAPO from taking delivery of the Crofelemer Final that is ready for delivery (subject to all other terms and conditions of this Agreement related to delivery and acceptance of Crofelemer Final by Napo).

F. Napo shall be obligated to purchase and take delivery of such quantities of Crofelemer Final as are set forth in each accepted Purchase Order, provided (i) such Crofelemer Final is delivered within the specified schedule as set forth therein and subject to the terms of Section 2.3E, and (ii) such fulfillment is in accordance with any special instructions or invoicing information stated in the Purchase Order. Each time Glenmark fails to deliver the Crofelemer Final ordered pursuant to a Purchase Order in a timely fashion, such failure shall be used for purposes of establishing Chronicity as per Section 2.3E.

G. Each Purchase Order shall terminate as of the later of the date of the last shipment therein or March 31 of the Financial Year for which such Purchase Order was submitted to and accepted by Glenmark pursuant to the terms stated in this Section 2.3. Napo will have no further obligation to purchase any Crofelemer Final on a given Purchase Order once the Purchase Order has terminated.

H. Notwithstanding anything to the contrary, unless the reasons are attributable to Napo, Napo shall not be required to pay for any Crofelemer Final pursuant to a given Purchase Order (i) for which Napo has not received a timely Delivery Readiness Notice, (ii) that has not been physically delivered to Napo by Glenmark, or (iii) acceptance was rejected by Napo pursuant to Section 3.5 and not replaced in a timely manner by Glenmark. The quantity of Crofelemer Final in a given Purchase Order shall be reduced by the quantity of Crofelemer Final that Glenmark is unable to deliver to Napo for the reasons set forth in this Section 2.3H.

2.4 Napo-Supplied CPL

A. By the 5th day of the first month of every calendar quarter, Glenmark will send to Napo a written statement of Glenmark's then-current inventory of Napo-Supplied CPL, which statement will include, among other items, (i) the number of kilograms available for processing as of that date, (ii) the number of kilograms delivered to Glenmark during the immediately preceding quarter and (iii) the number of kilograms consumed in processing during the immediately preceding quarter.

B. Absent an actual Force Majeure event, Napo, in accordance with each binding Purchase Order for Crofelemer Final, will use commercially reasonable efforts to provide sufficient quantities of Napo-Supplied CPL in a timely manner to allow Glenmark to maintain an inventory of Napo-Supplied CPL. Napo will provide Napo-Supplied CPL (upon written notice to Glenmark of the shipment readiness) which is collectively sufficient to [****] of the Crofelemer Final indicated in any Napo Purchase Order for any given quarter. Glenmark shall use the Napo-Supplied CPL only for purposes of Manufacturing Crofelemer Final for Napo and its Affiliates, and for no other purpose. Glenmark cannot use Napo-Supplied CPL to produce Crofelemer Final or Crofelemer-Based Product for its own use or for sale to a third-party. This Section 2.4B shall survive the expiration or early termination of this Agreement.

C. Napo shall submit an invoice for each shipment of Napo-Supplied CPL according to the terms defined in ***Appendix 2.4C***.

D. Napo will ship DAP (port of arrival, India) (Incoterms 2010) the Napo-Supplied CPL to Glenmark. Thus, Glenmark's obligations with respect to Napo-Supplied CPL shall be (i) responsibility for risk of loss upon Napo-Supplied CPL being customs cleared at port of entry into India, (ii) taking delivery of the Napo-Supplied CPL upon arrival at the port of entry into India, (iii) paying import taxes and duties applied to each Napo-Supplied CPL shipment, (iv) fulfilling all other steps necessary to ensure successful customs clearance and (v) paying shipment costs for Napo-Supplied CPL from the port of entry to Glenmark's Facility. Ownership title and risk of loss for the Napo-Supplied CPL will transfer to Glenmark upon customs clearance at the port of entry in India and Glenmark shall retain ownership of the Napo-Supplied CPL through all processing steps to Crofelemer Final.

E. Notwithstanding any other provisions hereinabove, Glenmark shall have no liability hereunder to the extent any such liability is attributable to failure of Napo-Supplied CPL to conform to applicable Specifications upon testing (per mutually agreed and accepted test methods) at the Facility. Glenmark shall test the Napo-Supplied CPL as soon as practicable and will notify Napo within five (5) Business Days of any Napo-Supplied CPL that does not meet the release Specifications set forth in the Quality Agreement.

F. In the event Napo fails to deliver Napo-Supplied CPL, which meets the release Specifications in the Quality Agreement, and in the quantities necessary for Glenmark to Manufacture Crofelemer Final in accordance with any given Purchase Order, such failure shall excuse Glenmark's obligation to supply the quantity of Crofelemer Final specified in that Purchase Order, within the timeframe requested. However, once a sufficient amount of Napo-Supplied CPL has been provided to and accepted (having met release Specifications) by Glenmark, Glenmark will use commercially reasonable efforts to supply Napo with the previously Ordered quantity of Crofelemer Final.

2.5 Manufacturing IP Licensed to Glenmark; Exclusivity. This Agreement is a contract manufacturing and supply agreement only. Nothing contained in this Agreement shall be interpreted or construed, in any way, to prohibit Napo from purchasing Crofelemer Final from other pharmaceutical manufacturers. Glenmark hereby represents that [****]. [****] [****].

ARTICLE 3

MANUFACTURING

3.1 Manufacture of Crofelemer Final.

A. Instructions and Requirements. Glenmark shall Manufacture Crofelemer Final according to the applicable Manufacturing Instructions, to meet the applicable Specifications, and in accordance with both applicable Regulatory Requirements and Applicable Laws, as then in effect. Amendments to the Specifications will be handled in accordance with Section 3.6.

B. Facility. As of the Effective Date, Glenmark shall use Building [****] at the Facility exclusively for the Manufacture of Crofelemer Final for Napo. The Parties will work together to plan an orderly expansion of the Facility in order to increase manufacturing capacity to meet Napo's needs on a timely basis. The Parties agree to execute an addendum to this Agreement at a future date, for the purposes of capacity expansion at the Facility, on the terms and conditions as may be mutually agreed upon between the Parties. Glenmark shall not unreasonably withhold its consent for the Manufacturing capacity expansion described in this Section 3.1B. The Parties will work out the terms of the cost allocation for such expansion as part of a separate business development agreement.

3.2 Quality Agreement. Not later than three (3) months after the Effective Date of this Agreement, Glenmark and Napo shall either a) amend the Quality Agreement or b) enter into a new reasonable and customary quality agreement which sets forth the quality assurance arrangements, responsibilities and procedures with respect to the Manufacturing of Crofelemer Final, quality testing, the conducting of timely investigations and the resolution of any issues that may arise from time to time, with respect to Crofelemer Final. Attached hereto as Exhibit 1.45 is the Quality Agreement that shall be in place until such revised Quality Agreement has been negotiated and executed by the Parties. A material violation of the Quality Agreement will be considered an event for purposes of Chronicity.

3.3 Quality Control. Glenmark shall be responsible for all quality control analyses of Crofelemer Final and all Crofelemer Final shall be released by Glenmark, in each case in accordance with the terms of the Quality Agreement.

3.4 Regulatory Inspections. Glenmark shall cooperate with any inspection of its facilities by the FDA relating to this Agreement and, if applicable, by any other Regulatory Authority that has any jurisdiction over the Manufacturing of Crofelemer Final.

