UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 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, 2024

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to

Commission file number: 001-33221

HERON THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

DELAWARE *(State or other jurisdiction of incorporation or organization)*	**94-2875566** *(I.R.S. Employer Identification No.)*
100 REGENCY FOREST DRIVE, SUITE 300 **CARY, NC** *(Address of principal executive offices)*	**27518** *(Zip Code)*

Registrant's telephone number, including area code:
(858) 251-4400

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.01 per share	HRTX	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 Section 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 every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☑ No ☐

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

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

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☑

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

The aggregate market value of voting and non-voting common stock held by non-affiliates of the registrant as of June 30, 2024 totaled $394.1 million based on the closing price of $3.50 as reported by The Nasdaq Capital Market. As of February 13, 2025, there were 152,329,588 shares of the Company's common stock ($0.01 par value) outstanding.

Documents Incorporated by Reference

Portions of the registrant's Definitive Proxy Statement related to its 2025 Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K. Such Definitive Proxy Statement will be filed with the U.S. Securities and Exchange Commission within 120 days after the end of the fiscal year to which this report relates. Except as expressly incorporated by reference, the registrant's Definitive Proxy Statement shall not be deemed to be part of this report.

HELSINN EXHIBIT 2007
Azurity Pharmaceuticals, Inc. v. Helsinn Healthcare S.A.
IPR2025-00947

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FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of the federal securities laws. We make such forward-looking statements pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 and other federal securities laws. In some cases, you can identify forward-looking statements by the use of the words “believe,” “expect,” “anticipate,” “intend,” “estimate,” “project,” “will,” “would,” “could,” “should,” “may,” “might,” “plan,” “assume” and other expressions that predict or indicate future events and trends and which do not relate to historical matters. All statements other than statements of historical facts contained in this Annual Report on Form 10-K, including statements regarding our future results of operations and financial condition, business and commercialization strategy, products and product candidates, research pipeline, ongoing and planned preclinical studies and clinical trials, regulatory submissions and approvals, addressable patient population, research and development expenses, timing and likelihood of success, as well as plans and objectives of management for future operations, are forward-looking statements. You should not rely on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, some of which are beyond our control. These risks, uncertainties and other factors may cause our actual results, performance or achievements to be materially different from our anticipated future results, performance or achievements expressed or implied by the forward-looking statements.

Factors that might cause these differences include the following:

- our ability to successfully commercialize, market and achieve market acceptance of ZYNRELEF® (bupivacaine and meloxicam) extended-release solution (“ZYNRELEF”), APONVIE® (aprepitant) injectable emulsion (“APONVIE”), CINVANTI® (aprepitant) injectable emulsion (“CINVANTI”), and SUSTOL® (granisetron) extended-release injection (“SUSTOL” and together with ZYNRELEF, APONVIE and CINVANTI, our "Products") in the United States (“U.S.”) , and our positioning relative to products that now or in the future compete with our Products or product candidates;

- our estimates regarding the potential market opportunities for our Products and our product candidates, if approved, and our ability to capture the potential additional market opportunity from the expanded ZYNRELEF label recently approved in the U.S.;

- our ability to establish and maintain successful commercial arrangements like our co-promotion agreement with Crosslink Network, LLC ("Crosslink Network");

- the realization of our anticipated benefits from our co-promotion agreement with Crosslink Network;

- the outcome of our pending abbreviated new drug application litigation;

- whether we are required to write-off any additional inventory in the future;

- our ability to establish satisfactory pricing and obtain adequate reimbursement from government and third-party payors of our Products and product candidates that receive regulatory approvals;

- whether study results of our Products and product candidates are indicative of the results in future studies;

- the results of the commercial launch of APONVIE in the U.S.;

- our ability to successfully launch VAN in the U.S.;

- the potential regulatory approval for and commercial launch of our product candidates, if approved;

- our competitors’ activities, including decisions as to the timing of competing product launches, generic entrants, pricing and discounting;

- whether safety and efficacy results of our clinical studies and other required tests for expansion of the indications for our Products and approval of our product candidates provide data to warrant progression of clinical trials, potential regulatory approval or further development of any of our Products or product candidates;

- our ability to develop, acquire and advance product candidates into, and successfully complete, clinical studies, and our ability to submit for and obtain regulatory approval for product candidates in our anticipated timing, or at all;

- our ability to meet the postmarketing study requirements within the mandated timelines of the U.S. Food and Drug Administration ("FDA") and to obtain favorable results and comply with standard postmarketing requirements, including U.S. federal advertising and promotion laws, federal and state anti-fraud and abuse laws, healthcare information privacy and security laws, safety information, safety surveillance and disclosure of payments or other transfers of value to healthcare professionals and entities for Products or any of our product candidates;

- our ability to successfully develop and achieve regulatory approval for any product candidates utilizing our proprietary Biochronomer® drug delivery technology ("Biochronomer Technology");

- our ability to establish key collaborations and vendor relationships for our Products and our product candidates;

- our ability to successfully develop and commercialize any technology that we may in-license or products we may acquire;

- our reliance on third-party contract manufacturers to supply our Products and product candidates, if approved;

- our ability to scale manufacturing capacity appropriately to meet demand;

- unanticipated delays due to manufacturing difficulties, supply constraints or changes in the regulatory environment, including as a result of geopolitical uncertainty;

- our ability to successfully operate in non-U.S. jurisdictions in which we may choose to do business, including compliance with applicable regulatory requirements and laws;

- uncertainties associated with obtaining and enforcing patents and trade secrets to protect our Products, our product candidates, our Biochronomer Technology and our other technology

- our ability to successfully defend ourselves against unforeseen third-party infringement claims and other litigation involving our Products and product candidates;

- our estimates regarding our capital requirements;

- the impact of our fiscal year 2023 restructuring activities, including the reduced headcount and external spend;

- our inability to achieve, or delay in achieving, profitability;

- the impacts of general business, financial market and economic conditions, including the impact of conflicts in Ukraine and the Middle East, global pandemics such as COVID-19, tariffs or other trade protection measures, and other sources of volatility, which could adversely affect our financial condition, results of operations and cash flows;

- the impact of evolving legal and regulatory requirements, and interpretations thereof, including the recent U.S. Supreme Court decision regarding deference to federal administrative agencies' interpretations of federal statutes;

- our ability to obtain additional financing and raise capital as necessary to fund operations or pursue business opportunities, and

- the impact of global economic and political developments on our business, including economic slowdowns or recessions and market disruptions that may result from, among others, global conflicts, economic sanctions, an inflationary environment, which could harm our commercialization effort, as well as the value of our common stock and our ability to access capital markets.

Any forward-looking statements in this Annual Report on Form 10-K reflect our current views with respect to future events or to our future financial performance and involve known and unknown risks, uncertainties and other 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 these forward-looking statements. Factors that may cause actual results to differ materially from current expectations include, among other things, those listed under the section entitled “Risk Factors” in this Annual Report on Form 10-K. You should carefully review all of these factors. Given these uncertainties, you should not place undue reliance on these forward-looking statements. These forward-looking statements were based on information, plans and estimates as of the date of this Annual Report on Form 10-K, and except as required by law, we assume no obligation to update any forward-looking statements to reflect changes in underlying assumptions or factors, new information, future events or other changes. These risk factors may be updated by our future filings under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). You should carefully review all information therein.

