



**innovation  
without  
boundaries**

2017 ANNUAL REPORT





**Jaguar Health, Inc.** is a commercial stage natural-products pharmaceuticals company focused on developing novel, sustainably derived gastrointestinal products on a global basis. Our wholly-owned subsidiary, Napo Pharmaceuticals, Inc., 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. FDA for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy.

### About Mytesi®

Mytesi® (crofelemer) is an antidiarrheal indicated for the symptomatic relief of noninfectious diarrhea in adult patients with HIV/AIDS on antiretroviral therapy (ART). Mytesi® is not indicated for the treatment of infectious diarrhea. Rule out infectious etiologies of diarrhea before starting Mytesi®. If infectious etiologies are not considered, there is a risk that patients with infectious etiologies will not receive the appropriate therapy and their disease may worsen. In clinical studies, the most common adverse reactions occurring at a rate greater than placebo were upper respiratory tract infection (5.7%), bronchitis (3.9%), cough (3.5%), flatulence (3.1%), and increased bilirubin (3.1%). See full Prescribing Information at [Mytesi.com](http://Mytesi.com).

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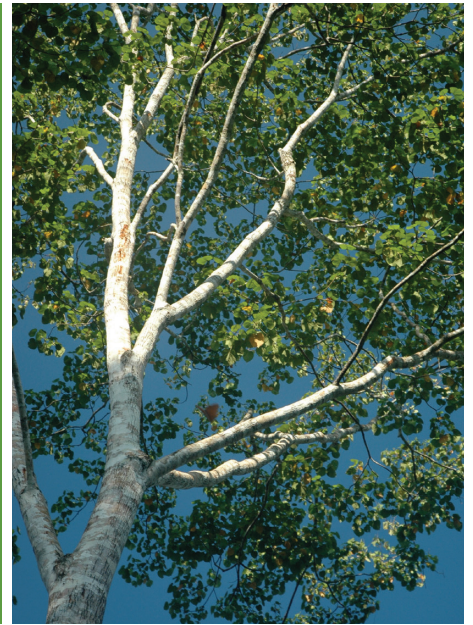


Photo not of actual patient.



Photo not of actual patient.

*"This new job that I got and I'm gonna start...I'm gonna have to get up extra early because, in the mornings, as soon as I get up, I might have diarrhea."*

**Female, age 54,  
HIV+ for 26 years**



Photo not of actual patient.  
Quote is from a person living with HIV.



## **DEAR FELLOW STOCKHOLDERS,**

Fiscal year 2017 was another year filled with important milestones for Jaguar. We've made significant progress on the commercialization front since acquiring our FDA-approved human drug product, Mytesi® (crofelemer), as a result of our July 2017 merger with Napo Pharmaceuticals. I am extremely pleased with these achievements and grateful for the ongoing support and dedication of our employees and stockholders as we continue efforts to grow sales and progress multiple possible follow-on indications for Mytesi®—the first and only antidiarrheal indicated for the symptomatic relief of non-infectious diarrhea in adult patients with HIV/AIDS on antiretroviral therapy.

Since the merger, we have both initiated and dramatically expanded Mytesi®-related commercial, educational and development initiatives, including the roll-out of direct-to-consumer advertising campaigns, publication-focused efforts, government affairs activities regarding neglected comorbidities of HIV, along with the other significant efforts described below.

### **A FORCE TO BE RECKONED WITH**

To launch Mytesi® to high-potential HIV prescribers, Napo deployed nine sales reps in October and November of 2017—six of whom came from Bristol-Myers Squibb and have called on HIV physicians for 18 to 19 years—in addition to hiring a national sales director in August 2017. Two additional HIV specialist reps joined our salesforce this past February, followed by four additional experienced reps this month. Our salesforce is focused on differentiating and targeting the *right* doctors—HIV specialists who are high prescribers of antiretroviral medications and gastroenterologists who see large populations of people living with HIV/AIDS, and is strategically positioned to cover the U.S. geographies with the highest potential, including major urban areas: San Francisco, Los Angeles/Palm Springs, Miami/southern Florida, northern Florida, New York, New Jersey, Pennsylvania, Delaware, Maryland, DC, Houston, northern Texas, Chicago, St. Louis, Indianapolis, Kansas City, Alabama, Mississippi, Louisiana, North Carolina/South Carolina and Atlanta. Our plan is to expand the Mytesi® salesforce to 20 reps and an additional sales manager in 2018.

Mytesi® sales are clearly benefiting from the efforts of our recently expanded salesforce—in addition to the multiple supportive programs we've put in place.

### **1,400 PLANNED EDUCATIONAL EVENTS IN 2018**

As a small, nimble company we are watching closely the impact of the various programs and tactics we've instituted to grow awareness of Mytesi® and its ability to benefit a growing, aging population of patients living with HIV. A key tactic we've mobilized to support Mytesi® growth is the launch of a healthcare practitioner and patient advocate speaker bureau. In December 2017 we completed the training of 29 healthcare practitioners and 10 patient advocates to serve as members of the Napo Speakers Bureau, and we expect to run 1,400 educational events in 2018, which is a significant undertaking for a newly-commercial company. The program fosters a paradigm shift in the conversation that needs to occur in doctors' offices about the often-neglected comorbidity of diarrhea in people living with HIV, and we've already seen a positive impact on doctor-patient interactions from the comments stemming from the programs we've run thus far.

## **NAPOCARES™ PATIENT ASSISTANCE PROGRAM**

To complement the sales, promotional and educational activities we've undertaken, we're also addressing the reimbursement environment through our NapoCares™ Patient Assistance Program, which provides access to a copay savings card intended to help ensure that patients who have a copay never have to pay more than \$25 a month to fill a Mytesi® prescription. Redemptions of our copay savings card were up an average of 7% each month over the prior month during the post-merger period of August to December of 2017.

## **NATIONWIDE “MYTESI DIRECT™” PROGRAM**

As we announced last month, Napo has signed an agreement with pharmacy services provider Transition Patient Services (TPS) to help streamline and expand nationwide patient access to Mytesi®. Under the terms of the agreement, TPS will operate a nationwide pilot program for Mytesi®. The core benefits of the program, named Mytesi Direct™, include streamlining prescription fulfillment for Mytesi® in order to ensure that Mytesi® users receive their prescription quickly, coordinating with other Napo programs—such as the Mytesi® Copay Savings Card and the NapoCares™ Patient Assistance Program—to help ensure that patient out-of-pocket expenses for Mytesi® are as low as possible, and improving Mytesi® refill adherence through the transmission of renewal reminders to patients. We expect this program to significantly reduce barriers to Mytesi® access, acquisition and adherence in a highly patient-friendly and prescriber-friendly manner, helping us expand the number of patients able to benefit from the novel, first-in-class anti-secretory mechanism of action of Mytesi®.

## **A ROBUST PIPELINE**

Further growth is also planned as we strive to develop Mytesi® indications for additional patient populations and global access. Diarrhea continues to be an area of concern for patients undergoing cancer treatment. Novel targeted agents, such as epidermal growth factor receptor antibodies and tyrosine kinase inhibitors (TKIs), may block natural chloride secretion regulation pathways in the normal gastrointestinal mucosa, thereby leading to secretory diarrhea, and we've prioritized cancer therapy-related diarrhea for additional development.

As previously announced, an investigator-initiated trial titled *HALT-D: DiarrHeA Prevention and Prophylaxis with Crofelemer in HER2 Positive Breast Cancer Patients Receiving Trastuzumab, Pertuzumab, and Docetaxel or Paclitaxel with or without Carboplatin* is currently underway in conjunction with Georgetown University. The primary objective of the study is to characterize the incidence and severity of diarrhea in patients receiving investigational therapy in the setting of prophylactic anti-diarrheal management.

As also previously announced, a second study, titled *An Open-Label Study to Characterize the Incidence and Severity of Diarrhea in Patients with Early-Stage HER2+ Breast Cancer Treated with Neratinib and Intensive Loperamide Prophylaxis*, is currently underway in conjunction with the University of California, San Francisco. The study is designed to evaluate crofelemer as a salvage antidiarrheal therapy used with the investigational breast cancer agent neratinib. The primary objective is to characterize the incidence and severity of diarrhea in patients with early-stage breast cancer receiving adjuvant trastuzumab and neratinib followed by one year of neratinib monotherapy in the setting of prophylactic anti-diarrheal management.

We recognize the importance of future development activities on supportive care for patients being treated with these cancer-related therapies—a focus area analogous to the supportive care of managing diarrhea in people living with HIV/AIDS.



As we announced this past January, we recently accepted a request to support an investigator-initiated trial of crofelemer at Sheikh Khalifa Medical City in Abu Dhabi for use in children with a disease known as congenital and diarrheal disorder. This is a group of rare chronic intestinal channel diseases that occur exclusively in early infancy and are characterized by severe lifelong diarrhea and a lifelong need for nutritional intake either parenterally or with a feeding tube.

Additionally, we have received orphan-drug designation from the U.S. Food and Drug Administration for Mytesi® for the treatment of short bowel syndrome (SBS), and we're working on a pediatric formulation suitable for SBS patients.

We've also prioritized inflammatory bowel disease, diarrhea-predominant irritable bowel syndrome, cholera and other acute infectious diarrheas for future product development and indication expansion, many of which are conditions for which we already have published clinical data. As I've commented many times, we consider crofelemer "a pipeline within a product."

Our near-term focus is to become a stable, cash-flow-positive operational business supported primarily by growth in Mytesi® sales for its current approved indication. To support this effort, we have dramatically reduced our expenditures on the animal health side of the business. We are, however, continuing initiatives related to Canalevia™ (crofelemer delayed-release tablets), our drug product candidate for chemotherapy-induced diarrhea (CID) in dogs and exercise-induced diarrhea (EID) in dogs, and Equilevia™, our non-prescription, personalized, premium product for total gut health in equine athletes.

As previously announced, we have received Minor Use in a Minor Species (MUMS) designation for Canalevia™ for CID in dogs. MUMS designation is modeled on the orphan-drug designation for human drug development and offers possible financial incentives to encourage MUMS drug development, such as the availability of grants to help with the cost of developing the MUMS drug and a longer period of marketing exclusivity. With receipt of conditional approval for this indication, we would expect to conduct the commercial launch of Canalevia™ for CID in dogs in mid-2019.

Also as previously announced, the FDA has indicated that the use of Canalevia™ for the treatment of EID in dogs qualifies as a minor use, which means Canalevia™ is also eligible for conditional approval for this second indication. If Canalevia™ receives conditional approval for EID in dogs, we expect to conduct the commercial launch of Canalevia™ for this indication in mid-2019 as well.

### **MYTESI®, MYTESI®, MYTESI®**

At Jaguar and Napo, it's all about sales of Mytesi®, Mytesi®, Mytesi®, as well as physician and patient awareness, promotional advertising, government affairs, educational and reimbursement activities, and the nimble monitoring of, and reacting to, the impact of these programs—all to continue driving Mytesi® commercial performance. We believe Mytesi® will be a successful, first-in-class entry to gastrointestinal care—in the U.S. and internationally—and has the ability to grow long-term and remain exclusively on the market for that long-term growth.

Sincerely,



Lisa A. Conte  
Chief Executive Officer & President  
April 24, 2018

## About Mytesi®

Mytesi® (crofelemer) is an antidiarrheal indicated for the symptomatic relief of noninfectious diarrhea in adult patients with HIV/AIDS on antiretroviral therapy (ART). Mytesi® is not indicated for the treatment of infectious diarrhea. Rule out infectious etiologies of diarrhea before starting Mytesi®. If infectious etiologies are not considered, there is a risk that patients with infectious etiologies will not receive the appropriate therapy and their disease may worsen. In clinical studies, the most common adverse reactions occurring at a rate greater than placebo were upper respiratory tract infection (5.7%), bronchitis (3.9%), cough (3.5%), flatulence (3.1%), and increased bilirubin (3.1%).

See full Prescribing Information at Mytesi.com. Crofelemer, the active ingredient in Mytesi®, is a botanical (plant-based) drug extracted and purified from the red bark sap of the medicinal *Croton lechleri* tree in the Amazon rainforest. Napo has established a sustainable harvesting program for crofelemer to ensure a high degree of quality and ecological integrity.

## Important Additional Information

You are urged to read the proxy statement filed with the SEC on April 24, 2018 related to Jaguar's 2018 Annual Meeting of Stockholders. Free copies of the proxy statement and other documents filed by Jaguar with the SEC are available through the SEC's web site at [www.sec.gov](http://www.sec.gov). In addition, the proxy statement and related materials may also be obtained free of charge from Jaguar by directing such requests to: Jaguar Health, Inc., Attention: Karen S. Wright, 201 Mission Street, Suite 2375, San Francisco, CA 94105 (415.371.8300 phone). Jaguar and certain of its directors and executive officers may be deemed to be participants in the solicitation of proxies.

## Forward-Looking Statements

Certain statements in this Stockholders Letter constitute "forward-looking statements." These include statements regarding the Company's belief that the Mytesi Direct™ program will significantly reduce barriers to Mytesi® access, acquisition and adherence in a highly patient-friendly and prescriber-friendly manner, helping expand the number of patients able to benefit from the novel, first-in-class anti-secretory mechanism of action of Mytesi®, the belief that further growth will occur as Jaguar and Napo strive to develop Mytesi® indications for additional patient populations, the expectation that, with receipt of conditional approval for Canalevia™ for CID in dogs, the Company will conduct the commercial launch of Canalevia™ for this indication in mid-2019, the expectation that, if Canalevia™ receives conditional approval for EID in dogs, Jaguar will conduct the commercial launch of Canalevia™ for this indication in mid-2019 as well, and the Company's belief that Mytesi® will be a successful, first-in-class entry to gastrointestinal care—in the U.S. and internationally—and that Mytesi® has the ability to grow long-term and remain exclusively on the market for that long-term growth. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expect," "plan," "aim," "anticipate," "could," "intend," "target," "project," "contemplate," "believe," "estimate," "predict," "potential" or "continue" or the negative of these terms or other similar expressions. The forward-looking statements in this release are only predictions. Jaguar has based these forward-looking statements largely on its current expectations and projections about future events. These forward-looking statements speak only as of the date of this release and are subject to a number of risks, uncertainties and assumptions, some of which cannot be predicted or quantified and some of which are beyond Jaguar's control. Except as required by applicable law, Jaguar does not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise.





# Jaguar Health

201 Mission Street, Suite 2375, San Francisco, CA 94105  
Tel: 415.371.8300 • Fax: 415.371.8311  
<https://jaguar.health>

April 24, 2018

Dear Stockholder:

You are cordially invited to attend the 2018 Annual Meeting of Stockholders (the “Annual Meeting”) of Jaguar Health, Inc. (the “Company”) to be held at 201 Mission Street, Suite 2375, San Francisco, CA 94105, on Friday, May 18, 2018, at 8:30 a.m., local time.

At the Annual Meeting you will be asked to (i) ratify the appointment of BDO USA, LLP as the Company’s independent registered public accounting firm for the fiscal year ended December 31, 2018, (ii) approve, for purposes of Nasdaq Rule 5635(b), the removal of the 19.99% Limitation (as defined in the accompanying proxy statement) with respect to the as-converted voting rights and conversion of the Company’s Series A Convertible Participating Preferred Stock into shares of the Company’s voting common stock, par value \$0.0001 per share (the “Common Stock”) (which such 19.99% Limitation would otherwise limit the conversion and as-converted voting rights of the Company’s Series A Convertible Participating Preferred Stock to no more than 19.99% of the Company’s Common Stock outstanding prior to such issuance), (iii) approve the adoption of an amendment to the Company’s Third Amended and Restated Certificate of Incorporation (the “COI”) to effect a reverse stock split of the Company’s issued and outstanding Common Stock at a ratio not less than 1-for-11 and not greater than 1-for-15, with the exact ratio, if approved and effected at all, to be set within that range at the discretion of the Company’s board of directors and publicly announced by the Company on or before June 30, 2018 without further approval or authorization of the Company’s stockholders (the “Reverse Stock Split”), and (iv) approve the adoption of an amendment to the COI to decrease the number of authorized shares of Common Stock to 150,000,000 shares, contingent upon the Reverse Stock Split being approved and effected.

It is important that your shares be represented and voted whether or not you plan to attend the Annual Meeting in person. You may vote on the Internet, by telephone or by completing and mailing a proxy card or voting instruction form. Voting over the Internet, by telephone or by mail will ensure your shares are represented at the annual meeting. If you do attend the Annual Meeting, you may, of course, withdraw your proxy should you wish to vote in person. Please read the enclosed information carefully before voting.

Sincerely,

Lisa A. Conte  
*Chief Executive Officer & President*

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# JAGUAR HEALTH, INC.

201 Mission Street  
Suite 2375  
San Francisco, CA 94105

## NOTICE OF 2018 ANNUAL MEETING OF STOCKHOLDERS To Be Held May 18, 2018

NOTICE HEREBY IS GIVEN that the 2018 Annual Meeting of Stockholders (the “Annual Meeting”) of Jaguar Health, Inc. (the “Company”) will be held at 201 Mission Street, Suite 2375, San Francisco, CA 94105, on Friday, May 18, 2018, at 8:30 a.m., local time, for the following purposes:

1. Ratifying the appointment of BDO USA, LLP as the Company’s independent registered public accounting firm for the fiscal year ended December 31, 2018 (Proposal 1);
2. Approving, for purposes of Nasdaq Rule 5635(b), the removal of the 19.99% Limitation (as defined in the accompanying proxy statement) with respect to the as-converted voting rights and conversion of the Company’s Series A Convertible Participating Preferred Stock into shares of the Company’s voting common stock, par value \$0.0001 per share (the “Common Stock”) (which such 19.99% Limitation would otherwise limit the conversion and as-converted voting rights of the Company’s Series A Convertible Participating Preferred Stock to no more than 19.99% of the Company’s Common Stock outstanding prior to such issuance) (Proposal 2);
3. Approving the adoption of an amendment to the Company’s Third Amended and Restated Certificate of Incorporation (the “COI”) to effect a reverse stock split of the Company’s issued and outstanding Common Stock at a ratio not less than 1-for-11 and not greater than 1-for-15, with the exact ratio, if approved and effected at all, to be set within that range at the discretion of the Company’s board of directors and publicly announced by the Company on or before June 30, 2018 without further approval or authorization of the Company’s stockholders (the “Reverse Stock Split”) (Proposal 3);
4. Approving the adoption of an amendment to the COI to decrease the number of authorized shares of Common Stock to 150,000,000 shares, contingent upon the Reverse Stock Split in Proposal 3 being approved and effected (Proposal 4); and
5. Such other business as properly may come before the Annual Meeting or any adjournment or postponement thereof.

The board of directors is not aware of any other business to be presented to a vote of the stockholders at the Annual Meeting. Information relating to the above matters is set forth in the attached Proxy Statement. Stockholders of record at the close of business on April 23, 2018 are entitled to receive notice of and to vote at the Annual Meeting and any adjournment or postponement thereof.

By Order of the Board of Directors.



Lisa A. Conte  
*Chief Executive Officer & President*

San Francisco, California  
April 24, 2018

Information relating to the above matters is set forth in the attached Proxy Statement. Stockholders of record at the close of business on April 23, 2018 are entitled to receive notice of and to vote at the Annual Meeting and any adjournment or postponement thereof. If you have questions concerning the proposals in the Proxy Statement, would like additional copies of the Proxy Statement or need help in voting your shares of Common Stock, please contact our proxy solicitor Georgeson LLC at 866-821-0284.

**Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to be Held on May 18, 2018. The proxy materials are available at <https://jaguarhealth.gcs-web.com/financial-information/annual-reports>**

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**PLEASE CAREFULLY READ THE PROXY STATEMENT. EVEN IF YOU EXPECT TO ATTEND THE ANNUAL MEETING, PLEASE PROMPTLY COMPLETE, EXECUTE, DATE AND RETURN THE ENCLOSED PROXY CARD OR VOTING INSTRUCTION FORM IN THE ACCOMPANYING POSTAGE-PAID ENVELOPE. NO POSTAGE IS NECESSARY IF MAILED IN THE UNITED STATES. YOU MAY ALSO VOTE ELECTRONICALLY VIA THE INTERNET OR BY TELEPHONE BY FOLLOWING THE INSTRUCTIONS ON THE ENCLOSED PROXY CARD OR VOTING INSTRUCTION FORM. IF YOU VOTE BY INTERNET OR TELEPHONE, THEN YOU NEED NOT RETURN A WRITTEN PROXY CARD OR VOTING INSTRUCTION FORM BY MAIL. STOCKHOLDERS WHO ATTEND THE ANNUAL MEETING MAY REVOKE THEIR PROXIES AND VOTE IN PERSON IF THEY SO DESIRE (AS DESCRIBED BELOW).**

## **JAGUAR HEALTH, INC.**

**201 Mission Street  
Suite 2375  
San Francisco, CA 94105**

### **PROXY STATEMENT**

#### **FOR THE 2018 ANNUAL MEETING OF STOCKHOLDERS**

**To Be Held May 18, 2018**

#### **GENERAL INFORMATION ABOUT THE ANNUAL MEETING**

We are furnishing this Proxy Statement to our stockholders in connection with the solicitation of proxies by our board of directors to be voted at the 2018 Annual Meeting of Stockholders (the “Annual Meeting”) and at any adjournment or postponement thereof. The Annual Meeting will be held at 201 Mission Street, Suite 2375, San Francisco, CA 94105, on Friday, May 18, 2018, at 8:30 a.m., local time.

When used in this Proxy Statement, the terms the “Company,” “we,” “us,” “our” and “Jaguar” refer to Jaguar Health, Inc.

The Securities and Exchange Commission (“SEC”) rules require us to provide an annual report to stockholders who receive this Proxy Statement. Accordingly, we have enclosed our Annual Report on Form 10-K for the fiscal year ended December 31, 2017 (the “Annual Report”), which was filed on April 9, 2018, with this Proxy Statement, and we will also provide copies of such documents to brokers, dealers, banks, voting trustees and their nominees for the benefit of their beneficial owners of record. Pursuant to rules adopted by the SEC, the Company is also providing access to its proxy materials over the Internet. All stockholders will have the ability to access the proxy materials at <https://jaguarhealth.gcs-web.com/financial-information/annual-reports>.

The date on which the Notice of 2018 Annual Meeting of Stockholders, this Proxy Statement, the Annual Report and form of proxy card or voting instruction form are first being sent or given to stockholders is on or about April 24, 2018.

#### **GENERAL INFORMATION ABOUT VOTING**

##### **Record Date**

As of April 23, 2018, the record date for the Annual Meeting (the “Record Date”), 128,410,756 shares of our voting common stock, par value \$0.0001 per share (the “Common Stock”), and 5,524,926 shares of our Series A Convertible Participating Preferred Stock, par value \$0.0001 per share (the “Preferred Stock”), were issued and outstanding. Only holders of record of our Common Stock and our Preferred Stock as of the close of business on the record date are entitled to notice of, and to vote at, the Annual Meeting or at any adjournment or postponement thereof. A list of such holders will be open to the examination of any stockholder for any purpose germane to the meeting at Jaguar

Health, Inc., 201 Mission Street, Suite 2375, San Francisco, CA 94105 for a period of ten (10) days prior to the Annual Meeting. The list of stockholders will also be available for such examination at the Annual Meeting. In addition, as of April 23, 2018, 41,939,410 shares of our non-voting common stock were outstanding, but these shares will have no voting rights with respect to any of the proposals being considered at the Annual Meeting. Each share of non-voting common stock is convertible into one share of Common Stock at the election of the holder thereof or automatically upon transfer to anyone that is not Nantucket Investments Limited or an affiliated investment fund. The use of the capitalized term “Common Stock” in this Proxy Statement and related materials refers only to the Company’s voting common stock and does not include the Company’s convertible non-voting common stock.

### **Voting, Quorum and Revocability of Proxies**

Each share of Common Stock entitles the holder of record thereof to one vote. Each share of Preferred Stock entitles the holder of record thereof to 8.6 votes (on an as converted to Common Stock basis, calculated assuming that the conversion price for the Preferred Stock for this purpose only is \$0.1935 (subject to appropriate adjustment in the event of any stock dividend, stock split, reverse stock split, combination or other similar recapitalization)) (as provided in the Certificate of Designation of the Series A Convertible Participating Preferred Stock (the “Certificate of Designation”)). Notwithstanding the foregoing, unless and until the Company obtains the requisite stockholder approval for the removal of the 19.99% Limitation (hereinafter defined) with respect to the as-converted voting and conversion rights of the Preferred Stock into shares of Common Stock (as contemplated by Proposal 2) (i) the Preferred Stock may not be converted into shares of the Company’s Common Stock in excess of 19.99% of the shares of the Company’s Common Stock outstanding immediately after giving effect to such conversion (the “Conversion Cap”) and (ii) the aggregate number of votes to which all holders of outstanding shares of Preferred Stock are entitled to cast together with the Common Stock may not exceed 19.99% of the aggregate number of votes to which all stockholders of the Company are entitled to cast (including the holders of shares of Preferred Stock) (the “Voting Cap” and, together with the Conversion Cap, the “19.99% Limitation”). No other securities are entitled to be voted at the Annual Meeting. Each stockholder holding Common Stock or Preferred Stock may vote in person or by proxy on all matters that properly come before the Annual Meeting and any adjournment or postponement thereof (except as otherwise described below).

The presence, in person or by proxy, of stockholders entitled to vote a majority of the shares of Common Stock and Preferred Stock (on an as converted to Common Stock basis, subject to the 19.99% Limitation) outstanding on the Record Date will constitute a quorum for purposes of voting at the Annual Meeting. Properly executed proxies marked “ABSTAIN” or “WITHHOLD AUTHORITY,” as well as broker non-votes will be counted as “present” for purposes of determining the existence of a quorum. If a quorum should not be present, the Annual Meeting may be adjourned from time to time until a quorum is obtained.

Our board of directors is soliciting proxies for use in connection with the Annual Meeting and any postponement or adjournment thereof. If you vote your shares via the Internet or by telephone or execute and return the proxy card or voting instruction form accompanying this Proxy Statement, your shares will be voted as you direct on all matters properly coming before the Annual Meeting for a vote. For Proposals 1, 2, 3 and 4, you may vote “FOR,” “AGAINST” or “ABSTAIN.”

If your shares are registered directly in your name with our transfer agent, Computershare Trust Company, N.A. (the “Transfer Agent”), you are considered, with respect to those shares, the stockholder of record. As the stockholder of record, you have the right to grant your proxy directly to the Company or to vote your shares in person at the Annual Meeting. If you hold your shares in a stock brokerage account or through a bank or other financial intermediary, you are considered the beneficial owner of shares held in street name. Your bank, broker or other financial intermediary is considered, with respect to those shares, the stockholder of record. As the beneficial owner, you have



the right to direct your bank, broker or other financial intermediary on how to vote your shares, but because you are not the stockholder of record, you may not vote these shares in person at the Annual Meeting unless you obtain a signed proxy from the record holder giving you the right to vote the shares. As a beneficial owner, you are, however, welcome to attend the Annual Meeting.

Even if you plan to attend the Annual Meeting, we recommend that you also submit your proxy as described in the proxy card or voting instruction form, so that your vote will be counted if you later decide not to attend the Annual Meeting. Submitting your proxy now will not prevent you from voting your shares in person by written ballot at the Annual Meeting if you desire to do so, as your proxy is revocable at your option.

You may revoke your proxy by (a) delivering to the Secretary of the Company at or before the Annual Meeting a written notice of revocation bearing a later date than the proxy, (b) duly executing a subsequent proxy and delivering it to the Secretary of the Company at or before the Annual Meeting or (c) attending the Annual Meeting and voting in person (although attendance at the Annual Meeting will not in and of itself constitute revocation of a proxy). Any written notice revoking a proxy should be delivered at or prior to the Annual Meeting to: Jaguar Health, Inc., 201 Mission Street, Suite 2375, San Francisco, CA 94105, Attention: Karen S. Wright. Beneficial owners of our Common Stock who are not holders of record and wish to revoke their proxy should contact their bank, brokerage firm or other custodian, nominee or fiduciary to inquire about how to revoke their proxy.

The shares represented by all valid proxies received will be voted in the manner specified. Where specific choices are not indicated on a validly executed and delivered proxy, the shares represented by such proxy will be voted: (i) “FOR” the ratification of the appointment of BDO USA, LLP (“BDO”) as the Company’s independent registered public accounting firm for the fiscal year ended December 31, 2018, (ii) “FOR” the approval of, for purposes of Nasdaq Rule 5635(b), the removal of the 19.99% Limitation with respect to the as-converted voting rights and conversion of the Company’s Preferred Stock into shares of Common Stock, (iii) “FOR” the approval of the amendment to the Company’s Third Amended and Restated Certificate of Incorporation (the “COI”) to effect a reverse stock split of the Company’s issued and outstanding Common Stock at a ratio of not less than 1-for-11 and not greater than 1-for-15, with the exact ratio, if approved and effected at all, to be set within that range at the discretion of the Company’s board of directors and publicly announced by the Company on or before June 30, 2018 without further approval or authorization of the Company’s stockholders (the “Reverse Stock Split”), and (iv) “FOR” the approval of the amendment to the COI to decrease the number of authorized shares of Common Stock to 150,000,000 shares, contingent upon the Reverse Stock Split being approved and effected.

We will bear all expenses of this solicitation, including the cost of preparing and mailing this Proxy Statement. We have retained Georgeson LLC to solicit proxies for a fee of \$7,500 plus reimbursement of reasonable out-of-pocket expenses. In addition to solicitation by use of the mail, proxies may be solicited by telephone, facsimile or personally by our directors, officers and employees, who will receive no extra compensation for their services. We will reimburse banks, brokerage firms and other custodians, nominees and fiduciaries for reasonable expenses incurred by them in sending proxy soliciting materials to beneficial owners of shares of Common Stock.

### **Broker Voting**

Brokers holding shares of record in “street name” for a client have the discretionary authority to vote on some matters (routine matters) if they do not receive instructions from the client regarding how the client wants the shares voted at least 10 days before the date of the meeting; provided the proxy materials are transmitted to the client at least 15 days before the meeting. There are also some matters with respect to which brokers do not have discretionary authority to vote (non-routine matters) if they do not receive timely instructions from the client. When a broker does not have discretion to

vote on a particular matter and the client has not given timely instructions on how the broker should vote, a broker non-vote results. Any broker non-vote will be counted as present at the Annual Meeting for purposes of determining a quorum, but will be treated as not entitled to vote with respect to non-routine matters.

The proposal to ratify the appointment of BDO as our independent registered public accounting firm for the fiscal year ended December 31, 2018 (Proposal 1), the proposal to approve the amendment to the COI to effect the Reverse Stock Split (Proposal 3), and the proposal to approve the amendment to the COI to decrease the number of authorized shares of the Company's Common Stock to 150,000,000 shares, contingent upon the Reverse Stock Split in Proposal 3 being approved and effected (Proposal 4) are considered routine matters and brokers will be permitted to vote in their discretion on these matters on behalf of clients who have not furnished voting instructions at least 10 days before the date of the Annual Meeting. In contrast, brokers will not be permitted to vote in the proposal to approve, for purposes of Nasdaq Rule 5635(b), the removal of the 19.99% Limitation with respect to the Company's Preferred Stock (Proposal 2).

### **Required Vote**

#### ***Proposal 1—Ratification of Independent Registered Public Accounting Firm***

With respect to the proposal to ratify the Audit Committee's appointment of BDO as our independent registered public accounting firm for the fiscal year ended December 31, 2018 (Proposal 1), you may vote in favor of the proposal, vote against the proposal or abstain from voting. The vote required to approve the proposal is governed by Delaware law, our COI and our Bylaws and is the affirmative vote of the holders of a majority of votes cast affirmatively or negatively in person or by proxy at the Annual Meeting and entitled to vote, provided a quorum is present. As a result, abstentions will be considered in determining whether a quorum is present but will have no effect on the vote for Proposal 1.

#### ***Proposal 2—Removal of the 19.99% Limitation Which Otherwise Applies to the Issuance of Common Stock Upon the Conversion of Preferred Stock For Purposes of Nasdaq Listing Rule 5635(b)***

With respect to the proposal to approve, for purposes of Nasdaq Rule 5635(b), the removal of the 19.99% Limitation with respect to (i) the conversion of the Company's Preferred Stock into shares of Common Stock and (ii) the as-converted voting rights of the Company's Preferred Stock ((i) and (ii), together, Proposal 2), you may vote in favor of the proposal, vote against the proposal or abstain from voting.

The vote required to approve Proposal 2 is governed by Delaware law, the Nasdaq Listing Rules, our COI and our Bylaws and is the affirmative vote of the holders of a majority of the votes cast affirmatively or negatively in person or by proxy at the Annual Meeting and entitled to vote, provided a quorum is present. As a result, abstentions will be considered in determining whether a quorum is present but will have no effect on the vote for Proposal 2.

The Preferred Stock shall not be entitled to vote with respect to Proposal 2.

#### ***Proposal 3—Approval of the Adoption of the Amendment to the COI to effect the Reverse Stock Split***

With respect to the proposal to approve the Amendment to the COI to effect the Reverse Stock Split, you may vote in favor of the proposal, vote against the proposal or abstain from voting.

The vote required to approve Proposal 3 is governed by Delaware law, our COI and our Bylaws and is the affirmative vote of the holders of a majority of the outstanding shares of Common Stock and Preferred Stock (on an as converted to Common Stock basis, subject to the 19.99% Limitation) as of the record date, present in person or represented by proxy at the Annual Meeting and entitled to vote,

voting together as a single class. As a result, abstentions will have the same practical effect as a vote against Proposal 3.

***Proposal 4—Approval of the Adoption of the Amendment to the COI to Decrease the Number of Authorized Shares of the Company’s Common Stock***

With respect to the proposal to approve the Amendment to the COI to decrease the number of authorized shares of the Company’s Common Stock to 150,000,000 shares, contingent upon the Reverse Stock Split in Proposal 3 being approved and effected, you may vote in favor of the proposal, vote against the proposal or abstain from voting.

The vote required to approve Proposal 4 is governed by Delaware law, our COI and our Bylaws and is the affirmative vote of the holders of a majority of the outstanding shares of Common Stock and Preferred Stock (on an as converted to Common Stock basis, subject to the 19.99% Limitation) as of the record date, present in person or represented by proxy at the Annual Meeting and entitled to vote, voting together as a single class. As a result, abstentions will have the same practical effect as a vote against Proposal 4.

**NO DISSENTERS’ RIGHTS**

The corporate action described in this Proxy Statement will not afford to stockholders the opportunity to dissent from the actions described herein and receive an agreed or judicially appraised value for their shares of Common Stock.



## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information regarding the beneficial ownership of shares of our Common Stock as of April 23, 2018 for:

- each person known to us to be the beneficial owner of more than 5% of our outstanding shares of Common Stock;
- each of our named executive officers;
- each of our directors; and
- all directors and named executive officers as a group.

Information with respect to beneficial ownership has been furnished by each director, executive officer or beneficial owner of more than 5% of our Common Stock. Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting and investment power with respect to the securities. Except as otherwise provided by footnote, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of Common Stock shown as beneficially owned by them. The number of shares of Common Stock used to calculate the percentage ownership of each listed person includes the shares of Common Stock underlying options or warrants or convertible securities held by such persons that are currently exercisable or convertible or exercisable or convertible within 60 days of April 23, 2018, but are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

Percentage of beneficial ownership is based on 128,410,756 shares of Common Stock and 5,524,926 shares of Preferred Stock outstanding as of April 23, 2018, subject to the 19.99% Limitation. Each share of Preferred Stock is convertible into approximately nine shares of Common Stock.

Except as otherwise set forth below, the address of each beneficial owner listed in the table below is c/o Jaguar Health, Inc., 201 Mission Street, Suite 2375, San Francisco, California 94105.

Name and address of beneficial owner	Voting Common Stock		Series A Convertible Participating Preferred Stock	
	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned
<b>5% Stockholders:</b>				
Sagard Capital Partners, L.P.(1) . . . . .	32,082,626	19.99%	5,524,926	100%
Invesco Ltd. . . . .	26,885,838	20.94%	—	—
Nantucket Investments Limited(2) . . . . .	23,634,341	16.06%	—	—
Entities affiliated with Kingdon Capital Management L.L.C.(3) . . . . .	12,846,405	9.09%	—	—
<b>Named executive officers and directors:</b>				
Lisa A. Conte(4) . . . . .	1,797,332	*	—	—
Steven R. King, Ph.D(5) . . . . .	648,970	*	—	—
Karen S. Wright(6) . . . . .	413,645	*	—	—
James J. Bochnowski(7) . . . . .	1,104,760	*	—	—
Jeffery C. Johnson . . . . .	—	—	—	—
Folkert W. Kamphuis(8) . . . . .	342,850	*	—	—
John Micek III(9) . . . . .	236,382	*	—	—
Jiahao Qiu(10) . . . . .	65,395	*	—	—
Jonathan B. Siegel . . . . .	—	—	—	—
Zhi Yang, Ph.D.(11) . . . . .	1,627,831	*	—	—
All current executive officers and directors as a group (10 persons)(12) . . . . .	6,237,165	4.70%	—	—

\* Less than 1%.

- (1) Represents 32,082,626 shares of Common Stock issuable upon conversion of shares of Preferred Stock that are convertible at any time, after giving effect to the 19.99% Limitation described elsewhere in this proxy statement. If Proposal 2 is approved and the 19.99% Limitation is removed, an additional 17,641,704 additional shares of Common Stock would be issuable upon conversion of shares of Preferred Stock, resulting in an aggregate of 49,724,330 shares of Common Stock issuable upon conversion of shares of Preferred Stock, which shares would be entitled to 47,540,060 votes as further discussed elsewhere in this proxy statement. The address for Sagard Capital Partners, L.P. is 280 Park Avenue, 3rd Floor West, New York, NY 10017.
- (2) Represents (i) 4,884,245 shares of Common Stock and (ii) 18,750,096 shares of Common Stock issuable upon conversion of shares of non-voting common stock that are convertible at any time. The address for the reporting person is 1555 Peachtree Street NE, Suite 1800, Atlanta GA 30309.
- (3) Represents (i) 1,291,986 shares of Common Stock, (ii) 566,668 shares of Common Stock issuable upon exercise of warrants, and (iii) 10,987,751 shares of Common Stock issuable upon conversion of the Kingdon Notes owned by Kingdon Capital Management, L.L.C. that are convertible or may become convertible within 60 days of April 23, 2018, excluding any accrued and unpaid interest on the Kingdon Notes. The address for the reporting person is 152 West 57th Street, 50th Floor, New York, NY 10019.

- (4) Represents (i) 11,297 shares of Common Stock and (ii) 1,786,035 shares of Common Stock issuable to Ms. Conte under stock options that are exercisable or will become exercisable within 60 days of April 23, 2018.
- (5) Represents (i) 6,636 shares of Common Stock and (ii) 642,334 shares of Common Stock issuable to Dr. King under stock options that are exercisable or will become exercisable within 60 days of April 23, 2018.
- (6) Represents 413,645 shares of Common Stock issuable to Ms. Wright under stock options that are exercisable or will become exercisable within 60 days of April 23, 2018.
- (7) Includes (i) 587,576 shares of Common Stock held by the Bochnowski Family Trust, (ii) 418,296 shares of Common Stock issuable to Mr. Bochnowski under stock options that are exercisable or will become exercisable within 60 days of April 23, 2018 and (iii) 98,888 shares of Common Stock issuable to the Bochnowski Family Trust under warrants that are exercisable or will become exercisable within 60 days of April 23, 2018. Mr. Bochnowski is a co-trustee and beneficiary of such trust and shares voting and investment control over such shares with his spouse.
- (8) Represents 342,850 shares of Common Stock issuable to Mr. Kamphuis under stock options that are exercisable or will become exercisable within 60 days of April 23, 2018.
- (9) Represents 236,382 shares of Common Stock issuable to Mr. Micek under stock options that are exercisable or will become exercisable within 60 days of April 23, 2018.
- (10) Represents 65,395 shares of Common Stock issuable to Mr. Qiu under stock options that are exercisable or will become exercisable within 60 days of April 23, 2018.
- (11) Represents 1,627,831 shares of Common Stock beneficially held by BioVeda Management, Ltd. (“BVCF”). Dr. Yang is the Chairperson, Founder, Managing Partner and sole shareholder of BVCF and he may be deemed to beneficially own all the shares held by BVCF.
- (12) See footnotes (4) - (11).



**PROPOSAL 1—RATIFICATION OF APPOINTMENT OF THE INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Audit Committee has appointed BDO USA, LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2018, and the board of directors is asking stockholders to ratify that selection. Representatives of BDO USA, LLP are expected to attend the Annual Meeting in order to respond to questions from stockholders and will have the opportunity to make a statement.

**Principal Accountant Fees and Services**

The following table sets forth the fees billed for audit and other services rendered:

	Years ended December 31,	
	2017	2016
Audit Fees . . . . .	\$594,909	\$413,792
Audit Related Fees . . . . .	—	—
Tax Fees . . . . .	—	—
All Other Fees . . . . .	—	—
Total . . . . .	\$594,909	\$413,792

Audit fees include fees and out-of-pocket expenses, whether or not yet invoiced, for professional services provided in connection with the audit of our annual financial statements and review of our quarterly financial statements. In 2016 and 2017, audit fees also include fees for our follow-on public offerings and reviews of services provided in connection with other SEC filings.

**Policy on Audit Committee Preapproval of Audit and Permissible Non-audit Services of the Independent Registered Public Accounting Firm**

As specified in the Audit Committee charter, the Audit Committee pre-approves all audit and non-audit services provided by the independent registered public accounting firm prior to the receipt of such services. Thus, the Audit Committee approved 100% of the services set forth in the above table prior to the receipt of such services and no services were provided under the permitted *de minimus* threshold provisions.

The Audit Committee determined that the provision of such services was compatible with the maintenance of the independence of BDO USA, LLP.

**Vote Required**

The vote required to approve Proposal 1 is the affirmative vote of the holders of a majority of votes cast, affirmatively or negatively in person or by proxy at the Annual Meeting and entitled to vote, provided a quorum is present. As a result, abstentions will be considered in determining whether a quorum is present but will have no effect on the vote for Proposal 1.

**The board of directors unanimously recommends that the stockholders vote “FOR” Proposal No. 1 to ratify the appointment of BDO USA, LLP as the independent registered public accounting firm of Jaguar Health, Inc. for the fiscal year ended December 31, 2018.**



## **PROPOSAL 2—TO APPROVE THE ISSUANCE OF COMMON STOCK UPON THE CONVERSION OF PREFERRED STOCK FOR PURPOSES OF NASDAQ LISTING RULE 5635(B)**

At the Annual Meeting, holders of our Common Stock will be asked to approve the removal of the 19.99% Limitation with respect to (i) the conversion of the Company's Preferred Stock into shares of Common Stock and (ii) the as-converted voting rights of the Company's Preferred Stock ((i) and (ii), together, "Proposal 2"), as required by and in accordance with NASDAQ Listing Rule 5635(b).

### ***Background***

As previously announced, on March 23, 2018, the Company entered into a Series A Preferred Stock Purchase Agreement (the "Preferred Stock Purchase Agreement") with Sagard Capital Partners, L.P. ("Sagard") pursuant to which the Company, in a private placement, issued and sold to Sagard 5,524,926 shares of Preferred Stock for an aggregate purchase price of \$9,199,001 (the "Preferred Stock Offering"). The Company intends to use the proceeds from the Preferred Stock Offering for ongoing commercialization activities for Mytesi® in connection with the product's currently FDA-approved indication and for general corporate purposes.

Each share of Preferred Stock is initially convertible into nine shares of Common Stock at an effective conversion price of \$0.185 per share (based on an original price per shares of Preferred Stock of \$1.665), provided that, at any time prior to the time the Company obtains stockholder approval as required pursuant to Nasdaq Rule 5635(b), any conversion of Preferred Stock by a holder into shares of Common Stock would be prohibited if, as a result of such conversion, the holder, together with such holder's attribution parties, would beneficially own more than 19.99% of the total number of shares of the Common Stock issued and outstanding after giving effect to such conversion. Subject to certain limited exceptions, the shares of Preferred Stock cannot be offered, pledged or sold by Sagard 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.

The shares of Preferred Stock will be mandatorily converted upon the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the then outstanding shares of Preferred Stock at a conversion price of \$0.185 per share. In each case, the number of shares of Common Stock issuable upon such conversion will be limited to the extent necessary to satisfy the 19.99% Limitation.

The holders of a majority of the outstanding shares of Preferred Stock are entitled to elect two (2) Series A Directors. Notwithstanding the foregoing, the number of Series A Directors will be reduced to the extent necessary to comply with the Company's obligations, if any, under the rules or regulations of the Nasdaq Stock Market (including Nasdaq Listing Rule 5640).

The holders of shares of Preferred Stock have the right to vote with holders of shares of Common Stock, voting together as a single class on all other matters, with each share of Preferred Stock entitling the holder thereof to cast that number of votes per share as is equal to the aggregate number of shares of Common Stock into which such share of Preferred Stock is then convertible, using the market value of the Common Stock on the date of the Preferred Stock Agreement as the conversion price; provided that, at any time prior to the time the Company obtains stockholder approval, as required pursuant to Nasdaq Rule 5635(b), no holder (together with such holder's attribution parties) is permitted to have a number of votes in excess of such aggregate number of votes granted to the holders of 19.99% of the shares of Common Stock then outstanding (including any votes with respect to any shares of Common Stock and Preferred Stock beneficially owned by the holder or such holder's attribution parties).

### ***Reasons for Requesting Stockholder Approval***

Our Common Stock is listed on the Nasdaq Capital Market and, as such, we are subject to Nasdaq's rules and regulations. Pursuant to Nasdaq Listing Rule 5635(b), stockholder approval is required prior to the issuance of securities when the issuance or potential issuance of securities will result in a change of control of the company (the "Change of Control Rule"). Nasdaq defines a "change of control" as occurring when, as a result of an issuance, an investor or group would own, or have the right to acquire 20% or more of the outstanding shares of common stock or the voting power of a company, and such ownership or voting power would be the largest ownership position. Assuming the full conversion of the Preferred Stock (assuming a conversion ratio of 9:1), such securities, in the hands of Sagard, would represent approximately 27.9% of our outstanding Common Stock (based on 178,135,084 shares of Common Stock outstanding as of April 23, 2018 on an as-converted basis). We are seeking your approval of this Proposal 2 in order to satisfy the requirements of the Change of Control Rule with respect to the issuance of the Common Stock upon conversion of the Preferred Stock.

The Preferred Stock Purchase Agreement requires us to submit this Proposal 2 to our stockholders at a stockholders meeting to be held no later than June 30, 2018. Approval of this Proposal 2 will constitute approval pursuant to the Change of Control Rule, to the extent that the issuance of the shares of Common Stock issuable upon conversion of the Preferred Stock may be deemed to result in a change of control of the Company. The information set forth in this Proposal 2 is qualified in its entirety by reference to the actual terms of the Preferred Stock Purchase Agreement and the Certificate of Designation of the Series A Convertible Participating Preferred Stock (the "Certificate of Designation") filed as exhibits to our Current Report on Form 8-K filed with the SEC on March 27, 2018. Stockholders are urged to carefully read these documents.

It is important to note that Nasdaq does not contend that we are in violation of any Nasdaq rules as a result of the closing of the Preferred Stock Offering, including the rules set forth above, and has approved the listing of the shares of our Common Stock underlying the Preferred Stock, subject to the limitations set forth above.

### ***Potential Adverse Consequences if Proposal 2 is Not Approved***

The board of directors is not seeking the approval of our stockholders to authorize our entry into the Preferred Stock Purchase Agreement. The issuance and sale of the shares of Preferred Stock has already occurred and the Preferred Stock Purchase Agreement and related agreements are binding obligations on us. The Preferred Stock will continue to be an authorized class of our capital stock and the terms of the Preferred Stock will remain outstanding obligations of ours in favor of the holders of such securities. The failure of our stockholders to approve this Proposal 2 will mean that we cannot issue all the shares of Common Stock issuable upon the full conversion of the Preferred Stock and Sagard will continue to be subject to the 19.99% Limitation as it applies to its conversion and as-converted voting rights. In the event that some portion of the Preferred Stock that would otherwise be converted remains outstanding as a result of the failure of our stockholders to approve this Proposal 2, such shares will continue to have a liquidation preference over the Common Stock, such shares will continue to have certain redemption rights and other rights, and we will be required to continue complying with negative covenants of the Preferred Stock that limit our ability to issue securities, incur debt, pay dividends and amend our charter documents, among other things, which could materially adversely impact our operations.

### ***Potential Adverse Effects of Proposal 2***

If this Proposal 2 is approved, existing stockholders could suffer immediate dilution of their voting rights as Sagard would no longer be subject to the 19.99% Limitation and dilution in their ownership

interests in the future as a result of the potential issuance of shares of our Common Stock upon the full conversion of the shares of Preferred Stock. Upon conversion in full of the shares of Preferred Stock (assuming a conversion ratio of 9:1), an aggregate of 49,724,330 additional shares of Common Stock will be outstanding (consisting of approximately 32,082,626 shares of Common Stock currently issuable upon conversion of the shares of Preferred Stock and approximately 17,641,704 additional shares of Common Stock which will become issuable upon conversion if this Proposal 2 is approved and the 19.99% Limitation is removed), and the ownership interest of our existing stockholders would be correspondingly reduced. The number of shares of Common Stock described above does not give effect to (i) the issuance of shares of Common Stock pursuant to other outstanding options and warrants or (ii) any other future issuances of our Common Stock. The sale into the public market of these shares also could materially and adversely affect the market price of our Common Stock.

#### **Required Vote of Stockholders**

The vote required to approve Proposal 2 is the affirmative vote of the holders of a majority of the votes cast, affirmatively or negatively in person or by proxy at the Annual Meeting and entitled to vote, provided a quorum is present. As a result, abstentions will be considered in determining whether a quorum is present but will have no effect on the vote for Proposal 2. The Preferred Stock shall not be entitled to vote with respect to Proposal 2.

**The board of directors unanimously recommends that the stockholders vote “FOR” Proposal No. 2 to approve the removal of the 19.99% Limitation with respect to the Preferred Stock and the removal of any limitation or cap on issuances or as-converted voting rights, as otherwise required by and in accordance with NASDAQ Listing Rule 5635(b).**



### **PROPOSAL 3—APPROVAL OF THE ADOPTION OF THE AMENDMENT TO THE COI TO EFFECT THE REVERSE STOCK SPLIT**

At the Annual Meeting, stockholders will be asked to approve an amendment to our COI to effect a reverse stock split of our issued and outstanding Common Stock by a numerical ratio of not less than 1-for-11 and not more than 1-for-15, with the exact ratio, if approved and effected at all, to be set within that range at the discretion of the board of directors and publicly announced by the Company on or before June 30, 2018. The proposed amendment to the COI reflecting the Reverse Stock Split is included in *Annex A* to this Proxy Statement. By approving this proposal, stockholders would give the board of directors the authority, but not the obligation, to effect the Reverse Stock Split and full discretion to approve the ratio at which shares of Common Stock will be reclassified, from and including a ratio of 1-for-11 and up to and including a ratio of 1-for-15. The ratio (if any) selected by the board of directors for the Reverse Stock Split would be publicly disclosed by the Company to the stockholders on or before the date on which the amendment to the COI reflecting the Reverse Stock Split is filed with the Secretary of State of the State of Delaware.

At a special meeting of stockholders on March 12, 2018 (the “2018 Special Meeting”), our stockholders approved a proposal that would allow us to effect a reverse stock split at any time prior to June 30, 2018 at a ratio not less than 1-for-1.2 and not greater than 1-for-10, with the exact ratio, if approved and effected at all, to be set within that range at the discretion of the board of directors before June 30, 2018 without further approval or authorization of the Company’s stockholders. Since the special meeting, our board of directors has determined that a higher ratio for the reverse stock split and corresponding higher market price per share of Common Stock would be beneficial to the Company. As such, if this Proposal 3 is approved, the board of directors intends to effect the reverse stock split within the range specified in this Proposal 3 instead of the range specified in the reverse stock split proposal previously approved by the Company’s stockholders at the 2018 Special Meeting.

We are requesting stockholder approval to effect the Reverse Stock Split at a ratio of not less than 1-for-11 and not more than 1-for-15, with the exact ratio determined by the board of directors and publicly announced by the Company on or before June 30, 2018, to provide the board of directors with the flexibility to determine the appropriate ratio and timing for the Reverse Stock Split based upon our performance and other market factors. However, the board of directors reserves the right to elect not to proceed with the Reverse Stock Split, even if approved, and to abandon the Reverse Stock Split if it determines, in its sole discretion, that the Reverse Stock Split is no longer in the best interests of our stockholders. No further action by the stockholders will be required for the board of directors to either implement or abandon the Reverse Stock Split.

If the board of directors does not effect the Reverse Stock Split on or before June 30, 2018, any authority granted to the board of directors by our stockholders pursuant to this Proposal 3 will terminate.

#### ***Reasons for the Reverse Stock Split***

The board of directors has authorized the resolution to seek stockholder approval to effect the Reverse Stock Split with the primary intent of increasing the price of our Common Stock in order to meet The Nasdaq Capital Market’s minimum price per share criteria for continued listing on that exchange. Our Common Stock is publicly traded and listed on The Nasdaq Capital Market under the symbol “JAGX.” The board of directors believes that, in addition to increasing the price of our Common Stock, the reverse stock split would also reduce certain of our costs, such as Nasdaq listing fees, and make our Common Stock more attractive to a broader range of institutional and other investors. The combination of lower transaction costs and increased interest from institutional investors and investment funds may ultimately improve the trading liquidity of our Common Stock. Accordingly,

we believe that authority granted to the board of directors to effect the Reverse Stock Split is in the Company's and the stockholders' best interests.

On May 16, 2017, we received a letter from the Listing Qualifications Department of Nasdaq notifying us that we were not in compliance with Nasdaq Listing Rule 5550(a)(2), as the minimum bid price for the Company's listed securities was less than \$1 for the previous 30 consecutive business days. Since we did not regain compliance with the minimum bid price requirement during the initial 180 calendar day grace period, on November 13, 2017, we requested and were granted a second 180 calendar day grace period, or until May 14, 2018, to regain compliance with the minimum bid price requirement. Since the Annual Meeting is scheduled for May 18, 2018, we intend to request a further extension from Nasdaq following the end of the second 180 calendar day grace period.

In addition to establishing a mechanism for the price of our Common Stock to meet Nasdaq's minimum bid price requirement, we also believe that the Reverse Stock Split will make our Common Stock more attractive to a broader range of institutional and other investors. It is our understanding that the current market price of our Common Stock may affect its acceptability to certain institutional investors, professional investors and other members of the investing public. It is also our understanding that many brokerage houses and institutional investors have internal policies and practices that either prohibit them from investing in low-priced stocks or tend to discourage individual brokers from recommending low-priced stocks to their customers. In addition, some of those policies and practices may function to make the processing of trades in low-priced stocks economically unattractive to brokers. Moreover, because brokers' commissions on low-priced stocks generally represent a higher percentage of the stock price than commissions on higher-priced stocks, the current average price per share of our Common Stock can result in individual stockholders paying transaction costs representing a higher percentage of their total share value than would be the case if the share price were substantially higher. However, some investors may view the Reverse Stock Split negatively because it reduces the number of shares of Common Stock available in the public market. Lastly, our board of directors is required to approve a reverse stock split no later than June 30, 2018 pursuant to the terms of the Preferred Stock Purchase Agreement.

Reducing the number of outstanding shares of our Common Stock through the Reverse Stock Split is intended, absent other factors, to increase the per share market price of our Common Stock. However, other factors, such as our financial results, market conditions and the market perception of our business may adversely affect the market price of our Common Stock. As a result, there can be no assurance that the Reverse Stock Split, if completed, will result in the intended benefits described above, that the market price of our Common Stock will increase following the Reverse Stock Split, that the market price of our Common Stock will not decrease in the future, or that our Common Stock will achieve a high enough price per share to permit its continued listing by Nasdaq.

#### ***Certain Risks Associated with the Reverse Stock Split***

In evaluating the proposed Reverse Stock Split, the board of directors also took into consideration certain risks associated with reverse stock splits generally, including the negative perception of reverse stock splits held by some investors, analysts and other stock market participants, the fact that the stock price of some companies that have effected reverse stock splits has subsequently declined back to pre-reverse stock split levels, and the risks described below.

***There can be no assurance that the total market capitalization of our Common Stock (the aggregate value of our Common Stock at the then market price) after the implementation of the Reverse Stock Split will be equal to or greater than the total market capitalization before the Reverse Stock Split or that the per share market price of our Common Stock following the Reverse Stock Split will increase in proportion to the reduction in the number of shares of our Common Stock outstanding before the Reverse Stock Split.***

There can be no assurance that the market price per share of our Common Stock after the Reverse Stock Split will remain unchanged or increase in proportion to the reduction in the number of shares of our Common Stock outstanding before the Reverse Stock Split. For example, based on the closing price of our Common Stock on April 12, 2018, of \$0.18 per share, if the board of directors were to implement the Reverse Stock Split and utilize a ratio of 1-for-11, we cannot assure you that the post-split market price of our Common Stock would be \$1.98 (that is, \$0.18 multiplied by 11) per share or greater. The market price of our Common Stock may fluctuate and potentially decline after the Reverse Stock Split.

Accordingly, the total market capitalization of our Common Stock after the Reverse Stock Split when and if approved and effected may be lower than the total market capitalization before the Reverse Stock Split. Moreover, in the future, the market price of our Common Stock following the Reverse Stock Split may not exceed or remain higher than the market price prior to the Reverse Stock Split.

*If the Reverse Stock Split is approved and effected, the resulting per-share market price may not attract institutional investors or investment funds and may not satisfy the investing guidelines of such investors and, consequently, the trading liquidity of our Common Stock may not improve.*

While the board of directors believes that a higher stock price may help generate investor interest, there can be no assurance that the Reverse Stock Split will result in a per-share market price that will attract institutional investors or investment funds or that such share price will satisfy the investing guidelines of institutional investors or investment funds. As a result, the trading liquidity of our Common Stock may not necessarily improve.

*A decline in the market price of our Common Stock after the Reverse Stock Split is approved and effected may result in a greater percentage decline than would occur in the absence of the Reverse Stock Split.*

If the Reverse Stock Split is approved and effected and the market price of our Common Stock declines, the percentage decline may be greater than would occur in the absence of the Reverse Stock Split. The market price of our Common Stock will, however, also be based upon our performance and other factors, which are unrelated to the number of shares of Common Stock outstanding.

#### ***Effecting the Reverse Stock Split; Board Discretion to Implement Reverse Stock Split***

If approved by stockholders at the Annual Meeting and the board of directors decides that it is in the best interests of the Company and our stockholders to effect the Reverse Stock Split, the board of directors will establish an appropriate ratio for the Reverse Stock Split based on several factors existing at such time, the Company will publicly announce the ratio selected by the board of directors and we will subsequently file an amendment to the COI, in the form of the proposed amendment to COI attached in *Annex A*. The board of directors will consider, among other factors, prevailing market conditions, the likely effect of the Reverse Stock Split on the trading price of our Common Stock and on our compliance with applicable Nasdaq listing requirements, and the marketability and liquidity of our Common Stock. The board of directors will also determine the appropriate timing for filing the amendment to our COI with the Secretary of State of the State of Delaware to effect the Reverse Stock Split. If, for any reason, the board of directors deems it advisable, the board of directors in its sole discretion, may abandon the Reverse Stock Split at any time prior to the effectiveness of the amendment to our COI, without further action by our stockholders. Assuming the board of directors determines that it is in the best interests of the Company and our stockholders to proceed with the Reverse Stock Split, the Reverse Stock Split will be effective as of the date and time set forth in the amendment to our COI that is filed with the Secretary of State of the State of Delaware (the “Effective Time”).

At the Effective Time, without any further action on the part of the Company or our stockholders, the outstanding shares of Common Stock held by stockholders of record as of the Effective Time will be converted into a lesser number of shares of Common Stock based on the ratio selected by the board of directors and publicly announce by the Company. For example, if the board of directors approves a ratio of 1-for-12, a stockholder who holds 1,200 shares of Common Stock as of the Effective Time will hold 100 shares of Common Stock following the Reverse Stock Split.

#### ***Effect on Outstanding Shares, Options, and Certain Other Securities***

If the Reverse Stock Split is approved and effected, the number of shares of our Common Stock owned by each stockholder will be reduced in the same proportion as the reduction in the total number of shares outstanding, such that the percentage of our Common Stock owned by each stockholder will remain unchanged, except for any de minimis change resulting from the treatment of any fractional shares that such stockholder would have received as a result of the Reverse Stock Split. The number of shares of Common Stock that may be received upon conversion, exercise or exchange, as the case may be, of outstanding options or other securities convertible into, or exercisable or exchangeable for, shares of our Common Stock, and the exercise or conversion prices for these securities, will also be adjusted in accordance with their terms, as of the Effective Time.

#### ***Effect on Registration and Stock Trading***

Our Common Stock is currently registered under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and we are subject to the periodic reporting and other requirements of the Exchange Act. The proposed Reverse Stock Split will not affect the registration of our Common Stock under the Exchange Act. If the Reverse Stock Split is approved and effected, our Common Stock will receive a new CUSIP number.

#### ***Mechanics of Reverse Split***

If this Proposal 3 is approved by the stockholders at the Annual Meeting and the board of directors decides that it is in the best interests of the Company and our stockholders to effect the Reverse Stock Split, our stockholders will be notified of the ratio for the Reverse Stock Split selected by the board of directors and that the Reverse Stock Split has been approved and effected. The mechanics of the Reverse Stock Split will differ depending upon whether a stockholder holds its shares of Common Stock in brokerage accounts or “street name” or whether the shares are registered directly in a stockholder’s name and held in book-entry form or certificate form.

- Our stockholders who hold shares of Common Stock in “street name” through a nominee (such as a bank or broker) will be treated in the same manner as stockholders whose shares are registered in their names, and nominees will be instructed to effect the Reverse Stock Split for their beneficial holders. However, nominees may have different procedures for processing the reverse stock split and stockholders holding shares in “street name” are encouraged to contact their nominees.
- Our registered stockholders may hold some or all of their shares of Common Stock electronically in book-entry form under the direct registration system for securities. These stockholders will not have stock certificates evidencing their ownership of our Common Stock. They are, however, provided with a statement reflecting the number of shares registered in their accounts. Stockholders holding registered shares of our Common Stock in book-entry form need not take any action to receive post-Reverse Stock Split shares as a transaction statement will automatically be sent to the stockholder’s address of record indicating the number of shares held.



- Some of our registered stockholders hold all their shares of Common Stock in certificate form or a combination of certificate and book-entry form. Stockholders holding shares of Common Stock in certificate form will receive a transmittal letter from the Transfer Agent as soon as practicable after the Effective Date of the Reverse Stock Split. The letter of transmittal will contain instructions for the surrender of stock certificates received prior to the Effective Time (the “Old Certificates”) to the Transfer Agent in exchange for new certificates representing the appropriate number of whole shares of Common Stock giving effect to the Reverse Stock Split. No new stock certificates will be issued to any stockholder until such stockholder has surrendered all Old Certificates, together with a properly completed and executed Letter of Transmittal, to the Transfer Agent. The stockholders will then receive, at their option, either a new certificate or certificates or book-entry shares representing the number of whole shares of Common Stock into which their pre-Reverse Stock Split shares have been converted as a result of the Reverse Stock Split. Until surrendered, we will deem outstanding Old Certificates held by stockholders to be cancelled and to only represent the number of whole shares of post-Reverse Stock Split Common Stock to which the stockholders are entitled. **STOCKHOLDERS SHOULD NOT DESTROY ANY STOCK CERTIFICATE(S) AND SHOULD NOT SUBMIT ANY CERTIFICATE(S) UNTIL REQUESTED TO DO SO.**

#### ***Treatment of Fractional Shares***

Stockholders who would otherwise hold fractional shares because the number of shares of Common Stock they hold before the Reverse Stock Split is not evenly divisible, based on the Reverse Stock Split ratio approved by our board of directors, will be entitled to receive cash (without interest or deduction) in lieu of such fractional shares from our transfer agent, upon receipt by our transfer agent of a properly completed and duly executed transmittal letter and, where shares are held in certificated form, the surrender of all old certificate(s), in an amount per share equal to the product obtained by multiplying (a) the closing price per share of our Common Stock on the effective date for the Reverse Stock Split as reported on the Nasdaq Stock Market by (b) the fraction of the share owned by the stockholder, without interest. The ownership of a fractional share interest will not give the holder any voting, dividend or other rights, except to receive the above-described cash payment.

#### ***Effect on Authorized but Unissued Shares of Capital Stock***

Currently, we are authorized to issue up to a total of 500,000,000 shares of Common Stock, of which 128,410,756 shares were issued and outstanding as of the Record Date, 50,000,000 shares of non-voting common stock, of which 41,939,410 shares were issued and outstanding as of the Record Date, and 10,000,000 shares of Preferred Stock, of which 5,524,926 were issued and outstanding as of the Record Date.

In the event the board of directors decides to effect the Reverse Stock Split following stockholder approval of this Proposal 3 and Proposal 4 is approved at the Annual Meeting, the board of directors will also effect an amendment to the COI, which will result in a decrease in the authorized number of shares of our Common Stock to 150,000,000, regardless of the applicable Reverse Stock Split ratio set by the board of directors, concurrently with the amendment to our COI to effect the Reverse Stock Split. In the event the board of directors decides to effect the Reverse Stock Split following stockholder approval of this Proposal 3 and Proposal 4 is not approved at the Annual Meeting, the authorized number of shares of our Common Stock will remain at 500,000,000, regardless of the applicable Reverse Stock Split ratio set by the board of directors. The Reverse Stock Split, if approved and effected, will not have any effect on the authorized number of shares of our non-voting common stock or Preferred Stock.

### ***Accounting Consequences***

The Reverse Stock Split will not affect the par value of our Common Stock per share, which will remain \$0.0001 par value per share. As a result, as of the Effective Time, the total of the stated capital attributable to Common Stock and the additional paid-in capital account on our balance sheet will not change due to the Reverse Stock Split. Reported per share net income or loss will be higher because there will be fewer shares of Common Stock outstanding.

### ***No Going Private Transaction***

Notwithstanding the decrease in the number of outstanding shares following the implementation of the Reverse Stock Split, the board of directors does not intend for this transaction to be the first step in a “going private transaction” within the meaning of Rule 13e-3 of the Exchange Act, and the implementation of the proposed Reverse Stock Split will not cause the Company to go private.

### ***No Dissenters’ Rights***

Under the General Corporation Law of the State of Delaware (the “DGCL”), stockholders will not be entitled to dissenters’ rights with respect to the proposed amendment to our COI to effect the reverse stock split, and we do not intend to independently provide stockholders with any such right.

### ***Reservation of Right to Abandon the Amendment to our COI***

The board of directors reserves the right to abandon the proposed amendment to our COI described in this Proposal 3 without further action by our stockholders at any time before the Effective Time, even if stockholders approve the this Proposal 3 at the Annual Meeting. By voting in favor of the Reverse Stock Split, stockholders are also expressly authorizing the board of directors to determine not to proceed with, and abandon, the Reverse Stock Split if it should so decide.

### ***Material U.S. Federal Income Tax Consequences of the Reverse Stock Split***

The following discussion is a summary of the material U.S. federal income tax consequences of the proposed reverse stock split to U.S. Holders (as defined below) of our Common Stock. This discussion is based on the Internal Revenue Code of 1986, as amended (the “Code”), U.S. Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service (the “IRS”), in each case in effect as of the date of this proxy statement. These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect a U.S. Holder. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below and there can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the tax consequences of the proposed reverse stock split.

For purposes of this discussion, a “U.S. Holder” is a beneficial owner of our Common Stock that, for U.S. federal income tax purposes, is or is treated as (i) an individual who is a citizen or resident of the United States; (ii) a corporation (or any other entity or arrangement treated as a corporation) created or organized under the laws of the United States, any state thereof, or the District of Columbia; (iii) an estate, the income of which is subject to U.S. federal income tax regardless of its source; or (iv) a trust if (1) its administration is subject to the primary supervision of a court within the United States and all of its substantial decisions are subject to the control of one or more “United States persons” (within the meaning of Section 7701(a)(30) of the Code), or (2) it has a valid election in effect under applicable U.S. Treasury regulations to be treated as a United States person.

This discussion is limited to U.S. Holders who hold our Common Stock as a “capital asset” within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion

does not address all U.S. federal income tax consequences relevant to the particular circumstances of a U.S. Holder, including the impact of the Medicare contribution tax on net investment income. In addition, it does not address consequences relevant to U.S. Holders that are subject to special rules, including, without limitation, financial institutions, insurance companies, real estate investment trusts, regulated investment companies, grantor trusts, tax-exempt organizations, brokers, dealers or traders in securities, commodities or currencies, stockholders who hold our Common Stock as part of a position in a straddle or as part of a hedging, conversion or integrated transaction for U.S. federal income tax purposes, U.S. Holders that have a functional currency other than the U.S. dollar, or U.S. Holders who actually or constructively own 10% or more of our voting stock.

If a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) is the beneficial owner of our Common Stock, the U.S. federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. Accordingly, partnerships (and other entities treated as partnerships for U.S. federal income tax purposes) holding our Common Stock and the partners in such entities should consult their own tax advisors regarding the U.S. federal income tax consequences of the proposed reverse stock split to them.

In addition, the following discussion does not address the U.S. federal estate and gift tax, alternative minimum tax, or state, local and non-U.S. tax law consequences of the proposed reverse stock split. Furthermore, the following discussion does not address any tax consequences of transactions effectuated before, after or at the same time as the proposed reverse stock split, whether or not they are in connection with the proposed reverse stock split.

Each stockholder should consult his, her or its own tax advisors concerning the particular U.S. federal tax consequences of the reverse stock split, as well as the consequences arising under the laws of any other taxing jurisdiction, including any state, local or foreign income tax consequences.

The proposed reverse stock split is intended to be treated as a “recapitalization” for U.S. federal income tax purposes pursuant to Section 368(a)(1)(E) of the Code. As a result, a U.S. Holder generally should not recognize gain or loss upon the proposed reverse stock split for U.S. federal income tax purposes. A U.S. Holder’s aggregate adjusted tax basis in the shares of our Common Stock received pursuant to the proposed reverse stock split should equal the aggregate adjusted tax basis of the shares of our Common Stock exchanged therefor. The U.S. Holder’s holding period in the shares of our Common Stock received pursuant to the proposed reverse stock split should include the holding period in the shares of our Common Stock exchanged therefor. U.S. Treasury Regulations provide detailed rules for allocating the tax basis and holding period of shares of Common Stock surrendered in a recapitalization to shares received in the recapitalization. U.S. Holders of shares of our Common Stock acquired on different dates and at different prices should consult their tax advisors regarding the allocation of the tax basis and holding period of such shares.

The U.S. federal income tax discussion set forth above does not discuss all aspects of U.S. federal income taxation that may be relevant to a particular stockholder in light of such stockholder’s circumstances and income tax situation. Accordingly, we urge you to consult with your own tax advisor with respect to all of the potential U.S. federal, state, local and foreign tax consequences to you of the reverse stock split.

#### ***Consequences if the Reverse Split is Not Approved***

In the event that the Reverse Stock Split is not approved, we intend to actively monitor the trading price of our Common Stock on The Nasdaq Capital Market and will consider available options to resolve our non-compliance with the Nasdaq listing rules. We believe that our ability to remain listed on The Nasdaq Capital Market would be significantly and negatively affected if the Reverse Stock Split is not approved. If we are unable to achieve an increase in our stock price and our Common Stock is

subsequently delisted, we could experience significant negative impacts including the acceleration of our outstanding debt with Kingdon Capital Management L.L.C. In addition, if our Common Stock is delisted it will significantly and negatively affect our ability to obtain alternative debt or equity financing in order to support Company operations.

### *Demand Letter*

The Company has recently received a demand letter from a law firm representing a purported stockholder, relating to certain approvals obtained at the 2018 Special Meeting. The demand letter alleges that the Company miscalculated the votes with respect to (i) the proposal to amend the COI as filed with Secretary of State of the State of Delaware on March 15, 2018, which increased the authorized shares of Common Stock from 250,000,000 to 500,000,000 (the “Share Increase Proposal”) and (ii) the proposal to amend the COI to effect a reverse stock split at a ratio of not less than 1-for-1.2 and not greater than 1-for-10, with the exact ratio, if approved and effected at all, to be set within that range at the discretion of the Company’s board of directors before June 30, 2018 without further approval or authorization of the Company’s stockholders (the “Former Reverse Stock Split Proposal”). As previously indicated, we did not implement the Former Reverse Stock Split Proposal.

Specifically, the demand letter alleges that the votes with respect to the Share Increase Proposal and the Former Reverse Stock Split Proposal were not calculated in accordance with the disclosures made in the proxy statement for the 2018 Special Meeting. The proxy statement for the 2018 Special Meeting disclosed that the Share Increase Proposal and the Former Reverse Stock Split Proposal were “non-routine” matters and that shares held by banks and brokers acting as nominees for certain holders would not be voted with respect to the Share Increase Proposal and/or the Reverse Stock Split Proposal if they did not receive voting instructions from their clients. The demand letter alleges that some banks and brokers voted certain uninstructed shares in favor of the Share Increase Proposal and the Former Reverse Stock Split Proposal and that the votes by these banks and brokers should not have been counted.

The Company is currently evaluating the demand letter. The Company believes that the Share Increase Proposal and the Former Reverse Stock Split Proposal were both approved by the requisite vote under the DGCL, our COI and our Bylaws. Moreover, even if such approvals were not properly obtained, the Company has not yet issued any of the 250,000,000 additional shares of Common Stock authorized by the amendment to the Certificate of Incorporation previously filed with the Secretary of State of the State of Delaware or effected any reverse stock split within the range approved at the 2018 Special Meeting.

### **Required Vote of Stockholders**

The vote required to approve Proposal 3 is the affirmative vote of the holders of a majority of the outstanding shares of Common Stock and Preferred Stock (on an as converted to Common Stock basis, subject to the 19.99% Limitation) as of the Record Date, present in person or represented by proxy at the Annual Meeting and entitled to vote, voting together as a single class. As a result, abstentions will have the same practical effect as a vote against Proposal 3.

**The board of directors unanimously recommends that the stockholders vote “FOR” Proposal No. 3 to effect a reverse stock split at a ratio of not less than 1-for-11 and not greater than 1-for-15, with the exact ratio, if approved and effected at all, to be set within that range at the discretion of the board of directors and publicly announced by the Company on or before June 30, 2018, without further approval or authorization of our stockholders.**

**PROPOSAL 4—APPROVAL OF THE ADOPTION OF THE AMENDMENT TO THE COI TO DECREASE THE NUMBER OF AUTHORIZED SHARES OF THE COMPANY’S COMMON STOCK**

At the Annual Meeting, holders of our Common Stock will be asked to approve an amendment to our COI to decrease the number of authorized shares of Common Stock to 150,000,000 shares, contingent upon the Reverse Stock Split being approved and effected in accordance with Proposal 3. The proposed amendment to the COI reflecting the decrease to the Company’s authorized shares of Common Stock is included in *Annex B* to this Proxy Statement.

In the event that the board of directors decides to effect the Reverse Stock Split following stockholder approval of Proposal 3 and this Proposal 4 is approved at the Annual Meeting, the board of directors will also effect an amendment to our COI that will result in a decrease in the number of authorized shares of Common Stock from 500,000,000 to 150,000,000, concurrently with the amendment to our COI to effect the Reverse Stock Split. In the event that (i) Proposal 3 is approved by our stockholders at the Annual Meeting and the board of directors decides to effect the Reverse Stock Split following such approval and (ii) this Proposal 4 is not approved at the Annual Meeting, the authorized number of shares of our Common Stock will remain at 500,000,000.

Even if Proposal 3 is approved at the Annual Meeting, the board of directors may determine in its sole discretion not to effect the Reverse Stock Split and not to file any amendments to our COI. If the board of directors determines not to implement the Reverse Stock Split in accordance with Proposal 3 on or before June 30, 2018, the number of authorized shares of our Common Stock will not be reduced to 150,000,000 in accordance with this Proposal 4, even if this proposal is approved at the Annual Meeting. If the board of directors determines to change the number of authorized shares of our Common Stock other than a reduction to 150,000,000 concurrently with effecting the Reverse Stock Split in accordance with Proposal 3, further stockholder approval would be required prior to the Company implementing any such change in the number of authorized shares of our Common Stock.

If Proposal 3 is not approved, then we will not amend our COI to decrease the number of authorized shares of Common Stock.

No changes to the COI are being proposed with respect to the number of authorized shares of non-voting common stock or Preferred Stock.

***Reasons for the Amendment***

In the event that the Reverse Stock Split is approved and effected in accordance with Proposal 3, the board of directors believes, based on current information, that we will need fewer authorized shares of Common Stock to meet our projected capital stock needs for capital-raising transactions, issuance of equity-based compensation and, to the extent opportunities may arise in the future, strategic transactions that may involve our issuance of stock-based consideration. Therefore, the board of directors is seeking approval of an amendment to our COI to reduce our authorized capital stock.

***Effects of the Amendment***

The decrease of the number of shares of authorized Common Stock (if it is approved by the Company’s stockholders at the Annual Meeting) will not change any rights of any holder of our Common Stock as such decrease would only apply to unissued authorized Common Stock. Voting rights of the holders of the issued shares of Common Stock will remain the same.

The proposed amendment to our COI would decrease the total number of authorized shares of our Common Stock to 150,000,000 shares. However, the proposed amendment would not change any of the current rights and privileges of our Common Stock or its par value.