3.5 Delivery and Acceptance.

A. Delivery. Subject to the terms and conditions of this Agreement, Glenmark shall deliver all Crofelemer Final ordered by Napo within the timeframe stated in the applicable Purchase Order in accordance with Section 2.3 and *Appendix 2.3D.* All Crofelemer Final shall be labeled by Glenmark and packed for shipping in accordance with packing instructions provided by Napo. In a situation where Glenmark delivers less, or in excess of the quantity ordered by Napo, invoices shall be based on the actual delivered quantity.

B. Napo's Responsibility. Glenmark shall ship Ex-works (Glenmark Facility) (Incoterms 2010) the Crofelemer Final from India specified in the applicable Purchase Order. It is the Parties' intention that the risk of loss for each shipment of Crofelemer Final transfer from Glenmark to Napo at the Facility. Thus, Napo's obligations with respect to each shipment of Crofelemer Final shall be (i) to assume any risk of loss for each shipment of Crofelemer Final upon pick up of Crofelemer Final from the Facility in India, (ii) to purchase any excess insurance desired by Napo to cover each shipment, (iii) taking delivery of the Crofelemer Final from Glenmark at the Facility, (iv) paying import taxes and duties applied to each Crofelemer Final shipment, and (v) paying shipment costs for Crofelemer Final from the Facility. Ownership/title to the Crofelemer Final shall not pass to Napo until Napo or Napo's shipping agent has taken physical possession thereof.

C. Record of Analysis; Batch Record Certificate. Each delivery of Crofelemer Final, shall be accompanied by a (i) Record of Analysis; (ii) Batch Record Certificate, (iii) such other documents as may be required pursuant to the Quality Agreement and (iv) all documentation necessary for the sale and/or import of Crofelemer Final.

D. Acceptance upon Delivery. Napo shall be under no obligation to accept any shipment of Crofelemer Final for which Glenmark has not provided a Record of Analysis or a Batch Record Certificate, as applicable. The receiving agent at the contract formulation facility (the consignee) shall inspect all shipments of Crofelemer Final promptly upon receipt, and Napo may reject any shipment of Crofelemer Final which is nonconforming to the Specifications for Crofelemer Final. To reject delivery of a shipment of Crofelemer Final, Napo must give written notice to Glenmark of Napo's rejection of any delivery within [****] after receipt of such delivery. If no such notice of rejection is received, Napo shall be deemed to have accepted such Crofelemer Final on the [****] after delivery, subject to Section 3.7C.

(i) Glenmark shall use commercially reasonable efforts to replace such rejected Crofelemer Final with Crofelemer Final conforming to the Specifications. The replacement Crofelemer Final and the delivery of such replacement Crofelemer Final shall be at no additional cost to Napo or its Affiliates.

(ii) Napo will, at Napo's sole discretion, either (a) dispose of the rejected Crofelemer Final at Napo's expense and will provide Glenmark with a copy of the certificate of destruction, or (b) use such rejected Crofelemer Final for research and development purposes.

If the Parties fail to agree whether Crofelemer Final conforms with the terms of this Agreement, including without limitation to the Quality Agreement, or are defective or not such matter shall be finally settled by an independent testing laboratory as agreed upon by the Parties and the decision of the independent testing laboratory shall be final and binding on the Parties. The said independent testing laboratory shall act as an expert and not as an arbitrator and the fees of the independent testing laboratory shall be borne by the losing Party.

Glenmark shall be responsible to pay Napo for the cost of any CPL associated with Crofelemer Final that has been rejected pursuant to this Section 3.5D.

For the avoidance of doubt, this shall constitute Napo's sole remedy for the late delivery of Crofelemer Final due to the Crofelemer Final not being accepted by Napo pursuant to this Section 3.5 and all other rights or remedies available under statute, common law or otherwise are hereby expressly excluded by the Parties. Notwithstanding the foregoing, if any such delivery is rejected due to a non-acceptance by Napo (pursuant to this Section 3.5) and such non-acceptance is caused by any event solely due to any act or omission of Glenmark and Glenmark cannot replace such Crofelemer Final before the end of the Financial Year, such quantity of Crofelemer Final will be used to reduce the quantity of Crofelemer Final that Napo is obligated to purchase under the Purchase Order for the Financial Year related to such delivery and if not promptly remediated by the end of the Financial Year shall be considered an event for purposes of Chronicity.

3.6 Change in Specifications; Other Modifications.

A. No Changes to Specifications By Glenmark. Glenmark shall not, in any respect, amend, modify or supplement the Specifications, the Manufacturing process, the location of the Manufacturing, or the test methods for Crofelemer Final or any Napo-Supplied CPL or sources of CPL used in connection with Manufacturing Crofelemer Final without the prior written consent of Napo

B. Changes in Specifications, Process, or Test Methods. If an amendment to the Specifications, the Manufacturing process, or the test methods for Crofelemer Final is (i) required by any Regulatory Authority in writing, or (ii) requested by Napo, Napo promptly shall provide Glenmark with appropriate documentation relating to any such changes to the Specifications or Manufacturing process to the extent that such changes affect Glenmark's Manufacturing and release of Crofelemer Final hereunder. If the requested changes can be made without modification to the existing process capability, Glenmark shall implement such changes in accordance with the change control procedures applicable under cGMPs and per agreement between the Parties regarding the timing of the changes. The Parties will meet and confer on whether or not the requested changes to the Specifications can be made without modification to the existing process capability. If the requested changes can be made without modification to the existing process capability, then Glenmark will make such changes without any additional cost to Napo. If the Parties determine that the requested changes cannot be made without modification to the existing process capability, then Glenmark will advise Napo of the cost to Napo to effect such changes; and, the Parties will decide whether or not to proceed with the changes to the Specifications, test methods, or Manufacturing process unless those changes are mandated by a Regulatory Authority.

C. Costs to be Absorbed By Napo. Except as set forth in Section 3.6D, Napo shall be solely responsible for any additional costs incurred to implement changes to the Specifications or the Manufacturing process as required by Napo or by any Regulatory Authority, including costs of capital equipment and process upgrades, obsolescence (e.g., disposal, disposition or removal) of non-conforming Napo-Supplied CPL and any Crofelemer Final inventory or any intermediate stage.

D. Costs to be Absorbed By Glenmark. Glenmark shall be solely responsible for any and all increased costs or expenses incurred by it as a result of any amendment of the Specifications or the Manufacturing process for Crofelemer Final (aa) requested by Glenmark and consented to by Napo or (bb) required by Napo as a result of Glenmark's failure to Manufacture Crofelemer Final in conformity with the Specifications; provided however, that such failure is not as a result of Napo-Supplied CPL or change in the Specifications and/or test methods of either the Napo-Supplied CPL or Crofelemer Final or any other intermediate stage.

E. Cost Reductions. In the event of a reduction in Actual Costs or a change to the Specifications, Manufacturing process, or test methods results in a reduction in Actual Costs, the Parties shall meet to determine the revised Actual Cost such that [****] of the improvement is reflected in a reduced Purchase Price to Napo. The lowered Purchase Price will be made available to Napo starting in the first full month following the month of the implementation of the cost saving changes to the Manufacturing process or test methods, if any. The Parties agree to amend the then outstanding Purchase Order to reflect such new Purchase Price for the remainder of the Financial Year for which the Purchase Order is open.