PART I

In this Annual Report on Form 10-K, all references to “Heron,” the “Company,” “we,” “us,” “our” and similar terms refer to Heron Therapeutics, Inc. and its wholly-owned subsidiary, Heron Therapeutics B.V. Heron Therapeutics®, the Heron logo, ZYNRELEF, APONVIE, CINVANTI, SUSTOL and Biochronomer are our trademarks. All other trademarks appearing or incorporated by reference into this Annual Report on Form 10-K are the property of their respective owners.

ITEM 1. BUSINESS.

Overview

We are a commercial-stage biotechnology company focused on improving the lives of patients by developing and commercializing therapeutic innovations that improve medical care. Our advanced science, patented technologies, and innovative approach to drug discovery and development have allowed us to create and commercialize a portfolio of products that aim to advance the standard of care for acute care and oncology patients.

Acute Care Product Portfolio

ZYNRELEF

ZYNRELEF is a dual-acting local anesthetic that delivers a fixed-dose combination of the local anesthetic bupivacaine and a low dose of the nonsteroidal anti-inflammatory drug meloxicam. ZYNRELEF is the first and only modified-release local anesthetic to be classified by the FDA as an extended-release product because ZYNRELEF demonstrated in Phase 3 studies significantly reduced pain and significantly increased proportion of patients requiring no opioids through the first 72 hours following surgery compared to bupivacaine solution, the current standard-of-care local anesthetic for postoperative pain control.

ZYNRELEF was initially approved by the FDA in May 2021, and we commenced commercial sales in the U.S. in July 2021. In December 2021 and January 2024, the FDA approved an expansion of ZYNRELEF's indication. ZYNRELEF is approved for small-to-medium open abdominal, lower extremity total joint arthroplasty, soft tissue and orthopedic surgical procedures including foot and ankle, and other procedures in which direct exposure to articular cartilage is avoided. In September 2024, the FDA approved our Prior Approval Supplement Application for ZYNRELEF Vial Access Needle ("VAN"), which will replace the current vented vial spike.

In March 2022, the Centers for Medicare and Medicaid Services (“CMS”) approved a 3-year transitional pass-through status of ZYNRELEF, which became effective on April 1, 2022, for separate reimbursement outside of the surgical bundle payment in the Hospital Outpatient Department (“HOPD”) setting of care. In addition, in December 2022, H.R. 2617, the omnibus spending bill was approved by Congress, which includes the Non-Opioids Prevent Addiction in the Nation (NOPAIN) Act which directs CMS to provide separate Medicare reimbursement for non-opioid treatments that are used to manage pain during surgeries conducted in hospital outpatient departments or in ambulatory surgical centers. To qualify, the non-opioid treatment must demonstrate the ability to replace, reduce, or avoid intraoperative or postoperative opioid use or the quantity of opioids prescribed in a clinical trial or through data published in a peer-reviewed journal. The hospital outpatient prospective payment system and ambulatory surgical center proposed rule for calendar year 2025 includes ZYNRELEF as a qualifying non-opioid requiring CMS to provide separate Medicare reimbursement in both the hospital outpatient department and ambulatory surgical center settings from January 1, 2025, through December 31, 2027.

APONVIE

APONVIE is the first and only intravenous (“IV”) formulation of a substance P/neurokinin-1 (“NK1”) receptor antagonist indicated for postoperative nausea and vomiting (“PONV”). Delivered via single 30-second IV injection, APONVIE has demonstrated rapid achievement of therapeutic drug levels ideally suited for the surgical setting.

APONVIE was approved by the FDA in September 2022 and became commercially available in the U.S. in March 2023. APONVIE is indicated for the prevention of PONV in adults. CMS granted pass-through payment status for APONVIE, effective April 1, 2023.

Oncology Care Product Portfolio

CINVANTI

CINVANTI is an IV formulation of aprepitant, a substance NK1 receptor antagonist. CINVANTI is the first IV formulation to directly deliver aprepitant, the active ingredient in EMEND® capsules. Aprepitant (including its prodrug, fosaprepitant) is the only single-agent NK1 receptor antagonist to significantly reduce nausea and vomiting in both the acute phase (0–24 hours after chemotherapy) and the delayed phase (24–120 hours after chemotherapy). CINVANTI is the first and only IV formulation of an NK1 receptor antagonist indicated for the prevention of acute and delayed nausea and vomiting associated with Highly Emetogenic Cancer (“HEC”) and nausea and vomiting associated with moderately emetogenic chemotherapy ("MEC") that is free of synthetic surfactants, including polysorbate 80.

CINVANTI, in combination with other antiemetic agents, is indicated in adults for the prevention of acute and delayed nausea and vomiting associated with initial and repeat courses of HEC including high-dose cisplatin as a single-dose regimen, delayed nausea and vomiting associated with initial and repeat courses of MEC as a single-dose regimen, and nausea and vomiting associated with initial and repeat courses of MEC as a 3-day regimen.

NK1 receptor antagonists are typically used in combination with 5-hydroxytryptamine type 3 (“5-HT3”) receptor antagonists. The only other injectable NK1 receptor antagonist currently approved in the U.S. for both acute and delayed chemotherapy induced nausea and vomiting (“CINV”), EMEND® IV (fosaprepitant), contains polysorbate 80, a synthetic surfactant, which has been linked to hypersensitivity reactions, including anaphylaxis, and infusion site reactions. The CINVANTI formulation does not contain polysorbate 80 or any other synthetic surfactant. Our CINVANTI data has demonstrated the bioequivalence of CINVANTI to EMEND IV, supporting its efficacy for the prevention of both acute and delayed nausea and vomiting associated with HEC and nausea and vomiting associated with MEC. Results also showed CINVANTI was better tolerated in healthy volunteers than EMEND IV, with significantly fewer adverse events reported with CINVANTI.

CINVANTI was approved by the FDA in November 2017, and we commenced commercial sales in the U.S. in January 2018.

SUSTOL

SUSTOL is the first extended-release 5-HT3 receptor antagonist approved for the prevention of acute and delayed nausea and vomiting associated with both MEC and anthracycline and cyclophosphamide ("AC") combination chemotherapy regimens. A standard of care in the treatment of breast cancer and other cancer types, AC regimens are among the most commonly prescribed HEC regimens, as defined by both the National Comprehensive Cancer Network (“NCCN”) and the American Society of Clinical Oncology (“ASCO”).

SUSTOL is indicated in combination with other antiemetics in adults for the prevention of acute and delayed nausea and vomiting associated with initial and repeat courses of MEC or AC combination chemotherapy regimens. SUSTOL is an extended-release, injectable 5-HT3 receptor antagonist that utilizes our Biochronomer Technology to maintain therapeutic levels of granisetron for ≥5 days. The SUSTOL global Phase 3 development program was comprised of two, large, guideline-based clinical studies that evaluated SUSTOL’s efficacy and safety in more than 2,000 patients with cancer. SUSTOL’s efficacy in preventing nausea and vomiting was evaluated in both the acute phase (0–24 hours following chemotherapy) and the delayed phase (24–120 hours following chemotherapy).

SUSTOL was approved by the FDA in August 2016, and we commenced commercial sales in the U.S. in October 2016.

Biochronomer Technology

Our proprietary Biochronomer Technology is designed to deliver therapeutic levels of a wide range of otherwise short-acting pharmacological agents over a period from days to weeks with a single administration. Our Biochronomer Technology consists of polymers that have been the subject of comprehensive animal and human toxicology studies that have shown evidence of the safety of the polymer. When administered, the polymers undergo controlled hydrolysis, resulting in a controlled, sustained release of the pharmacological agent encapsulated within the Biochronomer-based composition. Furthermore, our Biochronomer Technology is designed to permit more than

one pharmacological agent to be incorporated, such that multimodal therapy can be delivered with a single administration.