In addition, the amendment proposed in this Proposal 4 would not be expected to limit our ability to use the remaining number of authorized shares of Common Stock for appropriate future corporate purposes, including equity financing transactions, debt-for-equity refinancing transactions, refinancing transactions with an equity component, acquisitions involving equity consideration and other equity considerations that the board of directors may determine to be in the best interests of the Company and its stockholders from time to time. If the Reverse Stock Split is approved and effected (assuming a reverse stock split ratio 11-to-1) in accordance with Proposal 3 and the number of authorized shares of Common Stock is reduced in accordance with this Proposal 4, we will have approximately 130 million shares of Common Stock available for future use, which we believe is a sufficient number of authorized but unissued shares given our currently anticipated needs.

The proposed decrease in the number of authorized shares of our Common Stock could have adverse effects on us. We will have less flexibility to issue shares of Common Stock, including in connection with a potential merger or acquisition, other strategic transaction or follow-on offering if the number of authorized shares of our Common Stock is reduced. In the event that our board of directors determines that it would be in the best interests of the Company and its stockholders to issue a number of shares of Common Stock in excess of the number of then authorized but unissued and unreserved shares, we would be required to seek the approval of our stockholders to increase the number of shares of authorized Common Stock. If we are not able to obtain the approval of our stockholders for such an increase in a timely fashion, we may be unable to take advantage of opportunities that might otherwise be advantageous to us and our stockholders.

***Required Vote of Stockholders***

The vote required to approve Proposal 4 is the affirmative vote of the holders of a majority of the outstanding shares of Common Stock and Preferred Stock (on an as converted to Common Stock basis, subject to the 19.99% Limitation) as of the Record Date, present in person or represented by proxy at the Annual Meeting and entitled to vote, voting together as a single class and entitled to vote. As a result, abstentions will have the same practical effect as a vote against Proposal 4.

**The board of directors unanimously recommends that the stockholders vote “FOR” Proposal No. 4 to amend our Third Amended and Restated Certificate of Incorporation to decrease the number of authorized shares of Common Stock to 150,000,000, contingent upon the Reverse Stock Split being approved and effected in accordance with Proposal 3.**

## CORPORATE GOVERNANCE

### Information Regarding the Board of Directors

Our board of directors currently consists of eight (8) members, James J. Bochnowski, Lisa A. Conte, Jeffery C. Johnson, Folkert W. Kamphuis, John Micek III, Jiahao Qiu, Jonathan B. Siegel and Zhi Yang, Ph.D., who are divided into three classes with staggered three-year terms.

Seven (7) members of our board of directors are elected by holders of the Common Stock, voting as a separate class. The holders of the Preferred Stock, voting as a separate class, are entitled to elect two directors (the “Series A Directors”), subject to certain limitations set forth in the Certificate of Designation of the Series A Convertible Participating Preferred Stock (the “Certificate of Designation”). As of the date of this Proxy Statement, the holders of Preferred Stock have designated one Series A Director, Mr. Johnson.

Pursuant to the COI, the term of the three (3) Class III directorships will expire on the date of the Annual Meeting. We currently anticipate that the holders of the Preferred Stock, voting together as a separate class, will re-elect Mr. Johnson as a Class III director, who will serve and hold office for a three-year term expiring in 2021. We do not currently intend to nominate Mr. Kamphuis or Dr. Yang for reelection. Effective as of the date of the Annual Meeting, the number of authorized directorships will be reduced to seven (7) directors, consisting of three Class I Directors, two Class II Directors and two Class III Directors (both of which will be Series A Directors). Accordingly, we anticipate that one (1) of the Class III directorships will remain vacant until such directorship is filled by the holders of the Preferred Stock in accordance with our bylaws and the Certificate of Designation.

The following table lists our directors, their respective ages and positions as of April 23, 2018:

Name	Age	Position
James J. Bochnowski(1)(2)(3)	74	Chairman of the board of directors (Class I)
Lisa A. Conte	59	Chief Executive Officer, President and Director (Class I)
Jeffery C. Johnson	46	Director (Class III)
Folkert W. Kamphuis(2)(3)	58	Director (Class III)
John Micek III(1)(2)(3)	65	Director (Class II)
Jiahao Qiu(1)	32	Director (Class II)
Jonathan B. Siegel	44	Director (Class I)
Zhi Yang, Ph.D.(1)	62	Director (Class III)

- (1) Member of the Audit Committee.
- (2) Member of the Compensation Committee.
- (3) Member of the Nominating Committee.

*James J. Bochnowski.* Mr. Bochnowski has served as a member of our board of directors since February 2014 and as Chairperson of the board of directors since June 2014. Since 1988, Mr. Bochnowski has served as the founder and Managing Member of Delphi Ventures, a venture capital firm. In 1980, Mr. Bochnowski co-founded Technology Venture Investors. Mr. Bochnowski holds an M.B.A. from Harvard University Graduate School of Business and a B.S. in Aeronautics and Astronautics from Massachusetts Institute of Technology.

We believe Mr. Bochnowski is qualified to serve on our board of directors due to his significant experience with venture capital backed healthcare companies and experience as both an executive officer and member of the board of directors of numerous companies.

*Lisa A. Conte.* Ms. Conte has served as our President, Chief Executive Officer and a member of our board of directors since she founded the company in June 2013. From 2001 to 2014, Ms. Conte

served as the Chief Executive Officer of Napo Pharmaceuticals, Inc., a biopharmaceutical company she founded in November 2001. In 1989, Ms. Conte founded Shaman Pharmaceuticals, Inc., a natural product pharmaceutical company. Additionally, Ms. Conte is Napo Pharmaceutical's current Interim Chief Executive Officer and has served as a member of its board of directors since 2001. Ms. Conte is also currently a member of the board of directors of Healing Forest Conservatory, a California not-for-profit public benefit corporation and the Board of Visitors of the John Sloan Dickey Center for International Understanding, Dartmouth College. Ms. Conte holds an M.S. in Physiology and Pharmacology from the University of California, San Diego, and an M.B.A. and A.B. in Biochemistry from Dartmouth College.

We believe Ms. Conte is qualified to serve on our board of directors due to her extensive knowledge of our company and experience with our product and product candidates, as well as her experience managing and raising capital for public and private companies.

*Jeffery C. Johnson.* Mr. Johnson has served as a member of our board of directors since March 2018. Mr. Johnson is a partner at Sagard Holdings, ULC and an investment manager at SCPM. He previously served as portfolio manager and senior analyst at Evercore Asset Management. He also serves on the board of directors of Peak Achievement Athletics and previously served on the board of directors of Vein Clinics of America. Mr. Johnson received his M.B.A. in Finance and Accounting from the Kellogg School of Management in 1999. Mr. Johnson was elected to our board of directors pursuant to the terms of the Series A Preferred Stock Purchase Agreement, dated as of March 23, 2018, by and between the Company and Sagard Capital Partners, L.P., and the Certificate of Designation, which gives the Preferred Stock holders the right to elect two Class III directors so long as they are entitled to vote in the aggregate 5% or more of all of the votes entitled to be cast by holders of all voting securities of the Company at any meeting of stockholders.

We believe Jeffery C. Johnson is qualified to serve on our board of directors due to his experience evaluating, investing in and managing companies in the health care sector for Sagard Holdings, ULC, and for other investment firms he was previously employed by.

*Folkert W. Kamphuis* Mr. Kamphuis has served as a member of our board of directors since June 2015. Mr. Kamphuis currently has his own consulting business. He most recently served as a member of the Executive Committee of the animal health unit of Swiss pharmaceutical giant Novartis until its acquisition by Elanco. Mr. Kamphuis joined Novartis Animal Health in 2005, and held several executive positions from 2012 to 2014 as General Manager North American and as Chief Operating Officer from 2009 to 2012 and Head of Global Marketing and Business Development from 2005 to 2009. Prior thereto, Mr. Kamphuis spent 20 years in various executive, business development and global marketing roles at Pfizer/Pharmacia Animal Health and Merial/Merck AgVet. Mr. Kamphuis served a total of 10 years on the IFAH-Europe board, of which 9 years as treasurer. Mr. Kamphuis holds a B.A. in Marketing from the Dutch Institute of Marketing, Amsterdam, the Netherlands, and a MSc in Animal Nutrition from the Wageningen University and Research Center, Wageningen, the Netherlands.

We believe Mr. Kamphuis is qualified to serve on our board of directors due to his extensive experience and education in the animal health sector and is an experienced executive and strategist in animal health care companies who designs creative and effective companies. As noted above, Mr. Kamphuis will not stand for reelection to our board of directors at the Annual Meeting.

*John Micek III.* Mr. Micek has served as a member of our board of directors since April 2016. From 2000 to 2010, Mr. Micek was managing director of Silicon Prairie Partners, LP, a Palo Alto, California based family-owned venture fund. Since 2010, Mr. Micek has been managing partner of Verdant Ventures, a merchant bank dedicated to sourcing and funding university and corporate laboratory spinouts in areas including pharmaceuticals and cleantech. Mr. Micek serves on the board of directors of Armano Foods of Distinction, Innovare Corporation and JAL/Universal Assurors. He is

also a board member and the Chief Executive Officer and Chief Financial Officer of Enovo Systems and from March 2014 to August 2015 he served as interim Chief Financial Officer for Smith Electric Vehicles, Inc. Mr. Micek is a cum laude graduate of Santa Clara University and the University of San Francisco School of Law, and is a practicing California attorney specializing in financial services.

We believe Mr. Micek is qualified to serve on our board of directors due to his many years of executive experience in management and on boards of director.

*Jiahao Qiu.* Mr. Qiu has served as a member of our board of directors since February 2014. Mr. Qiu has been employed at BioVeda Management, Ltd., a life science investment firm, as associate (2010-2012), senior associate (2012-2014) and Principal since April 2014. From 2009 to 2010, he served as an interpreter for the Delegation of the European Union to China. Mr. Qiu holds a B.S. in Biotechnology from the Jiao Tong University in Shanghai, China.

We believe Mr. Qiu is qualified to serve on our board of directors due to his experience with evaluating, managing and investing in life science portfolio companies for BioVeda Management, Ltd.

*Jonathan B. Siegel.* Mr. Siegel has served as a member of our board of director since March 2018. Mr. Siegel is founder of JBS Healthcare Ventures, which pursues investments in public and private healthcare entities. In 2017 he left Kingdon Capital (“Kingdon”), where he was principal of the firm, a member of the executive committee and the sector head for healthcare. He joined Kingdon in 2011 and has more than 18 years of investment experience. Prior to joining Kingdon, Mr. Siegel was with SAC Capital Advisors from 2005 to 2011, serving as a portfolio manager for healthcare starting in 2007. Before joining SAC, he was an associate director of pharmaceutical and specialty pharmaceutical research with Bear, Stearns & Co., a research associate with Dresdner Kleinwort Wasserstein, specializing in pharmaceuticals, a consultant to the Life Sciences Division of Computer Sciences Corporation; a research associate at the Novartis Center for Immunobiology, Harvard Medical School, Beth Israel Deaconess Medical Center, and a research assistant at Tufts University School of Medicine. Additionally, he previously served on the board of KV Pharmaceutical Company. Mr. Siegel received a BS in Psychology from Tufts University in 1995 and an MBA from Columbia Business School in 1999.

We believe Mr. Siegel is qualified to serve on our board of directors due to his extensive experience in the pharmaceutical investment sector.

*Zhi Yang, Ph.D.* Dr. Yang has served as a member of our board of directors since February 2014. Since 2005, Dr. Yang has served as the Chairperson, Managing Partner and Founder of BioVeda Management, Ltd., a life science investment firm. Dr. Yang is currently an advisor to the China Health and Medical Development Foundation, under China’s Ministry of Health. Dr. Yang holds a Ph.D. in Molecular Biology and Biochemistry, as well as an M.A. in Cellular and Developmental Biology, both from Harvard University.

We believe Mr. Yang is qualified to serve on our board of directors due to his experience with evaluating, managing and investing in life science portfolio companies for BioVeda Management, Ltd. As noted above, Mr. Yang will not stand for reelection to our board of directors at the Annual Meeting.

There are no family relationships among any of our directors and executive officers.

### **Director Independence**

Our common stock is listed on The Nasdaq Capital Market. Under Nasdaq rules, independent directors must comprise a majority of a listed company’s board of directors. In addition, Nasdaq rules require that, subject to specified exceptions, each member of a listed company’s Audit, Compensation and Nominating Committee must be independent. Audit Committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Exchange Act. Under Nasdaq rules, a director

will only qualify as an “independent director” if, in the opinion of the company’s board of directors, such person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

To be considered independent for purposes of Rule 10A-3, a member of an audit committee of a listed company may not, other than in his or her capacity as a member of the audit committee, our board of directors, or any other board committee (1) accept, directly or indirectly, any consulting, advisory, or other compensatory fee from the listed company or any of its subsidiaries or (2) be an affiliated person of the listed company or any of its subsidiaries.

Our board of directors periodically undertakes a review of its composition, the composition of its committees and the independence of our directors and considered whether any director has a material relationship with us that could compromise his or her ability to exercise independent judgment in carrying out his or her responsibilities. Based upon information requested from and provided by each director concerning his or her background, employment and affiliations, including family relationships, our board of directors has determined that six of our eight directors (i.e., Mr. Bochnowski, Mr. Kamphuis, Mr. Micek, Mr. Qiu, Mr. Siegel and Dr. Yang) do not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is “independent” as that term is defined under the Nasdaq rules. Our board of directors also determined that Mr. Micek (chairperson), Mr. Bochnowski, Mr. Qiu, and Dr. Yang, who comprise our Audit Committee, Mr. Bochnowski (chairperson), Mr. Kamphuis and Mr. Micek, who comprise our Compensation Committee, and Mr. Bochnowski (chairperson), Mr. Kamphuis and Mr. Micek, who comprised our Nominating Committee, satisfy the independence standards for those committees established by applicable SEC rules and the Nasdaq rules and listing standards.

In making this determination, our board of directors considered the relationships that each non-employee director has with us and all other facts and circumstances our board of directors deemed relevant in determining independence, including the beneficial ownership of our capital stock by each non-employee director.



## MEETINGS AND COMMITTEES OF THE BOARD OF DIRECTORS

### Audit Committee

The members of our Audit Committee are Mr. Micek, Mr. Bochnowski, Mr. Qiu and Dr. Yang. Mr. Micek is the chairperson of the Audit Committee. Our Audit Committee's responsibilities include:

- appointing, approving the compensation of, and assessing the independence of our registered public accounting firm;
- overseeing the work of our independent registered public accounting firm, including through the receipt and consideration of reports from that firm;
- reviewing and discussing with management and our independent registered public accounting firm our annual and quarterly financial statements and related disclosures;
- monitoring our internal control over financial reporting, disclosure controls and procedures and code of conduct;
- discussing our risk management policies;
- establishing policies regarding hiring employees from our independent registered public accounting firm and procedures for the receipt and retention of accounting related complaints and concerns;
- reviewing and approving or ratifying any related person transactions; and
- preparing the Audit Committee report required by SEC rules.

All audit and non-audit services, other than *de minimis* non-audit services, to be provided to us by our independent registered public accounting firm must be approved in advance by our Audit Committee.

Our board of directors has determined that each of Mr. Micek, Mr. Bochnowski, Mr. Qiu and Dr. Yang is an independent director under Nasdaq rules and under Rule 10A-3. All members of our Audit Committee meet the requirements for financial literacy under the applicable rules and regulations of the SEC and Nasdaq. Our board of directors has determined that Mr. Micek is an "audit committee financial expert," as defined by applicable SEC rules, and has the requisite financial sophistication as defined under the applicable Nasdaq rules and regulations.

The Audit Committee held five meetings in 2017. The audit committee has adopted a written charter approved by our board of directors, which is available on our website at: <https://jaguarhealth.gcs-web.com/static-files/aeabd726-16c2-4219-a755-475e9c87b851>

### Compensation Committee

The members of our Compensation Committee are Mr. Bochnowski, Mr. Kamphuis and Mr. Micek. Mr. Bochnowski is the chairperson of the Compensation Committee. Our Compensation Committee's responsibilities include:

- determining, or making recommendations to our board of directors with respect to, the compensation of our Chief Executive Officer;
- determining, or making recommendations to our board of directors with respect to, the compensation of our other executive officers;
- overseeing and administering our cash and equity incentive plans;
- reviewing and making recommendations to our board of directors with respect to director compensation;

- reviewing and discussing at least annually with management our “Compensation Discussion and Analysis” disclosure if and to the extent then required by SEC rules; and
- preparing the Compensation Committee report and necessary disclosure in our annual proxy statement in accordance with applicable SEC rules.

Our board has determined that each of Mr. Bochnowski, Mr. Kamphuis and Mr. Micek is independent under the applicable Nasdaq rules and regulations, is a “non-employee director” as defined in Rule 16b-3 promulgated under the Exchange Act, and is an “outside director” as that term is defined in Section 162(m) of the Internal Revenue Code of 1986, as amended.

The Compensation Committee held three meetings in 2017. All compensation-related matters were approved at the board of directors level. The Compensation Committee has adopted a written charter approved by the board of directors, which is available on our website at: <https://jaguarhealth.gcs-web.com/static-files/653862da-1aa9-4819-b559-5c5654189e80>

### **Nominating Committee**

The members of our Nominating Committee are Mr. Bochnowski, Mr. Kamphuis and Mr. Micek. Mr. Bochnowski is the chairperson of the Nominating Committee. Our Nominating Committee’s responsibilities include:

- identifying individuals qualified to become members of our board of directors;
- evaluating qualifications of directors;
- recommending to our board of directors the persons to be nominated for election as directors and to each of the committees of our board of directors; and
- overseeing an annual evaluation of our board of directors.

The Nominating Committee held [one] meeting in 2017. All nomination-related matters were approved at the board of directors level. The Nominating Committee has adopted a written charter approved by the board of directors, which is available on our website at: <https://jaguarhealth.gcs-web.com/static-files/02dfed04-9508-44cd-a96a-3215e565111c>.

### **Meetings and Attendance During 2017**

The board of directors held eighteen meetings in 2017. Except for Dr. Yang and Mr. Qiu, each director who served as a director during 2017 participated in 75% or more of the meetings of the board of directors and of the committees on which he or she served, if any, during the year ended December 31, 2017 (during the period that such director served). Mr. Johnson and Mr. Siegel were not appointed to the board of directors until March 23, 2018 and March 29, 2018, respectively, and therefore, did not attend any meetings in 2017.

We do not have a written policy on director attendance at annual meetings of stockholders. We encourage, but do not require, our directors to attend the Annual Meeting. Mr. Bochnowski, Mr. Micek and Dr. Azhir attended the 2017 Annual Meeting of Stockholders.

### **Code of Business Conduct and Ethics**

We have adopted a Code of Business Conduct and Ethics that applies to our directors, officers and employees, including our President and Chief Executive Officer, our Chief Financial Officer and other employees who perform financial or accounting functions. The Code of Business Conduct and Ethics sets forth the basic principles that guide the business conduct of our employees. A current copy of the code is on our website at <https://jaguarhealth.gcs-web.com/static-files/2686b919-e219-4c2a-b863-e6df4533aea9>. We intend to disclose future amendments to certain provisions of our code of business conduct and ethics, or

waivers of such provisions on our website to the extent required by applicable rules and exchange requirements. The inclusion of our website address in this proxy statement does not incorporate by reference the information on or accessible through our website into this proxy statement.

### **Compensation Committee Interlocks and Insider Participation**

None of the members of our Compensation Committee has ever been an officer or employee of our company. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or Compensation Committee or other board committee performing equivalent functions of any entity that has one or more of its executive officers serving on our board of directors or Compensation Committee.

### **Limitation of Liability and Indemnification**

Our third amended and restated certificate of incorporation and amended and restated bylaws contain provisions that limit the personal liability of our directors for monetary damages to the fullest extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for:

- any breach of the director's duty of loyalty to us or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; or
- any transaction from which the director derived an improper personal benefit.

Such limitation of liability does not apply to liabilities arising under federal securities laws and does not affect the availability of equitable remedies, such as injunctive relief or rescission.

Our third amended and restated certificate of incorporation provides that we indemnify our directors to the fullest extent permitted by Delaware law. In addition, our amended and restated bylaws provide that we indemnify our directors and officers to the fullest extent permitted by Delaware law. Our amended and restated bylaws also provide that we shall advance expenses incurred by a director or officer in advance of the final disposition of any action or proceeding, and permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity, regardless of whether we would otherwise be permitted to indemnify him or her under the provisions of Delaware law. We have entered and expect to continue to enter into agreements to indemnify our directors, executive officers and other employees as determined by our board of directors. With certain exceptions, these agreements provide for indemnification for related expenses including, among others, attorneys' fees, judgments, fines and settlement amounts incurred by any of these individuals in any action or proceeding. We believe that these bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers. We also maintain directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our third amended and restated certificate of incorporation and amended and restated bylaws and our indemnification agreements, may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty of care. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Furthermore, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers. There is no pending litigation or proceeding

involving any of our directors, officers or employees for which indemnification is sought, and we are not aware of any threatened litigation that may result in claims for indemnification.

### **Board Leadership Structure**

Our Bylaws and corporate governance guidelines provide our board of directors with flexibility in its discretion to combine or separate the positions of Chairperson of the board of directors and chief executive officer. As a general policy, our board of directors believes that separation of the positions of Chairperson and chief executive officer reinforces the independence of the board of directors from management, creates an environment that encourages objective oversight of management's performance and enhances the effectiveness of the board of directors as a whole. We expect and intend the positions of Chairperson of the board and chief executive officer to be held by two individuals in the future.

### **Risk Oversight**

Our board of directors monitors our exposure to a variety of risks through our Audit Committee. Our Audit Committee charter gives the Audit Committee responsibilities and duties that include discussing with management and the independent auditors our major financial risk exposures and the steps management has taken to monitor and control such exposures, including our risk assessment and risk management policies.

### **Nomination of Directors**

There have been no material changes to the procedures by which stockholders may recommend nominees to our board of directors. Recommendations to the board of directors for election as directors of Jaguar at an annual meeting may be made only by the Nominating Committee or by the Company's stockholders (through the Nominating Committee) who comply with the timing, informational, and other requirements of our Bylaws, except for the right of the holders of Series A Preferred Stock to elect up to two directors (voting as a separate class), which is not subject to such procedural limitations. Stockholders have the right to recommend persons for nomination by submitting such recommendation, in written form, to the Nominating Committee, and such recommendation will be evaluated pursuant to the policies and procedures adopted by the board of directors. Such recommendation must be delivered to or mailed to and received by the Secretary of the Company at the principal executive offices not less than 90 days nor more than 120 calendar days prior to the first anniversary of the date the preceding year's annual meeting, except that if no annual meeting of stockholders was held in the preceding year or if the date of the annual meeting of stockholders has been changed by more than 30 calendar days from the date contemplated at the time of the preceding year's proxy statement, the notice shall be received by the Secretary at the Company's principal executive offices not less than 150 calendar days prior to the date of the contemplated annual meeting or the date that is 10 calendar days after the date of the first public announcement or other notification to stockholders of the date of the contemplated annual meeting, whichever first occurs. The deadline to submit recommendations for election as directors at the 2018 Annual Meeting has already passed.

The Nominating Committee, in accordance with the board of directors' governance principles, seeks to create a board that has the ability to contribute to the effective oversight and management of the Company, that is as a whole strong in its collective knowledge of and diversity of skills and experience with respect to accounting and finance, management and leadership, vision and strategy, business judgment, biotechnology industry knowledge, corporate governance and global markets. When the Nominating Committee reviews a potential new candidate, the Nominating Committee looks specifically at the candidate's qualifications in light of the needs of the board of directors and the Company at that time given the then current mix of director attributes.

General criteria for the nomination and evaluation of director candidates include:

- loyalty and commitment to promoting the long term interests of the Company's stockholders;
- the highest personal and professional ethical standards and integrity;
- an ability to provide wise, informed and thoughtful counsel to top management on a range of issues;
- a history of achievement that reflects superior standards for themselves and others;
- an ability to take tough positions in constructively-challenging the Company's management while at the same time working as a team player; and
- individual backgrounds that provide a portfolio of personal and professional experience and knowledge commensurate with the needs of the Company.

The Nominating Committee must also ensure that the members of the board of directors as a group maintain the requisite qualifications under the applicable Nasdaq Stock Market listing standards for populating the Audit, Compensation and Nominating Committees.

Written recommendations from a stockholder for a director candidate must include the following information:

- the stockholder's name and address, as they appear on our corporate books;
- the class and number of shares that are beneficially owned by such stockholder;
- the dates upon which the stockholder acquired such shares; and
- documentary support for any claim of beneficial ownership.

Additionally, the recommendation needs to include, as to each person whom the stockholder proposes to recommend to the Nominating Committee for nomination to election or reelection as a director, all information relating to the person that is required pursuant to Regulation 14A under the Exchange Act, as amended, and evidence satisfactory to us that the nominee has no interests that would limit their ability to fulfill their duties of office.

Once the Nominating Committee receives a recommendation, it will deliver a questionnaire to the director candidate that requests additional information about his or her independence, qualifications and other information that would assist the Nominating Committee in evaluating the individual, as well as certain information that must be disclosed about the individual in the Company's proxy statement, if nominated. Individuals must complete and return the questionnaire within the time frame provided to be considered for nomination by the Nominating Committee.

The Nominating Committee will review the stockholder recommendations and make recommendations to the board of directors that the Committee feels are in the best interests of the Company and its stockholders.

The Nominating Committee has not received any recommendations from stockholders for the Annual Meeting.



### **Communications with the Board of Directors**

Stockholders may contact an individual director or the board of directors as a group, or a specified board committee or group, including the non-employee directors as a group, by the following means:

Mail: Attn: Board of Directors  
Jaguar Health, Inc.  
201 Mission Street, Suite 2375  
San Francisco, CA 94105  
Email: AskBoard@jaguar.health

Each communication should specify the applicable addressee or addressees to be contacted as well as the general topic of the communication. We will initially receive and process communications before forwarding them to the addressee. We also may refer communications to other departments within the Company. We generally will not forward to the directors a communication that is primarily commercial in nature, relates to an improper or irrelevant topic, or requests the Company's general information.

### **Complaint and Investigation Procedures for Accounting, Internal Accounting Controls, Fraud or Auditing Matters**

We have created procedures for confidential submission of complaints or concerns relating to accounting or auditing matters and contracted with Nasdaq to facilitate the gathering, monitoring and delivering reports on any submissions. As of the date of this report, there have been no submissions of complaints or concerns to Nasdaq. Complaints or concerns about our accounting, internal accounting controls or auditing matters may be submitted to the Audit Committee and our executive officers by contacting Nasdaq. Nasdaq provides phone, internet and e-mail access and is available 24 hours per day, seven days per week, 365 days per year. The hotline number is 1-844-417-8861 and the website is <https://www.openboard.info/jagx>. Any person may submit a written Accounting Complaint to [jagx@openboard.info](mailto:jagx@openboard.info).

Our Audit Committee under the direction and oversight of the Audit Committee Chair will promptly review all submissions and determine the appropriate course of action. The Audit Committee Chair has the authority, in his discretion, to bring any submission immediately to the attention of other parties or persons, including the full board of directors, accountants and attorneys. The Audit Committee Chair shall determine the appropriate means of addressing the concerns or complaints and delegate that task to the appropriate member of senior management, or take such other action as it deems necessary or appropriate to address the complaint or concern, including obtaining outside counsel or other advisors to assist the Audit Committee.

## EXECUTIVE OFFICERS

Our executive officers as of the date of this proxy statement are as follows:

<u>Name</u>	<u>Age</u>	<u>Position</u>
Lisa A. Conte . . . . .	59	Chief Executive Officer, President and Director
Steven R. King, Ph.D. . . . .	60	Executive Vice President, Sustainable Supply, Ethnobotanical Research and Intellectual Property and Secretary
Karen S. Wright . . . . .	62	Chief Financial Officer and Treasurer

Set forth below is a summary of the business experience of our Executive Vice President of Sustainable Supply, Ethnobotanical Research and Intellectual Property and Secretary, Steven R. King, and our Chief Financial Officer, Karen S. Wright. Our Chief Executive Officer’s biography has been provided above.

*Steven R. King, Ph.D.* Dr. King has served as our Executive Vice President of Sustainable Supply, Ethnobotanical Research and Intellectual Property since March 2014 and as our Secretary since September 2014. From 2002 to 2014, Dr. King served as the Senior Vice President of Sustainable Supply, Ethnobotanical Research and Intellectual Property at Napo Pharmaceuticals, Inc. Prior to that, Dr. King served as the Vice President of Ethnobotany and Conservation at Shaman Pharmaceuticals, Inc. Dr. King has been recognized by the International Natural Products and Conservation Community for the creation and dissemination of research on the long-term sustainable harvest and management of *Croton lechleri*, the widespread source of crofelemer. Dr. King is currently a member of the board of directors of Healing Forest Conservatory, a California not-for-profit public benefit corporation. Dr. King holds a Ph.D. in Biology from the Institute of Economic Botany of the New York Botanical Garden and an M.S. in Biology from the City University of New York.

*Karen S. Wright.* Ms. Wright has served as our Chief Financial Officer since December 15, 2015. Prior to joining us, Ms. Wright served as head of finance for Clene Nanomedicine, Inc., beginning in August 2014. From June 2011 to May 2014, Ms. Wright served as vice president of finance and corporate controller at Veracyte, Inc., and from 2006 to 2011, she served as vice president of finance, corporate controller and principal accounting officer of VIA Pharmaceuticals, Inc. Ms. Wright holds a BS in Accounting and Marketing from the University of California Walter A. Haas School of Business.

Officers serve at the discretion of the board of directors. There is no family relationship between any of the executive officers or between any of the executive officers and the Company’s directors. There is no arrangement or understanding between any executive officer and any other person pursuant to which the executive officer was selected.

## COMPENSATION OF DIRECTORS AND EXECUTIVE OFFICERS

### Summary Compensation Table (2017 and 2016)

The total compensation paid to the Company's Principal Executive Officer and its three highest compensated executive officers other than the Principal Executive Officer, respectively, for services rendered in 2017 and 2016, as applicable, is summarized as follows:

	Year	Salary (\$)	Bonus (\$)	Option awards \$(1)	All other compensation \$(2)	Total (\$)
<b>Lisa A. Conte</b> . . . . .	2017	440,000	—	24,191	17,599	481,790
President and Chief Executive Officer	2016	446,205	—	435,493	14,923	896,622
<b>Steven R. King, Ph.D.</b> . . . . .	2017	280,500	—	8,064	32,032	320,596
Executive Vice President, Sustainable Supply, Ethnobotanical Research and Intellectual Property	2016	284,456	—	84,584	29,241	398,281
<b>Karen S. Wright</b> . . . . .	2017	240,000	5,000	4,596	—	249,596
Chief Financial Officer and Treasurer(3)	2016	243,385	—	68,863	—	312,248

#### Footnotes to Summary Compensation Table

- (1) Represents the dollar amounts recognized for financial statement reporting purposes with respect to the fiscal year (for stock option awards) determined under FASB ASC Topic 718 using assumptions set forth in the footnotes to the financial statements in the Annual Report on Form 10-K for the year ended 2017 and 2016. The following are the options held by each executive officer as of December 31, 2017:
- a. Ms. Conte—an aggregate of 1,049,986 shares were granted as follows: 16,998 shares granted December 19, 2016, 318,000 shares granted September 22, 2016, 69,970 shares granted April 1, 2016 which became effective at the annual stockholders' meeting of June 14, 2016, 113,212 shares granted July 7, 2015 which became effective at the annual stockholders' meeting of June 14, 2016, 85,616 shares granted July 2, 2015 which became effective at the annual stockholders' meeting of June 14, 2016, 160,383 shares granted April 1, 2014 and 285,807 shares granted December 21, 2017.
  - b. Dr. King—an aggregate of 294,568 shares were granted as follows: 4,496 shares granted December 19, 2016, 23,042 shares granted September 22, 2016, 28,263 shares granted April 1, 2016 which became effective at the annual stockholders' meeting of June 14, 2016, 49,942 shares granted July 2, 2015 which became effective at the annual stockholders' meeting of June 14, 2016, 93,556 shares granted April 1, 2014, and 95,269 shares granted December 21, 2017.
  - c. Ms. Wright—an aggregate of 184,661 shares were granted as follows: 2,866 shares granted December 19, 2016, 103,698 shares granted September 22, 2016, 3,802 shares granted April 1, 2016 which became effective at the annual stockholders' meeting of June 14, 2016, and 20,000 shares granted November 23, 2015, and 54,295 shares granted December 21, 2017.
  - d. All of the April 1, 2014 option grants vested 25% on January 1, 2015 (nine months from grant date), with the remainder vesting equally over the following 27 months such that the options are vested in full on April 1, 2017. Ms. Wright's November 23, 2015 option vested 25% on September 9, 2016, with the remainder vesting equally over the following 27 months such that the option is vested in full on November 9, 2018. All of the July 2, 2015 options were granted

contingent upon approval of the Company's stockholders at the June 14, 2016 annual stockholders' meeting and vest 1/36<sup>th</sup> per month beginning one month after grant date, with the remainder vesting equally over the following 35 months such that the option is vested in full on July 2, 2018. Ms. Conte's July 7, 2015 option was likewise granted contingent upon approval of the Company's stockholders at the June 14, 2016 annual stockholders' meeting and vests 1/36<sup>th</sup> per month beginning one month after grant date, with the remainder vesting equally over the following 35 months such that the option is vested in full on July 7, 2018. All of the options granted on April 1, 2016 which became effective at the annual stockholders' meeting of June 14, 2016, September 22, 2016, December 19, 2016 vest 1/36<sup>th</sup> per month beginning one month after grant, with the remainder vesting equally over the following 35 months such that the option is vested in full on December 19, 2019. Pursuant to Mr. Kallassy's separation agreement, dated April 28, 2016, all of Mr. Kallassy's stock options that remained unvested as of the date of the separation agreement were immediately accelerated to become fully vested. Mr. Kallassy had 90 days following the date of the separation agreement to exercise such stock options, after which any unexercised options were cancelled. Dr. Waltzman's August 12, 2016 option vested 2/36<sup>th</sup> on the grant date, with 7/36<sup>th</sup> vesting on April 1, 2017 and the remainder vesting equally over the following 27 months such that the option would have vested in full on July 1, 2019 had Dr. Waltzman not resigned in April 2017. Dr. Waltzman's stock options that are vested as of the effective date of his resignation, April 3, 2017, must be exercised within 3 months of such resignation or such options are cancelled, pursuant to the Company's 2014 Stock Incentive Plan. Any stock options that are unvested as of the effective date of his resignation are cancelled on such date of resignation. All of the options granted on December 21, 2017 are performance based options that 100% vest on March 31, 2018 if the officer remains in the employee of the Company.

- (2) Amounts shown in this column reflect incremental health insurance premiums paid for such executive's family members.
- (3) Ms. Wright has served as Chief Financial Officer and Treasurer since December 15, 2015.

#### **Narrative to Summary Compensation Table**

Understanding our history is key to the understanding of our compensation structure for 2016 and 2017. After our initial public offering closed on May 18, 2015, the executive officers of privately-held Jaguar Health, Inc. (f/k/a Jaguar Animal Health, Inc.) became our named executive officers.

#### ***Base Salary***

On July 2, 2015, the Compensation Committee increased Ms. Conte's annual base salary from \$400,000 to \$440,000, Dr. King's annual base salary from \$255,000 to \$280,500. The pay increases were effective June 15, 2015. On December 15, 2015, the Company's board of directors appointed Karen S. Wright as the Company's new Chief Financial Officer. Ms. Wright's annual base salary is \$240,000.

#### ***Bonuses***

We paid a performance based bonus to Ms. Wright of \$5,000 in 2017.

#### ***Equity Compensation***

Ms. Conte and Dr. King received stock option grants at the time they were hired by privately-held Jaguar Animal Health, Inc. Such options generally vest over time, with 25% of the options vesting after nine months of employment and monthly vesting thereafter with full vesting after three years. Ms. Wright received stock option grants with a similar vesting schedule at the time they were hired by us. The board of directors periodically grants additional options to the current named executive officers that typically vest ratably over a three-year period.

All stock options and restricted stock units issued to our current named executive officers vest and become exercisable upon a change in control.

### Outstanding Equity Awards at 2017 Fiscal Year End

The following table provides information regarding outstanding equity awards held by our named executive officers as of December 31, 2017.

	Options Vesting Commencement Date	Number of Securities Underlying Unexercised Options		Option exercise price	Stock Option expiration date
		Exercisable	Unexercisable		
Lisa A. Conte . . . . .	4/1/2014	160,383	—(1)	\$ 2.53	4/1/2024
	7/2/2015	68,967	16,649(2)	\$ 5.09	7/2/2025
	7/7/2015	91,198	22,014(3)	\$ 4.84	7/7/2025
	4/1/2016	38,872	31,098(5)	\$ 1.58	4/1/2026
	9/22/2016	132,500	185,500(6)	\$ 1.25	9/22/2026
	12/19/2016	5,665	11,333(7)	\$ 0.74	12/19/2026
	12/21/2017	—	285,807(8)	\$0.1234	12/21/2027
Steven R. King, Ph.D. . . . .	4/1/2014	93,556	—(1)	\$ 2.53	4/1/2024
	7/2/2015	40,230	9,712(2)	\$ 5.09	7/2/2025
	4/1/2016	15,700	12,563(5)	\$ 1.58	4/1/2026
	9/22/2016	9,600	13,442(6)	\$ 1.25	9/22/2026
	12/19/2016	1,498	2,998(7)	\$ 0.74	12/19/2026
	12/21/2017	—	95,269(8)	\$0.1234	12/21/2027
Karen S. Wright . . . . .	11/9/2015	13,888	6,112(4)	\$ 2.04	11/23/2025
	4/1/2016	2,112	1,690(5)	\$ 1.58	4/1/2026
	9/22/2016	43,207	60,491(6)	\$ 1.25	9/22/2026
	12/19/2016	955	1,911(7)	\$ 0.74	12/19/2026
	12/21/2017	—	54,295(8)	\$0.1234	12/21/2027

- (1) On January 1, 2015, 25% of each of such named executive officer's shares vested and became exercisable. The remainder of the shares are vested in approximately equal monthly installments through April 1, 2017, subject to continued service with us through each relevant vesting date.
- (2) The shares were granted on July 2, 2015 contingent upon the approval of the stockholders at the June 14, 2016 annual stockholders' meeting and vest 1/36th per month beginning one month after grant date, with the remainder vesting equally over the following 35 months such that the option is vested in full on July 2, 2018, subject to continued service with us through each relevant vesting date.
- (3) The shares were granted on July 7, 2015 contingent upon the approval of the stockholders at the June 14, 2016 annual stockholders' meeting and vest 1/36th per month beginning one month after grant date, with the remainder vesting equally over the following 35 months such that the option is vested in full on July 7, 2018, subject to continued service with us through each relevant vesting date.
- (4) The shares were granted on November 23, 2015. On August 9, 2016, 25% of such named executive officer's shares vested and became exercisable. The remainder of the shares are scheduled to vest in approximately equal monthly installments through November 9, 2018, subject to continued service with us through each relevant vesting date.
- (5) The options were granted on April 1, 2016, which became effective at the annual stockholders' meeting of June 14, 2016, and vest 1/36th per month beginning one month after grant, with the remainder vesting equally over the following 35 months such that the option is vested in full on April 1, 2019, subject to continued service with us through each relevant vesting date.



- (6) The options were granted on September 22, 2016 and vest 1/36th per month beginning one month after grant, with the remainder vesting equally over the following 35 months such that the option is vested in full on September 22, 2019, subject to continued service with us through each relevant vesting date.
- (7) The options were granted on December 19, 2016 and vest 1/36th per month beginning one month after grant, with the remainder vesting equally over the following 35 months such that the option is vested in full on December 19, 2019, subject to continued service with us through each relevant vesting date.(10)
- (8) The options were granted on December 21, 2017 and vest 100% on March 31, 2018 if the officer is an employee as of such date.

### **Executive Employment Agreements**

#### ***Lisa A. Conte***

In March 2014, we entered into an offer letter with Ms. Conte to serve as our Chief Executive Officer, effective March 1, 2014, in an at-will capacity. Under this offer letter, Ms. Conte's annual base salary is \$400,000, she is eligible for an annual target bonus of 30% of her base salary. Effective June 15, 2015, our board of directors has reviewed the terms of Ms. Conte's employment arrangement in connection with its annual compensation review, and has adjusted Ms. Conte's base salary to \$440,000. Ms. Conte is entitled to participate in all employee benefit plans, including group health care plans and all fringe benefit plans.

In April 2014, Ms. Conte was granted a stock option to purchase 160,383 shares of common stock at an exercise price of \$2.54 per share. The option has a 10 year term and vests as follows: 25% vested on January 1, 2015, 9 months after the grant date, with the remainder vesting equally over the next 27 months such that the option was vested in full on April 1, 2017. On June 2, 2014, Ms. Conte was granted 17,820 restricted stock units, or RSUs. Fifty percent of the shares of common stock underlying the RSUs vested and were issued on January 1, 2016, and the remaining 50% will vest and be issuable on July 1, 2017 pursuant to the terms of the RSU agreement. In the event of a change in control, as defined in the Jaguar Health, Inc. 2013 Equity Incentive Plan (the "2013 Plan"), the vesting of all outstanding awards granted to Ms. Conte under the 2013 Plan will accelerate if Ms. Conte's service with us is terminated without cause within twelve months of the change in control.

#### ***Steven R. King, Ph.D.***

In February 2014, we entered into an offer letter with Dr. King to serve as our Executive Vice President, Sustainable Supply, Ethnobotanical Research and Intellectual Property, effective March 1, 2014, in an at-will capacity. Under the offer letter, Dr. King's annual base salary of \$255,000, he is eligible for an annual target bonus of 30% of his base salary, and he is eligible to participate in the employee benefit plans we offer to our other employees. Effective June 15, 2015, our board of directors has reviewed the terms of Dr. King's employment arrangement in connection with its annual compensation review, and has adjusted Dr. King's base salary to \$280,500. Dr. King is entitled to participate in all employee benefit plans, including group health care plans and all fringe benefit plans.

In April 2014, Dr. King was granted a stock option to purchase 93,556 shares of common stock at an exercise price of \$2.54 per share. The option has a 10-year term and vests as follows: 25% vested on January 1, 2015, 9 months after the grant date, with the remainder vesting equally over the next 27 months such that the option was vested in full on April 1, 2017. In June 2014, Dr. King was granted 10,395 RSUs. Fifty percent of the shares of common stock underlying the RSUs vested and were issued on January 1, 2016, and the remaining 50% will vest and be issuable on July 1, 2017 pursuant to the terms of the RSU agreement. In the event of a change in control, as defined in the 2013 Plan, the

vesting of all outstanding awards granted to Dr. King under the 2013 Plan will accelerate if Dr. King's service with us is terminated without cause within twelve months of the change in control.

**Karen S. Wright**

In October 2015, we entered into an offer letter with Ms. Wright to serve as our Executive Vice President, Finance, effective November 9, 2015, in an at-will capacity. On December 15, 2015 the board of directors approved Ms. Wright's appointment to serve as our Chief Finance Officer. Under the offer letter, Ms. Wright's annual base salary is \$240,000, she is eligible for an annual target bonus of 25% of her base salary, and she is eligible to participate in the employee benefit plans we offer to our other employees.

In November 2015, Ms. Wright was granted a stock option to purchase 20,000 shares of common stock at an exercise price of \$2.04 per share. The option has a 10-year term and vests as follows: 25% vested on August 9, 2016, 9 months after the hire date, with the remainder vesting equally over the next 27 months such that the option is vested in full on November 9, 2018.

**Compensation of Directors**

The following table summarizes the total compensation earned in 2017 for the Company's non-management directors. Ms. Conte receives no additional compensation for her service as a director. Messrs. Johnson and Siegel did not join the board of directors until March 2018 and, therefore, did not receive any compensation for 2017.

	Year	Fees Earned or Paid in Cash (\$)	Option awards \$(2)	Total (\$)
James J. Bochnowski . . . . .	2017	—	—	—
	2016	—	63,644	63,644
Folkert W. Kamphuis . . . . .	2017	—	—	—
	2016	—	17,625	17,625
Jiahao Qiu . . . . .	2017	—	—	—
	2016	—	1,921	1,921
Zhi Yang . . . . .	2017	—	—	—
	2016	—	1,921	1,921
John Micek III . . . . .	2017	—	—	—
	2016	—	81,944	81,944
Ari Azhir(1) . . . . .	2017	—	—	—
	2016	—	35,678	35,678

**Footnote to Compensation of Directors Table**

- (1) Dr. Azhir resigned from the board of directors effective March 29, 2018.
- (2) Represents the dollar amounts recognized for financial statement reporting purposes with respect to the fiscal year (for stock option awards) determined under FASB ASC Topic 718 using assumptions set forth in the footnotes to the financial statements in the Annual Report on Form 10-K for the year ended 2016. The aggregate number of options held by each non-management director officer as of December 31, 2016 was as follows: Mr. Bochnowski—39,410 shares granted June 2, 2014 and 20,000 shares granted June 2, 2015; Mr. Kamphuis—50,000 shares granted June 2, 2015; Mr. Qiu—10,000 shares granted June 2, 2015; Dr. Yang—10,000 shares granted June 2, 2015. The June 2, 2014 grant to Mr. Bochnowski vests 25% on March 2, 2015 (nine months from grant date), with the remainder vesting equally over the following 27 months such that the options are vested in full on June 2, 2017. All of the June 2, 2015 option grants vest in equal monthly installments such that it is vested in full on the 3 year anniversary of the grant date.

## CERTAIN RELATIONSHIPS AND RELATED PERSON TRANSACTIONS

The following includes a summary of transactions since January 1, 2016, to which we have been a party in which the amount involved exceeded or will exceed the lesser of (i) \$120,000 and (ii) one percent (1%) of the average of our total assets at year end for the prior two fiscal years (which is \$235,962), and in which any of our directors, executive officers or beneficial owners of more than 5% of our capital stock or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest. Compensation arrangements for our directors and executive officers are described elsewhere in this proxy statement.

### Transactions with Sagard

#### *Preferred Stock Offering*

##### **Preferred Stock Purchase Agreement**

On March 23, 2018, we entered into the Preferred Stock Purchase Agreement with Sagard, pursuant to which we, in a private placement, agreed to issue and sell to Sagard 5,524,926 shares of Preferred Stock (the “Preferred Shares”), for an aggregate purchase price of \$9,199,001. The Preferred Stock Purchase Agreement also provides for customary representations, warranties and covenants among the parties. Among other things, the Preferred Stock Purchase Agreement requires that we (i) file prior to the initial closing the Certificate of Designation and (ii) enter into a registration rights agreement with Sagard providing for the registration of shares of our Common Stock, issuable upon conversion of the Preferred Shares (the “Conversion Shares”). In addition, so long as Sagard or its affiliates own, in the aggregate, no less than 50% or more of the cumulative amount of the Preferred Shares and Conversion Shares issued in the Preferred Stock Offering, Sagard and its affiliates have the right to purchase (x) 100% of the first \$10 million of any new securities issued by us and thereafter (y) a pro rata portion of any new securities that we may issue from time to time, subject to certain exceptions specified in the Preferred Stock Purchase Agreement. The Preferred Shares are subject to a 12-month lock-up period, which period may be shortened in limited circumstances specified in the Preferred Stock Purchase Agreement.

The Preferred Stock Purchase Agreement also provides that Sagard has the right to designate at least one non-voting observer (subject to increase to two if at any time two designees of the Preferred Shares and the Conversion Shares are not represented on the board of directors) to attend meetings of the Board, the board of directors of any of our subsidiaries and each committee of any of the foregoing (a “Board Observer”). In addition, at such time as no shares of Preferred Stock are outstanding, and so long as Sagard holds (i) at least 35% of the total number of the Conversion Shares that have been issued upon conversion of all shares of Preferred Stock issued in the Preferred Stock Offering, Sagard shall be entitled thereunder to nominate two directors of the Company (each, a “Series A Director”) and (ii) less than 35% but at least 20% of the total number of the Conversion Shares that have been issued upon conversion of all shares of Preferred Stock issued in the Preferred Stock Offering, Sagard shall be entitled thereunder to nominate one director of the Company.

Notwithstanding the foregoing, the number of Series A Directors shall be reduced to the extent necessary to comply with our obligations, if any, under the rules or regulations of the Nasdaq Stock Market (including Nasdaq Listing Rule 5640). The Preferred Stock Purchase Agreement provides that, if one Series A Director may not be appointed due to compliance with Nasdaq Listing Rule 5640, then Sagard shall be entitled to designate one additional Board Observer to attend meetings of the board of directors, the board of directors of any of our subsidiaries and each committee of any of the foregoing as an observer.

## **Series A Preferred Stock**

The Certificate of Designation authorizes 5,524,926 shares of Preferred Stock and provides for the rights, preferences and privileges of such Preferred Stock. Any reference to share prices in the below description of the Preferred Stock, including but not limited to the conversion price for the Preferred Shares and the amount of the liquidation preference per share, is subject to adjustment in the event of any stock dividend, stock split, reverse stock split, combination or other similar recapitalization, as further described in the Certificate of Designation.

### *Dividends*

Holders of shares of Preferred Stock 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 Common Stock on the shares of Common Stock on an as converted basis.

### *Election of Directors and Voting Rights*

The holders of a majority of the outstanding shares of Preferred Stock are entitled to elect two (2) members of the Company's Board of Directors. Notwithstanding the foregoing, the number of Series A Directors shall be reduced to the extent necessary to comply with the Company's obligations, if any, under the rules or regulations of the Nasdaq Stock Market (including Nasdaq Listing Rule 5640).

The holders of shares of Preferred Stock have the right to vote with holders of shares of the Common Stock, voting together as one class on all other matters, with each share of Preferred Stock entitling the holder thereof to cast that number of votes per share as is equal to the aggregate number of shares of Common Stock into which it is then convertible, using the market value of the Common Stock on the date of the Preferred Stock Agreement (i.e., \$0.1935) as the conversion price; provided that, at any time prior to the time the Company obtains stockholder approval, as required pursuant to Nasdaq Rule 5635(b), no holder (together with such holder's attribution parties) is permitted to have a number of votes in excess of such aggregate number of votes granted to the holders of 19.99% of the shares of Common Stock then outstanding (including any votes with respect to any shares of Common Stock and Preferred Stock beneficially owned by the holder or such holder's attribution parties).

### *Voluntary Conversion*

Each share of Preferred Stock is initially convertible into nine shares of Common Stock at an effective conversion price of \$0.185 per share (based on an original price per Preferred Share of \$1.665), provided that, at any time prior to the time the Company obtains stockholder approval, as required pursuant to Nasdaq Rule 5635(b) any conversion of Preferred Stock by a holder into shares of the Common Stock would be prohibited if, as a result of such conversion, the holder, together with such holder's attribution parties, would beneficially own more than 19.99% of the total number of shares of the Common Stock issued and outstanding after giving effect to such conversion. Subject to certain limited exceptions, the shares of Preferred Stock cannot be offered, pledged or sold by Sagard 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.

### *Mandatory Conversion*

The shares of Preferred Stock will be mandatorily converted upon the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the then outstanding shares of Preferred Stock at a conversion price of \$0.185 per share. In each case, the number of shares of Common Stock issuable upon such conversion will be limited to the extent

necessary to satisfy limitations on beneficial ownership as described under “Voluntary Conversion” above.

#### *Optional Redemption*

At any time after the first anniversary of the issuance of the Preferred Shares, so long as certain call conditions specified in the Certificate of Designation have been satisfied, the Company shall have the right to offer to redeem shares of Preferred Stock at a share price equal to two times the original share issue price of the Preferred Shares. The Company is only permitted to exercise this right to redeem two times, the first of which must be for an aggregate redemption price of \$9,199,001 and the second of which must be for all remaining shares of Preferred Stock remaining. If a holder of Preferred Shares fails to accept the Company’s redemption offer, such holder’s shares of Preferred Stock shall be automatically converted into shares of Common Stock pursuant to the terms of “Mandatory Conversion” as described above.

#### *Mandatory Redemption*

If (i) the Company’s consolidated net revenues attributable to the Mytesi products (“Mytesi Revenues”) for the six-month period ended March 31, 2021 are less than \$22 million, (ii) the average volume-weighted average price of the Common Stock for the thirty days immediately prior to the Measurement Date (as defined below) is less than \$1.00 or (iii) the Company fails to file with the SEC on or before June 30, 2021 its quarterly report on Form 10-Q for the three months ended March 31, 2021, then the holders of at least a majority of shares of Preferred Stock then outstanding may require the Company to redeem all shares of Preferred Stock then outstanding at a per share purchase price equal to \$2.3057. For purposes of the foregoing sentence, “Measurement Date” means the later of (x) April 30, 2021 and (y) the date on which the Company files its quarterly report on Form 10-Q for the three months ended March 31, 2021 (but in no event later than June 30, 2021).

The mandatory redemption right described above shall terminate if, prior to the Measurement Date, both (i) the Mytesi Revenues for any six-month period ending at the end of a calendar quarter are equal to or exceed \$22 million and (ii) the average volume-weighted average price of the Common Stock for the thirty days immediately preceding the end of such calendar quarter is equal to or greater than \$1.00.

#### *Fundamental Change*

The Certificate of Designation provides the holders of Preferred Stock with a right to require the Company to repurchase shares of Preferred Stock at a price to be calculated pursuant to the terms of the Certificate of Designation upon the occurrence of any of the following events (each a “Fundamental Change”):

(X) (a) any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act), other than certain “Permitted Holders” (and/or any direct transferee of shares of Preferred Stock from any Permitted Holder) (as defined in the Certificate of Designation), (i) shall have acquired beneficial ownership of more than fifty percent (50%) or more on a fully diluted basis of the voting and/or economic interest in the capital stock of the Company (or surviving entity in a merger or consolidation, if applicable) or (ii) shall have obtained the power (whether or not exercised) to elect a majority of the members of the Company’s Board of Directors (or similar governing body); or (b) the occurrence of any “change of control” or similar event under any agreements relating to any indebtedness of the Company or its subsidiaries; or

(Y) except in the case of a Deemed Liquidation Event (as defined in the Certificate of Designation and described below) in which holders of Preferred Stock receive, concurrently with the consummation of such Deemed Liquidation Event, a cash payment pursuant to Sections 2.1



and 2.4 of the Certificate of Designation in full, in an amount equal to the “Fundamental Change Price” as defined in the Certificate of Designation that would otherwise be payable, the Company or any of its subsidiaries enters into any transaction of merger or consolidation (except that a person may be merged with or into the Company or another wholly-owned subsidiary thereof so long as the Company or another wholly-owned subsidiary is the continuing or surviving person), or conveys, sells, leases, subleases (as lessor or sublessor), exchanges, transfers or otherwise disposes of, in one transaction or a series of transactions, all or substantially all of the consolidated business, assets or property of the Company and its subsidiaries.

The “Fundamental Change Price” for each share of Preferred Stock, as of any date, shall be calculated as the sum of (i) the amount payable in respect of such share under Section 2.1 of the Certificate of Designation in the event of a “Liquidation Event” as of such date, plus (ii) any and all accrued and unpaid dividends upon the Preferred Stock, whether or not declared, as of the date of the Fundamental Change, plus (iii) the “Participation Amount” as defined in the Certificate of Designation.

#### *Merger or Liquidation*

Subject to the Fundamental Change provision described above, under the terms of the Certificate of Designation, upon merger or consolidation resulting in a change of control, sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company, of substantially all of the assets of the Company and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of Napo (as defined below) (or any successor in interest) or one or more other subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries (collectively, a “Deemed Liquidation”), liquidation, dissolution or winding up of the Company as determined under the Certificate (collectively, a “Liquidation Event”), each share of Preferred Stock will be entitled to a preference of \$1.665 per share (or the equivalent of \$0.185 per share on an as-converted to Common Stock basis) plus a participation right described below. Thereafter, the holders of Common Stock then outstanding shall be entitled to receive an amount per share of Common Stock (in stock or cash as determined under the Certificate of Designation) equal to \$0.185 (as adjusted for stock splits, reverse splits, stock dividends, reclassifications, recapitalizations and/or other similar events). Thereafter, all of the remaining assets of the Company and/or proceeds from a Deemed Liquidation or Liquidation Event, as applicable, will in general be divided pro rata among the holders of the shares of Preferred Stock and the shares of Common Stock, on an as converted basis (all as more fully specified and calculated under the Certificate of Designation).

#### *Covenants*

Pursuant to the terms of the Preferred Stock as provided in the Certificate of Designation, so long as any shares of Preferred Stock are outstanding, the Company may not agree, among other things, without the prior written consent or vote of the holders of at least a majority of the then outstanding shares of Preferred Stock, to: (a) amend, alter, repeal or waive any provision of the Certificate of Designation, (b) amend, alter or repeal any provision of the Company’s charter documents in a manner that would adversely affect the powers, privileges, preferences or rights of the Preferred Stock, (c) create additional classes or series of capital stock having rights, preferences or privileges senior to or pari passu with the Preferred Stock or (d) increase or decrease the authorized number of shares of Preferred Stock.

So long as Sagard or its affiliates own at least 35% of the shares of Preferred Stock that were originally issued, the Certificate of Designation provides that the Company may not, among other things, without the prior written consent or vote of the holders of at least a majority of the then outstanding shares of Preferred Stock, (a) authorize or issue any capital stock of any subsidiary which is

not wholly-owned by the Company, (b) declare or pay dividends on the Company's equity securities or redeem any of the Company's equity securities, (c) incur, guarantee or assume any indebtedness, subject to certain limited exceptions, (d) grant or incur any lien, subject to certain limited exceptions, (e) enter into any transaction for the acquisition of all or substantially of the equity interests or assets of another person, subject to certain limited exceptions (f) make any investments, subject to certain limited exceptions or (g) enter into any transactions with the Company's affiliates, subject to certain limited exceptions.

#### ***Services Agreement***

On March 23, 2018, the Company entered into a management services agreement with Sagard Capital Partners Management Corp. ("SCPM"), an affiliate of Sagard, pursuant to which SCPM will provide certain consulting and management advisory services to the Company over a three-year period (the "Initial Term") for an annual fee of \$450,000, which fees will be paid in equal installments over the Initial Term beginning in the second year of the Initial Term (the "Services Agreement"). The Services Agreement may be terminated earlier than the initial three-year term (i) upon mutual consent of the parties, (ii) by either party following a breach of the Services Agreement by the other party that remains uncured following 30 days' written notice thereof, (iii) in SCPM's sole discretion with 10 day's prior written notice, or (iv) upon the consummation of a Deemed Liquidation (so long as all accrued and unpaid fees payable thereunder as of such termination have been paid in full) or a Fundamental Change in which all of the Company's shares of Preferred Stock are repurchased by the Company.

As described above, Jeffery C. Johnson, a member of the Company's board of directors, is an investment manager at SCPM.

#### **Transactions with Nantucket**

On July 31, 2017, we completed a merger (the "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 order to induce us to enter into the Merger Agreement, on March 31, 2017, Napo entered into a Settlement and Discounted Payoff Agreement with Nantucket Investments Limited ("Nantucket") and the lenders named therein (the "Settlement Agreement"), pursuant to which, among other things, Napo agreed, simultaneously with the consummation of the Merger, (a) to make a cash payment to Nantucket of no less than \$8 million, which reduced the outstanding principal obligations under the Financing Agreement, dated October 10, 2014, by and between Napo and Nantucket (the "Financing Agreement"), and (b) in satisfaction as a compromise for the outstanding obligations under the Financing Agreement and the release of any lien or security interest in respect of such outstanding obligations, (x) to transfer to Nantucket 2,666,666 shares of our Common Stock (the "Initial Tranche C Shares") owned by Napo and (y) pursuant to the Merger Agreement, to cause us to issue to Nantucket (i) 2,217,579 shares of our Common Stock (the "Remaining Tranche C Shares" and, together with the Initial Tranche C Shares, the "Tranche C Shares"), (ii) 18,479,826 shares of our non-voting common stock (the "Tranche A Shares") and (iii) 19,700,625 shares of our non-voting common stock (the "Tranche B Shares"), all of which shares are subject to the terms of the Investor Rights Agreement described below.

In connection with the execution of the Merger Agreement and the Settlement Agreement, we and Nantucket entered into an Investor Rights Agreement, dated March 31, 2017 (the "Investor Rights Agreement"), pursuant to which, among other things, we agreed to pay Nantucket's expenses incurred in connection with the transactions contemplated by the Investor Rights Agreement, Settlement Agreement and Merger Agreement, which, pursuant to the Investor Rights Agreement, we have elected to pay by issuing 270,270 additional shares of our non-voting common stock (the "Expense Reimbursement Shares") to Nantucket. We also agreed to register on one or more registration statements the resale of the Tranche C Shares and the shares of common stock issuable upon

conversion of the Expense Reimbursement Shares, the Tranche A Shares and, to the extent certain conditions are met, the Tranche B Shares.

The Investor Rights Agreement also imposes certain restrictions on the transfer and sale of the shares of common stock and non-voting common stock issued to Nantucket in connection with the Settlement Agreement, including (but not limited to) the following: (a) first, the Tranche B Shares are to be held in escrow and will be released to either Nantucket or the former Napo stockholders, depending on whether the resale of the Tranche A Shares to third parties provides Nantucket with cash returns at or exceeding a specified amount over a specified period of time (the “Hurdle Amounts”); (b) second, we are restricted from paying any dividends on any shares of our capital stock or redeeming any shares, except in limited circumstances, without the prior written consent of Nantucket; (c) third, until the earlier of (i) April 1, 2020 and (ii) the date on which the applicable Hurdle Amount is achieved, in the event that any potential purchaser approaches Nantucket to acquire some or all of the Tranche A Shares, Nantucket agrees to promptly sell some or all of its Tranche A Shares as requested by such party, provided all such sales are above a certain minimum share price for the relevant time period specified in the Investor Rights Agreement; and (d) lastly, if the applicable Hurdle Amount is achieved before all of the Tranche A Shares are sold, Nantucket is required to surrender 50% of the unsold Tranche A Shares, which will be exchanged for shares of common stock and distributed pro rata among holders of certain contingent rights that were issued in connection with the merger and holders of Napo restricted stock units.

## **Transactions with Napo**

### ***Formation***

We were founded in San Francisco, California as a Delaware corporation on June 6, 2013. Napo formed our company to develop and commercialize animal health products. In connection with our formation, we issued 2,666,666 shares of common stock to Napo, pursuant to a stock purchase agreement, for \$400 in cash and services to be provided by Napo to our company pursuant to the Service Agreement discussed below. As of December 31, 2013, we were a wholly-owned subsidiary of Napo and as of December 31, 2014, we were a majority-owned subsidiary of Napo. As of May 13, 2015, we are no longer a majority-owned subsidiary of Napo. As described below, we acquired Napo on July 31, 2017 and Napo is now our wholly-subsiidiary.

### ***Merger***

As discussed above, we completed the Merger with Napo on July 31, 2017. Immediately following the Merger, we changed our 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. FDA for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy.

In connection with the Merger, (i) each issued and outstanding share of Napo common stock (other than dissenting shares and shares held by Jaguar or Napo) was converted into a contingent right to receive (x) up to a whole number of shares of Jaguar common stock comprising in the aggregate up to approximately 20.2% of the fully diluted shares of Jaguar common stock immediately following the consummation of the merger, which contingent right will vest only if certain Hurdle Amounts are achieved upon the resale of the Tranche A Shares issued by Jaguar to Nantucket, and (y) if the applicable Hurdle Amount is achieved before all of the Tranche A Shares are sold, additional shares of our Common Stock (equal to 50% of the unsold Tranche A Shares), which will be distributed pro rata among holders of contingent rights and holders of Napo restricted stock units, (ii) existing creditors of Napo (inclusive of Nantucket) were issued in the aggregate approximately 42,903,018 shares of Jaguar non-voting common stock and 2,282,445 shares of Jaguar voting common stock in full satisfaction of all

existing indebtedness then owed by Napo to such creditors, and (iii) an existing Napo stockholder (“Invesco”) was issued an aggregate of approximately 3,243,243 shares of our Common Stock in return for \$3 million of new funds invested into Jaguar by such investor, which were immediately loaned to Napo to partially facilitate the extinguishment of the debt that Napo owed to Nantucket. The minimum Hurdle Amount needed for the vesting of the contingent rights will vary depending on a number of factors (including, among other things, the time period over which Nantucket receives specified cash returns in connection with the resale of the Tranche A Shares), and Napo stockholders may not receive any shares of our Common Stock in certain circumstances (including if the minimum Hurdle Amount is not satisfied).

Holders of Jaguar equity prior to the closing of the Merger (including all outstanding our Common Stock and all restricted stock units, options and warrants exercisable for shares of our Common Stock) held approximately 25% of Jaguar’s Common Stock and non-voting common stock following the closing of the Merger, and Napo’s creditors prior to the closing of the Merger held approximately 48% of Jaguar’s Common Stock and non-voting common stock following the closing of the Merger, in each case on a fully diluted basis, provided, however, certain outstanding convertible promissory notes exercisable for Jaguar Common Stock after the closing and certain option grants expected to be made at or immediately following the closing of the Merger are excluded from such ownership percentages.

#### ***Napo/Salix Settlement Agreement***

In March 2016, Napo settled ongoing litigation with Salix Pharmaceuticals, Inc. (“Salix”) (now owned by Valeant Pharmaceuticals International), and rights to develop, manufacture and commercialize crofelemer previously licensed to Salix in December 2008 in North America, certain European Union countries and Japan were terminated and returned to Napo, along with certain crofelemer active pharmaceutical ingredient inventory and Mytesi® drug product inventory and land. Pursuant to the settlement agreement between Napo and Salix (the “Napo/Salix Settlement Agreement”), upon the consummation of the Merger, we entered into a letter agreement with Salix (the “Letter Agreement”), pursuant to which we agreed to assume, be bound by, and perform certain provisions of the Napo/Salix Settlement Agreement as though we were added alongside Napo as an additional named person for purposes of such provisions.

#### ***Napo Service Agreement***

Effective July 1, 2016, we and Napo entered into an employee leasing and overhead allocation agreement (the “2016 Service Agreement”). The initial term of the 2016 Service Agreement was from July 1, 2016 to December 31, 2016, and the term was further extended upon consummation of the Merger on July 31, 2017. In connection with the 2016 Service Agreement, we provided to Napo the services of our employees, primarily in the areas of supply, manufacturing and quality control and general administrative positions. The 2016 Service Agreement stipulated that Napo reimburse us for a portion of our overhead costs including an allocated amount for rent.

#### **Transactions with Kingdon**

##### ***Exchangeable Promissory Notes***

On March 31, 2017, Napo entered into an Amended and Restated Note Purchase Agreement (the “Kingdon NPA”) with Kingdon Associates, M. Kingdon Offshore Master Fund L.P., Kingdon Family Partnership, L.P., and Kingdon Credit Master Fund L.P. (and, together with any other party purchasing Kingdon Notes (as defined below) pursuant to the Kingdon NPA, the “Kingdon Purchasers”), whereby Napo issued \$2,500,000 in aggregate principal amount of convertible promissory notes (the “Kingdon Notes”) to such purchasers at a purchase price of \$2,000,000. The holders of the Kingdon Notes may

convert the Kingdon Notes into shares of our Common Stock at a conversion price of \$0.925 (i) from the date of the Kingdon Note until the day immediately preceding the one-year anniversary of the Kingdon Note, all, but not less than all, of one-third of the outstanding principal and interest of the Kingdon Note, (ii) from the one-year anniversary of the Kingdon Note until the day immediately preceding the two-year anniversary of the Kingdon Note, all, but not less than all, of one-third of the outstanding principal and interest of the Kingdon Note, and (iii) from the two-year anniversary of the Kingdon Note and thereafter, all, but not less than all, of the outstanding principal and interest of the Kingdon Note. Immediately prior to the consummation of the Merger, each Kingdon Purchaser purchased its pro rata portion of additional Kingdon Notes with an aggregate original principal amount of \$7,500,000 for an aggregate purchase price of \$6,000,000.

The Kingdon Notes accrue interest at a rate of 10% per annum and mature on the first date after December 30, 2019 on which a majority of the Kingdon Purchasers have provided written notice to Napo requesting payment in full of the outstanding principal and interest of the Kingdon Notes. The obligations of Napo under the Kingdon Notes are secured pursuant to the terms of the Security Agreement, dated December 30, 2016, by and among Napo, Kingdon Capital Management L.L.C. and the purchasers named therein (the “Napo Security Agreement”) and the Limited Subordination Agreement, dated December 30, 2016, by and among Napo, the Kingdon Purchasers, Nantucket, the lenders under the Litigation Financing Agreement, Dorsar Investment Company, Alco Investment Company and Two Daughters LLC (the “Intercreditor Agreement”). On October 20, 2017, we filed a registration statement to register the resale of shares of our Common Stock issuable upon exchange of the 2017 Exchangeable Notes.

#### **Transactions with Jonathan B. Siegel**

On March 29, 2018, our board of directors appointed Mr. Jonathan B. Siegel to fill the vacancy created by Dr. Azhir’s resignation and serve as Class I director of the Company until the 2019 annual meeting of stockholders or until his successor is elected and qualified.

Mr. Siegel was formerly a principal and member of the executive committee of Kingdon Capital (“Kingdon”) and the head for Kingdon’s healthcare sector. As described further above, on March 31, 2017, Napo entered into the Kingdon NPA with the Kingdon Purchasers, which are affiliates of Kingdon, under which remains outstanding approximately \$10.1 million in aggregate principal amount of the Kingdon Notes. Napo’s obligations under the Kingdon Notes are secured by a security interest in substantially all of Napo’s assets, including Napo intellectual property.

#### **Indemnification Agreements**

We have entered into indemnification agreements with each of our directors and officers. These agreements, among other things, require us or will require us to indemnify each director to the fullest extent permitted by Delaware law, including indemnification of expenses such as expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted incurred by the director or officer in any action or proceeding, including any action or proceeding by or in right of us, arising out of the person’s services as a director or officer.

#### **Other Transactions**

We have granted stock options and/or RSUs to our executive officers. For a description of these options and RSUs, see the section above titled “Compensation of Directors and Executive Officers.”

We have also granted stock options to certain members of our board of directors. For a description of these stock options, see the section above titled “Director Compensation.”



## **Policies and Procedures for Related Person Transactions**

Our board of directors has adopted a written related person transaction policy setting forth the policies and procedures for the review and approval or ratification of related-person transactions. This policy will cover, with certain exceptions set forth in Item 404 of Regulation S-K under the Securities Act, any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships in which we were or are to be a participant, where the amount involved exceeds \$120,000 and a related person had or will have a direct or indirect material interest, including, without limitation, purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person. In reviewing and approving any such transactions, our Audit Committee is tasked to consider all relevant facts and circumstances, including, but not limited to, whether the transaction is on terms comparable to those that could be obtained in an arm's length transaction and the extent of the related person's interest in the transaction. All of the transactions described in this section occurred prior to the adoption of this policy.

### **SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE**

Section 16(a) of the Exchange Act, and regulations of the SEC thereunder require our directors, officers and persons who own more than 10% of our Common Stock, as well as certain affiliates of such persons, to file initial reports of their ownership of our Common Stock and subsequent reports of changes in such ownership with the SEC. Directors, officers and persons owning more than 10% of our Common Stock are required by SEC regulations to furnish us with copies of all Section 16(a) reports they file. Based solely on our review of the copies of such reports and amendments thereto received by us and written representations from these persons that no other reports were required, we believe that during the fiscal year ended December 31, 2017, our directors, officers and owners of more than 10% of our Common Stock complied with all applicable filing requirements except that each of Lisa Conte, Steven King and Karen Wright filed a Form 4 on December 29, 2017 reporting a grant of stock options that should have been filed on December 26, 2017 pursuant to Section 16(a) of the Exchange Act.

## AUDIT COMMITTEE REPORT

Management has primary responsibility for our financial statements and the overall reporting process, including maintaining effective internal control over financial reporting and assessing the effectiveness of our system of internal controls. The independent registered public accounting firm audits the annual financial statements prepared by management, expresses an opinion as to whether those financial statements fairly present our financial position, results of operations and cash flows in conformity with U.S. generally accepted accounting principles, and discusses with the Audit Committee any issues it believes should be raised with the Audit Committee. These discussions include a discussion of the quality, not just the acceptability, of the accounting principles, the reasonableness of significant judgments, and the clarity of disclosures in the financial statements. The Audit Committee monitors our processes, relying, without independent verification, on the information provided to it and on the representations made by management and the independent registered public accounting firm.

BDO USA, LLP (BDO), our Company's independent auditor for the year ended December 31, 2017, is responsible for expressing an opinion on the fairness of the presentation of the Company's financial statements in conformity with accounting principles generally accepted in the United States of America, in all material respects.

In this context, the Audit Committee has reviewed and discussed with management and BDO the audited financial statements for the year ended December 31, 2017. The Audit Committee has discussed with BDO the matters that are required to be discussed under the Public Accounting Oversight Board Auditing Standard No. 1301 "*Communications with Audit Committees*". BDO has provided to the Audit Committee the written disclosures and the letter required by applicable requirements of the Public Company Accounting Oversight Board's Ethics and Independence rule 3526 "*Communications with Audit Committees Concerning Independence*", and the Audit Committee has discussed with BDO that firm's independence. The Audit Committee has concluded that BDO's provision of audit and non-audit services to the Company are compatible with BDO's independence.

Based on the considerations and discussions referred to above, the Audit Committee recommended to our Board of Directors that the audited financial statements for the year ended December 31, 2017 be included in our Annual Report on Form 10-K for 2017. This report is provided by the following independent directors, who comprise the Audit Committee:

### **Audit Committee:**

John Micek III, Chairperson  
James J. Bochnowski  
Jiahao Qiu  
Zhi Yang

April 24, 2018

## STOCKHOLDER PROPOSALS FOR 2019 ANNUAL MEETING

In accordance with SEC Rule 14a-8, in order for stockholder proposals intended to be presented at the 2019 Annual Meeting of Stockholders to be eligible for inclusion in our proxy statement for such meeting, they must be received by us at our executive offices in San Francisco, California, before December 28, 2018. The board of directors has not determined the date of the 2018 Annual Meeting of the Company's Stockholders, but does not currently anticipate that the date will be changed by more than 30 calendar days from the date of this year's annual meeting.

Stockholder proposals (including recommendations of nominees for election to the board of directors) intended to be presented at the 2019 Annual Meeting of Stockholders, other than a stockholder proposal submitted pursuant to SEC Rule 14a-8, must be received in writing at our principal executive office no earlier than January 18, 2019 and no later than February 17, 2019, in accordance with our bylaws. If the date of the 2019 Annual Meeting of Stockholders is scheduled for a date more than 30 days before or more than 60 days after May 18, 2019, then such proposals must be received not later than the close of business on the later of the 90th day prior to the scheduled date of the 2019 Annual Meeting or the 10th day following the day on which public disclosure of the date of the 2019 Annual Meeting of Stockholders is first made, as set forth in our bylaws.

### AVAILABILITY OF ANNUAL REPORT TO STOCKHOLDERS AND REPORT ON FORM 10-K

A copy of our Annual Report, which includes certain financial information about the Company, is being provided with this Proxy Statement. Copies of our Annual Report (exclusive of exhibits and documents incorporated by reference), may also be obtained for free by directing written requests to: Jaguar Health, Inc., Attention: Karen S. Wright, 201 Mission Street, Suite 2375, San Francisco, CA 94105 (415.371.8300 phone). Copies of exhibits and basic documents filed with the Annual Report or referenced therein will be furnished to stockholders upon written request and payment of a nominal fee in connection with the furnishing of such documents. You may also obtain the Annual Report over the Internet at the SEC's website, [www.sec.gov](http://www.sec.gov), or at <https://jaguarhealth.gcs-web.com/financial-information/annual-reports>.

### LIST OF THE COMPANY'S STOCKHOLDERS

A list of our stockholders as of April 23, 2018, the Record Date, will be available for inspection at our corporate headquarters during normal business hours during the 10-day period prior to the Annual Meeting. The list of stockholders will also be available for such examination at the Annual Meeting.

### DELIVERY OF PROXY MATERIALS TO HOUSEHOLDS

Unless contrary instructions are received, we may send a single copy of the Annual Report, Proxy Statement and Notice of Annual Meeting to any household at which two or more stockholders reside if we believe the stockholders are members of the same family. Each stockholder in the household will continue to receive a separate proxy card. This process is known as "householding" and helps reduce the volume of duplicate information received at a single household, which reduces costs and expenses borne by us.

If you would like to receive a separate set of our annual disclosure documents this year or in future years, follow the instructions described below and we will deliver promptly a separate set. Similarly, if you share an address with another stockholder and the two of you would like to receive only a single set of our annual disclosure documents, follow the instructions below:

1. If your shares are registered in your own name, please contact our transfer agent by writing to them at Computershare Investor Services, PO Box 30170, College Station, Texas 77842-3170 (Attn: Jaguar Health, Inc. Representative) or calling 1-800-962-4284.
2. If a bank, broker or other nominee holds your shares, please contact your bank, broker or other nominee directly.

**OTHER MATTERS THAT MAY COME BEFORE THE ANNUAL MEETING**

Our board of directors knows of no matters other than those referred to in the accompanying Notice of Annual Meeting of Stockholders which may properly come before the Annual Meeting. However, if any other matter should be properly presented for consideration and voting at the Annual Meeting or any adjournments or postponements thereof, it is the intention of the persons named as proxies on the enclosed form of proxy card to vote the shares represented by all valid proxy cards in accordance with their judgment of what is in the best interest of the Company.

By Order of the Board of Directors.

A handwritten signature in black ink that reads "Lisa A. Conte". The signature is written in a cursive style with a large initial "L" and "C".