F. Intellectual Property.

(i) Napo shall own all right, title and interest in and to the Specifications and the Napo Intellectual Property. As stated in Section 2.5 above and in the Transfer Agreement, Glenmark shall have the right to use, during the Term, the Specifications and the Manufacturing IP for the limited purposes set forth herein. Glenmark shall promptly disclose

in writing to Napo the discovery, development, making, conception or reduction to practice of any Invention arising out of use of the Specifications and the Manufacturing IP and shall and does hereby assign to Napo any and all right, title or interest Glenmark may have in, or to, any such Invention. Glenmark shall execute any documents and perform such other acts as may be reasonably requested by Napo in order to secure, perfect, confirm, exercise or enforce Napo's foregoing rights.

(ii) If Glenmark uses any scientific methods, techniques, trade secrets and/or know-how that are not Napo Intellectual Property ("Glenmark Intellectual Property"), in the process of Manufacturing Crofelemer Final, then Glenmark does, hereby, grant to Napo during the Term of this Agreement a non-exclusive, worldwide, royalty-free, and sub-licensable license to such scientific methods, techniques, trade secrets and/or know-how.

(iii) Without limiting the provisions of the Confidentiality Agreement, Glenmark shall use the Specifications and Napo Intellectual Property solely for purposes of performing its obligations hereunder. Glenmark shall not share with or sublicense to any of Glenmark's Affiliates any of the Specifications or Napo Intellectual Property.

(iv) Napo shall have sole discretion and responsibility to prepare, file, prosecute, and maintain all patent applications and patents covering Inventions, and shall have the sole discretion and responsibility to enforce any such patent. Napo shall also be responsible for any related interference and opposition proceedings.

G. This Section 3.6 shall survive the termination of this Agreement.

3.7 Failure or Inability to Supply Crofelemer Final

A. Shortages. In the event that, absent an actual Force Majeure event and provided that there is timely supply of Napo-Supplied CPL in accordance with Specifications and accepted by Glenmark, if Glenmark, shall have reason to believe that it will be unable to supply Napo with the full quantity of Crofelemer Final actually ordered by Napo under a Purchase Order in a timely manner and in conformity with the warranties set forth in Section 5.2, Glenmark shall promptly notify Napo thereof. Thus, promptly upon receiving such notice, the Parties shall meet to discuss how Napo shall obtain such full quantity of conforming Crofelemer Final. Compliance by Glenmark with this Section 3.7A shall not relieve Glenmark of any other obligation or liability under this Agreement, including any obligation or liability under Sections 3.7B or 3.7C. Unless promptly remediated by the Parties to Napo's satisfaction, any such shortage [****]shall be regarded hereunder as a failure to supply for purposes of establishing Chronicity.

B. Delays. Absent an actual Force Majeure event and provided there is timely supply of Napo-Supplied CPL in accordance with Specifications and accepted by Glenmark, or any shortage as set out in 3.7A above, if Glenmark shall have reason to believe that it will be unable to supply Napo, in a timely manner, with the Crofelemer Final ordered by Napo, Glenmark shall promptly notify Napo of the delay. If the anticipated delay is to be [****] or more after the specified delivery date in a given Purchase Order, then Napo shall accept late delivery of the Crofelemer Final specified in the original Purchase Order. Promptly upon Napo receiving such notice (in no event later than [****], the Parties shall meet to discuss how to mitigate the delay in supply of Crofelemer Final. Unless there is a plan to remediate the delay by the Parties to Napo's satisfaction within 30 days of such notice to Napo, any such delay shall be regarded hereunder as a failure to supply for purposes of establishing Chronicity.

C. Latent Defects. In the event that Napo discovers a non-conformity that could not reasonably have been detected by a customary inspection (including chemical analysis of the Crofelemer Final) upon delivery, but in no event more than [****] after delivery of Crofelemer Final by Glenmark ("Latent Defect"), Napo shall give Glenmark notice thereof (including a sample of such

Crofelemer Final, if applicable) within [****] of such discovery. If Glenmark accepts NAPO's claim, Glenmark shall, as promptly as possible, supply Napo with a conforming quantity of Crofelemer Final at Glenmark's expense to replace the Crofelemer Final that is the subject of the Latent Defect. Glenmark shall be responsible to pay Napo for the cost of any CPL associated with Crofelemer Final that has been agreed by Glenmark to have a Latent Defect. Latent Defects shall not include any claim in relation to Crofelemer Final specifications.

If the Parties fail to agree whether Crofelemer Final conforms with the terms of this Agreement, including without limitation to the Quality Agreement, or are defective or not and such matter can be determined by an independent testing laboratory, then such matter shall be settled by an independent testing laboratory as agreed upon by the Parties and the decision of the independent testing laboratory shall be final and binding on the Parties. The said independent testing laboratory shall act as expert and not as arbitrator and the fees of the independent testing laboratory shall be borne by the losing Party. If the independent laboratory decides in favour of Glenmark, Glenmark shall have no liability whatsoever towards the claim of Latent Defect by NAPO however if decided against Glenmark, Glenmark shall do the needful as stated above as if Glenmark has agreed with the claim of NAPO.

3.8 Stability. Glenmark shall, during the Term, take such quantities of quality control stability samples, from batches of Crofelemer Final intended for delivery to Napo, as set forth in the Quality Agreement , and as are required by cGMPs and applicable Regulatory Requirements to establish appropriate stability studies as described in the most recent version of the ICH guidelines: *Stability Testing Of New Drug Substances And Products,* in each case to support the claimed expiration dating for the Crofelemer Final delivered to Napo.

3.9 Legislative Changes. Each Party shall immediately advise the other if it becomes aware of any legislation or Applicable Laws (including, all health and safety, environmental, custom, trade, tariff or other import laws, approvals process or vigilance reporting requirements) which is in effect or which may come into effect after the Effective Date and which affects the obligations of the Parties hereunder.

ARTICLE 4

PURCHASE PRICE AND PAYMENT

4.1 Purchase Price for Crofelemer

A. Glenmark shall Manufacture and supply Crofelemer Final at the purchase price for each Purchase Order, as specified in ***Appendix 1.43,*** ("**Purchase Price**"). Along with Glenmark's acceptance of each Purchase Order pursuant to Section 2.3, Glenmark shall also confirm the accuracy of the Purchase Price stated on such Purchase Order.

B. The Purchase Price is derived from the Actual Cost, which shall be calculated [****] after the end of each [****] during the Term; at which point, Glenmark shall provide Napo in writing with the Purchase Price for the new Financial Year. In the event of any increase in the Purchase Price, Glenmark shall inform Napo after calculation of the Purchase Price for the next Financial Year. Further, upon receipt of request from Napo, Glenmark will provide the reasons causing an increase in the Purchase Price.

C. Except as set forth in 3.6E, the Purchase Price for each Purchase Order is guaranteed for the life of the Purchase Order.

4.2 Payment Terms for Purchases.

A. Invoicing and Payment for Crofelemer Final. For each delivery of Crofelemer Final, Glenmark shall send a commercial invoice to Napo as soon as practicable after the product has been ordered and Napo shall pay the invoice on or no later than the Delivery Readiness Date. Upon receipt of full payment from Napo, Glenmark will be obligated to deliver the Crofelemer Final to Napo or its Affiliates under the respective Purchase Order subject to the terms of Section 2.3E hereof. In the event of any delay in payment by Napo beyond the Delivery Readiness Date, Glenmark shall be entitled to withhold delivery of such Crofelemer Final as set forth in Section 2.3E and [****].