Sales and Marketing

Our U.S.-based sales and marketing team consists of 75 employees as of December 31, 2024. The sales and marketing infrastructure includes a targeted, acute care and oncology sales force to establish relationships with a focused group of surgeons, oncologists, nurses and pharmacists. Additionally, the commercial team manages relationships with key accounts, such as managed care organizations, group purchasing organizations, hospital systems, oncology group networks, payors and government accounts. The sales force is supported by sales management, internal sales support, an internal marketing group and distribution support.

In January 2024, we entered into a co-promotion agreement with Crosslink Network to expand the sales network supporting ZYNRELEF. Crosslink Network is the lead partner in the U.S. for ZYNRELEF promotion for orthopedic indications.

Customers

Our Products are distributed in the U.S. through a limited number of specialty distributors and full line wholesalers that resell to healthcare providers and hospitals, the end users of our Products.

Competition

The biotechnology and pharmaceutical industries are extremely competitive. Our potential competitors are many in number and include major and mid-sized pharmaceutical and biotechnology companies. Many of our potential competitors have significantly more financial, technical and other resources than we do, which may give them a competitive advantage. In addition, they may have substantially more experience in effecting strategic combinations, in-licensing technology, developing drugs, obtaining regulatory approvals and manufacturing and marketing products. We cannot give any assurances that we can compete effectively with these other biotechnology and pharmaceutical companies. Our Products compete in highly competitive markets. Our potential competitors in these markets may succeed in developing products that could render our Products obsolete or noncompetitive.

ZYNRELEF competes in the postoperative pain management market with MARCAINETM (bupivacaine hydrochloride injection, solution, marketed by Pfizer Inc.) and generic forms of bupivacaine; NAROPIN® (ropivacaine, marketed by Fresenius Kabi USA, LLC) and generic forms of ropivacaine; EXPAREL® (bupivacaine liposome injectable suspension, marketed by Pacira BioSciences, Inc.); XARACOLL® (bupivacaine HCl implant, marketed by Innocoll Pharmaceuticals Limited); POSIMIR® (owned by Durect Corporation and to be marketed in the U.S. by Innocoll Pharmaceuticals Limited); ANJESO® (meloxicam injection, marketed by Baudax Bio, Inc.); OFIRMEV® (acetaminophen injection, marketed by Mallinckrodt Pharmaceuticals); SEGLENTIS® (celecoxib and tramadol hydrochloride, marketed by Kowa Pharmaceuticals America, Inc. in the U.S.); generic forms of IV acetaminophen; and potentially other products in development for postoperative pain management that reach the U.S. market.

APONVIE competes in the PONV prevention market with generic ondansetron, the current standard of care, generic aprepitant, and BARHEMSYS® (amisulpride, marketed by Eagle Pharmaceuticals, Inc.); TAK-951 (a peptide agonist under development (PH2) by Takeda Pharmaceutical Company Limited for PONV and not approved anywhere globally for any use); and potentially other products in development for PONV prevention that reach the market.

CINVANTI faces significant competition. NK1 receptor antagonists are administered for the prevention of CINV, in combination with 5-HT3 receptor antagonists, to augment the therapeutic effect of the 5-HT3 receptor antagonist. Currently available NK1receptor antagonists include: generic versions of EMEND® IV (fosaprepitant); EMEND® IV (fosaprepitant, marketed by Merck & Co., Inc.); EMEND® (aprepitant, marketed by Merck & Co., Inc.); AKYNZEO®(palonosetron, a 5-HT3 receptor antagonist, combined with netupitant, an NK1 receptor antagonist, marketed by Helsinn Therapeutics (U.S.), Inc.); VARUBI® (rolapitant, marketed by TerSera Therapeutics LLC), FOCINVEZTM (fosaprepitant injection, marketed by Amneal Pharmaceuticals, LLC) and other products that include an NK1 receptor antagonist that reach the market for the prevention of CINV.

SUSTOL also faces significant competition. Currently available 5-HT3 receptor antagonists include: AKYNZEO® (palonosetron, a 5-HT3 receptor antagonist, combined with netupitant, an NK1 receptor antagonist, marketed by Helsinn Therapeutics (U.S.), Inc.); SANCUSO® (granisetron transdermal patch, marketed by Cumberland Pharmaceuticals Inc.); and generic products including ondansetron (formerly marketed by GlaxoSmithKline plc as ZOFRAN), granisetron (formerly marketed by Hoffman-La Roche, Inc. as KYTRIL) and palonosetron (formerly marketed by Eisai in conjunction with Helsinn Healthcare S.A. as ALOXI) and Posfrea (Palonosetron Injection, marketed by AVYXA). Currently, palonosetron is the only 5-HT3receptor antagonist other than SUSTOL that is approved for the prevention of delayed CINV associated with MEC regimens. SUSTOL is indicated in combination with other antiemetics in adults for the prevention of acute and delayed nausea and vomiting associated with initial and repeat courses of MEC or AC combination chemotherapy regimens, which is considered to be a HEC regimen by the NCCN and ASCO. No other 5-HT3 receptor antagonist is specifically approved for the prevention of delayed CINV associated with a HEC regimen.

Manufacturing and Clinical Supplies

We do not own or operate manufacturing facilities for the production of commercial or clinical quantities of our Products. We currently rely on a small number of third-party manufacturers to produce compounds used in our product development and commercial activities and expect to continue to do so to meet the preclinical and clinical requirements of our Products and potential products and for all of our commercial needs. We currently have long-term manufacturing and processing agreements with certain third-party manufacturers. These agreements require that all third-party contract manufacturers and processors produce active pharmaceutical ingredients, excipients and finished products in accordance with the FDA's current Good Manufacturing Practices ("cGMP") and all other applicable laws and regulations. We maintain confidentiality agreements with potential and existing manufacturers in order to protect our proprietary rights related to our Products and our Biochronomer Technology.

Some of the critical materials and components used in manufacturing our Products are sourced from single suppliers. An interruption in the supply of a key material could significantly delay our research and development process or increase our expenses for commercialization or development of our Products. Specialized materials must often be manufactured for the first time for use in drug delivery technologies, or materials may be used in the technologies in a manner that is different from their customary commercial uses. The quality of materials can be critical to the performance of a drug delivery technology, so a reliable source that provides a consistent supply of materials is important. Materials or components needed for our drug delivery technologies may be difficult to obtain on commercially reasonable terms, particularly when relatively small quantities are required or if the materials traditionally have not been used in pharmaceutical products.

Intellectual Property

Our success will depend in large part on our ability to:

- obtain and maintain international and domestic patents and other legal protections for the proprietary technology, inventions and improvements we consider important to our business;
- prosecute and defend our patents;
- preserve our trade secrets; and
- operate without infringing the patents and proprietary rights of other parties.

We intend to continue to seek appropriate patent protection for the product candidates in our research and development programs and their uses by filing patent applications in the U.S. and other selected countries. We intend for these patent applications to cover, where possible, claims for composition of matter, medical uses, processes for preparation and formulations.

Our policy is to actively seek patent protection in the U.S. and to pursue equivalent patent claims in selected foreign countries, thereby seeking patent coverage for novel technologies and compositions of matter that may be commercially important to the development of our business. Granted patents include claims covering the product composition, methods of use and methods of preparation. Our existing patents may not cover future products,

additional patents may not be issued and current patents, or patents issued in the future, may not provide meaningful protection or prove to be of commercial benefit.