Lisa A. Conte  
*Chief Executive Officer & President*

San Francisco, California  
April 24, 2018

**CERTIFICATE OF SECOND AMENDMENT TO THE  
THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF  
JAGUAR HEALTH, INC.**

Jaguar Health, Inc., a corporation organized and existing under the laws of the State of Delaware (the “Corporation”), hereby certifies that:

1. The name of the Corporation is Jaguar Health, Inc.. The date of filing of the Corporation’s original Certificate of Incorporation with the Secretary of State of the State of Delaware was June 6, 2013, under the name Jaguar Animal Health, Inc.
2. This Certificate of Second Amendment to the Third Amended and Restated Certificate of Incorporation was duly authorized and adopted by the Corporation’s Board of Directors and stockholders in accordance with Section 242 of the General Corporation Law of the State of Delaware and amends the provisions of the Company’s Third Amended and Restated Certificate of Incorporation.
3. The amendment to the existing Third Amended and Restated Certificate of Incorporation being effected hereby is as follows:
  - a. Add the following paragraph at the end of Section IV.A. as a new Section IV.A.6:

“6. *Reverse Stock Split*. Upon this Amendment to the Third Restated Certificate becoming effective pursuant to the DGCL (the “*Effective Time*”), each eleven to fifteen shares of Common Stock issued and outstanding immediately prior to the Effective Time shall automatically be reclassified and combined into one (1) validly issued, fully paid and non-assessable share of Common Stock, the exact ratio within the foregoing range to be determined by the Board of Directors prior to the Effective Time and publicly announced by the Corporation, without any further action by the Corporation or the holder thereof (the “*Reverse Stock Split*”). No fractional shares shall be issued in connection with the Reverse Stock Split. Stockholders who otherwise would be entitled to receive fractional shares of Common Stock shall be entitled to receive cash (without interest or deduction) from the Corporation’s transfer agent in lieu of such fractional share interests upon the submission of a transmission letter by a stockholder holding the shares in book-entry form and, where shares are held in certificated form, upon the surrender of the stockholder’s Old Certificates (as defined below), in an amount equal to the product obtained by multiplying (a) the closing price per share of the Common Stock as reported on the Nasdaq Capital Market as of the date of the Effective Time, by (b) the fraction of one share owned by the stockholder. Each certificate that immediately prior to the Effective Time represented shares of Common Stock (“*Old Certificates*”), shall thereafter represent that number of shares of Common Stock into which the shares of Common Stock represented by the Old Certificate shall have been combined, subject to the elimination of fractional share interests as described above.”
4. This Certificate of Second Amendment to the Third Amended and Restated Certificate of Incorporation shall be effective immediately upon filing with the Delaware Secretary of State.

\*\*\*\*



IN WITNESS WHEREOF, Jaguar Health, Inc. has caused this Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation to be signed by [                    ], its [                    ], this [     •   ] day of [     •   ], 2018.

**JAGUAR HEALTH, INC.**

A Delaware corporation

By: \_\_\_\_\_

Name:

Title:

**CERTIFICATE OF THIRD AMENDMENT TO THE  
THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF  
JAGUAR HEALTH, INC.**

Jaguar Health, Inc., a corporation organized and existing under the laws of the State of Delaware (the “Corporation”), hereby certifies that:

1. The name of the Corporation is Jaguar Health, Inc.. The date of filing of the Corporation’s original Certificate of Incorporation with the Secretary of State of the State of Delaware was June 6, 2013, under the name Jaguar Animal Health, Inc.
2. This Certificate of Third Amendment to the Third Amended and Restated Certificate of Incorporation was duly authorized and adopted by the Corporation’s Board of Directors and stockholders in accordance with Section 242 of the General Corporation Law of the State of Delaware and amends the provisions of the Company’s Third Amended and Restated Certificate of Incorporation.
3. The amendment to the existing Third Amended and Restated Certificate of Incorporation being effected hereby is as follows:
  - a. Delete the first paragraph of Article IV in its entirety and substitute in its place the following:

“The total number of shares of stock that the Corporation shall have authority to issue is Two Hundred Ten Million (210,000,000) shares, consisting of (i) One Hundred Fifty Million (150,000,000) shares of common stock, \$0.0001 par value per share (“*Common Stock*”), (ii) Fifty Million (50,000,000) shares of convertible non-voting common stock, \$0.0001 par value per share (“*Non-Voting Common Stock*”), and (iii) Ten Million (10,000,000) shares of Preferred Stock, \$0.0001 par value per share (“*Preferred Stock*”).”
4. This Certificate of Third Amendment to the Third Amended and Restated Certificate of Incorporation shall be effective immediately upon filing with the Delaware Secretary of State.

\*\*\*\*

IN WITNESS WHEREOF, Jaguar Health, Inc. has caused this Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation to be signed by [ ], its [ ], this [ • ] day of [ • ], 2018.

**JAGUAR HEALTH, INC.**

A Delaware corporation

By: \_\_\_\_\_

Name:

Title:

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**Form 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2017

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
COMMISSION FILE NO. 001-36714

**JAGUAR HEALTH, INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

46-2956775  
(I.R.S. Employer  
Identification No.)

201 Mission Street, Suite 2375  
San Francisco, California 94105

(Address of principal executive offices)

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

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

Title of each class	Name of each exchange on which registered
Common Stock, Par Value \$0.0001 Per Share	The NASDAQ Capital Market

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes  No

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(Do not check if a smaller reporting company) Emerging growth company

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

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

As of June 30, 2017, the aggregate market value of the registrant's common stock held by non-affiliates was approximately \$6,574,176 based upon the closing sales price of the registrant's common stock on The NASDAQ Global Market on such date.

The number of shares of the registrant's Common Stock outstanding as of April 9, 2018 was 168,316,084, consisting of 125,698,191 shares of voting common stock and 42,617,893 shares of non-voting common stock. The company also had 5,524,926 shares of convertible preferred stock outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the proxy statement for the registrant's 2018 Annual Meeting of Stockholders, or Proxy Statement, to be filed within 120 days of the end of the fiscal year ended December 31, 2017 are incorporated by reference in Part III hereof. Except with respect to information specifically incorporated by reference in this Form 10-K, the Proxy Statement is not deemed to be filed as a part hereof.

## TABLE OF CONTENTS

<u>Item No.</u>		<u>Page No.</u>
<b>PART I</b>		
Item 1.	Business . . . . .	1
Item 1A.	Risk Factors . . . . .	42
Item 1B.	Unresolved Staff Comments . . . . .	76
Item 2.	Properties . . . . .	76
Item 3.	Legal Proceedings . . . . .	76
Item 4.	Mine Safety Disclosure . . . . .	77
<b>PART II</b>		
Item 5.	Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities . . . . .	78
Item 6.	Selected Financial Data . . . . .	79
Item 7.	Management’s Discussion and Analysis of Financial Condition and Results of Operation . . . . .	80
Item 7A.	Qualitative and Quantitative Disclosures About Market Risk . . . . .	110
Item 8.	Financial Statements and Supplementary Data . . . . .	111
Item 9.	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure . . . . .	162
Item 9A.	Controls and Procedures . . . . .	162
Item 9B.	Other Information . . . . .	163
<b>PART III</b>		
Item 10.	Directors, Executive Officers and Corporate Governance . . . . .	164
Item 11.	Executive Compensation . . . . .	164
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters . . . . .	164
Item 13.	Certain Relationships and Related Transactions, and Director Independence . . . . .	164
Item 14.	Principal Accountant Fees and Services . . . . .	164
<b>PART IV</b>		
Item 15.	Exhibits, Financial Statement Schedules . . . . .	165
<b>SIGNATURES</b> . . . . .		175



## PART I

### Forward-looking statements

This Form 10-K contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. All statements other than statements of historical facts contained in this Form 10-K, including statements regarding our future results of operations and financial position, business strategy, prospective products, product approvals, research and development costs, timing of receipt of clinical trial, field study and other study data, and likelihood of success, commercialization plans and timing, other plans and objectives of management for future operations, and future results of current and anticipated products are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expect,” “plan,” “aim,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplate,” “believe,” “estimate,” “predict,” “potential” or “continue” or the negative of these terms or other similar expressions. The forward-looking statements in this Form 10-K are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this Form 10-K and are subject to a number of risks, uncertainties and assumptions described under the sections in this Form 10-K titled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this Form 10-K. Forward-looking statements are subject to inherent risks and uncertainties, some of which cannot be predicted or quantified and some of which are beyond our control. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Moreover, we operate in a dynamic industry and economy. New risk factors and uncertainties may emerge from time to time, and it is not possible for management to predict all risk factors and uncertainties that we may face. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise.

Jaguar Health, our logo, Canalevia and Neonorm are our trademarks that are used in this Form 10-K. This Form 10-K also includes trademarks, tradenames and service marks that are the property of other organizations. Solely for convenience, trademarks and tradenames referred to in this Form 10-K appear without the ©, ® or ™ symbols, but those references are not intended to indicate that we will not assert, to the fullest extent under applicable law, our rights or that the applicable owner will not assert its rights, to these trademarks and tradenames.

### ITEM 1. BUSINESS

#### BUSINESS

##### Overview

We are a commercial stage natural-products 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 (“FDA”) for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy. In

the field of animal health, we are focused on developing and commercializing first-in-class gastrointestinal products for companion and production animals, foals, and high value horses.

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, until May 13, 2015, Jaguar was a majority-owned subsidiary of Napo. 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.

With the merger effective, we believe that our newly combined company is poised to realize a number of synergistic, value adding benefits—and 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 controls commercial rights for Mytesi for all indications, territories and patient populations globally, and crofelemer manufacturing is being conducted at a new, 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 strong Phase 2 evidence from completed Phase 2 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 as a second-generation anti-secretory agent for use in cholera patients. Mytesi has received orphan-drug designation for SBS.

Napo launched Mytesi in early 2017 with one full-time-equivalent Mytesi sales representative focused on targeting high-decile prescribing HIV doctors. Napo significantly expanded its internal national salesforce for Mytesi in Q4, 2017 through the hire in key U.S. markets of six additional full-time sales representatives experienced in the sale of drugs to HIV physicians and gastroenterologists. Today our sales force of ten highly trained sales representatives, a regional sales director, and our national sales manager are now fully on board and trained on Mytesi. Seven of these sales representatives are former long-term employees of the HIV portfolio business of drugmaker Bristol-Myers Squibb, while the remainder of the team possess extensive experience in drug sales to both HIV healthcare providers and gastroenterologists. With support provided by concomitant marketing, promotional activities, patient empowerment programs and medical education initiatives described below, we expect a proportional response in the number of patients treated with Mytesi.

The goal of Napo's internal sales team is to deliver a frequent and consistent selling message to targeted, high-volume prescribers of antiretroviral therapies (ART) and to gastroenterologists who see large numbers of HIV patients. In December 2017 we released the results of a survey of 350 people living with HIV and AIDS regarding the topic of "Talking to Your Doctor About Symptoms". The survey results show that diarrhea remains prevalent in those living with HIV/AIDS, as 27 percent of respondents living with HIV/AIDS reported that they currently have diarrhea, while 56 percent reported that they have had diarrhea in the past. Additionally, the results of a recent Napo-sponsored survey of 271 U.S. board certified gastroenterologists indicate that the number one GI complaint for people living with HIV/AIDS is diarrhea, and 93 percent of U.S. gastroenterologists see patients with HIV/AIDS in their practice.

Key to the success of our sales representatives in growing Mytesi is differentiating and targeting the right doctors—those HIV specialists who are high prescribers of ART medications and those gastrointestinal doctors who see large populations of people living with HIV/AIDS. The target list of prescribers for our sales reps includes a pool of 3,500 high volume ART prescribing HIV specialists, and

the 1,500 gastroenterologists who see the largest number of people living with HIV/AIDS, and we've strategically placed our sales force in the US geographies with the highest potential, including Miami/South Florida, Los Angeles/Palm Springs, New York, Houston, Chicago/St. Louis, Indianapolis, Kansas City, Alabama, Atlanta, San Francisco, DC, Pennsylvania, New Jersey, Delaware, Maryland, Mississippi and Louisiana.

As we announced on January 22, 2018, preliminary sales of Mytesi for the period of August 1, 2017 through December 31, 2017—the period following the close of the merger—were approximately \$1.40 million, and, as we announced March 2, 2018, we anticipate that Mytesi gross sales for the period of January 1, 2017 through March 31, 2018 will total approximately \$3.2 million. Jaguar estimates the potential U.S. market for Mytesi to be approximately \$100 million in gross annual sales.

From September 1, 2017 through November 30, 2017, there was an increase of 86% in new Mytesi prescribers among gastroenterologists and 8% in HIV specialists, coincident with the deployment of our direct sales force. According to data provided by IQVIA, the number of Mytesi prescriptions written by physicians increased an average of 9.5% each month over the prior month during the August 1, 2017 through December 31, 2017 period. Additionally, patient redemptions of our Mytesi Copay Savings Card increased an average of 7% each month over the prior month during the same period.

As announced January 22, 2018, Napo recently completed the training of 29 health care practitioners (HCPs) and ten patient advocates to serve as members of the Napo Speakers Bureau. Medical education presentations led by participating HCPs—a group that includes HIV/AIDS specialists, infectious disease specialists, gastroenterologists, colorectal surgeons, and nurse practitioners—will focus on the prevalence and pathophysiology of gastrointestinal consequences of HIV infection and on the latest treatment options for HIV-related diarrhea. Presentations given by patient advocate members will provide information to people living with HIV (PLWH) about the prevalence of diarrhea in PLWH and offer guidance about talking to HCPs regarding diarrhea-related concerns.

As part of Napo's medical and patient education program, the Mytesi direct sales force are planning more than 1,400 live and virtual educational events for 2018. Live events will largely take place in the following key geographies covered by the Mytesi sales team: Miami/South Florida, Los Angeles/Palm Springs, New York, Houston, Chicago/St. Louis, Indianapolis, Kansas City, Alabama, Atlanta, San Francisco, DC, Pennsylvania, New Jersey, Delaware, Maryland, Mississippi and Louisiana.

As we announced March 2, 2018, Napo has signed an agreement with pharmacy services provider Transition Patient Services (TPS) to help streamline and expand nationwide patient access to Mytesi. Headquartered in Treviso, Pennsylvania, TPS is a direct-to-patient hub-service pharmacy licensed in all 50 states and dedicated to simplifying medication access, increasing patient engagement, reducing prescription abandonment, and enhancing patient outcomes through confirmed medication acquisition and improved adherence. Under the terms of the agreement, TPS will operate a nationwide pilot program for Mytesi, expected to begin in March 2018. The core benefits of the program, named Mytesi Direct™, include streamlining prescription fulfillment for Mytesi in order to ensure that Mytesi users receive their prescription quickly, coordinating with other Napo programs—such as the Mytesi Copay Savings Card and the NapoCares™ Patient Assistance Program—to help ensure that patient out-of-pocket expenses for Mytesi are as low as possible, and improving Mytesi refill adherence through the transmission of renewal reminders to patients. We expect the Mytesi Direct™ program to significantly reduce barriers to Mytesi access, acquisition and adherence in a highly patient-friendly and prescriber-friendly manner—helping us expand the number of patients able to benefit from the novel, first-in-class anti-secretory mechanism of action of Mytesi.

New crofelemer (Mytesi) data from a supplemental analysis of the ADVENT trial was featured in a poster presentation at the 9th International Aids Society (IAS) Conference on HIV Science held in July 2017 in Paris, France. The presentation was titled *Long-Term Crofelemer Use Gives Clinically Relevant Reductions in HIV-Related Diarrhea*. IAS features the latest HIV science, including basic, clinical and

prevention research, and brings together a broad cross section of HIV professionals from around the world with a focus on implementation—moving scientific advances into practice. The results indicate that more than 50% of the patients treated had complete resolution of their diarrhea; and 83% had at least a 50% reduction in diarrhea. Entry criteria required at least 7 watery stools in a week, and the average was 20 (with some patients having as high as 67 stools in a week).

In October 2017, Napo launched a national campaign—called “Keep your pants on... Unless you don’t want to”—to highlight the need to recognize and treat diarrhea in people living with HIV/AIDS (PLWHA). The campaign ([keep-your-pants-on.com](http://keep-your-pants-on.com)), which launched initially to the 10,000 participants in the AIDS Walk Los Angeles event on October 15, 2017, is designed to raise awareness and to engage PLWHA in a fun and light way to discuss a topic that can be embarrassing. The campaign integrates live third-party events, including the Greater Palm Springs Pride event taking place in November 2017, with social media on the web, Twitter, and Facebook. Campaign participants are encouraged to use the hashtag #KeepYourPantsOn when posting photos and videos to social media. Napo is also running “Keep Your Pants On” digital ads on more than 25 HIV and LGBT media outlets around the U.S.

Additionally in Q4 2017, Napo launched a print and digital advertising campaign titled “Enough is Enough” to target PLWHA who are tired of planning their lives around diarrhea as well as HIV physicians and gastroenterologists. The campaign is centered around national HIV magazines, local HIV publications, and publications targeting physicians.

In October 2017, Napo established a scientific advisory board for each potential follow-on indication currently planned for Mytesi. Napo has developed relationships with more than 30 physicians, pharmacists and patient advocates around the world who are recognized specialists and key opinion leaders in the planned Mytesi follow-on indications, and is conducting outreach efforts to discuss the possibility of membership in Napo’s new scientific advisory boards with these individuals. As announced on October 19, 2017, Dr. Lee Schwartzberg, MD, FACP, a nationally-recognized medical oncologist and hematologist, has joined Napo’s scientific advisory board for cancer therapy-related diarrhea (CTD).

We are confident that our scientific advisory boards will provide expert, actionable input regarding all aspects of development, including trial design, for Mytesi for our follow-on indications—each of which addresses a significant, global, unmet medical need. We also expect that our scientific advisory board members will serve as speakers for our medical education programs, authors on Napo abstracts and publications, as a resource for media inquiries.

Napo’s HIV Scientific Advisory Board will focus primarily on physician education, and community and global awareness regarding the importance and availability of solutions for neglected comorbidities, such as the first-in-class anti-secretory mechanism of action of Mytesi for its currently approved indication.

Napo is pursuing AIDS Drug Assistance Program (ADAP) formulary listing in states where Mytesi is not currently on ADAP formulary. This includes key states such as New York, Florida, California, Texas, and Georgia. The ADAP program provides Mytesi free of charge to patients who qualify and copay support for some patients who have insurance coverage.

Mytesi is currently reimbursed by Medicaid in all 50 states. It is also currently covered on 100% of the top 10 commercial insurance plan national formularies, representing more than 245 million U.S. lives. Additionally, Napo operates a co-pay coupon program, which helps ensure that the majority of participating patients do not have a Mytesi co-pay greater than \$25. Information about the NapoCares Patient Assistance Program, which assists patients with benefit verification, prior authorization, and claims appeals, can be found at [mytesi.com/mytesi-savings.html](http://mytesi.com/mytesi-savings.html).

According to the World Health Organization, there are nearly 1.7 billion cases of diarrheal disease globally every year. Although not all types of diarrhea are secretory in nature, we view the current, initial approval of Mytesi as the opening of the door to an important pipeline—demonstrating approval by the

FDA of the Chemistry, Manufacturing and Controls (“CMC”) for this natural product, as well as acknowledgement by the FDA of the safety of the product for chronic use for the approved indication.

Two investigator-initiated trials of Mytesi are underway in breast cancer patients suffering from CTD, one funded by Genetech—Roche with Herceptin (enrolling patients), and one funded by Puma with neratinib (eurolling patients).

According to data appearing in “Treatment Guidelines for CID” (chemotherapy-induced diarrhea) in the April 2004 issue of *Gastroenterology and Endoscopy News*, diarrhea is the most common adverse event reported in chemotherapy patients. Approved third-party supportive care products for chemotherapy-induced nausea and vomiting (CINV) include Sustol, Aloxi, Akynzeo and Sancuso. According to Transparency Market Research, sales of therapeutics for the prevention of CINV approximated \$620 million in 2013, and sales of such therapeutics are expected to reach \$1 billion in 2020.

In this era of novel targeted agents, epidermal growth factor receptor tyrosine kinase inhibitors (TKIs), in particular, may block natural chloride secretion regulation pathways in the normal gastrointestinal mucosa, thereby leading to secretory diarrhea. Diarrhea has been reported as the most common side effect of the recently approved CDK 4/6 inhibitor abemaciclib and the pan-HER TKI neratinib, with occurrence ranging from 86% to >95% in published studies. Diarrhea in this patient population has the potential to cause dehydration, potential infections, and non-adherence to treatment. A novel anti-diarrheal like Mytesi may hold promise for treating secretory diarrhea—and therefore also support long-term cancer treatment adherence—in this population.

As we announced on January 22, 2018, Napo has accepted a request for support submitted by Dr. Mohamad Miqdady, Chief of Pediatric Gastroenterology, Hepatology and Nutrition at Sheikh Khalifa Medical City (SKMC) in Abu Dhabi, for an investigator-initiated trial of crofelemer, the active pharmaceutical ingredient in Mytesi, for congenital diarrheal disorders (CDDs) in children.

CDDs are a group of rare, chronic intestinal channel diseases, occurring exclusively in early infancy, that are characterized by severe, lifelong diarrhea and a lifelong need for nutritional intake either parenterally or with a feeding tube. CDDs are related to specific genetic defects inherited as autosomal recessive traits. The incidence of CDDs is prevalent in regions where consanguineous marriages (related by blood) is part of the culture. CDDs are directly associated with serious secondary conditions including dehydration, metabolic acidosis, and failure to thrive, prompting the need for immediate therapy to prevent death and limit lifelong disability.

SKMC is the Abu Dhabi public health system’s flagship institution and the largest hospital in the United Arab Emirates (UAE), consisting of a 586-bed tertiary hospital, 14 outpatient specialty clinics, and the Abu Dhabi Blood Bank, all of which are accredited by Joint Commission International, the oldest and largest healthcare standards-setting and accrediting body in the United States. Dr. Miqdady is American Board certified in Pediatric Gastroenterology, Hepatology and Nutrition, and he is a member of Napo’s Scientific Advisory Board.

Napo intends to submit documentation in the first half of 2018 to the FDA for the planned formulation of crofelemer appropriate for feeding tube administration to support this investigation.

As announced on June 5, 2017, Napo has received orphan drug designation from the FDA for short bowel syndrome (SBS). The Orphan Drug Act provides for granting special status to a drug or biological product to treat a rare disease or condition upon request of a sponsor. Orphan designation qualifies the sponsor of the drug for various development incentives, including extended exclusivity, tax credits for qualified clinical testing, and relief of filing fees.

Jaguar’s and Napo’s portfolio development strategy involves meeting with Key Opinion Leaders (KOLs) to identify indications that are potentially high-value because they address important medical needs that are significantly or globally unmet, obtain input on protocol practicality and protocol



generation, and then strategically sequencing indication development priorities, second-generation product pipeline development, and partnering goals on a global basis, as well as identifying possible opportunities for a Special Protocol Assessment (SPA) from the FDA. When granted, SPA provides that, upon request, FDA will evaluate within 45 days certain protocols to assess whether they are adequate to meet scientific and regulatory requirements identified by the sponsor. In 2007, under the SPA process, Napo obtained agreement with the FDA for the design of the pivotal study protocol for the currently approved indication of crofelemer (Mytesi) for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy. The 2007 SPA agreement was an important milestone for Napo, allowing Napo to address and mitigate regulatory uncertainty prior to the completion of its final Phase 3 trial of crofelemer for its currently approved indication.

According to a 2017 report from Research and Markets, the combined global market for prescription and OTC gastrointestinal agents is expected to reach \$21 billion by 2025.

Our management team has significant experience in gastrointestinal product development for both humans and animals. Napo was founded 28 years ago to perform drug discovery and development by leveraging the knowledge of traditional healers working in rainforest areas. Ten members of the Jaguar and Napo team have been together for more than 15 years. Dr. Steven King, our executive vice president of sustainable supply, ethnobotanical research and intellectual property, and Lisa Conte, our founder, president and CEO, have worked together for more than 28 years. Together, these dedicated personnel successfully transformed crofelemer, which is extracted from trees growing in the rainforest, to Mytesi, which is a natural, sustainably harvested, FDA-approved drug.

There are significant barriers to entry for Mytesi (crofelemer). Through Napo, we hold an extensive global patent portfolio. At the present time we hold 132 issued worldwide patents, with coverage in many cases that extends until 2031. These issued patents cover multiple indications including HIV-AIDS diarrhea, IBS, IBD, manufacturing, enteric protection from gastric juices, among others. We also have 85 pending patent applications worldwide in the human and animal health areas that are being prosecuted.

Mytesi is the first oral drug approved by the FDA under botanical guidance, which provides another barrier to entry from potential generic competition. The FDA requires that the manufacturer of crofelemer use a validated proprietary bioassay to release the drug substance and drug product of Mytesi. While most generic products are fashioned to meet chemical release specifications that are in the public domain, the specifics of this assay are not publicly available. In addition, Mytesi is not systemically absorbed, so the classic approach of creating a generic drug by matching pharmacokinetic blood levels is not possible. A generic player would have to conduct costly and risky clinical trials.

The active ingredient in Mytesi is the basis for our eleven different animal health products across eight different species, all of which work by the same mechanism of action, which is highly conserved across all mammals. While Jaguar's commercial and development efforts have evolved to focus primarily on Mytesi and human pipeline indications since its merger with Napo, the Company is continuing animal health initiatives related to Canalevia, its drug product candidate for treatment of various types of diarrhea in dogs, and Equilevia, its non-prescription, personalized, premium product for total gut health in equine athletes.

As previously announced, Jaguar has received MUMS (Minor Use and Minor Species) designation status from the FDA for Canalevia for the indication of chemotherapy-induced diarrhea (CID) in dogs. Jaguar has completed clinical and manufacturing activity for Canalevia for this indication. MUMS designation is modeled on the orphan-drug designation for human drug development and offers possible financial incentives to encourage MUMS drug development, such as the availability of grants to help with the cost of developing the MUMS drug. Additionally, as announced March 8, 2018, the FDA's Center for Veterinary Medicine (CVM) has indicated that Jaguar's Reasonable Expectation of Effectiveness (RxE) technical section is complete towards conditional approval of Canalevia (crofelemer delayed-release tablets) for treatment of CID in dogs, based on CVM's review of the results of Jaguar's completed pilot

study (CANA-001) of Canalevia for this indication. Jaguar has now completed two of the four required technical sections of the Company's application for conditional approval of Canalevia for CID in dogs.

As announced in December 2017, Jaguar has entered into a collaboration agreement with Seed Mena Businessmen Services LLC (SEED) for Equilevia. Based in Dubai in the UAE, SEED is affiliated with Seed Group, a diversified group of companies under the umbrella of The Private Office of His Royal Highness Sheikh Saeed Bin Ahmed Al Maktoum establishing strategic partnerships with multinational companies from around the globe in an aim to leverage Seed Group's network to support potential business expansion in the MENA (Middle East and North Africa) region. The UAE has become a global leader in horse racing, equine endurance competitions, and other equine athletic activities. Gut health is of critical importance in competitive horses, as conditions such as ulcers can meaningfully impair equine athlete performance, and colic can lead to the death of an otherwise healthy horse in a matter of hours. According to a third-party study titled *Results of a large-scale necroscopic study of equine colonic ulcers*, published in the Journal of Equine Veterinary Science in 2005, as many as 55% of performance horses have both colonic and gastric ulcers, and 97% of performance horses have either a gastric (87%) or a colonic (63%) ulcer.

Net sales in 2017 for Jaguar's non-prescription Neonorm Foal and Neonorm Calf products totaled approximately \$422,000. Collaboration revenue totaled approximately \$2.9M. Jaguar continues to maintain a relationship with the Company's dairy market distributor in addition to selling Neonorm directly to end users through neonorm.com.

We will consider additional animal formulations and additional animal product expenditures from time to time as part of portfolio planning and prioritization in the context of the combined company.

Crofelemer is extracted from the *Croton lechleri* tree, which we sustainably harvest and manage through programs that we have been developing over the past 28 years. This process has involved working with communities to plant trees, obtaining permits for export, and creating a supply network that is robust and reliable.

We continue to have working relationships with partners that began in the 1990s. Additionally, through the establishment of a nonprofit called the Healing Forest Conservancy (HFC), our team has created a long-term mechanism for benefit sharing that recognizes the intellectual contribution of indigenous populations. This program is intended to contribute to the continued strength and effectiveness of the valued and strategically important relationships we have carefully cultivated over the past 28 years.

## **Product Pipeline**

### ***Human Health***

In addition to our Mytesi (crofelemer) product that is approved by the U.S. FDA for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy, we are also developing a pipeline of prescription drug product candidates to address unmet needs in gastrointestinal health through Napo. Mytesi (crofelemer) 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. Clinical trials demonstrated that nearly 80 percent of Mytesi users experienced an improvement in their diarrhea over a four-week period. At week 20 of the pivotal trial, over half the patients had no watery stools, or a 100% decrease, and 83% had at least a 50% decrease in watery stools. Initiation on a new antiretroviral therapy has been shown to cause diarrhea 15% of the time. Our Mytesi pipeline currently includes prescription drug product candidates for four follow-on indications, several of which are backed by strong Phase 2 evidence from completed Phase 2 trials. In addition, a second-generation proprietary anti-secretory agent is in development for cholera.

## Napo Prescription Drug Product Candidates

Product Candidates	Indication	Completed Milestones	Current Phase of Development	Anticipated Near-Term Milestones
Mytesi	Cancer therapy-related diarrhea (CTD)	<ul style="list-style-type: none"> <li>Two investigator-initiated clinical trials funded by Genentech, Roche &amp; Puma</li> </ul>	Phase 2	<ul style="list-style-type: none"> <li>Protocol development with KOLs for discussions with FDA</li> </ul>
Mytesi	Supportive care for IBD	<ul style="list-style-type: none"> <li>Safety</li> <li>Multiple Phase 2 studies completed in various secretory diarrheas (not IBD)</li> </ul>	Phase 2	<ul style="list-style-type: none"> <li>Protocol development for discussions with FDA</li> </ul>
Formulation of crofelemer	Rare disease indications (SBS & CDD)	<ul style="list-style-type: none"> <li>Phase 1 study</li> <li>Orphan designation for SBS</li> </ul>	Phase 2	<ul style="list-style-type: none"> <li>Formulation/IIT, Abu Dhabi</li> <li>Pursue orphan-drug status for CDD</li> </ul>
Formulation of crofelemer	Irritable Bowel Syndrome—diarrhea predominant (IBS-D)	<ul style="list-style-type: none"> <li>Phase 1 study</li> <li>Two Phase 2 studies completed</li> </ul>	Phase 2	<ul style="list-style-type: none"> <li>Protocol development with KOLs for discussions with FDA</li> <li>Publication of supplemental analysis of Phase 2 data</li> </ul>
SB-300	Second-generation anti-secretory agent for multiple indications including cholera	<ul style="list-style-type: none"> <li>Animal and human studies in secretory diarrheas; successful cholera trial design for anti-secretory mechanism of action with crofelemer</li> </ul>	Pre IND	<ul style="list-style-type: none"> <li>CMC development for SB-300</li> <li>Pre-clinical and Phase 1 in 2018*</li> </ul>

\* Clinical trials are funding dependent

### Estimated Size of Mytesi Target Markets

We believe the medical need for Mytesi is significant, compelling, and unmet, and that doctors are looking for a drug product with a mechanism of action that is distinct from the options currently available to resolve diarrhea. A growing percentage of HIV patients have lived with the virus in their gut for 10+ years, often causing gut enteropathy and chronic or chronic-episodic diarrhea. According to data from

the U.S. Centers for Disease Control and Prevention, by 2020 more than 70% of Americans with HIV are expected to be 50 and older.

Market	Number of Competitors for Mytesi's Approved/Anticipated Labelled Indication	Market Size/Potential
HIV-D .....	0	We estimate the U.S. market revenue potential for Mytesi to be approximately \$100 million in gross annual sales
CTD .....	0	An estimated 650,000 U.S. cancer patients receive chemotherapy in an outpatient oncology clinic. <sup>(1)</sup> Comparable supportive care (i.e. CINV) product sales of ~\$620 million in 2013, which is projected to reach \$1.0 billion by 2020 <sup>(2)</sup>
IBD.....	0	Estimated 1,171,000 Americans have IBD <sup>(3)</sup>
IBS-D .....	3	Most IBS products have estimated revenue potential of greater than \$1.0 billion <sup>(4)</sup>
CDD/SBS-Orphan .....	0	Financial benefits of Orphan Designation
Cholera (hydration maintenance) PRV (SB-300).....	0	Priority review vouchers have recently sold for \$125 million to \$350 million <sup>(5)</sup>

<sup>(1)</sup> Centers for Disease Control and Prevention. Preventing Infections in Cancer Patients: Information for Health Care Providers ([cdc.gov/cancer/preventinfections/providers.htm](http://cdc.gov/cancer/preventinfections/providers.htm))

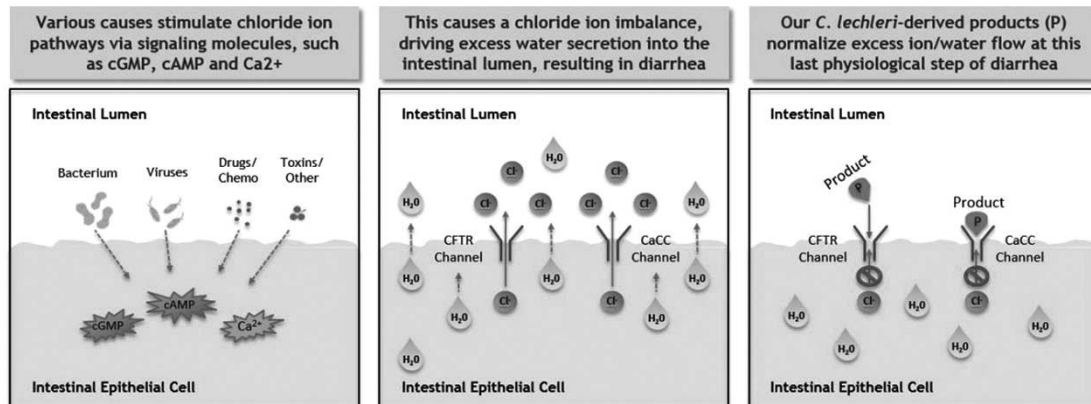
<sup>(2)</sup> Heron Therapeutics, Inc. Form 10-K for the fiscal year ended December 31, 2016

<sup>(3)</sup> Kappelman, M. et al. Recent Trends in the Prevalence of Crohn's Disease and Ulcerative Colitis in a Commercially Insured US Population. *Dig Dis Sci.* 2013 Feb; 58(2): 519-525

<sup>(4)</sup> Merrill Lynch forecasts peak US sales of roughly \$1.5 bn for Ironwood's Linzess (<http://247wallst.com/healthcare-business/2015/04/27/key-analyst-sees-nearly-30-upside-in-ironwood/>); Rodman & Renshaw estimate peak annual sales of Synergy Pharmaceuticals' Trulance at \$2.3 bn in 2021 (Source: <https://www.benzinga.com/analyst-ratings/analyst-color/17/03/9224181/analyst-synergy-pharma-could-achieve-sustainable-profit/>)

<sup>(5)</sup> In Aug. 2015, AbbVie Inc. bought a priority review voucher from United Therapeutics Corp for \$350 million (<http://www.reuters.com/article/us-abbvie-priorityreview/abbvie-buys-special-review-voucher-for-350-million-idUSKCN0QO1LQ20150819>). In Feb. 2017 Sarpeta Therapeutics sold a priority review voucher to Gilead Sciences, Inc. for \$125 million (<http://fortune.com/2017/02/21/sarepta-gilead-review-voucher/>).

The following diagram illustrates the mechanism of action of our human and animal gastrointestinal drug products and drug product candidates, which normalize chloride and water flow and transit time of fluids within the intestinal lumen.



### *Animal Health*

In the animal health space, we focus on developing and commercializing first-in-class gastrointestinal products for companion and production animals, foals, and high value horses.

Our pipeline currently includes prescription drug product candidates and non-prescription products targeting eight species. Neonorm Foal is an antidiarrheal product for newborn horses, which we launched in the United States in early 2016. Neonorm Calf is an antidiarrheal product for preweaned dairy calves, which we launched in the United States at the end of 2014. We are also developing a pipeline of prescription drug product candidates and non-prescription (non-drug) products to address unmet needs in animal health.

Neonorm is a standardized botanical extract derived from the *Croton lechleri* tree. The reception among users of Neonorm Calf and Neonorm Foal has been positive. In June 2017 we launched neonorm.com, a commercial website for both Neonorm products. As we announced on June 14, 2017, the Organic Materials Review Institute (“OMRI”) has reviewed Neonorm Calf and determined that it is allowed for use in compliance with the U.S. Department of Agriculture National Organic Program. OMRI is an international nonprofit organization that determines which input products are allowed for use in organic production and processing.

## Jaguar Animal Prescription Drug Product Candidates

<u>Product Candidates</u>	<u>Species</u>	<u>Indication</u>	<u>Recent Developments</u>	<u>Anticipated Near-Term Milestones</u>
Canalevia	Dogs	Chemotherapy-induced diarrhea (CID)	<ul style="list-style-type: none"> <li>Completed safety study with commercial formulation in June 2015</li> <li>RXE and environmental impact technical sections accepted by CVM</li> <li>Received MUMS designation</li> </ul>	<ul style="list-style-type: none"> <li>Commercial launch in 2019</li> </ul>
	Dogs	Exercise-induced diarrhea (EID)	<ul style="list-style-type: none"> <li>Completed safety study with commercial formulation in June 2015</li> <li>FDA indicated that use of Canalevia for this indication qualifies as a “minor use”</li> </ul>	<ul style="list-style-type: none"> <li>Commercial launch in 2019</li> </ul>

### Business Strategy

Our goal is to become a leading human and animal pharmaceuticals company with first-in-class, sustainably derived products that address significant unmet gastrointestinal medical needs globally. To accomplish this goal, we plan to:

#### *Expand Mytesi by leveraging our significant gastrointestinal knowledge, experience and intellectual property portfolio*

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. Our Mytesi (crofelemer) product is approved by the U.S. FDA for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy. Jaguar, through Napo, controls commercial rights for Mytesi for all indications, territories and patient populations globally. 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 as a second-generation anti-secretory agent for use in cholera patients.

Our management team collectively has more than 100 years of experience in the development of gastrointestinal prescription drug and non-prescription products. This experience covers all aspects of product development, including discovery, preclinical and clinical development, GMP manufacturing, and regulatory strategy. Key members of this team successfully developed Mytesi.

#### *Establish and expand commercial capabilities in Mytesi sales and marketing efforts*

As announced on August 7, 2017, we appointed Pete Riojas, a 29-year pharmaceutical industry veteran, to lead Mytesi sales nationally. We also significantly expanded our internal national salesforce for Mytesi through the hire in key U.S. markets of ten sales representatives experienced in the sale of drugs to HIV physicians and gastroenterologists and a regional sales director. Our new sales representatives are



based in and cover Miami/South Florida, Los Angeles/Palm Springs, New York, Houston, Chicago/St. Louis, Indianapolis, Kansas City, Alabama, Atlanta, San Francisco, DC, Pennsylvania, New Jersey, Delaware, Maryland, Mississippi and Louisiana. Seven of these sales representatives are former long-term employees of the HIV portfolio business of drugmaker Bristol-Myers Squibb, while the remainder of the team possess extensive experience in drug sales to both HIV healthcare providers and gastroenterologists.

With the goal of continuing to drive Mytesi sales and awareness nationwide, our plans for 2018 include plans to increase to a total of 20 sales representatives plus an additional regional sales manager, the initiation of new and extensive sales and marketing programs, advertising and promotional activities, direct-to-patient hub-service activities, the expected publication of supplemental data, and an increased focus on patient empowerment and educational programs for the important and neglected comorbidity of diarrhea in people living with HIV. Additionally, as stated above, we expect Napo's recently signed agreement with pharmacy services provider TPS to help streamline and expand nationwide patient access to Mytesi. The core benefits of the program, named Mytesi Direct™, include streamlining prescription fulfillment for Mytesi in order to ensure that Mytesi users receive their prescription quickly, coordinating with other Napo programs—such as the Mytesi Copay Savings Card and the NapoCares™ Patient Assistance Program—to help ensure that patient out-of-pocket expenses for Mytesi are as low as possible, and improving Mytesi refill adherence through the transmission of renewal reminders to patients.

***Leverage our relationships with key opinion leaders regarding development of human and animal follow-on indications***

To date, more than 30 key opinion leaders (KOLs) who are recognized specialists in HIV patient care, CTD, IBD, IBS, cholera, SBS, CDD and equine gut health, are participating in our KOL advisory program in some manner.

***Strategically sequence the development of follow-on indications of Mytesi and seek geographically-focused licensing opportunities***

Although it is possible that we may enter into corporate partnering relationships related to Mytesi, our intention would be to retain all commercialization and promotional rights in the U.S., so that we do not become primarily a royalty-collecting organization, and we are opposed to entering into any Mytesi partnering relationship that would require splitting indications. We are seeking to put limited geographically-focused partnerships in place in the near term, while also considering possibilities for a worldwide partnership with a leading global entity (excluding the US commercial rights) in the field of gastrointestinal care and cancer in the long term.

***Strategically plan our portfolio in the animal health space***

Portfolio planning for the animal health space is of utmost importance to us, given the wide array of potential species-specific products and because we do not want animal-related research and development activities to divert significant financial resources while we are focusing on growing Mytesi sales and seeking to move our company towards profitability. Additional formulations and additional animal product expenditures will be considered from time to time as part of portfolio planning and prioritization in the context of the combined company. Canalevia is our lead veterinary prescription drug product candidate, intended for treatment of various forms of diarrhea in dogs. Our next expected veterinary product commercial launch will be for Equilevia, a personalized premium proprietary total gut health product for equine athletes, which will be non-prescription.

***Reduce risks relating to product development***

Risk reduction is a key focus of our product development planning. Mytesi is approved for chronic indication, providing us the ability to leverage this corresponding safety data when seeking approval for

planned follow-on indications. Crofelemer manufacturing is being conducted at a new, multimillion-dollar commercial manufacturing facility that has been FDA-inspected and approved. In an effort to reduce risk further, we have implemented the following approach: First, we meet with key opinion leaders, typically at medical conferences—as we did in 2017 at Digestive Disease Week for IBS and IBD, the American Society of Clinical Oncology annual meeting, and the Multinational Association of Supportive Care and Congress. Next, we confirm unmet medical needs with these key opinion leaders, and discuss the practicality of patient enrollment and trial implementation. We then generate protocols to discuss with the FDA, seeking, when possible, special protocol assessments. Our goal, by the time we start devoting significant funds to a clinical trial, is to have derisked the program as much as we believe we possibly can. We believe this approach will lead to better long-term outcomes for our products in development.

With the Merger effective, we believe that our newly combined company is poised to realize a number of synergistic, value adding benefits—and 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.

In May 2016, the New Drug Application (“NDA”) and commercial rights for human applications of crofelemer (Mytesi) previously licensed to Salix Pharmaceuticals, Inc. (“Salix”) were transferred to Napo. The active pharmaceutical ingredient (“API”) in Mytesi is crofelemer, our proprietary, patented gastrointestinal anti-secretory agent sustainably harvested from the rainforest.

Diarrhea is a common adverse event seen with chemotherapy agents typically used in breast and colon cancers, and in particular in the more recently introduced therapeutic classes of epidermal growth factor receptor (“EGFR”) monoclonal antibodies and tyrosine kinase inhibitors (“TKI”) often used for chronic management of cancer. The increased need for and use of these agents has made diarrhea one of the most disabling issues for cancer patients.

We will seek partnerships outside the United States for the above indications, while focusing on development, and commercial access in the United States directly. We are also focused on investigating SB-300 for various gastrointestinal indications. SB-300 is a distinct and proprietary Jaguar pharmaceutical formulation of a standardized botanical extract, also sustainably derived from the *Croton lechleri* tree.

We believe SB-300, which has the same mechanism of action as crofelemer and is less costly to produce, may support efforts to receive a priority review voucher from the U.S. FDA for a cholera indication. Priority review vouchers are granted by the FDA to drug developers as an incentive to develop treatments for neglected diseases and rare pediatric diseases. Additionally, we believe SB-300 represents a long-term pipeline opportunity as a second-generation anti-secretory agent, on a global basis, for multiple gastro-intestinal diseases—especially in resource-constrained countries where cost of goods is a factor, in part, because requirements often exist in such regions for drug prices to decrease annually.

Our human and animal portfolio development strategy is based on identifying indications that are potentially high-value because they address important medical needs that are significantly or globally unmet, and then strategically sequencing indication development priorities, second-generation product pipeline development, and partnering goals on a global basis.

Our technology for proprietary gastrointestinal disease products is central to the product pipelines of both veterinary and human indications. Crofelemer is also the API in Canalevia, our lead prescription drug product candidate, intended for the treatment of various forms of diarrhea in dogs. We expect our first veterinary prescription product launch will be Canalevia for chemotherapy-induced diarrhea, an interesting commercial synergy with the pursuit of follow-on indications for Mytesi supported by the merger.

## Mytesi Clinical Data

Mytesi has been clinically demonstrated to have:

- Minimal absorption, with plasma concentrations below the level of detection
- No clinically relevant drug-drug interactions
- No effect on viral load or CD4 counts
- Adverse events comparable to those with placebo

The efficacy of Mytesi 125-mg delayed-release tablets twice daily was evaluated in a randomized, double-blind, 24-week, multicenter study (the ADVENT trial) comprised of a placebo-controlled (1 month) treatment period and a placebo-free (5 month) treatment period. The study enrolled HIV-positive patients on stable ART with a history of diarrhea for 1 month or more. In the Mytesi 125mg bid group, more than twice as many patients (18% vs. 8% on placebo,  $p < 0.01$ ) achieved the highly rigorous endpoint defined as reduction to  $\leq 2$  watery stools per week for 2 out of the 4 weeks in the placebo-controlled period (the average baseline in the ADVENT population was 20 watery stools per week).

In a supplemental analysis of the ADVENT study population, 78% of patients in the Mytesi 125mg BID group experienced a decrease in watery stools at week 4. Among these patients that experienced a decrease, 61% had at least a 50% decrease in watery stools. At week 20, 89% of patients in the Mytesi BID group experienced a decrease in watery stools. Among these patients that experienced a decrease, 83% had at least a 50% decrease in watery stools, and over half of patients had no watery stools at all (100% decrease).

## Human Products in Development

### Cancer Therapy-Related Diarrhea (CTD)

**CTD is a common problem with a relevant mechanism for crofelemer**

	National Cancer Institute Criteria for Grading Severity of Diarrhea			
	Grade 1	Grade 2	Grade 3	Grade 4
Patients without a colostomy	Increase of <4 stools per day over pretreatment	Increase of 4 to 6 stools per day or nocturnal stools	Increase of $\geq 7$ stools per day or incontinence; need for parenteral support for hydration	Physiologic consequences requiring intensive care; hemodynamic collapse

Diarrhea is a common adverse event seen with chemotherapy agents in the therapeutic classes of epidermal growth factor receptor (“EGFR”) tyrosine kinase inhibitors (“TKI’s”) and EGFR monoclonal antibodies (for breast, lung, and other malignancies). The increased need for and use of these agents has made diarrhea one of the most disabling issues for cancer patients. Crofelemer offers the potential for an appropriate mechanism of action against this likely secretory diarrhea and has prompted interest among physicians concerned about this diarrheal symptom, stimulating the aforementioned investigator-initiated trials. Diarrhea is also a common adverse event seen with chemotherapy agents used in colorectal and gastric cancers, and chronic maintenance chemotherapy. There are currently no anti-diarrhea agents approved generally for chemotherapy-induced diarrhea.

### Clinical Studies

A study titled *HALT-D: Diarrhea Prevention and Prophylaxis with Crofelemer in HER2 Positive Breast Cancer Patients Receiving Trastuzumab, Pertuzumab, and Docetaxel or Paclitaxel with or without Carboplatin* is currently enrolling patients in conjunction with Georgetown University. The primary objective of the

study is to characterize the incidence and severity of diarrhea in patients receiving investigational therapy in the setting of prophylactic anti-diarrheal management.

A second study, titled *An open label study to characterize the incidence and severity of diarrhea in patients with early stage HER2+ breast cancer treated with adjuvant trastuzumab and neratinib followed by neratinib monotherapy, and intensive anti-diarrhea prophylaxis*, is currently enrolling patients in conjunction with the University of California at San Francisco. The study is designed to evaluate crofelemer as a salvage anti-diarrheal therapy used with the investigational breast cancer agent neratinib. The primary objective is to characterize the incidence and severity of diarrhea in patients with early stage breast cancer receiving adjuvant trastuzumab and neratinib followed by 1 year of neratinib monotherapy in the setting of prophylactic anti-diarrheal management. The secondary objectives are to evaluate the activity of crofelemer as a rescue anti-diarrheal medication; to assess neratinib adherence, holds, delays, and early discontinuation throughout the course of study therapy. which includes patients receiving neratinib for >1 year; and to assess overall toxicity including constipation and cardiac toxicity with concomitant neratinib and trastuzumab.

### **Irritable Bowel Syndrome—Diarrhea Predominant (IBS-D)**

Diarrhea is a common symptom of irritable bowel syndrome (IBS), a frustrating, underdiagnosed and undertreated condition. IBS-D is a subtype characterized mainly by loose or watery stools at least 25 percent of the time. According to the U.S. FDA, studies estimate that IBS affects 10 to 15 percent of adults in the United States.

Abdominal pain is the key symptom of IBS, and the pain, which is associated with a change in stool frequency or consistency, can be severe. To improve the diagnosis and outcomes for IBS patients and to update clinicians on the latest research, Dr. William Chey, a gastroenterologist and professor of medicine and nutrition sciences at the University of Michigan, along with an international team of collaborators, compiled *Rome IV*, an updated compendium of diagnostic criteria on functional GI disorders such as IBS. *Rome IV* contains a chapter titled Centrally Mediated Disorders of Gastrointestinal Pain.

Although new agents for IBS-D have come on the market, there is an unmet medical need for long-term, safe management of the abdominal pain associated with IBS-D. Mytesi has been demonstrated to be safe for chronic use, and two studies provide statistically significant results of crofelemer use for abdominal pain in women.

The largest group of IBS sufferers are those with the subtype referred to as IBS-M (mixed diarrhea and constipation). IBS-M is also referred to as IBS-A, because the condition often involves frequent alternating between IBS-D and IBS-C (constipation predominant). IBS-M is distressing for patients as well as difficult to diagnose and manage, and is often associated with pain and urgency as well as significant abdominal distension and bloating. No approved drugs currently exist for IBS-M. Leading gastroenterologists have stated that IBS-C drugs may cause diarrhea in an IBS-M patient, and an IBS-D drug may cause significant constipation. We therefore believe an opportunity exists for an IBS-M indication for Mytesi. Resultingly, and due to the demonstrated safety of Mytesi for chronic use and its demonstrated benefit for abdominal pain in women, Napo is considering expanding development efforts to evaluate the IBS-M indication.

### **Clinical Study**

Crofelemer has been tested in safety studies and two significant Phase 2 studies for IBS-D as detailed below. We recognize that patients suffering from IBS-D or IBS-M may require a polypharmaceutical approach to their lifetime management of the disease, and are therefore working to develop a low risk study designed to optimize efforts to develop an approved formulation to address these unmet medical needs.

### ***Completed Studies—IBS-D***

*Phase 2a—a randomized double-blind placebo-controlled, dose-ranging (placebo, 125 mg, 250 mg, and 500 mg bid) study over a 12-week treatment period in 246 patients with d-IBS (Rome II criteria), including both males and females, whose average age was 50 years old.*

n=245 subjects

61 placebo

62 125 mg crofelemer BID

59 250 mg crofelemer BID

62 500 mg crofelemer BID

IBS symptoms (pain, urgency, stool frequency and consistency, and adequate relief) were self-reported by the patients via an interactive voice response system. Patients needed to exhibit active disease during the two-week baseline period as defined by a mean daily stool frequency greater than or equal to 2/day, pain score greater than or equal to 1 and stool consistency greater than or equal to 3 (5-point Lickert scale for pain and consistency) to be enrolled. Patients received treatment for 12 weeks followed by a two-week treatment free period.

The protocol-specified primary efficacy measure was daily stool consistency. Statistical analysis of the primary endpoint found no significant differences between placebo and any of the crofelemer dose groups ( $p \geq 0.1434$ ) and no significant dose relationship was seen with regard to change from Baseline to Month 3 in stool consistency scores ( $p = 0.1165$ ) in the ITT population.

A supplementary analysis of Rome Foundation-defined stool consistency and abdominal pain showed positive results. Responders were subjects who had stool consistency score of  $\geq 4$  for  $< 25\%$  of days in a given week and  $\geq 30\%$  improvement in abdominal pain scores a given week (i.e., Rome Foundation-defined stool consistency and abdominal pain responders).

When we look at a supplemental analysis at a reduction in a composite abdominal pain/stool consistency endpoint, the regulatory endpoint in accordance with FDA guidance, we see at the 125 mg dose bid a significant 15% difference with just women patients compared to placebo; and a significant 11% when we include both men and women. The current D-IBS products on the market have a 7-8% reduction (Viberzi and Xifaxan).

In this analysis, Rome Foundation-defined stool consistency and abdominal pain responders were significantly more likely during the entire 3 months in the 125 mg BID group when compared with placebo (24.2% versus 13.1%,  $p = 0.0399$ ) and there was a statistical trend in favor of crofelemer 125 mg BID during Months 1 through 2 (27.4% versus 16.4%,  $p = 0.0640$ ). Similar positive effects of crofelemer 125 mg BID were observed in female subjects ( $n = 183$ ). When the supplementary analysis was applied to the female patients, crofelemer at a dose of 125 mg BID was superior to placebo at Month 3 (26.1% vs 10.9%,  $p=0.0337$ ).

- Results: The 125mg bid of crofelemer exhibited a consistent response during each month among most efficacy endpoints in women with d-IBS reaching statistical significance ( $p<0.05$ ) for pain.
  - Crofelemer had little effect on the stool consistency score, though there was a trend toward reduced stool frequency.
  - Treatment benefits were not apparent in men, although relatively few men enrolled in the trial (13-16/group).
- As with previous trials of crofelemer, no drug-related serious adverse events were reported. Adverse event rates were similar across all dose groups, although in the two highest doses (250 and 500 mg bid) there were a higher percentage of dropouts. There were no drug-related or



dose-related differences in constipation. During the two-week treatment-free follow-up period symptoms approached baseline levels.

**Safety:** Crofelemer at doses of 125, 250 and 500 mg had a safety profile that was generally similar to placebo among men and women with d-IBS.

*Phase 2—A Randomized, double-blind, placebo-controlled study to assess the safety and efficacy of crofelemer for the symptomatic treatment of diarrhea predominant irritable bowel syndrome (d-IBS) in 240 female subjects 18 years or older with active d-IBS according to the Rome II criteria for the diagnosis of d-IBS.*

The study consisted of a 2-week screening period and a 12-week blinded treatment period followed by a 4-week treatment-free follow-up period. During the 12-week treatment period 240 subjects were given 125 mg of crofelemer BID or placebo BID and recorded daily assessments of their IBS symptoms in the interactive voice response system.

The primary endpoint was the change from baseline for overall percentage of abdominal pain/discomfort free days (PFDs). On a daily basis, respondents recorded the intensity of their abdominal pain/discomfort for that day using the 5-point Likert scale: 0=none, 1=mild, 2=moderate, 3=intense, 4=severe. Any day that a score of zero (0) was recorded was considered a PFD.

Stool consistency and abdominal pain endpoints were analyzed using definitions of symptom improvement from a recent FDA guidance on IBS endpoints (March 2010) and recommendations of the Rome Foundation (letter dated 28 June 2010) concerning the IBS endpoints described in this guidance.

**Results:** The overall increase in pain-free days (protocol-specified primary endpoint) for subjects in the crofelemer group was not statistically significant when compared with subjects in the placebo group ( $p = 0.5107$ )

A supplementary analysis of abdominal pain showed positive results. Responders were subjects who had  $\geq 30\%$  improvement in abdominal pain scores a given week (i.e., FDA-defined abdominal pain responders; this definition of abdominal pain responders was presented in the March 2010 guidance on IBS endpoints).

In this analysis, abdominal pain responders were significantly more likely during Months 1 through 2 (58.3% versus 45.0%,  $p = 0.0303$ ) and during the entire 3 months (54.2% versus 42.5%,  $p = 0.0371$ ) in the crofelemer group when compared to placebo.

**Safety:** The overall safety profile for crofelemer 125 mg BID for 12 weeks was comparable to that observed with placebo and was consistent with the IBS population under study.

### **Rare Pediatric Disease Indications: Congenital Diarrheal Disorders and Short Bowel Syndrome (SBS)**

Congenital diarrheal disorders (CDD) are a group of rare, chronic intestinal channel diseases, occurring exclusively in early infancy, that are characterized by severe, lifelong diarrhea and a lifelong need for nutritional intake either parenterally or with a feeding tube. CDDs are related to specific genetic defects inherited as autosomal recessive traits, and the incidence of CDDs is much more prevalent in regions where consanguineous marriage is part of the culture. CDDs are directly associated with serious secondary conditions including dehydration, metabolic acidosis, and failure to thrive, prompting the need for immediate therapy to prevent death and limit lifelong disability.

### **Orphan Drug: Short Bowel Syndrome (SBS)**

SBS is a complex condition characterized by malabsorption of fluids and nutrients due to congenital deficiencies or surgical resection of small bowel segments. Consequently, patients suffer from symptoms such as debilitating diarrhea, malnutrition, dehydration and imbalances of fluids and salts. This could be due to either a genetic disorder or premature birth. In countries such as the United Arab Emirates and



Saudi Arabia, SBS occurs with much higher incidence. Napo recently visited with medical centers in this region.

#### Clinical Study—CDD

We have completed safety studies of crofelemer in children as young as 3 months of age, and Napo has accepted a request for support submitted by Dr. Mohamad Miqdady, Chief of Pediatric Gastroenterology, Hepatology and Nutrition at Sheikh Khalifa Medical City (SKMC) in Abu Dhabi, for an investigator-initiated trial of crofelemer, the active pharmaceutical ingredient in Mytesi, for CDD in children.

We have received orphan-drug status for Mytesi (crofelemer) for the SBS indication and are pursuing orphan-drug status for CDD. The mission of the FDA Office of Orphan Products Development is to advance the evaluation and development of products (drugs, biologics, devices, or medical foods) that demonstrate promise for the diagnosis and/or treatment of rare diseases or conditions.

#### **IBD—Supportive Care:**

Key opinion leaders (“KOLs”) identified an unmet need to treat diarrhea in IBD patients, particularly in specific subsets of patients. KOLs felt all IBD patients who undergo ileal pouch-anal anastomosis (IPAA) surgery suffer severe, chronic diarrhea following the procedure. Because this is a highly-motivated patient population with a low placebo-responder risk, we believe a relatively small proof-of-concept trial is the appropriate next step from a development standpoint.

KOLs felt crofelemer’s novel mechanism of action may also prove to be an effective treatment for diarrhea that results from bile acid malabsorption, which has been shown to occur in approximately 30% of patients with IBD.

Additionally, KOLs felt crofelemer’s novel mechanism of action may prove to be an effective treatment for diarrhea experienced by patients receiving IV infusions of Entyvio, a Takeda Pharmaceuticals prescription medicine used in adults with moderate to severe ulcerative colitis or Crohn’s disease. Secretory diarrhea occurs when the intestine does not complete absorption of electrolytes and water from luminal contents. This can happen when a nonabsorbable, osmotically active substance is ingested (“osmotic diarrhea”) or when electrolyte absorption is impaired (“secretory diarrhea”).

Secretory diarrhea can result from bacterial toxins, luminal secretagogues (such as bile acids or laxatives), reduced absorptive surface area caused by disease or resection, circulating secretagogues (such as various hormones, drugs, and poisons), and medical problems that compromise regulation of intestinal function. These studies in acute diarrhea support the normalizing aspect of the mechanism of action, regardless of the cause of the diarrhea, and are supportive of the supportive care indication under development in IBD patients.

#### Clinical Study

##### ***Completed Study—Travelers’ Diarrhea***

*Phase 2—A study of crofelemer in 184 persons in a double-blind, placebo-controlled study for the symptomatic treatment of acute diarrhea among travelers to Jamaica and Mexico.*

The study was designed to evaluate the effectiveness of crofelemer in the treatment of travelers’ diarrhea.

A total of 184 persons from the United States who acquired diarrhea in Jamaica or Mexico were enrolled in a double-blind, placebo-controlled study examining the effectiveness of three doses of crofelemer in reducing illness. Subjects were treated with 125 mg, 250 mg, or 500 mg crofelemer or a

matching placebo four times a day for 2 days. Subjects kept daily diaries of symptoms and were seen each day for 3 days. Of the subjects, 169 (92%) were included in the efficacy analysis.

The most common etiological agent identified was enterotoxigenic *Escherichia coli*, found in 19% of subjects. The mean time interval from taking the first dose of medication until passage of the last unformed stool during 48-hour therapy (TLUS48) was 38.7 hours for the placebo group.

TLUS48 was shortened by crofelemer:

30.6 h for the 125-mg dose group ( $p = 0.005$ );

30.3 h for the 250-mg group; and

32.6 h for the 500-mg group ( $p = 0.01$ ).

Treatment failures were seen in 29.3% in the placebo group compared with 7.3% ( $p = 0.01$ ), 4.3 ( $p = 0.002$ ), and 9.8 ( $p = 0.026$ ) in the three treatment groups. Crofelemer was well tolerated at all doses.

The study provided statistically significant results of crofelemer use for shortening the duration of travelers' diarrhea. This antisecretory approach works directly against the pathophysiology of travelers' diarrhea and is not likely to potentiate invasive forms of diarrhea or to produce posttreatment constipation.

### **Cholera/General Watery Diarrhea**

According to the Centers for Disease Control and Prevention of the U.S. Department of Health & Human Services, Cholera is an acute, diarrheal illness caused by infection of the intestine with the bacterium *Vibrio cholerae*. An estimated 3-5 million cases and over 100,000 deaths occur each year around the world. The infection is often mild or without symptoms, but can sometimes be severe. Approximately one in 10 (5-10%) of infected persons will have severe disease characterized by profuse watery diarrhea, vomiting, and leg cramps. In these people, rapid loss of body fluids leads to dehydration and shock. Without treatment, death can occur within hours. At this time, for example, the largest cholera outbreak in recorded history is occurring in Yemen.

We are investigating SB-300 for the indication of cholera/general watery diarrhea. SB-300 is a distinct and proprietary Napo pharmaceutical formulation of a standardized botanical extract, also sustainably derived from the *Croton lechleri* tree. We believe SB-300 represents a long-term pipeline opportunity as a second-generation anti-secretory agent, on a global basis, for multiple gastro-intestinal diseases. Additionally, we believe SB-300, which has the same mechanism of action as crofelemer and is less costly to produce, may support efforts to receive a priority review voucher from the U.S. FDA for a cholera indication. Priority review vouchers are granted by the FDA to drug developers as an incentive to develop treatments for neglected diseases and rare pediatric diseases. If approved for this indication, SB-300 could serve as long-term pipeline anti-secretory agent for cholera/general watery diarrhea in geographies where cost of goods is a critical factor, for example, in resource-constrained regions and countries in which a requirement exists for drug prices to decrease annually.

### **Clinical Study**

We have initiated CMC and have multiple animal and human studies in secretory diarrheas with SB-300. We have also completed a successful trial design for cholera with an anti-secretory mechanism of action, published studies with crofelemer in patients with cholera and other acute severe watery diarrhea disease.

### ***Completed Studies—Cholera and Severe Acute Dehydrating Watery Diarrhea***

*Phase 2 study of crofelemer in the treatment acute, severely dehydrating watery diarrhea with confirmed cholera with the use of an antibiotic (azithromycin) and oral rehydration therapy in 100 adult patients between 18 and 55 in Bangladesh.*

A total of 100 adult patients, from Bangladesh, between the ages of 18 and 55, with acute, severely dehydrating watery diarrhea with confirmed cholera were treated with crofelemer on a background of an antibiotic (azithromycin) and oral rehydration therapy. After a four-hour period of rapid rehydration therapy, patients were randomized 1:2:2 to placebo or 125 mg or 250 mg oral dose of crofelemer. Crofelemer or placebo doses were administered about one hour after the oral administration of azithromycin (1 gm dose). The primary objective was to evaluate the safety and effects of crofelemer on reducing the watery stool output normalized to body weight (mL/kg) in the first 24 hours on the background of azithromycin and rehydration therapy. Crofelemer was well tolerated and there were no drug related adverse events in this study. Both doses of crofelemer produced approximately 25-30% reduction in median watery stool volumes in the 0-6 and 0-12 hour period following initiation of therapy. Crofelemer showed a strong trend in the reduction of watery stool output in the 0-6 hour and 0-12 hour intervals ( $p=0.07$ ). Upon exclusion of three outlier patients, the crofelemer dose of 125 mg produced a statistically significant reduction in the normalized stool output ( $p=0.028$ ) and the dose of 250 mg crofelemer showed a strong trend for reduction of watery stool output ( $p=0.07$ ).

In another study, the effects of crofelemer were evaluated in patients with acute dehydrating watery diarrhea caused by various bacterial pathogens, such as enterotoxigenic strains of *Escherichia coli* (ETEC) and *Vibrio cholerae* infection. Crofelemer was evaluated in adult Indian patients with acute watery diarrhea of less than 24-hour duration with suspected bacterial infections, without the use of antibiotics. In this study, patients received oral doses of placebo or crofelemer at a dose of 250 mg every 6 hours for 2 days on the background of oral rehydration therapy only. The use of antibiotics was prohibited in this study. A total of 98 patients were randomized into this study (47 in placebo group and 51 in the crofelemer group). Primary endpoints for this study were changes in stool weight, frequency, consistency, duration of diarrhea. Secondary endpoints included the assessment of clinical symptoms scored as total of 7-item GI index. Clinical success was defined as no diarrhea within 48 hours from study start date and treatment failure was defined as no improvement/worsening of symptoms after 24 hours, fever, bloody stools or dehydration.

*Results:* 98 patients (51 crofelemer, 47 placebo) were enrolled in the study. 16 patients (4 in the crofelemer group and 12 in the placebo group) used antibiotics and were considered as treatment failures and were excluded from the “per protocol efficacy analysis”. Groups were similar in age, weight, vital signs, stool frequency, consistency, dehydration and GI index.

The crofelemer group had improvement over baseline and compared to placebo at day 3. More specifically, crofelemer showed superior effects in reducing stool weight (61% vs 11%), stool frequency (65% vs 21%), reversion to soft stool (92% vs 49%) and improved the 7-item GI index (70% C vs 33% P), (all  $p<0.05$ ).

Crofelemer was well tolerated with no related serious adverse events or concerning changes in lab values. Progression to dehydration and report of fecal incontinence was more common in placebo group ( $p<0.05$ ).

*Conclusions:* Clinical success (cessation of diarrhea within 48 hours of 1st dose) was achieved in 79% of crofelemer patients compared to 28% placebo patients ( $p<0.05$ ).

## Other Human Product Potential Future Indications

### Institutional Diarrhea

Patients in medical institutions such as hospitals often experience diarrhea following infection with *Clostridium difficile*, an anaerobic bacillus shed in feces. According to the Centers for Disease Control and Prevention of the U.S. Department of Health & Human Services, any surface, device, or material (e.g., commodes, bathing tubs, and electronic rectal thermometers) that becomes contaminated with feces may serve as a reservoir for the *C. difficile* spores, which are transferred to patients mainly via the hands of healthcare personnel who have touched a contaminated surface or item. We believe development of an approved formulation of crofelemer for use in *C. difficile* has the potential to help patients infected with *C. difficile* leave the hospital sooner, help keep patients infected with *C. difficile* out of the hospital, and aid in controlling *C. difficile* contagion in institutional settings, which would also represent a significant economic benefit.

### Animal Products in Development

Since our July 2017 merger with Napo, as previously announced, Jaguar's human portfolio has been, and continues to be, our core focus. However, CID is an interesting model for human product performance and is being pursued as our first prescription indication for animal health under MUMS designation (we are also leveraging our MUMS regulatory package to include exercise induced diarrhea in dogs). We believe there is an important unmet medical need for the treatment of CID in dogs, and that Canalevia is an ideal treatment for this indication because of its demonstrated novel anti-secretory mechanism of action. We are also continuing initiatives related to Equilevia, our non-prescription, personalized, premium product for total gut health in equine athletes, and continuing fulfillment support for both Neonorm Foal and Neonorm Calf.

## Competition

### Human Health

There are several significantly larger pharmaceutical companies competing with us in the gastrointestinal segment. These companies include Valeant Pharmaceuticals International, Merck & Co., Inc., and Allergan plc as well as smaller pharmaceutical companies.

*Diarrhea in adult patients living with HIV/AIDS.* We are not aware of any other FDA-approved drugs for the symptomatic relief of diarrhea in HIV/AIDS patients. HIV/AIDS patients also use loperamide and over the counter anti-diarrheal remedies such as Mylanta or Kaopectate to treat their diarrhea, but these medicines affect motility and can result in rebound diarrhea.

*Diarrhea predominant irritable bowel syndrome.* Two drugs were approved in 2015 for the treatment of diarrhea predominant irritable bowel syndrome, Allergan plc's Virbezi and Xifaxan which is marketed by Valeant Pharmaceuticals International. Also, Lotronex was approved by the FDA in 2000 but was withdrawn from the market and later reintroduced in 2002 under a Risk Management Program. With the exception of Lotronex, the sponsors of Verbezi and Xifaxan employ extensive media and print promotion for the commercialization of these products. We are seeking a partner to further the clinical development and commercialization of crofelemer for d-IBS. There are currently numerous trials on going for d-IBS.

*Pediatric diarrhea.* Acute diarrhea in children is commonly treated by a change in diet, oral rehydration therapy and/or antibiotics, assuming the cause of the diarrhea is bacterial in nature. Children aged 12 and younger are advised not to use anti-motility drugs (loperamide for example) unless directed to do so by a physician. There are recent clinical trials for probiotics and zinc sulfate. Other recent anti-diarrheal studies in children include a safety and tolerability study of Fidaxomicin for *C. difficile* associated diarrhea.

*Chemotherapy induced diarrhea.* We are not aware of any FDA-approved drugs specifically indicated for chemotherapy induced diarrhea. A recent Phase IIb trial of elsiglutide for the treatment of chemotherapy induced diarrhea in colorectal cancer patients did not meet statistical significance. Opioids and over the counter drugs are commonly used to treat chemotherapy induced diarrhea, but these drugs affect motility. Certain tyrosine-kinase inhibitor chemotherapy agents have diarrhea as a significant side effect.

*Congenital Diarrheal Disorders and Short Bowel Syndrome.* We are not aware of any FDA-approved drugs specifically indicated for Congenital Diarrheal Disorders and Short Bowel Syndrome.

*Cholera.* We are not aware of any FDA-approved drugs specifically indicated as an anti-secretory agent for use to address the devastating dehydration in cholera patients.

*Irritable Bowel Syndrome (IBS).* If we receive regulatory approval for Mytesi for IBS, we expect to compete with major pharmaceutical and biotechnology companies that operate in the gastrointestinal space, such as Sucampo AG, Takeda Pharmaceuticals, Allergan, Inc., Ironwood Pharmaceuticals, Inc., Synergy Pharmaceuticals Inc., Sebela Pharmaceuticals, Inc. and Salix Pharmaceuticals. Because Mytesi is approved with chronic safety and several of the other agents have safety concerns, there is likely to be an opportunity for a polypharmaceutical approach to long-term management of these patients, removing a direct competitive scenario from Mytesi's potential entry to the marketplace and disease indication.

To our knowledge, there are currently no FDA-approved anti-secretory products, in particular which act locally in the gut with the chronic safety profile of crofelemer, in development or on the market. Crofelemer represents a new tool in gastro-intestinal disease management.

### **Distribution and Marketing Agreements**

Napo has agreements in place with BexR, a distributor in Texas, and SmartPharma, a marketing and commercialization advisory firm, for the distribution, marketing and sale of Mytesi. The agreements compensate these parties with a percentage of net sales, as defined. Payments by Napo to BexR will be a specified percentage of net sales, ranging in the low double digits but in no instance exceeding 20% of net sales, depending on the period in which the sales occur and the amount of such sales. Payments by Napo to SmartPharma will be a specified percentage of net sales, ranging in the low double digits but in no instance exceeding 20% of net sales, depending on the amount of such sales. In addition, under certain circumstances, Napo will be required to pay SmartPharma a termination fee equal to a certain percentage of net sales generated within a specified period after the termination date.

### **Manufacturing**

The plant material used to manufacture is crude plant latex ("CPL") extracted and purified from *Croton lechleri*, a widespread and naturally regenerating tree in the rainforest that is managed as part of sustainable harvesting programs. The tree is found in several South American countries and has been the focus of long-term sustainable harvesting research and development work. Napo's collaborating suppliers obtain CPL and arrange for the shipment of CPL to Napo's third-party contract manufacturer.

Napo's third-party contract manufacturer, India-based Glenmark Pharmaceuticals Ltd. (Glenmark), a research-driven, global, integrated pharmaceutical company, is Napo's primary manufacturer of crofelemer, the active pharmaceutical ingredient in Mytesi. Glenmark processes CPL into crofelemer utilizing a proprietary manufacturing process. The processing occurs at two FDA-approved Glenmark facilities. Additionally, Napo plans to establish a third processing site, which will be operated by Indena S.p.A., a Milan, Italy-based contract manufacturer dedicated to the identification, development and production of high-quality active principles derived from plants, for use in the pharmaceutical, health food and personal care industries. Indena has completed the required technology transfer and has equipment in place for pilot manufacturing.

Canalevia will be manufactured by the same process used to manufacture the API that was used in the animal safety studies and the human studies in support of the approval of Mytesi. Napo has also licensed this intellectual property to third parties in connection with its licenses related to the development and commercialization of crofelemer for human use. While we believe these third parties have developed their own proprietary manufacturing specifications pursuant to their license agreements, such third-party intellectual property is unknown to us, and is not part of the intellectual property that we intend to use for the manufacture of API in its licensed field of use.

In May 2014 and June 2014, and as amended in February 2015, we entered into binding memorandums of understanding with Indena S.p.A. to negotiate a definitive commercial supply agreement for the manufacture of the API in Canalevia and the botanical extract in Neonorm. We have furnished equipment to Indena S.p.A. for use in a facility that will be dedicated to the manufacture of crofelemer and the botanical extract.

We have made all contractual payments to Indena as of March 31, 2016. In March 2015, Indena S.p.A. agreed to delay payment of the fees payable by the end of March 2015 until the earlier of April 30, 2015 or the completion of our initial public offering. In July 2015 and December 2015 Indena S.p.A. agreed to delay payment of certain fees payable until March 2016. In June 2014, as contemplated by the memorandums of understanding, we also issued Indena S.p.A. a warrant to acquire 16,666 shares our common stock at an exercise price per share equal to 90% of the initial public offering price, which expires in June 2019.

In September 2015 we entered a distribution agreement with Glenmark. With the execution of the agreement, we intend to use Glenmark as our primary manufacturer of crofelemer for animal health use. Our agreement with Glenmark supplements our previously announced manufacturing agreement with Indena S.p.A. for the standardized botanical extract in Neonorm Calf and Neonorm Foal. We intend to eventually use Indena as an alternative supplier for crofelemer.

In October 2015, we announced that we signed a crofelemer formulation development and manufacturing contract with Patheon Pharmaceuticals Inc. (“Patheon”), a leading global provider of drug development and delivery solutions to the global pharmaceutical and biopharma industries. Under the terms of the contract, Patheon will provide enteric-coated crofelemer tablets for us for use in animals. The tablets were used in our pivotal efficacy trial for Canalevia, which began in the fourth quarter of 2015.

Patheon is the manufacturer of Mytesi.

We also plan to enter agreements with third parties for the formulation of the API and botanical extracts into finished products to be used for planned studies and commercialization.

We plan to ensure that the facilities of our third-party contract manufacturers that will manufacture our API and botanical extract, as well as formulate our finished products, comply with cGMP and other relevant manufacturing requirements.

### **Proprietary Library of Medicinal Plants**

We possess a proprietary library of more than 2,300 medicinal plants.

### **Intellectual Property**

#### **Trademarks**

We plan to market all of our products under a trademark or trademarks we select and we will own all rights, title and interest, including all goodwill, associated with such trademarks. Mytesi is a registered trademark owned by Napo.



## **License Agreements**

### ***Termination, Asset Transfer and Transition Agreement***

On September 19, 2017 (the “Transfer Date”), Napo entered into the Termination, Asset Transfer and Transition Agreement (the “Glenmark Transition Agreement”) with Glenmark. The Glenmark Transition Agreement supersedes the Glenmark Collaboration Agreement and returns to Napo certain rights which Napo licensed to Glenmark pursuant to the Glenmark Collaboration Agreement related to the development and commercialization of crofelemer for certain specified human indications in India and 140 other countries largely in developing regions (the “Transferred Assets”).

As a result of the execution of the Glenmark Transition Agreement, we, through Napo, now control commercial rights for Mytesi for all indications, territories and patient populations globally, and also hold commercial rights to the existing regulatory approvals for crofelemer in Brazil, Ecuador, Zimbabwe and Botswana.