B. Invoicing, Payment and Annual Reconciliation for CPL. [****]

C. Currency. All references to "Dollars" or "$" shall mean the legal currency of the United States. All payments to be made under this Agreement shall be made in US Dollars, unless expressly specified to the contrary herein.

D. Taxes. Napo shall be responsible hereunder for payments of all applicable taxes on the payment of invoice amount to Glenmark and shall pay any and all taxes lawfully imposed by any government authority on the purchase of Crofelemer Final. The Purchase Price is exclusive of amounts in respect of value added tax and/or goods and services tax. Napo shall, on receipt of valid value added tax invoice from Glenmark, pay to Glenmark such additional amounts in respect of value added tax as are chargeable on a supply of Crofelemer Final.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

5.1 Mutual Representations and Warranties. Each Party hereby represents and warrants to the other Party as of the Effective Date as follows:

A. The execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate actions;

B. This Agreement constitutes a valid obligation of such Party and is binding and enforceable against such Party in accordance with the terms hereof; and

C. Such Party has the corporate power and authority and the legal right to enter into this Agreement and to perform its obligations hereunder, and there is no contractual restriction or obligation binding on such Party which would be materially contravened by execution and delivery of this Agreement or by the performance or observance of its terms.

5.2 Crofelemer Final Warranties. Glenmark represents and warrants:

A. that the Crofelemer Final supplied to Napo:

(i) complies with the Specifications in the Quality Agreement and the then-current Manufacturing Instructions;

(ii) has been Manufactured at the Facility and those portions of the Facility used in the Manufacture of Crofelemer Final are in compliance with all Applicable Laws at the time of such Manufacture (including, without limitation, applicable cGMPs and inspection requirements of FDA and other Regulatory Authorities);

(iii) has been packaged, labeled and stored in compliance with the Specifications;

(iv) has not been Adulterated at the time of shipment by Glenmark from the Facility; and

(v) assuming payment in full by Napo, is free and clear of all security interests, liens and other encumbrances of any kind or character.

B. that, with respect to the Facility and the Manufacturing

(i) neither Glenmark nor any of its Affiliates has been debarred or is subject to debarment pursuant to Section 306 of the FD&C Act; and

(ii) neither Glenmark nor any of its Affiliates will use in any capacity, in connection with the services to be performed under this Agreement, any Person who has been debarred pursuant to Section 306 of the FD&C Act or any similar law in India, or who is the subject of a conviction described in such section. Glenmark shall inform Napo in writing immediately if it or, to its knowledge, any Person who is performing services hereunder is debarred or is the subject of a conviction described in Section 306 of the FD&C Act or any similar law in India.

5.3 Napo represents and warrants that:

(i) It shall at all times commercialize, handle and store Crofelemer Final in compliance with all Applicable Laws;

(ii) The Manufacturing of Crofelemer Final by Glenmark as per the terms of this Agreement shall not violate Applicable Law or any rights of third parties;

(iii) The Intellectual Property rights licensed to Glenmark under this Agreement do not infringe any third party intellectual property rights;

(iv) The CPL supplied to Glenmark shall comply with the Specifications and it's use by Glenmark shall not infringe Applicable Law or any rights of the third parties; and

(v) Except as set forth in Section 2.3C, Napo has obtained and ensures to maintain any and all government authorization, consent, approval, license, exemption of or filing or registration with any country or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, under any Applicable Laws currently in effect, is or will be necessary for, or in connection with, the transactions contemplated by this Agreement or any other agreement or instrument executed in connection herewith, or for the performance by it of its obligations under this Agreement and such other agreements.

5.4 Both Parties Represent and Warrant. The Parties shall conduct their repective activities in connection with this Agreement in accordance with Applicable Law. Each Party further acknowledges and agrees that they and their respective Affiliates, sub-licensees and agents may be subject to anti-corruption laws including the US Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and any other Applicable Laws and Regulations for the prevention of fraud, corruption, racketeering, money laundering and terrorism. Such laws and regulations generally prohibit the direct, or indirect, offering, promising, or giving of any advantage, or thing of value, to a person (including private individuals or government employee or official) for the purposes of obtaining or retaining business, or to intend to induce, or induce, any improper act or decision. Each Party agrees to refrain from, and to use all reasonable endeavors to procure that their respective Affiliates and agents refrain from, any activity in the performance of their obligations and duties under this Agreement that would constitute a violation of applicable anti-corruption laws. Each Party has and will maintain throughout the duration of this Agreement policies and procedures to ensure compliance with applicable anti-corruption laws (which must constitute "adequate procedures" for the purposes of the UK Bribery Act 2010), and enforce their policies and procedures where appropriate. Neither Party nor, to its respective knowledge, any of its directors, officers, agents, employees or Affiliates is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "***FCPA***"), including, without limitation, making use of the mails or any means or instrumentality of U.S. interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of

value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and Napo and its Affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith;

5.5 Limitation on Liability.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR ANY OF THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS SHALL HAVE ANY LIABILITY OF ANY TYPE (INCLUDING, BUT NOT LIMITED TO, CLAIMS IN CONTRACT, NEGLIGENCE AND TORT LIABILITY) FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, THE LOSS OF OPPORTUNITY, LOSS OF USE OR LOSS OF REVENUE OR PROFIT IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, EVEN IF SUCH DAMAGES MAY HAVE BEEN FORESEEABLE. THE FOREGOING SHALL NOT LIMIT EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 7 NOR SHALL IT APPLY TO DAMAGES ARISING FROM EITHER PARTY'S BREACH OF ITS OBLIGATIONS UNDER ARTICLE 6. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE TOTAL LIABILITY OF GLENMARK UNDER THIS AGREEMENT SHALL NOT EXCEED THE PURCHASE PRICE OF THE BATCH(ES) OF CROFELEMER FINAL GIVING RISE TO SUCH LIABLITY.

5.6 Recalls and Withdrawals. All costs for recalls, market withdrawals and returns and destruction of Crofelemer-Based Products shall be the responsibility of Napo for any recalls, market withdrawals and returns and destruction of Crofelemer-Based Product attributable to the failure of Napo-supplied CPL to conform to applicable Specifications as of the time of its delivery to Glenmark hereunder or other reasons attributable to Napo. If any recall or withdrawal is initiated due to reasons solely attributable to Glenmark, Glenmark shall be liable to reimburse the cost, if any, incurred towards such recall provided, however, in no event will Glenmark's total liability exceed the Purchase Price received by Glenmark for the batch(es) giving rise to such liability.

5.7 Insurance.

A. Napo shall maintain (i) comprehensive general liability insurance written on an occurrence basis with a combined single limit for bodily injury and property damage of not less than [****] and (ii) product liability /completed operations coverage with a per claim limit of not less than [****].

B. Glenmark shall maintain (i) comprehensive general liability insurance in the amount of [****] and (ii) public liability insurance in the amount of [****].

C. The insurance policies referenced in Sections 5.7A and B above ("**Policies**") shall (i) be provided by an insurance carrier(s) acceptable to the other Party and (ii) show the other Party as additional named insured and loss payee, as its interests may appear. Certificates of insurance for the Policies shall be furnished to the other Party within [****] after the Effective Date. The Policies shall remain in effect throughout the Term of this Agreement and shall not be canceled or subject to a reduction of coverage or any other modification without the prior written authorization of the other Party.