We have filed a number of U.S. patent applications on inventions relating to the composition of a variety of polymers, specific products, product groups and processing technology. As of December 31, 2024, we had a total of 31 issued U.S. patents and an additional 124 issued (or registered) foreign patents. The patents on the bioerodible technologies expire in April 2026.

CINVANTI is covered by 12 patents issued in the U.S. and by five patents issued (or registered) in foreign countries including Korea and Japan. U.S. patents covering CINVANTI have expiration dates ranging from September 2035 to February 2036. Foreign patents covering CINVANTI have expiration dates ranging from September 2035 to February 2036.

SUSTOL is covered by 18 patents issued (or registered) in foreign countries including France, Germany, Hong Kong, Ireland, Italy, Japan, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom. Foreign patents covering SUSTOL expire in September 2025.

ZYNRELEF is protected by 16 patents issued in the U.S. and by 100 patents issued (or registered) in foreign countries including Albania, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Mexico, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan, Turkey and the United Kingdom. U.S. patents covering ZYNRELEF have expiration dates ranging from March 2034 to April 2035. Foreign patents covering ZYNRELEF have expiration dates ranging from November 2033 to November 2036.

APONVIE is covered by 13 patents issued in the U.S. and by five patents issued (or registered) in foreign countries including Korea and Japan. U.S. patents covering APONVIE have expiration dates ranging from September 2035 to February 2036. Foreign patents covering APONVIE have expiration dates ranging from September 2035 to February 2036.

HTX-034 is protected by 13 patents issued in the U.S. and by 100 patents issued (or registered) in foreign countries including Albania, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Mexico, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan, Turkey and the United Kingdom. U.S. patents covering HTX-034 have expiration dates ranging from March 2034 to April 2035. Foreign patents covering HTX-034 have expiration dates ranging from November 2033 to November 2036.

Although we believe that our rights under patent applications we own provide a competitive advantage, the patent positions of pharmaceutical and biotechnology companies are highly uncertain and involve complex legal and factual questions. We may not be able to develop patentable products or processes, and may not be able to obtain patents from pending applications. Even if patent claims are allowed, the claims may not issue, or in the event of issuance, may not be sufficient to protect the technology owned by or licensed to us. Any patents or patent rights that we obtain may be circumvented, challenged or invalidated by our competitors.

We also rely on trade secrets, proprietary know-how and continuing innovation to develop and maintain our competitive position. We seek protection of these trade secrets, proprietary know-how and any continuing innovation, in part, through confidentiality and proprietary information agreements. However, these agreements may not provide meaningful protection for, or adequate remedies to protect, our technology in the event of unauthorized use or disclosure of information. Furthermore, our trade secrets may otherwise become known to, or be independently developed by, our competitors.

Government Regulation

Pharmaceutical Regulation

Pharmaceutical products that we market in the U.S. are subject to extensive government regulation. Likewise, if we receive approvals to market and distribute any such products abroad, they would also be subject to extensive foreign government regulation. Compliance with these regulations has not had a material effect on our capital

expenditures, earnings, or competitive position to date, but new regulations or amendments to existing regulations to make them more stringent could have such an effect in the future. We cannot estimate the expenses we may incur to comply with potential new laws or changes to existing laws, or the other potential effects these laws may have on our business.

In the U.S., the FDA regulates pharmaceutical products. FDA regulations govern the testing, research and development activities, manufacturing, quality, storage, advertising, promotion, labeling, sale and distribution of pharmaceutical products. Accordingly, there is a rigorous process for the approval of new drugs and ongoing oversight of marketed products. We are also subject to foreign regulatory requirements governing clinical trials and drug products if products are tested or marketed abroad. The approval process outside the U.S. varies from jurisdiction to jurisdiction and the time required may be longer or shorter than that required for FDA approval.

Regulation in the U.S.

The FDA testing and approval process requires substantial time, effort and money. The FDA approval process for new drugs includes, without limitation:

- preclinical studies;
- submission in the U.S. of an Investigational New Drug application ("IND"), for clinical trials conducted in the U.S.;
- adequate and well-controlled human clinical trials to establish safety and efficacy of the product;
- submission and review of a New Drug Application ("NDA") in the U.S.; and
- inspection of the facilities used in the manufacturing of the drug to assess compliance with the FDA's current cGMP regulations.

The FDA monitors the progress of trials conducted in the U.S. under an IND and may, at its discretion, re-evaluate, alter, suspend or terminate testing based on the data accumulated to that point and the FDA's risk/benefit assessment with regard to the patients enrolled in the trial. The FDA may also place a hold on one or more clinical trials conducted under an IND for a drug if it deems warranted. Furthermore, even after regulatory approval of an NDA is obtained, under certain circumstances, such as later discovery of previously unknown problems, the FDA can withdraw approval or subject the drug to additional restrictions.

Preclinical Testing

Preclinical studies include laboratory evaluation of the product and animal studies to assess the potential safety and effectiveness of the product. Most of these studies must be performed according to Good Laboratory Practices, a system of management controls for laboratories and research organizations to ensure the consistency and reliability of results.

An IND is the request for authorization from the FDA to administer an investigational new drug product to humans. The IND includes information regarding the preclinical studies, the investigational product's chemistry and manufacturing, supporting data and literature and the investigational plan and protocol(s). Clinical trials may begin 30 days after an IND is received, unless the FDA raises concerns or questions about the conduct of the clinical trials. If concerns or questions are raised, an IND sponsor and the FDA must resolve any outstanding concerns before clinical trials can proceed. An IND must become effective before human clinical trials begin. We have filed INDs in the U.S. and Clinical Trial Applications ("CTAs") in the EU, and we may file additional INDs and CTAs in the future. We cannot assure that submission of any additional INDs or CTAs for any of our Products will result in authorization to commence clinical trials.

Clinical Trials

Clinical trials involve the administration of the product candidate that is the subject of the trial to volunteers or patients under the supervision of a qualified principal investigator and in accordance with a clinical trial protocol, which sets forth details, such as the study objectives, enrollment criteria and the safety and effectiveness criteria to be evaluated. Each clinical trial must be reviewed and approved at each institution at which the study will be conducted by an independent Institutional Review Board in the U.S., referred to as an Ethics Committee in the EU and other markets or Research Ethics Board in Canada. The Institutional Review Board, Ethics Committee or Research Ethics Board (hereafter collectively referred to as "IRB") will consider, among other things, ethical factors, safety of human subjects and the possible liability of the institution arising from the conduct of the proposed clinical trial. In addition, clinical trials in the U.S. and other regions must be performed according to current Good Clinical Practices, which are enumerated in FDA regulations and guidance documents. Some studies include oversight by an independent group of experts, known as a data safety monitoring board, which authorizes whether a study may move forward based on certain data from the study and may stop the clinical trial if it determines that there is an unacceptable safety risk for subjects or other grounds.

The FDA or other regulatory authorities may order the temporary, or permanent, discontinuation of a clinical trial at any time, or impose other sanctions, if it or they believe that the clinical trial is not being conducted in accordance with regulatory requirements or presents an unacceptable risk to the clinical trial patients. An IRB may also require the clinical trial at the site to be halted, either temporarily or permanently, for failure to comply with the IRB's requirements, or it may impose other conditions.

Clinical trials typically are conducted in sequential phases: Phases 1, 2, 3 and 4. The phases may overlap. The FDA may require that we suspend clinical trials at any time on various grounds, including if the FDA makes a finding that the subjects participating in the trial are being exposed to an unacceptable health risk.