In consideration for Glenmark’s assignment and transfer of the Transferred Assets to Napo, Napo agreed to pay Glenmark in cash, within 45 days after receipt by Napo, 25% of any payment that Napo 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 limitations, until Glenmark has received a total of \$7 million. As additional consideration for the assignment and transfer of the Transferred Assets, Napo agreed (i) to enter into, within 90 days after the Transfer Date, a manufacturing and supply agreement with Glenmark for crofelemer, which will be manufactured at either or both of Glenmark’s facilities in India and (ii) to transfer and assign to Glenmark all right, title and interest in and to certain required dedicated equipment used to manufacture crofelemer located at Glenmark’s Ankleshwar facility, subject to certain limitations.

### ***License Agreement with Elanco US Inc.***

As we announced on January 31, 2017, we signed an agreement with Elanco US Inc. (“Elanco”), a subsidiary of Eli Lilly and Company, to license, develop, co-promote, and commercialize Canalevia, our drug product candidate under investigation for treatment of acute diarrhea and CID in dogs. The agreement granted Elanco exclusive global rights to Canalevia for use in companion animals. As we announced on November 1, 2017, we received notice from Elanco of its decision to terminate the License, Development Co-Promotion and Commercialization Agreement by giving Jaguar 90 days written notice. Pursuant to the terms of the agreement, termination of the agreement became effective January 30, 2018, 90 days after the date of the notice. On the effective date of termination of the agreement, all licenses granted to Elanco by Jaguar under the agreement were revoked and the rights granted thereunder reverted back to Jaguar.

## **Patent Portfolio**

### ***Napo***

Napo owns a portfolio of patents and patent applications covering formulations of and methods of treatment with proanthocyanidin polymers isolated from *Croton spp* or *Calophyllum spp.*, including Mytesi (crofelemer). The patent family related to International Patent publication WO1998/16111 relates to enteric protected formulations of proanthocyanidin polymers isolated from *Croton spp* or *Calophyllum spp.*, including crofelemer, and methods of treating watery diarrhea using these enteric protected formulation. There are two U.S. patents in this family, including, US 7,323,195, which has a term until at least June 7, 2018, and US 7,341,744, which has a term until at least June 23, 2019. Napo has elected to extend the term of US 7,341,744 under 35 U.S.C. 156, and the United States Patent and Trademark Office has issued a Notice of Final Determination that the patent term extension for US 7,341,744 is 1075 days.

Based upon the June 23, 2019 expiration date, the patent would be extended to June 2, 2022, to account for regulatory delay in obtaining human marketing approval for crofelemer.

Napo additionally owns a family of patents arising from International Patent Application Publication WO2012058664 that cover methods of treating HIV associated diarrhea and HAART associated diarrhea with proanthocyanidin polymers isolated from *Croton spp* or *Calophyllum spp.*, including crofelemer. In the U.S., there are two issued patents, US 8,962,680 and US 9,585,868, both of which expire October 31, 2031. Outside the U.S., patent protection for methods of treating HIV associated diarrhea has been obtained in Australia, Europe, Hong Kong, Japan, Kenya, Mexico, Russia, Ukraine, South Africa and Zimbabwe, with expiration dates of October 31, 2031, and Napo has pending applications in Brazil, Canada, China, India, Japan, Mexico, and Malaysia. Napo also has patent families related to methods of treating diarrhea predominant irritable bowel syndrome, constipation predominant irritable bowel syndrome, and inflammatory bowel disease, familial adenomatous polyposis and colon cancer, with proanthocyanidin polymers isolated from *Croton spp* or *Calophyllum spp.*, including crofelemer. In particular, for diarrhea predominant irritable bowel syndrome, Napo has 1 issued US patent, which expires February 9, 2027, and 1 pending application, issued patents in Australia, Europe, Japan, South Korea, Mexico, New Zealand, Singapore, and Taiwan and pending applications in Bangladesh, Bolivia, Canada, Chile, Gulf States, Mexico, Panama, Peru, Paraguay, Thailand, and Venezuela, all of which are estimated to expire April 30, 2027; for constipation predominant irritable bowel syndrome, Napo has 3 issued US patents, with terms of at least April 30, 2027, patents in Australia, Canada, Europe, Mexico, New Zealand, Singapore and a pending application in India, all of which are estimated to expire April 30, 2027; and for inflammatory bowel disease, familial adenomatous polyposis and/or colon cancer, Napo has 1 issued US patent, which has an expiration date of October 9, 2029 and 1 pending application, issued patents in Australia, Europe and a pending application in Canada, which have estimated expiration dates of April 30, 2027.

Napo also co-owns with Glenmark, issued patents in India, South Africa and Eurasia patents that expire August 24, 2030, and cover a method of manufacturing with proanthocyanidin polymers isolated from *Croton spp* or *Calophyllum spp.*, including crofelemer). Napo holds two US patents covering a formulation of NP 500 (nordihydroguaiaretic acid (NDGA)) and its use in treating a metabolic disorder that have terms until April 23, 2031 Napo has filed a US non-provisional application for the treatment of chemotherapy-induced diarrhea (CID) with crofelemer and two US provisional applications on other human indications.

### **Jaguar**

We have exclusive rights in the veterinary field to an international patent family related to International Patent Application WO1998/16111 as set forth above in the disclosure of the Napo patent portfolio. The patents in this family are directed to enteric protected formulations of proanthocyanidin polymers isolated from *Croton spp* or *Calophyllum spp.* (such as crofelemer and Neonorm), and methods of treating watery diarrhea using the enteric protected formulations for both human and veterinary uses. As such, the patents of this family cover certain formulations of crofelemer, including Canalevia, as well as the standardized botanical extract in Neonorm, and methods of treating diarrhea using these formulations.

Certain Napo patents and patent applications, which cover both human and veterinary uses, were previously licensed by Napo to Salix for certain fields of human use. On March 4, 2016, Napo and Salix settled litigation and all rights to crofelemer and Mytesi (formerly known as Fulyzaq) were returned to Napo and the collaboration agreement between Salix and Napo (the “Salix Collaboration Agreement”), was terminated. Napo has the responsibility to file, prosecute and maintain the Napo Patents. There are two issued Napo Patents in the United States that cover, collectively, enteric protected formulations of proanthocyanidin polymers isolated from *Croton spp.* and methods of treating watery diarrhea using the enteric protected formulations for both human and veterinary uses.

We have filed and have currently three applications pending under the PCT, and seven U.S. non provisional patent applications relating to veterinary uses of *Croton* proanthocyanidin polymer compositions, including crofelemer, Neonorm and Canalevia, and product combinations under development. These applications are directed to treatment of watery diarrhea in newborn and young animals, including methods of improving mortality and weight gain in newborn animals, treatment of stress induced diarrhea in animals, and treatment of watery diarrhea caused by salmonella in animals. These applications also focus on the treatment of diarrhea in companion animals such as dogs and cats. In addition, an application has been submitted for the treatment of ulcers and related symptoms in animals with an emphasis on ulcers in horses. An application has also been filed on a prebiotic effect of crofelemer in bovine and other animal species based on research findings that indicate a prebiotic enhancement of the gut bacteria in animals. One other patent application has been filed combining crofelemer with rifaximin, a non absorbed antibiotic for the treatment of bacteria induced diarrhea in multiple animal species. Applications have been filed relating to treatment of porcine epidemic virus in piglets and treatment of diarrhea in livestock with a formulation that is not enteric protected. Patents that may issue based upon these applications should have terms that extend until at least May 2035.

## **Government Regulation**

### ***Human Health Business***

The FDA and comparable regulatory authorities in state and local jurisdictions and in other countries impose substantial and burdensome requirements upon companies involved in the clinical development, manufacture, marketing and distribution of prescription drugs such as those Napo is developing. These agencies and other federal, state and local entities regulate, among other things, the research and development, testing, manufacture, quality control, safety, effectiveness, labeling, storage, record keeping, approval, advertising and promotion, distribution, post-approval monitoring and reporting, sampling and export and import of Napo's drug product candidates. To comply with the regulatory requirements in each of the jurisdictions in which Napo is seeking to market and subsequently sell its prescription products, Napo is establishing processes and resources to provide oversight of the development, approval processes and launch of its products and to position those products in order to gain market share.

### ***U.S. Government Regulation***

In the United States, the FDA approves and regulates drugs under the Federal Food, Drug, and Cosmetic Act ("FDCA"), and its implementing regulations.

The process of obtaining regulatory approvals and the subsequent compliance with applicable federal, state, local and foreign statutes and regulations requires the expenditure of substantial time and financial resources. Failure to comply with the applicable U.S. requirements at any time during the product development process, approval process or after approval, may subject an applicant to a variety of administrative or judicial sanctions, such as the FDA's refusal to approve pending NDAs, withdrawal of an approval, imposition of a clinical hold, issuance of warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, refusals of government contracts, restitution, disgorgement or civil or criminal penalties.

The process required by the FDA before a drug may be marketed in the United States generally involves the following:

- completion of pre-clinical laboratory tests, animal studies and formulation studies in compliance with the FDA's good laboratory practice, or GLP, regulations;
- submission to the FDA of an investigational new drug application, or IND, which must become approved before human clinical trials may begin;

- approval by an institutional review board, or IRB, of the study protocol and informed consent forms for the clinical site before each trial may be initiated. Multiple sites may necessitate the involvement of multiple IRBs and submissions;
- performance of adequate and well-controlled human clinical trials in accordance with good clinical practice, or GCP, requirements to establish the safety and efficacy of the proposed drug product for each indication;
- submission to the FDA of an NDA which would include the study reports of the clinical trials, chemistry and manufacturing of the active pharmaceutical ingredient and the final dosage form as well as other required sections to be included in the NDA;
- satisfactory completion of an FDA advisory committee review, if applicable;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the product is produced to assess compliance with current good manufacturing practice, or cGMP, requirements and to assure that the facilities, methods and controls are adequate to preserve the drug's identity, strength, quality and purity; and
- FDA review and approval of the NDA.

### *Pre-clinical Studies*

Pre-clinical studies include laboratory evaluation of the drug product's chemistry, toxicity and formulation, as well as animal studies to assess potential safety and efficacy. An IND sponsor must submit the results of the pre-clinical tests, together with manufacturing information, analytical data and any available clinical data or literature, among other things, to the FDA as part of an IND. Some pre-clinical testing may continue even after the IND is submitted. An IND automatically becomes effective 30 days after receipt by the FDA, unless before that time the FDA raises concerns or questions related to one or more proposed clinical trials and places the clinical trial on a clinical hold. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. As a result, submission of an IND may not result in the FDA allowing clinical trials to commence.

### *Clinical Trials*

Clinical trials involve the administration of the investigational new drug to human subjects pursuant to a clinical protocol, under the supervision of qualified investigators in accordance with GCP requirements, which include the requirement that all research subjects provide their informed consent in writing for their participation in any clinical trial. Clinical trials are conducted under protocols detailing, among other things, the objectives or endpoints of the trial, the parameters to be used in monitoring safety, and the effectiveness criteria to be evaluated. A protocol for each clinical trial and any subsequent protocol amendments must be submitted to the FDA under the IND. In addition, an IRB at each institution participating in the clinical trial must review and approve the plan for any clinical trial before it commences at that institution. Information about certain clinical trials must be submitted within specific timeframes to the National Institutes of Health, or NIH, for public dissemination on their [www.clinicaltrials.gov](http://www.clinicaltrials.gov) website.

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

- Phase 1: The drug is initially introduced into healthy human subjects or patients with the target disease or condition and tested for safety, dosage tolerance, absorption, metabolism, distribution, excretion and, if possible, to gain an early indication of its effectiveness depending on the endpoints set forth in the protocol.

- Phase 2: The drug is administered to a limited patient population to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted diseases and to determine dosage tolerance and optimal dosage.
- Phase 3: The drug is administered to an expanded patient population, generally at geographically dispersed clinical trial sites, in well-controlled clinical trials to generate enough data to statistically evaluate the efficacy and safety of the product for approval, to establish the overall risk-benefit profile of the product, and to provide adequate information for the labeling of the product.

Progress reports detailing the results of the clinical trials must be submitted at least annually to the FDA and more frequently if serious adverse events occur. Phase 1, Phase 2 and Phase 3 clinical trials may not be completed successfully within any specified period, or at all. Furthermore, the FDA or the sponsor may suspend or terminate a clinical trial at any time on various grounds, including a finding that the research subjects are being exposed to an unacceptable health risk. Similarly, an IRB can suspend or terminate approval of a clinical trial at its institution if the clinical trial is not being conducted in accordance with the IRB's requirements or if the drug has been associated with unexpected serious harm to patients.

### *Special Protocol Assessment*

The special protocol assessment, or SPA, process is designed to facilitate the FDA's review and approval of drugs by allowing the FDA to evaluate issues related to the adequacy of certain clinical trials, including Phase 3 clinical trials that can form the primary basis for a drug product's efficacy claim in an NDA. Upon specific request by a clinical trial sponsor, the FDA will evaluate the protocol and respond to a sponsor's questions regarding, among other things, primary efficacy endpoints, trial conduct and data analysis, within 45 days of receipt of the request.

The FDA ultimately assesses whether the protocol design and planned analysis of the trial are acceptable to support regulatory approval of the product candidate with respect to effectiveness of the indication studied. All agreements and disagreements between the FDA and the sponsor regarding an SPA must be clearly documented in an SPA letter or the minutes of a meeting between the sponsor and the FDA.

Even if the FDA agrees to the design, execution and analyses proposed in protocols reviewed under the SPA process, the FDA may revoke or alter its agreement under the following circumstances:

- public health concerns emerge that were unrecognized at the time of the protocol assessment;
- the director of the review division determines that a substantial scientific issue essential to determining safety or efficacy has been identified after testing has begun;
- a sponsor fails to follow a protocol that was agreed upon with the FDA; or
- the relevant data, assumptions, or information provided by the sponsor in a request for SPA change, are found to be false statements or misstatements, or are found to omit relevant facts.

A documented SPA may be modified, and such modification will be deemed binding on the FDA review division, except under the circumstances described above, if FDA and the sponsor agree in writing to modify the protocol and such modification is intended to improve the study.

### *Marketing Approval*

Assuming successful completion of the required clinical testing, the results of the pre-clinical studies and clinical trials, together with detailed information relating to the product's chemistry, manufacture, controls and proposed labeling, among other things, are submitted to the FDA as part of a NDA requesting approval to market the product for one or more indications. In most cases, the submission of a NDA is subject to a substantial application user fee. Under the Prescription Drug User Fee Act



(“PDUFA”), guidelines that are currently in effect, the FDA has a goal of ten months from the date of “filing” of a standard NDA for a new molecular entity to review and act on the submission. This review typically takes twelve months from the date the NDA is submitted to FDA because the FDA has approximately two months to make a “filing” decision.

In addition, under the Pediatric Research Equity Act of 2003 (“PREA”), as amended and reauthorized, certain NDAs or supplements to an NDA must contain data that are adequate to assess the safety and effectiveness of the drug for the claimed indications in all relevant pediatric subpopulations; this would include information which supports dosing and administration for each pediatric subpopulation for which the product is safe and effective. The FDA may, on its own initiative or at the request of the applicant, grant deferrals for submission of some or all pediatric data until after approval of the product for use in adults or full or partial waivers from the pediatric data requirements.

The FDA may also require submission of a risk evaluation and mitigation strategy, or REMS, plan to ensure that the benefits of the drug outweigh its risks. The REMS plan could include medication guides, physician communication plans, assessment plans, and/or elements to assure safe use, such as restricted distribution methods, patient registries, or other risk minimization tools.

The FDA may also require other information as part of the NDA filing such as an environmental impact statement. The FDA can waive some or delay compliance with some of these requirements.

The FDA conducts a preliminary review of all NDAs within the first 60 days after submission, before accepting them for filing, to determine whether they are sufficiently complete to permit substantive review. The FDA may request additional information rather than accept a NDA for filing. In this event, the application must be resubmitted with the additional information. The resubmitted application is also subject to review before the FDA accepts it for filing. Once the submission is accepted for filing, the FDA begins an in-depth substantive review. The FDA reviews a NDA to determine, among other things, whether the drug is safe and effective and whether the facility in which it is manufactured, processed, packaged or held meets standards designed to assure the product’s continued safety, quality and purity.

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

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

After evaluating the NDA and all related information, including the advisory committee recommendation, if any, and inspection reports regarding the manufacturing facilities and clinical trial sites, the FDA may issue an approval letter, or, in some cases, a complete response letter. A complete response letter must contain a statement of specific items that prevent the FDA from approving the application and will also contain conditions that must be met in order to secure final approval of the NDA and may require additional clinical or pre-clinical testing in order for FDA to reconsider the application. Even with submission of this additional information, the FDA ultimately may decide that the application does not satisfy the regulatory criteria for approval. If and when those conditions have been met to the FDA’s satisfaction, the FDA will typically issue an approval letter. An approval letter authorizes commercial marketing of the drug with specific prescribing information for specific indications.

Even if the FDA approves a product, it may limit the approved indications for use of the product, require that contraindications, warnings or precautions be included in the product labeling, require that



post-approval studies, Phase 4 clinical trials, be conducted to further assess a drug's safety after approval, require testing and surveillance programs to monitor the product after commercialization, or impose other conditions, including distribution and use restrictions or other risk management mechanisms under a REMS, which can materially affect the potential market and profitability of the product. The FDA may prevent or limit further marketing of a product based on the results of post-marketing studies or surveillance programs. After approval, some types of changes to the approved product, such as adding new indications, manufacturing changes, and additional labeling claims, are subject to further testing requirements and FDA review and approval.

#### *Post-Approval Requirements*

Drugs manufactured or distributed pursuant to FDA approvals are subject to pervasive and continuing regulation by the FDA, including, among other things, requirements relating to recordkeeping, periodic reporting, product sampling and distribution, advertising and promotion and reporting of adverse experiences with the product. After approval, most changes to the approved product, such as adding new indications or other labeling claims are subject to prior FDA review and approval. New secondary indications must be supported by clinical trials or data. There also are continuing, annual user fee requirements for any marketed products and the establishments at which such products are manufactured, as well as new application fees for supplemental applications with clinical data.

The FDA may impose a number of post-approval requirements as a condition of approval of an NDA. For example, the FDA may require post-marketing testing, including Phase 4 clinical trials, and surveillance to further assess and monitor the product's safety and effectiveness after commercialization.

In addition, drug manufacturers and other entities involved in the manufacture and distribution of approved drugs are required to register their establishments with the FDA and state agencies, and are subject to periodic unannounced inspections by the FDA and these state agencies for compliance with cGMP requirements. Changes to the manufacturing process are strictly regulated and often require prior FDA approval before being implemented. FDA regulations also require investigation and correction of any deviations from cGMP requirements and impose reporting and documentation requirements upon the sponsor and any third-party manufacturers that the sponsor may decide to use. Accordingly, manufacturers must continue to expend time, money and effort in the area of production and quality control to maintain cGMP compliance.

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

- restrictions on the marketing or manufacturing of the product, complete withdrawal of the product from the market or product recalls;
- fines, warning letters or holds on post-approval clinical trials;
- refusal of the FDA to approve pending NDAs or supplements to approved NDAs, or suspension or revocation of product approvals;
- product seizure or detention, or refusal to permit the import or export of products; or
- injunctions or the imposition of civil or criminal penalties.

The FDA strictly regulates marketing, labeling, advertising and promotion of products that are placed on the market. Drugs may be promoted only for the approved indications and in accordance with the provisions of the approved label. The FDA and other agencies actively enforce the laws and regulations

prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant liability. In addition, the FDA regulates the purity and or consistency of the approved product. Products, if deemed adulterated can lead to serious consequences as set forth above as well as civil and criminal penalties.

### ***Foreign Government Regulation***

To the extent that any of Napo's product candidates, once approved, are sold in a foreign country, Napo may be subject to similar foreign laws and regulations, which may include, for instance, applicable post-marketing requirements, including safety surveillance, anti-fraud and abuse laws and implementation of corporate compliance programs and reporting of payments or other transfers of value to healthcare professionals.

In order to market Napo's future products in the EEA (which is comprised of the 28 Member States of the EU plus Norway, Iceland and Liechtenstein) and many other foreign jurisdictions, a sponsor must obtain separate regulatory approvals. More concretely, in the EEA, medicinal products can only be commercialized after obtaining a Marketing Authorization, or MA. There are two types of marketing authorizations:

- the Community MA, which is issued by the European Commission through the Centralized Procedure, based on the opinion of the Committee for Medicinal Products for Human Use of the European Medicines Agency, or EMA, and which is valid throughout the entire territory of the EEA. The Centralized Procedure is mandatory for certain types of products, such as biotechnology medicinal products, orphan medicinal products and medicinal products indicated for the treatment of AIDS, cancer, neurodegenerative disorders, diabetes, auto-immune and viral diseases. The Centralized Procedure is optional for products containing a new active substance not yet authorized in the EEA, or for products that constitute a significant therapeutic, scientific or technical innovation or which are in the interest of public health in the EU; and
- National MAs, which are issued by the competent authorities of the Member States of the EEA and only cover their respective territory, are available for products not falling within the mandatory scope of the Centralized Procedure. Where a product has already been authorized for marketing in a Member State of the EEA, this National MA can be recognized in another Member State through the Mutual Recognition Procedure. If the product has not received a National MA in any Member State at the time of application, it can be approved simultaneously in various Member States through the Decentralized Procedure.

Under the above described procedures, before granting the MA, the EMA or the competent authorities of the Member States of the EEA make an assessment of the risk-benefit balance of the product on the basis of scientific criteria concerning its quality, safety and efficacy.

In the EEA, new products authorized for marketing, or reference products, qualify for eight years of data exclusivity and an additional two years of market exclusivity upon marketing authorization. The data exclusivity period prevents generic or biosimilar applicants from relying on the pre-clinical and clinical trial data contained in the dossier of the reference product when applying for a generic or biosimilar marketing authorization in the EU during a period of eight years from the date on which the reference product was first authorized in the EU. The market exclusivity period prevents a successful generic or biosimilar applicant from commercializing its product in the EU until 10 years have elapsed from the initial authorization of the reference product in the EU. The 10-year market exclusivity period can be extended to a maximum of eleven years if, during the first eight years of those 10 years, the marketing authorization holder obtains an authorization for one or more new therapeutic indications which, during the scientific evaluation prior to their authorization, are held to bring a significant clinical benefit in comparison with existing therapies.

In the EEA, marketing authorization applications for new medicinal products not authorized have to include the results of studies conducted in the pediatric population, in compliance with a pediatric investigation plan, or PIP, agreed with the EMA's Pediatric Committee ("PDCO"). The PIP sets out the timing and measures proposed to generate data to support a pediatric indication of the drug for which marketing authorization is being sought. The PDCO can grant a deferral of the obligation to implement some or all of the measures of the PIP until there are sufficient data to demonstrate the efficacy and safety of the product in adults. Further, the obligation to provide pediatric clinical trial data can be waived by the PDCO when these data is not needed or appropriate because the product is likely to be ineffective or unsafe in children, the disease or condition for which the product is intended occurs only in adult populations, or when the product does not represent a significant therapeutic benefit over existing treatments for pediatric patients. Once the marketing authorization is obtained in all Member States of the EU and study results are included in the product information, even when negative, the product is eligible for six months' supplementary protection certificate extension. For orphan-designated medicinal products, the 10-year period of market exclusivity is extended to 12 years.

#### *Other U.S. Healthcare Laws*

In addition to FDA restrictions on marketing of pharmaceutical and biological products, other U.S. federal and state healthcare regulatory laws restrict business practices in the pharmaceutical industry, which include, but are not limited to, state and federal anti-kickback, false claims, data privacy and security and physician payment and drug pricing transparency laws.

The U.S. federal Anti-Kickback Statute prohibits, among other things, any person or entity from knowingly and willfully offering, paying, soliciting, receiving or providing any remuneration, directly or indirectly, overtly or covertly, to induce or in return for purchasing, leasing, ordering, or arranging for or recommending the purchase, lease, or order of any good, facility, item or service reimbursable, in whole or in part, under Medicare, Medicaid or other federal healthcare programs. The term "remuneration" has been broadly interpreted to include anything of value. The Anti-Kickback Statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on the one hand and prescribers, purchasers, formulary managers and beneficiaries on the other. Although there are a number of statutory exceptions and regulatory safe harbors protecting some common activities from prosecution, the exceptions and safe harbors are drawn narrowly. Practices that involve remuneration that may be alleged to be intended to induce prescribing, purchases, or recommendations may be subject to scrutiny if they do not meet the requirements of a statutory or regulatory exception or safe harbor. Failure to meet all of the requirements of a particular applicable statutory exception or regulatory safe harbor does not make the conduct per se illegal under the U.S. federal Anti-Kickback Statute. Instead, the legality of the arrangement will be evaluated on a case-by-case basis based on a cumulative review of all its facts and circumstances. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute has been violated.

Additionally, the intent standard under the U.S. federal Anti-Kickback Statute was amended by the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, or collectively, the ACA, to a stricter standard such that a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation. In addition, the ACA codified case law that a claim including items or services resulting from a violation of the U.S. federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act. The majority of states also have anti-kickback laws, which establish similar prohibitions and in some cases may apply to items or services reimbursed by any third-party payor, including commercial insurers.

The federal false claims and civil monetary penalties laws, including the civil False Claims Act, prohibit any person or entity from, among other things, knowingly presenting, or causing to be presented, a

false, fictitious or fraudulent claim for payment to, or approval by, the federal government, knowingly making, using, or causing to be made or used a false record or statement material to a false or fraudulent claim to the federal government, or from knowingly making a false statement to avoid, decrease or conceal an obligation to pay money to the U.S. federal government. A claim includes “any request or demand” for money or property presented to the U.S. government. Actions under the civil False Claims Act may be brought by the Attorney General or as a qui tam action by a private individual in the name of the government. Violations of the civil False Claims Act can result in very significant monetary penalties and treble damages. Several pharmaceutical and other healthcare companies have been prosecuted under these laws for, among other things, allegedly providing free product to customers with the expectation that the customers would bill federal programs for the product. Other companies have been prosecuted for causing false claims to be submitted because of the companies’ marketing of products for unapproved, or off-label, uses. In addition, the civil monetary penalties statute imposes penalties against any person who is determined to have presented or caused to be presented a claim to a federal health program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent. Many states also have similar fraud and abuse statutes or regulations that apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor.

Violations of fraud and abuse laws, including federal and state anti-kickback and false claims laws, may be punishable by criminal and civil sanctions, including fines and civil monetary penalties, the possibility of exclusion from federal healthcare programs (including Medicare and Medicaid), disgorgement and corporate integrity agreements, which impose, among other things, rigorous operational and monitoring requirements on companies. Similar sanctions and penalties, as well as imprisonment, also can be imposed upon executive officers and employees of such companies. Given the significant size of actual and potential settlements, it is expected that the government authorities will continue to devote substantial resources to investigating healthcare providers’ and manufacturers’ compliance with applicable fraud and abuse laws.

The federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, created additional federal criminal statutes that prohibit, among other actions, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private third-party payors, knowingly and willfully embezzling or stealing from a healthcare benefit program, willfully obstructing a criminal investigation of a healthcare offense and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the U.S. federal Anti-Kickback Statute, the ACA broadened the reach of certain criminal healthcare fraud statutes created under HIPAA by amending the intent requirement such that a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.

In addition, there has been a recent trend of increased federal and state regulation of payments made to physicians and certain other healthcare providers. The ACA imposed, among other things, new annual reporting requirements through the Physician Payments Sunshine Act for covered manufacturers for certain payments and “transfers of value” provided to physicians and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members. Failure to submit timely, accurately and completely the required information for all payments, transfers of value and ownership or investment interests may result in civil monetary penalties of up to an aggregate of \$150,000 per year and up to an aggregate of \$1 million per year for “knowing failures.” Covered manufacturers must submit reports by the 90th day of each subsequent calendar year. In addition, certain states require implementation of compliance programs and compliance with the pharmaceutical industry’s voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government, impose restrictions on marketing practices and/or tracking and reporting of gifts, compensation and other remuneration or items of value provided to physicians and other healthcare professionals and entities.

Napo may also be subject to data privacy and security regulation by both the federal government and the states in which Napo conducts its business. HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, and their respective implementing regulations, including the Final HIPAA Omnibus Rule published on January 25, 2013, impose specified requirements relating to the privacy, security and transmission of individually identifiable health information held by covered entities and their business associates. Among other things, HITECH made HIPAA's security standards directly applicable to "business associates," defined as independent contractors or agents of covered entities that create, receive, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity. HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney's fees and costs associated with pursuing federal civil actions. In addition, state laws govern the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same requirements, thus complicating compliance efforts.

### *Coverage and Reimbursement*

Significant uncertainty exists as to the coverage and reimbursement status of any pharmaceutical products for which Napo obtains regulatory approval. In the United States and markets in other countries, patients who are prescribed treatments for their conditions and providers performing the prescribed services generally rely on third-party payors to reimburse all or part of the associated healthcare costs. Patients are unlikely to use Napo's products unless coverage is provided and reimbursement is adequate to cover a significant portion of the cost of Napo's products. Sales of any products for which Napo receives regulatory approval for commercial sale will therefore depend, in part, on the availability of coverage and adequate reimbursement from third-party payors. Third-party payors include government authorities, managed care plans, private health insurers and other organizations. In the United States, the process for determining whether a third-party payor will provide coverage for a pharmaceutical or biological product typically is separate from the process for setting the price of such product or for establishing the reimbursement rate that the payor will pay for the product once coverage is approved. Third-party payors may limit coverage to specific products on an approved list, also known as a formulary, which might not include all of the FDA-approved products for a particular indication. A decision by a third-party payor not to cover Napo's product candidates could reduce physician utilization of Napo's products once approved and have a material adverse effect on Napo's sales, results of operations and financial condition. Moreover, a third-party payor's decision to provide coverage for a pharmaceutical or biological product does not imply that an adequate reimbursement rate will be approved. Adequate third-party reimbursement may not be available to enable Napo to maintain price levels sufficient to realize an appropriate return on Napo's investment in product development. Additionally, coverage and reimbursement for products can differ significantly from payor to payor. One third-party payor's decision to cover a particular medical product or service does not ensure that other payors will also provide coverage for the medical product or service, or will provide coverage at an adequate reimbursement rate. As a result, the coverage determination process will require Napo to provide scientific and clinical support for the use of Napo's products to each payor separately and will be a time-consuming process.

In the EEA, governments influence the price of products through their pricing and reimbursement rules and control of national health care systems that fund a large part of the cost of those products to consumers. Some jurisdictions operate positive and negative list systems under which products may only be marketed once a reimbursement price has been agreed to by the government. To obtain reimbursement or pricing approval, some of these countries may require the completion of clinical trials that compare the cost effectiveness of a particular product candidate to currently available therapies. Other member states allow companies to fix their own prices for medicines, but monitor and control company profits. The downward pressure on health care costs in general, particularly prescription products, has become very



intense. As a result, increasingly high barriers are being erected to the entry of new products. In addition, in some countries, cross border imports from low-priced markets exert a commercial pressure on pricing within a country.

The containment of healthcare costs has become a priority of federal, state and foreign governments, and the prices of pharmaceutical or biological products have been a focus in this effort. Third-party payors are increasingly challenging the prices charged for medical products and services, examining the medical necessity and reviewing the cost-effectiveness of pharmaceutical or biological products, medical devices and medical services, in addition to questioning safety and efficacy. If these third-party payors do not consider Napo's products to be cost-effective compared to other available therapies, they may not cover Napo's products after FDA approval or, if they do, the level of payment may not be sufficient to allow Napo to sell its products at a profit.

### *Healthcare Reform*

A primary trend in the U.S. healthcare industry and elsewhere is cost containment. Government authorities and other third-party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medical products. For example, in March 2010, the ACA was enacted, which, among other things, increased the minimum Medicaid rebates owed by most manufacturers under the Medicaid Drug Rebate Program; introduced a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs that are inhaled, infused, instilled, implanted or injected; extended the Medicaid Drug Rebate Program to utilization of prescriptions of individuals enrolled in Medicaid managed care plans; imposed mandatory discounts for certain Medicare Part D beneficiaries as a condition for manufacturers' outpatient drugs coverage under Medicare Part D; subjected drug manufacturers to new annual fees based on pharmaceutical companies' share of sales to federal healthcare programs; created a new Patient Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research; creation of the Independent Payment Advisory Board, once empaneled, will have authority to recommend certain changes to the Medicare program that could result in reduced payments for prescription drugs; and establishment of a Center for Medicare Innovation at the CMS to test innovative payment and service delivery models to lower Medicare and Medicaid spending. Since its enactment, the U.S. federal government has delayed or suspended implementation of certain provisions of the ACA. In addition, there have been judicial and Congressional challenges to certain aspects of the ACA, and Napo expects there will be additional challenges and amendments to the ACA in the future. For example, in January 2017, the U.S. House of Representatives and Senate passed legislation, which, if signed into law, would repeal certain aspects of the ACA. In addition, Congress could consider subsequent legislation to replace those elements of the ACA if so repealed.

Napo expects that the ACA, as well as other healthcare reform measures that may be adopted in the future, may result in more rigorous coverage criteria and lower reimbursement, and additional downward pressure on the price that Napo receives for any approved product. Any reduction in reimbursement from Medicare or other government-funded programs may result in a similar reduction in payments from private payors. Moreover, recently there has been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products. The implementation of cost containment measures or other healthcare reforms may prevent Napo from being able to generate revenue, attain profitability or commercialize Napo's drugs.

Additionally, on August 2, 2011, the Budget Control Act of 2011 created measures for spending reductions by Congress. A Joint Select Committee on Deficit Reduction, tasked with recommending a targeted deficit reduction of at least \$1.2 trillion for the years 2013 through 2021, was unable to reach required goals, thereby triggering the legislation's automatic reduction to several government programs. This included aggregate reductions of Medicare payments to providers of 2% per fiscal year, which went



into effect on April 1, 2013 and, due to subsequent legislative amendments to the statute, will stay in effect through 2025 unless additional action is taken by Congress. On January 2, 2013, the American Taxpayer Relief Act of 2012 was signed into law, which, among other things, further reduced Medicare payments to several types of providers, including hospitals, imaging centers and cancer treatment centers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. More recently, there has been heightened governmental scrutiny recently over the manner in which manufacturers set prices for their marketed products, which have resulted in several recent Congressional inquiries and proposed bills designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for pharmaceutical products.

Napo expects that additional state and federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, which could result in reduced demand for Napo's products once approved or additional pricing pressures.

### ***Animal Health Business***

The development, approval and sale of animal health products are governed by the laws and regulations of each country in which we intend to seek approval, where necessary, to market and subsequently sell our prescription drug and non-drug products. To comply with these regulatory requirements, we are establishing processes and resources to provide oversight of the development, approval processes and launch of its products and to position those products in order to gain market share in each respective market.

#### ***United States***

Certain federal regulatory agencies are charged with oversight and regulatory authority of animal health products in the United States. These agencies, depending on the product and its intended use may include the FDA, the USDA and the Environmental Protection Agency. In addition, the Drug Enforcement Administration regulates animal therapeutics that are classified as controlled substances. In addition, the Federal Trade Commission may in the case of non-drug products, regulate the marketing and advertising claims being made.

The approval of prescription drugs intended for animal use is regulated by the FDA's Center for Veterinary Medicine ("CVM"). The CVM consists of six offices that work together to, in part, approve new drugs for commercialization and thereafter monitor those commercialized drugs once in the market. The Office of New Animal Drug Evaluation ("ONADE"), is the lead office for reviewing novel drug candidates. We, as the sponsor of a novel drug candidate, commence the development and approval process by initiating communication with the ONADE and opening an INAD file. As part of this process, we will also schedule a discussion of the novel drug's development plan in order to obtain agreement from the CVM for the number, type and design of studies needed to obtain FDA approval of the novel drug.

As required by the FDA, new animal drug products must obtain marketing approval through the NADA process. Under the Administrative New Animal Drug Application, or Administrative NADA, process, a sponsor can engage in a phased submission of the required technical sections of an NADA, known as a rolling NADA, as opposed to submitting the entire application at once with a standard NADA. The requirements for all NADAs are the same regardless of whether a sponsor chooses the rolling NADA or the standard NADA submission. Under the phased review, once all technical sections have been submitted and reviewed, the sponsor submits an Administrative NADA to reflect that all technical sections of the NADA have been submitted and reviewed, each such technical section meets the requirements for approval and the CVM has issued technical section complete letters for each technical section. The phased review and Administrative NADA allow a drug sponsor to engage with the FDA as to each technical section to ensure that each section meets all requirements prior to submission of the application for approval. Phasing of NADA submissions is a voluntary process.

Once the tasks set forth in the development plan have been completed, including the clinical work as well as the chemistry and manufacturing work (feasibility, validation and stability of the drug inclusive), We, as the novel drug sponsor will need to provide to the FDA through the application process, information as to the safety and efficacy of the drug candidate, and, if needed, human food safety studies. These food safety studies are only required for drugs intended for use in production animals, and we currently have no plans to develop drugs for production animals. Additionally, the application will contain a module on CMC, which describes the plan for manufacturing the drug including the API, the final formulation, where it will be made, how it will be made, how the drug will be packaged, how it can be stored, the conditions required for storage and how long it can be stored before expiry. A major part of the CMC section is the analysis we employ to ensure that the manufactured drug is of a high quality, is consistently manufactured under cGMP and is stable. Other significant components to the application we have to complete before receiving drug approval includes a draft label that will list specific information such as dosing information, intended use, warnings, directions for use, and other information as required by the regulations. The package insert that will contain information on studies, warnings, drug interactions, intended use and dosing is considered part of the label in addition to that which is adhering to the container itself. The CVM ensures that the labeling provides all the necessary information to use the drug safely and effectively, and that it clearly discloses the risks associated with the drug.

### **MUMS Designation**

The Minor Use and Minor Species Animal Health Act (“MUMS Act”), became effective in August 2004. The purpose of the MUMS Act was twofold: first, to encourage the development and availability of more animal drugs that are intended to be used in a major species defined as dogs, cats, cattle, horses, chickens, turkeys and pigs to treat diseases which occur infrequently or in limited geographic areas, therefore having an impact on a smaller number of animals on a yearly basis; and second, to encourage the development and availability of animal drugs for use in minor species (defined as all animals other than humans that are not one of the major species). The drug sponsor may seek conditional approval of the drug product provided the Office of Minor Use Minor Species (“OMUMS”) acknowledges that the intended use fits within a small number of animals treated per annum. A drug does not have to be designated to be eligible for conditional approval, however if OMUMS designates a MUMS drug, certain incentives and exclusivities are available to the sponsor. The MUMS designation is modeled on the orphan drug designation for human drug development and has certain financial incentives available to encourage MUMS drug development such as the availability of grants to help with the cost of the MUMS drug development. Also, drug developers of MUMS drugs are eligible to apply for a waiver of the user fees once the MUMS designation has been given by OMUMS. We believe that we qualify for MUMS designation for Canalevia as a minor use in a major species because the estimated total number of dogs in the United States affected by CID is less than 70,000. We also believe that Canalevia will qualify for MUMS designation for EID because, in our estimate, the total number of dogs in the United States affected by EID on an annual basis is less than 70,000. To obtain conditional approval of a MUMS drug, the company must submit CMC and safety data similar to that required for an NADA, as well as data suggesting a reasonable expectation of effectiveness. After the submission and the review of the application, the FDA through the CVM can then grant a conditional approval (CA-1). This approval allows for a commercialization of the product, while the sponsor continues to collect the substantial evidence of effectiveness required for a full NADA approval. The sponsor has up to five years to demonstrate substantial evidence of effectiveness for a previously conditionally approved drug. Ideally, MUMS designation helps move the product forward in development; however, it may not shorten the time to full commercialization. A sponsor that gains approval or conditional approval for a MUMS designated drug receives seven years of marketing exclusivity.

### **Protocol Concurrence**

As we announced in April 2016, we obtained protocol concurrence from the FDA for our pivotal trial of Canalevia that we initiated in December 2015 for acute diarrhea in dogs. We plan to pursue protocol concurrences from the FDA for future pivotal trials in other indications. Under this process, a protocol is submitted to the FDA voluntarily by a drug sponsor. The FDA review of the protocol for a pivotal study makes it more likely that the study will generate information the sponsor needs to demonstrate whether the drug is safe and effective for its intended use. It creates an expectation by the sponsor that the FDA will not later alter its perspectives on these issues unless public or animal health concerns appear that were not recognized at the time of protocol assessment. Even if FDA issues a protocol concurrence, ultimate approval of an NADA by the FDA is not guaranteed because a final determination that the agreed-upon protocol satisfies a specific objective, such as the demonstration of efficacy, or supports an approval decision, will be based on a complete review of all the data submitted to the FDA. Even if we were to obtain protocol concurrence, such concurrence does not guarantee that the results of the study will support a particular finding or approval of the new drug.

### **Marketing Exclusivity**

We are currently planning on seeking MUMS designation for some of our prescription drug products and if we receive such a designation, we will be entitled to a seven-year marketing exclusivity, which means that we will face no competition from another sponsor marketing the same drug in the same dosage form for the same intended use. If we were to lose such designation or not receive such designation but our application as a new animal drug is found to be a new chemical entity that meets the criteria described by the FDA, we would be entitled to a five-year marketing exclusivity. In order to receive this five-year exclusivity, the FDA would have to find in its approval of our application that our NADA contains an API not previously approved in another application, that the application itself is an original application, not a supplemental application, and that our application included the following studies: one or more investigations to demonstrate substantial evidence of effectiveness of the drug for which we are seeking approval; animal safety studies and human food safety studies (where applicable). If the NADA is seeking approval of a drug for which we have received conditional approval, we, upon approval would still be entitled to a five-year marketing exclusivity provided we meet the criteria as set forth above. If, however, our NADA is for a drug for which the FDA has determined that the drug contains an API that has previously been approved, regardless of whether the original approval was for use in humans or not, we may only be entitled to a three-year marketing exclusivity provided that the NADA is an original, not supplemental, application and contains both safety and efficacy studies demonstrating the safety and efficacy of the drug which is the subject of the application. We have received MUMS designation for Canalevia for the indication of chemotherapy-induced diarrhea, or CID, in dogs. Additionally, the FDA has indicated that the use of Canalevia for the treatment of EID in dogs qualifies as a “minor use”, which means that Canalevia is eligible for conditional approval for the indication of EID in dogs. If Canalevia is approved for CID and EID in dogs, we expect to conduct the commercial launch of Canalevia for these indications in the first half of 2018.

### ***European Union***

The European Union, or EU, definition of a veterinary medicinal product closely matches the definition of an animal drug in the United States. In the EU, a company can market a veterinary medicinal product only after a marketing authorization has been issued by an EU member state, (*i.e.*, approval on a country-by-country basis) or by the EU Commission through the European Medicines Agency, or the EMA. Before the EU member state or the EU Commission issues marketing authorization, we must submit a marketing authorization application, known as the dossier. The dossier includes data from studies showing the product’s quality, safety, and efficacy and is similar to an NADA filed with the FDA.

For an animal drug, the Committee for Medicinal Products for Veterinary Use (“CVMP”), is responsible for the scientific evaluation. Experts from all EU member states are on the CVMP. The Rapporteur, or lead reviewer on the dossier, prepares an overview of the committee’s scientific evaluation, called the CVMP Assessment Report.

The CVMP Assessment Report:

- summarizes the data submitted by the company on the product’s quality, safety, and efficacy;
- explains the assessment done by the CVMP to support the committee’s recommendation to the EU Commission to issue a marketing authorization; and
- is the basis for the European Public Assessment Report published on the EMA’s website.

### ***Labeling***

The FDA plays a significant role in regulating the labeling, advertising and promotion of animal drugs. This is also true of regulatory agencies in the EU and other territories. In addition, advertising and promotion of animal health products is controlled by regulations in many countries. These rules generally restrict advertising and promotion to those claims and uses that have been reviewed and approved by the applicable agency. We will conduct a review of advertising and promotional material for compliance with the local and regional requirements in the markets where it eventually may sell its product candidates.

Our non-prescription products will be labeled in accordance with the health guidelines outlined by the National Animal Supplements Council, an industry organization that sets industry standards for certain non-prescription animal products, including but not limited to product labeling.

### ***Other Regulatory Considerations***

We believe regulatory rules relating to human food safety, food additives, or drug residues in food will not apply to the products we currently are developing because our animal prescription drug product candidates are not intended for use in production animals, with the exception of horses, which qualify as food animals in Europe and Canada; and our non-prescription products are not regulated by section 201(g) of the Federal Food, Drug, and Cosmetic Act, which the FDA is authorized to administer.

Our animal prescription drug product candidates currently in development, if approved, may eventually face generic competition in the United States and in the EU after the period of exclusivity has expired. In the United States, a generic animal drug may be approved pursuant to an abbreviated new animal drug application (“ANADA”). With an ANADA, a generic applicant is not subject to the submission of new clinical and safety data but instead must only show that the proposed generic product is a copy of the novel drug product, and bioequivalent to the approved novel product. However, if our product candidates are the first approved by the FDA or the EMA as applicable for use in animals, they will be eligible for a five-year marketing exclusivity in the United States and 10 years in the EU thereby prohibiting generic entry into the market. If the product has MUMS designation it has a seven-year marketing exclusivity.

We do not believe that our animal non-prescription products are currently subject to regulation in the United States. The CVM only regulates those animal supplements that fall within the FDA’s definition of an animal drug, food or feed additive. The Federal Food Drug and Cosmetic Act defines food as “articles used for food or drink for man or other animals and articles used as components of any such article.” Animal foods are not subject to pre-market approval and are designed to provide a nutritive purpose to the animals that receive them. Feed additives are defined as those articles that are added to an animal’s feed or water as illustrated by the guidance documents. Our non-prescription products are not added to food, are not ingredients in food nor are they added to any animal’s drinking water. Therefore, our non-prescription products do not fall within the definition of a food or feed additive. The FDA seeks to

regulate such supplements as food or food additives depending on the intended use of the product. The intended use is demonstrated by how the article is included in a food, or added to the animals' intake (*i.e.*, through its drinking water). If the intended use of the product does not fall within the proscribed use making the product a food, it cannot be regulated as a food. There is no intent to make our non-prescription products a component of an animal food, either directly or indirectly. A feed additive is a product that is added to a feed for any reason including the top dressing of an already prepared feed. Some additives, such as certain forage, are deemed to be Generally Recognized as Safe ("GRAS"), and therefore, not subject to a feed Additive Petition approval prior to use. However, the substances deemed GRAS are generally those that are recognized as providing nutrients as a food does. We do not believe that our non-prescription products fit within this framework either. Finally, a new animal drug refers to drugs intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals. Our non-prescription products are not intended to diagnose, cure, mitigate, treat or prevent disease and therefore, do not fit within the definition of an animal drug. Our non-prescription products are intended to support a healthy gut, support fluid retention, and normalize stool formation in animals suffering from scours. Additionally, because a previously marketed human formulation of the botanical extract in our non-prescription products was considered a dietary supplement subject to the Dietary Supplement Health and Education Act of 1994 (and not regulated as a drug by the FDA), we do not believe that the FDA would regulate the animal formulation used in our non-prescription products in a different manner. We do not believe that our non-prescription products fit the definition of an animal drug, food or food additive and therefore are not regulated by the FDA at this time.

In addition to the foregoing, we may be subject to state, federal and foreign healthcare and/or veterinary medicine laws, including but not limited to anti-kickback laws, as we may from time to time enter consulting and other financial arrangements with veterinarians, who may prescribe or recommend our products. If our financial relationships with veterinarians are found to be in violation of such laws that apply to us, we may be subject to penalties.

### **Legal Proceedings**

From time to time, we may become involved in litigation relating to claims arising from the ordinary course of business. Other than as set forth below, 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.

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 on behalf of pre-Merger shareholders of Jaguar who held shares on June 30, 2017 and were entitled to vote at the 2017 Special Shareholders Meeting, against us and certain individuals who were directors as of the date of the vote, in a matter captioned Tony Plant v. Jaguar Animal Health, Inc., et al. The plaintiff attempts to assert 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 plaintiff alleges that material omissions and misstatements were contained in the Joint Proxy Statement/Prospectus on Form S-4 (File No. 333-217364) declared effective by the SEC on July 6, 2017 related to the solicitation of votes from shareholders to approve the Merger and certain transaction related thereto. We believe the claims are without merit. While no monetary damages have been quantified, we intend to vigorously contest this complaint, and we've now filed a motion to have the complaint dismissed.

The plaintiff has not yet served the complaint and summons on any of the defendants. If plaintiff elected to proceed with the litigation and made service on the defendants, the defendants would move to dismiss the complaint for failure to state a claim on which relief may be granted.

## **Corporate Information**

We were incorporated in the State of Delaware on June 6, 2013. Our principal executive offices are located at 201 Mission Street, Suite 2375, San Francisco, CA 94015 and our telephone number is (415) 371-8300. Our website address is [www.jaguar.health](http://www.jaguar.health). The information contained on, or that can be accessed through, our website is not part of this prospectus. Our voting common stock is listed on the NASDAQ Capital Market and trades under the symbol “JAGX.” On July 31, 2017, we completed the acquisition of Napo (the “Merger”) pursuant to the Agreement and Plan of Merger, dated March 31, 2017, by and among the Company, Napo, Napo Acquisition Corporation, and Napo’s representative (the “Merger Agreement”).

Jaguar Health, our logo, Napo Pharmaceuticals, Mytesi, Canalevia, Equilevia and Neonom are our trademarks that are used in this prospectus. This prospectus also includes trademarks, tradenames and service marks that are the property of other organizations. Solely for convenience, trademarks and tradenames referred to in this prospectus appear without the ©, ® or ™ symbols, but those references are not intended to indicate that we will not assert, to the fullest extent under applicable law, our rights or that the applicable owner will not assert its rights, to these trademarks and tradenames.

## **Employees**

As of December 31, 2017, we had 36 employees. Of our employees, six hold D.V.M. or Ph.D. degrees and fifteen of our employees are engaged in research and development activities. None of our employees are represented by labor unions or covered by collective bargaining agreements.

## **Description of Properties**

Our corporate headquarters are located in San Francisco, California, where we sublease 6,008 rentable square feet of office space from SeeChange Health Management Company, Inc. Our sublease agreement expires on August 31, 2018. We believe that our existing facilities are adequate for our near-term needs. We believe that suitable additional or alternative space would be available if required in the future on commercially reasonable terms if we are not able to convert our current sublease to a lease by August 31, 2018 on commercially reasonable terms.



## ITEM 1A. RISK FACTORS

The business, financial condition and operating results of the Company may 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 such factors could directly or indirectly cause the Company's actual results of operations and financial condition to vary materially from past or anticipated future results of operations and financial condition. Any of these factors, in whole or in part, could materially and adversely affect the Company's business, financial condition, results of operations and stock price. The following information should be read in conjunction with Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and related notes in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report.

### Risks Related to Our Business

*We have a limited operating history, expect to incur further losses as we grow and may be unable to achieve or sustain profitability. Our independent registered public accounting firm has expressed substantial doubt about our ability to continue as a going concern.*

Since formation in June 2013, our operations have been primarily limited to the research and development of our animal prescription drug product candidate, Canalevia, to treat various forms of diarrhea in dogs, our non-prescription product, Neonorm Calf, to help dairies and calf farms proactively retain fluid in calves, the ongoing commercialization of Neonorm Foal, our antidiarrheal for newborn horses, and Equilevia, our planned product for total gut health in high-performance equine athletes. Since the consummation of the Merger on July 31, 2017, our operations have also been heavily focused on research, development and the ongoing commercialization of our lead prescription drug product candidate, Mytesi, which is approved by the U.S. FDA for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy. As a result, we have limited meaningful historical operations upon which to evaluate our business and prospects and have not yet demonstrated an ability to broadly commercialize any of our animal health products, obtain any required marketing approval for any of our animal prescription drug product candidates or successfully overcome the risks and uncertainties frequently encountered by companies in emerging fields such as the animal health industry or the gastrointestinal health industry in general. We also have not generated any material revenue to date, and expect to continue to incur significant research and development and other expenses. Our net loss and comprehensive loss for the year ended December 31, 2017 was \$22.0 million. As of December 31, 2017, we had total stockholders' equity of \$17.3 million. We expect to continue to incur losses for the foreseeable future, which will increase significantly from historical levels as we expand our product development activities, seek necessary approvals for our human and veterinary drug product candidates, conduct species-specific formulation studies for our non-prescription products and begin commercialization activities. Even if we succeed in developing and broadly commercializing one or more of our products or product candidates, we expect to continue to incur losses for the foreseeable future, and we may never become profitable. If we fail to achieve or maintain profitability, then we may be unable to continue our operations at planned levels and be forced to reduce or cease operations.

As more fully discussed in Note 1 to our financial statements, we believe there is substantial doubt about our ability to continue as a going concern as we do not currently have sufficient cash resources to fund our operations through March 31, 2019, or one year from the filing date of our Form 10-K. Our financial statements do not include any adjustments that may result from the outcome of this uncertainty. If we are unable to continue as a viable entity, our stockholders may lose their entire investment.

*We currently generate limited revenue from the sale of products and may never become profitable.*

We are a natural-products pharmaceuticals company focused on the development and commercialization of novel, sustainably derived gastrointestinal products for both human prescription use

and animals on a global basis. Napo, our wholly-owned subsidiary, began the commercial pre-launch activities of our first FDA approved product, Mytesi, in February 2017. Accordingly, we have only generated limited revenue from product sales. There is no guarantee that our ongoing commercialization efforts for Neonorm Calf for preweaned dairy calves in the United States and Neonorm Foal for newborn horses in the United States will be successful or that we will be able to generate a consistent revenue stream from the sale of any of these products in the future. Further, in order to commercialize our other prescription drug product candidates, we must receive regulatory approval from the FDA in the United States and other regulatory agencies in various jurisdictions. Other than Mytesi, we have not yet received any regulatory approvals for our prescription drug product candidates. In addition, certain of our non-prescription products, such as Neonorm Calf, may be subject to regulatory approval outside the United States prior to commercialization in other countries. Accordingly, until and unless we receive any necessary regulatory approvals, we cannot market or sell our products in many regions. Moreover, even if we receive the necessary approvals, we may not be successful in generating revenue from sales of our products as we do not have any meaningful experience marketing or distributing our products. Accordingly, we may never generate any material revenue from our operations.

***We expect to incur significant additional costs as we continue commercialization efforts for current prescription drug candidates, Neonorm, or other product candidates, and undertake the clinical trials necessary to obtain any necessary regulatory approvals, which will increase our losses.***

We commenced sales of Neonorm for preweaned dairy calves in the United States under the brand name Neonorm Calf at the end of 2014, and Napo commenced sales of Mytesi for adults with HIV/AIDS on antiretroviral therapy in February 2017. We will need to continue to invest in developing our internal and third-party sales and distribution network and outreach efforts to key opinion leaders in the gastrointestinal health industry, including physicians and veterinarians, as applicable. We will also need to conduct clinical trials for Canalevia in order to obtain necessary initial regulatory approvals and to subsequently broaden Mytesi to additional indications and Canalevia to additional indications and additional species. We will also need to conduct species-specific testing with Neonorm to expand to additional animal populations.

We are actively identifying additional products for development and commercialization, and will continue to expend substantial resources for the foreseeable future to develop Mytesi, Equilevia, Canalevia and Neonorm and develop products from Napo's library of over 2,300 medicinal plants. These expenditures will include costs associated with:

- identifying additional potential prescription drug product candidates and non-prescription products;
- formulation studies;
- conducting pilot, pivotal and toxicology studies;
- completing other research and development activities;
- payments to technology licensors;
- maintaining our intellectual property;
- obtaining necessary regulatory approvals;
- establishing commercial supply capabilities; and
- sales, marketing and distribution of our commercialized products.

We also may incur unanticipated costs in connection with developing and commercializing our products. Because the outcome of our development activities and commercialization efforts is inherently

uncertain, the actual amounts necessary to successfully complete the development and commercialization of our current or future products and product candidates may be greater than we anticipate.

Because we anticipate incurring significant costs for the foreseeable future, if we are not successful in broadly commercializing any of our current or future products or product candidates or raising additional funding to pursue our research and development efforts, we may never realize the benefit of our development efforts and our business may be harmed.

***We will need to raise substantial additional capital in the future in the event that we conduct clinical trials for new indications and we may be unable to raise such funds when needed and on acceptable terms, which would force us to delay, limit, reduce or terminate one or more of our product development programs.***

We are forecasting continued losses and negative cash flows as we continue to fund our operating and marketing activities and research and development programs, and we will not have sufficient cash on hand to fund our operating plan through March 31, 2019 and to complete the development of all the current products in our pipeline, or any additional products we may identify. We will need to seek additional funds sooner than planned through public or private equity or debt financings or other sources such as strategic collaborations. Any such financings or collaborations may result in dilution to our stockholders, the imposition of debt covenants and repayment obligations or other restrictions that may harm our business or the value of our common stock. We may also seek from time to time to raise additional capital based upon favorable market conditions or strategic considerations such as potential acquisitions or potential license arrangements.

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

- the scope, progress, results and costs of researching and developing our current and future prescription drug product candidates and non-prescription products;
- the timing of, and the costs involved in, obtaining any regulatory approvals for our current and any future products;
- the number and characteristics of the products we pursue;
- the cost of manufacturing our current and future products and any products we successfully commercialize;
- the cost of commercialization activities for Mytesi, Neonorm, Equilevia and Canalevia, if approved, including sales, marketing and distribution costs;
- the expenses needed to attract and retain skilled personnel;
- the costs associated with being a public company;
- our ability to establish and maintain strategic collaborations, distribution or other arrangements and the financial terms of such agreements; and
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing possible patent claims, including litigation costs and the outcome of any such litigation.

Additional funds may not be available when we need them on terms that are acceptable to us, or at all. If adequate funds are not available to us on a timely basis, we may be required to delay, limit, reduce or terminate one or more of our product development programs or future commercialization efforts.

*We are substantially dependent on the success of our current lead prescription drug product candidates, Mytesi and Canalevia, and our non-prescription products, Equilevia and Neonorm, and cannot be certain that necessary approvals will be received for planned Mytesi follow-on indications or Canalevia or that these product candidates will be successfully commercialized, either by us or any of our partners.*

Other than Mytesi, we currently do not have regulatory approval for any of our prescription drug product candidates, including Canalevia. Our current efforts are primarily focused on the ongoing commercialization of Mytesi, Neonorm Calf and Neonorm Foal in the United States, and development efforts related to Mytesi, Equilevia, and Canalevia, and on the development of formulations of Neonorm for additional species. With regard to Mytesi, we are focused on the commercial launch of the product in the United States as well as on development efforts related to a follow-on indication for Mytesi in CID, an important supportive care indication for patients undergoing primary or adjuvant chemotherapy for cancer treatment. Mytesi is also in development for rare disease indications for infants and children with congenital diarrheal disorders and short bowel syndrome; for IBS (Mytesi has demonstrated benefit to IBS-D patients in published Phase 2 studies); for supportive care for IBD; and as a second-generation anti-secretory agent for use in cholera patients. Mytesi has received orphan-drug designation for SBS. Accordingly, our near term prospects, including our ability to generate material product revenue, obtain any new financing if needed to fund our business and operations or enter into potential strategic transactions, will depend heavily on the success of Mytesi, Equilevia and Neonorm, as well as on Canalevia, if Canalevia is approved.

Substantial time and capital resources have been previously devoted by third parties in the development of crofelemer, the active pharmaceutical ingredient, or API, in Mytesi and Canalevia, and the development of the botanical extract used in Equilevia and Neonorm. Both crofelemer and the botanical extract used in Equilevia and Neonorm were originally developed at Shaman Pharmaceuticals, Inc. (“Shaman”), by certain members of our management team, including Lisa A. Conte, our chief executive officer and president, and Steven R. King, Ph.D., our executive vice president of sustainable supply, ethnobotanical research and intellectual property and secretary. Shaman spent significant development resources before voluntarily filing for bankruptcy in 2001 pursuant to Chapter 11 of the U.S. Bankruptcy Code. The rights to crofelemer and the botanical extract used in Equilevia and Neonorm, as well as other intellectual property rights, were subsequently acquired by Napo from Shaman in 2001 pursuant to a court approved sale of assets. Ms. Conte founded Napo in 2001 and was the current interim chief executive officer of Napo and a member of Napo’s board of directors prior to the Merger. While at Napo, certain members of our management team, including Ms. Conte and Dr. King, continued the development of crofelemer. In 2005, Napo entered into license agreements with Glenmark and Luye Pharma Group Limited for rights to various human indications of crofelemer in certain territories as defined in the respective license agreements with these licensees. Subsequently, after expending significant sums developing crofelemer, including trial design and on-going patient enrollment in the final pivotal Phase 3 trial for crofelemer for non-infectious diarrhea in adults with HIV/AIDS on antiretroviral therapy, in late 2008, Napo entered into a collaboration agreement with Salix Pharmaceuticals, Inc., or Salix, for development and commercialization rights to certain indications worldwide and certain rights in North America, Europe, and Japan, to crofelemer for human use. In January 2014, Jaguar entered into the Napo License Agreement pursuant to which Jaguar acquired an exclusive worldwide license to Napo’s intellectual property rights and technology, including crofelemer and the botanical extract used in Equilevia and Neonorm, for all veterinary treatment uses and indications for all species of animals. In February 2014, most of the executive officers of Napo, and substantially all Napo’s employees, became Jaguar’s employees. Following the merger of Jaguar and Napo in July 2017, Napo became Jaguar’s wholly-owned subsidiary. If we are not successful in the development and commercialization of Mytesi, Neonorm, Equilevia and Canalevia, our business and our prospects will be harmed.

The successful development and commercialization of Mytesi, Equilevia and Neonorm, and, if approved, Canalevia will depend on a number of factors, including the following:

- the successful completion of the pivotal trials and toxicology studies for Canalevia, which may take significantly longer than we currently anticipate and will depend, in part, upon the satisfactory performance of third-party contractors;
- our ability to demonstrate to the satisfaction of the FDA and any other regulatory bodies, the safety and efficacy of Canalevia;
- our ability and that of our contract manufacturers to manufacture supplies of Mytesi, Neonorm, Equilevia and Canalevia and to develop, validate and maintain viable commercial manufacturing processes that are compliant with current good manufacturing practices, or cGMP, if required;
- the success of Neonorm field studies and acceptance of their results by dairy producers;
- our ability to successfully launch Mytesi and Neonorm, whether alone or in collaboration with others;
- our ability to successfully launch Canalevia, assuming approval is obtained, and Equilevia, whether alone or in collaboration with others;
- the availability, perceived advantages, relative cost, relative safety and relative efficacy of our prescription drug product candidates and non-prescription products compared to alternative and competing treatments;
- the acceptance of our prescription drug product candidates and non-prescription products as safe and effective by physicians, veterinarians, patients, animal owners and the human and animal health community, as applicable;
- our ability to achieve and maintain compliance with all regulatory requirements applicable to our business; and
- our ability to obtain and enforce our intellectual property rights and obtain marketing exclusivity for our prescription drug product candidates and non-prescription products, and avoid or prevail in any third-party patent interference, patent infringement claims or administrative patent proceedings initiated by third parties or the U.S. Patent and Trademark Office (“USPTO”).

Many of these factors are beyond our control. Accordingly, we may not be successful in developing or commercializing Mytesi, Neonorm, Equilevia, Canalevia or any of our other potential products. If we are unsuccessful or are significantly delayed in developing and commercializing Mytesi, Neonorm, Equilevia, Canalevia or any of our other potential products, our business and prospects will be harmed and you may lose all or a portion of the value of your investment in our common stock.

***If we are not successful in identifying, licensing, developing and commercializing additional product candidates and products, our ability to expand our business and achieve our strategic objectives could be impaired.***

Although a substantial amount of our efforts is focused on the commercial performance of Mytesi, Equilevia and Neonorm and the continued development and potential approval of Canalevia, a key element of our strategy is to identify, develop and commercialize a portfolio of products to serve the gastrointestinal health market. Most of our potential products are based on our knowledge of medicinal plants. Our current focus is primarily on product candidates whose active pharmaceutical ingredient or botanical extract has been successfully commercialized or demonstrated to be safe and effective in human or animal trials. In some instances, we may be unable to further develop these potential products because of perceived regulatory and commercial risks. Even if we successfully identify potential products, we may

still fail to yield products for development and commercialization for many reasons, including the following:

- competitors may develop alternatives that render our potential products obsolete;
- an outside party may develop a cure for any disease state that is the target indication for any of our planned or approved drug products;
- potential products we seek to develop may be covered by third-party patents or other exclusive rights;
- a potential product may on further study be shown to have harmful side effects or other characteristics that indicate it is unlikely to be effective or otherwise does not meet applicable regulatory criteria;
- a potential product may not be capable of being produced in commercial quantities at an acceptable cost, or at all; and
- a potential product may not be accepted as safe and effective by physicians, veterinarians, patients, animal owners, key opinion leaders and other decision-makers in the gastrointestinal health market, as applicable.

While we are developing specific formulations, including flavors, methods of administration, new patents and other strategies with respect to our current potential products, we may be unable to prevent competitors from developing substantially similar products and bringing those products to market earlier than we can. If such competing products achieve regulatory approval and commercialization prior to our potential products, our competitive position may be impaired. If we fail to develop and successfully commercialize other potential products, our business and future prospects may be harmed and we will be more vulnerable to any problems that we encounter in developing and commercializing our current potential products.

***Mytesi faces significant competition from other pharmaceutical companies, both for its currently approved indication and for planned follow-on indications, and our operating results will suffer if we fail to compete effectively.***

The development and commercialization of products for human gastrointestinal health is highly competitive and our success depends on our ability to compete effectively with other products in the market. During the ongoing commercialization of Mytesi for its currently approved indication, and during the future commercialization of Mytesi for any planned follow-on indications, if such follow-on indications receive regulatory approval, we expect to compete with major pharmaceutical and biotechnology companies that operate in the gastrointestinal space, such as Sucampo AG, Takeda Pharmaceuticals, Allergan, Inc., Ironwood Pharmaceuticals, Inc., Synergy Pharmaceuticals Inc., Heron Therapeutics, Inc., Sebelo Pharmaceuticals, Inc. and Salix Pharmaceuticals.

Many of our competitors and potential competitors in the human gastrointestinal space have substantially more financial, technical and human resources than we do. Many also have more experience in the development, manufacture, regulation and worldwide commercialization of human gastrointestinal health products.

For these reasons, we cannot be certain that we and Mytesi can compete effectively.

***Our animal health products face significant competition from other pharmaceutical companies and our operating results will suffer if we fail to compete effectively.***

The development and commercialization of animal health products is highly competitive and our success depends on our ability to compete effectively with other products in the market. We expect to



compete with the animal health divisions of major pharmaceutical and biotechnology companies such as Merck Animal Health, Merial Inc., Elanco Animal Health, Bayer Animal Health GmbH, Novartis Animal Health Inc. and Boehringer Ingelheim Animal Health, as well as specialty animal health medicines companies such as Zoetis Inc., Phibro Animal Health Corporation and, in Europe, Virbac S.A., Vétquinol S.A., Ceva Animal Health S.A. and Dechra Pharmaceuticals PLC. We are also aware of several early-stage companies that are developing products for use in the animal health market, including Aratana Therapeutics, Inc., Kindred Biosciences, Inc., Parnell Pharmaceuticals Holdings Ltd, Nexvet Biopharma and ImmuCell Corporation. We also compete with academic institutions, governmental agencies and private organizations that are conducting research in the field of animal health products.

Although there are currently no FDA-approved anti-secretory products to treat chemotherapy-induced diarrhea (CID) in dogs, we anticipate that Canalevia, if approved, may face competition from various products, including products approved for use in humans that are used extra-label in animals. Extra-label use is the use of an approved drug outside of its cleared or approved indications in the animal context. All of our potential products could also face competition from new products in development. These and other potential competing products may benefit from greater brand recognition and brand loyalty than our products and product candidates may achieve.

Many of our competitors and potential competitors have substantially more financial, technical and human resources than we do. Many also have more experience in the development, manufacture, regulation and worldwide commercialization of animal health products, including animal prescription drugs and non-prescription products.

For these reasons, we cannot be certain that we and our products can compete effectively.

***We may be unable to obtain, or obtain on a timely basis, regulatory approval for our existing or future human or animal prescription drug product candidates under applicable regulatory requirements, which would harm our operating results.***

The research, testing, manufacturing, labeling, approval, sale, marketing and distribution of human and animal health products are subject to extensive regulation. We are typically not permitted to market our prescription drug product candidates in the United States until we receive approval of the product from the FDA through the filing of an NDA or NADA, as applicable. To gain approval to market a prescription drug, we must provide the FDA with safety and efficacy data from pivotal trials that adequately demonstrate that our prescription drug product candidates are safe and effective for the intended indications. Likewise, to gain approval to market an animal prescription drug for a particular species, we must provide the FDA with safety and efficacy data from pivotal trials that adequately demonstrate that our prescription drug product candidates are safe and effective in the target species (e.g. dogs, cats or horses) for the intended indications. In addition, we must provide manufacturing data evidencing that we can produce our product candidates in accordance with cGMP. For the FDA, we must also provide data from toxicology studies, also called target animal safety studies, and in some cases environmental impact data. In addition to our internal activities, we will partially rely on contract research organizations (“CROs”), and other third parties to conduct our toxicology studies and for certain other product development activities. The results of toxicology studies, other initial development activities, and/or any previous studies in humans or animals conducted by us or third parties may not be predictive of future results of pivotal trials or other future studies, and failure can occur at any time during the conduct of pivotal trials and other development activities by us or our CROs. Our pivotal trials may fail to show the desired safety or efficacy of our prescription drug product candidates despite promising initial data or the results in previous human or animal studies conducted by others. Success of a prescription drug product candidate in prior animal studies, or in the treatment of humans, does not ensure success in subsequent studies. Clinical trials in humans and pivotal trials in animals sometimes fail to show a benefit even for drugs that are effective because of statistical limitations in the design of the trials or other statistical

anomalies. Therefore, even if our studies and other development activities are completed as planned, the results may not be sufficient to obtain a required regulatory approval for a product candidate.

Regulatory authorities can delay, limit or deny approval of any of our prescription drug product candidates for many reasons, including:

- if they disagree with our interpretation of data from our pivotal studies or other development efforts;
- if we are unable to demonstrate to their satisfaction that our product candidate is safe and effective for the target indication and, if applicable, in the target species;
- if they require additional studies or change their approval policies or regulations;
- if they do not approve of the formulation, labeling or the specifications of our current and future product candidates; and
- if they fail to approve the manufacturing processes of our third-party contract manufacturers.

Further, even if we receive a required approval, such approval may be for a more limited indication than we originally requested, and the regulatory authority may not approve the labeling that we believe is necessary or desirable for successful commercialization.

Any delay or failure in obtaining any necessary regulatory approval for the intended indications of our human or animal product candidates would delay or prevent commercialization of such product candidates and would harm our business and our operating results.

***The results of our earlier studies of Mytesi and Neonorm may not be predictive of the results in any future clinical trials and species-specific formulation studies, respectively, and we may not be successful in our efforts to develop or commercialize line extensions of Mytesi and Neonorm.***

Our human and animal product pipeline includes a number of potential indications of Mytesi, our lead prescription product, and a number of species-specific formulations of Neonorm, our commercially available non-prescription product. The results of our studies and other development activities and of any previous studies in humans or animals conducted by us or third parties may not be predictive of future results of these clinical studies and formulation studies, respectively. Failure can occur at any time during the conduct of these trials and other development activities. Even if our formulation/clinical studies and other development activities are completed as planned, the results may not be sufficient to pursue a particular line extension for Mytesi or Neonorm, respectively. Further, even if we obtain promising results from our clinical trials or species-specific formulation studies, as applicable, we may not successfully commercialize any line extension. Because line extensions are developed for a particular market, we may not be able to leverage our experience from the commercial launch of Mytesi, Neonorm Calf and Neonorm Foal in new markets. If we are not successful in developing and successfully commercializing these line extension products, we may not be able to grow our revenue and our business may be harmed.

***Development of prescription drug products is inherently expensive, time-consuming and uncertain, and any delay or discontinuance of our current or future pivotal trials would harm our business and prospects.***

Development of prescription drug products for human and animal gastrointestinal health remains an inherently lengthy, expensive and uncertain process, and our development activities may not be successful. We do not know whether our current or planned pivotal trials for any of our product candidates will begin or conclude on time, and they may be delayed or discontinued for a variety of reasons, including if we are unable to:

- address any safety concerns that arise during the course of the studies;
- complete the studies due to deviations from the study protocols or the occurrence of adverse events;

- add new study sites;
- address any conflicts with new or existing laws or regulations; or
- reach agreement on acceptable terms with study sites, which can be subject to extensive negotiation and may vary significantly among different sites.

Further, we may not be successful in developing new indications for Mytesi and/or species-specific formulations for Neonorm, and Neonorm may be subject to the same regulatory regime as prescription drug products in jurisdictions outside the United States. Any delays in completing our development efforts will increase our costs, delay our development efforts and approval process and jeopardize our ability to commence product sales and generate revenue. Any of these occurrences may harm our business, financial condition and prospects. In addition, factors that may cause a delay in the commencement or completion of our development efforts may also ultimately lead to the denial of regulatory approval of our product candidates which, as described above, would harm our business and prospects.

***We will partially rely on third parties to conduct our development activities. If these third parties do not successfully carry out their contractual duties, we may be unable to obtain regulatory approvals or commercialize our current or future human or animal product candidates on a timely basis, or at all.***

We will partially rely upon CROs to conduct our toxicology studies and for other development activities. We intend to rely on CROs to conduct one or more of our planned pivotal trials. These CROs are not our employees, and except for contractual duties and obligations, we have limited ability to control the amount or timing of resources that they devote to our programs or manage the risks associated with their activities on our behalf. We are responsible for ensuring that each of our studies is conducted in accordance with the development plans and trial protocols presented to regulatory authorities. Any deviations by our CROs may adversely affect our ability to obtain regulatory approvals, subject us to penalties or harm our credibility with regulators. The FDA and foreign regulatory authorities also require us and our CROs to comply with regulations and standards, commonly referred to as good clinical practices (“GCPs”), or good laboratory practices (“GLPs”), for conducting, monitoring, recording and reporting the results of our studies to ensure that the data and results are scientifically valid and accurate.

Agreements with CROs generally allow the CROs to terminate in certain circumstances with little or no advance notice. These agreements generally will require our CROs to reasonably cooperate with us at our expense for an orderly winding down of the CROs’ services under the agreements. If the CROs conducting our studies do not comply with their contractual duties or obligations, or if they experience work stoppages, do not meet expected deadlines, or if the quality or accuracy of the data they obtain is compromised, we may need to secure new arrangements with alternative CROs, which could be difficult and costly. In such event, our studies also may need to be extended, delayed or terminated as a result, or may need to be repeated. If any of the foregoing were to occur, regulatory approval, if required, and commercialization of our product candidates may be delayed and we may be required to expend substantial additional resources.

***Even if we obtain regulatory approval for planned follow-on indications of Mytesi, or for Canalevia or our other product candidates, they may never achieve market acceptance. Further, even if we are successful in the ongoing commercialization of Mytesi and Neonorm, we may not achieve commercial success.***

If we obtain necessary regulatory approvals for planned follow-on indications of Mytesi or for Canalevia or our other product candidates, such products may still not achieve market acceptance and may not be commercially successful. Market acceptance of Mytesi, Canalevia, Neonorm and any of our other products depends on a number of factors, including:

- the safety of our products as demonstrated in our target animal studies;
- the indications for which our products are approved or marketed;

- the potential and perceived advantages over alternative treatments or products, including generic medicines and competing products currently prescribed by physicians or veterinarians, as applicable, and, in the case of animal products, products approved for use in humans that are used extra-label in animals;
- the acceptance by physicians, veterinarians, companion animal owners and production animal owners, including in the dairy industry, as applicable, of our products as safe and effective;
- the cost in relation to alternative treatments and willingness on the part of physicians, veterinarians, patients and animal owners, as applicable, to pay for our products;
- the prevalence and severity of any adverse side effects of our products;
- the relative convenience and ease of administration of our products; and
- the effectiveness of our sales, marketing and distribution efforts.

Any failure by Mytesi, Canalevia, Equilevia, Neonorm or any of our other products to achieve market acceptance or commercial success would harm our financial condition and results of operations.

***The dairy industry is subject to conditions beyond our control and the occurrence of any such conditions may harm our business and impact the demand for our products.***

The demand for production animal health products, such as Neonorm Calf, is heavily dependent on factors that affect the dairy market that are beyond our control, including the following, any of which may harm our business:

- cost containment measures within the dairy industry, in response to international, national and local general economic conditions, which may affect the market adoption of our products;
- state and federal government policies, including government-funded programs or subsidies whose discontinuance or modification could erode the demand for our products;
- a decline in demand for dairy products due to changes in consumer diets away from dairy products, which could adversely affect the demand for production animal health products;
- adverse weather conditions and natural disasters, such as floods, droughts, and pestilence, which can lower dairy yields; and
- disease or other conditions beyond our control.

***Human and animal gastrointestinal health products are subject to unanticipated post-approval safety or efficacy concerns, which may harm our business and reputation.***

The success of our commercialization efforts will depend upon the perceived safety and effectiveness of human and animal gastrointestinal health products, in general, and of our products, in particular. Unanticipated safety or efficacy concerns can subsequently arise with respect to approved prescription drug products, such as Mytesi, or non-prescription products, such as Neonorm, which may result in product recalls or withdrawals or suspension of sales, as well as product liability and other claims. Any safety or efficacy concerns, or recalls, withdrawals or suspensions of sales of our products could harm our reputation and business, regardless of whether such concerns or actions are justified.

***Future federal and state legislation may result in increased exposure to product liability claims, which could result in substantial losses.***

Under current federal and state laws, companion and production animals are generally considered to be the personal property of their owners and, as such, the owners' recovery for product liability claims involving their companion and production animals may be limited to the replacement value of the animal.