D. It is understood that such insurance shall not be construed to create a limit of either Party's liability with respect to its indemnification obligations under Article 7.

5.8 Disclaimer of Other Warranties. THE WARRANTIES, LIMITATIONS AND DISCLAIMERS EXPRESSLY SET FORTH IN THIS ARTICLE 5 SUPERSEDE ANY OTHER WARRANTY LIMITATIONS AND DISCLAIMERS GIVEN BY EITHER PARTY, WHETHER WRITTEN OR ORAL. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS ARTICLE 5, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND WITH RESPECT TO THE CPL OR

CROFELEMER, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 6

CONFIDENTIALITY

6.1 Confidentiality Agreement. “Confidentiality Agreement” means the Confidentiality Agreement by and between Napo and Glenmark attached hereto as Exhibit 6.1 and incorporated herein by this reference, including any subsequent amendments or modifications that shall be mutually agreed to between the Parties from time to time.

6.2 Notification. Upon a Party's discovery of loss or compromise of the other Party's Confidential Information, the Party discovering the loss shall notify the other Party immediately and cooperate as reasonably requested.

6.3 Remedies. Each Party agrees that the unauthorized use or disclosure of Confidential Information in violation of the Confidentiality Agreement will cause severe and irreparable damage. In the event of any violation of the Confidentiality Agreement, the Parties agree that the Party whose Confidential Information has been disclosed shall, in addition to any other relief permitted by Applicable Law or in the Confidentiality Agreement, be authorized and entitled to obtain from any court of competent jurisdiction injunctive relief, whether preliminary or permanent, without the necessity of proving irreparable harm or showing actual damages, and without posting any bond. The Party sought to be enjoined agrees to waive any requirement that the Party seeking the injunctive relief post bond as a condition for obtaining any such relief.

6.4 Use of Names. Neither Party shall mention or otherwise use the name, insignia, symbol trademark, trade name or logotype of the other Party (or any abbreviation or adaptation thereof) in any publication, press release, promotional material or other form of publicity without the prior written approval of such other Party in each instance. The restrictions imposed by this Section 6.4 shall not prohibit either Party from making any disclosure identifying the other Party that is required by Applicable Law, including, without limitation, filings with the stock exchange authorities such as United States Securities and Exchange Commission, which may include filing a copy of this Agreement; provided, however, that reasonable measures shall be taken to assure confidential treatment of such information.

6.5 Press Releases. Neither Party shall make a press release or other public announcement regarding this Agreement, the terms hereof or the transactions contemplated hereby without the prior written approval of the other Party. Each Party shall provide the other with the proposed text of any such press release or public announcement for review and approval which approval shall not be unreasonably withheld, conditioned or delayed, as early as possible, but in no event less than four (4) Business Days in advance of the publication, communication or dissemination thereof; provided, however, that the receiving Party shall notify the proposing Party in writing of any objections to such press release or public announcement within three (3) Business Days after receipt by the receiving Party of the text of such public announcement. Notwithstanding the foregoing, but consistent with Section 6.4 above, this Section 6.5 shall not be applicable to filings and disclosures required by Applicable Law**.**

ARTICLE 7

INDEMNIFICATION

7.1 Indemnification by Glenmark. Glenmark shall indemnify, defend and hold Napo and its Affiliates and their respective officers, directors, employees and agents (“**Napo Indemnitees**”) harmless from and against any and all losses, damages, liabilities, assessments, costs, charges, or claims (**"Losses**") arising out of or resulting from any Third Party claims made or suits brought against Napo which arise or result from: (i) the breach of any of Glenmark's representations and warranties set forth

in this Agreement; (ii) Glenmark's negligence or willful misconduct in the performance of this Agreement, or (iii) Glenmark's material breach of this Agreement; except in each case of clauses (i) through (iii), if, and to the extent, Napo has an obligation to indemnify the Glenmark Indemnitees, or any one of them, pursuant to Section 7.2. Notwithstanding the foregoing, in no event will the entire liability of Glenmark under this Agreement exceed the Purchase Price received by Glenmark in connection with the batch(es) of Crofelemer Final giving rise to such liability.

7.2 Indemnification by Napo. Napo shall indemnify, defend and hold Glenmark and their respective officers, directors, employees and agents ("**Glenmark Indemnitees**") harmless from and against any and all Losses arising out of or resulting from any Third Party claims made or suits brought against Glenmark which arise or result from: (i) the breach of any of Napo's representations and warranties set forth in this Agreement; (ii) a claim by a Third Party that the Manufacturing/supply of Crofelemer Final by Glenmark in accordance with Napo's Manufacturing Instructions or, marketing and sale of any finished Crofelemer-Based Product by Napo or its Affiliates infringes such Third Party's intellectual property rights or (iii) Napo's negligence or willful misconduct in the performance of this Agreement, or (iv) Napo's material breach of this Agreement; except in each case of clauses (i) through (iv) if, and to the extent Glenmark has an obligation to indemnify the Napo Indemnitees, or any one of them, pursuant to Section 7.1. Notwithstanding the foregoing, in no event, save and except the eventuality covered in Section 7.2(ii) above, the entire liability of Napo under this Agreement shall exceed the value of the Purchase Order of Crofelemer Final (excluding that portion of the Purchase Price that is for CPL) giving rise to such liability.

7.3 Procedures.

A. A Party making a claim for indemnity under this Article 7 hereinafter is referred to as an "**Indemnified Party**" and the Party against whom such claim is asserted is hereinafter referred to as the "**Indemnifying Party**." All claims by any Indemnified Party under this Section shall be asserted and resolved in accordance with the following provisions. If any claim or demand for which an Indemnifying Party would be liable to an Indemnified Party is asserted against or sought to be collected from such Indemnified Party by a Third Party, said Indemnified Party shall with reasonable promptness notify in writing the Indemnifying Party of such claim or demand stating with reasonable specificity the circumstances of the Indemnified Party's claim for indemnification; provided, however, that any failure to give such written notice will not waive any rights of the Indemnified Party except to the extent the rights of the Indemnifying Party are actually prejudiced by such delay. After receipt by the Indemnifying Party of such notice, then upon reasonable notice from the Indemnifying Party to the Indemnified Party, or upon the written request of the Indemnified Party, the Indemnifying Party shall defend, manage and conduct any proceedings, negotiations or communications involving any claimant whose claim is the subject of the Indemnified Party's notice to the Indemnifying Party as set forth above, and shall take all actions necessary, including the posting of such bond or other security as may be required by any governmental authority, so as to enable the claim to be defended against or resolved without expense or other action by the Indemnified Party.

B. In any such proceeding, any Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the sole expense of such Indemnified Party.

C. Upon written request of the Indemnifying Party, the Indemnified Party shall to the extent it may legally do so and to the extent that it is compensated in advance by the Indemnifying Party for any costs and expenses thereby incurred, (i) take such action as the Indemnifying Party may reasonably request in connection with such action, (ii) allow the Indemnifying Party to dispute such action in the name of the Indemnified Party and to conduct a defense to such action on behalf of the Indemnified Party, or (iii) render to the Indemnifying Party all such assistance as the Indemnifying Party may reasonably request in connection with such dispute and defense.