In Phase 1 clinical trials, the investigational product is usually tested on a small number of healthy volunteers to determine safety, any adverse effects, proper dosage, absorption, metabolism, distribution, excretion and other drug effects. Follow-on Phase 1b clinical trials may also evaluate efficacy with respect to trial participants.

In Phase 2 clinical trials, the investigational product is usually tested on a limited number of patients (generally up to several hundred) to preliminarily evaluate the efficacy of the drug for specific, targeted indications, to determine dosage tolerance and optimal dosage, and to identify possible adverse effects and safety risks. Multiple Phase 2 clinical trials may be conducted to obtain information prior to beginning Phase 3 clinical trials.

In Phase 3 clinical trials, the investigational product is administered to an expanded patient population to confirm proof of concept and efficacy claims, provide evidence of clinical efficacy and to further test for safety, generally at multiple clinical sites.

In Phase 4 clinical trials or other post-approval commitments, additional studies and patient follow-up are conducted to gain experience from the treatment of patients in the intended therapeutic indication. The FDA and other regulatory authorities may require a commitment to conduct post-approval Phase 4 studies as a condition of approval. Additional studies and follow-up may be conducted to document a clinical benefit where drugs are approved under accelerated approval regulations and based on surrogate endpoints. In clinical trials, surrogate endpoints are alternative measurements of the symptoms of a disease or condition that are substituted for measurements of observable clinical symptoms. In the U.S., failure to timely conduct Phase 4 clinical trials and follow-up could result in withdrawal of approval for products approved under accelerated approval regulations.

Clinical Data Review and Approval in the U.S.

The data from the clinical trials, together with preclinical data and other supporting information that establishes a drug candidate's safety, are submitted to the FDA in the form of an NDA, or sNDA (for approval of a new indication if the product candidate is already approved for another indication). Under applicable laws and FDA regulations, the FDA reviews the NDA within 60 days of receipt of the NDA submission to determine whether the application will be accepted for filing based on the FDA's threshold determination that the NDA is sufficiently complete to permit substantive review. If deemed complete, the FDA will "file" the NDA, thereby triggering substantive review of the application. The FDA can refuse to file any NDA that it deems incomplete or not properly reviewable.

The FDA has established internal substantive review goals of 10 months for most NDAs. The FDA has various programs, including Breakthrough Therapy, Fast Track and Priority Review, which are intended to expedite or simplify the process for reviewing drug candidates, and/or provide for approval based on surrogate endpoints. Even if a drug candidate qualifies for one or more of these programs, the FDA may later decide that the drug candidate no longer meets the conditions for qualification or that the period for FDA review or approval will not be shortened. Generally, drug candidates that may be eligible for these programs are those for serious or life-threatening conditions, those with the potential to address unmet medical needs, and those that offer meaningful benefits over existing treatments. For example, Fast Track is a process designed to facilitate the development, and expedite the review, of drugs to treat serious diseases and fill an unmet medical need. The request may be made at the time of IND submission and generally no later than the pre-NDA meeting. The FDA will respond within 60 calendar days of receipt of the request. Priority Review designation, which is requested at the time of an NDA submission, is designed to give drugs that offer major advances in treatment or provide a treatment where no adequate therapy exists, an initial review within 6 months as compared to a standard review time of 10 months. Although Fast Track and Priority Review do not affect the standards for approval, the FDA will attempt to facilitate early and frequent meetings with a sponsor of a Fast Track designated drug and expedite review of the application for a drug designated for Priority Review. Accelerated approval provides an expedited approval of drugs that treat serious diseases and that fill an unmet medical need based on a surrogate endpoint. The FDA, however, is not legally required to complete its review within these periods, and these performance goals may change over time.

If the FDA approves the NDA, it will issue an approval letter authorizing the commercial marketing of the drug with prescribing information for specific indications. As a condition of NDA approval, the FDA may require a risk evaluation and mitigation strategy ("REMS"), to help ensure that the benefits of the drug outweigh the potential risks. REMS can include medication guides, communication plans for healthcare professionals, and elements to assure safe use. Additionally, the FDA will inspect the facility or the facilities at which the drug is manufactured. Moreover, product approval may require substantial post-approval testing and surveillance to monitor the drug's safety or efficacy. Once granted, product approvals may be withdrawn if compliance with regulatory standards is not maintained or problems are identified following initial marketing. In many cases, the outcome of the review, even if generally favorable, is not an actual approval, but a "complete response" that generally outlines the deficiencies in the submission, which may require substantial additional testing or information before the FDA will reconsider the application. If, or when, those deficiencies have been addressed to the FDA's satisfaction in a resubmission of the NDA, the FDA will issue an approval letter.

Satisfaction of FDA requirements or similar requirements of state, local and foreign regulatory agencies typically takes several years and requires the expenditure of substantial financial resources. Information generated in this process is susceptible to varying interpretations that could delay, limit or prevent regulatory approval at any stage of the process. Accordingly, the actual time and expense required to bring a product to market may vary substantially. Data obtained from clinical activities is not always conclusive and may be susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. Success in early-stage clinical trials does not ensure success in later-stage clinical trials. Even if a product candidate receives regulatory approval, the approval may be significantly limited to specific disease states, patient populations and dosages, or have conditions placed on it that restrict the commercial applications, advertising, promotion or distribution of these products.

Once issued, the FDA may withdraw product approval if ongoing regulatory standards are not met or if safety problems occur after the product reaches the market. In addition, the FDA may require testing and surveillance programs to monitor the safety or effectiveness of approved products which have been commercialized, and the FDA has the power to prevent or limit further marketing of a product based on the results of these postmarketing programs. The FDA may also request or require additional Phase 4 clinical trials after a product is approved. The results of Phase 4 clinical trials can confirm the effectiveness of a product candidate and can provide important safety information to augment the FDA's voluntary adverse drug reaction reporting system. Any products manufactured or distributed by us pursuant to FDA approvals would be subject to continuing regulation by the FDA, including recordkeeping requirements and reporting of adverse experiences with the drug. Drug manufacturers and their subcontractors are required to register their establishments with the FDA and certain state agencies and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMPs, which impose certain procedural and documentation requirements on us and our third-party manufacturers.

In addition, both before and after approval is sought, we are required to comply with a number of FDA requirements. For example, we are required to report certain adverse reactions and production problems, if any, to the FDA, and to comply with certain limitations and other requirements concerning advertising and promotion for our products. In addition, quality control and manufacturing procedures must continue to conform to cGMP after approval, and the FDA periodically inspects manufacturing facilities to assess compliance with continuing cGMP. In addition, discovery of problems, such as safety problems, may result in changes in labeling or restrictions on a product manufacturer or NDA holder, including removal of the product from the market.

The FDA closely regulates the marketing and promotion of drugs. Approval may be subject to postmarketing surveillance and other recordkeeping and reporting obligations and involve ongoing requirements. Product approvals may be withdrawn if compliance with regulatory standards is not maintained or if problems occur following initial marketing. A company can make only those claims relating to safety and efficacy that are approved by the FDA. Failure to comply with these requirements can result in adverse publicity, warning letters, corrective advertising and potential civil and criminal penalties.