Companion animal owners and their advocates, however, have filed lawsuits from time to time seeking non-economic damages such as pain and suffering and emotional distress for harm to their companion animals based on theories applicable to personal injuries to humans. If new legislation is passed to allow recovery for such non-economic damages, or if precedents are set allowing for such recovery, we could be exposed to increased product liability claims that could result in substantial losses to us if successful. In addition, some horses can be worth millions of dollars or more, and product liability for horses may be very high. While we currently have product liability insurance, such insurance may not be sufficient to cover any future product liability claims against us.

***If we fail to retain current members of our senior management, or to identify, attract, integrate and retain additional key personnel, our business will be harmed.***

Our success depends on our continued ability to attract, retain and motivate highly qualified management and scientific personnel. We are highly dependent upon our senior management, particularly Lisa A. Conte, our president and Chief Executive Officer. The loss of services of any of our key personnel would cause a disruption in our ability to develop our current or future product pipeline and commercialize our products and product candidates. Although we have offer letters with these key members of senior management, such agreements do not prohibit them from resigning at any time. For example, the resignation of our former Chief Financial Officer, Charles O. Thompson, in September 2014, and the mutually agreed departure of our former Chief Veterinary Officer, Serge Martinod, D.V.M., Ph.D. in February 2015, caused us to incur additional expenses and expend resources to ensure a smooth transition with their respective successors, which diverted management attention away from executing our operational plan during this period. We currently do not maintain “key man” life insurance on any of our senior management team. The loss of Ms. Conte or other members of our current senior management could adversely affect the timing or outcomes of our current and planned studies, as well as the prospects for commercializing our products.

In addition, competition for qualified personnel in the human and animal gastrointestinal health fields is intense, because there are a limited number of individuals who are trained or experienced in the field. Further, our headquarters are located in San Francisco, California, and the dairy and agriculture industries are not prevalent in urban areas such as San Francisco. We will need to hire additional personnel as we expand our product development and commercialization activities. Even if we are successful in hiring qualified individuals, as we are a growing organization, we do not have a track record for integrating and retaining individuals. If we are not successful in identifying, attracting, integrating or retaining qualified personnel on acceptable terms, or at all, our business will be harmed.

***We are dependent on two suppliers for the raw material used to produce the active pharmaceutical ingredient in Mytesi and Canalevia and the botanical extract in Neonorm and Equilevia. The termination of either of these contracts would result in a disruption to product development and our business will be harmed.***

The raw material used to manufacture Mytesi, Canalevia, Neonorm and Equilevia is crude plant latex (“CPL”), derived from the *Croton lechleri* tree, which is found in countries in South America, principally Peru. The ability of our contract suppliers to harvest CPL is governed by the terms of their respective agreements with local government authorities. Although CPL is available from multiple suppliers, we only have contracts with two suppliers to obtain CPL and arrange the shipment to our contract manufacturer. Accordingly, if our contract suppliers do not or are unable to comply with the terms of our respective agreements, and we are not able to negotiate new agreements with alternate suppliers on terms that we deem commercially reasonable, it may harm our business and prospects. The countries from which we obtain CPL could change their laws and regulations regarding the export of the natural products or impose or increase taxes or duties payable by exporters of such products. Restrictions could be imposed on the harvesting of the natural products or additional requirements could be implemented for the replanting and regeneration of the raw material. Such events could have a significant impact on our cost and ability to produce Mytesi, Canalevia, Neonorm, Equilevia and anticipated line extensions.



***We are dependent upon third-party contract manufacturers, both for the supply of the active pharmaceutical ingredient in Mytesi and Canalevia and the botanical extract in Neonorm and Equilevia, as well as for the supply of finished products for commercialization.***

We have contracted with third parties for the formulation of API and botanical extract into finished products for our studies. We have also entered into memorandums of understanding with Indena S.p.A. for the manufacture of CPL received from our suppliers into the API in Canalevia to support our regulatory filings, as well as the botanical extract in Neonorm and agreed to negotiate a commercial supply agreement. Indena S.p.A. has never manufactured either such ingredient to commercial scale. As a second supplier situation, we have entered into a four-year manufacturing and supply agreement with Glenmark for the supply of the API in Canalevia. Glenmark is the current manufacturer of crofelemer, the active API in Canalevia, for Mytesi, and the manufacturer on file for the NADA to which we have a right of reference. As announced in October of 2015, we have entered an agreement with Patheon, a provider of drug development and delivery solutions, under which Patheon provides enteric-coated tablets to us for use in animals. We also may contract with additional third parties for the formulation and supply of finished products, which we will use in our planned studies and commercialization efforts.

We will be dependent upon our contract manufacturers for the supply of the API in Mytesi and Canalevia. We currently have sufficient quantities of the botanical extract used in Neonorm and Equilevia to support initial commercialization of Neonorm and Equilevia. However, we will require additional quantities of the botanical extract if our ongoing commercial launch of Neonorm or our commercial launch of and Equilevia is successful. If we are not successful in reaching agreements with third parties on terms that we consider commercially reasonable for manufacturing and formulation, or if our contract manufacturer and formulator are not able to produce sufficient quantities or quality of API, botanical extract or finished product under their agreements, it could delay our plans and harm our business prospects.

The facilities used by our third-party contractors are subject to inspections, including by the FDA, and other regulators, as applicable. We also depend on our third-party contractors to comply with cGMP. If our third-party contractors do not maintain compliance with these strict regulatory requirements, we and they will not be able to secure or maintain regulatory approval for their facilities, which would have an adverse effect on our operations. In addition, in some cases, we also are dependent on our third-party contractors to produce supplies in conformity to our specifications and maintain quality control and quality assurance practices and not to employ disqualified personnel. If the FDA or a comparable foreign regulatory authority does not approve the facilities of our third-party contractors if so required, or if it withdraws any such approval in the future, we may need to find alternative manufacturing or formulation facilities, which could result in delays in our ability to develop or commercialize our human and animal products, if at all. We and our third-party contractors also may be subject to penalties and sanctions from the FDA and other regulatory authorities for any violations of applicable regulatory requirements. The USDA and the European Medicines Agency (the “EMA”), employ different regulatory standards than the FDA, so we may require multiple manufacturing processes and facilities for the same human or animal product candidate or any approved product. We are also exposed to risk if our third-party contractors do not comply with the negotiated terms of our agreements, or if they suffer damage or destruction to their facilities or equipment.

***If we are unable to establish sales capabilities on our own or through third parties, we may not be able to market and sell our current or future human or animal products and product candidates, if approved, and generate product or other revenue.***

We currently have limited sales, marketing or distribution capabilities, and prior to Napo’s launch of Mytesi for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy, and our launch of Neonorm for preweaned dairy calves, we had no experience in the sale, marketing and distribution of human or animal health products. There are significant risks involved in



building and managing a sales organization, including our potential inability to attract, hire, retain and motivate qualified individuals, generate sufficient sales leads, provide adequate training to sales and marketing personnel and effectively oversee a geographically dispersed sales and marketing team. Any failure or delay in the development of our internal sales, marketing and distribution capabilities and entry into adequate arrangements with distributors or other partners would adversely impact the commercialization of Mytesi, Neonorm, Equilevia and, if approved, Canalevia. If we are not successful in commercializing Mytesi, Neonorm, Equilevia, Canalevia or any of our other line extension products, either on our own or through one or more distributors, or in generating upfront licensing or other fees, we may never generate significant revenue and may continue to incur significant losses, which would harm our financial condition and results of operations.

***Changes in distribution channels for animal health prescription drugs may make it more difficult or expensive to distribute our animal health prescription drug products.***

In the United States, animal owners typically purchase their animal health prescription drugs from their local veterinarians who also prescribe such drugs. There is a trend, however, toward increased purchases of animal health prescription drugs from Internet-based retailers, “big-box” retail stores and other over-the-counter distribution channels, which follows an emerging shift in recent years away from the traditional veterinarian distribution channel. It is also possible that animal owners may come to rely increasingly on Internet-based animal health information rather than on their veterinarians. We currently expect to market our animal health prescription drugs directly to veterinarians, so any reduced reliance on veterinarians by animal owners could harm our business and prospects by making it more difficult or expensive for us to distribute our animal health prescription drug products.

Legislation has been or may be proposed in various states that would require veterinarians to provide animal owners with written prescriptions and disclosures that the animal owner has the right to fill the prescriptions through other means. If enacted, such legislation could lead to a reduction in the number of animal owners who purchase their animal health pharmaceuticals directly from veterinarians, which also could harm our business.

***Consolidation of our customers could negatively affect the pricing of our animal health products.***

Veterinarians will be our primary customers for our prescription animal health drug products, as well as, to some extent, our non-prescription animal health products, such as Neonorm and Equilevia. In recent years, there has been a trend towards the consolidation of veterinary clinics and animal hospitals. If this trend continues, these large clinics and hospitals could attempt to leverage their buying power to obtain favorable pricing from us and other animal health product companies. Any downward pressure on the prices of any of our animal health products could harm our operating results and financial condition.

***We will need to increase the size of our organization and may not successfully manage such growth.***

As of December 31, 2017, we had 36 full-time equivalent (FTE) employees. Our ability to manage our growth effectively will require us to hire, train, retain, manage and motivate additional employees and to implement and improve our operational, financial and management systems. These demands also may require the hiring of additional senior management personnel or the development of additional expertise by our senior management personnel. If we fail to expand and enhance our operational, financial and management systems in conjunction with our potential future growth, it could harm our business and operating results.

***Research and development with respect to our animal health products and product candidates relies on evaluations in animals, which is controversial and may become subject to bans or additional regulations.***

The evaluation of our animal health products and product candidates in target animals is required to develop, formulate and commercialize our animal health products and product candidates. Although our animal testing will be subject to GLPs and GCPs, as applicable, animal testing in the human pharmaceutical industry and in other industries continues to be the subject of controversy and adverse publicity. Some organizations and individuals have sought to ban animal testing or encourage the adoption of additional regulations applicable to animal testing. To the extent that such bans or regulations are imposed, our research and development activities with respect to animal health products, and by extension our operating results and financial condition, could be harmed. In addition, negative publicity about animal practices by us or in our industry could harm our reputation among potential customers.

***If approved, our animal health prescription drug product candidates may be marketed in the United States only in the target animals and for the indications for which they are approved, and if we want to expand the approved animals or indications, it will need to obtain additional approvals, which may not be granted.***

If our animal health prescription drug product candidates are approved by regulatory authorities, we may market or advertise them only in the specific species and for treatment of the specific indications for which they were approved, which could limit use of the products by veterinarians and animal owners. We intend to develop, promote and commercialize approved products for other animals and new treatment indications in the future, but we cannot be certain whether or at what additional time and expense we will be able to do so. If we do not obtain marketing approvals for other species or for new indications, our ability to expand our animal health business may be harmed.

Under the Animal Medicinal Drug Use Clarification Act of 1994, veterinarians are permitted to prescribe extra-label uses of certain approved animal drugs and approved human drugs for animals under certain conditions. While veterinarians may in the future prescribe and use human-approved products or use our products for extra-label uses, we may not promote our animal health products for extra-label uses. We note that extra-label uses are uses for which the product has not received approval. If the FDA determines that any of our marketing activities constitute promotion of an extra-label use, we could be subject to regulatory enforcement, including seizure of any misbranded or mislabeled drugs, and civil or criminal penalties, any of which could have an adverse impact on our reputation and expose us to potential liability. We will continue to spend resources ensuring that our promotional claims for our animal health products and product candidates remain compliant with applicable FDA laws and regulations, including materials we post or link to on our website. For example, in 2012, our Chief Executive Officer received an “untitled letter” from the FDA while at Napo regarding preapproval promotion statements constituting misbranding of crofelemer, which was then an investigational drug. These statements were included in archived press releases included on Napo’s website. Napo was required to expend time and resources to revise its website to remove the links in order to address the concerns raised in the FDA’s letter.

***If our human or animal prescription drug product candidates are approved by regulatory authorities, the misuse or extra-label use of such products may harm our reputation or result in financial or other damages.***

If our human or animal prescription drug product candidates are approved by regulatory authorities, there may be increased risk of product liability if physicians, veterinarians, patients, animal owners or others, as applicable, attempt to use such products extra-label, including the use of our products for indications or in species for which they have not been approved. Furthermore, the use of an approved human or animal drug for indications other than those indications for which such products have been approved may not be effective, which could harm our reputation and lead to an increased risk of litigation. If we are deemed by a governmental or regulatory agency to have engaged in the promotion of any approved human or animal product for extra-label use, such agency could request that we modify our training or promotional materials and practices and we could be subject to significant fines and penalties,

and the imposition of these sanctions could also affect our reputation and position within the gastrointestinal health industry. Any of these events could harm our reputation and our operating results.

***We may not maintain the benefits associated with MUMS designation, including market exclusivity.***

Although we have received MUMS designation for Canalevia for the treatment of CID in dogs, we may not maintain the benefits associated with MUMS designation. MUMS designation is a status similar to “orphan drug” status for human drugs. When we were granted MUMS designation for Canalevia for the indication of CID in dogs, we became eligible for incentives to support the approval or conditional approval of the designated use. This designation does not allow us to commercialize a product until such time as we obtain approval or conditional approval of the product.

Because Canalevia has received MUMS designation for the identified particular intended use, we are eligible to obtain seven years of exclusive marketing rights upon approval (or conditional approval) of Canalevia for that intended use and become eligible for grants to defray the cost of our clinical work. Each designation that is granted must be unique, *i.e.*, only one designation can be granted for a particular API in a particular dosage form for a particular intended use. The intended use includes both the target species and the disease or condition to be treated.

At some point, we could lose MUMS designation. The basis for a lost designation can include but is not limited to, our failure to engage with due diligence in moving forward with a non-conditional approval, or a competing product has received conditional approval or approval prior to our product candidate for the same indication or species. In addition, MUMS designation may be withdrawn for a variety of reasons such as where the FDA determines that the request for designation was materially defective, or if the manufacturer is unable to assure sufficient quantity of the prescription drug product to meet the needs of animals with the rare disease or condition. If this designation is lost, it could have a negative impact on the product and us, which includes but is not limited to, market exclusivity related to MUMS designation, or eligibility for grants as a result of MUMS designation.

***The market for our human or animal products, and the gastrointestinal health market as a whole, is uncertain and may be smaller than we anticipate, which could lead to lower revenue and harm our operating results.***

It is very difficult to estimate the commercial potential of any of our human or animal products because the gastrointestinal health market continues to evolve and it is difficult to predict the market potential for our products. The market will depend on important factors such as safety and efficacy compared to other available treatments, changing standards of care, preferences of physicians and veterinarians, as applicable, the willingness of patients and companion and production animal owners, as applicable, to pay for such products, and the availability of competitive alternatives that may emerge either during the product development process or after commercial introduction. If the market potential for our human or animal products is less than we anticipate due to one or more of these factors, it could negatively impact our business, financial condition and results of operations. Further, the willingness of patients and companion and production animal owners to pay for our products may be less than we anticipate, and may be negatively affected by overall economic conditions. Moreover, with respect to our animal health products, the current penetration of animal insurance in the United States is low, animal owners are likely to have to pay out-of-pocket, and such owners may not be willing or able to pay for our products.

***Insurance coverage for Mytesi for its current approved indication could decrease or end, or Mytesi might not receive insurance coverage for any approved follow-on indications, which could lead to lower revenue and harm our operating results.***

For its current approved indication, Mytesi is currently covered by all of the top 10 commercial insurance plans, representing more than 245 million U.S. lives. In 50% of these plans it is currently on Tier 3 with no restrictions, and in 50% it is currently on Tier 3 with a prior authorization required. In the

top 10 Managed Medicare plans, which represent 24 million covered lives, Mytesi is currently covered on 10% of plans. Mytesi is currently covered on Medicaid in all 50 states. However, the nature or extent of coverage for Mytesi by any of these plans or programs could change or be terminated, or Mytesi might not receive insurance coverage for any approved follow-on indications. Either outcome could lead to significantly lower revenue and significantly harm our operating results.

***We may engage in future acquisitions that increase our capital requirements, dilute our stockholders, cause us to incur debt or assume contingent liabilities and subject us to other risks.***

We may evaluate various strategic transactions, including licensing or acquiring complementary products, technologies or businesses. Any potential acquisitions may entail numerous risks, including increased operating expenses and cash requirements, assimilation of operations and products, retention of key employees, diversion of our management's attention and uncertainties in our ability to maintain key business relationships of the acquired entities. In addition, if we undertake acquisitions, we may issue dilutive securities, assume or incur debt obligations, incur large one-time expenses and acquire intangible assets that could result in significant future amortization expense. Moreover, we may not be able to locate suitable acquisition opportunities and this inability could impair our ability to grow or obtain access to technology or products that may be important to the development of our business.

***Certain of the countries in which we plan to commercialize our products in the future are developing countries, some of which have potentially unstable political and economic climates.***

We may commercialize our products in jurisdictions that are developing and emerging countries. This may expose us to the impact of political or economic upheaval, and we could be subject to unforeseen administrative or fiscal burdens. At present, we are not insured against the political and economic risks of operating in these countries. Any significant changes to the political or economic climate in any of the developing countries in which we operate or plan to sell products either now or in the future may have a substantial adverse effect on our business, financial condition, trading performance and prospects.

***Fluctuations in the exchange rate of foreign currencies could result in currency transactions losses.***

As we expand our operations, we expect to be exposed to risks associated with foreign currency exchange rates. We anticipate that we will commercialize Neonorm for preweaned dairy calves and its line extensions, as well as possibly Canalevia and its line extensions in jurisdictions outside the United States. As a result, we will also be further affected by fluctuations in exchange rates in the future to the extent that sales are denominated in currencies other than U.S. dollars. We do not currently employ any hedging or other strategies to minimize this risk, although we may seek to do so in the future.

***There are other gastrointestinal-focused human pharmaceutical companies, and we face competition in the marketplaces in which we operate or plan to operate.***

Our commercial success in the human drug arena remains dependent on maintaining or establishing a competitive position in the market for the current, approved specialty indication of Mytesi as well as for planned Mytesi follow-on indications. In the IBS-D market in particular, several competitors have commercially available products approved for our planned IBS-D indication. The availability of our competitors' products could limit the demand, and the price we are able to charge, for any drug candidate we develop. The inability to compete with existing or subsequently introduced drug candidates would have a material adverse impact on our business, financial condition and prospects.

***Our obligations to Hercules, and subject to certain events, to CVP, are secured by a security interest in substantially all of our veterinary related assets, so if we default on those obligations, Hercules or CVP could foreclose on our assets.***

Our obligations under the loan and security agreement with Hercules Capital, Inc. (f/k/a Hercules Technology Growth Capital, Inc.) (“Hercules”) are secured by a security interest in substantially all of our veterinary related assets, including intellectual property. As a result, if we default on our obligations under the loan and security agreement (the “Hercules Debt”), Hercules could foreclose on its security interests and liquidate some or all of these assets, which would harm our veterinary related business, financial condition and results of operations and could require us to reduce or cease operations. In addition, Chicago Venture Partners, L.P. (“CVP”) may acquire a security interest in substantially all of our veterinary related assets upon the earlier of CVP purchasing Hercules Debt or the repayment in full of the Hercules Debt, as provided in the Security Agreement, dated June 29, 2017, between us and CVP, the Security Agreement, dated December 8, 2017, between us and CVP, and the Subordination Agreement and Right to Purchase Debt, dated June 29, 2017, by and among us, CVP and Hercules.

***Napo’s obligations to the holders of the Kingdon Notes are secured by a security interest in substantially all of Napo’s assets, so if we default on those obligations, the convertible note holders could foreclose on Napo’s assets.***

Napo’s obligations under the convertible promissory notes (the “Kingdon Notes”) issued pursuant to the Amended and Restated Note Purchase Agreement, dated March 31, 2017, by and among Kingdon Associates, M. Kingdon Offshore Master Fund L.P., Kingdon Family Partnership, L.P. and Kingdon Credit Master Fund L.P. (collectively, the “Kingdon Purchasers”) and Napo and the related transaction documents are secured by a security interest in substantially all of Napo’s assets, including Napo intellectual property. As a result, if we default under our obligations under the Kingdon Notes or the transaction documents, the holders of such Kingdon Notes, acting through their appointed agent, could foreclose on their security interests and liquidate some or all of these assets, which would harm our business, financial condition and results of operations and could require us to reduce or cease operations.

## **Risks Related to Intellectual Property**

***We cannot be certain that our patent strategy will be effective to protect against competition***

Our commercial success depends in large part on obtaining and maintaining patent, trademark and trade secret protection of our human or animal products, both prescription and non-prescription, our current human or animal product candidates and any future human or animal product candidates, and their respective components, formulations, methods used to manufacture them and methods of treatment, as well as successfully defending our patents and other intellectual property rights against third-party challenges. Our ability to stop unauthorized third parties from making, using, selling, offering to sell or importing our products or our product candidates is dependent upon the extent to which we have rights under valid and enforceable patents, trade secrets and other similar intellectual property that cover these activities. The patent prosecution process is expensive and time-consuming, and we may not be able to prepare, file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we will fail to identify patentable aspects of inventions made in the course of development and commercialization activities in time to obtain patent protection on them.

We have a portfolio of United States and foreign issued patents and pending applications related to our products and product candidates. We have five issued United States patents listed in the FDA’s Orange Book for Mytesi. We plan to rely on certain of these issued patents as protection for Canalevia. The strength of patents in the field of pharmaceuticals and animal health involves complex legal and scientific questions and can be uncertain. We cannot be certain that pending applications will issue as patents. For those patents that are already issued and even if other patents do successfully issue, third parties may challenge their validity, enforceability or scope, which may result in such patents being narrowed,



invalidated or held unenforceable. Furthermore, even if they are unchallenged, our patents may not adequately protect our intellectual property or prevent others from designing around their claims. If the patents we have are not maintained or their scope is significantly narrowed or if we are not able to obtain issued patents from pending applications, our business and prospects would be harmed.

Recent patent reform legislation could increase the uncertainties and costs surrounding the prosecution of any patent applications and the enforcement or defense of any patents that issue. On September 16, 2011, the Leahy-Smith America Invents Act, or the Leahy-Smith Act, was signed into law. The Leahy-Smith Act includes a number of significant changes to U.S. patent law. These include provisions that affect the way patent applications are prosecuted, redefine prior art, may affect patent litigation, and switch the U.S. patent system from a “first-to-invent” system to a “first-to-file” system. Under a “first-to-file” system, assuming the other requirements for patentability are met, the first inventor to file a patent application generally will be entitled to the patent on an invention regardless of whether another inventor had made the invention earlier. The USPTO has developed new regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act, and in particular, the first-to-file provisions, became effective on March 16, 2013. Among some of the other changes to the patent laws are changes that limit where a patentee may file a patent infringement suit and that provide opportunities for third parties to challenge any issued patent in the USPTO. The Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our patents and any other patents that issue, all of which could harm our business and financial condition.

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

Periodic maintenance and annuity fees on any issued patent and, in certain jurisdictions, pending applications, are due to be paid to the USPTO and foreign patent agencies in several stages over the lifetime of the patent. The USPTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. While an inadvertent lapse can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Non-compliance events that could result in abandonment or lapse of a patent or patent application include failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. If we fail to maintain the patents and patent applications covering our prescription drug products, prescription drug product candidates and non-prescription products, our competitors might be able to enter the market, which would harm our business.

***Third parties may initiate legal proceedings alleging that we are infringing their intellectual property rights, which would be costly, time-consuming and, if successfully asserted against us, delay or prevent the development and commercialization of our current or future products and product candidates.***

Our research, development and commercialization activities may infringe or otherwise violate or be claimed to infringe or otherwise violate patents owned or controlled by other parties. There may be patents already issued of which we are unaware that might be infringed by a product or one of our current or future prescription drug product candidates or non-prescription products. Moreover, it is also possible that patents may exist that we are aware of, but that we do not believe are relevant to our current or future prescription drug product candidates or non-prescription products, which could nevertheless be found to block our freedom to market these products. Because patent applications can take many years to issue and



may be confidential for 18 months or more after filing, there may be applications now pending of which we are unaware and which may later result in issued patents that may be infringed by our current or future prescription drug product candidates or non-prescription products. We cannot be certain that our products, current or future prescription drug product candidates or non-prescription products will not infringe these or other existing or future third-party patents. In addition, third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents.

To the extent we become subject to future third-party claims against us or our collaborators, we could incur substantial expenses and, if any such claims are successful, we could be liable to pay substantial damages, including treble damages and attorney's fees if we or our collaborators are found to be willfully infringing a third party's patents. If a patent infringement suit were brought against us or our collaborators, we or they could be forced to stop or delay research, development, manufacturing or sales of the human or animal prescription drug or non-prescription product that is the subject of the suit. Even if we are successful in defending such claims, infringement and other intellectual property claims can be expensive and time-consuming to litigate and divert management's attention from our business and operations. As a result of or in order to avoid potential patent infringement claims, we or our collaborators may be compelled to seek a license from a third party for which we would be required to pay license fees or royalties, or both. Moreover, these licenses may not be available on acceptable terms, or at all. Even if we or our collaborators were able to obtain such a license, the rights may be nonexclusive, which could allow our competitors access to the same intellectual property. Any of these events could harm our business and prospects.

***Our proprietary position depends upon patents that are formulation or method-of-use patents, which do not prevent a competitor from using the same human or animal drug for another use.***

Composition-of-matter patents on the API in prescription drug products are generally considered to be the strongest form of intellectual property protection because such patents provide protection without regard to any particular method of use or manufacture or formulation of the API used. The composition-of-matter patents for crofelemer, the API in Mytesi and Canalevia, have expired, and the issued patents and applications relevant to our products and product candidates cover formulations and methods of use for crofelemer and the botanical extract in Neonorm and Equilevia.

Method-of-use patents protect the use of a product for the specified method and formulation patents cover formulations of the API or botanical extract. These types of patents do not prevent a competitor from developing or marketing an identical product for an indication that is outside the scope of the patented method or from developing a different formulation that is outside the scope of the patented formulation. Moreover, with respect to method-of-use patents, even if competitors do not actively promote their product for our targeted indications or uses for which we may obtain patents, physicians may recommend that patients use our products extra-label, and veterinarians may recommend that animal owners use these products extra-label, or animal owners may do so themselves. Although extra-label use may infringe or contribute to the infringement of method-of-use patents, the practice is common and such infringement is difficult to prevent or prosecute.

***We may be involved in lawsuits to protect or enforce our patents, which could be expensive, time-consuming and unsuccessful, and third parties may challenge the validity or enforceability of our patents and they may be successful.***

We intend to rely upon a combination of regulatory exclusivity periods, patents, trade secret protection, and confidentiality agreements to protect the intellectual property related to Mytesi, our current prescription drug product candidates, non-prescription products and our development programs.

If the breadth or strength of protection provided by any patents, patent applications or future patents we may own, license, or pursue with respect to any of our current or future product candidates or products

is threatened, it could threaten our ability to commercialize any of our current or future human or animal product candidates or products. Further, if we encounter delays in our development efforts, the period of time during which we could market any of our current or future product candidates or products under any patent protection we obtain would be reduced.

Given the amount of time required for the development, testing and regulatory review of new product candidates or products, patents protecting such candidates might expire before or shortly after such product candidates or products are commercialized. Patent term extension has been applied for US 7,341,744 to account for regulatory delays in obtaining human marketing approval for crofelemer. The FDA and the USPTO have confirmed that US 7,341,744 is eligible for an extension of 1075 days and we await issuance of the patent term extension certificate. With respect to requests for patent term extensions, the applicable authorities, including the USPTO and the FDA, and any equivalent regulatory authority in other countries, may not agree with our assessment of whether such extensions are available, and may refuse to grant extensions to patents, or may grant more limited extensions than requested. If this occurs, our competitors may take advantage of our investment in development and trials by referencing our clinical and preclinical data and launch their product earlier than might otherwise be the case.

Even where laws provide protection or we are able to obtain patents, costly and time-consuming litigation may be necessary to enforce and determine the scope of our proprietary rights, and the outcome of such litigation would be uncertain. Moreover, any actions we may bring to enforce our intellectual property against our competitors could provoke them to bring counterclaims against us, and some of our competitors have substantially greater intellectual property portfolios than we have. To counter infringement or unauthorized use of any patents we may obtain, we may be required to file infringement claims, which can be expensive and time-consuming to litigate. In addition, if we or one of our future collaborators were to initiate legal proceedings against a third party to enforce a patent covering one of our products, current product candidates, or one of our future products, the defendant could counterclaim that the patent is invalid or unenforceable. In patent litigation in the United States, defendant counterclaims alleging invalidity or unenforceability are commonplace and challenges to validity of patents in certain foreign jurisdictions is common as well. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness, non-enablement or lack of statutory subject matter. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant material information from the USPTO, or made a materially misleading statement, during prosecution. In particular, Mytesi has regulatory exclusivity as a new chemical entity until December 31, 2017. Under the Hatch-Waxman Act, a competitor seeking to market a generic form of Mytesi before the expiration of any of the patents listed in the FDA's Orange Book for Mytesi could file (and could have filed after December 31, 2016) an ANDA with a certification under 21 U.S.C. § 355(j)(2)(A)(iv) that each of these patents (except for those which the ANDA filer states it will market only after its expiration) is either invalid, unenforceable or not infringed. We may assert the patents in Hatch-Waxman litigation against the party filing the ANDA to keep the competing product off of the market until the patents expire but there is a risk that we will not succeed. The party filing the ANDA may also counterclaim in the litigation that the our patents are not valid or unenforceable, and the court may find one or more claims of our patents invalid or unenforceable. If this occurs, a competing generic product could be marketed prior to expiration of our patents listed in the Orange Book, which would harm our business.

Third parties may also raise similar validity claims before the USPTO in post-grant proceedings such as *ex parte* reexaminations, *inter partes* review, or post-grant review, or oppositions or similar proceedings outside the United States, in parallel with litigation or even outside the context of litigation. The outcome following legal assertions of invalidity and unenforceability is unpredictable. If a defendant were to prevail on a legal assertion of invalidity or unenforceability, we would lose at least part, and perhaps all, of any future patent protection on one or more of our products or our current or future product candidates. Such a loss of patent protection could harm our business. We cannot be certain that there is no invalidating prior

art, of which we and the patent examiner were unaware during prosecution or other basis for a finding of invalidity. Litigation proceedings may fail and, even if successful, may result in substantial costs and distract our management and other employees. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be unsuccessful, it could have an adverse effect on the price of our common stock. Finally, we may not be able to prevent, misappropriation of our trade secrets or confidential information, particularly in countries where the laws may not protect those rights as fully as in the United States.

***If we are unable to prevent disclosure of our trade secrets or other confidential information to third parties, our competitive position may be impaired.***

We also rely on trade secret protection and confidentiality agreements to protect proprietary know-how that is not patentable or for which we have not filed patent applications, processes for which patents are difficult to enforce and other elements of our product development processes that involve proprietary know-how, information or technology that is not covered by patents. Although we require all of our employees to assign their inventions to us, and endeavor to execute confidentiality agreements with all of our employees, consultants, advisors and any third parties who have access to our proprietary know-how, information or technology, we cannot be certain that we have executed such agreements with all parties who may have helped to develop our intellectual property or had access to our proprietary information, or that our agreements will not be breached. We cannot guarantee that our trade secrets and other confidential proprietary information will not be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. If we are unable to prevent disclosure of our intellectual property to third parties, we may not be able to maintain a competitive advantage in our market, which would harm our business.

Any disclosure to or misappropriation by third parties of our confidential proprietary information could enable competitors to quickly duplicate or surpass our technological achievements, and erode our competitive position in our market.

***Changes in U.S. patent law could diminish the value of patents in general, thereby impairing our ability to protect our products.***

As is the case with other human or animal pharmaceutical product companies, our success is heavily dependent on intellectual property, particularly patents. Obtaining and enforcing patents in the human and animal health industries involves both technological and legal complexity. Therefore, obtaining and enforcing patents is costly, time-consuming and inherently uncertain. In addition, the United States has recently enacted and implemented wide-ranging patent reform legislation. The U.S. Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents, once obtained. Depending on decisions by the U.S. Congress, the federal courts, and the USPTO, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce patents that we have licensed or that we might obtain in the future.

***We may not be able to protect our intellectual property rights throughout the world, which could impair our business.***

Filing, prosecuting and defending patents on human and animal drug products, product candidates and non-prescription products throughout the world would be prohibitively expensive. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories where we may obtain patent protection, but where patent enforcement is not as strong as that in the United States. These products may compete with our products in jurisdictions where we do not have any issued or licensed patents and any future patent claims or other intellectual property rights may not be effective or sufficient to prevent them from so competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection, particularly those relating to animal health products, which could make it difficult for us to stop the infringement of our future patents, if any, or patents we have in licensed, or marketing of competing products in violation of our proprietary rights generally. Further, the laws of some foreign countries do not protect proprietary rights to the same extent or in the same manner as the laws of the United States. As a result, we may encounter significant problems in protecting and defending our intellectual property both in the United States and abroad. Proceedings to enforce our future patent rights, if any, in foreign jurisdictions could result in substantial cost and divert our efforts and attention from other aspects of our business.

***Our business could be harmed if we fail to obtain certain registered trademarks in the United States or in other countries.***

Our registered and pending U.S. trademarks include NEONORM®, MYTESI®, NAPO®, Napo Logo®, CANALEVIA, EQUILEVIA, JAGUAR ANIMAL HEALTH, the Jaguar Animal Health logo and MY HIV THANK YOU. We also own pending applications for the CANALEVIA mark in a number of foreign countries. We have not yet filed applications for our company name or our logo in the U.S. During trademark registration proceedings, we may receive rejections of our trademark applications. If so, we will have an opportunity to respond, but we may be unable to overcome such rejections. In addition, the USPTO and comparable agencies in many foreign jurisdictions may permit third parties to oppose pending trademark applications and to seek to cancel registered trademarks. If opposition or cancellation proceedings are filed against any of our trademark applications or any registered trademarks, our trademarks may not survive such proceedings. Moreover, any name we propose to use with our prescription drug product candidates in the United States, including CANALEVIA, must be approved by the FDA, regardless of whether we have registered or applied to register as a trademark. The FDA typically conducts a review of proposed prescription drug product names, including an evaluation of potential for confusion with other product names. If the FDA objects to any of our proposed proprietary product names, we may be required to expend significant additional resources in an effort to identify a suitable substitute name that would qualify under applicable trademark laws, not infringe the existing rights of third parties and be acceptable to the FDA.

***We may be subject to claims that our employees, consultants or independent contractors have wrongfully used or disclosed confidential information of third parties.***

We have received confidential and proprietary information from third parties. In addition, we employ individuals who were previously employed at other biotechnology, pharmaceutical or animal health companies. We may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise improperly used or disclosed confidential information of these third parties or our employees' former employers. Litigation may be necessary to defend against any such claims. Even if we were successful in defending against any such claims, such litigation could result in substantial cost and be a distraction to our management and employees.

### **Risks Related to Government Regulation**

***Even if we receive any of the required regulatory approvals for our current or future prescription drug product candidates and non-prescription products, we will be subject to ongoing obligations and continued regulatory review, which may result in significant additional expense.***

If the FDA or any other regulatory body approves any of our current or future prescription drug product candidates, or if necessary, our non-prescription products, the manufacturing processes, clinical development, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion

and recordkeeping for the product may be subject to extensive and ongoing regulatory requirements. These requirements could include, but are not limited to, submissions of efficacy and safety and other post-marketing information and reports, establishment registration, and product listing, compliance with new rules promulgated under the FSMA, as well as continued compliance with cGMP, GLP and GCP for any studies that we conduct post-approval. Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with our contract manufacturers or manufacturing processes, or failure to comply with regulatory requirements, are reportable events to the FDA and may result in, among other things:

- restrictions on the marketing or manufacturing of the product, withdrawal of the product from the market, revised labeling, or voluntary or involuntary product recalls;
- additional clinical studies, fines, warning letters or holds on target animal studies;
- refusal by the FDA, or other regulators to approve pending applications or supplements to approved applications filed by us or our strategic collaborators related to the unknown problems, or suspension or revocation of the problematic product's license approvals;
- product seizure or detention, or refusal to permit the import or export of products; and
- injunctions and/or the imposition of civil or criminal penalties.

The FDA or other regulatory agency's policies may change and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our product candidates or require certain changes to the labeling or additional clinical work concerning safety and efficacy of the product candidates. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the United States or abroad. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained and we may not achieve or sustain profitability, which would harm our business. In addition, failure to comply with these regulatory requirements could result in significant penalties.

In addition, from time to time, we may enter into consulting and other financial arrangements with veterinarians, who prescribe or recommend our products, once approved. As a result, we may be subject to state, federal and foreign healthcare and/or veterinary medicine laws. If our financial relationships with veterinarians are found to be in violation of such laws that apply to us, we may be subject to penalties.

***The issuance by the FDA of protocol concurrences for our pivotal studies does not guarantee ultimate approval of our NADA.***

We intend to seek protocol concurrences from the FDA for the pivotal trial of Canalevia that we have initiated for acute diarrhea in dogs and for future pivotal trials in other indications. A pivotal study protocol is submitted to the FDA by a drug sponsor for purposes of obtaining FDA review of the protocol. Prior FDA review of the protocol for a pivotal study makes it more likely that the study design will generate information the sponsor needs to demonstrate to the satisfaction of the FDA whether the drug is safe and effective for its intended use. It creates an expectation by the sponsor that the FDA should not later alter its perspectives on these issues unless public or animal health concerns appear that were not recognized at the time of protocol assessment. Even if the FDA issues a protocol concurrence, ultimate approval of an NADA by the FDA is not guaranteed because a final determination that the agreed-upon protocol satisfies a specific objective, such as the demonstration of efficacy, or supports an approval decision, will be based on a complete review of all the data submitted to the FDA including the outcome of the study for which protocol concurrence was received. Even if we were to obtain protocol concurrence such concurrence does not guarantee that the results of the study will support a particular finding or approval of the new drug.



*Any of our current or future prescription drug product candidates or non-prescription products may cause or contribute to adverse medical events that we would be required to report to regulatory authorities and, if we fail to do so, we could be subject to sanctions that would harm our business.*

If we are successful in commercializing any of our current or future prescription drug product candidates or non-prescription products, certain regulatory authorities will require that we report certain information about adverse medical events if those products may have caused or contributed to those adverse events. The timing of our obligation to report would be triggered by the date we become aware of the adverse event as well as the nature of the event. We may fail to report adverse events we become aware of within the prescribed timeframe. We may also fail to appreciate that we have become aware of a reportable adverse event, especially if such event is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of our products. If we fail to comply with our reporting obligations, the regulatory authorities could take action including, but not limited to, criminal prosecution, seizure of our products, facility inspections, removal of our products from the market, recalls of certain lots or batches, or cause a delay in approval or clearance of future products.

*Legislative or regulatory reforms with respect to animal health may make it more difficult and costly for us to obtain regulatory clearance or approval of any of our current or future product candidates and to produce, market, and distribute our products after clearance or approval is obtained.*

From time to time, legislation is drafted and introduced in the U.S. Congress or other jurisdictions in which we intend to operate that could significantly change the statutory provisions governing the testing, regulatory clearance or approval, manufacture, and marketing of regulated products. In addition, the FDA's regulations and guidance are often revised or reinterpreted by the FDA and such other regulators in ways that may significantly affect our business and our products and product candidates. Similar changes in laws or regulations can occur in other countries. Any new regulations or revisions or reinterpretations of existing regulations in the United States or in other countries may impose additional costs or lengthen review times of any of our current or future products and product candidates. We cannot determine what effect changes in regulations, statutes, legal interpretation or policies, when and if promulgated, enacted or adopted may have on our business in the future. Such changes could, among other things, require:

- changes to manufacturing methods;
- additional clinical trials or testing;
- new requirements related to approval to enter the market;
- recall, replacement, or discontinuance of certain products; and
- additional record keeping or the development of certain regulatory required hazard identification plans.

Each of these would likely entail substantial time and cost and could harm our financial results. In addition, delays in receipt of or failure to receive regulatory clearances or approvals for any future products would harm our business, financial condition, and results of operations.

*We believe that our non-prescription products are not subject to regulation by regulatory agencies in the United States, but there is a risk that regulatory bodies may disagree with our interpretation, or may redefine the scope of their regulatory reach in the future, which would result in additional expense and could delay or prevent the commercialization of these products.*

The FDA retains jurisdiction over all animal prescription drug products however, in many instances, the Federal Trade Commission will exercise primary or concurrent jurisdiction with FDA on non-prescription products as to post marketing claims made regarding the product. On April 22, 1996, the FDA published a statement in the Federal Register, 61 FR 17706, that it believes that the Dietary



Supplement and Health Education Act (“DSHEA”), does not apply to animal health supplement products, such as our non-prescription products. Accordingly, the FDA’s Center for Veterinary Medicine only regulates those animal supplements that fall within the FDA’s definition of an animal drug, animal food or animal feed additive. The Federal Food Drug and Cosmetic Act defines food as “articles used for food or drink for man or other animals and articles used as components of any such article.” Animal foods are not subject to pre-market approval and are designed to provide a nutritive purpose to the animals that receive them. Feed additives are defined as those articles that are added to an animal’s feed or water as illustrated by the guidance documents. Our non-prescription products are not added to food, are not ingredients in food nor are they added to any animal’s drinking water. Therefore, our non-prescription products do not fall within the definition of a food or feed additive. In light of the pronouncement by the FDA that the DSHEA was not intended to apply to animals, the FDA seeks to regulate such supplements as food or food additives depending on the intended use of the product. The intended use is demonstrated by how the article is included in a food, or added to the animals’ intake (*i.e.*, through its drinking water). If the intended use of the product does not fall within the proscribed use making the product a food, it cannot be regulated as a food. There is no intent to make our non-prescription products a component of an animal food, either directly or indirectly. A feed additive is a product that is added to a feed for any reason including the top dressing of an already prepared feed. Some additives, such as certain forage, are deemed to be Generally Recognized as Safe, or GRAS, and therefore, not subject to a feed Additive Petition approval prior to use. However, the substances deemed GRAS are generally those that are recognized as providing nutrients as a food does. We do not believe that our non-prescription products fit within this framework either. Finally, a new animal drug refers to drugs intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals. Our non-prescription Neonorm Foal and Neonorm Calf products are not intended to diagnose, cure, mitigate, treat or prevent disease and therefore, do not fit within the definition of an animal drug. Additionally, because a previously marketed human formulation of the botanical extract in our non-prescription products was regulated as a human dietary supplement subject to the DSHEA (and not regulated as a drug by the FDA), we do not believe that the FDA would regulate the animal formulation used in our non-prescription products in a different manner. We do not believe that our non-prescription products fit the definition of an animal drug, food or food additive and therefore are not regulated by the FDA at this time.

However, despite many such unregulated animal supplements currently on the market, the FDA may choose in the future to exercise jurisdiction over animal supplement products in which case, we may be subject to unknown regulations thereby inhibiting our ability to launch or to continue marketing our non-prescription products. In the past, the FDA has redefined or attempted to redefine some non-prescription non-feed products as falling within the definition of drug, feed or feed additive and therefore subjected those products to the relevant regulations. We have not discussed with the FDA its belief that the FDA currently does not exercise jurisdiction over our non-prescription products. Should the FDA assert regulatory authority over our non-prescription products, we would take commercially reasonable steps to address the FDA’s concerns, potentially including but not limited to, seeking registration for such products, reformulating such products to further distance such products from regulatory control, or ceasing sale of such products. Further, the Animal and Plant Health Inspection Service, an agency of the USDA, may at some point choose to exercise jurisdiction over certain non-prescription products that are not intended for production animals. We do not believe we are currently subject to such regulation, but could be in the future. If the FDA or other regulatory agencies, such as the USDA, try to regulate our non-prescription products, we could be required to seek regulatory approval for our non-prescription products, which would result in additional expense and could delay or prevent the commercialization of these products.

***Even if Napo receives the required regulatory approvals for Napo's current or future prescription drug product candidates and non-prescription products, Napo will be subject to ongoing obligations and continued regulatory review, which may result in significant additional expense.***

If the FDA or any other regulatory body approves any of Napo's current or future prescription drug product candidates, or if necessary, Napo's non-prescription products, the manufacturing processes, clinical development, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for the product is subject to extensive and ongoing regulatory requirements. These requirements could include, but are not limited to, submissions of efficacy and safety and other post-marketing information and reports, establishment registration, and product listing, compliance with new rules promulgated under the FSMA, as well as continued compliance with cGMP, GLP and GCP for any studies that Napo conducts post-approval. Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with Napo's contract manufacturers or manufacturing processes, or failure to comply with regulatory requirements, are reportable events to the FDA and may result in, among other things:

- restrictions on the marketing or manufacturing of the product, withdrawal of the product from the market, revised labeling, or voluntary or involuntary product recalls;
- additional clinical studies fines, warning letters or holds on studies;
- refusal by the FDA, or other regulators to approve pending applications or supplements to approved applications filed by Napo or Napo's strategic collaborators related to the unknown problems, or suspension or revocation of the problematic product's license approvals;
- product seizure or detention, or refusal to permit the import or export of products; and
- injunctions or the imposition of civil or criminal penalties.

The FDA or other regulatory agency's policies may change and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of Napo's product candidates or require certain changes to the labeling or require additional clinical work concerning safety and efficacy of the product candidates. Napo cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the United States or abroad. If Napo is slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if Napo is not able to maintain regulatory compliance, Napo may lose any marketing approval that Napo may have obtained and Napo may not achieve or sustain profitability, which would harm Napo's business. In addition, failure to comply with these regulatory requirements could result in significant penalties.

In addition, from time to time, Napo may enter into consulting and other financial arrangements with physicians, who prescribe or recommend Napo's products, once approved. As a result, Napo may be subject to state, federal and foreign healthcare laws, including but not limited to anti-kickback laws. If Napo's financial relationships with physicians are found to be in violation of such laws that apply to Napo, Napo may be subject to penalties.

***The issuance by the FDA of protocol concurrences for Napo's pivotal studies does not guarantee ultimate approval of Napo's NDA.***

Napo intends to seek protocol concurrences from the FDA for future pivotal trials that Napo initiates. A pivotal study protocol is submitted to the FDA by a drug sponsor for purposes of obtaining FDA review of the protocol. Prior FDA review of the protocol for a pivotal study makes it more likely that the study will generate information the sponsor needs to demonstrate whether the drug is safe and effective for its intended use. It creates an expectation by the sponsor that the FDA should not later alter its perspectives on these issues unless public concerns appear that were not recognized at the time of protocol assessment.

Even if the FDA issues a protocol concurrence, ultimate approval of an NDA by the FDA is not guaranteed because a final determination that the agreed-upon protocol satisfies a specific objective, such as the demonstration of efficacy, or supports an approval decision, will be based on a complete review of all the data submitted to the FDA. Even if Napo were to obtain protocol concurrence such concurrence does not guarantee that the results of the study will support a particular finding or approval of the new drug.

***Any of Napo's current or future prescription drug product candidates or non-prescription products may cause or contribute to adverse medical events that Napo would be required to report to regulatory authorities and, if Napo fails to do so, Napo could be subject to sanctions that would harm Napo's business.***

If Napo is successful in commercializing any of Napo's current or future prescription drug product candidates or non-prescription products, certain regulatory authorities will require that Napo report certain information about adverse medical events if those products may have caused or contributed to those adverse events. The timing of Napo's obligation to report would be triggered by the date Napo becomes aware of the adverse event as well as the nature of the event. Napo may fail to report adverse events Napo becomes aware of within the prescribed timeframe. Napo may also fail to appreciate that Napo has become aware of a reportable adverse event, especially if it is not reported to Napo as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of Napo's products. If Napo fails to comply with Napo's reporting obligations, the regulatory authorities could take action including, but not limited to, criminal prosecution, seizure of Napo's products, facility inspections, removal of Napo's products from the market, recalls of certain lots or batches, or cause a delay in approval or clearance of future products.

***Legislative or regulatory reforms make it more difficult and costly for Napo to obtain regulatory clearance or approval of any of Napo's current or future product candidates and to produce, market, and distribute Napo's products after clearance or approval is obtained.***

From time to time, legislation is drafted and introduced in the U.S. Congress or other jurisdictions in which Napo intends to operate that could significantly change the statutory provisions governing the testing, regulatory clearance or approval, manufacture, and marketing of regulated products. In addition, the FDA's regulations and guidance are often revised or reinterpreted by the FDA and such other regulators in ways that may significantly affect Napo's business and Napo's products and product candidates. Similar changes in laws or regulations can occur in other countries. Any new regulations or revisions or reinterpretations of existing regulations in the United States or in other countries may impose additional costs or lengthen review times of any of Napo's current or future products and product candidates. Napo cannot determine what effect changes in regulations, statutes, legal interpretation or policies, when and if promulgated, enacted or adopted may have on Napo's business in the future. Such changes could, among other things, require:

- changes to manufacturing methods;
- additional clinical trials or testing;
- new requirements related to approval to enter the market;
- recall, replacement, or discontinuance of certain products; and
- additional record keeping or the development of certain regulatory required hazard identification plans.

Each of these would likely entail substantial time and cost and could harm Napo's financial results. In addition, delays in receipt of or failure to receive regulatory clearances or approvals for any future products would harm Napo's business, financial condition, and results of operations.

## Risks Related to Our Common Stock

***Our failure to meet the continued listing requirements of The NASDAQ Capital Market could result in a delisting of our common stock.***

Our common stock is listed on The NASDAQ Capital Market, which imposes, among other requirements a minimum bid requirement. The closing bid price for our common stock must remain at or above \$1.00 per share to comply with NASDAQ's minimum bid requirement for continued listing. If the closing bid price for our common stock is less than \$1.00 per share for 30 consecutive business days, NASDAQ may send us a notice stating that we will be provided a period of 180 days to regain compliance with the minimum bid requirement or else NASDAQ may make a determination to delist our common stock. Our common stock traded for less than \$1.00 for 30 consecutive business days, and we received notice of this from The NASDAQ Capital Market on May 16, 2017. Since we did not regain compliance with the minimum bid price requirement during the initial 180 calendar day grace period, on November 13, 2017, we requested and were granted a second 180 calendar day grace period, or until May 14, 2018, to regain compliance with the minimum bid price requirement. The minimum bid price requirement will be met if our common stock has a minimum closing bid price of at least \$1.00 per share for a minimum of 10 consecutive business days during the 180 calendar day grace period. We are diligently working to evidence compliance with the minimum bid requirement for continued listing on NASDAQ and recently filed a definitive proxy statement seeking stockholder approval to give our Board the flexibility to effect a reverse stock split. However, we cannot assure you that a reverse stock split, if effected, will increase our stock price and have the desired effect of maintaining compliance with Nasdaq rules. The liquidity of our capital stock may even be harmed by a reverse stock split because of the reduced number of shares that would be outstanding after the reverse stock split, particularly if the stock price does not increase as a result of the reverse stock split.

The delisting of our common stock from NASDAQ may make it more difficult for us to raise capital on favorable terms in the future. Such a delisting would likely have a negative effect on the price of our common stock and would impair your ability to sell or purchase our common stock when you wish to do so. Further, if we were to be delisted from The NASDAQ Capital Market, our common stock would cease to be recognized as covered securities and we would be subject to regulation in each state in which it offers its securities.

Moreover, there is no assurance that any actions that we take to restore our compliance with the NASDAQ minimum bid requirement would stabilize the market price or improve the liquidity of our common stock, prevent our common stock from falling below the NASDAQ minimum bid price required for continued listing again or prevent future non-compliance with NASDAQ's listing requirements.

***We have a material weakness in our internal control over financial reporting related to the accounting for income taxes, and if we fail to remediate the material weakness, or experience any additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls in the future, we may not be able to accurately report our financial condition or results of operations which may adversely affect investor confidence in us and, as a result, the value of our common stock.***

Our management is responsible for establishing and maintaining adequate internal control over our financial reporting, as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Preparing our consolidated financial statements involves a number of complex manual and automated processes, which are dependent upon individual data input or review and require significant management judgment. One or more of these elements may result in errors that may not be detected and could result in a material misstatement of our consolidated financial statements. If we fail to maintain the adequacy of our internal controls over financial reporting, our business and operating results may be harmed and we may fail to meet our financial reporting obligations. If material weaknesses in our internal control are

discovered or occur, our consolidated financial statements may contain material misstatements and we could be required to restate our financial results.

In connection with the audit of our financial statements as of and for the year ended December 31, 2017, we identified a material weakness in our internal control over financial reporting, as defined in the standards established by the Public Company Accounting Oversight Board of the United States. Our management has determined that we had a material weakness in our internal control over financial reporting as of December 31, 2017 because we did not adequately and timely review the accounting for income taxes. While the Company utilizes the assistance of an external income tax specialist to prepare its annual tax provision, management has concluded there to be a material weakness in the design of the Company's income tax controls in that the Company's policy that governs the data validation controls over data provided to and received from the external income tax specialist and the management review controls were not designed with appropriate levels of precision and were not undertaken in a timely manner.

We are enhancing our internal controls, processes and related documentation necessary to remediate our material weakness. We may not be able to complete our remediation, evaluation and testing in a timely fashion. If we are unable to remediate this material weakness, or if we identify one or more other material weaknesses in our internal control over financial reporting, we will continue to be unable to conclude that our internal controls are effective. If we are unable to confirm that our internal control over financial reporting is effective we could lose investor confidence in the accuracy and completeness of our financial reports, which could cause the price of our common stock to decline.

***If our shares become subject to the penny stock rules, it would become more difficult to trade our shares.***

The SEC has adopted rules that regulate broker-dealer practices in connection with transactions in penny stocks. Penny stocks are generally equity securities with a price of less than \$5.00, other than securities registered on certain national securities exchanges or authorized for quotation on certain automated quotation systems, provided that current price and volume information with respect to transactions in such securities is provided by the exchange or system. If we do not retain a listing on The NASDAQ Capital Market and if the price of our common stock is less than \$5.00, our common stock will be deemed a penny stock. The penny stock rules require a broker-dealer, before a transaction in a penny stock not otherwise exempt from those rules, to deliver a standardized risk disclosure document containing specified information. In addition, the penny stock rules require that before effecting any transaction in a penny stock not otherwise exempt from those rules, a broker-dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive (i) the purchaser's written acknowledgment of the receipt of a risk disclosure statement; (ii) a written agreement to transactions involving penny stocks and (iii) a signed and dated copy of a written suitability statement. These disclosure requirements may have the effect of reducing the trading activity in the secondary market for our common stock, and therefore stockholders may have difficulty selling their shares.

***The price of our common stock could be subject to volatility related or unrelated to our operations, and purchasers of our common stock could incur substantial losses.***

The trading price of our common stock could be subject to wide fluctuations in response to various factors, some of which are beyond our control. These factors include those discussed previously in this "Risk Factors" section of this report and others, such as:

- delays in the commercialization of Mytesi, Neonorm, Canalevia, Equilevia or our other current or future prescription drug product candidates and non-prescription products;
- any delays in, or suspension or failure of, our current and future studies;
- announcements of regulatory approval or disapproval of any of our current or future product candidates or of regulatory actions affecting our company or our industry;



- manufacturing and supply issues that affect product candidate or product supply for our studies or commercialization efforts;
- quarterly variations in our results of operations or those of our competitors;
- changes in our earnings estimates or recommendations by securities analysts;
- the payment of licensing fees or royalties in shares of our common stock;
- announcements by us or our competitors of new prescription drug products or product candidates or non-prescription products, significant contracts, commercial relationships, acquisitions or capital commitments;
- announcements relating to future development or license agreements including termination of such agreements;
- adverse developments with respect to our intellectual property rights or those of our principal collaborators;
- commencement of litigation involving us or our competitors;
- any major changes in our board of directors or management;
- new legislation in the United States relating to the prescription, sale, distribution or pricing of gastrointestinal health products;
- product liability claims, other litigation or public concern about the safety of our prescription drug product or product candidates and non-prescription products or any such future products;
- market conditions in the human or animal industry, in general, or in the gastrointestinal health sector, in particular, including performance of our competitors; and
- general economic conditions in the United States and abroad.

In addition, the stock market, in general, or the market for stocks in our industry, in particular, may experience broad market fluctuations, which may adversely affect the market price or liquidity of our common stock. Any sudden decline in the market price of our common stock could trigger securities class-action lawsuits against us. If any of our stockholders were to bring such a lawsuit against us, we could incur substantial costs defending the lawsuit and the time and attention of our management would be diverted from our business and operations. We also could be subject to damages claims if we were found to be at fault in connection with a decline in our stock price.

***No active market for our common stock exists or may develop, and you may not be able to resell our common stock when you wish to sell them or at a price that you consider attractive or satisfactory.***

Prior to our initial public offering in May 2015, there was no public market for shares of our common stock. The listing of our common stock on The NASDAQ Capital Market does not assure that a meaningful, consistent and liquid trading market exists. Although our common stock is listed on The NASDAQ Capital Market, trading volume in our common stock has been limited and an active trading market for our shares may never develop or be sustained. If an active market for our common stock does not develop, you may be unable to sell your shares when you wish to sell them or at a price that you consider attractive or satisfactory. The lack of an active market may also adversely affect our ability to raise capital by selling securities in the future, or impair our ability to license or acquire other product candidates, businesses or technologies using our shares as consideration.



***The sale of our common stock to Aspire Capital or L2 Capital may cause substantial dilution to our existing stockholders and the sale of the shares of common stock acquired by Aspire Capital or L2 Capital could cause the price of our common stock to decline.***

On June 8, 2016, we entered into a common stock purchase agreement with Aspire Capital (the “Aspire CSPA”), in which Aspire Capital committed to purchase, at our election, up to an aggregate of \$15.0 million shares of our common stock over a period of approximately 30 months (i.e., 30 months from July 8, 2016, the effective date of the initial registration statement on Form S-1 that we filed to register the shares that we issued and may issue to Aspire pursuant to the Aspire CSPA). On November 24, 2017, we entered into a common stock purchase agreement with L2 Capital, LLC (the “L2 Capital CSPA”), a Kansas limited liability company (“L2 Capital”), relating to an offering of an aggregate of up to 12,100,000 shares of our common stock, of which 10,000,000 of such shares are being offered in an indirect primary offering consisting of an equity line of credit.

Through December 31, 2017, we have issued 6,000,000 shares of our common stock to Aspire Capital and under the Aspire CSPA and 5,100,000 shares of our common stock to L2 Capital under the L2 Capital CSPA for gross proceeds of approximately \$5.1 million and \$600,000, respectively. We may ultimately sell all, some or none of the approximately \$9.9 million of common stock remaining under the Aspire CSPA to Aspire Capital and \$9.4 million of common stock remaining under the L2 Capital CSPA, and Aspire Capital and L2 Capital may sell all, some or none of our shares that it holds or comes to hold under the Aspire CSPA and L2 Capital CSPA, respectively. Sales by Aspire Capital and L2 Capital of shares acquired pursuant to the Aspire CSPA and L2 Capital CSPA, respectively, may result in dilution to the interests of other holders of our common stock. The sale of a substantial number of shares of our common stock by Aspire Capital or L2 Capital, or anticipation of such sales, could make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise wish to effect sales. However, we have the right to control the timing and amount of sales of our shares to Aspire Capital and L2 Capital, and the Aspire Capital CSPA and L2 Capital CSPA may be terminated by us at any time at our discretion without any penalty or cost to us.

***If securities or industry analysts do not publish research or reports about our company, or if they issue adverse or misleading opinions regarding us or our stock, our stock price and trading volume could decline.***

The trading market for our common stock depends in part on the research and reports that industry or financial analysts publish about us or our business. We do not influence or control the reporting of these analysts. If one or more of the analysts who do cover us downgrade or provide a negative outlook on our company or our industry, or the stock of any of our competitors, the price of our common stock could decline. If one or more of these analysts ceases coverage of our company, we could lose visibility in the market, which in turn could cause the price of our common stock to decline.

***You may be diluted by conversions of outstanding non-voting common stock and convertible notes and exercises of outstanding options and warrants.***

As of December 31, 2017, we had (i) outstanding options to purchase an aggregate of 3,444,663 shares of our common stock at a weighted average exercise price of \$1.87 per share, (ii) warrants to purchase an aggregate of 4,820,025 shares of our common stock at a weighted-average exercise price of \$1.08 per share and (iii) outstanding convertible promissory notes in an aggregate principal amount of \$13,800,627, which are convertible for up to 15,549,637 shares of our common stock.

The exercise of such options and warrants or conversion of the convertible promissory notes will result in further dilution of your investment. In addition, you may experience additional dilution if we issue common stock in the future. As a result of this dilution, you may receive significantly less in net tangible book value than the full purchase price you paid for the shares in the event of liquidation.

***Shares eligible for future sale may adversely affect the market for our common stock.***

Of the 105,325,373 voting and non-voting shares of our common stock outstanding as of December 31, 2017, approximately 59,862,017 shares are held by “non-affiliates” and are, or will become, freely tradable without restriction pursuant to Rule 144. In addition, in the second half of 2017 and first quarter of 2018, we filed with the SEC registration statements on Form S-3 for purposes of registering the resale of an aggregate of 65,117,092 shares of restricted common stock that were sold to certain Napo creditors and investors in connection with the Merger and related refinancing transactions, including (i) 1,489,741 shares of voting common stock, (ii) 22,917,268 shares of voting common stock issuable upon conversion of non-voting common stock, (iii) 1,224,875 shares of voting common stock issuable upon exercise of warrants with an exercise price of \$0.08, (iv) 23,315,544 shares of voting common stock issuable upon conversion of Convertible Promissory Notes due December 30, 2019 (including interest accrued through maturity), (v) 8,510,294 shares of voting common stock issuable upon conversion of exchangeable promissory notes (including interest accrued through maturity), and (vi) 4,000,000 shares of voting common stock issuable upon conversion of Secured Convertible Promissory Notes due August 2, 2018. While sales of certain of these shares are subject to contractual resale restrictions, any substantial sale of our common stock pursuant to Rule 144 or pursuant to any resale prospectus may have a material adverse effect on the market price of our common stock.

***If shares of our non-voting common stock are converted into shares of our voting common stock, your voting power will be diluted.***

As of December 31, 2017, we had 62,707,480 shares of voting common stock and 42,617,893 shares of non-voting common stock outstanding. Generally, holders of our non-voting common stock have no voting power (other than in connection with a change of control of our company) and have no right to participate in any meeting of stockholders or to have notice thereof. However, shares of our non-voting common stock that are converted into voting common stock will have all the voting rights of the voting common stock. Shares of our non-voting common stock are convertible into shares of our voting common stock on a one-for-one basis (i) at the option of the respective holders thereof, at any time and from time to time on or after April 1, 2018 or (ii) automatically, without any payment of additional consideration by the holder thereof, (x) upon a transfer of such shares to any person or entity that is neither an affiliate of Nantucket nor an investment fund, investment vehicle or other account, that is, directly or indirectly, managed or advised by Nantucket or any of its affiliates pursuant to a sale of such stock to a third-party for cash in accordance with the terms and condition set forth in the Investor Rights Agreement, or (y) upon the subsequent release or transfer of such shares to the registered pre-Merger legacy stockholders of Napo’s outstanding shares of common stock as of July 31, 2017 (the “Napo Legacy Stockholders”). Upon conversion of any non-voting common stock, your voting power will be diluted in proportion to the decrease in your ownership of the total outstanding voting common stock.

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

Our third amended and restated certificate of incorporation and amended and restated bylaws contain provisions that could delay or prevent changes in control or changes in our management without the consent of our board of directors. These provisions to include the following:

- a classified board of directors with three-year staggered terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- no cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;

- the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- the ability of our board of directors to authorize the issuance of shares of preferred stock and to determine the terms of those shares, including preferences and voting rights, without stockholder approval, which could adversely affect the rights of our common stockholders or be used to deter a possible acquisition of our company;
- the ability of our board of directors to alter our bylaws without obtaining stockholder approval;
- the required approval of the holders of at least 75% of the shares entitled to vote at an election of directors to adopt, amend or repeal our bylaws or repeal the provisions of our third amended and restated certificate of incorporation regarding the election and removal of directors;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- the requirement that a special meeting of stockholders may be called only by the chairman of the board of directors, the chief executive officer, the president or the board of directors, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors; and
- advance notice procedures that stockholders must comply with in order to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of us.

These provisions could inhibit or prevent possible transactions that some stockholders may consider attractive.

We are also subject to the anti-takeover provisions contained in Section 203 of the Delaware General Corporation Law. Under Section 203, a corporation generally may not engage in a business combination with any holder of 15% or more of its capital stock unless the holder has held the stock for three years or, among other exceptions, the board of directors has approved the transaction.

***Our amended and restated bylaws designate the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or other employees.***

Our amended and restated bylaws provide that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, (iv) any action asserting a claim that is governed by the internal affairs doctrine or (v) any action to interpret, apply, enforce or determine the validity of our certificate of incorporation or bylaws. Any person purchasing or otherwise acquiring any interest in any shares of our capital stock shall be deemed to have notice of and to have consented to this provision of our amended and restated bylaws. This choice-of-forum provision may limit our stockholders' ability to bring a claim in a judicial forum that they find favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits. Alternatively, if a court were to find this provision of our amended and restated bylaws inapplicable or unenforceable with respect to one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could harm our business and financial condition.

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

We currently intend to invest our future earnings, if any, to fund our growth and not to pay any cash dividends on our common stock. Moreover, so long as Nantucket or any of its affiliates owns any shares of our non-voting common stock, we cannot pay dividends on our common stock or non-voting common stock without obtaining the prior written consent of Nantucket. Because we do not intend to pay dividends and may be required to obtain written consent if we were to do so, your ability to receive a return on your investment will depend on any future appreciation in the market price of our common stock. We cannot be certain that our common stock will appreciate in price.

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

As of December 31, 2017, our executive officers, directors, holders of 5% or more of our capital stock and their respective affiliates beneficially owned in the aggregate approximately 62% of the outstanding shares of our voting common stock. As a result of their stock ownership, these stockholders may have the ability to influence our management and policies, and will be able to significantly affect the outcome of matters requiring stockholder approval such as elections of directors, amendments of our organizational documents or approvals of any merger, sale of assets or other major corporate transaction. This may prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may feel are in your best interest as one of our stockholders.

***The requirements of being a public company, including compliance with the reporting requirements of the Exchange Act and the requirements of the Sarbanes-Oxley Act, may strain our resources, increase our costs and distract management, and we may be unable to comply with these requirements in a timely or cost-effective manner.***

Our initial public offering had a significant, transformative effect on us. Prior to our initial public offering, our business operated as a privately-held company, and we were not required to comply with public reporting, corporate governance and financial accounting practices and policies required of a publicly-traded company. As a publicly-traded company, we incur significant additional legal, accounting and other expenses compared to historical levels. In addition, new and changing laws, regulations and standards relating to corporate governance and public disclosure, including the Dodd-Frank Wall Street Reform and Consumer Protection Act and the rules and regulations thereunder, as well as under the Sarbanes-Oxley Act, the JOBS Act and the rules and regulations of the SEC and The NASDAQ Capital Market, may result in an increase in our costs and the time that our board of directors and management must devote to our compliance with these rules and regulations. These rules and regulations have substantially increased our legal and financial compliance costs and diverted management time and attention from our product development and other business activities.

The Sarbanes-Oxley Act requires, among other things, that we assess the effectiveness of its internal control over financial reporting annually and the effectiveness of our disclosure controls and procedures quarterly. In particular, Section 404 of the Sarbanes-Oxley Act, or Section 404, requires us to perform system and process evaluation and testing of our internal control over financial reporting to allow management to report on, and our independent registered public accounting firm potentially to attest to, the effectiveness of our internal control over financial reporting. We have needed to expend time and resources on documenting our internal control over financial reporting so that we are in a position to perform such evaluation when required. As an “emerging growth company,” we expect to avail ourselves of the exemption from the requirement that our independent registered public accounting firm attest to the effectiveness of our internal control over financial reporting under Section 404. However, we may no longer avail itself of this exemption when we cease to be an “emerging growth company.” When our independent registered public accounting firm is required to undertake an assessment of our internal control over financial reporting, the cost of our compliance with Section 404 will correspondingly increase.

Our compliance with applicable provisions of Section 404 requires that we incur substantial accounting expense and expend significant management time on compliance-related issues as we implement additional corporate governance practices and comply with reporting requirements. Moreover, if we are not able to comply with the requirements of Section 404 applicable to us in a timely manner, or if we or our independent registered public accounting firm identifies deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, the market price of our stock could decline and we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would require additional financial and management resources.

*We are an “emerging growth company” and we cannot be certain if the reduced disclosure requirements applicable to “emerging growth companies” will make our common stock less attractive to investors.*

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, and we may take advantage of certain exemptions and relief from various reporting requirements that are applicable to other public companies that are not “emerging growth companies.” In particular, while we are an “emerging growth company” (i) we will not be required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, (ii) we will be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and (iii) we will not be required to hold nonbinding advisory votes on executive compensation or stockholder approval of any golden parachute payments not previously approved. In addition, the JOBS Act provides that an emerging growth company can delay its adoption of any new or revised accounting standards, but we have irrevocably elected not to avail ourselves of this exemption and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies. In addition, investors may find our common stock less attractive if we rely on the exemptions and relief granted by the JOBS Act. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may decline and/or become more volatile.

We may remain an “emerging growth company” until as late as December 31, 2020 (the fiscal year-end following the fifth anniversary of the closing of our initial public offering, which occurred on May 18, 2015), although we may cease to be an “emerging growth company” earlier under certain circumstances, including (i) if the market value of our common stock that is held by non-affiliates exceeds \$700.0 million as of any June 30, in which case we would cease to be an “emerging growth company” as of December 31 of such year, (ii) if our gross revenue exceeds \$1.0 billion in any fiscal year or (iii) if we issue more than \$1.0 billion of non-convertible debt over a three-year period.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

#### **ITEM 2. PROPERTIES**

Our corporate headquarters are located in San Francisco, California, where we sublease 6,008 rentable square feet of office space from SeeChange Health Management Company, Inc. Our sublease agreement expires on August 31, 2018. We believe that our existing facilities are adequate for our near-term needs. We believe that suitable additional or alternative space would be available if required in the future on commercially reasonable terms if we are not able to convert our current sublease to a lease by August 31, 2018 on commercially reasonable terms.

#### **ITEM 3. 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 June 30, 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 allege 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 has been granted. Plaintiff filed an amended complaint against the Company and the United States-based director Defendants on January 10, 2018. If the Plaintiff were able to prove its allegations in this matter and to establish the damages it asserts, then an adverse ruling could have a material impact on the Company. However, the Company disputes the claims asserted in this putative class action case and is vigorously contesting the matter. The Defendants intend to move to dismiss the amended complaint for failure to state a claim upon which relief may be granted.

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 4. MINE SAFETY DISCLOSURE**

Not applicable.



## PART II

### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### Market Information

Our shares of common stock have been listed and traded on The NASDAQ Capital Market under the symbol "JAGX" since May 13, 2015. Prior to that date, there was no public market for our common stock.

The following table sets forth, for the periods indicated, the high and low intra-day sale prices in dollars on The NASDAQ Capital Market for our common stock.

<u>Quarter Ended</u>	<u>High</u>	<u>Low</u>
March 31, 2016 . . . . .	\$4.60	\$ 1.35
June 30, 2016 . . . . .	\$3.79	\$ 1.19
September 30, 2016 . . . . .	\$2.25	\$ 1.09
December 31, 2016 . . . . .	\$1.53	\$ 0.61
March 31, 2017 . . . . .	\$1.52	\$ 0.50
June 30, 2017 . . . . .	\$1.03	\$0.505
September 30, 2017 . . . . .	\$0.99	\$ 0.17
December 31, 2017 . . . . .	\$0.25	\$0.105

#### Holdings

As of December 31, 2017, there were approximately 29 stockholders of record of our common stock. These figures do not reflect the beneficial ownership or shares held in nominee name, nor do they include holders of any RSUs.

#### Dividend Policy

We have never paid any cash dividends on our common stock to date. We currently anticipate that we will retain all future earnings, if any, to fund the development and growth of our business and do not anticipate paying any cash dividends for at least the next five years, if ever.

#### Recent Sales of Unregistered Securities

On October 30, 2017, pursuant to a debt settlement agreement dated October 30, 2017, we issued 235,134 shares of common stock to KCSA Strategic Communications ("KCSA"), which together with the 64,866 shares of common stock previously issued on July 31, 2017, fully satisfied \$60,000 in debt incurred by us for services rendered by KCSA.

In November and December 2017, through a series of partial redemptions pursuant to the terms of the Secured Convertible Promissory Note issued to Chicago Venture Partners, L.P. (the "CVP Note") as disclosed in our Form 8-K filed with the SEC on July 3, 2017, we issued 4,000,000 shares of common stock to redeem \$601,311.80 of the CVP Note.

In December 2017, pursuant to a share purchase agreement dated December 27, 2017, we issued 4,010,000 shares of our common stock to certain investors for gross proceeds of \$401,000. We used net proceeds from the offering for commercialization activities relating to the launch of Mytesi, our FDA-approved human health product, and general corporate purposes.

Other than as provided above and the shares of our common stock sold pursuant to the L2 Capital CSPA, as disclosed on our Form 8-K filed with the SEC on November 24, 2017, there were no unregistered sales of equity securities during the period.

The offers, sales, and issuances of the securities described above were deemed to be exempt from registration under the Securities Act in reliance on Section 4(a)(2) of the Securities Act, Regulation D or Regulation S promulgated thereunder as transactions by an issuer not involving a public offering. The recipients of securities in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions was an accredited or sophisticated person and had adequate access, through employment, business or other relationships, to information about us.

**ITEM 6. SELECTED FINANCIAL DATA**

Not Applicable.

## **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*The following discussion and analysis should be read together with our financial statements and the related notes appearing elsewhere in this report.*

### **Overview**

We are a commercial stage natural-products pharmaceuticals company focused on developing novel, sustainably derived gastrointestinal products for both human prescription use and animals 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 ("FDA") for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy. In the field of animal health, we are focused on developing and commercializing first-in-class gastrointestinal products for companion and production animals, foals, and high value horses.

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, until May 13, 2015, Jaguar was a majority-owned subsidiary of Napo. 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.

With the merger effective, we believe that our newly combined company is poised to realize a number of synergistic, value adding benefits—and 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.

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. Jaguar, through Napo, controls commercial rights for Mytesi for all indications, territories and patient populations globally. 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 as a second-generation anti-secretory agent for use in cholera patients. Mytesi has received orphan-drug designation for SBS.

### **Financial Operations Overview**

We were incorporated in June 2013 in Delaware. Napo formed our company to develop and commercialize animal health products. Prior to our incorporation, the only activities of Napo related to animal health were limited to the retention of consultants to evaluate potential strategic alternatives. We were previously a majority-owned subsidiary of Napo. However, following the closing of our May 2015 initial public offering, we are no longer majority-owned by Napo.

On July 31, 2017, Jaguar Animal Health, Inc., or 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 our wholly-owned subsidiary. Immediately following the Napo 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. FDA for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy.

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 and comprehensive loss was \$22.0 million and \$14.7 million for the years ended December 31, 2017 and 2016, respectively. As of December 31, 2017, we had total stockholders' equity of \$17.3 million and cash and cash equivalents of \$520,698. We expect to continue to incur losses 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 commercialization activities. As a result, we expect to experience increased expenditures for 2018.

### Revenue Recognition

We recognize revenue in accordance with ASC 605 "Revenue Recognition", subtopic ASC 605-25 "*Revenue with Multiple Element Arrangements*" and subtopic ASC 605-28 "*Revenue Recognition—Milestone Method*", which provides accounting guidance for revenue recognition for arrangements with multiple deliverables and guidance on defining the milestone and determining when the use of the milestone method of revenue recognition for research and development transactions is appropriate, respectively. For multiple-element arrangements, each deliverable within a multiple deliverable revenue arrangement is accounted for as a separate unit of accounting if both of the following criteria are met: (1) the delivered item or items have value to the customer on a standalone basis and (2) for an arrangement that includes a general right of return relative to the delivered item(s), delivery or performance of the undelivered item(s) is considered probable and substantially in our control. If a deliverable in a multiple element arrangement is not deemed to have a stand-alone value, consideration received for such a deliverable is recognized ratably over the term of the arrangement or the estimated performance period, and it will be periodically reviewed based on the progress of the related product development plan. The effect of a change made to an estimated performance period and therefore revenue recognized ratably would occur on a prospective basis in the period that the change was made.

We recognize revenue under its licensing, development, co-promotion and commercialization agreement from milestone payments when: (i) the milestone event is substantive and its achievability has substantive uncertainty at the inception of the agreement, and (ii) it does not have ongoing performance obligations related to the achievement of the milestone earned. Milestone payments are considered substantive if all of the following conditions are met: the milestone payment (a) is commensurate with either our performance subsequent to the inception of the arrangement to achieve the milestone or the enhancement of the value of the delivered item or items as a result of a specific outcome resulting from our performance subsequent to the inception of the arrangement to achieve the milestone, (b) relates solely to past performance, and (c) is reasonable relative to all of the deliverables and payment terms (including other potential milestone consideration) within the arrangement.

We record revenue related to the reimbursement of costs incurred under the collaboration agreement where the company acts as principal, controls the research and development activities and bears credit risk. Under the agreement, we are reimbursed for associated out-of-pocket costs and for certain employee costs. The gross amount of these pass-through costs is reported in revenue in the accompanying statements of operations and comprehensive loss, while the actual expense for which we are reimbursed are reflected as research and development costs.

Determining whether and when some of these revenue recognition criteria have been satisfied often involves assumptions and judgments that can have a significant impact on the timing and amount of revenue we will report. Changes in assumptions or judgments or changes to the elements in an

arrangement could cause a material increase or decrease in the amount of revenue that we report in a particular period.