D. The Indemnifying Party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent, or if there be a final judgment for the plaintiff, the Indemnifying Party shall indemnify and hold harmless such Indemnified Parties from and against any Losses (to the extent stated above) by reason of such settlement or judgment. Without the prior written consent of the Indemnified Party, no Indemnifying Party shall effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability arising out of such proceeding.

ARTICLE 8

TERM

8.1 Term. This Agreement shall become effective upon the Effective Date and shall remain in full force and effect until March 31, 2023, unless sooner terminated pursuant to Section 8.2 below (the **"Term").** At the end of the Term, the Parties may extend this Agreement for successive renewal terms of minimum of two (2) years by mutual agreement of the Parties in a written instrument, signed by both Parties and specifically referencing this Agreement.

8.2 Termination. In addition to any other provision of this Agreement expressly providing for termination of this Agreement, this Agreement may be terminated as follows:

A. Napo may terminate this Agreement:

(i) Immediately upon notice to Glenmark in the event that Regulatory Authorities cause the withdrawal of Crofelemer Final or any Crofelemer-Based Product from the market for safety and/or non-compliance reasons; or

(ii) [INTENTIONALLY LEFT BLANK]

(iii) Upon 30 days' notice to Glenmark on the occurrence of Chronicity.

B. Either Party may terminate this Agreement:

(i) immediately upon written notice if the other Party shall (a) file in any court or agency pursuant to any statute or regulation of any state, country or jurisdiction a petition in bankruptcy or insolvency or for reorganization or for arrangement or for the appointment of a receiver or trustee of that Party or of its assets, (b) be served with an involuntary petition against it, filed in any insolvency proceeding, and such petition shall not be dismissed within sixty (60) days after the filing thereof, (c) propose or be a party to any dissolution or liquidation, (d) make an assignment for the benefit of its creditors, or (e) admit in writing its inability generally to pay its debts as they fall due in the general course; or

(ii) immediately upon written notice in the event of any material breach by the other Party in the performance of any of its obligations herein contained that has not been cured by the defaulting Party within ninety (90) days after receiving written notice thereof from the non-breaching Party; or

(iii) immediately upon written notice in the event that, as a result of an order of government or any other official authority or change in Applicable Law, the continued operation of this Agreement in its entirety or in substantial part is prevented or delayed for an unspecified and indeterminate period.

C. Either Party may terminate this Agreement for any reason with twelve (12) months prior written notice to the other Party. If the termination date pursuant to this Section 8.2.C does not align with the last day of a Financial Year, the Minimum Quantity for the final year of this Agreement shall be pro-rated for the number of months for which this Agreement will be in effect during such final Financial Year.

8.3 Effect of Expiration or Termination.

A. Survival. The expiration or earlier termination of this Agreement shall be without prejudice to any rights or obligations of the Parties that may have accrued prior to such termination or expiration, and the provisions of Articles 1 (Definitions), 3.5D (Acceptance Upon Delivery), 3.7 (Failure or Inability to Supply Crofelemer Final), 4 (Payment), 5 (Representations and Warranties), 6 (Confidentiality), 7 (Indemnification), 8 (Term), and 9 (Miscellaneous) along with any other provision that would survive due to its nature or specifically designated herein to survive shall survive the expiration or termination of this Agreement. Except as otherwise expressly provided herein, termination of this Agreement in accordance with the provisions hereof shall not limit remedies that may otherwise be available at law or in equity. Upon the expiry or earlier termination of the Agreement, unless the conduct of the Parties is otherwise, the Intellectual Property License granted by NAPO to Glenmark shall terminate where after save and except for any remaining material, Glenmark shall cease the use of any and all Napo Intellectual Property.

B. Return of Confidential Information and Materials. Upon expiration or earlier termination of this Agreement, each Party, at the request of the other, shall return all data, files, records and other materials in its possession or control containing or comprising the other Party's Confidential Information except that the legal department of each Party may retain one copy for archival purposes.

C. Actions Upon Termination.

(i) Upon termination of the Agreement by NAPO pursuant to Section 8.2.A(i) or 8.2.B(iii), NAPO shall take the delivery of the Crofelemer Final ready for delivery, if legally permissible, and make the payment of the Purchase Price therefor as well as for any work in progress at the Actual Cost, excluding the value attributable to the CPL, in which event GLS shall not be liable to pay cost for CPL, therefor, with no markup. Glenmark promptly shall return any remaining Napo-Supplied CPL to Napo or its designee at Napo's expense and the Purchase Order will be cancelled without payment for the deficit in the Minimum Quantity.

(ii) Upon termination of the Agreement by NAPO pursuant to Section 8.2.A(iii) or 8.2B(i) or (ii), NAPO shall take the delivery of the Crofelemer Final ready for delivery, including Glenmark's completion of any work in progress when such is converted into Crofelemer Final, if legally permissible, and make the payment therefor. Glenmark promptly shall return any remaining Napo-Supplied CPL to Napo or its designee at Napo's expense and the Purchase Order will be cancelled without payment for the deficit in the Minimum Quantity.

(iii) Upon termination of the Agreement by Glenmark pursuant to Section 8.2.B(i) or (ii), NAPO will have to take the delivery of the Crofelemer Final ready for delivery, including Glenmark's completion of any work in progress when such is converted into Crofelemer Final, if legally permissible, and make the payment therefor as well as for any deficit in the adjusted Minimum Purchase Quantity of that Financial Year as described in Section 2.1, if any. The Purchase Price used to calculate the deficit in the Minimum Purchase Quantity shall exclude the cost of CPL, and accordingly GLS shall not be liable to pay for cost of CPL. Glenmark promptly shall return any remaining Napo-Supplied CPL to Napo or its designee at Napo's expense.

(iv) Upon termination of this Agreement for any reason other than as set forth in Section 8.2 and subject to full payment of any amount due to Glenmark and/or to Napo, as of the termination date (a) Glenmark immediately shall cease all Manufacturing of Crofelemer Final, (b) all submitted but unfilled Purchase Orders automatically shall be cancelled, (c) NAPO will take the delivery of the Crofelemer Final ready for delivery, including Glenmark's completion of any work in progress when such is converted into Crofelemer Final, if legally permissible, and make the payment therefor, and (d) Glenmark promptly shall return any remaining Napo-Supplied CPL to Napo or its designee at Napo's expense. Further, there shall be no payment due for a deficit Minimum Purchase Quantity, if any.

(v) The Parties shall be permitted to exercise their respective rights in accordance with the terms of the Transfer Agreement.

D. Cumulative Remedies. Except as expressly stated otherwise herein, remedies hereunder are cumulative, and nothing in this Agreement shall prevent either Party, in the case of a breach, from not terminating this Agreement and seeking to enforce its rights hereunder.

E. Accrued Obligations. Except as set forth herein, any termination or expiration of this Agreement shall not relieve either Party of any obligation which has accrued prior to the effective date of such termination or expiration, which obligations shall remain in full force and effect for the period provided therein. However, to the extent cancellable or revocable, both Parties will make commercially reasonable efforts to cancel or revoke, and thereby limit the amount of any accrued obligations. Neither Party shall be liable for any amount that could have been avoided if cancelled or revoked by the other Party upon written notice of termination.

F. No Release. The termination or expiration of this Agreement, as the case may be, shall not act as a waiver of any breach of this Agreement and shall not act as a release of either Party from any liability or obligation incurred under this Agreement through the date of such termination or expiration.