Clinical Trial Conduct and Product Approval Regulation in Non-U.S. Jurisdictions

In addition to regulations in the U.S., we may be subject to a variety of foreign regulations governing clinical trials and commercial sales and distribution of our products. For example, our clinical trials conducted in the EU must be done under an Investigational Medicinal Product Dossier, and the oversight of an Ethics Committee. If we market our products in foreign countries, we also will be subject to foreign regulatory requirements governing marketing approval for pharmaceutical products. The requirements governing the conduct of clinical trials, product approval, pricing and reimbursement vary widely from country to country. Whether or not FDA approval has been obtained, approval of a product by the comparable regulatory authorities of foreign countries must be obtained before manufacturing or marketing the product in those countries. The approval process varies from country to country and the time required for such approvals may differ substantially from that required for FDA approval. There is no assurance that any future FDA approval of any of our product candidates will result in similar foreign approvals or vice versa. The process for clinical trials in other jurisdictions are similar, and trials are heavily scrutinized by the designated Ethics Committee.

Section 505(b)(2) Applications

Some of our product candidates may be eligible for submission of applications for approval under the FDA's Section 505(b)(2) approval process, which provides an alternate path to FDA approval for new or improved formulations or new uses of previously approved products. Section 505(b)(2) was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, also known as the Hatch-Waxman Act, and allows approval of NDAs that rely, at least in part, on studies that were not conducted by or for the applicant and to which the applicant has not obtained a right of reference. Such studies can be provided by published literature, or the FDA can rely on previous findings of safety and efficacy for a previously approved drug. If the 505(b)(2) applicant can establish that reliance on the FDA's previous approval is scientifically appropriate, it may eliminate the need to conduct certain preclinical studies or clinical trials of the new product. Section 505(b)(2) applications may be submitted for drug products that represent a modification (e.g., a new indication or new dosage form) of an eligible approved drug. In such cases, the additional information in 505(b)(2) applications necessary to support the change from the previously approved drug is frequently provided by new studies submitted by the applicant. Because a Section 505(b)(2) application relies in part on previous studies or previous FDA findings of safety and effectiveness, preparing 505(b)(2) applications is generally less costly and time-consuming than preparing an NDA based entirely on new data and information from a full set of clinical trials. The FDA may approve the new product candidate for all, or some, of the label indications for which the referenced product has been approved, as well as for any new indication sought by the Section 505(b)(2) applicant. The law governing Section 505(b)(2) or FDA's current policies may change in such a way as to adversely affect our applications for approval that seek to utilize the Section 505(b)(2) approach. Such changes could result in additional costs associated with additional studies or clinical trials and delays.

The FDA provides that reviews and/or approvals of applications submitted under Section 505(b)(2) will be delayed in various circumstances. For example, the holder of the NDA for the listed drug may be entitled to a period of market exclusivity during which the FDA will not approve, and may not even review, a Section 505(b)(2) application from other sponsors. If the listed drug is claimed by one or more patents that the NDA holder has listed with the FDA, the Section 505(b)(2) applicant must submit a certification with respect to each such patent. If the 505(b)(2) applicant certifies that a listed patent is invalid, unenforceable or not infringed by the product that is the subject of the Section 505(b)(2) application, it must notify the patent holder and the NDA holder. If, within 45 days of providing this notice, the NDA holder sues the 505(b)(2) applicant for patent infringement, the FDA will not approve the Section 505(b)(2) application until the earlier of a court decision favorable to the Section 505(b)(2) applicant or the expiration of 30 months. The regulations governing marketing exclusivity and patent protection are complex, and it is often unclear how they will be applied in particular circumstances.

Drug Enforcement Agency Regulation

Our research and development processes involve the controlled use of hazardous materials, including chemicals. Some of these hazardous materials are considered to be controlled substances and subject to regulation by the U.S. Drug Enforcement Agency ("DEA"). Controlled substances are those drugs that appear on one of 5 schedules promulgated and administered by the DEA under the Controlled Substances Act ("CSA"). The CSA governs, among other things, the distribution, recordkeeping, handling, security and disposal of controlled substances. We must be registered by the DEA in order to engage in these activities, and we are subject to periodic and ongoing inspections by the DEA and similar state drug enforcement authorities to assess ongoing compliance with the DEA's regulations. Any failure to comply with these regulations could lead to a variety of sanctions, including the revocation, or a denial of renewal, of the DEA registration, injunctions or civil or criminal penalties.

Third-party Payor Coverage and Reimbursement

Commercial success of our Products will depend, in part, on the availability of coverage and reimbursement from third-party payors at the federal, state and private levels. Government payor programs, including Medicare and Medicaid, private health care insurance companies and managed care plans have attempted to control costs by limiting coverage and the amount of reimbursement for particular procedures or drug treatments. The U.S. Congress and state legislatures, from time to time, propose and adopt initiatives aimed at cost containment. Ongoing federal and state government initiatives directed at lowering the total cost of health care will likely continue to focus on health care reform, the cost of prescription pharmaceuticals and on the reform of the Medicare and Medicaid payment systems. Examples of how limits on drug coverage and reimbursement in the U.S. may cause reduced payments for drugs in the future include:

- changing Medicare reimbursement methodologies;
- fluctuating decisions on which drugs to include in formularies;
- revising drug rebate calculations under the Medicaid program or requiring that new or additional rebates be provided to Medicare, Medicaid and other federal or state healthcare programs; and
- reforming drug importation laws.

Some third-party payors also require pre-approval of coverage for new drug therapies before they will reimburse health care providers that use such therapies. While we cannot predict whether any proposed cost-containment measures will be adopted or otherwise implemented in the future, the announcement or adoption of these proposals could have a material adverse effect on our ability to obtain adequate prices for our current and future products and to operate profitably.

Reimbursement systems in international markets vary significantly by country and, within some countries, by region. Reimbursement approvals must be obtained on a country-by-country basis. In many foreign markets, including markets in which we hope to sell our Products, the pricing of prescription pharmaceuticals is subject to government pricing control. In these markets, once marketing approval is received, pricing negotiations could take significant additional time. As in the U.S., the lack of satisfactory reimbursement or inadequate government pricing of any of our Products would limit widespread use and lower potential Product revenues.

Anti-kickback, Fraud and Abuse and False Claims Regulation

We are subject to health care fraud and abuse regulation and enforcement by both the federal government and the states in which we conduct our business. Healthcare providers, physicians and third-party payors play a primary role in the recommendation and prescription of our Products. Arrangements with third-party payors and customers may expose us to applicable fraud and abuse and other healthcare laws and regulations that may constrain the business or financial arrangements and relationships through which we market, sell and distribute our Products.

Regulations under applicable federal and state healthcare laws and regulations include the federal health care programs' Anti-Kickback Law, which prohibits, among other things, persons from knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, in exchange for or to induce either the referral or purchase of any good or service for which payment may be made under federal health care programs such as the Medicare and Medicaid programs. Remuneration has been broadly defined to include anything of value, including cash, improper discounts, and free or reduced-price items and services. Many states have similar laws that apply to their state health care programs as well as private payors. In addition, the False Claims Act ("FCA") imposes liability on persons who, among other things, present or cause to be presented false or fraudulent claims for payment by a federal health care program. The FCA has been used to prosecute persons submitting claims for payment that are inaccurate or fraudulent, that are for services not provided as claimed, or for services that are not medically necessary. Actions under the FCA may be brought by the United States Department of Justice ("DOJ") or as a qui tam action by a private individual in the name of the government. Violations of the FCA can result in significant monetary penalties and treble damages. The federal government is using the FCA, and the accompanying threat of significant liability, in its investigation and prosecution of pharmaceutical and biotechnology companies throughout the country, for example, in connection with the promotion of products for unapproved uses and other sales and marketing practices.