### **Product Revenue**

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. Beginning the three months ended December 2017, we developed sufficient sales history and pipeline visibility to recognize revenue when risk and title of products are transferred to the distributors. Prior to this, revenue recognition depended on notification directly from the distributor that product has been sold to the distributor's customer, and deferred revenue on shipments to distributors reflected the estimated effects of distributor price adjustments, if any, and the estimated amount of gross margin expected to be realized when the distributor sells through product purchased from us. Prior to the three months ended December 2017, our sales to distributors were invoiced and included in accounts receivable and deferred revenue upon shipment, and inventory was relieved and revenue recognized upon shipment by the distributor to their customer. We had Neonorm revenues of \$344,194 and \$117,523 for the years ended December 31, 2017 and 2016, respectively. The change resulted in the recognition of gross profit of \$106,000 consisting of \$163,000 in previously deferred revenue and \$57,000 in related cost of revenue.

Sales of Botanical Extract are recognized as revenue when delivered to the customer. We had Botanical Extract revenues of \$78,000 and \$24,000 in the years ended December 31, 2017 and 2016, respectively.

Sales of Mytesi are recognized as revenue when the products are delivered to the wholesalers. We had Mytesi revenues of \$1,062,920 and \$0 in the years ended December 2017 and 2016, respectively. We record a reserve for estimated product returns under terms of agreements with wholesalers based on its historical returns experience. Reserves for returns at December 31, 2017 were immaterial. If actual returns differed from our historical experience, changes to the reserved could be required in future periods.

### **Collaboration Revenue**

On January 27, 2017, we entered into a licensing, development, co-promotion and commercialization agreement with Elanco US Inc. ("Elanco") to license, develop and commercialize Canalevia ("Licensed Product"), our drug product candidate under investigation for treatment of acute and chemotherapy-induced diarrhea in dogs, and other drug product formulations of crofelemer for treatment of gastrointestinal diseases, conditions and symptoms in cats and other companion animals. We granted Elanco exclusive global rights to Canalevia, a product whose active pharmaceutical ingredient is sustainably isolated and purified from the Croton lechleri tree, for use in companion animals. Pursuant to the Elanco Agreement, Elanco will have exclusive rights globally outside the U.S. and co-exclusive rights with us in the U.S. to direct all marketing, advertising, promotion, launch and sales activities related to the Licensed Products. On November 1, 2017, Elanco executed its right to terminate the agreement effective January 30, 2018.

Under the terms of the Elanco Agreement, we received an initial upfront payment of \$2,548,689, inclusive of reimbursement of past product and development expenses of \$1,048,689, and will receive additional payments upon achievement of certain development, regulatory and sales milestones in an aggregate amount of up to \$61.0 million payable throughout the term of the Elanco Agreement, as well as product development expense reimbursement for any additional product development expenses incurred, and royalty payments on global sales. The \$61.0 million development and commercial milestones consist of \$1.0 million for successful completion of a dose ranging study; \$2.0 million for the first commercial sale of license product for acute indications of diarrhea; \$3.0 million for the first commercial sale of a license product for chronic indications of diarrhea; \$25.0 million for aggregate worldwide net sales of licensed products exceeding \$100.0 million in a calendar year during the term of the agreement; and \$30.0 million

for aggregate worldwide net sales of licensed products exceeding \$250.0 million in a calendar year during the terms of the agreement. Each of the development and commercial milestones are considered substantive. No revenues associated with the achievement of the milestones has been recognized to date. The Elanco Agreement specifies that we will supply the Licensed Products to Elanco, and that the parties will agree to set a minimum sales requirement that Elanco must meet to maintain exclusivity. The \$2,548,689 upfront payment, inclusive of reimbursement of past product and development expenses of \$1,048,689 is recognized as revenue ratably over the estimated development period of one year resulting in \$2,371,300 in collaboration revenue in the year ended December 31, 2017, which is included in the statements of operations and comprehensive loss. The difference of \$177,389 is included in deferred collaboration revenue in the balance sheet.

In addition to the upfront payments, Elanco reimburses us for certain development and regulatory expenses related to our planned target animal safety study and the completion of the Canalevia field study for acute diarrhea in dogs. These are recognized as revenue in the month in which the related expenses are incurred. We have \$1,380 of unreimbursed expenses as of December 31, 2017, which is included in Other Receivables on the balance sheet. We included the \$504,771 of reimbursements in collaboration revenue in the year ended December 31, 2017, which is included in the statements of operations and comprehensive loss. On November 1, 2017, the Company received a letter (the “Notice”) from Elanco serving as formal notice of Elanco’s decision to terminate the Elanco Agreement by giving the Company 90 days written notice. Pursuant to the terms of the Elanco Agreement, termination of the Agreement became effective on January 30, 2018, which is 90 days after the date of the Notice. On the effective date of termination of the Elanco Agreement, all licenses granted to Elanco by the Company under the Elanco Agreement will be revoked and the rights granted thereunder revert back to the Company.

### **Cost of Product Revenue**

Cost of product revenue expenses consist of costs to manufacture, package and distribute Neonom related to those products that prior to December 2017 distributors have sold through to their customers, and beginning December 2017 products sold to distributors and other customers. Cost of product revenue also includes charges associated with inventory reserves.

### **Research and Development Expense**

Research and development expenses consist primarily of clinical and contract manufacturing expense, personnel and related benefit expense, stock-based compensation expense, employee travel expense, reforestation expenses. Clinical and contract manufacturing expense consists primarily of costs to conduct stability, safety and efficacy studies, and manufacturing startup expenses at an outsourced API provider in Italy.

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 but do not allocate 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 significantly as we add personnel, commence additional clinical studies and other activities to develop our prescription drug product candidates and non-prescription products.

### **Sales and Marketing Expense**

Sales and marketing expenses consist of personnel and related benefit 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 and Neonorm calf and foal sales.

We expect sales and marketing expense to increase significantly as we develop and commercialize new products and grow our existing Neonorm market. We will need to add sales and marketing headcount to promote the sales of existing and new products.

### **General and Administrative Expense**

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

We expect general and administrative expense to increase in order to enable us to effectively manage the overall growth of the business. This will include adding headcount, enhancing information systems and potentially expanding corporate facilities.

### **Interest Expense**

Interest expense consists primarily of interest on convertible promissory notes, promissory notes, and the loan and security agreement (long-term debt arrangement). We also include accretion of debt issuance costs, debt discount amortization and the accretion of an end-of-term long-term debt payment in interest expense in the statements of operations and comprehensive loss.

## Results of Operations

### Comparison of the years ended December 31, 2017 and 2016

The following table summarizes the Company's results of operations with respect to the items set forth in such table for the years ended December 31, 2017 and 2016 together with the change in such items in dollars and as a percentage:

	Years Ended December 31,		Variance	Variance %
	2017	2016		
Product revenue . . . . .	\$ 1,485,114	\$ 141,523	\$ 1,343,591	949.4%
Collaboration revenue . . . . .	2,876,072	—	2,876,072	N/A
Total revenue . . . . .	<u>4,361,186</u>	<u>141,523</u>	<u>4,219,663</u>	<u>2981.6%</u>
Operating Expenses				
Cost of revenue . . . . .	880,405	51,966	828,439	1594.2%
Research and development expense . . . . .	4,269,455	7,206,864	(2,937,409)	(40.8)%
Sales and marketing expense . . . . .	3,083,739	485,440	2,598,299	535.2%
General and administrative expense . . . . .	11,247,647	5,983,238	5,264,409	88.0%
Impairment of goodwill . . . . .	16,827,000	—	16,827,000	N/A
Impairment of long-lived intangible assets . . . . .	2,300,000	—	2,300,000	N/A
Total operating expenses . . . . .	<u>38,608,246</u>	<u>13,727,508</u>	<u>24,880,738</u>	<u>181.2%</u>
Loss from operations . . . . .	(34,247,060)	(13,585,985)	(20,661,075)	(152.1)%
Interest expense, net . . . . .	(1,209,632)	(985,549)	(224,083)	(22.7)%
Other income . . . . .	88,549	(11,046)	99,595	901.6%
Change in fair value of warrants . . . . .	695,341	(43,200)	738,541	N/A
Loss on extinguishment of debt . . . . .	(477,054)	(108,000)	(369,054)	N/A
Net loss before tax . . . . .	(35,149,856)	(14,733,780)	(20,416,076)	(138.6)%
Income tax benefit . . . . .	13,181,242	—	13,181,242	N/A
Net loss and comprehensive loss . . . . .	<u>\$(21,968,614)</u>	<u>\$(14,733,780)</u>	<u>\$ (7,234,834)</u>	<u>(49.1)%</u>

### Revenue and Cost of Revenue

#### Product revenue

Our product revenue of \$1,485,114 and \$141,523 and related cost of revenue of \$880,405 and \$51,966 for the years ended December 31, 2017 and 2016 reflects revenue from the sale of our human drug Mytesi, our animal products branded as Neonorm Calf and Neonorm Foal and botanical extract .

Sales of our human drug Mytesi are recognized as revenue when the products are delivered to the wholesalers. We had Mytesi revenues of \$1,062,920 and \$0 for the years ended December 31, 2017 and 2016, respectively. We record a reserve for estimated product returns under terms of agreements with wholesalers based on its historical returns experience. Reserves for returns at December 31, 2017 were immaterial. If actual returns differed from our historical experience, changes to the reserved could be required in future periods.

Sales of our Neonorm Calf and Foal animal products to distributors are made under agreements that may provide distributor price adjustments and rights of return under certain circumstances. Beginning December 2017, we developed sufficient sales history and pipeline visibility to recognize revenue when products are delivered to the distributors. Prior to December 2017, revenue recognition depended on notification directly from the distributor that product has been sold to the distributor's customer, and deferred revenue on shipments to distributors reflected the estimated effects of distributor price

adjustments, if any, and the estimated amount of gross margin expected to be realized when the distributor sells through product purchased from us. Prior to December 2017, our sales to distributors were invoiced and included in accounts receivable and deferred revenue upon shipment, and inventory was relieved and revenue recognized upon shipment by the distributor to their customer. We had Neonorm revenues of \$344,194 and \$117,523 for the years ended December 31, 2017 and 2016, respectively. The change resulted in the recognition of gross profit of \$106,000 consisting of \$163,000 in previously deferred revenue and \$57,000 in related cost of revenue.

Sales of Botanical Extract are recognized as revenue when delivered to the customer. We had Botanical Extract revenues of \$78,000 and \$24,000 in the years ended December 31, 2017 and 2016, respectively. We began selling botanical extract to a distributor for use exclusively in China beginning in September 2016. Revenue increased due to an increase in kilograms of botanical extract sold directly to customers in the years ended December 31, 2017 compared to the same period in 2016. We had no cost of product revenue associated with the botanical extract as we wrote off the full value of the botanical extract to expense in 2014 due to uncertainty of future use and ability to sell to a customer.

### **Collaboration revenue**

On January 27, 2017, we entered into a licensing, development, co-promotion and commercialization agreement with Elanco to license, develop and commercialize Canalevia (“Licensed Product”), our drug product candidate under investigation for treatment of acute and chemotherapy-induced diarrhea in dogs, and other drug product formulations of crofelemer for treatment of gastrointestinal diseases, conditions and symptoms in cats and other companion animals. We granted to Elanco exclusive global rights to Canalevia, a product whose active pharmaceutical ingredient is sustainably isolated and purified from the Croton lechleri tree, for use in companion animals. Pursuant to the Elanco Agreement, Elanco has exclusive rights globally outside the U.S. and co-exclusive rights with us in the U.S. to direct all marketing, advertising, promotion, launch and sales activities related to the Licensed Products. Under the terms of the Elanco Agreement, we received an initial upfront payment of \$2,548,689 and will receive additional payments upon achievement of certain development, regulatory and sales milestones in an aggregate amount of up to \$61.0 million payable throughout the term of the Elanco Agreement, as well as product development expense reimbursement, and royalty payments on global sales. The Elanco Agreement specifies that we will supply the Licensed Products to Elanco, and that the parties will agree to set a minimum sales requirement that Elanco must meet to maintain exclusivity. Elanco will reimburse us for certain development and regulatory expenses related to our planned target animal safety study and the completion of our field study of Canalevia for acute diarrhea in dogs. The \$2,548,689 total of the upfront payment and expense reimbursement is recognized as collaboration revenue ratably over the estimated development period of one year resulting in \$2,371,300 in collaboration revenue in the year ended December 31, 2017. In addition to the upfront payments, Elanco reimburses us for certain development and regulatory expenses related to our planned target animal safety study and the completion of the Canalevia field study for acute diarrhea in dogs. These are recognized as revenue in the month in which the related expenses are incurred. We included \$504,771 of reimbursements in collaboration revenue in the year ended December 31, 2017.

### Research and Development Expense

The following table presents the components of research and development expense for the years ended December 31, 2017 and 2016 together with the change in such components in dollars and as a percentage:

	Years Ended December 31,		Variance	Variance %
	2017	2016		
<i>R&amp;D:</i>				
Personnel and related benefits . . . . .	\$2,162,251	\$2,546,220	\$ (383,969)	(15.1)%
Materials expense and tree planting . . . . .	248,010	113,394	\$ 134,616	118.7%
Travel, other expenses . . . . .	189,622	400,846	\$ (211,224)	(52.7)%
Clinical and contract manufacturing . . . . .	439,071	2,254,122	\$(1,815,051)	(80.5)%
Stock-based compensation . . . . .	216,932	181,489	\$ 35,443	19.5%
Other . . . . .	1,013,569	1,710,793	\$ (697,224)	(40.8)%
Total . . . . .	<u>\$4,269,455</u>	<u>\$7,206,864</u>	<u>\$(2,937,409)</u>	<u>(40.8)%</u>

Our research and development expense decreased \$2,937,409 from \$7,206,864 in the year ended December 31, 2016 to \$4,269,455 for the same period in 2017. Personnel and related benefits decreased \$383,969 from \$2,546,220 in the year ended December 31, 2016 to \$2,162,251 in the same period in 2017 due to an increase of \$148,343 employee leasing chargebacks to Napo for services rendered in the seven months ended July 31, 2017 over the year ended December 31, 2016 with the remainder of the decrease due to changes in headcount personnel and related salaries and benefits year over year. Travel expenses decreased \$211,224 from \$400,846 in the year ended December 31, 2016 to \$189,622 in the same period in 2017 due primarily to a decrease in clinical activity. Clinical trial work decreased and contract manufacturing work was completed in Q1 2016 resulting in a reduction of expense of \$1,815,051 from \$2,254,122 in the year ended December 31, 2016 to \$439,071 in the same period in 2017. Clinical expenses decreased \$1,400,746 from \$1,921,863 in the year ended December 31, 2016 to \$521,117 in the same period in 2017, and contract manufacturing expense decreased \$414,305 due to the completion of the manufacturing setup in Italy in the first quarter of 2016 and due to some related contract adjustments that arose in the second quarter of 2017. Stock-based compensation increased \$35,443 from \$181,489 in the year ended December 31, 2016 to \$216,932 in the same period in 2017 primarily due to an increase in the number of outstanding option grants year over year. Other expenses, consisting primarily of consulting and formulation expenses, decreased \$697,224 from \$1,710,793 in the year ended December 31, 2016 to \$1,013,569 in the same period in 2017. Consulting expenses decreased \$540,559 from \$1,047,285 in the year ended December 31, 2016 to \$506,726 in the same period in 2017 consistent with the decrease in contractor utilization to assist in our clinical trials and in chemistry, manufacturing and controls (“CMC”) activities. Formulation expenses decreased \$154,180 from \$420,143 in the year ended December 31, 2016 to \$265,963 for the same period in 2017 due to an decrease in work needed for clinical operations. We plan to increase our research and development expense as we continue developing our drug candidates. Our research and development expenses include \$1,014,820 of Napo research and development expenses for the five month period from the July 31, 2017 acquisition.

We continued to increase our level of support for the reforestation of croton lechleri trees in South America, which is reflected in an increase in spend of \$134,616 from \$113,393 in the year ended December 31, 2016 to \$248,010 in the same period in 2017. We value and take to heart the responsibility to replenish trees consumed in order to extract the raw material to manufacture our primary commercial product and the drug product for use in clinical trials.

### *Sales and Marketing Expense*

The following table presents the components of sales and marketing expense for the years ended December 31, 2017 and 2016 together with the change in such components in dollars and as a percentage:

	Years Ended December 31,		Variance	Variance %
	2017	2016		
<i>S&amp;M:</i>				
Personnel and related benefits . . . . .	\$ 753,944	\$198,100	\$ 555,844	280.6%
Stock-based compensation . . . . .	32,325	73,679	(41,354)	(56.1)%
Direct Marketing Fees . . . . .	1,491,869	116,417	1,375,452	1181.5%
Other . . . . .	805,601	97,244	708,357	728.4%
Total . . . . .	<u>\$3,083,739</u>	<u>\$485,440</u>	<u>\$2,598,299</u>	<u>535.2%</u>

Our sales and marketing expense increased \$2,598,299 from \$485,440 in the year ended December 31, 2016 to \$3,083,739 in the same period in 2017. Personnel and related benefits increased \$555,844 from \$198,100 in the year ended December 31, 2016 to \$753,944 in the same period in 2017 due to headcount changes year over year, net of \$42,703 in employee leasing chargebacks to Napo for services rendered in the seven months ended July 31, 2017 over the year ended December 31, 2016. Stock based compensation expense decreased \$41,354 from \$73,679 in the year ended December 31, 2016 to \$32,325 in the same period in 2017 due to new options granted at a much lower fair value due to a lower strike price and a lower fair market value. Direct marketing and sales expense increased \$1,375,452 from \$116,417 in the year ended December 31, 2016 to \$1,491,869 for the same period in 2017 due to an increase in marketing programs to promote the Napo Mytesi product. Other expenses, consisted primarily of travel expense, consulting expense and royalty expense, which collectively increased \$708,357 from \$97,244 in the year ended December 31, 2016 to \$805,601 in the same period in 2017. We plan to expand sales and marketing spend to promote our Mytesi products. Sales and marketing expenses include \$2,519,701 in Napo sales and marketing expenses for the five month period from the July 31, 2017 acquisition.

### *General and Administrative Expense*

The following table presents the components of general and administrative expense for the years ended December 31, 2017 and 2016 together with the change in such components in dollars and as a percentage:

	Years Ended December 31,		Variance	Variance %
	2017	2016		
<i>G&amp;A:</i>				
Personnel and related benefits . . . . .	\$ 1,810,132	\$2,104,809	\$ (294,677)	(14.0)%
Accounting fees . . . . .	740,959	311,693	429,266	137.7%
Third-party consulting fees and Napo service fees . .	1,470,737	374,852	1,095,885	292.4%
Legal fees . . . . .	3,462,769	824,288	2,638,481	320.1%
Travel . . . . .	303,601	310,066	(6,465)	(2.1)%
Stock-based compensation . . . . .	565,356	462,759	102,597	22.2%
Rent and lease expense . . . . .	336,435	384,147	(47,712)	(12.4)%
Public company expenses . . . . .	777,629	291,253	486,376	167.0%
Other . . . . .	1,780,029	919,371	860,658	93.6%
Total . . . . .	<u>\$11,247,647</u>	<u>\$5,983,238</u>	<u>\$5,264,409</u>	<u>88.0%</u>

Our general and administrative expenses increased \$5,264,409 from \$5,983,238 in the year ended December 31, 2016 to \$11,247,647 for the same period in 2017 due primarily to \$3,521,751 in merger related expenses incurred in the year ended December 31, 2017, including \$858,103 in consulting services for a fairness opinion, \$101,119 in other consulting services, \$2,202,799 in estimated legal fees and \$136,529 in estimated audit fees, and \$223,201 in estimated printer and filing fees. Personnel and related benefits decreased \$294,677 from \$2,104,809 in the year ended December 31, 2016 to \$1,810,132 in the same period in 2017 due to an increase of \$60,232 in employee leasing chargebacks for services rendered in the seven months ended July 31, 2017 versus the year ended December 31, 2016, a decrease in severance expense of \$105,425 from \$105,425 in the year ended December 31, 2016 to \$0 in the same period in 2017, with the remainder of the decrease due to changes in headcount personnel and related salaries year over year, primarily at high paying executive levels. Personnel and related benefits for the year ended December 31, 2017 include \$321,313 for Napo's personnel and related benefits for the five months from the July 31, 2017 date of acquisition. Stock-based compensation increased \$102,597 from \$462,759 in the year ended December 31, 2016 to \$565,356 in the same period in 2017 due primarily to expense associated with new grants to existing employees. Public company expenses increased \$486,376 from \$291,253 in the year ended December 31, 2016 to \$777,629 in the same period in 2017 due primarily to the \$223,201 in merger related printer expenses. In addition to the \$136,529 of audit related merger fees discussed above, our annual, quarterly and other audit and accounting fees increased by another \$292,737 resulting in an aggregate \$429,266 increase in accounting fees from \$311,693 in the year ended December 31, 2016 to \$740,959 in the same period in 2017. In addition to the \$2,202,799 of legal related merger fees, our general corporate and public securities legal fees increased an additional \$435,682 resulting in an aggregate increase of \$2,638,481 in legal fees from \$824,288 in the year ended December 31, 2016 to \$3,462,769 in the same period in 2017. In addition to the \$858,103 fairness opinion consulting and \$101,119 in other consulting merger related fees, our non-merger related consulting expenses increased by \$106,663 resulting in aggregate increase of \$1,095,885 from \$374,852 in the year ended December 31, 2016 to \$1,470,737 in the same period in 2017. Rent and lease expense decreased \$47,712 from \$384,147 in the year ended December 31, 2016 to \$336,435 in the same period in 2017 due primarily to an increase of \$24,771 in employee leasing chargebacks to Napo for space used in connection with our employees providing services to Napo during the seven months ended July 31, 2017, offset by additional parking and apartment rent year over year. Other expenses, including warrant expense, insurance costs, office and facilities expenses increased \$860,658 from \$919,371 in the year ended December 31, 2016 to \$1,780,029 in the same period in 2017 primarily due to \$23,000 of expense related to warrant exercises, \$26,629 increase in conferences and meetings, a \$26,210 increase in IT expenses, net of a reduction of \$30,906 in bank and credit card fees, net of a reduction of \$109,381 in recruiting fees. Other expenses for the year ended December 31, 2017 include \$901,009 for Napo's other general and administrative expenses for the five months from the July 31, 2017 date of acquisition. We expect to incur additional general and administrative expense as a result of operating as a public company and as we grow our business, including expenses related to compliance with the rules and regulations of the SEC, additional insurance expenses, investor relations activities and other administrative and professional services. General and administrative expenses include \$1,750,751 in Napo sales and marketing expenses for the five month period from the July 31, 2017 acquisition.

## **Liquidity and Capital Resources**

### *Sources of Liquidity*

We had an accumulated deficit of \$62.4 million as a result of incurring net losses since our inception as we have not generated enough revenue to cover costs and expenses through the current fiscal year. Our net loss and comprehensive loss was \$22.0 million for the year ended December 31, 2017. We expect to continue to incur additional losses through the end of fiscal year 2017 and into future years due to expected significant expenses for toxicology, safety and efficacy clinical trials of our products and product candidates, for establishing contract manufacturing capabilities, and for the commercialization of one or more of our product candidates, if approved.



We had cash and cash equivalents of \$520,698 as of December 31, 2017. We do not believe our existing cash and cash equivalents will be sufficient to meet our anticipated cash requirements for the next 12 months. Our independent registered public accounting firm has included an explanatory paragraph in its audit report included in our Form 10-K for the years ended December 31, 2017 and 2016 regarding our assessment of substantial doubt about our ability to continue as a going concern. Our financial statements do not include any adjustments that may result from the outcome of this uncertainty.

To date, we have funded our operations primarily through the issuance of equity securities, short-term convertible promissory notes, and long-term debt, in addition to sales of our commercial products:

- In 2013, we received \$400 from the issuance of 2,666,666 shares of common stock to our parent Napo Pharmaceuticals, Inc. We also received \$519,000 of net cash from the issuance of convertible promissory notes in an aggregate principal amount of \$525,000. These notes were all converted to common stock in 2014.
- In 2014, we received \$6.7 million in proceeds from the issuance of convertible preferred stock. Effective as of the closing of our initial public offering, the 3,015,902 shares of outstanding convertible preferred stock were automatically converted into 2,010,596 shares of common stock. Following our initial public offering, there were no shares of preferred stock outstanding.
- In 2014, we received \$1.1 million from the issuance of convertible promissory notes in an aggregate principal amount of \$1.1 million. These notes were converted to common stock upon the effectiveness of the initial public offering in May of 2015. In August 2014, we entered into a standby line of credit with an individual, who is an accredited investor, for up to \$1.0 million. To date, we had not made any drawdowns under this facility. Also, in October of 2014, as amended and restated in December 2014, we entered into a \$1.0 million standby bridge loan which was repaid in 2015.
- In 2015, we received \$1.25 million in exchange for \$1.25 million of convertible promissory notes, of which \$1.0 million was converted to common stock in 2015, and \$100,000 was repaid in 2015. The remaining \$150,000 remains outstanding.
- In May 2015, we received net proceeds of \$15.9 million upon the closing of our initial public offering, gross proceeds of \$20.0 million (2,860,000 shares at \$7.00 per share) net of \$1.2 million of underwriting discounts and commissions and \$3.3 million of offering expenses, including \$0.4 million of non-cash expense. These shares began trading on The NASDAQ Capital Market on May 13, 2015.
- In 2015, we received net proceeds of \$5.9 million from the issuance of long-term debt. We entered into a loan and security agreement with a lender for up to \$8.0 million, which provided for an initial loan commitment of \$6.0 million. Under the loan agreement we are required to maintain \$4.5 million of the proceeds in cash, which amount may be reduced or eliminated on the achievement of certain milestones. An additional \$2.0 million is available contingent on the achievement of certain further milestones. The agreement has a term of three years, with interest only payments through February 29, 2016. Thereafter, principal and interest payments will be made with an interest rate of 9.9%. Additionally, there will be a balloon interest payment of \$560,000 on August 1, 2018. This amount is being recognized over the term of the loan agreement and the effective interest rate, considering the balloon payment, is 15.0%. Our proceeds are net of a \$134,433 debt discount under the terms of the agreement.
- In 2014 and 2015, we received \$24,000 and \$531,000, respectively, in cash from sales of Neonorm to distributors.
- In 2015, we received approximately \$13,000 in proceeds from the exercise of stock options.

- In 2016, we received net proceeds of \$4.1 million upon the closing of our follow-on public offering, reflecting gross proceeds of \$5.0 million (2.0 million shares at \$2.50 per share) net of \$373,011 of underwriting discounts and commissions and \$496,887 of offering expenses.
- In June 2016, we entered into the CSPA with a private investor. Under the terms of the agreement, we may sell up to \$15.0 million in common stock to the investor during the approximately 30-month term of the agreement. Upon execution of the CSPA, we sold 222,222 shares of our common stock to the investor at \$2.25 per share for net proceeds of \$448,732, reflecting gross proceeds of \$500,000 and offering expenses of \$51,268. In consideration for entering into the CSPA, we issued 456,667 shares of our common stock to the investor. We issued 1,348,601 shares in exchange for net proceeds of \$2,122,570, reflecting gross proceeds of \$2,176,700 net of \$54,130 offering expenses under the CSPA in the year ended December 31, 2016. And in the nine months ended September 30, 2017, we sold another 3,972,510 shares of the Company's common stock in exchange for \$2,387,085 of gross cash proceeds. Of the \$15.0 million available under the CSPA, we have received \$5,063,785 from the sale of 6,000,000 shares of our common stock as of December 31, 2017.
- In October 2016, we entered into a Common Stock Purchase Agreement with an existing private investor. Upon execution of the agreement we sold 170,455 shares of our common stock in exchange for \$150,000 in cash proceeds.
- On November 22, 2016, we entered into a Securities Purchase Agreement, or the 2016 Purchase Agreement, with certain institutional investors, pursuant to which we sold securities to such investors in a private placement transaction, which we refer to herein as the 2016 Private Placement. In the 2016 Private Placement, we sold an aggregate of 1,666,668 shares of our common stock at a price of \$0.60 per share for gross proceeds of approximately \$1.0 million. The investors in the 2016 Private Placement also received (i) warrants to purchase up to an aggregate of 1,666,668 shares of our common stock, at an exercise price of \$0.75 per share, or the Series A Warrants, (ii) warrants to purchase up to an aggregate 1,666,668 shares of our common stock, at an exercise price of \$0.90 per share, or the Series B Warrants, and (iii) warrants to purchase up to an aggregate 1,666,668 shares of our common stock, at an exercise price of \$1.00 per share, or the Series C Warrants and, together with the Series A Warrants and the Series B Warrants, the 2016 Warrants.
- On January 27, 2017, we entered into a licensing, development, co-promotion and commercialization agreement with Elanco to license, develop and commercialize Canalevia, our drug product candidate under investigation for treatment of acute and chemotherapy-induced diarrhea in dogs, and other drug product formulations of crofelemer for treatment of gastrointestinal diseases, conditions and symptoms in cats and other companion animals. The Elanco Agreement grants Elanco exclusive global rights to Canalevia, a product whose active pharmaceutical ingredient is sustainably isolated and purified from the Croton lechleri tree, for use in companion animals. Pursuant to the Elanco Agreement, Elanco will have exclusive rights globally outside the U.S. and co-exclusive rights with us in the U.S. to direct all marketing, advertising, promotion, launch and sales activities related to the Licensed Products.
- Under the terms of the Elanco Agreement, we received an initial upfront payment of \$2,548,689 inclusive of reimbursement of past product and development expenses of \$1,048,689 and we will receive additional payments upon achievement of certain development, regulatory and sales milestones in an aggregate amount of up to \$61.0 million payable throughout the term of the Elanco Agreement, as well as product development expense reimbursement, and royalty payments on global sales. The Elanco Agreement specifies that we will supply the Licensed Products to Elanco, and that the parties will agree to set a minimum sales requirement that Elanco must meet to maintain exclusivity. Elanco will also reimburse us for Canalevia-related expenses, including reimbursement for Canalevia-related expenses in Q4 2016, certain development and regulatory

expenses related to our planned target animal safety study and the completion of our field study of Canalevia for acute diarrhea in dogs. On November 1, 2017, Elanco notified the Company of its intention to terminate the Elanco Agreement, effective January 30, 2018.

- On March 31, 2017, we entered into a merger agreement with Napo, pursuant to which we are required, among other things, to issue approximately 69,299,346 shares of our common stock and non-voting common stock to Napo creditors, noteholders, holders of Napo warrants, options or restricted stock units, and Invesco upon consummation of the merger.
- On June 28, 2017, we closed a private investment in public entities, or PIPE, with a member of our board of directors. We received gross proceeds of \$50,000 in exchange for 100,000 shares of our common stock.
- On June 29, 2017, we issued a secured convertible promissory note to a lender 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. Interest on the outstanding balance will be paid 8% per annum from the purchase price date until the balance is paid in full. All interest calculations are computed on the basis of a 360-day year comprised of twelve (12) thirty (30) day months compounded daily and payable in accordance with the terms of the Note. All principal and interest on the debt is due in full on August 2, 2018.
- On July 13, 2017, we closed a PIPE, with an investor. We received gross proceeds of \$50,000 in exchange for 100,000 shares of our common stock.
- On July 31, 2017, as part of the merger with Napo, we sold 3,243,243 shares of our common stock to an investor in exchange for \$1,000,000 in cash and \$2,000,000 in a direct payoff of Napo debt.
- On July 31, 2017, we entered into Warrant Exercise Agreements, or Exercise Agreements, with certain holders of Series C Warrants, or the Exercising Holders, which Exercising Holders own, in the aggregate, Series C Warrants exercisable for 908,334 shares of the Company's common stock. Pursuant to the Exercise Agreements, the Exercising Holders and the Company agreed that the Exercising Holders would exercise their Series C Warrants with respect to 908,334 shares of common stock underlying such Series C Warrants for a reduced exercise price equal to \$0.40 per share. The Company received aggregate gross proceeds of approximately \$363,334 from the exercise of the Series C Warrants by the Exercising Holders.
- On October 3, 2017, we issued 21,250,000 shares of our common stock in exchange for net proceeds of \$3,494,173 upon the closing of our follow-on public offering, consisting of gross proceeds of \$4,250,000 net of \$297,500 of underwriting discounts and commissions and \$458,377 of offering expenses. On November 1, 2017, we issued an additional 437,500 shares for net proceeds of \$81,331 consisting of gross proceeds of \$87,500 net of \$6,125 of underwriting discounts and commissions and \$1,500 in expenses.
- On November 24, 2017, we entered into a share purchase agreement with an investor wherein during the year ended December 31, 2017 we received net proceeds of \$555,000 in exchange for 5,100,000 shares of our common stock.
- On December 8, 2017, we issued a secured promissory note to an existing lender in the aggregate principal amount of \$1,587,500 less an original issue discount of \$462,500 and less \$25,000 to cover the lender's legal fees for net cash proceeds of \$1,100,000. Interest on the outstanding balance will be paid 8% per annum from the purchase price date until the balance is paid in full. All interest calculations are computed on the basis of a 360-day year comprised of twelve (12) thirty (30) day months compounded daily and payable in accordance with the terms of the Note. All principal and interest on the debt is due in full on September 8, 2018.

- On December 28 and 29, 2017, we entered into a series of PIPE financings with existing investors wherein we received \$401,000 in exchange for 4,010,000 shares of our common stock.

We expect our expenditures will continue to increase as we continue our efforts to develop animal health products, expand our commercially available Neonorm product 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 December 2018. 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 financial statements.

#### ***Cash Flows for Year Ended December 31, 2017 Compared to the Year Ended December 31, 2016***

The following table shows a summary of cash flows for the years ended December 31, 2017 and 2016:

	<b>Years Ended December 31,</b>	
	<b>2017</b>	<b>2016</b>
Total cash used in operations . . . . .	\$(9,824,940)	\$(14,413,718)
Total cash (used in)/ provided by investing activities . . . . .	(1,285,215)	2,384,500
Total cash provided by financing activities . . . . .	10,679,874	5,282,666
	<u>\$ (430,281)</u>	<u>\$ (6,746,552)</u>

#### ***Cash Used in Operating Activities***

During the year ended December 31, 2017, cash used in operating activities of \$9,824,940 resulted from our net loss of \$22.0 million, adjusted by non-cash accretion of end of term payment, debt discounts and debt issuance costs of \$600,000, stock-based compensation of \$815,000, change in fair value of modified warrants of \$23,000, reduction in the fair value of warrant liability of \$695,000, loss on extinguishment of debt of \$477,000, stock issued in the merger in exchange for services \$151,000, common stock issued in exchange for services rendered of \$44,000, depreciation and amortization expenses of \$584,000, interest paid on the conversion of debt to equity of \$79,000, impairment of goodwill of \$16.8 million, impairment of long-lived intangible assets of \$2,300,000 deferred income benefit of \$13.2 million, and gain on revaluation of derivative liability of \$9,000, net of changes in operating assets and liabilities of \$4.1 million.

During the year ended December 31, 2016, cash used in operating activities of \$14.4 million resulted from our net loss of \$14.7 million, offset by non-cash accretion of end of term payment, debt discounts and debt issuance costs of \$510,000, stock-based compensation of \$718,000, loss on extinguishment of debt of \$108,000, depreciation expense of \$47,000, net of changes in operating assets and liabilities of \$1.1 million.

### ***Cash Provided By/Used In Investing Activities***

During the year ended December 31, 2017, cash used in investing activities of \$1,285,215 consisted of cash used in acquisition, net of cash acquired of \$1.6 million offset by \$272,000 of release of restricted cash that resulted from principal payments of our long-term debt.

During the year ended December 31, 2016, cash provided by investing activities of \$2.4 million primarily consisted of \$2.5 million of a release of restricted cash that resulted from a reduction in our long-term debt, net of \$104,000 in purchases of property and equipment.

### ***Cash Provided by Financing Activities***

During the year ended December 31, 2017, cash used in financing activities of \$10,679,874 consisted of \$3.5 million of net proceeds received in a follow-on registration statement, \$555,000 and \$401,000 received in separate PIPE financings, \$2.3 million in net proceeds received in the CSPA, \$94,000 in net proceeds received in a PIPE financing, \$1.7 million received in the issuance of convertible debt, \$1.1 million received in the issuance of non-convertible debt, \$3.0 million received from the sale of common stock in the merger, and \$363,000 received in the exercise of certain warrants, offset by \$2.4 million in principal payments of our long-term debt.

During the year ended December 31, 2016, cash provided by financing activities of \$5.3 million primarily consisted of \$4.1 million in net cash received in our secondary public offering, net of commissions and certain offering expenses, \$2.6 million in net proceeds received in the CSPA, \$150,000 in net proceeds from an additional common stock purchase agreement, and \$903,000 in net cash received in the sale of common stock to various investors as part of the 2016 Private Placement offset by \$2.5 million in principal payments on our long-term debt.

### **Description of Indebtedness**

#### ***Convertible Notes and Warrants***

Convertible notes at December 31, 2017 and December 31, 2016 consist of the following:

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
February 2015 convertible notes payable . . . . .	150,000	150,000
June 2017 convertible note payable . . . . .	1,613,089	—
Napo convertible notes . . . . .	12,153,389	—
	<u>\$13,916,478</u>	<u>\$150,000</u>
Less: unamortized debt discount and debt issuance costs . . . . .	(261,826)	—
Net convertible notes payable obligation . . . . .	<u>\$13,654,652</u>	<u>\$150,000</u>
Convertible notes payable—non-current . . . . .	10,982,437	—
Convertible notes payable—current . . . . .	<u>\$ 2,672,215</u>	<u>\$150,000</u>



Interest expense on the convertible notes for the years ended December 31, 2017 and 2016 follows:

	Years Ended December 31,	
	2017	2016
February 2015 convertible note nominal interest . . . . .	\$ 18,000	\$18,049
June 2017 convertible note nominal interest . . . . .	85,581	—
June 2017 convertible note accretion of debt discount . . . . .	247,175	—
Napo convertibles note nominal interest . . . . .	283,520	—
Total interest expense on convertible debt . . . . .	<u>\$634,276</u>	<u>\$18,049</u>

Interest payable on all convertible notes was \$642,405 and \$94,048 at December 31, 2017 and 2016.

**February 2015 Convertible Note**

In February 2015, we issued convertible promissory notes to two accredited investors in the aggregate principal amount of \$250,000. These notes were issued pursuant to the convertible note purchase agreement dated December 23, 2014. In connection with the issuance of the notes, we issued the lenders warrants to purchase 22,320 shares at \$5.60 per share, which expire December 31, 2017. Principal and interest of \$103,912 was paid in May 2015 for \$100,000 of these notes. We analyzed the beneficial nature of the conversion terms and determined that a BCF existed because the effective conversion price was less than the fair value at the time of the issuance. We calculated the value of the BCF using the intrinsic method. A BCF for the full face value was recorded as a discount to the notes payable and to additional paid-in capital. The full amount of the BCF was amortized to interest expense by the end of June 2015.

The remaining outstanding note of \$150,000 is payable to an investor at an effective simple interest rate of 12% per annum, and was due in full on July 31, 2016. On July 28, 2016, we entered into an amendment to delay the repayment of the principal and related interest under the terms of the remaining note from July 31, 2016 to October 31, 2016.

On November 8, 2016, we entered into an amendment to extend the maturity date of the remaining note from October 31, 2016 to January 1, 2017. In exchange for the extension of the maturity date, on November 8, 2016, our board of directors granted the lender a warrant to purchase 120,000 shares of our common stock for \$0.01 per share. The warrant is exercisable at any time on or before July 28, 2022, the expiration date of the warrant. The amendment and related warrant issuance resulted in the Company treating the debt as having been extinguished and replaced with new debt for accounting purposes due to meeting the 10% cash flow test.

**\* Extinguishment of debt**

On January 31, 2017, we entered into another amendment to extend the maturity date of the remaining note from January 1, 2017 to January 1, 2018. In exchange for the extension of the maturity date, on January 31, 2017, our board of directors granted the lender a warrant to purchase 370,916 shares of our common stock for \$0.51 per share. The warrant is exercisable at any time on or before January 31, 2019, the expiration date of the warrant. The amendment and related warrant issuance resulted in our treating the debt as having been extinguished and replaced with new debt for accounting purposes due to meeting the 10% cash flow test. We calculated a loss on the extinguishment of debt of \$207,713, or the equivalent to the fair value of the warrants granted, which is included in loss on extinguishment of debt in the statements of operations and comprehensive loss in the year ended December 31, 2017. The debtor agreed to accept our common stock as payment for all outstanding principal and interest in March of 2018.

The \$150,000 note is included in notes payable in current liabilities on the balance sheet. We have unpaid accrued interest of \$51,929 and \$33,929, which is included in accrued expenses on the balance sheet



as of December 31, 2017 and December 31, 2016, respectively, and incurred interest expense of \$18,000 and \$18,049 in the years ended December 31, 2017 and 2016 which are included in interest expense in the statement of operations and comprehensive loss.

#### ***June 2017 Convertible Note***

On June 29, 2017, we issued a secured convertible promissory note (“Note”) to a lender 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. Interest on the outstanding balance will be paid 8% per annum from the purchase price date until the balance is paid in full. All interest calculations are computed on the basis of a 360-day year comprised of twelve (12) thirty (30) day months compounded daily and payable in accordance with the terms of the Note. All principal and interest on the debt is due in full on August 2, 2018. We have accrued interest of \$6,180 at December 31, 2017 which is included in accrued expenses on the balance sheet, and incurred nonmal interest of \$85,581 in interest expense in the year ended December 31, 2017 which is included in interest expense in the statement of operations and comprehensive loss. We recorded debt discount accretion of \$247,175 in interest expense for the year ended December 31, 2017 which is included in the statement of operations and comprehensive loss. The lender has the right to convert all or any portion of the outstanding balance into our common stock at \$1.00 per share. The Note provides the lender with an optional monthly redemption that allows for the monthly payment of up to \$350,000 at the creditor’s option.

The Note provides for two separate features that result in a derivative liability:

1. Repayment of mandatory default amount upon an event of default—upon the occurrence of any event of default, the lender may accelerate the Note resulting in the outstanding balance becoming immediately due and payable in cash; and
2. Automatic increase in the interest rate on and during an event of default—during an event of default, the interest rate will increase to the lesser of 17% per annum or the maximum rate permitted under applicable law.

We computed fair values at June 30, 2017 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 is included as a derivative liability on the Balance Sheet. The derivatives were revalued at December 31, 2017 using the same Model resulting in a combined fair value of \$11,000. The \$9,000 gain is included in other income and expense in the statement of income and comprehensive income.

The balance of the note payable of \$1,351,264, consisting of the \$2,155,000 face value of the note less note discounts and debt issuance costs of \$509,000, less the \$20,000 derivative liability, less principal payments of \$521,911, plus the accretion of the debt discount and debt issuance costs of \$247,175 in the year ended December 31, 2017, is included in convertible notes payable in current liabilities on the balance sheet.

Interest payable on the accumulation of all convertible notes was \$118,228 and \$94,048 at December 31, 2017 and 2016.

#### ***Napo convertible notes***

In December 2016, our Napo subsidiary 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 \$125,338 was added to principal of the Napo December Notes, and the new principal balance became \$2,625,338. 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 \$0.925 per share. We assumed these convertible notes at fair value of \$11,161,000 as part of the Napo Merger. The fair value was calculated using the Binomial Lattice Model using the following criteria: stock price of \$0.5893, expected term of 2.42 years, conversion price of \$0.925, volatility of 115%, and risk free rate of 1.41%. The \$1,035,661 difference between the fair value of the notes and the principal balance is being amortized over the twenty-nine (29) month period from July 31, 2017 to December 31, 2019 or \$178,562 and is recorded as a contra interest expense in the statement of operations and comprehensive loss. At December 31, 2017, the unamortized balance of the note payable is \$10,982,438 and the accrued interest on these notes is \$448,779 which are included in the balance sheet.

In March 2017, our subsidiary Napo entered into an exchangeable Note Purchase Agreement with two lenders for the funding of face amount of \$1,312,500 in two \$525,000 tranches of face amount \$656,250. The notes bear interest at 3% and mature on December 1, 2017. Interest may be paid at maturity in either cash or shares of Jaguar per terms of the exchangeable note purchase agreement. The notes may be exchanged for up to 2,343,752 shares of Jaguar common stock, prior to maturity date. We assumed the notes at fair value of \$1,312,500 as part of the Napo Merger. At December 31, 2017, the accrued interest on these notes is \$29,774. The fair value was calculated using the Binomial Lattice Model using the following criteria: stock price of \$0.5893, expected term of tranche 1 of 0.34 years and tranche 2 of 0.42 years, conversion price of \$0.56, volatility of tranche 1 of 70% and tranche 2 of 100%, and risk free rate of tranche 1 of 1.09% and tranche 2 of 1.13%.

#### *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 \$0.56 per share to \$0.20 per share. We also issued 2,492,084 shares of common stock to the lenders in connection with this amendment to partially redeem \$299,050 from the first tranche of the notes. The amended face value of the notes is \$1,170,950. This amendment resulted in our treating the notes as having been extinguished and replaced with new notes for accounting purposes due to meeting the 10% cash flow test. We calculated a loss on extinguishment of notes of \$157,500, which is included in loss on extinguishment of debt in the Company's consolidated statement of operations and comprehensive income. The conversion option in the notes was bifurcated and accounted as a conversion option liability at its fair value of \$111,841 using the Black-Scholes-Merton model and the following criteria: stock price of \$0.14 per share, conversion prices of \$0.20 per share, expected life of 0.13 to 0.25 years, volatility of 86.29% to 160.78%, risk free rate of 1.28% to 1.39% and dividend rate of 0%. The \$111,841 was included in conversion option liability on the balance sheet and in loss on extinguishment of debt on the statement of operations and comprehensive loss.

At December 31, 2017, the balance of the notes payable of \$1,170,950 was included in convertible notes payable in current liabilities on the consolidated balance sheet. The accrued interest on these notes of \$29,774 is included in accrued expenses in current liabilities on the consolidated balance sheet.

## Notes Payable

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
December 2017 convertible note payable . . . . .	\$1,587,500	\$—
	<u>\$1,587,500</u>	<u>\$—</u>
Less: unamortized net discount and debt issuance costs . .	(446,347)	—
Net convertible notes payable obligation . . . . .	<u>\$1,141,153</u>	<u>\$—</u>

Interest expense on the notes for the years ended December 31, 2017 and 2016 follows:

	<u>Years ended December 31,</u>	
	<u>2017</u>	<u>2016</u>
December 2017 convertible note nominal interest . . . . .	\$ 8,134	\$—
December 2017 convertible note accretion of debt discount . . . . .	41,153	—
Total interest expense on convertible debt . . . . .	<u>\$49,287</u>	<u>\$—</u>

Interest payable on notes payable was \$8,134 and \$0 at December 31, 2017 and 2016, respectively.

On December 8, 2017, we entered into a securities purchase agreement (the “Securities Purchase Agreement”) with an existing creditor pursuant to which we issued a promissory note (the “Note”) in the aggregate principal amount of \$1,587,500 for an aggregate purchase price of \$1,100,000. The Note carries an original issue discount of \$462,500, and the initial principal balance also includes \$25,000 to cover the lender’s transaction expenses. We will use the proceeds for general corporate purposes. The Note bears interest at the rate of 8% per annum and matures on September 8, 2018.

Under the Securities Purchase Agreement, we are subject to certain covenants, including the obligations of the Company to: (i) timely file all reports required to be filed under Sections 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and not terminate its status as an issuer required to file reports under the Exchange Act; (ii) maintain listing of the Company’s common stock on a securities exchange; (iii) avoid trading in the Company’s common stock from being suspended, halted, chilled, frozen or otherwise ceased; (iv) not issue any variable securities (i.e., Company securities that (a) have conversion rights of any kind in which the number of shares that may be issued pursuant to the conversion right varies with the market price of the our common stock or (b) are or may become convertible into shares of the our common stock with a conversion price that varies with the market price of such stock) that generate gross cash proceeds to us of less than the lesser of \$1 million and the then-current outstanding balance of the Note without the lender’s prior consent; (v) not grant a security interest in its assets without the lender’s prior consent; and (vi) other customary covenants and obligations, for which our failure to comply may be subject to certain liquidated damages.

In addition, beginning on January 31, 2018, the lender will have the right to redeem a portion of the outstanding balance of the Note in any amount up to \$350,000 per month for the first six months following the Purchase Price Date and \$500,000 per month thereafter. For purposes of calculating the maximum amount that may be redeemed in any month, the amounts redeemed under the Note will be aggregated with all redemption amounts under the Secured Convertible Promissory Note in the original principal amount of \$2,155,000 issued by us in favor of the creditor on June 29, 2017.

## Long-term Debt

In August 2015, we entered into a loan and security agreement with a lender for up to \$8.0 million, which provided for an initial loan commitment of \$6.0 million. The loan agreement requires us to maintain

\$4.5 million of the proceeds in cash, which may be reduced or eliminated on the achievement of certain milestones. An additional \$2.0 million is available contingent on the achievement of certain further milestones. The agreement has a term of three years, with interest only payments through February 29, 2016. Thereafter, principal and interest payments will be made with an interest rate of 9.9%. Additionally, there will be a balloon payment of \$600,000 on August 1, 2018 (as modified in the third amendment to the Loan Agreement). This amount is being recognized over the term of the loan agreement and the effective interest rate, considering the balloon payment, is 15.0%. Proceeds were net of a \$134,433 debt discount under the terms of the loan agreement. This debt discount is being recorded as interest expense, using the interest method, over the term of the loan agreement. Under the agreement, we are entitled to prepay principal and accrued interest upon five days prior notice to the lender. In the event of prepayment, we are obligated to pay a prepayment charge. If such prepayment is made during any of the first twelve months of the loan agreement, the prepayment charge will be (a) during such time as we are required to maintain a minimum cash balance, 2% of the minimum cash balance amount plus 3% of the difference between the amount being prepaid and the minimum cash balance, and (b) after such time as we are no longer required to maintain a minimum cash balance, 3% of the amount being prepaid. If such prepayment is made during any time after the first twelve months of the loan agreement, 1% of the amount being prepaid.

On April 21, 2016, the loan and security was amended upon which we repaid \$1.5 million of the debt out of restricted cash. The amendment modified the repayment amortization schedule providing a four-month period of interest only payments for the period from May through August 2016.

On July 7, 2017, we entered into the third amendment to the Loan Agreement upon which we paid \$1.0 million of the outstanding loan balance, and the Lender waived the Prepayment Charge associated with such prepayment. The Third Amendment modified the repayment schedule providing a three-month period of interest only payments for the period from August 2017 through October 2017, and reduced the required cash amount that we must keep on hand to \$500,000, which will be reduced following the Lender's receipt of each principal repayment subsequent to the \$1.0 million. As the present value of the cash flows under the terms of the third amendment is less than 10% different from the remaining cash flows under the terms of the loan agreement prior to the amendment, the third amendment was accounted as a debt modification.

As of December 31, 2017 and 2016, the net long-term debt obligation was as follows:

	<b>December 31, 2017</b>	<b>December 31, 2016</b>
Debt and unpaid accrued end-of-term payment . . . . .	\$1,636,639	\$3,894,320
Unamortized note discount . . . . .	(6,615)	(42,493)
Unamortized debt issuance costs . . . . .	<u>(20,780)</u>	<u>(114,626)</u>
Net debt obligation . . . . .	<u>\$1,609,244</u>	<u>\$3,737,201</u>
Current portion of long-term debt . . . . .	\$1,609,244	\$1,919,675
Long-term debt, net of discount . . . . .	<u>—</u>	<u>1,817,526</u>
Total . . . . .	<u>\$1,609,244</u>	<u>\$3,737,201</u>

Future principal payments under the long-term debt are as follows:

<u>Years ending December 31</u>	<u>Amount</u>
2018 . . . . .	1,089,199
Total future principal payments . . . . .	1,089,199
2018 end-of-term payment . . . . .	600,000
	<u>1,689,199</u>
Less: unaccreted end-of-term payment at December 31, 2017 . . . . .	(52,560)
Debt and unpaid accrued end-of-term payment . . . . .	<u>\$1,636,639</u>

The obligation at December 31, 2017 includes an end-of-term payment of \$600,000, which accretes over the life of the loan as interest expense. As a result of the debt discount and the end-of-term payment, the effective interest rate for the loan differs from the contractual rate.

Interest expense on the long-term debt for the years ended December 31, 2017 and 2016 was as follows:

	<u>Years ended December 31,</u>	
	<u>2017</u>	<u>2016</u>
Nominal interest . . . . .	\$214,037	\$457,448
Accretion of debt discount . . . . .	35,878	64,142
Accretion of end-of-term payment . . . . .	164,413	267,230
Accretion of debt issuance costs . . . . .	111,741	178,713
	<u>\$526,069</u>	<u>\$967,533</u>

Interest payable on the long-term debt was \$9,422 and \$29,934 at December 31, 2017 and 2016, respectively.

**Warrants**

On November 22, 2016, we entered into a Securities Purchase Agreement, or the 2016 Purchase Agreement, with certain institutional investors, pursuant to which the Company sold securities to such investors in a private placement transaction, which we refer to herein as the 2016 Private Placement. In the 2016 Private Placement, we sold an aggregate of 1,666,668 shares of our common stock at a price of \$0.60 per share for gross proceeds of approximately \$1.0 million. The investors in the 2016 Private Placement also received (i) warrants to purchase up to an aggregate of 1,666,668 shares of our common stock, at an exercise price of \$0.75 per share, or the Series A Warrants, and the Placement Agent received warrants to purchase 133,333 shares of our common stock in lieu of cash for service fees with the same terms as the investors; (ii) warrants to purchase up to an aggregate 1,666,668 shares of our common stock, at an exercise price of \$0.90 per share, or the Series B Warrants, and (iii) warrants to purchase up to an aggregate 1,666,668 shares of our common stock, at an exercise price of \$1.00 per share, or the Series C Warrants and, together with the Series A Warrants and the Series B Warrants, the 2016 Warrants. The warrants were granted in three series with different terms. The warrants were valued using the Black-Scholes-Merton warrant pricing model as follows:

- Series A Warrants and Placement Agent Warrants: 1,666,668 warrant shares with a strike price of \$0.75 per share and an expiration date of May 29, 2022; and 133,333 warrant shares to the placement agent with a strike price of \$0.75 and an expiration date of May 29, 2022; the expected life is 5.5 years, the volatility is 71.92% and the risk free rate is 1.87% in valuing these warrants.

- Series B Warrants: 1,666,668 warrant shares with a strike price of \$0.90 per share and an expiration date of November 29, 2017; the expected life is one year, the volatility is 116.65% and the risk free rate is 0.78% in valuing these warrants.
- Series C Warrants: 1,666,668 warrant shares with a strike price of \$1.00 per share and an expiration date of May 29, 2018; the expected life is 1.5 years, the volatility is 116.92% and the risk free rate is 0.94%.

The warrant valuation date was November 29, 2016 and the closing price of \$0.69 per share was used in determining the fair value of the warrants. The series A warrants and placement agent warrants were valued at \$756,001 and were classified as a warrant liability in the balance sheet. The series A warrants and placement agent warrants were revalued on December 31, 2016 at \$799,201 which is included in the balance sheet, and the \$43,200 increase is included in the statements of operations and comprehensive loss. The stock price was \$0.716, the strike price was \$0.75 per share, the expected life was 5.41 years, the volatility was 73.62% and the risk free rate was 2.0%. The series B and C warrants were classified as equity, and as such were not subject to revaluation at year end. Costs incurred in connection with the issuance were allocated based on the relative fair values of the Series A and the Series B and C warrants. The series A warrants and placement agent warrants were revalued on December 31, 2017 at \$103,860 and is included in the balance sheet. The valuation reflects a reduction of \$695,341 from the \$799,201 December 31, 2016 valuation. The reduction is included in the statements of operations and comprehensive loss. The \$103,860 valuation at December 31, 2017 was computed using the Black-Scholes-Merton pricing model using a stock price of \$0.1398, the strike price was \$0.75 per share, the expected life was 4.41 years, the volatility was 96.36% and the risk free rate was 2.14%.

On July 31, 2017, we entered into Warrant Exercise Agreements (the “Exercise Agreements”) with certain holders of Series C Warrants (the “Exercising Holders”), which Exercising Holders own, in the aggregate, Series C Warrants exercisable for 908,334 shares of our common stock. Pursuant to the Exercise Agreements, the Exercising Holders and we agreed that the Exercising Holders would exercise their Series C Warrants with respect to 908,334 shares of common stock underlying such Series C Warrants for a reduced exercise price equal to \$0.40 per share. We received aggregate gross proceeds of approximately \$363,334 from the exercise of the Series C Warrants by the Exercising Holders. The difference between the pre-modification and post-modification fair value of \$23,000 was expensed in general and administrative expense in the statements of operations and comprehensive income. The pre-modification fair value was computed using the Black-Scholes-Merton model using a stock price of \$0.56 (fair market value on modification date), original strike price of \$1.00, expected life of 0.83 years, volatility of 115.28%, risk-free rate of 1.20% to arrive at a fair value of \$0.1347 per share. The post-modification fair value was computed using the intrinsic value on the date of modification or \$0.16 per share.

We granted warrants to purchase the 1,224,875 shares of our common stock at an exercise price price of \$0.08 per share to replace our Napo subsidiary’s warrants upon the consummation of the Merger. Of the 1,224,875 warrants, 145,457 warrants expire on December 31, 2018 and 1,079,418 warrants expire on December 31, 2025. The warrants were valued at \$630,859, using the Black-Scholes-Merton warrant pricing model as follows: exercise price of \$0.08 per share, stock price of \$0.56 per share, expected life ranging from 1.42 years to 8.42 years, volatility ranging from 75.07% to 110.03%, and risk free rate ranging from 1.28% to 2.14%. The warrants were accounted in equity.



Our warrant activity is summarized as follows:

	Years ended December 31,	
	2017	2016
Beginning balance . . . . .	5,968,876	748,872
Warrants granted . . . . .	1,595,791	5,253,337
Warrants exercised . . . . .	(908,334)	—
Warrants cancelled . . . . .	(1,836,308)	(33,333)
Ending balance . . . . .	<u>4,820,025</u>	<u>5,968,876</u>

### Off-Balance Sheet Arrangements

Since inception, we have not engaged in the use of any off-balance sheet arrangements, such as structured finance entities, special purpose entities or variable interest entities.

### Critical Accounting Policies and Significant Judgments and Estimates

The preparation of 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 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 financial statements require significant judgments and estimates. For additional information relating to these and other accounting policies, see Note 2 to our audited financial statements, appearing elsewhere in this report.

### Revenue Recognition

We recognize revenue in accordance with ASC 605 “ Revenue Recognition”, subtopic ASC 605-25 “ *Revenue with Multiple Element Arrangements* “ and subtopic ASC 605-28 “ *Revenue Recognition— Milestone Method* “, which provides accounting guidance for revenue recognition for arrangements with multiple deliverables and guidance on defining the milestone and determining when the use of the milestone method of revenue recognition for research and development transactions is appropriate, respectively. For multiple-element arrangements, each deliverable within a multiple deliverable revenue arrangement is accounted for as a separate unit of accounting if both of the following criteria are met: (1) the delivered item or items have value to the customer on a standalone basis and (2) for an arrangement that includes a general right of return relative to the delivered item(s), delivery or performance of the undelivered item(s) is considered probable and substantially in our control. If a deliverable in a multiple element arrangement is not deemed to have a stand-alone value, consideration received for such a deliverable is recognized ratably over the term of the arrangement or the estimated performance period, and it will be periodically reviewed based on the progress of the related product development plan. The effect of a change made to an estimated performance period and therefore revenue recognized ratably would occur on a prospective basis in the period that the change was made.

We recognize revenue under its licensing, development, co-promotion and commercialization agreement from milestone payments when: (i) the milestone event is substantive and its achievability has substantive uncertainty at the inception of the agreement, and (ii) it does not have ongoing performance

obligations related to the achievement of the milestone earned. Milestone payments are considered substantive if all of the following conditions are met: the milestone payment (a) is commensurate with either our performance subsequent to the inception of the arrangement to achieve the milestone or the enhancement of the value of the delivered item or items as a result of a specific outcome resulting from our performance subsequent to the inception of the arrangement to achieve the milestone, (b) relates solely to past performance, and (c) is reasonable relative to all of the deliverables and payment terms (including other potential milestone consideration) within the arrangement.

We record revenue related to the reimbursement of costs incurred under the collaboration agreement where the company acts as principal, controls the research and development activities and bears credit risk. Under the agreement, we are reimbursed for associated out-of-pocket costs and for certain employee costs. The gross amount of these pass-through costs is reported in revenue in the accompanying statements of operations and comprehensive loss, while the actual expense for which we are reimbursed are reflected as research and development costs.

Determining whether and when some of these revenue recognition criteria have been satisfied often involves assumptions and judgments that can have a significant impact on the timing and amount of revenue we will report. Changes in assumptions or judgments or changes to the elements in an arrangement could cause a material increase or decrease in the amount of revenue that we report in a particular period.

### **Product Revenue**

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. Beginning the three months ended December 2017, we developed sufficient sales history and pipeline visibility to recognize revenue when risk and title of products are transferred to the distributors. Prior to this, revenue recognition depended on notification directly from the distributor that product has been sold to the distributor's customer, and deferred revenue on shipments to distributors reflected the estimated effects of distributor price adjustments, if any, and the estimated amount of gross margin expected to be realized when the distributor sells through product purchased from us. Prior to the three months ended December 2017, our sales to distributors were invoiced and included in accounts receivable and deferred revenue upon shipment, and inventory was relieved and revenue recognized upon shipment by the distributor to their customer. We had Neonorm revenues of \$344,194 and \$117,523 for the years ended December 31, 2017 and 2016, respectively. The change resulted in the recognition of gross profit of \$106,000 consisting of \$163,000 in previously deferred revenue and \$57,000 in related cost of revenue.

Sales of Botanical Extract are recognized as revenue when delivered to the customer. We had Botanical Extract revenues of \$78,000 and \$24,000 in the years ended December 31, 2017 and 2016, respectively.

Sales of Mytesi are recognized as revenue when the products are delivered to the wholesalers. We had Mytesi revenues of \$1,062,920 and \$0 in the years ended December 2017 and 2016, respectively. We record a reserve for estimated product returns under terms of agreements with wholesalers based on its historical returns experience. Reserves for returns at December 31, 2017 were immaterial. If actual returns differed from our historical experience, changes to the reserved could be required in future periods.

### **Collaboration Revenue**

On January 27, 2017, we entered into a licensing, development, co-promotion and commercialization agreement with Elanco US Inc. ("Elanco") to license, develop and commercialize Canalevia ("Licensed Product"), our drug product candidate under investigation for treatment of acute and chemotherapy-induced diarrhea in dogs, and other drug product formulations of crofelemer for treatment of gastrointestinal diseases, conditions and symptoms in cats and other companion animals. We granted

Elanco exclusive global rights to Canalevia, a product whose active pharmaceutical ingredient is sustainably isolated and purified from the Croton lechleri tree, for use in companion animals. Pursuant to the Elanco Agreement, Elanco will have exclusive rights globally outside the U.S. and co-exclusive rights with us in the U.S. to direct all marketing, advertising, promotion, launch and sales activities related to the Licensed Products. On November 1, 2017, Elanco executed its right to terminate the agreement effective January 30, 2018.

Under the terms of the Elanco Agreement, we received an initial upfront payment of \$2,548,689, inclusive of reimbursement of past product and development expenses of \$1,048,689, and will receive additional payments upon achievement of certain development, regulatory and sales milestones in an aggregate amount of up to \$61.0 million payable throughout the term of the Elanco Agreement, as well as product development expense reimbursement for any additional product development expenses incurred, and royalty payments on global sales. The \$61.0 million development and commercial milestones consist of \$1.0 million for successful completion of a dose ranging study; \$2.0 million for the first commercial sale of license product for acute indications of diarrhea; \$3.0 million for the first commercial sale of a license product for chronic indications of diarrhea; \$25.0 million for aggregate worldwide net sales of licensed products exceeding \$100.0 million in a calendar year during the term of the agreement; and \$30.0 million for aggregate worldwide net sales of licensed products exceeding \$250.0 million in a calendar year during the terms of the agreement. Each of the development and commercial milestones are considered substantive. No revenues associated with the achievement of the milestones has been recognized to date. The Elanco Agreement specifies that we will supply the Licensed Products to Elanco, and that the parties will agree to set a minimum sales requirement that Elanco must meet to maintain exclusivity. The \$2,548,689 upfront payment, inclusive of reimbursement of past product and development expenses of \$1,048,689 is recognized as revenue ratably over the estimated development period of one year resulting in \$2,371,300 in collaboration revenue in the year ended December 31, 2017, which is included in the statements of operations and comprehensive loss. The difference of \$177,389 is included in deferred collaboration revenue in the balance sheet.

In addition to the upfront payments, Elanco reimburses us for certain development and regulatory expenses related to our planned target animal safety study and the completion of the Canalevia field study for acute diarrhea in dogs. These are recognized as revenue in the month in which the related expenses are incurred. We have \$1,380 of unreimbursed expenses as of December 31, 2017, which is included in Other Receivables on the balance sheet. We included the \$504,771 of reimbursements in collaboration revenue in the year ended December 31, 2017, which is included in the statements of operations and comprehensive loss. On November 1, 2017, the Company received a letter (the "Notice") from Elanco serving as formal notice of Elanco's decision to terminate the Elanco Agreement by giving the Company 90 days written notice. Pursuant to the terms of the Elanco Agreement, termination of the Agreement became effective on January 30, 2018, which is 90 days after the date of the Notice. On the effective date of termination of the Elanco Agreement, all licenses granted to Elanco by the Company under the Elanco Agreement will be revoked and the rights granted thereunder revert back to the Company.

### **Goodwill and Indefinite-lived Intangible Assets**

Goodwill is tested for impairment on an annual basis and in between annual tests if events or circumstances indicate that an impairment loss may have occurred. The test is based on a comparison of the reporting unit's book value to its estimated fair market value. We perform annual impairment test during the fourth quarter of each fiscal year using the opening consolidated balance sheet as of the first day of the fourth quarter, with any resulting impairment recorded in the fourth quarter of the fiscal year.

If the carrying value of a reporting unit's net assets exceeds its fair value, the goodwill would be considered impaired and would be reduced to its fair value. The goodwill was entirely allocated to the human health reporting unit as the goodwill relates to the Napo Merger. The decline in market capitalization during the year ended December 31, 2017 was determined to be a triggering event for

potential goodwill impairment. Accordingly we performed the goodwill impairment analysis. The Company utilized the market capitalization plus a reasonable control premium in the performance of its impairment test. The market capitalization was based on the outstanding shares and the average market share price for the 30 days prior to December 31, 2017. Based on the results of our impairment test, the Company recorded an impairment charge of \$16,827,000 during the year ended December 31, 2017. If the market capitalization decreases in the future, a reasonable possibility exists that goodwill could be further impaired in the near term and that such impairment may be material to the financial statements.

Fair value determinations require considerable judgment and are sensitive to changes in underlying assumptions, estimates and market factors. Estimating the fair value of individual reporting units and indefinite-lived intangible assets requires us to make assumptions and 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 market factors. If current expectations of future growth rates are not met or market factors outside of our control, such as discount rates, change significantly, this may lead to a further goodwill impairment in the future. Acquired in-process research and development (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. Based on the results of our impairment test, the Company recorded an impairment charge of \$2,300,000 during the year ended December 31, 2017. 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 consolidated balance sheet. 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.

Additionally, as goodwill and intangible assets associated with recently acquired businesses are recorded on the balance sheet at their estimated acquisition date fair values, those amounts are more susceptible to an impairment risk if business operating results or macroeconomic conditions deteriorate.

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 consolidated balance sheet. 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.

#### **Accrued Research and Development Expenses**

As part of the process of preparing our 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. 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.

### **Accounting for Stock-Based Compensation**

Beginning in the second quarter of 2014, we awarded options and restricted stock units. We measure stock-based awards granted to employees and directors at fair value on the date of grant and recognize the corresponding compensation expense of the awards, net of estimated forfeitures, over the requisite service periods, which correspond to the vesting periods of the awards. The Company revalues non-employee options each reporting period using the fair market value of the Company's common stock as of the last day of each reporting period.

**Key Assumptions.** Our Black-Scholes-Merton option-pricing model requires the input of highly subjective assumptions, including the fair value of the underlying common stock, the expected volatility of the price of our common stock, the expected term of the option, risk-free interest rates and the expected dividend yield of our common stock. These estimates involve inherent uncertainties and the application of management's judgment. If factors change and different assumptions are used, our stock-based compensation expense could be materially different in the future. These assumptions are estimated as follows:

- Fair value of our common stock—Our common stock is valued by reference to the publicly-traded price of our common stock.
- Expected volatility—As we do not have any trading history for our common stock, the expected stock price volatility for our common stock was estimated by taking the average historic price volatility for industry peers based on daily price observations for common stock values over a period equivalent to the expected term of our stock option grants. We did not rely on implied volatilities of traded options in our industry peers' common stock because the volume of activity was relatively low. We intend to continue to consistently apply this process using the same or similar public companies until a sufficient amount of historical information regarding the volatility of our own common stock share price becomes available.
- Expected term—The expected term represents the period that our stock-based awards are expected to be outstanding. It is based on the "simplified method" for developing the estimate of the expected life of a "plain vanilla" stock option. Under this approach, the expected term is presumed to be the midpoint between the average vesting date and the end of the contractual term for each vesting tranche. We intend to continue to apply this process until a sufficient amount of historical exercise activity is available to be able to reliably estimate the expected term.
- Risk-free interest rate—The risk-free interest rate is based on the yields of U.S. Treasury securities with maturities similar to the expected term of the options for each option group.
- Dividend yield—We have never declared or paid any cash dividends and do not presently plan to pay cash dividends in the foreseeable future. Consequently, we used an expected dividend yield of zero.



- Forfeitures—We estimate forfeitures at the time of grant and revise those estimates periodically in subsequent periods. We use historical data to estimate pre-vesting option forfeitures and record stock-based compensation expense only for those awards that are expected to vest.

**Common Stock Valuations.** Prior to our IPO, the fair value of the common stock underlying our stock options was determined by our board of directors, which intended all options granted to be exercisable at a price per share not less than the per share fair value of our common stock underlying those options on the date of grant. The valuations of our common stock were determined in accordance with the guidelines outlined in the American Institute of Certified Public Accountants Practice Aid, Valuation of Privately-Held-Company Equity Securities Issued as Compensation. The assumptions we used in the valuation model are highly complex and subjective. We base our assumptions on future expectations combined with management judgment. In the absence of a public trading market, our board of directors, with input from management, exercised significant judgment and considered numerous objective and subjective factors to determine the fair value of our common stock as of the date of each option grant and stock award. These judgments and factors will not be necessary to determine the fair value of new awards once the underlying shares begin trading. For now we included the following factors:

- the prices, rights, preferences and privileges of our Series A preferred stock relative to those of our common stock;
- lack of marketability of our common stock;
- our actual operating and financial performance;
- current business conditions and projections;
- hiring of key personnel and the experience of our management;
- our stage of development;
- illiquidity of share-based awards involving securities in a private company;
- the U.S. capital market conditions; and
- the likelihood of achieving a liquidity event, such as an offering or a merger or acquisition of our company given prevailing market conditions.

The fair market value per share of our common stock for purposes of determining stock-based compensation is now the closing price of our common stock as reported on The NASDAQ Stock Market on the applicable grant date.

### **Classification of Securities**

We apply the principles of ASC 480-10 “Distinguishing Liabilities From Equity” and ASC 815-40 “Derivatives and Hedging—Contracts in Entity’s Own Equity” to determine whether financial instruments such as warrants, contingently issuable shares and shares subject to repurchase should be classified as liabilities or equity and whether beneficial conversion features exist. Financial instruments such as warrants that are evaluated to be classified as liabilities are fair valued upon issuance and are remeasured at fair value at subsequent reporting periods with the resulting change in fair value recorded in other income/ (expense). The fair value of warrants is estimated using the Black Scholes Merton model and requires the input of subjective assumptions including expected stock price volatility and expected life.

### **Income Taxes**

As of December 31, 2017, the Company had federal and state net operating loss carryovers of approximately \$20,777,790 and \$21,432,738, respectively. The federal and state net operating losses will begin to expire in 2033. Our management has evaluated the factors bearing upon the realizability of our



deferred tax assets, which are comprised principally of net operating loss carryforwards. Our management concluded that, due to the uncertainty of realizing any tax benefits as of December 31, 2017, a valuation allowance was necessary to fully offset our deferred tax assets. We have evaluated our uncertain tax positions and determined that we have no liabilities from unrecognized tax benefits and therefore we have not incurred any penalties or interest. The Tax Reform Act of 1986, as amended, limits the use of net operating loss and tax credit carryforward in certain situations where changes occur in the stock ownership of a company. Utilization of the domestic NOL and tax credit forwards may be subject to a substantial annual limitation due to ownership change limitations that may have occurred or that could occur in the future, as required by the Internal Revenue Code Section 382, as well as similar state provisions.

### **Recent Accounting Pronouncements**

In July 2017, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2017-11, “Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815): (Part I) Accounting for Certain Financial Instruments with Down Round Features, (Part II) Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Non-controlling Interests with a Scope Exception” (“ASU 2017-11”), which addresses the complexity of accounting for certain financial instruments with down round features. Down round features are features of certain equity-linked instruments (or embedded features) that result in the strike price being reduced on the basis of the pricing of future equity offerings. Current accounting guidance creates cost and complexity for entities that issue financial instruments (such as warrants and convertible instruments) with down round features that require fair value measurement of the entire instrument or conversion option. The amendments in Part I of this ASU are effective for public business entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. We are currently evaluating the impact of the adoption of ASU 2017-11 on its consolidated financial statements.

In May 2017, the FASB issued ASU No. 2017-09, “Compensation—Stock Compensation (Topic 718): Scope of Modification Accounting” (“ASU 2017-09”), which provides guidance on determining which changes to the terms and conditions of share-based payment awards require an entity to apply modification accounting under Topic 718. The amendments in this ASU are effective for all entities for annual periods, and interim periods within those annual periods, beginning after December 15, 2017. Early adoption is permitted, including adoption in any interim period, for (1) public business entities for reporting periods for which financial statements have not yet been issued and (2) all other entities for reporting periods for which financial statements have not yet been made available for issuance. The amendments in this ASU should be applied prospectively to an award modified on or after the adoption date. We do not expect the adoption of ASU 2017-09 to have a material impact on our consolidated financial statements.

In February 2017, the FASB issued ASU No. 2017-05, “Other Income—Gains and Losses from the Derecognition of Nonfinancial Assets (Subtopic 610-20): Clarifying the Scope of Asset Derecognition Guidance and Accounting for Partial Sales of Nonfinancial Assets” (“ASU 2017-05”), which clarifies the scope of the nonfinancial asset guidance in Subtopic 610-20. This ASU also clarifies that the derecognition of all businesses and nonprofit activities (except those related to conveyances of oil and gas mineral rights or contracts with customers) should be accounted for in accordance with the derecognition and deconsolidation guidance in Subtopic 810-10. The amendments in this ASU also provide guidance on the accounting for what often are referred to as partial sales of nonfinancial assets within the scope of Subtopic 610-20 and contributions of nonfinancial assets to a joint venture or other noncontrolled investee. The amendments in this ASU are effective for annual reporting reports beginning after December 15, 2017, including interim reporting periods within that reporting period. Public entities may apply the guidance earlier but only as of annual reporting periods beginning after December 15, 2016, including interim reporting periods within that reporting period. We do not expect the adoption of ASU 2017-05 to have a material impact on our consolidated financial statements.

In January 2017, the FASB issued ASU 2017-04 related to goodwill impairment testing. This ASU eliminates Step 2 from the goodwill impairment test. Under the new guidance, if a reporting unit's carrying amount exceeds its fair value, the entity will record an impairment charge based on that difference. The impairment charge will be limited to the amount of goodwill allocated to that reporting unit. Previously, if the fair value of a reporting unit was lower than its carrying amount (Step 1), an entity was required to calculate any impairment charge by comparing the implied fair value of goodwill with its carrying amount (Step 2). Additionally, under the new standard, entities that have reporting units with zero or negative carrying amounts will no longer be required to perform the qualitative assessment to determine whether to perform Step 2 of the goodwill impairment test. As a result, reporting units with zero or negative carrying amounts will generally be expected to pass the simplified impairment test; however, additional disclosure will be required of those entities. This ASU will be effective beginning in the first quarter of our fiscal year 2020. Early adoption is permitted for annual and interim goodwill impairment testing dates after January 1, 2017. The new guidance must be adopted on a prospective basis. We early adopted this ASU in 2017. For impact of the adoption of this standard, refer to Note 6 "Goodwill" to the Condensed Consolidated Financial Statements.

In November 2016, the FASB issued Accounting Standards Update No. 2016-18, Statement of Cash Flows: Restricted Cash, or ASU 2016-18, that will require entities to show the changes in the total of cash, cash equivalents, restricted cash and restricted cash equivalents in the statement of cash flows. As a result, entities will no longer present transfers between cash and cash equivalents and restricted cash and restricted cash equivalents in the statement of cash flows. When cash, cash equivalents, restricted cash and restricted cash equivalents are presented in more than one line item on the balance sheet, the new guidance requires a reconciliation of the totals in the statement of cash flows to the related captions in the balance sheet. This reconciliation can be presented either on the face of the statement of cash flows or in the notes to the financial statements. Entities will also have to disclose the nature of their restricted cash and restricted cash equivalent balances. ASU 2016-18 becomes effective for fiscal years beginning after December 15, 2017, and interim periods within those years, with early adoption permitted. Any adjustments must be reflected as of the beginning of the fiscal year that includes that interim period. We are currently evaluating the impact of the adoption of ASU No. 2016-18 on our consolidated financial statements.