ARTICLE 9

MISCELLANEOUS

9.1 Notices. Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted to be given to either Party shall be in writing and shall be deemed given only if delivered to the Party personally or sent to the Party by registered mail, return receipt requested, postage prepaid, or sent by an internationally recognized courier service guaranteeing next-day or second-day delivery, charges prepaid, addressed to the Party at its address set forth below, or sent by electronic mail (email transmission to the email address set forth below if acknowledged by the Party in an email reply, with the understanding that a reply email may, in fact, be directed to someone other than the original individual at the sending Party), or at such other address or fax number as such Party may from time to time specify by notice given in the manner provided herein to the Party entitled to receive notice hereunder:

For Glenmark: Glenmark Life Sciences Ltd.,

Glenmark House,
B. D. Sawant Marg, Chakala, Andheri East, Mumbai 400099,
India
Attention: Gautam Arora
[****]

For Napo: **Napo Pharmaceuticals, Inc.**

201 Mission Street, Suite 2375,
San Francisco, CA 94105
USA

Attention: Chief Executive Officer
[****]

With a copy to:

Napo Pharmaceuticals, Inc.
201 Mission Street, Suite 2375
San Francisco, CA 941054
USA

Attention: Jonathan Wolin, Chief Compliance Officer and Corporate Counsel

9.2 Entire Agreement and Inconsistency. Subject to Section 2.5, this Agreement which includes all Appendices, exhibits and schedules attached hereto, together with the Quality Agreement and the Transfer Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no oral or written statement may be used to interpret or vary the meaning of the terms and conditions hereof. In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of the Quality Agreement, this Agreement will prevail. In the event of a conflict or inconsistency between the provisions of this Agreement and any legal or regulatory requirements, amendments to this Agreement shall be considered promptly in good faith in order to satisfy such requirements.

9.3 Assignment. Neither Party may assign or otherwise transfer this Agreement without the prior written consent of the other Party; provided, however, that either Party may assign this Agreement without the consent of the other Party to any Affiliate or in connection with the acquisition of such Party or the sale of all or substantially all of the business or assets of the assigning Party relating to the subject matter of this Agreement, whether by merger, acquisition or otherwise. Subject to the foregoing, this Agreement shall inure to the benefit of each Party, its successors and permitted assigns. Any assignment of this Agreement in violation of this Section shall be null and void.

9.4 Force Majeure. Except for either Party's payment obligations, failure of any Party to perform its obligations under this Agreement shall not subject such Party to any liability to the other Party, or place them in breach of any term or condition of this Agreement if, and solely to the extent, such failure is caused by Force Majeure. The corresponding obligations of the other Party will be suspended to the same extent. "Force Majeure" shall mean any unanticipated event, reason or cause beyond the reasonable control of a Party (including fire, flood, embargo, power shortage or failure, acts of war, insurrection, riot, terrorism, strike, lockout or other labor disturbance, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, or storm or like catastrophe, acts of God or any acts, omissions or delays in acting of the other Party); provided, however, that the Party affected shall, within five (5) days of its occurrence, notify the other Party, stating the nature of the condition constituting Force Majeure as defined herein, its anticipated duration and any action being taken to avoid or minimize its effect. Then, such Party shall exert commercially reasonable efforts to eliminate, cure and overcome any such causes and to resume performance of its obligations with all possible speed. If a condition constituting Force Majeure as defined herein prevents, or would likely prevent, a Party from performing its obligations under this Agreement for more than sixty (60) days, the Parties shall meet to negotiate a mutually satisfactory solution to the problem, if practicable, including the use of a Third Party to fulfill the obligations hereunder of the Party invoking the Force Majeure.

9.5 Headings. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of the Agreement.

9.6 Independent Contractor. Each Party shall be acting as an independent contractor in performing under this Agreement and shall not be considered or deemed to be an agent, employee, joint venture or partner of the other Party. Neither Party to this Agreement shall have any express or implied right or authority to assume or create any obligations on behalf of, or in the name of, the other Party, or to bind the other Party to any contract, agreement or undertaking with any Third Party.

9.7 Severability. In the event any provision of this Agreement should be held invalid, illegal or unenforceable in any jurisdiction, the Parties shall negotiate in good faith and enter into a valid, legal and enforceable substitute provision that most nearly reflects the original intent of the Parties. All other provisions of this Agreement shall remain in full force and effect in such jurisdiction. Such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction.

9.8 No Third-Party Beneficiaries. Nothing in this Agreement, either express or implied, is intended to or shall confer upon any other Third Party (other than Jaguar Health, Inc.) any legal or equitable right, benefit or remedy of any nature whatsoever under, or by reason of, this Agreement.

9.9 Amendment. This Agreement may not be amended or modified except by an instrument in writing signed by authorized representatives of Napo and Glenmark, and specifically referencing this Agreement.

9.10 Governing Law. This Agreement and all questions regarding the existence, validity, interpretation, breach or performance of this Agreement, shall be governed by, and construed and enforced in accordance with, the laws of State of New York, without reference to its conflicts of law principles.

9.11 Dispute Resolution.

A. In the event of any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof (hereinafter referred to as "**Dispute**"), between the Parties that relates to interpretation of a Party's rights and/or obligations hereunder or any alleged breach of this Agreement, such dispute shall be resolved in accordance with this Section. Notwithstanding the provisions of this Section, however, nothing herein contained shall preclude a party from seeking equitable remedies in any court of competent jurisdiction.

B. Any Dispute shall be referred for decision forthwith to a senior executive of each Party not involved in the Dispute. If no agreement is reached within thirty (30) days of the request by one Party to the other to refer the same to such senior executive, then the Parties agree to attempt to settle such Dispute through good faith non-binding mediation efforts. If after a period of thirty (30) days, the Parties have not settled the Dispute by non-binding mediation, then any such Dispute which does not involve a claim for equitable relief shall be settled by Arbitration according to the provisions of Section 9.11C.

C. Any Dispute that is not resolved in accordance with Section 9.11B shall be decided by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("**AAA**"); such arbitration to be held in the Borough of Manhattan, New York, New York on an expedited basis. Each Party hereby expressly waives any right to object to such jurisdiction on the basis of venue or forum non-convenience. Any arbitration shall be conducted by three arbitrators. One arbitrator shall be selected by Napo, one arbitrator shall be selected by Glenmark and the third arbitrator shall be selected by the two arbitrators so selected. The arbitrators shall have no power to change the provisions of this Agreement nor to make an award of reformation. The award rendered by the arbitrators shall be final and binding upon the Parties hereto, and judgment upon the award rendered may be entered by either Party in any court that has jurisdiction over the Parties or the subject matter of the controversy or claim.

The expense of such arbitration, including attorneys' fees, shall be allocated between the Parties as the arbitrators shall decide. The arbitration panel shall prepare and deliver to the Parties a written, reasoned opinion conferring its decision. Both Parties, solely for the purpose of collection of a judgment against them, consent to jurisdiction and venue in New York, New York, USA.

9.12 No Waiver. The failure of either Party to enforce at any time for any period the provisions of, or any rights deriving from this Agreement shall not be construed to be a waiver of such provisions or rights, or the right of such Party thereafter to enforce such provisions.