The risk of being found in violation of these laws is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Moreover, recent health care reform legislation has strengthened many of these laws. For example, the Patient Protection and Affordable Care Act ("PPACA"), among other things, amends the intent requirement of the federal anti-kickback and criminal health care fraud statutes to clarify that a person or entity does not need to have actual knowledge of this statute or specific intent to violate it. In addition, PPACA provides that a claim including items or services resulting from a violation of the federal anti-kickback statute constitutes a false or fraudulent claim for purposes of the false claims statutes.

The continuing interpretation and application of these laws could have a material adverse impact on our business and our ability to compete in a highly competitive market.

Federal and State Sunshine Laws

We must comply with federal and state "sunshine" laws, now known as Open Payments that require transparency regarding financial arrangements with health care providers. This would include the reporting and disclosure requirements imposed by the PPACA on drug manufacturers regarding any "payment or transfer of value" made or distributed to physicians and teaching hospitals. Failure to submit required information can result in civil monetary penalties. A number of states have laws that require the implementation of commercial compliance programs, impose restrictions on drug manufacturer marketing practices and/or require pharmaceutical companies to track and report payments, gifts and other benefits provided to physicians and other health care professionals and entities.

Foreign Corrupt Practices Act

We are subject to the Foreign Corrupt Practices Act of 1997 ("FCPA"). The FCPA and other similar anti-bribery laws in other jurisdictions, such as the U.K. Bribery Act, generally prohibit companies and their intermediaries from providing money or anything of value to officials of foreign governments, foreign political parties, or international organizations with the intent to obtain or retain business or seek a business advantage. A determination that our operations or activities are not, or were not, in compliance with U.S. or foreign laws or regulations could result in the imposition of substantial fines, interruptions of business, loss of supplier, vendor or other third-party relationships, termination of necessary licenses and permits and other legal or equitable sanctions. Other internal or government investigations or legal or regulatory proceedings, including lawsuits brought by private litigants, may also follow as a consequence. We have a policy against using Company funds for political purposes, and we incurred no costs in 2024, 2023 or 2022 associated with legal or regulatory fines or settlements associated with violations of bribery, corruption or anti-competitive standards.

Patient Privacy and Data Security

We are required to comply, as applicable, with numerous federal and state laws, including state security breach notification laws, state health and personal information privacy laws and federal and state consumer protection laws, and to govern the collection, use and disclosure of personal information. For example, the California Consumer Privacy Act ("CCPA") became effective on January 1, 2020 and gave California residents expanded rights to access and request deletion of their personal information, opt out of certain personal information sharing and receive detailed information about how their personal information is used. Additionally, the California Privacy Rights Act, a ballot measure that was approved by California voters on November 3, 2020 and became operative on January 1, 2023, amends and expands the CCPA and its accompanying obligations, including through yet-to-be-finalized implementing regulations from a new enforcement agency, the California Privacy Protection Agency. Other states, such as Virginia and Colorado, have also passed comprehensive data privacy and security laws, and similar laws are being considered in several other states, as well as the federal and local levels. Other countries also have developed, or are developing, laws governing the collection, use and transmission of personal information, such as the General Data Protection Regulation in the EU that became effective in May 2018 and the Personal Information Protection and Electronic Documents Act that became effective in Canada in April 2000. In addition, most healthcare providers who utilize our Products or who may utilize other products we may sell in the future are subject to privacy and security requirements under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology and Clinical Health Act, and its implementing regulations (collectively, "HIPAA"). We are not a HIPAA covered entity, do not intend to become one, and we do not operate as a business associate to any covered entities. Therefore, these privacy and security requirements do not apply to us. However, we could be subject to civil and criminal penalties if we knowingly obtain individually identifiable or protected health information from a covered entity in a manner that is not authorized or permitted by HIPAA or for aiding and abetting the violation of HIPAA. The legislative and regulatory landscape for privacy and data protection continues to evolve, and there has been an increasing amount of focus on privacy and data protection issues with the potential to affect our business, including through affecting our customers. These laws could create liability for us or increase our cost of doing business, and any failure to comply could result in harm to our reputation, and potentially fines and penalties.

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 effect, thus complicating compliance efforts.

Environmental, Health and Safety Laws

Our operations are subject to complex and increasingly stringent environmental, health and safety laws and regulations. Further, in the future, we may open manufacturing facilities that would likely be subject to environmental and health and safety authorities in the relevant jurisdictions. These authorities typically administer laws which regulate, among other matters, the emission of pollutants into the air (including the workplace), the discharge of pollutants into bodies of water, the storage, use, handling and disposal of hazardous substances, the exposure of persons to hazardous substances, and the general health, safety and welfare of employees and members of the public. Violations of these laws could subject us to strict liability, fines or liability to third parties.

There are a number of proposed and pending rules and regulations relating to climate-related disclosures to which we may be subject if such rules become effective and survive pending legal challenges. For example on March 6, 2024, the U.S. Securities and Exchange Commission (the "SEC") adopted a final rule requiring public companies to include various climate-related disclosures in certain documents filed with the SEC, including climate-related financial statement metrics, greenhouse gas emissions and climate related targets and goals, and management's role in managing material climate-related risks. A number of state legislators and regulators have adopted or are currently considering proposing or adopting other rules, regulations, directives, initiatives and laws requiring climate-related disclosures or limiting (or affirmatively requiring) certain climate-related conduct, including California laws S.B. 253, S.B. 261, and A.B. 1305. The Company is monitoring the status of such regulations.

Other Laws

We are subject to a variety of financial disclosure and securities trading regulations as a public company in the U.S., including laws relating to the oversight activities of the SEC and the regulations of The Nasdaq Capital Market, on which our shares are traded. We are also subject to various laws, regulations and recommendations relating to safe working conditions, laboratory practices and the experimental use of animals.

Human Capital Management

As of December 31, 2024, we employed 122 full-time employees, 75 of whom are involved in sales and marketing activities, 12 of whom are involved in research and development activities and 35 of whom are involved in general and administrative activities. None of our employees are represented by a labor union or covered by a collective bargaining agreement.

We continually evaluate business needs and opportunities in addition to balancing in-house expertise and capacity with that of outsourced resources. Currently, we outsource drug manufacturing work to contract manufacturers in addition to a few other specialty tasks for which we do not have in-house expertise.

Drug development is a complex endeavor that requires deep expertise and experience across a broad array of disciplines. Pharmaceutical companies both large and small compete for a limited number of qualified applicants to fill specialized positions, which continued in 2024, with heavy competition for talent. To attract qualified applicants, we offer a total rewards package consisting of base salary and cash bonus incentive targets aligned with the applicable market norms and long term equity compensation. Bonus opportunity and equity compensation increase as a percentage of total compensation based on level of responsibility. Actual bonus payouts for all employees except our executive officers are based on a weighting of Company and individual performance, which varies based on level of responsibility. Actual bonus payout for our executive officers (including our named executive officers for the year ended December 31, 2024) is based exclusively on Company performance, as will be more fully described in our Definitive Proxy Statement to be filed with the SEC related to our 2025 Annual Meeting of Stockholders.

As additional means of attracting and retaining appropriate talent, we offer all employees a robust benefits package offering a comprehensive array of benefits including generous employer contributions toward medical, dental, and vision insurance as well as company paid life and disability insurance coverage. We also offer a retirement savings plan with a company match and an Employee Stock Purchase Plan.

We support our employees' further development with individualized development plans, mentoring, coaching, internal development workshops, and certain financial support, including Company-paid external conference attendance and tuition reimbursement. We sponsor professional society memberships for all employees, as well as memberships for interested female employees in a women's advocacy organization supporting women in Science, Technology, Engineering and Math.