In August 2016, the FASB issued Accounting Standards Update, or ASU, No. 2016-15, Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments, which addresses the following cash flow issues: (1) debt prepayment or debt extinguishment costs; (2) settlement of zero-coupon debt instruments or other debt instruments with coupon interest rates that are insignificant in relation to the effective interest rate of the borrowing; (3) contingent consideration payments made after a business combination; (4) proceeds from the settlement of insurance claims; (5) proceeds from the settlement of corporate-owned life insurance policies, including bank-owned life insurance policies; (6) distributions received from equity method investees; (7) beneficial interests in securitization transactions; and (8) separately identifiable cash flows and application of the predominance principle. The amendments in this ASU are effective for public business entities for fiscal years beginning after December 15, 2017 and interim periods within those fiscal years and are effective for all other entities for fiscal years beginning after December 15, 2018 and interim periods within fiscal years beginning after December 15, 2019. Early adoption is permitted, including adoption in an interim period. We are currently evaluating the impact of the adoption of ASU No. 2016-15 on our consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting, which simplifies several aspects of the accounting for employee stock-based payment transactions. The areas for simplification in ASU No. 2016-09 include the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. The amendments in this ASU will be effective for annual periods beginning after December 15, 2016 and interim periods within those annual periods.

Early adoption is permitted. We are currently evaluating the impact of the adoption of ASU No. 2016-09 on our consolidated financial statements.

In March 2016 the FASB issued ASU No. 2016-07, Investments—Equity Method and Joint Ventures (Topic 323): Simplifying the Transition to the Equity Method of Accounting. This new standard eliminates the requirement that when an investment qualifies for use of the equity method as a result of an increase in the level of ownership interest or degree of influence, an adjustment must be made to the investment, results of operations and retained earnings retroactively on a step-by-step basis as if the equity method had been in effect during all previous periods that the investment has been held. ASU 2016-07 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2017. We are currently evaluating the potential effects of the adoption of this update on its financial statements.

In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842), which provides guidance for accounting for leases. Under ASU 2016-02, the Company will be required to recognize the assets and liabilities for the rights and obligations created by leased assets. ASU 2016-02 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. We are currently evaluating the impact of the adoption of ASU 2016-02 on our consolidated financial statements.

In May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606), and subsequently issued modifications or clarifications in ASU No. 2015-14, Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date, ASU 2016-08, Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross versus Net), ASU No. 2016-10, Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing, and ASU No. 2016-12, Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients. The revenue recognition principle in ASU 2014-09 and the related guidance is that an entity should recognize revenue to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. ASU 2014-09 prescribes a five-step process for evaluating contracts and determining revenue recognition. In addition, new and enhanced disclosures are required. Companies may adopt the new standard either using the full retrospective approach, a modified retrospective approach with practical expedients, or a cumulative effect upon adoption approach. We have completed the process of evaluating the effects of the adoption of Topic 606 and determined that the timing and measurement of our revenues under the new standard is similar to that recognized under the previous revenue guidance. Similar to the current guidance, we will need to make significant estimates related to variable consideration at the point of sale, including chargebacks, rebates and product returns. Revenue will be recognized at a point in time upon the transfer of control of our products, which occurs upon delivery for substantially all of the our sales. As such, the adoption of ASU 2014-09, ASU 2016-10 and ASU 2016-12 will not have a material impact on our financial position and results of operations. We will adopt the new revenue guidance effective January 1, 2018, by recognizing the cumulative effect of initially applying the new standard as an increase to the opening balance of retained earnings as prescribed by the modified retrospective method of adoption.

#### **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 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.**

Not applicable.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

**Jaguar Health, Inc.  
Index to Financial Statements**

	<u>Page</u>
<b>Audited Financial Statements</b>	
Report of Independent Registered Public Accounting Firm . . . . .	112
Balance Sheets as of December 31, 2017 and 2016 . . . . .	113
Statements of Comprehensive Loss for the years ended December 31, 2017 and 2016 . . . . .	114
Statement of Changes in Common Stock, Convertible Preferred Stock and Stockholders' (Deficit) for the period from December 31, 2015 through December 31, 2017 . . . . .	115
Statements of Cash Flows for the years ended December 31, 2017 and 2016 . . . . .	116
Notes to Audited Financial Statements . . . . .	118

## **Report of Independent Registered Public Accounting Firm**

Board of Directors and Stockholders  
Jaguar Health, Inc.  
San Francisco, California

### **Opinion on the consolidated Financial Statements**

We have audited the accompanying consolidated balance sheets of Jaguar Health, Inc. (formerly Jaguar Animal Health, Inc.) (the “Company”) as of December 31, 2017 and 2016, the related consolidated statements of operations and comprehensive loss, stockholders’ equity (deficit), and cash flows for each of the two years in the period ended December 31, 2017. In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2017 and 2016, and the results of their operations and their cash flows for each of the two years in the period ended December 31, 2017, in conformity with accounting principles generally accepted in the United States of America.

### **Going Concern Uncertainty**

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses from operations and an accumulated deficit that raise substantial doubt about its ability to continue as a going concern. Management’s plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### **Basis for Opinion**

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

We have served as the Company’s auditor since 2013.

/s/ BDO USA, LLP

San Francisco, California  
April 9, 2018

**Jaguar Health, Inc.**  
**Balance Sheets**

	<b>December 31, 2017</b>	<b>December 31, 2016</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents . . . . .	\$ 520,698	\$ 950,979
Restricted cash . . . . .	239,169	511,293
Accounts receivable . . . . .	467,658	4,963
Other receivable . . . . .	1,380	—
Due from former parent . . . . .	—	299,648
Inventory . . . . .	2,072,817	412,754
Deferred offering costs . . . . .	—	72,710
Prepaid expenses and other current assets . . . . .	497,373	302,694
Total current assets . . . . .	3,799,095	2,555,041
Land, property and equipment, net . . . . .	1,222,068	885,945
Goodwill . . . . .	5,210,821	—
Intangible assets, net . . . . .	33,397,222	—
Other assets . . . . .	—	122,163
<b>Total assets</b> . . . . .	<b>\$ 43,629,206</b>	<b>\$ 3,563,149</b>
<b>Liabilities, Convertible Preferred Stock and Stockholders' Equity (Deficit)</b>		
Current liabilities:		
Accounts payable . . . . .	\$ 7,354,932	\$ 517,000
Deferred collaboration revenue . . . . .	177,389	—
Deferred product revenue . . . . .	—	224,454
Deferred rent . . . . .	4,584	—
Accrued expenses . . . . .	2,199,549	582,522
Warrant liability . . . . .	103,860	799,201
Derivative liability . . . . .	11,000	—
Conversion option liability . . . . .	111,841	—
Convertible notes payable . . . . .	2,672,215	150,000
Notes payable . . . . .	1,141,153	—
Current portion of long-term debt . . . . .	1,609,244	1,919,675
Total current liabilities . . . . .	15,385,767	4,192,852
Long-term debt, net of discount . . . . .	—	1,817,526
Convertible notes payable . . . . .	10,982,437	—
Deferred rent . . . . .	—	6,956
Total liabilities . . . . .	\$ 26,368,204	\$ 6,017,334
Commitments and Contingencies (See Note 7)		
<b>Stockholders' Equity (Deficit):</b>		
Preferred stock: \$0.0001 par value, 10,000,000 shares authorized at December 31, 2017 and 2016; no shares issued and outstanding at December 31, 2017 and 2016. . . . .	—	—
Common stock: \$0.0001 par value, 250,000,000 shares and 50,000,000 authorized at December 31, 2017 and 2016, respectively; 62,707,480 and 14,007,132 shares issued and outstanding at December 31, 2017 and 2016, respectively. . . . .	6,271	1,401
Common stock—non-voting: \$0.0001 par value, 50,000,000 and 0 shares authorized at December 31, 2017 and 2016; 42,617,893 and 0 shares issued and outstanding at December 31, 2017 and 2016, respectively. . . . .	4,262	—
Additional paid-in capital . . . . .	79,655,191	37,980,522
Accumulated deficit . . . . .	(62,404,722)	(40,436,108)
Total stockholders' equity (deficit) . . . . .	17,261,002	(2,454,185)
<b>Total liabilities, convertible preferred stock and stockholders' equity (deficit)</b> . . . . .	<b>\$ 43,629,206</b>	<b>\$ 3,563,149</b>

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



**Jaguar Health, Inc.**  
**Statements of Operations and Comprehensive Loss**

	<u>Years Ended December 31,</u>	
	<u>2017</u>	<u>2016</u>
Product revenue . . . . .	\$ 1,485,114	\$ 141,523
Collaboration revenue . . . . .	2,876,072	—
Total revenue . . . . .	<u>4,361,186</u>	<u>141,523</u>
Operating Expenses		
Cost of product revenue . . . . .	880,405	51,966
Research and development expense . . . . .	4,269,455	7,206,864
Sales and marketing expense . . . . .	3,083,739	485,440
General and administrative expense . . . . .	11,247,647	5,983,238
Impairment of goodwill . . . . .	16,827,000	—
Impairment of indefinite-lived intangible assets . . . . .	2,300,000	—
Total operating expenses . . . . .	<u>38,608,246</u>	<u>13,727,508</u>
Loss from operations . . . . .	(34,247,060)	(13,585,985)
Interest expense . . . . .	(1,209,632)	(985,549)
Other income/(expense) . . . . .	88,549	(11,046)
Change in fair value of warrants . . . . .	695,341	(43,200)
Loss on extinguishment of debt . . . . .	(477,054)	(108,000)
Net loss before income tax . . . . .	(35,149,856)	(14,733,780)
Income tax benefit . . . . .	13,181,242	—
Net loss and comprehensive loss . . . . .	<u>\$(21,968,614)</u>	<u>\$(14,733,780)</u>
Net loss per share, basic and diluted . . . . .	<u>\$ (0.51)</u>	<u>\$ (1.35)</u>
Weighted-average common shares outstanding, basic and diluted . . . . .	<u>43,435,928</u>	<u>10,951,178</u>

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

Jaguar Health, Inc.

Statement of Changes in Common Stock and Stockholders' Equity (Deficit)

	Common Stock		Common stock—non-voting		Additional paid-in capital	Accumulated deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount			
Balances—December 31, 2015	8,124,923	\$ 812			\$30,100,613	\$(25,702,328)	\$ 4,399,097
Issuance of common stock in a secondary public offering, net of discounts and commissions of \$373,011 and offering costs of \$496,887 February 2016	2,000,000	200			4,129,902	—	4,130,102
Issuance of common stock in a private investment in public entities offering, net of offering costs of \$105,398 June 2016	2,027,490	203			2,571,099	—	2,571,302
Issuance of common stock in a private investment in public entities offering October 2016	170,455	17			149,983	—	150,000
Issuance of common stock and equity warrants in a private investment in public entities offering, net of warrant liability of \$700,001 and net of offering costs of \$96,833 November 2016	1,666,668	167			203,000	—	203,167
Warrants, issued in conjunction with debt extinguishment	—	—			108,000	—	108,000
Issuance of common stock in exchange for vested restricted stock units	17,596	2			(2)	—	—
Stock-based compensation	—	—			717,927	—	717,927
Net and comprehensive loss	—	—			—	(14,733,780)	(14,733,780)
Balances—December 31, 2016	14,007,132	\$1,401	—	\$ —	\$37,980,522	\$(40,436,108)	\$ (2,454,185)
Issuance of common stock in association with a June 2016 private investment in public entities offering, net of offering costs of \$72,710	3,972,510	\$ 397	—	—	2,313,977	—	2,314,374
Issuance of common stock in a private investment in public entities offering, net of offering costs of \$6,000 June 2017	200,000	\$ 20	—	—	93,980	—	94,000
Issuance of common stock through a stock purchase agreement with a private investor, net of offering costs of \$44,738 November 2017	5,100,000	\$ 510	—	—	554,752	—	555,262
Issuance of common stock in a private investment in public entities offering	4,010,000	\$ 401	—	—	400,599	—	401,000
Issuance of common stock in the merger	2,282,445	\$ 228	—	—	1,277,941	—	1,278,169
Issuance of common stock in a July 2017 CSPA	3,243,243	\$ 325	—	—	2,999,675	—	3,000,000
Issuance of common stock in a follow-on offering registration statement October 2017, net of commissions and offering costs of \$763,502	21,687,500	\$2,169	—	—	3,571,829	—	3,573,998
Issuance of common stock—non-voting in the merger	—	—	43,173,288	4,317	24,172,725	—	24,177,042
Conversion of non-voting common stock to common stock	555,395	\$ 55	(555,395)	(55)	—	—	—
Issuance of warrants in the merger	—	—	—	—	630,859	—	630,859
Issuance of stock options in the merger	—	—	—	—	5,691	—	5,691
Issuance of RSUs in the merger	—	—	—	—	3,300,555	—	3,300,555
Issuance of common stock in exchange for warrants	908,334	\$ 91	—	—	386,243	—	386,334
Stock-based compensation	—	—	—	—	814,613	—	814,613
Warrants, issued in conjunction with debt extinguishment	—	—	—	—	207,713	—	207,713
Issuance of common stock in exchange for vested restricted stock units	13,703	\$ 1	—	—	(1)	—	—
Issuance of common stock in exchange for redemption of convertible debt	6,492,084	\$ 649	—	—	899,713	—	900,362
Issuance of common stock in exchange for services	235,134	\$ 24	—	—	43,805	—	43,829
Net and comprehensive loss	—	—	—	—	—	(21,968,614)	(21,968,614)
Balances—December 31, 2017	62,707,480	\$6,271	42,617,893	\$4,262	\$79,655,191	\$(62,404,722)	\$ 17,261,002

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

**Jaguar Health, Inc.**  
**Statements of Cash Flow**

	<b>Years Ended December 31,</b>	
	<b>2017</b>	<b>2016</b>
<b>Cash Flows from Operating Activities</b>		
Net loss	\$(21,968,614)	\$(14,733,780)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	584,339	47,494
Interest paid on the conversion of debt to equity	79,401	—
Common stock issued in exchange for services rendered	43,829	—
Impairment of goodwill	16,827,000	—
Impairment of indefinite-lived intangible assets	2,300,000	—
Deferred income tax benefit	(13,181,242)	—
Loss on extinguishment of debt	477,054	108,000
Stock issued in Napo merger for services	151,351	—
Charge in relation to modification of warrants	23,000	—
Issuance costs in connection with warrants issued in the November 2016 private investment in public entity	—	39,200
Stock-based compensation	814,613	717,927
Amortization of debt issuance costs and debt discount	600,360	510,085
Change in fair value of warrants	(695,341)	43,200
Change in fair value of derivative liability	(9,000)	—
Changes in assets and liabilities		
Accounts receivable—trade	(166,057)	50,904
Other receivable	(1,380)	—
Inventory	128,000	(182,883)
Prepaid expenses and other current assets	(143,926)	21,389
Deferred offering costs	72,710	(72,710)
Other non-current assets	122,163	—
Due from former parent	(164,647)	(296,449)
Deferred collaboration revenue	177,389	—
Deferred product revenue	(224,454)	(27,482)
Deferred rent	(2,372)	3,635
License fee payable	—	(425,000)
Accounts payable	4,188,890	(28,336)
Accrued expenses	141,994	(188,912)
<b>Total cash used in operations</b>	<b>(9,824,940)</b>	<b>(14,413,718)</b>
<b>Cash Flows from Investing Activities</b>		
Purchase of equipment	—	(104,207)
Cash paid in Napo merger, net of cash acquired	(1,557,340)	—
Change in restricted cash	272,125	2,488,707
<b>Total cash (used in)/ provided by investing activities</b>	<b>(1,285,215)</b>	<b>2,384,500</b>
<b>Cash Flows from Financing Activities</b>		
Repayment of long-term debt	(2,422,094)	(2,488,706)
Proceeds from issuance of convertible debt	1,700,000	—
Proceeds from issuance of notes payable	1,100,000	—
Proceeds from issuance of common stock in follow-on secondary public offering, net of commissions, discounts	—	5,000,000
Commissions, discounts and issuance costs associated with the follow-on secondary public offering	—	(869,898)
Proceeds from issuance of common stock in a private investment in public entities June 2016	2,376,155	2,676,746

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

**Jaguar Health, Inc.**  
**Statements of Cash Flow (Continued)**

	<b>Years Ended December 31,</b>	
	<b>2017</b>	<b>2016</b>
Issuance costs associated with the proceeds from the issuance of common stock in a private investment in public entities June 2016 . . . . .	(61,781)	(105,444)
Proceeds from the issuance of common stock in a private investment in public entities October 2016 . . . . .	—	150,000
Proceeds from the issuance of common stock in a private investment in public entities November 2016 . . . . .	—	1,000,001
Issuance costs associated with the proceeds from the issuance of common stock in a private investment in public entities November 2016 . . . . .	—	(80,033)
Issuance of common stock through a stock purchase agreement with a private investor November 2017 . . . . .	600,000	
Issuance costs associated with the issuance of common stock through a stock purchase agreement—November 2017 . . . . .	(44,738)	
Issuance of common stock in a private investment in public entities offering December 2017 . . . . .	401,000	
Proceeds from issuance of common stock in a private investment in public entities June 2017 . . . . .	100,000	—
Issuance costs associated with the proceeds from the issuance of common stock in a private investment in public entities June 2017 . . . . .	(6,000)	—
Issuance of common stock in a follow-on offering registration statement October 2017 . . . . .	3,723,875	
Issuance costs associated with the issuance of common stock in a follow-on offering registration statement October 2017 . . . . .	(149,877)	
Proceeds from issuance of common stock in the Napo merger . . . . .	3,000,000	
Proceeds from the issuance of common stock through the exercise of common stock warrants . . . . .	363,334	—
<b>Total Cash Provided by Financing Activities . . . . .</b>	<b>10,679,874</b>	<b>5,282,666</b>
<b>Net decrease in cash and cash equivalents . . . . .</b>	<b>(430,281)</b>	<b>(6,746,552)</b>
<b>Cash and cash equivalents, beginning of period . . . . .</b>	<b>950,979</b>	<b>7,697,531</b>
<b>Cash and cash equivalents, end of period . . . . .</b>	<b>\$ 520,698</b>	<b>\$ 950,979</b>
<b>Supplemental Schedule of Non-Cash Financing and Investing Activities</b>		
Interest paid on long-term debt . . . . .	\$ 234,550	\$ 478,665
Fair value of common stock issued in a merger . . . . .	\$ 25,303,860	\$ —
Fair value of replacement of common stock warrants issued in a merger . . . . .	\$ 630,859	\$ —
Fair value of replacement restricted stock units issued in a merger . . . . .	\$ 3,300,555	\$ —
Fair value of replacement stock options issued in a merger . . . . .	\$ 5,691	\$ —
Fair value of common stock issued as redemption of Jaguar notes payable . . . . .	\$ 601,312	\$ —
Fair value of common stock issued as redemption of Napo notes payable . . . . .	\$ 299,050	\$ —
Fair value of common stock issued in lieu of repayment of Napo debt . . . . .	\$ 2,000,000	\$ —
Warrants issued in connection with notes payable . . . . .	\$ —	\$ 108,000
Warrants issued in connection with private investment in public entity . . . . .	\$ —	\$ 756,001

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

**Jaguar Health, Inc.**  
**Notes to Financial Statements**

**1. Organization and Business**

Jaguar Health, Inc. (“Jaguar” 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. In September of 2016, the Company began selling the *Croton lechleri* botanical extract (the “botanical extract”) to an exclusive distributor for use in pigs in China. The Company’s activities are subject to significant risks and uncertainties, including failing to secure additional funding in order to timely compete the development and commercialization of products. The Company manages its operations through two segments—human health and animal health and is headquartered in San Francisco, California.

On June 11, 2013, Jaguar issued 2,666,666 shares of common stock to Napo in exchange for cash and services. On July 1, 2013, Jaguar entered into an employee leasing and overhead agreement (the “Service Agreement”) with Napo, under which Napo agreed to provide the Company with the services of certain Napo employees for research and development and the general administrative functions of the Company. On January 27, 2014, Jaguar executed an intellectual property license agreement with Napo pursuant to which Napo transferred fixed assets and development materials, and licensed intellectual property and technology to Jaguar. On February 28, 2014, the Service Agreement terminated and the associated employees became employees of Jaguar effective March 1, 2014. See Note 9 for additional information regarding the capital contributions and Note 5 for the Service Agreement and license agreement details. Effective July 1, 2016, Napo agreed to reimburse the Company for the use of the Company’s employee’s time and related expenses, including rent and a fixed overhead amount to cover office supplies and copier use (Note 5).

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 our 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. FDA for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy.

**Liquidity**

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern. The Company has incurred recurring operating losses since inception and has an accumulated deficit of \$62,404,722 as of December 31, 2017. The Company expects to incur substantial losses 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 the securing of additional financing. There is no assurance that profitable operations, if ever achieved, could be sustained on a continuing basis.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**1. Organization and Business (Continued)**

The Company plans to finance its operations and capital funding needs through equity and/or debt financing, collaboration arrangements with other entities, as well as revenue from future product sales. However, there can be no assurance that additional funding will be available to the Company on acceptable terms on a timely basis, if at all, or that the Company will generate sufficient cash from operations to adequately fund operating needs or ultimately achieve profitability. If the Company is unable to obtain an adequate level of financing needed for 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. 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 financial statements. The accompanying financial statements do not include any adjustments that might result from the outcome of these uncertainties.

In June 2016, the Company entered into a common stock purchase agreement with a private investor (the "CSPA"), which provides that, upon the terms and subject to the conditions and limitations set forth therein, the investor is committed to purchase up to an aggregate of \$15.0 million of the Company's common stock over the approximately 30-month term of the agreement. Through December 31, 2017 the Company sold 6,000,000 shares for gross cash proceeds of \$5,063,785. The CSPA limited the number of shares that the Company can sell thereunder to 2,027,490 shares, which equals 19.99% of the Company's outstanding shares as of the date of the CSPA (such limit, the "19.99% exchange cap"), unless either (i) the Company obtains stockholder approval to issue more than such 19.99% exchange cap or (ii) the average price paid for all shares of the Company's common stock issued under the CSPA is equal to or greater than \$1.32 per share (the closing price on the date the CSPA was signed), in either case in compliance with Nasdaq Listing Rule 5635(d). At the 2017 Annual Stockholders' Meeting on May 8, 2017, the Company's stockholders voted on the approval, pursuant to Nasdaq Listing Rule 5635(d), of the issuance of an additional 3,555,514 shares of the Company's common stock under the CSPA, which when combined with the 2,444,486 shares that the Company has already sold pursuant to the CSPA, equals an aggregate of 6,000,000 shares.

**2. Summary of Significant Accounting Policies**

**Basis of Presentation**

The financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").

**Principles of Consolidation**

The consolidated financial statements have been prepared in accordance with US GAAP and applicable rules and regulations of the Securities and Exchange Commission ("SEC") and include the accounts of the Company and its wholly owned subsidiaries. All inter-company transactions and balances have been eliminated in consolidation.

**Use of Estimates**

The preparation of 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 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



**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

understanding and evaluating its reported financial results are valuation of stock options; valuation of warrant liabilities; valuation of derivative liability, impairment testing of goodwill, IPR&D, and long lived assets; useful lives for depreciation and amortization; 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.

**Deferred Offering Costs**

Deferred offering costs are costs incurred in filings of registration statements with the Securities and Exchange Commission. These deferred offering costs are offset against proceeds received upon the closing of the offerings. Deferred costs of \$72,710 as of December 31, 2016, include legal, accounting, printer and filing fees associated with the Company's registration of unissued shares in the CSPA.

**Concentration of Credit Risk and Cash and Cash Equivalents**

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 ("FDIC") insurance limits. The carrying value of cash approximates fair value at December 31, 2017 and 2016.

**Fair Values**

The Company's financial instruments include, cash and cash equivalents, accounts receivable, accounts payable, accrued expenses, warrant liabilities, derivative liability, debt conversion option liability, and debt. Cash is reported at fair value. 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 4 for the fair value measurements, and Note 8 for the fair value of the Company's warrant liabilities, derivative liability, and debt conversion option liability.

**Restricted Cash**

On August 18, 2015, the Company entered into a long-term loan and security agreement with a lender for up to \$8.0 million, which provided for an initial loan commitment of \$6.0 million. The loan agreement required the Company to maintain a base minimum cash balance of \$4.5 million until the Company met certain milestones and/or when the Company begins making principal payments. On December 22, 2015, the Company achieved certain milestones and the base minimum cash balance was reduced to \$3.0 million. Aggregate principal payments of \$3.0 million further reduced the restricted cash balance to \$0 as of September 30, 2017. Restrictions were fully released on April 1, 2017. On July 7, 2017, the Company entered into the third amendment to the Loan Agreement upon which the Company paid \$1.0 million of the outstanding loan balance, and the Lender waived the Prepayment Charge associated with such prepayment. The Third Amendment modified the repayment schedule providing a three-month period of interest only payments for the period from August 2017 through October 2017, and reestablished a

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

required restricted cash amount of \$500,000. The restricted cash balance was \$239,169 and \$511,293 at December 31, 2017 and 2016, respectively.

**Inventories**

Inventories are stated at the lower of cost or market. The Company calculates inventory valuation adjustments when conditions indicate that market 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 market. The Company reserved \$88,000 for Neonorm Foal inventory obsolescence in the year ended December 31, 2017.

**Land, Property and Equipment**

Land is stated at cost, reflecting fair value of the property at July 31, 2017, the date of the merger with Napo.

Equipment is stated at cost, less accumulated depreciation. Equipment begins to be depreciated when it is placed into service. Depreciation is calculated using the straight-line method over the estimated useful lives of 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 statements of operations and comprehensive loss.

**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 periods benefited, and are reviewed when appropriate for possible impairment.

**Goodwill and Indefinite-lived Intangible Assets**

Goodwill is tested for impairment on an annual basis and in between annual tests if events or circumstances indicate that an impairment loss may have occurred. The test is based on a comparison of the reporting unit's book value to its estimated fair market value. The Company performs annual impairment test during the fourth quarter of each fiscal year using the opening consolidated balance sheet as of the first day of the fourth quarter, with any resulting impairment recorded in the fourth quarter of the fiscal year.

If the carrying value of a reporting unit's net assets exceeds its fair value, the goodwill would be considered impaired and would be reduced to its fair value. The goodwill was entirely allocated to the

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

human health reporting unit as the goodwill relates to the Napo Merger. The decline in market capitalization during the year ended December 31, 2017 was determined to be a triggering event for potential goodwill impairment. Accordingly the Company performed the goodwill impairment analysis. The Company utilized the market capitalization plus a reasonable control premium in the performance of its impairment test. The market capitalization was based on the outstanding shares and the average market share price for the 30 days prior to December 31, 2017. Based on the results of the Company's impairment test, the Company recorded an impairment charge of \$16,827,000 during the year ended December 31, 2017. If the market capitalization decreases in the future, a reasonable possibility exists that goodwill could be further impaired in the near term and that such impairment may be material to the financial statements.

Fair value determinations require considerable judgment and are sensitive to changes in underlying assumptions, estimates and market factors. Estimating the fair value of individual reporting units and indefinite-lived intangible assets requires us to make assumptions and 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 market factors. If current expectations of future growth rates are not met or market factors outside of our control, such as discount rates, change significantly, this may lead to a further goodwill impairment in the future. Acquired in-process research and development (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 booked an impairment of \$2,300,000 in the year ended December 31, 2017. The impairment loss is measured based on the excess of the carrying amount over the asset's fair value. The loss resulted from the Company's termination of the clostridium difcil infection program. Definite-lived intangible assets are amortized on a straight-line basis over the estimated periods benefited, and are reviewed when appropriate for possible impairment.

Additionally, as goodwill and intangible assets associated with recently acquired businesses are recorded on the balance sheet at their estimated acquisition date fair values, those amounts are more susceptible to an impairment risk if business operating results or macroeconomic conditions deteriorate.

In connection with each annual impairment assessment and any interim impairment assessment in which indicators of impairment have been identified, the Company compares the fair value of the asset as of the date of the assessment with the carrying value of the asset on the consolidated balance sheet. 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.

**Research and Development Expense**

Research and development expense consists of expenses incurred in performing research and development activities including related salaries, clinical trial 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.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

**Revenue Recognition**

The Company recognizes revenue in accordance with ASC 605 “Revenue Recognition”, subtopic ASC 605-25 *Revenue with Multiple Element Arrangements* and subtopic ASC 605-28 “*Revenue Recognition—Milestone Method*”, which provides accounting guidance for revenue recognition for arrangements with multiple deliverables and guidance on defining the milestone and determining when the use of the milestone method of revenue recognition for research and development transactions is appropriate, respectively. For multiple-element arrangements, each deliverable within a multiple deliverable revenue arrangement is accounted for as a separate unit of accounting if both of the following criteria are met: (1) the delivered item or items have value to the customer on a standalone basis and (2) for an arrangement that includes a general right of return relative to the delivered item(s), delivery or performance of the undelivered item(s) is considered probable and substantially in our control. If a deliverable in a multiple element arrangement is not deemed to have a stand-alone value, consideration received for such a deliverable is recognized ratably over the term of the arrangement or the estimated performance period, and it will be periodically reviewed based on the progress of the related product development plan. The effect of a change made to an estimated performance period and therefore revenue recognized ratably would occur on a prospective basis in the period that the change was made.

The Company recognizes revenue under its licensing, development, co-promotion and commercialization agreement from milestone payments when: (i) the milestone event is substantive and its achievability has substantive uncertainty at the inception of the agreement, and (ii) it does not have ongoing performance obligations related to the achievement of the milestone earned. Milestone payments are considered substantive if all of the following conditions are met: the milestone payment (a) is commensurate with either the Company’s performance subsequent to the inception of the arrangement to achieve the milestone or the enhancement of the value of the delivered item or items as a result of a specific outcome resulting from the Company’s performance subsequent to the inception of the arrangement to achieve the milestone, (b) relates solely to past performance, and (c) is reasonable relative to all of the deliverables and payment terms (including other potential milestone consideration) within the arrangement.

We record revenue for the reimbursement of costs incurred under the collaboration agreement where the company acts as principal, controls the research and development activities and bears credit risk. Under the agreement, the Company is reimbursed for associated out-of-pocket costs and for certain employee costs. The gross amount of these pass-through costs is reported in revenue in the accompanying statements of operations and comprehensive loss, while the actual expense for which the Company is reimbursed are reflected as research and development costs.

Determining whether and when some of these revenue recognition criteria have been satisfied often involves assumptions and judgments that can have a significant impact on the timing and amount of revenue the Company will report. Changes in assumptions or judgments or changes to the elements in an arrangement could cause a material increase or decrease in the amount of revenue that the Company reports in a particular period.

**Product Revenue**

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. Beginning the three months ended December 2017, the Company developed sufficient sales history and pipeline visibility to recognize

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

revenue when risk and title of products are transferred to the distributors. Prior to this, revenue recognition depended on notification directly from the distributor that product has been sold to the distributor's customer, and deferred revenue on shipments to distributors reflected the estimated effects of distributor price adjustments, if any, and the estimated amount of gross margin expected to be realized when the distributor sells through product purchased from us. Prior to the three months ended December 2017, the Company's sales to distributors were invoiced and included in accounts receivable and deferred revenue upon shipment, and inventory was relieved and revenue recognized upon shipment by the distributor to their customer. The Company had Neonorm revenues of \$344,194 and \$117,523 for the years ended December 31, 2017 and 2016, respectively. The change resulted in the recognition of gross profit of \$106,000 consisting of \$163,000 in previously deferred revenue and \$57,000 in related cost of revenue.

Sales of Botanical Extract are recognized as revenue when the product is delivered to the customer. The Company had Botanical Extract revenues of \$78,000 and \$24,000 in the years ended December 31, 2017 and 2016, respectively.

Sales of Mytesi are recognized as revenue when the products are delivered to the wholesalers. The Company had Mytesi revenues of \$1,062,920 and \$0 in the years ended December 2017 and 2016, respectively. The Company recorded a reserve for estimated product returns under terms of agreements with wholesalers based on its historical returns experience. Reserves for returns at December 31, 2017 were immaterial. If actual returns differed from our historical experience, changes to the reserved could be required in future periods.

**Collaboration Revenue**

On January 27, 2017, the Company entered into a licensing, development, co-promotion and commercialization agreement (the "Elanco Agreement") with Elanco US Inc. ("Elanco") to license, develop and commercialize Canalevia ("Licensed Product"), our drug product candidate under investigation for treatment of acute and chemotherapy-induced diarrhea in dogs, and other drug product formulations of crofelemer for treatment of gastrointestinal diseases, conditions and symptoms in cats and other companion animals. The Company grants Elanco exclusive global rights to Canalevia, a product whose active pharmaceutical ingredient is sustainably isolated and purified from the Croton lechleri tree, for use in companion animals. Pursuant to the Elanco Agreement, Elanco will have exclusive rights globally outside the U.S. and co-exclusive rights with the Company in the U.S. to direct all marketing, advertising, promotion, launch and sales activities related to the Licensed Products.

Under the terms of the Elanco Agreement, the Company received an initial upfront payment of \$2,548,689, inclusive of reimbursement of past product and development expenses of \$1,048,689, and will receive additional payments upon achievement of certain development, regulatory and sales milestones in an aggregate amount of up to \$61.0 million payable throughout the term of the Elanco Agreement, as well as product development expense reimbursement for any additional product development expenses incurred, and royalty payments on global sales. The \$61.0 million development and commercial milestones consist of \$1.0 million for successful completion of a dose ranging study; \$2.0 million for the first commercial sale of license product for acute indications of diarrhea; \$3.0 million for the first commercial sale of a license product for chronic indications of diarrhea; \$25.0 million for aggregate worldwide net sales of licensed products exceeding \$100.0 million in a calendar year during the term of the agreement; and \$30.0 million for aggregate worldwide net sales of licensed products exceeding \$250.0 million in a calendar year during the terms of the agreement. Each of the development and commercial milestones are

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

considered substantive. No revenues associated with the achievement of the milestones has been recognized to date. The Elanco Agreement specifies that the Company will supply the Licensed Products to Elanco, and that the parties will agree to set a minimum sales requirement that Elanco must meet to maintain exclusivity. The \$2,548,689 upfront payment, inclusive of reimbursement of past product and development expenses of \$1,048,689 is recognized as revenue ratably over the estimated development period of one year resulting in \$2,371,300 in collaboration revenue in the year ended December 31, 2017 which are included in the Company's statements of operations and comprehensive loss. The difference of \$177,389 is included in deferred collaboration revenue in the Company's balance sheet.

In addition to the upfront payments, Elanco reimburses the Company for certain development and regulatory expenses related to our planned target animal safety study and the completion of the Canalevia field study for acute diarrhea in dogs. These are recognized as revenue in the month in which the related expenses are incurred. The Company has \$1,380 of unreimbursed expenses as of December 31, 2017, which is included in Other Receivables on the balance sheet. The Company included the \$504,771 of expense reimbursements in collaboration revenue in the years ended December 31, 2017 which are included in the Company's statements of operations and comprehensive loss. On November 1, 2017, the Company received a letter (the "Notice") from Elanco serving as formal notice of Elanco's decision to terminate the Elanco Agreement by giving the Company 90 days written notice. Pursuant to the terms of the Elanco Agreement, termination of the Agreement will become effective on January 30, 2018, which is 90 days after the date of the Notice. On the effective date of termination of the Elanco Agreement, all licenses granted to Elanco by the Company under the Elanco Agreement will be revoked and the rights granted thereunder revert back to the Company.

**Stock-Based Compensation**

The Company's 2013 Equity Incentive Plan and 2014 Stock Incentive Plan (see Note 10) provides for the grant of stock options, restricted stock and restricted stock unit awards.

The Company measures stock awards granted to employees and directors at fair value on the date of grant and recognizes the corresponding compensation expense of the awards, net of estimated forfeitures, 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 value both employee and non-employee options when granted. The Company revalues non-employee options each reporting period using the fair market value of the Company's common stock as of the last day of each reporting period.

**Classification of Securities**

The Company applies the principles of ASC 480-10 "Distinguishing Liabilities from Equity" and ASC 815-40 "Derivatives and Hedging—Contracts in Entity's Own Equity" to determine whether financial instruments such as warrants should be classified as liabilities or equity and whether beneficial conversion features exist. Financial instruments such as warrants that are evaluated to be classified as liabilities are fair valued upon issuance and are remeasured at fair value at subsequent reporting periods with the resulting change in fair value recorded in other income/(expense). The fair value of warrants is estimated using the Black-Scholes-Merton model and requires the input of subjective assumptions including expected stock price volatility and expected life.



**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

**Income Taxes**

The Company accounts for income taxes using the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been recognized in the financial statements or in the Company's tax returns. Deferred taxes are determined based on the difference between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect in the years in which the differences are expected to reverse. Changes in deferred tax assets and liabilities are recorded in the provision for income taxes. The Company assesses the likelihood that its deferred tax assets will be recovered from future taxable income and, to the extent it believes, based upon the weight of available evidence, that it is more likely than not that all or a portion of deferred tax assets will not be realized, a valuation allowance is established through a charge to income tax expense. Potential for recovery of deferred tax assets is evaluated by estimating the future taxable profits expected and considering prudent and feasible tax planning strategies.

The Company accounts for uncertainty in income taxes recognized in the financial statements by applying a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon external examination by the taxing authorities. If the tax position is deemed more-likely-than-not to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the financial statements. The amount of the benefit that may be recognized is the largest amount that has a greater than 50% likelihood of being realized upon ultimate settlement. The provision for income taxes includes the effects of any resulting tax reserves, or unrecognized tax benefits, that are considered appropriate, as well as the related net interest and penalties.

Certain reclassifications were made to prior year disclosures for comparability purposes.

**Comprehensive Loss**

Comprehensive loss is defined as changes in stockholders' equity (deficit) exclusive of transactions with owners (such as capital contributions and distributions). There was no difference between net loss and comprehensive loss for the years ended December 31, 2017 and 2016.

**Segment Data**

Prior to the merger with Napo, the Company managed its operation as a single segment for the purposes of assessing performance and making operating decisions. The Company reorganized their segments to reflect the change in the organizational structure resulting from the merger with Napo. Post-merger with Napo, the Company manages its operations through two segments. 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 noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

The Company's reportable segments net sales and net income consisted of:

	<u>Years Ended December 31,</u>	
	<u>2017</u>	<u>2016</u>
Revenue from external customers		
Human Health . . . . .	\$ 1,062,920	\$ —
Animal Health . . . . .	3,298,266	141,523
Consolidated Totals . . . . .	<u>\$ 4,361,186</u>	<u>\$ 141,523</u>
Interest expense		
Human Health . . . . .	\$ (283,520)	\$ —
Animal Health . . . . .	(926,112)	(985,549)
Consolidated Totals . . . . .	<u>\$ (1,209,632)</u>	<u>\$ (985,549)</u>
Depreciation and amortization		
Human Health . . . . .	\$ 524,215	\$ —
Animal Health . . . . .	60,124	47,494
Consolidated Totals . . . . .	<u>\$ 584,339</u>	<u>\$ 47,494</u>
Segment profit		
Human Health . . . . .	\$(14,860,754)	\$ —
Animal Health . . . . .	(7,107,860)	(14,733,780)
Consolidated Totals . . . . .	<u>\$(21,968,614)</u>	<u>\$(14,733,780)</u>

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

	<u>As of December 31,</u>	
	<u>2017</u>	<u>2016</u>
Segment assets		
Human Health . . . . .	\$41,754,603	\$ —
Animal Health . . . . .	36,807,184	3,563,149
Total . . . . .	<u>\$78,561,787</u>	<u>\$3,563,149</u>

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

	<u>As of December 31,</u>	
	<u>2017</u>	<u>2016</u>
Total assets for reportable segments . . . . .	\$ 78,561,787	\$3,563,149
Less: Investment in subsidiary . . . . .	(29,240,965)	—
Less: Intercompany loan . . . . .	(2,000,000)	—
Less: Intercompany receivable . . . . .	(3,691,616)	—
Consolidated Totals . . . . .	<u>\$ 43,629,206</u>	<u>\$3,563,149</u>

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

**Basic and Diluted Net Loss Per Common Share**

Basic net loss per common share is computed by dividing net loss attributable to common stockholders for the period by the weighted-average number of common shares outstanding during the period. Diluted net loss per share is computed by dividing the net loss attributable to common stockholders for the period by the weighted-average number of common shares, including potential dilutive shares of common stock assuming the dilutive effect of potential dilutive securities. For periods in which the Company reports a net loss, diluted net loss per common share is the same as basic net loss per common share, because their impact would be anti-dilutive to the calculation of net loss per common share. Diluted net loss per common share is the same as basic net loss per common share for the years ended December 31, 2017 and 2016.

**Recent Accounting Pronouncements**

In July 2017, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2017-11, “Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815): (Part I) Accounting for Certain Financial Instruments with Down Round Features, (Part II) Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Non-controlling Interests with a Scope Exception” (“ASU 2017-11”), which addresses the complexity of accounting for certain financial instruments with down round features. Down round features are features of certain equity-linked instruments (or embedded features) that result in the strike price being reduced on the basis of the pricing of future equity offerings. Current accounting guidance creates cost and complexity for entities that issue financial instruments (such as warrants and convertible instruments) with down round features that require fair value measurement of the entire instrument or conversion option. The amendments in Part I of this ASU are effective for public business entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. The Company is currently evaluating the impact of the adoption of ASU 2017-11 on its consolidated financial statements.

In May 2017, the FASB issued ASU No. 2017-09, “Compensation—Stock Compensation (Topic 718): Scope of Modification Accounting” (“ASU 2017-09”), which provides guidance on determining which changes to the terms and conditions of share-based payment awards require an entity to apply modification accounting under Topic 718. The amendments in this ASU are effective for all entities for annual periods, and interim periods within those annual periods, beginning after December 15, 2017. Early adoption is permitted, including adoption in any interim period, for (1) public business entities for reporting periods for which financial statements have not yet been issued and (2) all other entities for reporting periods for which financial statements have not yet been made available for issuance. The amendments in this ASU should be applied prospectively to an award modified on or after the adoption date. The Company does not expect the adoption of ASU 2017-09 to have a material impact on our consolidated financial statements.

In February 2017, the FASB issued ASU No. 2017-05, “Other Income—Gains and Losses from the Derecognition of Nonfinancial Assets (Subtopic 610-20): Clarifying the Scope of Asset Derecognition Guidance and Accounting for Partial Sales of Nonfinancial Assets” (“ASU 2017-05”), which clarifies the scope of the nonfinancial asset guidance in Subtopic 610-20. This ASU also clarifies that the derecognition of all businesses and nonprofit activities (except those related to conveyances of oil and gas mineral rights or contracts with customers) should be accounted for in accordance with the derecognition and

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

deconsolidation guidance in Subtopic 810-10. The amendments in this ASU also provide guidance on the accounting for what often are referred to as partial sales of nonfinancial assets within the scope of Subtopic 610-20 and contributions of nonfinancial assets to a joint venture or other noncontrolled investee. The amendments in this ASU are effective for annual reporting reports beginning after December 15, 2017, including interim reporting periods within that reporting period. Public entities may apply the guidance earlier but only as of annual reporting periods beginning after December 15, 2016, including interim reporting periods within that reporting period. The Company does not expect the adoption of ASU 2017-05 to have a material impact on our consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-04 related to goodwill impairment testing. This ASU eliminates Step 2 from the goodwill impairment test. Under the new guidance, if a reporting unit's carrying amount exceeds its fair value, the entity will record an impairment charge based on that difference. The impairment charge will be limited to the amount of goodwill allocated to that reporting unit. Previously, if the fair value of a reporting unit was lower than its carrying amount (Step 1), an entity was required to calculate any impairment charge by comparing the implied fair value of goodwill with its carrying amount (Step 2). Additionally, under the new standard, entities that have reporting units with zero or negative carrying amounts will no longer be required to perform the qualitative assessment to determine whether to perform Step 2 of the goodwill impairment test. As a result, reporting units with zero or negative carrying amounts will generally be expected to pass the simplified impairment test; however, additional disclosure will be required of those entities. This ASU will be effective beginning in the first quarter of our fiscal year 2020. Early adoption is permitted for annual and interim goodwill impairment testing dates after January 1, 2017. The new guidance must be adopted on a prospective basis. The Company early adopted this ASU in 2017. For impact of the adoption of this standard, refer to Note 6 "Goodwill".

In November 2016, the FASB issued Accounting Standards Update No. 2016-18, Statement of Cash Flows: Restricted Cash, or ASU 2016-18, that will require entities to show the changes in the total of cash, cash equivalents, restricted cash and restricted cash equivalents in the statement of cash flows. As a result, entities will no longer present transfers between cash and cash equivalents and restricted cash and restricted cash equivalents in the statement of cash flows. When cash, cash equivalents, restricted cash and restricted cash equivalents are presented in more than one line item on the balance sheet, the new guidance requires a reconciliation of the totals in the statement of cash flows to the related captions in the balance sheet. This reconciliation can be presented either on the face of the statement of cash flows or in the notes to the financial statements. Entities will also have to disclose the nature of their restricted cash and restricted cash equivalent balances. ASU 2016-18 becomes effective for fiscal years beginning after December 15, 2017, and interim periods within those years, with early adoption permitted. Any adjustments must be reflected as of the beginning of the fiscal year that includes that interim period. The Company is currently evaluating the impact of the adoption of ASU No. 2016-18 on our consolidated financial statements.

In August 2016, the FASB issued Accounting Standards Update, or ASU, No. 2016-15, Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments, which addresses the following cash flow issues: (1) debt prepayment or debt extinguishment costs; (2) settlement of zero-coupon debt instruments or other debt instruments with coupon interest rates that are insignificant in relation to the effective interest rate of the borrowing; (3) contingent consideration payments made after a business combination; (4) proceeds from the settlement of insurance claims; (5) proceeds from the settlement of corporate-owned life insurance policies, including bank-owned life insurance policies; (6) distributions received from equity method investees; (7) beneficial interests in securitization

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

transactions; and (8) separately identifiable cash flows and application of the predominance principle. The amendments in this ASU are effective for public business entities for fiscal years beginning after December 15, 2017 and interim periods within those fiscal years and are effective for all other entities for fiscal years beginning after December 15, 2018 and interim periods within fiscal years beginning after December 15, 2019. Early adoption is permitted, including adoption in an interim period. The Company is currently evaluating the impact of the adoption of ASU No. 2016-15 on our consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting, which simplifies several aspects of the accounting for employee stock-based payment transactions. The areas for simplification in ASU No. 2016-09 include the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. The amendments in this ASU will be effective for annual periods beginning after December 15, 2016 and interim periods within those annual periods. Early adoption is permitted. The Company is currently evaluating the impact of the adoption of ASU No. 2016-09 on our consolidated financial statements.

In March 2016 the FASB issued ASU No. 2016-07, Investments—Equity Method and Joint Ventures (Topic 323): Simplifying the Transition to the Equity Method of Accounting. This new standard eliminates the requirement that when an investment qualifies for use of the equity method as a result of an increase in the level of ownership interest or degree of influence, an adjustment must be made to the investment, results of operations and retained earnings retroactively on a step-by-step basis as if the equity method had been in effect during all previous periods that the investment has been held. ASU 2016-07 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2017. The Company is currently evaluating the potential effects of the adoption of this update on its financial statements.

In February 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2016-02, Leases (Topic 842), which provides guidance for accounting for leases. Under ASU 2016-02, the Company will be required to recognize the assets and liabilities for the rights and obligations created by leased assets. ASU 2016-02 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. The Company is currently evaluating the impact of the adoption of ASU 2016-02 on our consolidated financial statements.

In May 2014, the FASB issued ASU No. 2014-09, “Revenue from Contracts with Customers (Topic 606)” (ASU 2014-09), and subsequently issued modifications or clarifications in ASU No. 2015-14, “Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date,” ASU 2016-08, “Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross versus Net),” ASU No. 2016-10, “Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing,” and ASU No. 2016-12, “Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients.” The revenue recognition principle in ASU 2014-09 and the related guidance is that an entity should recognize revenue to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. ASU 2014-09 prescribes a five-step process for evaluating contracts and determining revenue recognition. In addition, new and enhanced disclosures are required. Companies may adopt the new standard either using the full retrospective approach, a modified retrospective approach with practical expedients, or a cumulative effect

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

upon adoption approach. The Company has completed the process of evaluating the effects of the adoption of Topic 606 and determined that the timing and measurement of our revenues under the new standard is similar to that recognized under the previous revenue guidance. Similar to the current guidance, the Company will need to make significant estimates related to variable consideration at the point of sale, including chargebacks, rebates and product returns. Revenue will be recognized at a point in time upon the transfer of control of the Company's products, which occurs upon delivery for substantially all of the Company's sales. As such, the adoption of ASU 2014-09, ASU 2016-10 and ASU 2016-12 will not have a material impact on our financial position and results of operations. The Company will adopt the new revenue guidance effective January 1, 2018, by recognizing the cumulative effect of initially applying the new standard as an increase to the opening balance of retained earnings as prescribed by the modified retrospective method of adoption.

**3. Business Combination**

As discussed in Note 1—Organization and Business, the Company completed a merger with Napo on July 31, 2017. 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. FDA for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy.

The merger was accounted for under the acquisition method of accounting for business combinations and Jaguar was considered to be the acquiring company. Under the acquisition method of accounting, total consideration exchanged was:

	<u>(Unaudited)</u>
Fair value of Jaguar common stock . . . . .	\$25,303,859
Fair value of Jaguar common stock warrants . . . . .	630,859
Fair value of replacement restricted stock units . . . . .	3,300,555
Fair value of replacement stock options . . . . .	5,691
Cash . . . . .	2,000,000
Effective settlement of receivable from Napo . . . . .	464,295
Total consideration exchanged . . . . .	<u>\$31,705,259</u>

The purchase price allocation to assets and liabilities assumed in the transaction was:

Current assets . . . . .	\$ 2,578,114
Non-current assets . . . . .	396,247
Identifiable intangible assets . . . . .	36,400,000
Current liabilities . . . . .	(4,052,180)
Convertible notes payable . . . . .	(12,473,501)
Deferred tax liability . . . . .	<u>(13,181,242)</u>
Net assets acquired . . . . .	9,667,438
Goodwill on acquisition . . . . .	<u>22,037,821</u>
Total consideration . . . . .	<u>\$ 31,705,259</u>



**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**3. Business Combination (Continued)**

Under the acquisition method of accounting, certain identifiable assets and liabilities of Napo including identifiable intangible assets, inventory, debt and deferred revenue were recorded based on their estimated fair values as of the effective time of the Napo Merger. Tangible and other assets and liabilities were valued at their respective carrying amounts, which management believes approximate their fair values.

The Developed Technology (DT) is for the development and commercial processing of Mytesi™ (crofelemer 125mg delayed-release tablets), which is an antidiarrheal indicated for the symptomatic relief of noninfectious diarrhea in adult patients with HIV/AIDS on antiretroviral therapy. The DT is a definite lived asset and is being amortized over a 15-year estimated useful life.

The acquired trademarks include Mytesi product trademark, domain names, and other brand related intellectual property. Trademark is a definite lived asset and is being amortized over a 15-year estimated useful life.

The acquired IPR&D projects relate to developing the proprietary technology into a commercially viable product for the several follow-on indications related to formulations of crofelemer. Crofelemer is in development for rare disease indications for infants and children with congenital diarrheal disorders (CDD) and short bowel syndrome (SBS), and for irritable bowel syndrome (IBS). These indications have completed some studies of clinical testing for safety and/or proof of concept efficacy at the time of the merger and the projects were determined to have substance. IPR&D is not amortized during the development period and is tested for impairment at least annually, or more frequently if indicators of impairment are identified. The Company terminated development of the indication for *C. difficile* infection (CDI) in Q4 2017. This indication was included as part of IPR&D at the time of the merger, and an impairment loss of \$2,300,000 was recorded as a result of the decision to abandon the project in favor of the prioritization of the following: Mytesi is in development for follow-on indications in cancer therapy-related diarrhea (CTD), an important supportive care indication for patients undergoing primary or adjuvant therapy for cancer treatment; as supportive care for post-surgical inflammatory bowel disease patients (IBD); and as a second-generation anti-secretory agent for use in cholera patients. These indications did not have substance at the time of the merger and were not recognized as an asset apart from Goodwill.

The fair value of IPR&D, trademark, and DT was determined using the income approach, which was based on forecasts prepared by management.

The Napo Merger resulted in \$22,037,821 of goodwill relating principally to synergies expected to be achieved from the combined operations and planned growth in new markets. Goodwill has been allocated to the human health segment.

As none of the goodwill, IPR&D, and developed technology acquired are expected to be deductible for income tax purposes, it was determined that a deferred income tax liability of \$14,498,120 was required to reflect the book to tax differences of the merger. A deferred tax asset of \$1,316,878 was accounted as an element of consideration for the replacement share-based payment awards as the replacement awards are expected to result in a future tax deduction.

The Company valued finished goods using a net realizable value approach, which resulted in a step-up of \$84,806. Raw material was valued using the replacement cost approach.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**3. Business Combination (Continued)**

The Company valued convertible debt assumed in the Napo Merger based on the value of the debt and the conversion option at \$12,473,501 (see note 8). The Company incurred acquisition related costs of \$3,554,250 during the year ended December 31, 2017. The acquisition related costs for the year ended December 31, 2017 includes the fair value of \$151,351 for 270,270 shares of Company's common stock issued to a former creditor of Napo towards reimbursement of acquisition related costs. Acquisition related costs are expensed as incurred to general and administrative expenses in the condensed consolidated statements of operations and comprehensive loss.

The following table provides unaudited proforma results, prepared in accordance with ASC 805, for the years ended December 31, 2017 and 2016, as if Napo was acquired on January 1, 2016.

	For the years ended December 31,	
	2017	2016
Net sales . . . . .	\$ 5,436,263	\$ 1,128,835
Net loss . . . . .	\$(23,113,148)	\$(18,618,706)
Net loss per share, basic and diluted . . . . .	\$ (0.53)	\$ (0.31)

The unaudited proforma results include adjustments to eliminate the interest on Napo's historical convertible debt not assumed by Jaguar and debt exchanged for Jaguar common stock, record interest on convertible debt assumed by Jaguar, eliminate Napo impairment of investment in related party, and eliminate Napo's loss from investment in related party. The Company made proforma adjustments to exclude the acquisition related costs for the year ended December 31, 2017 and to exclude the acquisition related costs in the results for the year ended December 31, 2016, because such costs are nonrecurring and are directly related to the Napo Merger.

The unaudited pro forma condensed results do not give effect to the potential impact of current financial conditions, regulatory matters, operating efficiencies or other savings or expenses that may be associated with the Napo Merger. The Company made proforma adjustments to exclude the acquisition related costs for the years ended December 31, 2017 and 2016. Unaudited pro forma amounts are not necessarily indicative of results had the Napo Merger occurred on January 1, 2016 or of future results.

**4. 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—Quoted prices in active markets for identical assets or liabilities;

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**4. Fair Value Measurements (Continued)**

- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data; and
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities, including pricing models, discounted cash flow methodologies and similar techniques.

The following table presents information about the Company's derivative, conversion option and warrant liabilities that were measured at fair value on a recurring basis as of December 31, 2017 and 2016 and indicates the fair value hierarchy of the valuation:

	December 31, 2017			
	Level 1	Level 2	Level 3	Total
Warrant liability . . . . .	\$—	\$—	\$103,860	\$103,860
Derivative liability . . . . .	—	—	11,000	11,000
Conversion option liability . . . . .	—	—	111,841	111,841
Total fair value . . . . .	\$—	\$—	\$226,701	\$226,701
	December 31, 2016			
	Level 1	Level 2	Level 3	Total
Warrant liability . . . . .	\$—	\$—	\$799,201	\$799,201
Derivative liability . . . . .	—	—	—	—
Conversion option liability . . . . .	—	—	—	—
Total fair value . . . . .	\$—	\$—	\$799,201	\$799,201

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

	For the years ended			December 31,
	December 31, 2017			2016
	Warrant Liability	Derivative Liability	Conversion Option Liability	Warrant Liability
Beginning value of level 3 liability . . . . .	\$ 799,201	\$ —	\$ —	\$ —
Issuance . . . . .	—	20,000	111,841	756,001
Change in fair value of level 3 liability . . . . .	(695,341)	(9,000)	—	43,200
Ending fair value of level 3 liability . . . . .	\$ 103,860	\$11,000	\$111,841	\$799,201

***Warrant Liability***

The warrants associated with the level 3 liability were issued in 2016 and were originally valued on November 29, 2016 using the Black-Scholes-Merton model with the following assumptions: stock price of \$0.69, exercise price of \$0.75, term of 5.5 years expiring May 2022, volatility of 71.92%, dividend yield of 0%, and risk-free interest rate of 1.87%. The warrants were revalued at December 31, 2016 using the Black-Scholes-Merton model with the following assumptions: stock price of \$0.72, exercise price of \$0.75,

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**4. Fair Value Measurements (Continued)**

term of 5.41 years expiring May 2022, volatility of 73.62%, dividend yield of 0%, and risk-free interest rate of 2.0%. The \$103,860 valuation at December 31, 2017 was computed using the Black-Scholes-Merton pricing model using a stock price of \$0.1398, the strike price was \$0.75 per share, the expected life was 4.41 years, the volatility was 96.36% and the risk free rate was 2.14%. The resulting \$695,341 gain is included in change in fair value of warrants in the statement of income and comprehensive loss.

***Conversion Option Liability***

The derivative liability associated with the level 3 liability were associated with the June 2017 issuance of a convertible note payable. 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 is included as a derivative liability on the Balance Sheet. The derivatives were revalued at December 31, 2017 using the same Model resulting in a combined fair value of \$11,000. The resulting \$9,000 gain is included in other income and expense in the Company's statement of income and comprehensive loss.

***Conversion Option Liability***

In March 2017, Napo entered into an exchangeable note purchase agreement with two lenders for the funding of face amount of \$1,312,500 in two \$525,000 tranches of face amount \$656,250. The Company assumed the notes at fair value of \$1,312,500 as part of the Napo Merger. 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 \$0.56 per share to \$0.20 per share. The Company also issued 2,492,084 shares of common stock to the lenders in connection with this amendment to partially redeem \$299,050 from the first tranche of the notes. The optional conversion option in the notes was bifurcated and accounted as a derivative liability at its fair value of \$111,841 using the Black-Scholes-Merton model and the following criteria: stock price of \$0.14 per share, conversion prices of \$0.20 per share, expected life of 0.13 to 0.25 years, volatility of 86.29% to 160.78%, risk free rate of 1.28% to 1.39% and dividend rate of 0%. The \$111,841 was included in conversion option liability on the balance sheet and in loss on extinguishment of debt on the statement of operations and comprehensive loss.

**5. Related Party Transactions**

***Due from former parent***

The Company was a majority-owned subsidiary of Napo until May 18, 2015, the date of the Company's IPO. Additionally, Lisa A. Conte, Chief Executive Officer of the Company, was also the Interim Chief Executive Officer of Napo Pharmaceuticals, Inc. The Company completed a merger with Napo on July 31, 2017, from which date Napo operates as a wholly-owned subsidiary of the Company—see Note 3—Business Combination.

	<b>December 31, 2016</b>
Due from former parent . . . . .	\$299,819
Royalty payable to former parent . . . . .	(171)
Net receivable (payable) to former parent . . . . .	\$299,648

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**5. Related Party Transactions (Continued)**

*Due from former parent*

*Employee leasing and overhead allocation*

Effective July 1, 2016, Napo agreed to reimburse the Company for the use of the Company's employee's time and related expenses, including rent and a fixed overhead amount to cover office supplies and copier use. The balance of unpaid employee leasing charges due from Napo was \$277,529 at December 31, 2016. The total amount of such services was \$913,068 and Napo remitted \$838,723 for the seven months ended July 31, 2017. The remaining unpaid balance of \$351,870 was included in the receivable from Napo at July 31, 2017. Receivable from Napo was effectively settled on merger and is included in the purchase consideration for the acquisition of Napo.

*Loan to Napo*

The Company loaned \$2.0 million from proceeds of shares issued to an investor in connection with the merger to Napo, to partially extinguish Napo's debt. The Company accounted for this amount as purchase consideration for the acquisition of Napo.

*Other transactions*

The Company periodically made purchases on behalf of Napo, primarily including travel expenses and investor relations expenses. The balance of unpaid non-employee leasing charges due from Napo was \$22,290 at December 31, 2016. The total amount of such purchases was \$157,877 and Napo remitted \$67,262 for the seven month ended July 31, 2017. The remaining unpaid balance of \$112,905 was included in receivable from Napo at July 31, 2017. Receivable from Napo was effectively settled on merger and is included in the purchase consideration for the acquisition of Napo.

*Royalty payable to former parent and license fee payable to former parent and related agreement*

On July 11, 2013, Jaguar entered into an option to license Napo's intellectual property and technology (the "Option Agreement"). Under the Option Agreement, upon the payment of \$100,000 in July 2013, the Company obtained an option for a period of two years to execute an exclusive worldwide license to Napo's intellectual property and technology to use for the Company's animal health business. The option price was creditable against future license fees to be paid to Napo under the License Agreement (as defined below).

In January 2014, the Company exercised its option and entered into a license agreement (the "License Agreement") with Napo for an exclusive worldwide license to Napo's intellectual property and technology to permit the Company to develop, formulate, manufacture, market, use, offer for sale, sell, import, export, commercialize and distribute products for veterinary treatment uses and indications for all species of animals. The Company was originally obligated to pay a one-time non-refundable license fee of \$2,000,000, less the option fee of \$100,000. At the Company's option, the license fee could have been paid in common stock. In January 2015, the License Agreement was amended to decrease the one-time non-refundable license fee payable from \$2,000,000 to \$1,750,000 in exchange for acceleration of the payment of the fee. Given that Napo was a significant shareholder of the Company, the abatement of the license fee amount was recorded as a capital contribution in the accompanying condensed financial statements. The Company paid the final \$425,000 in the three months ended March 31, 2016.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**5. Related Party Transactions (Continued)**

Milestone payments aggregating \$3,150,000 were also potentially due to Napo based on regulatory approvals of various veterinary products. In addition to the milestone payments, the Company would owe Napo an 8% royalty on annual net sales of products derived from the *Croton lechleri* tree, up to \$30,000,000 and then, a royalty of 10% on annual net sales of \$30,000,000 or more. Additionally, if any other products are developed, the Company would owe Napo a 2% royalty on annual net sales of pharmaceutical prescription products that are not derived from *Croton lechleri* and a 1% royalty on annual net sales of non-prescription products that are not derived from *Croton lechleri*. The royalty term expires at the longer of 10 years from the first sale of each individual product or when there is no longer a valid patent claim covering any of the products and a competitive product has entered the market. However, because an IPO of at least \$10,000,000 was consummated prior to December 31, 2015, the royalty was reduced to 2% of annual net sales of its prescription products derived from *Croton lechleri* and 1% of net sales of its non-prescription products derived from *Croton lechleri* and no milestone payment will be due and no royalties will be owed on any additional products developed.

The Company had unpaid royalties of \$171 at December 31, 2016, which are netted with other receivables due from former parent in current assets in the Company's balance sheet. The Company incurred \$765 in royalties during the seven months ended July 31, 2017, which are included in sales and marketing expense in the Company's statement of operations and comprehensive loss, and paid \$455 to Napo in the seven months ended July 31, 2017. The remaining balance of unpaid royalties of \$481 are netted with receivables due from Napo. The net receivable balance at July 31, 2017 of \$464,295 was effectively settled on merger and is included in the purchase consideration for the acquisition of Napo.

**6. Balance Sheet Components**

***Land, Property and Equipment***

Land, property and equipment at December 31, 2017 and 2016 consisted of the following:

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
Land . . . . .	\$ 396,247	\$ —
Lab equipment . . . . .	811,087	811,087
Clinical equipment . . . . .	64,870	64,870
Software . . . . .	<u>62,637</u>	<u>62,637</u>
Total property and equipment at cost . . . . .	1,334,841	938,594
Accumulated depreciation . . . . .	<u>(112,773)</u>	<u>(52,649)</u>
Property and equipment, net . . . . .	<u>\$1,222,068</u>	<u>\$885,945</u>



**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**6. Balance Sheet Components (Continued)**

Depreciation and amortization expense was \$60,124 and \$47,494 in the years ended December 31, 2017 and 2016 and was recorded in the statements of operations and comprehensive loss as follows:

	<b>Years ended December 31,</b>	
	<u>2017</u>	<u>2016</u>
Depreciation—lab equipment—research and development expense . . . . .	\$26,271	\$26,271
Depreciation—clinical equipment—research and development expense . . . . .	12,974	10,203
Depreciation—software—general and administrative expense . . .	<u>20,879</u>	<u>11,020</u>
Total depreciation expense . . . . .	<u>\$60,124</u>	<u>\$47,494</u>

**Goodwill**

The change in the carrying amount of goodwill for the year ended December 31, 2017 was as follows:

	<u>December 31, 2017</u>
Balance at December 31, 2016 . . . . .	\$ —
Goodwill acquired in conjunction with the Napo merger . . . . .	22,037,821
Impairment . . . . .	<u>(16,827,000)</u>
Balance at December 31, 2017 . . . . .	<u>\$ 5,210,821</u>

**Intangible assets, net**

Intangible assets, net of amortization at December 31, 2017 and 2016 consist of the following:

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
Developed technology . . . . .	\$25,000,000	\$—
Accumulated developed technology amortization . . . . .	<u>(694,445)</u>	—
Developed technology, net . . . . .	<u>24,305,555</u>	—
In-process research and development . . . . .	11,100,000	—
Impairment . . . . .	<u>(2,300,000)</u>	—
In-process research and development, net . . . . .	<u>8,800,000</u>	—
Trademarks . . . . .	300,000	—
Accumulated trademark amortization . . . . .	<u>(8,333)</u>	—
Trademarks, net . . . . .	<u>291,667</u>	—
Total intangible assets, net . . . . .	<u>\$33,397,222</u>	<u>\$—</u>

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**6. Balance Sheet Components (Continued)**

*Accrued Expenses*

Accrued expenses at December 31, 2017 and 2016 consist of the following:

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
Accrued compensation and related:		
Accrued vacation . . . . .	\$ 264,304	\$223,769
Accrued payroll . . . . .	150	2,692
Accrued payroll tax . . . . .	30,617	20,140
	<u>295,071</u>	<u>246,601</u>
Accrued interest . . . . .	659,961	123,982
Accrued clinical . . . . .	—	36,725
Accrued research and development costs . . . . .	668,850	—
Accrued legal costs . . . . .	—	92,500
Accrued audit . . . . .	40,000	37,000
Accrued other . . . . .	535,667	45,714
<b>Total</b> . . . . .	<u>\$2,199,549</u>	<u>\$582,522</u>

**7. Commitments and Contingencies**

Effective July 1, 2015, the Company leases its San Francisco, California headquarters under a non-cancelable sub-lease agreement that expires August 31, 2018. The Company provided cash deposits of \$122,163, consisting of a security deposit of \$29,539 and prepayment of the last three months of the lease of \$92,623, which are included in prepaid expenses and other current assets on the Company's balance sheet.

Future minimum lease payments under non-cancelable operating leases as of December 31, 2017 are as follows:

<u>Years ending December 31,</u>	<u>Amount</u>
2018 . . . . .	\$245,327
Total minimum lease payments . . . . .	<u>\$245,327</u>

The Company recognizes rent expense on a straight-line basis over the non-cancelable lease period. Rent expense under the non-cancelable operating lease was \$361,114 for the years ended December 31, 2017 and 2016, respectively. Rent expense is included in general and administrative expense in the Company's statements of operations and comprehensive loss.

*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

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**7. Commitments and Contingencies (Continued)**

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 million.

***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 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. Upon termination for any reason, the Company remains obligated to make Revenue Sharing Payments to SEED until the end of 2018.

***Purchase Commitment***

As of December 31, 2017, the Company had issued non-cancelable purchase orders to a vendor for \$1.3 million.

***Debt Obligations***

See Note 8—Debt and Warrants.

***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 June 30, 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 allege 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 has been granted. Plaintiff filed an amended complaint against the Company and the United States-based director Defendants on January 10, 2018. If the Plaintiff were able to prove its allegations in this matter and to establish the damages it asserts, then an adverse ruling could have a material impact on the Company. However, the Company disputes the claims asserted in this putative class action case and is vigorously

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**7. Commitments and Contingencies (Continued)**

contesting the matter. The Defendants intend to move to dismiss the amended complaint for failure to state a claim upon which relief may be granted. The Company believes that it is not probable that an asset has been impaired or a liability has been incurred as of the date of the financial statements and the amount of any potential loss is not reasonably estimable.

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.

**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.

**8. Debt and Warrants**

**Convertible Notes and Warrants**

Convertible notes at December 31, 2017 and December 31, 2016 consist of the following:

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
February 2015 convertible notes payable . . . . .	150,000	150,000
June 2017 convertible note payable . . . . .	1,613,089	—
Napo convertible notes . . . . .	<u>12,153,389</u>	<u>—</u>
	\$13,916,478	\$150,000
Less: unamortized debt discount and debt issuance costs . . . . .	<u>(261,826)</u>	<u>—</u>
Net convertible notes payable obligation . . . . .	<u>\$13,654,652</u>	<u>\$150,000</u>
Convertible notes payable—non-current . . . . .	<u>10,982,437</u>	<u>—</u>
Convertible notes payable—current . . . . .	<u>\$ 2,672,215</u>	<u>\$150,000</u>

Interest expense on the convertible notes for the years ended December 31, 2017 and 2016 follows:

	<u>Years Ended December 31,</u>	
	<u>2017</u>	<u>2016</u>
February 2015 convertible note nominal interest . . . . .	\$ 18,000	\$18,049
June 2017 convertible note nominal interest . . . . .	85,581	—
June 2017 convertible note accretion of debt discount . . . . .	247,175	—
Napo convertibles note nominal interest . . . . .	<u>283,520</u>	<u>—</u>
Total interest expense on convertible debt . . . . .	<u>\$634,276</u>	<u>\$18,049</u>

Interest payable on all convertible notes was \$642,405 and \$94,048 at December 31, 2017 and 2016.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**8. Debt and Warrants (Continued)**

***February 2015 Convertible Note***

In February 2015, the Company issued convertible promissory notes to two accredited investors in the aggregate principal amount of \$250,000. These notes were issued pursuant to the convertible note purchase agreement dated December 23, 2014. In connection with the issuance of the notes, the Company issued the lenders warrants to purchase 22,320 shares at \$5.60 per share, which expire December 31, 2017. Principal and interest of \$103,912 was paid in May 2015 for \$100,000 of these notes. The Company analyzed the beneficial nature of the conversion terms and determined that a BCF existed because the effective conversion price was less than the fair value at the time of the issuance. The Company calculated the value of the BCF using the intrinsic method. A BCF for the full face value was recorded as a discount to the notes payable and to additional paid-in capital. The full amount of the BCF was amortized to interest expense by the end of June 2015.

The remaining outstanding note of \$150,000 is payable to an investor at an effective simple interest rate of 12% per annum, and was due in full on July 31, 2016. On July 28, 2016, the Company entered into an amendment to delay the repayment of the principal and related interest under the terms of the remaining note from July 31, 2016 to October 31, 2016.

On November 8, 2016, the Company entered into an amendment to extend the maturity date of the remaining note from October 31, 2016 to January 1, 2017. In exchange for the extension of the maturity date, on November 8, 2016, the Company's board of directors granted the lender a warrant to purchase 120,000 shares of the Company's common stock for \$0.01 per share. The warrant is exercisable at any time on or before July 28, 2022, the expiration date of the warrant. The amendment and related warrant issuance resulted in the Company treating the debt as having been extinguished and replaced with new debt for accounting purposes due to meeting the 10% cash flow test.

***\* Extinguishment of debt***

On January 31, 2017, the Company entered into another amendment to extend the maturity date of the remaining note from January 1, 2017 to January 1, 2018. In exchange for the extension of the maturity date, on January 31, 2017, the Company's board of directors granted the lender a warrant to purchase 370,916 shares of the Company's common stock for \$0.51 per share. The warrant is exercisable at any time on or before January 31, 2019, the expiration date of the warrant. The amendment and related warrant issuance resulted in the Company treating the debt as having been extinguished and replaced with new debt for accounting purposes due to meeting the 10% cash flow test. The Company calculated a loss on the extinguishment of debt of \$207,713, or the equivalent to the fair value of the warrants granted, which is included in loss on extinguishment of debt in the statements of operations and comprehensive loss in the year ended December 31, 2017. The debtor agreed to accept the Company's common stock as payment for all outstanding principal and interest in March of 2018.

The \$150,000 note is included in notes payable in current liabilities on the Company's balance sheet. The Company has unpaid accrued interest of \$51,929 and \$33,929, which is included in accrued expenses on the Company's balance sheet as of December 31, 2017 and December 31, 2016, respectively, and incurred interest expense of \$18,000 and \$18,049 in the years ended December 31, 2017 and 2016 which are included in interest expense in the statement of operations and comprehensive loss.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**8. Debt and Warrants (Continued)**

***June 2017 Convertible Note***

On June 29, 2017, the Company issued a secured convertible promissory note (“Note”) to a lender 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. Interest on the outstanding balance will be paid 8% per annum from the purchase price date until the balance is paid in full. All interest calculations are computed on the basis of a 360-day year comprised of twelve (12) thirty (30) day months compounded daily and payable in accordance with the terms of the Note. All principal and interest on the debt is due in full on August 2, 2018. The Company accrued interest of \$6,180 at December 31, 2017 which is included in accrued expenses on the Company’s balance sheet, and incurred nonmal interest of \$85,581 in interest expense in the year ended December 31, 2017 which is included in interest expense in the Company’s statement of operations and comprehensive loss. The Company recorded debt discount accretion of \$247,175 in interest expense for the year ended December 31, 2017 which is included in the Company’s statement of operations and comprehensive loss. The lender has the right to convert all or any portion of the outstanding balance into the Company’s common stock at \$1.00 per share. The Note provides the lender with an optional monthly redemption that allows for the monthly payment of up to \$350,000 at the creditor’s option.

The Note provides for two separate features that result in a derivative liability:

1. Repayment of mandatory default amount upon an event of default—upon the occurrence of any event of default, the lender may accelerate the Note resulting in the outstanding balance becoming immediately due and payable in cash; and
2. Automatic increase in the interest rate on and during an event of default—during an event of default, the interest rate will increase to the lesser of 17% per annum or the maximum rate permitted under applicable law.

The Company computed fair values at June 30, 2017 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 is included as a derivative liability on the Balance Sheet. The derivatives were revalued at December 31, 2017 using the same Model resulting in a combined fair value of \$11,000. The \$9,000 gain is included in other income and expense in the Company’s statement of income and comprehensive income.

The balance of the note payable of \$1,351,264, consisting of the \$2,155,000 face value of the note less note discounts and debt issuance costs of \$509,000, less the \$20,000 derivative liability, less principal payments of \$521,911, plus the accretion of the debt discount and debt issuance costs of \$247,175 in the year ended December 31, 2017, is included in convertible notes payable in current liabilities on the balance sheet.

Interest payable on the accumulation of all convertible notes was \$118,228 and \$94,048 at December 31, 2017 and 2016.

***Napo convertible notes***

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



**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**8. Debt and Warrants (Continued)**

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 \$125,338 was added to principal of the Napo December Notes, and the new principal balance became \$2,625,338. 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 \$0.925 per share. The Company assumed these convertible notes at fair value of \$11,161,000 as part of the Napo Merger. The fair value was calculated using the Binomial Lattice Model using the following criteria: stock price of \$0.5893, expected term of 2.42 years, conversion price of \$0.925, volatility of 115%, and risk free rate of 1.41%. The \$1,035,661 difference between the fair value of the notes and the principal balance is being amortized over the twenty-nine (29) month period from July 31, 2017 to December 31, 2019 or \$178,562 and is recorded as a contra interest expense in the statement of operations and comprehensive loss. At December 31, 2017, the unamortized balance of the note payable is \$10,982,438 and the accrued interest on these notes is \$448,779 which are included in the balance sheet.

In March 2017, Napo entered into an exchangeable Note Purchase Agreement with two lenders for the funding of face amount of \$1,312,500 in two \$525,000 tranches of face amount \$656,250. The notes bear interest at 3% and mature on December 1, 2017. Interest may be paid at maturity in either cash or shares of Jaguar per terms of the exchangeable note purchase agreement. The notes may be exchanged for up to 2,343,752 shares of Jaguar common stock, prior to maturity date. The Company assumed the notes at fair value of \$1,312,500 as part of the Napo Merger. At December 31, 2017, the accrued interest on these notes is \$29,774. The fair value was calculated using the Binomial Lattice Model using the following criteria: stock price of \$0.5893, expected term of tranche 1 of 0.34 years and tranche 2 of 0.42 years, conversion price of \$0.56, volatility of tranche 1 of 70% and tranche 2 of 100%, and risk free rate of tranche 1 of 1.09% and tranche 2 of 1.13%.

*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 \$0.56 per share to \$0.20 per share. The Company also issued 2,492,084 shares of common stock to the lenders in connection with this amendment to partially redeem \$299,050 from the first tranche of the notes. The amended face value of the notes is \$1,170,950. 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 Company calculated a loss on extinguishment of notes of \$157,500, which is included in loss on extinguishment of debt in the Company's consolidated statement of operations and comprehensive income. The conversion option in the notes was bifurcated and accounted as a conversion option liability at its fair value of \$111,841 using the Black-Scholes-Merton model and the following criteria: stock price of \$0.14 per share, conversion prices of \$0.20 per share, expected life of 0.13 to 0.25 years, volatility of 86.29% to 160.78%, risk free rate of 1.28% to 1.39% and dividend rate of 0%. The \$111,841 was included in conversion option liability on the balance sheet and in loss on extinguishment of debt on the statement of operations and comprehensive loss.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**8. Debt and Warrants (Continued)**

At December 31, 2017, the balance of the notes payable of \$1,170,950 was included in convertible notes payable in current liabilities on the consolidated balance sheet. The accrued interest on these notes of \$29,774 is included in accrued expenses in current liabilities on the consolidated balance sheet.