9.13 Counterparts. This Agreement may be executed in one or more counterparts, and by the respective Parties in separate counterparts, each of which when executed shall be deemed to be an original, and both of which taken together shall constitute one and the same Agreement. Delivery of an executed counterpart of a signature page of this Agreement (and each amendment, modification and waiver in respect of it) by facsimile or other electronic transmission, if identified and complete, will be regarded as an original signature and shall be as effective as delivery of a manually executed original counterpart of each such instrument.

9.14 Further Assurances. Each Party shall duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including the filing of such assignments, the execution and delivery of such agreements, documents and instruments as may be necessary, or as the other Party may reasonably request, in connection with the Parties' respective performances or obligations under this Agreement, or to carry out more effectively the provisions and purposes hereof, or to better assure and confirm unto such other Party its rights and remedies under this Agreement.

9.15 Export Control. This Agreement is made subject to any restrictions concerning the export of products or technical information from the United States or other countries that may be imposed on the Parties from time to time. Each Party agrees that it will not export, directly or indirectly, any technical information acquired from the other Party under this Agreement or any products using such technical information to a location or in a manner that at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate agency or other governmental entity in accordance with Applicable Law.

9.16 Construction. Unless the context of this Agreement otherwise requires: (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the terms "Article," "Section," "Appendix", "Schedule," "Exhibit" or "clause" refer to the specified Article, Section, Appendix, Schedule, Exhibit or clause of this Agreement; (v) the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or"; (vi) the term "including" or "includes" means "including without limitation" or "includes without limitation"; and (vii) references to any agreement, instrument or other document in this Agreement refer to such agreement, instrument or other document as originally executed or, if subsequently amended, replaced or supplemented from time to time, as so amended, replaced or supplemented and in effect at the relevant time of reference thereto. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. The headings and captions of this Agreement are for convenience of reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. Finally, in every instance throughout this Agreement, where one Party is to give the other Party a communication *in writing,* it is the Parties' intention that email shall suffice as a written instrument, so long as the Party receiving such email acknowledges receipt by replying to the sending Party (with the understanding that a reply email may, in fact, be directed to someone other than the original individual at the sending Party).

9.17 English Language and Mutual Drafting. This Agreement shall be written and executed in, and all other communications under or in connection with this Agreement shall be in, the English language. Any translation into any other language shall not be an official version thereof, and in the event of any conflict

in interpretation between the English version and such translation, the English version shall control. This Agreement is the mutual product of the parties hereto, and each provision hereof has been subject to the mutual consultation, negotiation, and agreement of each of the parties, and shall not be construed for or against any party hereto.

[SIGNATURES ON NEXT PAGE]

SIGNATURE PAGE

Manufacturing and Supply Agreement

IN WITNESS WHEREOF**,** each Party hereto has executed, or caused this Agreement to be executed on its behalf, by a duly authorized signatory, as of the Effective Date.

GLENMARK LIFE SCIENCES, LTD.

/s/ Sumeet Wadhwani
Signature

Sumeet Wadhwani
Print Name

Head Legal
Print Title

Date: September 3, 2020

NAPO PHARMACEUTICALS, INC.

/s/ Lisa A. Conte
Signature

Lisa A. Conte
Print Name

President and CEO
Print Title

Date: September 2, 2020

APPENDIX 1.2

COMPONENTS OF THE ACTUAL COST

- [****]

APPENDIX 1.43

PRICING TERM SHEET

- [****]

APPENDIX 2.3D

SHIPPING AND BILLING PROCEDURES FOR CROFELEMER FINAL

1. Napo will issue a formal shipping request to Glenmark designating specific lots of Crofelemer to be shipped from the Facility to a given consignee. This request shall include the lot numbers to be shipped, the net weight of each lot, the ship-by date, and any other information needed for shipment to take place.

2. Glenmark will create a *pro forma* invoice and will send it to Napo for review. The *pro forma* invoice will include:

   A. Designation of specific Lots (by Lot numbers) to be shipped and aggregate net weight in kilograms

   B. Name and address of the consignee to which said lots are to be delivered

   C. Ports of loading and discharge (departure)

   D. The Purchase Price of the Crofelemer Final to be shipped

3. Napo will review the *pro forma* invoice for accuracy, and if no changes are necessary, Napo will, pay the invoice amount to Glenmark as detailed in the body of this Agreement.

4. Napo, or its designee, will provide Glenmark with any other necessary documents, such as disposition certificate, etc.

5. Within 24-hours of receipt of Napo's payment, Glenmark will provide the final invoice to NAPO.

6. Upon receipt of the payment from NAPO, Glenmark will deliver the Crofelemer Final on Ex-works Glenmark Facility, Incoterms 2010, to an express carrier designated by Napo. Glenmark will arrange to have the freight charges billed to Napo's account with the carrier. NAPO may elect to itself arrange shipment with an express carrier or freight forwarder to deliver the Crofelemer Final to the final destination under Ex-works (Glenmark Facility), Incoterms 2010.

7. Glenmark's clearing and forwarding agent will effect and ensure the export clearance in India.

8. Prior to pick-up of the shipment, Glenmark will issue a commercial invoice to Napo, with the invoice date being the date of delivery at the Facility.

9. Risk of loss, and responsibility for onward transit, will transfer to Napo at the time of pick up at Glenmark Facility. Napo will arrange for delivery of the Crofelemer Final from the point of pick-up to its final destination. Napo will arrange for customs clearance in the receiving country.

APPENDIX 2.4C

SHIPPING AND BILLING PROCEDURES FOR CPL

1. When one or more lots of CPL are to be available for shipment to Glenmark, Napo will notify Glenmark in writing (email will suffice) providing**:**

   a. Number of drums to be shipped
   b. Estimated weight in kilograms
   c. Expected ship date
   d. Purchase Price of CPL
   e. Estimated freight and insurance charges for delivery to port in India

   It will not be necessary for Glenmark to issue a purchase order for CPL in order for Napo to ship a consignment of CPL.

2. Napo, or its designee, will provide Glenmark the documents that are necessary for customs clearance and receipt of the CPL by Glenmark, including (but not limited to)**:**

   a. Certificate of Analysis
   b. Certificate of Origin
   c. Commercial Invoice
   d. Packing List
   e. Bills of Lading
   f. Any other documents which Glenmark deems necessary for the purpose of the clearance of CPL

3. Glenmark will be responsible for (i) clearance through customs in India, (ii) payment of duties and taxes, and (iii) delivery of the CPL to the appropriate Facility for processing.

EXHIBIT 1.45

QUALITY AGREEMENT

Exhibit 31.1

PRINCIPAL EXECUTIVE OFFICER'S CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Lisa A. Conte, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Jaguar Health, Inc. for the quarter ended September 30, 2020;

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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 16, 2020

/s/ Lisa A. Conte
Lisa A. Conte
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

PRINCIPAL FINANCIAL OFFICER'S CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Carol Lizak, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Jaguar Health, Inc. for the quarter ended September 30, 2020;

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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 16, 2020

/s/ Carol Lizak
Carol Lizak
Principal Financial and Accounting Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Jaguar Health, Inc. (the "Company") on Form 10-Q for the quarter ended September 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned officer of the Company certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to such officer's knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 16, 2020

/s/ Lisa A. Conte
Lisa A. Conte
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Jaguar Health, Inc. (the "Company") on Form 10-Q for the quarter ended September 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned officer of the Company certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to such officer's knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 16, 2020

/s/ Carol Lizak
Carol Lizak
Principal Financial and Accounting Officer