*Notes Payable*

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
December 2017 convertible note payable . . . . .	\$1,587,500	\$—
	\$1,587,500	\$—
Less: unamortized net discount and debt issuance costs . .	(446,347)	—
Net convertible notes payable obligation . . . . .	<u>\$1,141,153</u>	<u>\$—</u>

Interest expense on the notes for the years ended December 31, 2017 and 2016 follows:

	<u>Years ended December 31,</u>	
	<u>2017</u>	<u>2016</u>
December 2017 convertible note nominal interest . . . . .	\$ 8,134	\$—
December 2017 convertible note accretion of debt discount . . . . .	41,153	—
Total interest expense on convertible debt . . . . .	<u>\$49,287</u>	<u>\$—</u>

Interest payable on notes payable was \$8,134 and \$0 at December 31, 2017 and 2016, respectively.

On December 8, 2017, the Company entered into a securities purchase agreement (the “Securities Purchase Agreement”) with an existing creditor pursuant to which the Company issued a promissory note (the “Note”) in the aggregate principal amount of \$1,587,500 for an aggregate purchase price of \$1,100,000. The Note carries an original issue discount of \$462,500, and the initial principal balance also includes \$25,000 to cover CVP’s transaction expenses. The Company will use the proceeds for general corporate purposes. The Note bears interest at the rate of 8% per annum and matures on September 8, 2018.

Under the Securities Purchase Agreement, the Company is subject to certain covenants, including the obligations of the Company to: (i) timely file all reports required to be filed under Sections 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and not terminate its status as an issuer required to file reports under the Exchange Act; (ii) maintain listing of the Company’s common stock on a securities exchange; (iii) avoid trading in the Company’s common stock from being suspended, halted, chilled, frozen or otherwise ceased; (iv) not issue any variable securities (i.e., Company securities that (a) have conversion rights of any kind in which the number of shares that may be issued pursuant to the conversion right varies with the market price of the Company’s common stock or (b) are or may become convertible into shares of the Company’s common stock with a conversion price that varies with the market price of such stock) that generate gross cash proceeds to the Company of less than the lesser of \$1 million and the then-current outstanding balance of the Note without CVP’s prior consent; (v) not grant a security interest in its assets without CVP’s prior consent; and (vi) other customary covenants and obligations, for which the Company’s failure to comply may be subject to certain liquidated damages.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**8. Debt and Warrants (Continued)**

In addition, beginning on January 31, 2018, CVP will have the right to redeem a portion of the outstanding balance of the Note in any amount up to \$350,000 per month for the first six months following the Purchase Price Date and \$500,000 per month thereafter. For purposes of calculating the maximum amount that may be redeemed in any month, the amounts redeemed under the Note will be aggregated with all redemption amounts under the Secured Convertible Promissory Note in the original principal amount of \$2,155,000 issued by the Company in favor of the creditor on June 29, 2017.

***Long-term Debt***

In August 2015, the Company entered into a loan and security agreement with a lender for up to \$8.0 million, which provided for an initial loan commitment of \$6.0 million. The loan agreement requires the Company to maintain \$4.5 million of the proceeds in cash, which may be reduced or eliminated on the achievement of certain milestones. An additional \$2.0 million is available contingent on the achievement of certain further milestones. The agreement has a term of three years, with interest only payments through February 29, 2016. Thereafter, principal and interest payments will be made with an interest rate of 9.9%. Additionally, there will be a balloon payment of \$600,000 on August 1, 2018 (as modified in the third amendment to the Loan Agreement). This amount is being recognized over the term of the loan agreement and the effective interest rate, considering the balloon payment, is 15.0%. Proceeds to the Company were net of a \$134,433 debt discount under the terms of the loan agreement. This debt discount is being recorded as interest expense, using the interest method, over the term of the loan agreement. Under the agreement, the Company is entitled to prepay principal and accrued interest upon five days prior notice to the lender. In the event of prepayment, the Company is obligated to pay a prepayment charge. If such prepayment is made during any of the first twelve months of the loan agreement, the prepayment charge will be (a) during such time as the Company is required to maintain a minimum cash balance, 2% of the minimum cash balance amount plus 3% of the difference between the amount being prepaid and the minimum cash balance, and (b) after such time as the Company is no longer required to maintain a minimum cash balance, 3% of the amount being prepaid. If such prepayment is made during any time after the first twelve months of the loan agreement, 1% of the amount being prepaid.

On April 21, 2016, the loan and security was amended upon which the Company repaid \$1.5 million of the debt out of restricted cash. The amendment modified the repayment amortization schedule providing a four-month period of interest only payments for the period from May through August 2016.

On July 7, 2017, the Company entered into the third amendment to the Loan Agreement upon which the Company paid \$1.0 million of the outstanding loan balance, and the Lender waived the Prepayment Charge associated with such prepayment. The Third Amendment modified the repayment schedule providing a three-month period of interest only payments for the period from August 2017 through October 2017, and reduced the required cash amount that the Company must keep on hand to \$500,000, which will be reduced following the Lender's receipt of each principal repayment subsequent to the \$1.0 million. As the present value of the cash flows under the terms of the third amendment is less than 10% different from the remaining cash flows under the terms of the loan agreement prior to the amendment, the third amendment was accounted as a debt modification.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**8. Debt and Warrants (Continued)**

As of December 31, 2017 and 2016, the net long-term debt obligation was as follows:

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
Debt and unpaid accrued end-of-term payment . . . . .	\$1,636,639	\$3,894,320
Unamortized note discount . . . . .	(6,615)	(42,493)
Unamortized debt issuance costs . . . . .	<u>(20,780)</u>	<u>(114,626)</u>
Net debt obligation . . . . .	<u>\$1,609,244</u>	<u>\$3,737,201</u>
Current portion of long-term debt . . . . .	\$1,609,244	\$1,919,675
Long-term debt, net of discount . . . . .	<u>—</u>	<u>1,817,526</u>
Total . . . . .	<u>\$1,609,244</u>	<u>\$3,737,201</u>

Future principal payments under the long-term debt are as follows:

<u>Years ending December 31</u>	<u>Amount</u>
2018 . . . . .	<u>1,089,199</u>
Total future principal payments . . . . .	1,089,199
2018 end-of-term payment . . . . .	<u>600,000</u>
	1,689,199
Less: unaccreted end-of-term payment at December 31, 2017 . . . . .	<u>(52,560)</u>
Debt and unpaid accrued end-of-term payment . . . . .	<u>\$1,636,639</u>

The obligation at December 31, 2017 includes an end-of-term payment of \$600,000, which accretes over the life of the loan as interest expense. As a result of the debt discount and the end-of-term payment, the effective interest rate for the loan differs from the contractual rate.

Interest expense on the long-term debt for the years ended December 31, 2017 and 2016 was as follows:

	<u>Years ended December 31,</u>	
	<u>2017</u>	<u>2016</u>
Nominal interest . . . . .	\$214,037	\$457,448
Accretion of debt discount . . . . .	35,878	64,142
Accretion of end-of-term payment . . . . .	164,413	267,230
Accretion of debt issuance costs . . . . .	<u>111,741</u>	<u>178,713</u>
	<u>\$526,069</u>	<u>\$967,533</u>

Interest payable on the long-term debt was \$9,422 and \$29,934 at December 31, 2017 and 2016, respectively.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**8. Debt and Warrants (Continued)**

***Warrants***

On November 22, 2016, the Company entered into a Securities Purchase Agreement, or the 2016 Purchase Agreement, with certain institutional investors, pursuant to which the Company sold securities to such investors in a private placement transaction, which we refer to herein as the 2016 Private Placement. In the 2016 Private Placement, the Company sold an aggregate of 1,666,668 shares of the Company's common stock at a price of \$0.60 per share for gross proceeds of approximately \$1.0 million. The investors in the 2016 Private Placement also received (i) warrants to purchase up to an aggregate of 1,666,668 shares of the Company's common stock, at an exercise price of \$0.75 per share, or the Series A Warrants, and the Placement Agent received warrants to purchase 133,333 shares of our common stock in lieu of cash for service fees with the same terms as the investors; (ii) warrants to purchase up to an aggregate 1,666,668 shares of the Company's common stock, at an exercise price of \$0.90 per share, or the Series B Warrants, and (iii) warrants to purchase up to an aggregate 1,666,668 shares of our common stock, at an exercise price of \$1.00 per share, or the Series C Warrants and, together with the Series A Warrants and the Series B Warrants, the 2016 Warrants. The warrants were granted in three series with different terms. The warrants were valued using the Black-Scholes-Merton warrant pricing model as follows:

- Series A Warrants and Placement Agent Warrants: 1,666,668 warrant shares with a strike price of \$0.75 per share and an expiration date of May 29, 2022; and 133,333 warrant shares to the placement agent with a strike price of \$0.75 and an expiration date of May 29, 2022; the expected life is 5.5 years, the volatility is 71.92% and the risk free rate is 1.87% in valuing these warrants.
- Series B Warrants: 1,666,668 warrant shares with a strike price of \$0.90 per share and an expiration date of November 29, 2017; the expected life is one year, the volatility is 116.65% and the risk free rate is 0.78% in valuing these warrants.
- Series C Warrants: 1,666,668 warrant shares with a strike price of \$1.00 per share and an expiration date of May 29, 2018; the expected life is 1.5 years, the volatility is 116.92% and the risk free rate is 0.94%.

The warrant valuation date was November 29, 2016 and the closing price of \$0.69 per share was used in determining the fair value of the warrants. The series A warrants and placement agent warrants were valued at \$756,001 and were classified as a warrant liability in the Company's balance sheet. The series A warrants and placement agent warrants were revalued on December 31, 2016 at \$799,201 which is included in the Company's balance sheet, and the \$43,200 increase is included in the Company's statements of operations and comprehensive loss. The stock price was \$0.716, the strike price was \$0.75 per share, the expected life was 5.41 years, the volatility was 73.62% and the risk free rate was 2.0%. The series B and C warrants were classified as equity, and as such were not subject to revaluation at year end. Costs incurred in connection with the issuance were allocated based on the relative fair values of the Series A and the Series B and C warrants. The series A warrants and placement agent warrants were revalued on December 31, 2017 at \$103,860 and is included in the Company's balance sheet. The valuation reflects a reduction of \$695,341 from the \$799,201 December 31, 2016 valuation. The reduction is included in the Company's statements of operations and comprehensive loss. The \$103,860 valuation at December 31, 2017 was computed using the Black-Scholes-Merton pricing model using a stock price of \$0.1398, the strike price was \$0.75 per share, the expected life was 4.41 years, the volatility was 96.36% and the risk free rate was 2.14%.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**8. Debt and Warrants (Continued)**

On July 31, 2017, the Company entered into Warrant Exercise Agreements (the “Exercise Agreements”) with certain holders of Series C Warrants (the “Exercising Holders”), which Exercising Holders own, in the aggregate, Series C Warrants exercisable for 908,334 shares of the Company’s common stock. Pursuant to the Exercise Agreements, the Exercising Holders and the Company agreed that the Exercising Holders would exercise their Series C Warrants with respect to 908,334 shares of common stock underlying such Series C Warrants for a reduced exercise price equal to \$0.40 per share. The Company received aggregate gross proceeds of approximately \$363,334 from the exercise of the Series C Warrants by the Exercising Holders. The difference between the pre-modification and post-modification fair value of \$23,000 was expensed in general and administrative expense in the statements of operations and comprehensive income. The pre-modification fair value was computed using the Black-Scholes-Merton model using a stock price of \$0.56 (fair market value on modification date), original strike price of \$1.00, expected life of 0.83 years, volatility of 115.28%, risk-free rate of 1.20% to arrive at a fair value of \$0.1347 per share. The post-modification fair value was computed using the intrinsic value on the date of modification or \$0.16 per share.

The Company granted warrants to purchase the 1,224,875 shares of common stock of the Company at an exercise price price of \$0.08 per share to replace Napo warrants upon the consummation of the Merger. Of the 1,224,875 warrants, 145,457 warrants expire on December 31, 2018 and 1,079,418 warrants expire on December 31, 2025. The warrants were valued at \$630,859, using the Black-Scholes-Merton warrant pricing model as follows: exercise price of \$0.08 per share, stock price of \$0.56 per share, expected life ranging from 1.42 years to 8.42 years, volatility ranging from 75.07% to 110.03%, and risk free rate ranging from 1.28% to 2.14%. The warrants were accounted in equity.

The Company’s warrant activity is summarized as follows:

	<u>Years ended December 31,</u>	
	<u>2017</u>	<u>2016</u>
Beginning balance . . . . .	5,968,876	748,872
Warrants granted . . . . .	1,595,791	5,253,337
Warrants exercised . . . . .	(908,334)	—
Warrants cancelled . . . . .	<u>(1,836,308)</u>	<u>(33,333)</u>
Ending balance . . . . .	<u>4,820,025</u>	<u>5,968,876</u>

**9. Stockholders’ Equity**

**Common Stock**

On July 31, 2017, the Company filed a third amended and restated certificate of incorporation authorizing the Company to issue 250,000,000 shares of common stock \$0.0001 par value and 50,000,000 of convertible non-voting common stock, \$0.0001 par value per share. The holders of common stock are entitled to one vote for each share of common stock held at all meetings of stockholders. 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. The number of authorized shares of common stock may be increased or decreased by the affirmative vote of the holders of shares of capital stock of the Company representing a majority of the votes represented by all shares (including Preferred Stock) entitled to vote. Shares of the Company’s non-voting common stock



**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**9. Stockholders' Equity (Continued)**

have the same rights to dividends and other distributions and are convertible into shares of the Company's common stock on a one-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.

On May 18, 2015, the Company completed an initial public offering ("IPO") of its common stock. In connection with its IPO, the Company issued and sold 2,860,000 shares of common stock at a price to the public of \$7.00 per share. As a result of the IPO, the Company received \$15.9 million in net proceeds, after deducting underwriting discounts and commissions of \$1.2 million and offering expenses of \$2.9 million (\$3.3 million including non-cash offering expenses) payable by the Company. In connection with the IPO, the Company's outstanding shares of convertible preferred stock were automatically converted into 2,010,596 shares of common stock and the Company's outstanding warrants to purchase convertible preferred stock were all converted to warrants to purchase common stock.

In February 2016, the Company completed a secondary public offering of its common stock. In connection with its secondary public offering, the Company issued and sold 2,000,000 shares of common stock at a price to the public of \$2.50 per share. As a result of the secondary public offering, the Company received \$4.1 million in net proceeds, after deducting underwriting discounts and commissions of \$373,011 and offering expenses of \$496,887.

In June 2016, the Company entered into a common stock purchase agreement with a private investor (the "CSPA"), which provides that, upon the terms and subject to the conditions and limitations set forth therein, the investor is committed to purchase up to an aggregate of \$15.0 million of the Company's common stock over the approximately 30-month term of the agreement. Upon execution of the CSPA, the Company sold 222,222 shares of its common stock to the investor at \$2.25 per share for net proceeds of \$394,534, reflecting gross proceeds of \$500,000 and offering expenses of \$105,398. In consideration for entering into the CSPA, the Company issued 456,667 shares of its common stock to the investor. Concurrently with entering into the CSPA, the Company also entered into a registration rights agreement with the investor (the "Registration Agreement"), in which the Company agreed to file one or more registration statements, as permissible and necessary to register under the Securities Act of 1933, as amended, the sale of the shares of the Company's common stock that have been and may be issued to the investor under the CSPA. On June 22, 2016 and September 22, 2016, the Company filed registration statements on Form S-1 (File Nos. 333-212173 and 333-213751) pursuant to the terms of the Registration Agreement, which registration statements were declared effective on July 8, 2016 and October 5, 2016, respectively. In the year ended December 31, 2016, pursuant to the CSPA, the Company sold an additional 1,348,601 shares of the Company's common stock in exchange for \$2,176,700 of cash proceeds. And in the remainder of the year ended December 31, 2017, the Company sold another 3,972,510 shares of the Company's common stock in exchange for \$2,387,085 of cash proceeds. Of the \$15.0 million available under the CSPA, the Company has received \$4,748,017 as of March 31, 2017. The CSPA limits the number of shares that the Company can sell thereunder to 2,027,490 shares, which equals 19.99% of the Company's outstanding shares as of the date of the CSPA (such limit, the "19.99% exchange cap"), unless either (i) the Company obtains stockholder approval to issue more than such 19.99% exchange cap or (ii) the average price paid for all shares of the Company's common stock issued under the CSPA is equal to or greater than \$1.32 per share (the closing price on the date the CSPA was signed), in either case in compliance with Nasdaq Listing Rule 5635(d). The Company held its 2017 Annual Meeting on May 8, 2017. At the 2017 Annual Meeting, the Company's stockholders voted on the approval, pursuant to

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**9. Stockholders' Equity (Continued)**

Nasdaq Listing Rule 5635(d), of the issuance of an additional 3,555,514 shares of the Company's common stock under the CSPA, which when combined with the 2,444,486 shares that the Company has already sold pursuant to the CSPA, equals an aggregate of 6,000,000 shares.

In October 2016, the Company entered into a Common Stock Purchase Agreement with an existing private investor. Upon execution of the agreement the Company sold 170,455 shares of its common stock in exchange for \$150,000 in cash proceeds.

On November 22, 2016, the Company entered into a Securities Purchase Agreement, or the 2016 Purchase Agreement, with certain institutional investors, pursuant to which the Company sold securities to such investors in a private placement transaction, which is referred to herein as the 2016 Private Placement. In the 2016 Private Placement, the Company sold an aggregate of 1,666,668 shares of its common stock at a price of \$0.60 per share for net proceeds of \$677,224 or gross proceeds of approximately \$1.0 million less \$322,777 in issuance costs. The investors in the 2016 Private Placement also received (i) warrants to purchase up to an aggregate of 1,666,668 shares of our common stock, at an exercise price of \$0.75 per share, or the Series A Warrants, (ii) warrants to purchase up to an aggregate 1,666,668 shares of our common stock, at an exercise price of \$0.90 per share, or the Series B Warrants, and (iii) warrants to purchase up to an aggregate 1,666,668 shares of our common stock, at an exercise price of \$1.00 per share, or the Series C Warrants and, together with the Series A Warrants and the Series B Warrants, the 2016 Warrants. The issuance costs were allocated to common stock, series A warrants, and Series B and C warrants based on the relative fair value of each.

<u>Instruments</u>	<u>Fair Value</u>	<u>% Allocation</u>	<u>Issuance Costs (allocated)</u>
Common Stock . . . . .	\$ 156,522	16%	\$ 50,522
Warrants (Series A) . . . . .	700,001	70%	225,944
Warrants (Series B and C) . . . . .	143,478	14%	46,311
Total . . . . .	<u>\$1,000,001</u>	<u>100%</u>	<u>\$322,777</u>

Common stock of a net \$106,000 (fair value less issuance costs) was included in equity in the company's balance sheet. Series A warrants of \$756,001, consisting of the series A warrants of \$700,001 and the series A placement agent warrants of \$56,000, are included in current liabilities in the company's balance sheet and the \$225,944 of issuance cost was expensed and is in general and administrative expense on the company's statement of operations and comprehensive loss. Series B and C warrants of a net \$97,167 (fair value less issuance costs) were classified in equity in the company's balance sheet.

In exchange for the extension of the maturity date of the outstanding 2015 Convertible Note, on, November 8, 2016, the Company's board of directors granted the lender a warrant to purchase 120,000 shares of the Company's common stock for \$0.01 per share. The warrant is exercisable at any time on or before July 28, 2022, the expiration date of the warrant. The amendment and related warrant issuance resulted in the Company treating the debt as having been extinguished and replaced with new debt for accounting purposes due to meeting the 10% cash flow test. The Company calculated a loss on the extinguishment of debt of \$108,000, or the equivalent to the fair value of the warrants granted, which is included in other expense in the Company's statements of operations and comprehensive loss. The warrants were valued on November 8, 2016 using the Black-Scholes-Merton model with the following

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**9. Stockholders' Equity (Continued)**

assumptions: stock price of \$0.91, exercise price of \$0.01, term of 5.72 years expiring July 2022, volatility of 70.35%, dividend yield of 0%, and risk-free interest rate of 1.45%.

On June 28, 2017 and July 13, 2017, the Company entered into Common Stock Purchase Agreements with existing private investors. Upon execution of the agreement the Company sold 200,000 shares of its common stock in exchange for \$100,000 in cash proceeds.

On July 31, 2017, the Company entered into a Common Stock Purchase Agreement with an existing investor. Upon execution of the agreement the Company sold 3,243,243 shares of voting common stock in exchange for \$3.0 million in cash proceeds.

On July 31, 2017, the Company completed the merger with Napo and changed its name to Jaguar Health, Inc. The Company issued 2,282,445 shares of voting common stock and 43,173,288 shares of non-voting stock at the time the merger was consummated.

In November 2017, the Company issued 235,134 shares of common stock to an existing investor in exchange for \$43,829 in services rendered.

In November and December 2017, the Company issued 6,492,084 shares of common stock to a convertible debt holder as redemption of \$900,362 of debt principal and interest.

In November and December 2017, in a private investment in public entities, the Company issued 5,100,000 shares of its common stock with a single investor in exchange for \$555,262 in cash.

In December 2017, in a private investment in public entities, the Company entered into various purchase agreements with existing investors resulting in the issuance of 4,010,000 shares of the Company's common stock in exchange for \$401,000 in cash.

As of December 31, 2017 and 2016, the Company had reserved shares of common stock for issuance as follows:

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
Options issued and outstanding . . . . .	3,444,663	2,571,220
Options available for grant . . . . .	53,026	39,988
RSUs issued and outstanding . . . . .	5,893,849	20,789
Warrants issued and outstanding . . . . .	4,820,025	5,968,876
Convertible notes . . . . .	<u>14,999,050</u>	<u>67,655</u>
Total . . . . .	<u>29,210,613</u>	<u>8,668,528</u>

**Preferred Stock**

The Company's third amended and restated certificate of incorporation dated July 31, 2017 authorizes the Company to issue 10,000,000 shares of preferred stock \$0.0001 par value. No shares of preferred stock were issued or outstanding at December 31, 2017 or 2016.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**10. 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. As of December 31, 2013, the Company had reserved 300,000 shares of its common stock for issuance under the 2013 Plan. In April 2014, the board of directors amended the 2013 Plan to increase the shares reserved for issuance to 847,533 shares. 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. There were 565,377 option shares outstanding at December 31, 2017.

**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 Company reserved 333,333 shares of common stock for issuance pursuant to the 2014 Plan. On January 1, 2017 and 2016, the Company added 280,142 and 162,498 shares to the option pool in accordance with the 2014 Plan that provides for automatic share increases on the first day of each fiscal year in the amount of 2% of the outstanding number of shares of the Company's common stock on last day of the preceding calendar year. The 2014 Plan replaces the 2013 Plan except that all outstanding options under the 2013 Plan remain outstanding until exercised, cancelled or until they expire.

In July 2015, the Company amended the 2014 Plan reserving an additional 550,000 shares under the plan contingent upon approval by the Company's stockholders at the June 2016 annual stockholders meeting. In June 2016, the Company amended the 2014 Plan once again, modifying the increase from 550,000 shares to 1,550,000 shares, which was approved at the 2016 annual stockholders meeting. In July 2017, the Company amended the 2014 Plan reserving an additional 6,500,188 shares under the plan, which was approved at the special stockholders meeting on July 27, 2017.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**10. Stock Incentive Plans (Continued)**

**Stock Options and Restricted Stock Units (“RSUs”)**

The following table summarizes incentive plan activity for the years ended December 31, 2017 and 2016:

	Shares Available for Grant	Stock Options Outstanding	RSUs Outstanding	Weighted Average Stock Option Exercise Price	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value*
Combined Incentive Plan Balance—						
December 31, 2015 . . . . .	106,833	919,506	55,536	\$3.87	8.81	\$ —
2013 Equity Incentive Plan Activity:						
Options cancelled not rolled back into the 2013 Plan . . . . .		(127,629)		\$4.19		
RSUs vested and released . . . . .			(27,768)			
RSUs cancelled . . . . .			(6,979)			
2014 Stock Incentive Plan Activity:						
Additional shares authorized . . . . .	1,712,498					
Options granted . . . . .	(1,927,121)	1,927,121		\$1.97		
Options cancelled . . . . .	147,778	(147,778)		\$2.28		
Combined Incentive Plan Balance—						
December 31, 2016 . . . . .	39,988	2,571,220	20,789	\$2.52	8.77	\$ —
2013 Equity Incentive Plan Activity:						
None						
2014 Stock Incentive Plan Activity:						
Additional shares authorized . . . . .	6,780,330					
Options granted . . . . .	(1,068,001)	1,068,001		0.18		
Options granted in the merger . . . . .	(543,301)	543,301		2.07		
RSUs granted in the merger . . . . .	(5,893,849)		5,893,849			
Options cancelled . . . . .	737,859	(737,859)		1.85		
RSUs vested and released . . . . .			(20,789)			
Combined Incentive Plan Balance—						
December 31, 2017 . . . . .	53,026	3,444,663	5,893,849	\$1.87	8.31	\$11,781
Options vested and exercisable—						
December 31, 2017 . . . . .		1,615,043		\$3.06	7.40	\$ —
Options vested and expected to vest—December 31, 2017 . . . . .		3,063,308		\$1.92	8.37	\$10,108

\* Fair market value of JAGX stock on December 31, 2017 was \$0.1398 per share.

The weighted average grant date fair value of stock options granted was \$0.13 and \$0.86 per share during the years ended December 31, 2017 and 2016.

The number of option shares that vested in the years ended December 31, 2017 and 2016 was 687,634 shares and 655,481 shares, respectively. The grant date weighted average fair value of option shares that vested in the years ended December 31, 2017 and 2016 was \$712,718 and \$722,134, respectively.

No options were exercised in the years ended December 31, 2017 and 2016.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**10. Stock Incentive Plans (Continued)**

The intrinsic value is computed as the options granted multiplied by the difference between the fair market value of the Company's common stock of \$0.1398 on December 31, 2017 and the grant date stock option exercise price.

The Company granted RSUs in 2014 and 2015 under the 2013 Equity Incentive Plan. The units granted vest upon the occurrence of both a liquidity event and satisfaction of the service-based requirement. The time-based vesting provides that 50% of the RSU will vest on January 1, 2016 and the remaining 50% vest on July 1, 2017. The Company began recording stock-based compensation expense relating to the RSU grants effective May 18, 2015, the date of the Company's initial public offering, and the date the liquidity condition was met. The stock-based compensation expense is based on the grant date fair value which is the equivalent to the fair market value on the date of grant, and is amortized over the vesting period using the straight-line method, net of estimated forfeitures. On January 1, 2016, the Company issued 17,546 shares of its common stock in exchange for 27,768 vested and released RSUs, net of 10,172 RSU shares used to pay withholding taxes.

**Stock-Based Compensation**

The following table summarizes stock-based compensation expense related to stock options and RSUs for the years ended December 31, 2017 and 2016, and are included in the statements of operations and comprehensive loss as follows:

	Years Ended December 31,	
	2017	2016
Research and development expense . . . . .	\$216,932	\$181,489
Sales and marketing expense . . . . .	32,325	73,679
General and administrative expense . . . . .	565,356	462,759
Total . . . . .	\$814,613	\$717,927

As of December 31, 2017, the Company had \$671,378 of unrecognized stock-based compensation expense for options and restricted stock units outstanding, which is expected to be recognized over a weighted-average period of 1.27 years.

The estimated grant-date fair value of employee stock options was calculated using the Black-Scholes-Merton option-pricing model using the following assumptions:

	Years Ended December 31,	
	2017	2016
Weighted-average volatility . . . . .	74.26 - 90.45%	66.25 - 72.08
Weighted-average expected term (years) . . . . .	5.14 - 5.82	5.00 - 5.82
Risk-free interest rate . . . . .	1.97 - 2.27%	1.10 - 2.15
Expected dividend yield . . . . .	—	—



**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**10. Stock Incentive Plans (Continued)**

The estimated grant-date fair value of non-employee stock options was calculated using the Black-Scholes-Merton option-pricing model was revalued using the following assumptions:

	Years Ended December 31,	
	2017	2016
Weighted-average volatility . . . . .	85.40 - 85.65%	78.30 - 80.04%
Weighted-average expected term (years) . . . . .	9.83 - 9.97	9.19 - 10.00
Risk-free interest rate . . . . .	2.35 - 2.46%	1.32 - 2.46%
Expected dividend yield . . . . .	—	—

**11. Net Loss Per Share Attributable to Common Stockholders**

The following table presents the calculation of basic and diluted net loss per common share for the years ended December 31, 2017 and 2016:

	Years Ended December 31,	
	2017	2016
Net loss attributable to common shareholders . . . . .	<u>\$(21,968,614)</u>	<u>\$(14,733,780)</u>
Shares used to compute net loss per common share, basic and diluted . . . . .	<u>43,435,928</u>	<u>10,951,178</u>
Net loss per share attributable to common shareholders, basic and diluted . . . . .	<u>\$ (0.51)</u>	<u>\$ (1.35)</u>

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 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 years ended December 31, 2017 and 2016 because their inclusion would be anti-dilutive:

	December 31, 2017	December 31, 2016
Options issued and outstanding . . . . .	3,444,663	2,571,220
Warrants to purchase common stock . . . . .	4,820,025	5,968,876
Restricted stock units . . . . .	5,893,849	20,789
Total . . . . .	<u>14,158,537</u>	<u>8,560,885</u>

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**12. Income Taxes**

The Company's loss before provision for income taxes during the years ended December 31, 2017 and 2016, was a domestic loss of \$35,149,856 and \$14,733,780, respectively.

The effective tax rate for 2017 and 2016 was (38)% and 0%, respectively. As a result of the acquisition of Napo Pharmaceuticals on July 31, 2017, the Company recorded a tax benefit of \$13,181,242 for the year ended December 31, 2017. This tax benefit is a result of the partial release of its existing valuation allowance since the acquired deferred tax liabilities from Napo will provide a source of income for the Company to realize a portion of its deferred tax assets, for which a valuation allowance is no longer needed. As a result of the Company's history of net operating losses and full valuation allowance against its deferred tax assets, there was no current or deferred income tax provision for the year ended December 31, 2016.

The components of the provision for income taxes during the years ended December 31, 2017 and 2016 is as follows:

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
Current:		
Federal . . . . .	\$ —	\$ —
State . . . . .	—	—
Foreign . . . . .	—	—
Total Current . . . . .	<u>—</u>	<u>—</u>
Deferred:		
Federal . . . . .	(12,165,311)	—
State . . . . .	(1,015,931)	—
Foreign . . . . .	—	—
Total Deferred . . . . .	<u>(13,181,242)</u>	<u>—</u>
Total Provision for Income Taxes . . . . .	<u><u>\$(13,181,242)</u></u>	<u><u>\$ —</u></u>

The Company's effective tax during the years ended December 31, 2017 and 2016, differed from the federal statutory rate as follows:

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
Statutory Rate . . . . .	(34.0)%	(34.0)%
State Taxes . . . . .	(2.2)	(5.6)
Tax Credits . . . . .	(0.2)	(0.5)
Goodwill and Indefinite-lived Intangible Asset Impairment	16.3	—
Other . . . . .	3.6	1.8
Effect of U.S. tax law change . . . . .	2.6	—
Valuation Allowance . . . . .	<u>(23.6)</u>	<u>38.3</u>
Effective Tax Rate . . . . .	<u><u>(37.5)</u></u>	<u><u>—%</u></u>

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**12. Income Taxes (Continued)**

Net deferred tax assets as of December 31, 2017 and 2016 consist of the following:

	December 31, 2017	December 31, 2016
Non-current deferred tax assets:		
Net operating losses . . . . .	\$ 5,827,970	\$ 9,626,610
Tax credits . . . . .	325,188	374,605
Stock compensation . . . . .	1,198,657	297,438
Fixed assets and intangibles . . . . .	—	3,700,557
Other . . . . .	312,949	93,434
	7,664,764	14,092,644
Valuation allowance . . . . .	(1,625,782)	(14,092,644)
Net non-current deferred tax assets . . . . .	6,038,982	—
Non-current deferred tax liabilities:		
Fixed assets and intangibles . . . . .	(6,038,982)	—
Net non-current deferred tax liability . . . . .	(6,038,982)	—
Net non-current deferred tax asset (liability) . . . . .	—	\$ —

A valuation allowance is provided when it is more likely than not that the deferred tax assets will not be realized. The Company has established a valuation allowance to offset net deferred tax assets as of December 31, 2017 and 2016, due to the uncertainty of realizing future tax benefits from its net operating loss carryforwards and other deferred tax assets.

The valuation allowance decreased by \$12,466,862 during the year ended December 31, 2017.

On December 22, 2017, President Trump signed the Tax Cuts and Jobs Act of 2017 (the “Act”) into law. The new legislation decreases the U.S. corporate federal income tax rate from 35% to 21% effective January 1, 2018. The Act also includes a number of other provisions including the elimination of loss carrybacks and limitations on the use of future losses and repeal of the Alternative Minimum Tax regime. The Company has calculated its best estimate of the impact of the Tax Act in its year end income tax provision in accordance with its understanding of the Tax Act and guidance available as of the date of this filing. The provisional amount related to the re-measurement of certain deferred tax assets and liabilities based on the rates at which they are expected to reverse in the future was a net decrease related to deferred tax assets and deferred tax liabilities of \$914,534 with a corresponding offsetting change in valuation allowance of \$914,534 for the year ended December 31, 2017.

As of December 31, 2017, the Company had federal and California net operating loss carryovers of approximately \$20,777,790 and \$19,861,817, respectively. The federal and California net operating losses will begin to expire in 2033.

As of December 31, 2017, the Company had federal and California research credit carryovers of approximately \$71,083 and \$422,439, respectively. The federal research credits will begin to expire in 2033. The California research credits carry forward indefinitely.

Utilization of the domestic NOL and tax credit forwards may be subject to a substantial annual limitation due to ownership change limitations that may have occurred or that could occur in the future, as

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**12. Income Taxes (Continued)**

required by the Internal Revenue Code Section 382, as well as similar state provisions. In general, an “ownership change,” as defined by the code, results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50 percentage points of the outstanding stock of a company by certain stockholders or public groups. Any limitation may result in expiration of all or a portion of the NOL or tax credit carryforwards before utilization. As of December 31, 2017, the Company has reduced its federal and California gross net operating loss by \$101,791,629 and \$66,968,727 respectively. The Company also reduced their federal R&D credit carryforwards by \$1,586,110. The California R&D credit carryforward is indefinite and therefore is not impacted by Section 382.

**Uncertain Tax Positions**

The Company has adopted the provisions of ASC 740, “Income Taxes Related to Uncertain Tax Positions.” Under these principals, tax positions are evaluated in a two-step process. The Company first determines whether it is more-likely-than-not that a tax positions will be sustained upon examination. If a tax position meets the more-likely-than-not recognition threshold it is then measured to determine the amount of benefit to be recognized in the financial statements. The tax position is measured as the largest amount of benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement.

The following is a reconciliation of the beginning and ending amount of our total gross unrecognized tax benefit liabilities:

	December 31, 2017	December 31, 2016
Gross Unrecognized Tax Benefit—Beginning Balance . . . .	\$113,073	\$ 78,930
Increases Related to Tax Positions from Prior Years . . . . .	(55,960)	—
Increases Related to Tax Positions Taken During the Current Year . . . . .	39,897	34,143
Gross Unrecognized Tax Benefit—Ending Balance . . . . .	\$ 97,010	\$113,073

**13. 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 December 31, 2017.

**14. Subsequent Events**

The Company completed an evaluation of the impact of subsequent events through April 9, 2018, the date these financial statements were issued.

*Notes payable*

On February 26, 2018, Jaguar Health, Inc. (the “Company”) entered into a securities purchase agreement (the “Securities Purchase Agreement”) with Chicago Venture Partners, L.P. (“CVP”), pursuant to which the Company issued to CVP a promissory note (the “Note”) in the aggregate principal amount of \$2,240,909 for an aggregate purchase price of \$1,560,000. The Note carries an original issue discount of \$655,909, and the initial principal balance also includes \$25,000 to cover CVP’s transaction expenses. The Company will use the proceeds for general corporate purposes and working capital. The Note bears

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**14. Subsequent Events (Continued)**

interest at the rate of 8% per annum and matures on (i) August 26, 2019 if the Company has raised at least \$12 million in equity after the issuance date of the Note (the “Redemption Start Condition”) and on or before April 1, 2018 or (ii) November 26, 2018 if the Redemption Start Condition is not satisfied on or before April 1, 2018.

*Covnterible notes payable—Second Amendment to Note Purchase Agreement and Notes*

On February 16, 2018, Napo Pharmaceuticals, Inc. (“Napo”), a wholly-owned subsidiary of Jaguar Health, Inc. (the “Company”), entered into the Second Amendment to Note Purchase Agreement and Notes and Payoff Agreement (the “Second Amendment”) with each of the purchasers (the “Purchasers”) party to the Note Purchase Agreement, dated March 1, 2017, by and among the Napo and the Purchasers (as amended, the “Note Purchase Agreement”). In connection with the Second Amendment, Napo amended the original issue discount exchangeable promissory notes previously issued to the Purchasers on April 27, 2017 pursuant to the Note Purchase Agreement (the “Second Tranche Notes”) to extend the maturity date of the Second Tranche Notes from April 1, 2018 to May 1, 2018.

In connection with the Second Amendment, the Company also issued 3,783,444 shares (the “Shares”) of Common Stock to the Purchasers as repayment of the remaining \$435,949.92 aggregate principal amount of the original issue discount exchangeable promissory notes previously issued by Napo to the Purchasers on March 1, 2017 pursuant to the Note Purchase Agreement (the “First Tranche Notes”) and \$18,063.24 in accrued and unpaid interest thereon.

The Shares were offered and sold pursuant to an exemption from the registration requirements of the Securities Act pursuant to Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

The form of Second Tranche Note and the Second Amendment are filed as Exhibits 4.1 and 10.1, respectively, to this Current Report on Form 8-K, and such documents are incorporated herein by reference. The foregoing is only a brief description of the material terms of the Second Tranche Note and the Second Amendment, does not purport to be a complete description of the rights and obligations of the parties thereunder and is qualified in its entirety by reference to such exhibits.

On February 27, 2018, Napo entered into the Consent and Payoff Agreement with each of the purchasers party to the Note Purchase Agreement, dated March 1, 2017, by and among the Napo and the Purchasers. In connection with the Note Purchase Agreement, Napo agreed (i) to pay in cash all outstanding obligations under the original issue discount exchangeable promissory notes previously issued by Napo to the Purchasers on April 27, 2017 pursuant to the Note Purchase Agreement (the “Second Tranche Notes”), including accrued and unpaid interest thereon, within three days of the Company’s receipt of proceeds of \$5.0 million or more from one or more equity financings and in any case no later than April 15, 2018 (such date of payment, the Payment Date) and (ii) until the Payment Date, to limit the total number of outstanding shares of the Company’s voting common stock to the amount specified therein, subject to certain limited exceptions. In consideration for these agreements, the Purchasers agreed to waive the restriction on prepayment of the Second Tranche Notes and not exercise their right to exchange the Second Tranche Notes for shares of Common Stock.

**Jaguar Health, Inc.**  
**Notes to Financial Statements (Continued)**

**14. Subsequent Events (Continued)**

*Certificate of incorporation*

On March 12, 2018, the Company filed a fourth amended and restated certificate of incorporation authorizing the Company to issue 500,000,000 shares of common stock \$0.0001 par value and 50,000,000 of convertible non-voting common stock, \$0.0001 par value per share.

*Security purchase arrangement and related note payable*

On March 23, 2018, the Company entered into a Stock Purchase Agreement with Sagard Capital Partners, L.P. pursuant to which the Company, in a private placement, agreed to issue and sell to Sagard 5,524,926 shares of the Company's series A convertible participating preferred stock, \$0.0001 par value per share, for an aggregate purchase price of \$9,199,001. The Company intends to use the proceeds from the offering for ongoing commercialization activities for Mytesi® in connection with the product's currently FDA-approved indication and for general corporate purposes. Each share of preferred stock is initially convertible into nine shares of common stock at an effective conversion price of \$0.185 per share (based on an original price per Preferred Share of \$1.665), provided that, at any time prior to the time the Company obtains stockholder approval, as required pursuant to Nasdaq Rule 5635(b) any conversion of Preferred Stock by a holder into shares of the Common Stock would be prohibited if, as a result of such conversion, the holder, together with such holder's attribution parties, would beneficially own more than 19.99% of the total number of shares of the Common Stock issued and outstanding after giving effect to such conversion. Subject to certain limited exceptions, the shares of Preferred Stock cannot be offered, pledged or sold by Sagard 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.

Concurrently with the consummation of the preferred stock offering, the Company entered into share purchase agreements with certain institutional investors pursuant to which the Company issued approximately \$5.0 million of common stock to such investors at a price of \$0.17 per share. The Company intends to use the proceeds from the Common Stock Offering for to repay certain aged payables relating to the Company's acquisition of Napo in July 2017.

On March 21, 2018, the Company issued to CVP a promissory note in the aggregate principal amount of \$1,090,340.91 for an aggregate purchase price of \$750,000. The Note carries an original issue discount of \$315,340.91, and the initial principal balance also includes \$25,000 to cover CVP's transaction expenses. The Company will use the proceeds to fully repay certain prior secured and unsecured indebtedness. The Note bears interest at the rate of 8% per annum and matures on September 21, 2019. The Company also entered into a security agreement with CVP, pursuant to which CVP will receive a security interest in substantially all of the Company's assets. Pursuant to the terms of the Security Agreement, CVP's security interest becomes effective upon CVP's purchase of the Company's outstanding obligations under that certain loan and security agreement, dated August 18, 2015, between the Company and Hercules Capital, Inc. or upon such time that the Hercules Loan is otherwise repaid in full. Upon the consummation of the CVP Note Offering, the Company repaid the Hercules Loan in full, and CVP's security interest in substantially all of the Company's assets became effective.



## **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

### **ITEM 9A. CONTROLS AND PROCEDURES**

#### **Disclosure Controls and Procedures**

We maintain “disclosure controls and procedures,” as such term is defined in Rule 13a-15(e) and 15d-15(c) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognized that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Our disclosure controls and procedures have been designed to meet reasonable assurance standards. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based on their evaluation as of the end of the period covered by this Annual Report on Form 10-K, our Chief Executive Officer and Chief Financial Officer have concluded that, as of such date, our disclosure controls and procedures were not effective due to the existence of a material weakness in the design and operating effectiveness of an internal control related to review of our tax provision. 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 financial statements will not be prevented or detected in a timely basis. In connection with the audit of our financial statements as of and for the year ended December 31, 2017, we did not adequately and timely review the accounting for income taxes. While we utilize the assistance of an external income tax specialist to prepare our annual tax provision, management has concluded there to be a material weakness in the design of our income tax controls in that our policy that governs the data validation controls over data provided to and received from the external income tax specialist and the management review controls were not designed with appropriate levels of precision and were not undertaken in a timely manner, which resulted in an extension to file our Annual Report on Form 10-K. We plan to enhance existing controls and design and implement new controls applicable to our tax accounting, to ensure that our income tax balances are accurately calculated and appropriately reflected in our financial statements on a timely basis. We plan to devote significant time and attention to remediate the above material weakness 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 weakness 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.

#### **Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) and 15d-15(c) under the Exchange Act. Because of its

inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of the effectiveness of internal control to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with policies or procedures may deteriorate. Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2017 using the criteria established in *Internal Control Integrated Framework* (“2013 Framework”) issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”).

Based on our evaluation using those criteria, our management has concluded that, as of December 31, 2017, our internal control over financial reporting was not effective-due to the material weakness identified above.

This annual report does not include an attestation report of our registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.

#### **Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting, other than the material weakness identified above, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting during the fourth quarter of 2017.

#### **ITEM 9B. OTHER INFORMATION**

None.

### **PART III**

#### **ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information required by this item is incorporated by reference from the Proxy Statement for the 2018 Annual Meeting of Stockholders to be filed with the SEC within 120 days of the fiscal year ended December 31, 2017.

#### **ITEM 11. EXECUTIVE COMPENSATION**

The information required by this item is incorporated by reference from the information under the captions “Compensation of Directors and Executive Officers” contained in the Proxy Statement for the 2018 Annual Meeting of Stockholders to be filed with the SEC within 120 days of the fiscal year ended December 31, 2017.

#### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this item is incorporated by reference from the information under the captions “Security Ownership of Certain Beneficial Owners and Management” and “Compensation of Directors and Executive Officers—Equity Compensation” contained in the Proxy Statement for the 2018 Annual Meeting of Stockholders to be filed with the SEC within 120 days of the fiscal year ended December 31, 2017.

#### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this item is incorporated by reference from the information under the caption “Proposal 1—Election of Directors—Director Independence” and “Certain Relationships and Related Transactions” contained in the Proxy Statement for the 2018 Annual Meeting of Stockholders to be filed with the SEC within 120 days of the fiscal year ended December 31, 2017.

#### **ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by this item is incorporated by reference from the information under the caption “Proposal 2—Ratification of the Appointment of Independent Registered Public Accounting Firm—Principal Accountant Fees and Services” contained in the Proxy Statement for the 2018 Annual Meeting of Stockholders to be filed with the SEC within 120 days of the fiscal year ended December 31, 2017.

## PART IV

### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) Documents filed as part of this report

1. Financial Statements:

Reference is made to the Index to Financial Statements of Jaguar Health, Inc. included in Item 8 of Part II hereof.

2. Financial Statement Schedules

All schedules have been omitted because they are not required, not applicable, or the required information is included in the financial statements or notes thereto.

3. Exhibits

See Item 15(b) below. Each management contract or compensating plan or arrangement required to be filed has been identified.

(b) Exhibits—The following exhibits are included herein or incorporated herein by reference.

<u>Exhibit No.</u>	<u>Description</u>
2.1	Agreement and Plan of Merger, dated as of March 31, 2017, by and among Jaguar Health, Inc. (f/k/a Jaguar Animal Health, Inc.), Napo Acquisition Corporation, Napo Pharmaceuticals, Inc. and Gregory Stock (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K of Jaguar Health, Inc. filed March 31, 2017, File No. 001-36714).
3.1	Third Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (No. 001-36714) filed with the Securities and Exchange Commission on August 1, 2017).
3.2*	Certificate of Amendment of the Third Amended and Restated Certificate of Incorporation.
3.3	Certificate of Designation of Series A Convertible Participating Preferred Stock (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (filed with the Securities and Exchange Commission on March 27, 2018).
3.4	Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 to the Current Report on Form 8-K (No. 001-36714) filed with the Securities and Exchange Commission on May 18, 2015).
4.1	Specimen Common Stock Certificate of Jaguar Health, Inc. (incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on October 10, 2014).
4.2	Secured Convertible Promissory Note, dated June 29, 2017, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P. (incorporated by reference to Ex. 4.1 to the Current Report on Form 8-K filed on July 3, 2017).
4.3	Specimen Non-Voting Common Stock Certificate of Jaguar Health, Inc. (incorporated by reference to Exhibit 4.1 to the Form 8-K of Jaguar Health, Inc. filed August 1, 2017, File No. 001-36714).
4.4	Secured Promissory Note, dated December 8, 2017, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P. (incorporated by reference to Ex. 4.1 to the Current Report on Form 8-K filed on December 14, 2017).

Exhibit No.	Description
10.1‡	Form of Indemnification Agreement by and between Jaguar Health, Inc. and its directors and officers (incorporated by reference to Exhibit 10.1 to the Registration Statement on Form S-1 (No. 333-198383) filed with the Securities and Exchange Commission on August 27, 2014).
10.2‡	Jaguar Health, Inc. 2014 Stock Incentive Plan (incorporated by reference to Exhibit 10.5 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on October 31, 2014).
10.3‡	Form of Notice of Grant of Stock Option and Stock Option Agreement under the 2014 Stock Incentive Plan (incorporated by reference to Exhibit 10.6 to the Registration Statement on Form S-1 (No. 333-198383) filed with the Securities and Exchange Commission on August 27, 2014).
10.4‡	Form of Notice of Grant of Restricted Stock and Restricted Stock Agreement under the 2014 Stock Incentive Plan (incorporated by reference to Exhibit 10.7 to the Registration Statement on Form S-1 (No. 333-198383) filed with the Securities and Exchange Commission on August 27, 2014).
10.5‡	Form of Notice of Grant of Restricted Stock Units and Restricted Stock Unit Agreement under the 2014 Stock Incentive Plan (incorporated by reference to Exhibit 10.8 to the Registration Statement on Form S-1 (No. 333-198383) filed with the Securities and Exchange Commission on August 27, 2014).
10.6‡	Offer Letter by and between Jaguar Health, Inc. and Lisa A. Conte, dated March 1, 2014 (incorporated by reference to Exhibit 10.9 to the Registration Statement on Form S-1 (No. 333-198383) filed with the Securities and Exchange Commission on August 27, 2014).
10.7‡	Offer Letter by and between Jaguar Health, Inc. and Steven R. King, Ph.D., dated February 28, 2014 (incorporated by reference to Exhibit 10.11 to the Registration Statement on Form S-1 (No. 333-198383) filed with the Securities and Exchange Commission on August 27, 2014).
10.8	Form of Common Stock Warrant that expires February 5, 2019 (incorporated by reference to Exhibit 10.16 to the Registration Statement on Form S-1 (No. 333-198383) filed with the Securities and Exchange Commission on August 27, 2014).
10.9	Form of Common Stock Warrant issued to Indena S.p.A. that expires June 26, 2019 (incorporated by reference to Exhibit 10.17 to the Registration Statement on Form S-1 (No. 333-198383) filed with the Securities and Exchange Commission on August 27, 2014).
10.10	Form of Common Stock Warrant issued to Joshua Mailman, which expires August 26, 2016 (incorporated by reference to Exhibit 10.21 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on September 9, 2014).
10.11	Non-Disturbance Letter Agreement by and between Napo Pharmaceuticals, Inc. and Nantucket Investments Limited, as Administrative Agent and Collateral Agent, dated October 10, 2014 (incorporated by reference to Exhibit 10.23 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on October 10, 2014).
10.12	Form of Warrant to Purchase Common Stock issued to GPB Life Science Holdings LLC and 31 Group, LLC, which expires October 30, 2019 (incorporated by reference to Exhibit 10.25 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on October 31, 2014).

Exhibit No.	Description
10.13	Form of Exchange Warrant to Purchase Common Stock, issued to GPB Life Science Holdings LLC and 31 Group, LLC, which expires June 3, 2020, as amended (incorporated by reference to Exhibit 10.27 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on April 17, 2015).
10.14	Amendment No. 1 to Amended and Restated License Agreement between Jaguar Health, Inc. and Napo Pharmaceuticals, Inc., dated as of January 27, 2015 (incorporated by reference to Exhibit 10.28 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on March 20, 2015).
10.15	Offer Letter by and between Jaguar Health, Inc. and Michael Hauser, D.V.M., dated as of March 3, 2015 (incorporated by reference to Exhibit 10.32 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on March 20, 2015).
10.16	Form of Representative's Warrant (incorporated by reference to Exhibit 10.33 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on April 17, 2015).
10.17	Form of Warrant and Note Exercise Amendment pursuant to Convertible Note and Warrant Purchase Agreement dated December 23, 2014 (incorporated by reference to Exhibit 10.35 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on April 17, 2015).
10.18	Convertible Note and Warrant Purchase Agreement dated March 20, 2015 by and between Jaguar Health, Inc., and Dechra Pharmaceuticals PLC (incorporated by reference to Exhibit 10.37 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on April 17, 2015).
10.19	Common Stock Warrant issued pursuant to the Convertible Note and Warrant Purchase Agreement dated March 20, 2015, which expires December 31, 2017 (incorporated by reference to Exhibit 10.39 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on April 17, 2015).
10.20	Form of Warrant Exercise Amendment pursuant to Exchange Warrant to Purchase Common Stock dated December 3, 2014 (incorporated by reference to Exhibit 10.40 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on April 17, 2015).
10.21	Form of Amended and Restated Exchange Warrant to Purchase Common Stock (incorporated by reference to Exhibit 10.41 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on April 17, 2015).
10.22	Sublease Agreement by and between SeeChange Health Management LLC and Jaguar Health, Inc., dated June 19, 2015 (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (No. 001-36714) filed with the Securities and Exchange Commission on June 23, 2015).
10.23	Consent to Sublease by and among CA-Mission Street Limited Partnership, SeeChange Health Management LLC and Jaguar Health, Inc., dated June 19, 2015 (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (No. 001-36714) filed with the Securities and Exchange Commission on June 23, 2015).



Exhibit No.	Description
10.24	Loan and Security Agreement between Jaguar Health, Inc., Qualified Subsidiaries thereof, the several banks and other financial institutions or entities from time to time parties thereto as lenders and Hercules Technology Growth Capital, Inc., dated as of August 18, 2015 (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K (No. 001-36714) filed with the Securities and Exchange Commission on August 20, 2015).
10.25†	Manufacture and Supply Agreement between Jaguar Health, Inc. and Glenmark Pharmaceuticals Ltd., dated September 22, 2015 (incorporated herein by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q (No. 001-36714) filed with the Securities and Exchange Commission on November 13, 2015).
10.26	Formulation Development and Manufacturing Agreement between Jaguar Health, Inc. and Patheon Pharmaceuticals Inc., dated October 8, 2015 (incorporated by reference to Exhibit 10.30 to the Registration Statement on Form S-1 (No. 333-208905) filed with the Securities and Exchange Commission on January 7, 2016).
10.27‡	Offer Letter by and between Jaguar Health, Inc., and Karen Wright, dated as of October 11, 2015 (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed with the Securities and Exchange Commission on December 18, 2015).
10.28	Form of Convertible Promissory Note issued pursuant to the Convertible Note and Warrant Purchase Agreement dated as of December 23, 2014 (incorporated by reference to Exhibit 10.30 to the Registration Statement on Form S-1/A (No. 333-198383) filed with the Securities and Exchange Commission on March 20, 2015).
10.29	First Amendment to the Loan and Security Agreement and Waiver, dated as of April 21, 2016, by and among Jaguar Health, Inc., Hercules Capital, Inc., and the lender party thereto (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed with the Securities and Exchange Commission on April 27, 2016).
10.30	Common Stock Purchase Agreement, dated June 8, 2016, by and between Jaguar Health, Inc. and Aspire Capital Fund, LLC (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on June 9, 2016).
10.31	Letter of Intent, between Jaguar Health, Inc. and Napo Pharmaceuticals, Inc. (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on October 6, 2016).
10.32	Common Stock Warrant issued pursuant to the Letter Agreement, dated November 8, 2016, between Jaguar Health, Inc. and Serious Change II LP, which expires July 28, 2022 (incorporated herein by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q (No. 001-36714) filed on November 14, 2016).
10.33	Form of Securities Purchase Agreement, by and among Jaguar Health, Inc. and the investors in the 2016 Private Placement (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on November 29, 2016).
10.34	Form of Registration Rights Agreement, by and among Jaguar Health, Inc. and the investors in the 2016 Private Placement (incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K filed on November 29, 2016).
10.35	Supply and Distribution Agreement, dated as of September 6, 2016, by and between Jaguar Health, Inc. and Integrated Animal Nutrition and Health Inc. (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q/A (No. 001-36714) filed on December 5, 2016).

Exhibit No.	Description
10.36†	Distribution Agreement, dated December 9, 2016, by and between Jaguar Health, Inc. and Henry Schein, Inc.
10.37†	License, Development, Co-Promotion and Commercialization Agreement, dated January 27, 2017, by and between Jaguar Health, Inc. and Elanco US, Inc.
10.38	Common Stock Warrant issued pursuant to the Letter Agreement, dated January 30, 2017, between Jaguar Health, Inc. and Serious Change II LP, which expires January 31, 2019.
10.39	Binding Agreement of Terms for Jaguar Health, Inc. Acquisition of Napo Pharmaceuticals, dated February 8, 2017, between Jaguar Health, Inc. and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on February 9, 2017).
10.40	Employee Leasing and Overhead Allocation Agreement, dated July 1, 2016, by and between Napo Pharmaceuticals, Inc. and Jaguar Health, Inc. (incorporated herein by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q (No. 001-36714) filed on May 15, 2017).
10.41	Amendment No. 1 to Employee Leasing and Overhead Allocation Agreement, dated March 2, 2017, by and between Jaguar Health, Inc. and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q (No. 001-36714) filed on May 15, 2017).
10.42	Binding Agreement of Terms for Jaguar Animal Health, Inc. Acquisition of Napo Pharmaceuticals, dated February 8, 2017, between Jaguar Health, Inc. and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on February 9, 2017).
10.43	Commitment Letter, dated February 21, 2017, signed by Invesco Asset Management Limited (incorporated herein by reference to Exhibit 10.4 to the Quarterly Report on Form 10-Q (No. 001-36714) filed on May 15, 2017).
10.44	Note Purchase Agreement, dated March 1, 2017, by and among Napo Pharmaceuticals, Inc. and the purchasers named therein (incorporated herein by reference to Exhibit 10.45 to the Registration Statement on Form S-4 filed April 18, 2017 (No. 333-217364)).
10.45	Investor Rights Agreement, dated March 31, 2017, by and between Jaguar Health, Inc. and Nantucket Investments Limited (incorporated by reference herein to Exhibit 10.1 to the Current Report on Form 8-K filed on March 31, 2017).
10.46	Form of Original Issue Discount Exchange Promissory Note issued pursuant to the Note Purchase Agreement dated as of March 1, 2017, by and among Napo Pharmaceuticals, Inc. and the Purchasers as defined therein (incorporated herein by reference to Exhibit 10.46 to the Registration Statement on Form S-4 filed April 18, 2017 (No. 333-217364)).
10.47	Amended and Restated Note Purchase Agreement, dated March 31, 2017, by and among Napo Pharmaceuticals, Inc., Kingdon Associates, M. Kingdon Offshore Master Fund L.P., and Kingdon Family Partnership, L.P. (incorporated herein by reference to Exhibit 10.47 to the Registration Statement on Form S-4 filed April 18, 2017 (No. 333-217364)).
10.48	Form of Kingdon Convertible Promissory Note issued pursuant to the Amended and Restated Note Purchase Agreement, dated March 31, 2017, by and among Napo Pharmaceuticals, Inc., Kingdon Associates, M. Kingdon Offshore Master Fund L.P., and Kingdon Family Partnership, L.P. (incorporated herein by reference to Exhibit 10.48 to the Registration Statement on Form S-4 filed April 18, 2017 (No. 333-217364)).

Exhibit No.	Description
10.49	Limited Subordination Agreement, dated December 30, 2016, by and among Napo Pharmaceuticals, Inc., Kingdon Capital Management, L.L.C., Nantucket Investments Limited, the lenders under the Nantucket Financing Agreement party thereto, Dorsar Investment Company, Alco Investment Company and Two Daughters LLC (incorporated herein by reference to Exhibit 10.49 to the Registration Statement on Form S-4 filed April 18, 2017 (No. 333-217364)).
10.50	Security Agreement, dated December 30, 2016, by and among Napo Pharmaceuticals, Inc., Kingdon Capital Management, L.L.C., and the purchasers named therein (incorporated herein by reference to Exhibit 10.50 to the Registration Statement on Form S-4 filed April 18, 2017 (No. 333-217364)).
10.51	Settlement and Discounted Payoff Agreement, dated March 31, 2017, by and among the lenders named therein, Nantucket Investments Limited, and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.52 to the Registration Statement on Form S-4 filed April 18, 2017 (No. 333-217364)).
10.52	Debt and Warrant Settlement Agreement, dated March 31, 2017, by and among Dorsar Investment Company, Alco Investment Company, Two Daughters LLC, and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.53 to the Registration Statement on Form S-4 filed April 18, 2017 (No. 333-217364)).
10.53	Debt Settlement Agreement, dated March 31, 2017, by and between Boies Schiller Flexner LLP and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.54 to the Registration Statement on Form S-4 filed April 18, 2017 (No. 333-217364)).
10.54	Debt Settlement Agreement, dated March 31, 2017, by and between Dan Becka and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.55 to the Registration Statement on Form S-4 filed April 18, 2017 (No. 333-217364)).
10.55‡	Form of Escrow Agreement, by and among Jaguar Animal Health, Inc., Nantucket Investments Limited and Citibank, National Association (incorporated herein by reference to Exhibit 10.57 to the Registration Statement on Form S-4 filed April 18, 2017 (No. 333-217364)).
10.56‡	Form of Restricted Stock Unit Indemnification and Forfeiture Agreement, by and among Jaguar Animal Health, Inc., Napo Pharmaceuticals, Inc. and the holders of Napo RSUs (incorporated herein by reference to Exhibit 10.58 to the Registration Statement on Form S-4 filed April 18, 2017 (No. 333-217364)).
10.57†	Collaboration Agreement, dated July 2, 2005, by and between Glenmark Pharmaceuticals Ltd. and Napo Pharmaceuticals, Inc., as amended (incorporated herein by reference to Exhibit 10.59 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).
10.58	Settlement Agreement, dated December 29, 2013, by and between Glenmark Pharmaceuticals Ltd. and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.60 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).
10.59†	Alliance Agreement, dated May 23, 2005, by and among AsiaPharm Investment Limited and its Affiliates, including Shandong Luye Pharmaceuticals Co. Ltd., and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.61 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).

Exhibit No.	Description
10.60†	Finder's Agreement, dated April 9, 2010, by and among Luye Pharma Group Limited and its Affiliates, including Shandong Luye Pharmaceuticals Co. Ltd., and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.62 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).
10.61†	Settlement, Termination, Asset Transfer and Transition Agreement, dated March 4, 2016, by and between Napo Pharmaceuticals, Inc. and Salix Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.63 to the Registration Statement on Form S-4/A filed June 28, 2017 (No. 333-217364)).
10.62	First Amendment to Settlement, Termination, Asset Transfer and Transition Agreement, dated as of May 10, 2016, by and between Napo Pharmaceuticals, Inc. and Salix Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.64 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).
10.63	Investment Rights Agreement, dated April 20, 2006, as amended January 25, 2011, by and among IL&FS Trust Company Limited, as trustee of the IL&FS Private Equity Trust, investing through its venture capital scheme Leverage India Fund, acting through its investment manager IL&FS Investment Managers Limited, and Napo Pharmaceuticals, Inc., and Napo India Private Limited and the Management Team, as defined therein (incorporated herein by reference to Exhibit 10.69 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).
10.64	Investment Rights Agreement, dated October 1, 2007, by and among IL&FS Trust Company Limited, as trustee of the IL&FS Private Equity Trust, investing through its venture capital scheme Leverage India Fund, acting through its investment manager IL&FS Investment Managers Limited, and Sindu Private Limited, and Napo Pharmaceuticals, Inc., and Indus Pharmaceuticals Inc. (incorporated herein by reference to Exhibit 10.70 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).
10.65	Investment Rights Agreement, dated December 21, 2009, by and among IL&FS Trust Company Limited, as trustee of the IL&FS Private Equity Trust, investing through its venture capital scheme Leverage India Fund, acting through its investment manager IL&FS Investment Managers Limited, and Napo Pharmaceuticals, Inc., and Napo Pharmaceuticals India Private Limited (incorporated herein by reference to Exhibit 10.71 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).
10.66†	Marketing and Distribution Agreement, dated as of April 14, 2016, by and among Napo Pharmaceuticals, Inc. and BexR Logistics, LLC, as amended (incorporated herein by reference to Exhibit 10.72 to the Registration Statement on Form S-4/A filed June 28, 2017 (No. 333-217364)).
10.67†	Strategic Marketing Alliance Agreement, dated as of April 14, 2016, by and between Napo Pharmaceuticals, Inc. and SmartPharma, LLC (incorporated herein by reference to Exhibit 10.73 to the Registration Statement on Form S-4/A filed June 28, 2017 (No. 333-217364)).
10.68	Quality Agreement, dated May 21, 2013, between Salix Pharmaceuticals, Inc. and Patheon Pharmaceuticals Inc., as assigned by Salix Pharmaceuticals Inc. to Napo Pharmaceuticals, Inc. pursuant to the Settlement, Termination, Asset Transfer and Transition Agreement, dated March 4, 2016, by and between Napo Pharmaceuticals, Inc. and Salix Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.74 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).

Exhibit No.	Description
10.69†	Master Manufacturing Services Agreement, dated May 21, 2013, between Salix Pharmaceuticals, Inc. and Patheon Pharmaceuticals Inc., as assigned by Salix Pharmaceuticals Inc. to Napo Pharmaceuticals, Inc. pursuant to the Settlement, Termination, Asset Transfer and Transition Agreement, dated March 4, 2016, by and between Napo Pharmaceuticals, Inc. and Salix Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.75 to the Registration Statement on Form S-4/A filed June 28, 2017 (No. 333-217364)).
10.70†	Crofelemer Product Agreement, dated May 21, 2013, between Salix Pharmaceuticals, Inc. and Patheon Pharmaceuticals Inc., as assigned by Salix Pharmaceuticals Inc. to Napo pursuant to the Settlement, Termination, Asset Transfer and Transition Agreement, dated March 4, 2016, by and between Napo Pharmaceuticals, Inc. and Salix Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.76 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).
10.71†	License Agreement, dated February 28, 2007, by and between Insmed Incorporated and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.77 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).
10.72	Master Service Agreement, dated February 13, 2017, by and between Alamo Pharma Services, Inc. and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.80 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).
10.73†	Project Agreement, dated February 13, 2017, by and between Alamo Pharma Services, Inc., Mission Pharmacal Company, and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.81 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).
10.74†	Project Agreement, dated February 27, 2017, by and between Alamo Pharma Services, Inc. and Napo Pharmaceuticals, Inc. (incorporated herein by reference to Exhibit 10.82 to the Registration Statement on Form S-4/A filed May 26, 2017 (No. 333-217364)).
10.75	Amendment, Waiver & Consent, dated June 27, 2017, by and among Jaguar Health, Inc., Nantucket Investments Limited, and Napo Pharmaceuticals, Inc. (incorporated by reference to Ex. 10.83 of the Company's Registration Statement on Form S-4 (Registration No. 333-217364) filed on July 5, 2017).
10.76	Securities Purchase Agreement, dated June 29, 2017, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P. (incorporated by reference to Ex. 10.1 to the Current Report on Form 8-K filed on July 3, 2017).
10.77	Subordination Agreement and Right to Purchase Debt, dated June 29, 2017, by and between Chicago Venture Partners, L.P., Jaguar Health, Inc. and Hercules Capital, Inc. (incorporated by reference to Ex. 10.2 to the Current Report on Form 8-K filed on July 3, 2017).
10.78	Security Agreement, dated June 29, 2017, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P. (incorporated by reference to Ex. 10.3 to the Current Report on Form 8-K filed on July 3, 2017).
10.79	Form of Warrant Exercise Agreement (incorporated by reference to Ex. 10.1 to the Current Report on Form 8-K filed on July 31, 2017).



Exhibit No.	Description
10.80	Share Purchase Agreement, dated July 31, 2017, by and between Jaguar Health, Inc. and Invesco Asset Management Limited (incorporated herein by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q (No. 001-36714) filed on November 20, 2017).
10.81	Letter Agreement, dated September 1, 2017, by and among Napo Pharmaceuticals, Inc., MEF I, L.P. and Riverside Merchant Partners (incorporated by reference to Exhibit 10.33 to the Form 8-K/A of Jaguar Health, Inc. filed September 14, 2017, File No. 001-36714).
10.82	Letter Agreement, dated August 31, 2017, by and among Napo Pharmaceuticals, Inc., M. Kingdon Offshore Master Fund L.P., Kingdon Family Partnership, L.P. and Kingdon Credit Master Fund L.P. (incorporated by reference to Exhibit 10.34 to the Form 8-K/A of Jaguar Health, Inc. filed September 14, 2017, File No. 001-36714).
10.83	Letter Agreement, dated August 28, 2017, by and among Napo Pharmaceuticals, Inc., Dorsar Investment Company, Alco Investment Company and Two Daughters LLC (incorporated by reference to Exhibit 10.35 to the Form 8-K/A of Jaguar Health, Inc. filed September 14, 2017, File No. 001-36714).
10.84	Letter Agreement, dated September 1, 2017, by and between Napo Pharmaceuticals, Inc. and Boies Schiller Flexner LLP (incorporated by reference to Exhibit 10.36 to the Form 8-K/A of Jaguar Health, Inc. filed September 14, 2017, File No. 001-36714).
10.85	Letter Agreement, dated August 30, 2017, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P. (incorporated by reference to Exhibit 10.37 to the Form 8-K/A of Jaguar Health, Inc. filed September 14, 2017, File No. 001-36714).
10.86	Termination, Asset Transfer and Transition Agreement, dated September 22, 2017, by and between Napo Pharmaceuticals, Inc. and Glenmark Pharmaceuticals, Ltd. (incorporated herein by reference to Exhibit 10.8 to the Quarterly Report on Form 10-Q (No. 001-36714) filed on November 20, 2017).
10.87	Share Purchase Agreement, dated November 24, 2017, by and between Jaguar Health, Inc. and L2 Capital, LLC (incorporated by reference to Exhibit 10.1 to the Form 8-K of Jaguar Health, Inc. filed November 24, 2017, File No. 001-36714).
10.88	Common Stock Purchase Agreement, dated November 24, 2017, by and between Jaguar Health, Inc. and L2 Capital, LLC (incorporated by reference to Exhibit 10.1 to the Form 8-K of Jaguar Health, Inc. filed November 24, 2017, File No. 001-36714).
10.89*	Collaboration Agreement, dated December 13, 2017, by and between Jaguar Health, Inc. and Seed Mena Businessmen Services, LLC.
10.90	Securities Purchase Agreement, dated December 8, 2017, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P. (incorporated by reference to Ex. 10.1 to the Current Report on Form 8-K filed on December 14, 2017).
10.91	Security Agreement, dated December 8, 2017, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P. (incorporated by reference to Ex. 10.2 to the Current Report on Form 8-K filed on December 14, 2017).
10.92	Form of First Amended Original Issue Discount Exchangeable Promissory Note. (incorporated by reference to Ex. 4.1 to the Current Report on Form 8-K filed on January 2, 2018).



Exhibit No.	Description
10.93	First Amendment to the Note Purchase Agreement and Notes, dated December 29, 2017, by and among Jaguar Health, Inc. and the purchasers named therein (incorporated by reference to Ex. 10.1 to the Current Report on Form 8-K filed on January 2, 2018).
23.1*	Consent of Independent Registered Public Accounting Firm.
31.1*	Principal Executive Officer's Certifications Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Principal Financial Officer's Certifications 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
101.CAL	XBRL Taxonomy Extension Calculation Linkbase
101.DEF	XBRL Taxonomy Extension Definition Linkbase
101.LAB	XBRL Taxonomy Extension Label Linkbase
101.PRE	XBRL Taxonomy Extension Presentation Linkbase

\* 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-K 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.

† Confidential treatment granted as to portions of the exhibit. Confidential materials omitted and filed separately with the Securities and Exchange Commission.

‡ Management contract or compensatory plan or arrangement.



**Consent of Independent Registered Public Accounting Firm**

Jaguar Health, Inc.  
San Francisco, California

We hereby consent to the incorporation by reference in the Registration Statements on Form S-1 (Nos. 333-213751 and 333-214956) and Form S-8 (Nos. 333-204280, 333-215303 and 333-219939) of Jaguar Health, Inc. of our report dated April 9, 2018, relating to the consolidated financial statements which appear in this Form 10-K. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

/s/ BDO USA, LLP

San Francisco, California

April 9, 2018

**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 annual report on Form 10-K of Jaguar Health, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(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: April 9, 2017

/s/ LISA A. CONTE

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Lisa A. Conte  
*Chief Executive Officer and President*  
*(Principal Executive Officer)*

**PRINCIPAL FINANCIAL OFFICER'S CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Karen S. Wright, certify that:

1. I have reviewed this annual report on Form 10-K of Jaguar Health, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(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: April 9, 2018

/s/ KAREN S. WRIGHT

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Karen S. Wright  
*Chief Financial Officer*  
*(Principal Financial Officer)*

**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 annual report of Jaguar Health, Inc. (the “Company”) on Form 10-K for the year ended December 31, 2017, 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: April 9, 2018

/s/ LISA A. CONTE

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Lisa A. Conte  
*Chief Executive Officer and President  
(Principal Executive Officer)*



**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 annual report of Jaguar Health, Inc. (the “Company”) on Form 10-K for the year ended December 31, 2017, 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: April 9, 2018

/s/ KAREN S. WRIGHT

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Karen S. Wright  
*Chief Financial Officer*  
*(Principal Financial Officer)*

# Corporate Information

## BOARD OF DIRECTORS

**JAMES J. BOCHNOWSKI**

**LISA CONTE**

**JIAHAO QIU**

**ZHI YANG, PH.D.**

**FOLKERT KAMPHUIS**

**JOHN MICEK III**

**JONATHAN B. SIEGEL**

**JEFFERY C. JOHNSON**

## EXECUTIVE MANAGEMENT TEAM

**LISA CONTE**

President & Chief Executive Officer

**STEVEN KING, PH.D.**

Executive Vice President of Sustainable Supply,  
Ethnobotanical Research and IP

**KAREN WRIGHT**

Chief Financial Officer and Treasurer

## CORPORATE ADDRESS

201 Mission Street, Suite 2375  
San Francisco, CA 94105

## TICKER SYMBOL

**NASDAQ: JAGX**

## TRANSFER AGENT

First Class/Registered/Certified Mail:

**COMPUTERSHARE INVESTOR SERVICES**

P.O. Box 505002

Louisville, KY 40233-5022

Courier Services:

**COMPUTERSHARE INVESTOR SERVICES**

250 Royall St.

Canton, MA 02021

Shareholder Services Numbers: 800-962-4284

Outside the US: 781-575-3120

Investor Center portal:

[www.computershare.com/investor](http://www.computershare.com/investor)

## INVESTOR RELATIONS

**PETER HODGE**

Jaguar Health, Inc.

[phodge@jaguar.health](mailto:phodge@jaguar.health)

## VISIT OUR WEBSITE

[www.jaguar.health](http://www.jaguar.health)

## FOLLOW US ONLINE

[Facebook.com/jaguarhealth](https://Facebook.com/jaguarhealth)

[Twitter.com/Jaguar\\_Health](https://Twitter.com/Jaguar_Health)

[Instagram.com/jaguar.health](https://Instagram.com/jaguar.health)



*"It pretty much sucks waking up around 3 AM and running to the bathroom 2 or 3 times. I might lay back down, and then, 'oh crap!' I have to run to the bathroom again."*

**Male, age 39,  
HIV+ for 6 years**

Photo not of actual patient.  
Quote is from a person living with HIV.

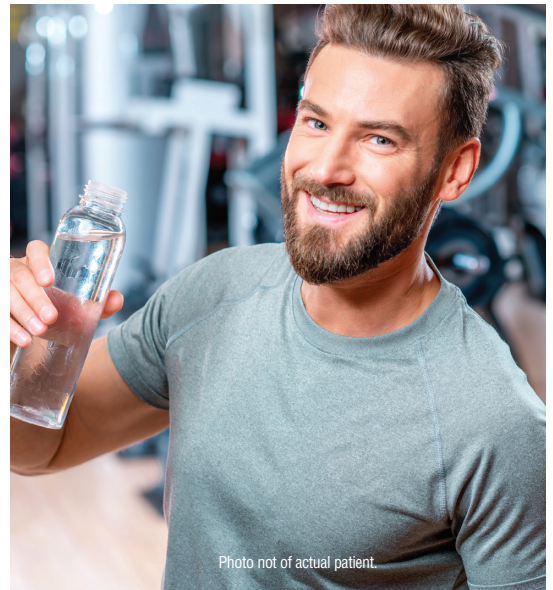


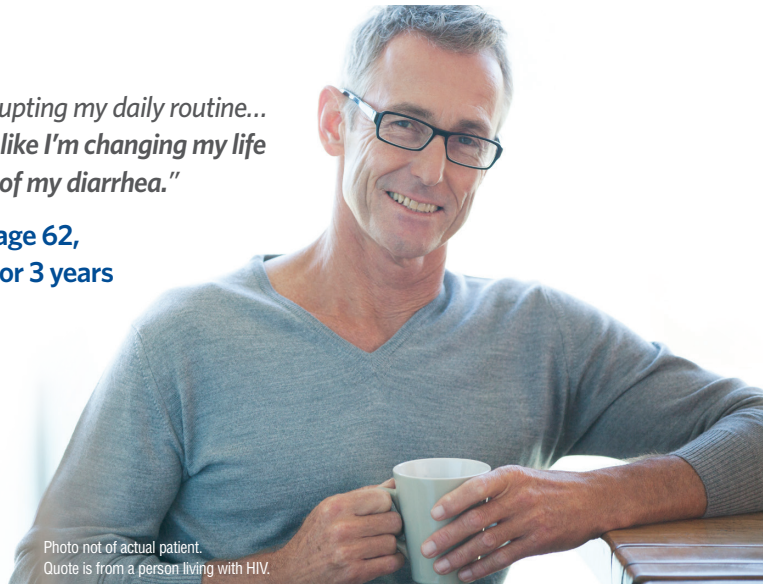
Photo not of actual patient.



*"It's interrupting my daily routine... It seems like I'm changing my life because of my diarrhea."*

**Male, age 62,  
HIV+ for 3 years**

Photo not of actual patient.  
Quote is from a person living with HIV.



201 Mission Street, Suite 2375, San Francisco, CA 94105 / +1 (415) 371-8300 / [www.jaguar.health](http://www.jaguar.health)