We also monitor employee compliance with applicable laws and regulations through a third-party ethics and compliance hotline system that facilitates anonymous internal and external reporting of complaints or concerns. We did not receive any complaints during 2024.

We are committed to the safety, health and security of our employees. We believe a hazard-free environment is critical for the success of our business. Throughout our operations, we strive to ensure that all our employees have

access to safe workplaces that allow them to succeed in their jobs. Our experience and continuing focus on workplace safety has enabled us to preserve business continuity without sacrificing our commitment to keeping our colleagues safe.

Company Information

Our principal executive offices are located at 100 Regency Forest Drive, Suite 300, Cary, North Carolina 27518, and our telephone number is (858) 251-4400. Our website address is *www.herontx.com*. We make our periodic and current reports, and any amendments to those reports, available on our website, free of charge, as soon as reasonably practicable after such material is electronically filed with, or furnished to, the SEC. No portion of our website is incorporated by reference into this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

Risk Factor Summary

You should carefully consider the following information about risks and uncertainties that may affect us or our business, together with the other information appearing elsewhere in this Annual Report on Form 10-K. If any of the following events, described as risks, actually occur, our business, financial condition, results of operations and future growth prospects could be materially and adversely affected. In these circumstances, the market price of our common stock could decline, and you may lose all or part of your investment in our securities. An investment in our securities is speculative and involves a high degree of risk. You should not invest in our securities if you cannot bear the economic risk of your investment for an indefinite period of time and cannot afford to lose your entire investment.

Below is a summary of material factors that make an investment in our securities speculative or risky. Importantly, this summary does not address all of the risks that we face. Additional discussion of the risks summarized in this risk factor summary, as well as other risks that we face, can be found below.

- We are substantially dependent on the commercial success of our Products, and if these Products do not attain market acceptance by healthcare professionals and patients, our business and results of operations will suffer.
- If we cannot maintain satisfactory pricing of our Products, that is also acceptable to the U.S. government, insurance companies, managed care organizations and other payors, or arrange for favorable reimbursement policies, our product sales may be adversely affected and our future revenue may suffer.
- If we fail to comply with our reporting and payment obligations under U.S. governmental pricing and contracting programs, we could be subject to additional reimbursement requirements, penalties and fines, which could have a negative impact on our business, financial condition, and results of operations.
- If our suppliers or contract manufacturers are unable to manufacture in commercially viable quantities, or perform as expected, we could face delays in our ability to commercialize our Products, our costs will increase and sales of our Products , may be severely hindered.
- Certain of the components used in the manufacture of our Products are, or might be, sourced from a single vendor, and the loss or disruption of this vendor could significantly harm our business.
- We face intense competition from other companies developing products for the management of postoperative pain or the prevention of CINV and PONV, including lower-cost generic products, which may limit our ability to sell our products.
- Our product platforms or product development efforts may not produce safe, efficacious or commercially viable products, and, if we are unable to develop new products, our business may suffer.
- If we are unable to recruit and retain skilled employees, we may not be able to achieve our objectives.
- Our business strategy may include international expansion, acquisitions of other businesses, products or product licenses. We may not be able to successfully manage such activities.
- Our business strategy may include entry into collaborative agreements. We may not be able to enter into collaborative agreements or may not be able to negotiate commercially acceptable terms for these agreements.
- Natural or man-made disasters, including severe weather, epidemics, pandemics, cyber attacks, acts of war or terrorism, armed conflict, federal workforce uncertainty, or resource shortages, could disrupt our investigational drug candidate development and approved drug commercialization efforts or have other negative consequences on our business and adversely affect results.
- We have a history of losses, we expect to generate losses in the near future, and we may never achieve or maintain profitability.

- Additional capital will be needed in the future to enable us to implement our business plan, and we may be unable to raise capital, which would force us to limit or cease our operations.
- Provisions contained in our debt instruments limit our ability to incur additional indebtedness.
- We could be exposed to significant product liability claims that could be time-consuming and costly to defend, divert management attention and adversely impact our ability to obtain and maintain insurance coverage.
- If any of our services providers are characterized as employees, we would be subject to employment and tax withholding liabilities and other additional costs.
- The investment of our cash is subject to risks, which may cause losses or adversely affect the liquidity of these investments and our results of operations, liquidity and financial condition.
- Adverse developments affecting the financial services industry, such as actual events or concerns involving liquidity, defaults or non-performance by financial institutions or transactional counterparties, could adversely affect our current and projected business operations and its financial condition and results of operations.
- If we fail to comply with continuing federal, state and foreign regulations with respect to our Products for which we obtain regulatory approval, we could lose our approvals to market drugs, and our business would be seriously harmed.
- The commercial use of our Products may cause unintended side effects or adverse reactions, or incidents of misuse may occur, which could adversely affect our business.
- The pharmaceutical industry is subject to significant regulation and oversight pursuant to anti-kickback laws, false claims statutes and anti-corruption laws, which may result in significant additional expense and limit our ability to commercialize our Products. In addition, any failure to comply with these regulations could result in substantial fines or penalties.
- We may incur significant liability if it is determined that we are promoting the “off-label” use of drugs or promoting in a non-truthful and misleading way.
- Health care reform could increase our expenses and adversely affect the commercial success of our Products.
- Our use of hazardous materials could subject us to liabilities, fines and sanctions.
- Our employees may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could have a negative impact on our business.
- We are and may become subject to stringent and evolving laws, regulations, rules, contractual obligations, policies and other obligations related to data privacy and security. Our actual or perceived failure to comply with such obligations could lead to regulatory investigations or actions, litigation, fines and penalties, disruptions of our business operations, reputational harm, loss of revenue or profits, and other adverse business consequences.
- Security breaches and other disruptions could compromise our information and expose us to liability, which would cause our business and reputation to suffer.
- Changes in government policies, laws, and regulations and with respect to the government workforce may have a negative impact on our business and the markets in which we operate.
- If we are unable to adequately protect or enforce our intellectual property rights, we may lose valuable assets or incur costly litigation to protect our rights.
- We may be subject to claims that we have infringed on the intellectual property rights of others, and any litigation could force us to stop developing or selling potential products and could be costly, divert management attention and harm our business.

- We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.
- The price of our common stock has been and may continue to be volatile.
- Our certificate of incorporation, our bylaws and Delaware law contain provisions that could discourage another company from acquiring us and may prevent attempts by our stockholders to replace or remove our current management.
- Future utilization of net operating loss carryforwards or research and development credit carryforwards may be impaired due to recent changes in ownership.
- Actions of activist stockholders could impact the pursuit of our business strategies, cause us to incur substantial costs, divert our management's attention and resources, and adversely affect our business, results of operations, liquidity, financial condition, and the trading price of our common stock.
- If we identify a material weakness in our internal control over financial reporting, our ability to meet our reporting obligations and the trading price of our common stock could be negatively affected.

Because we do not anticipate paying any cash dividends on our common stock in the foreseeable future, capital appreciation, if any, will be the source of gain for our stockholders.

Risks Related to Our Business

We are substantially dependent on the commercial success of our Products, and if these Products do not attain market acceptance by healthcare professionals and patients, our business and results of operations will suffer.

The success of our business is substantially dependent on our ability to achieve market acceptance of our Products. Although members of our management team have prior experience launching new drugs, ZYNRELEF, APONVIE, CINVANTI and SUSTOL are the first four products that we have launched.

Further, even if our sales organization performs as expected, the revenue that we may receive from the sales of our Products, may be less than anticipated due to factors that are outside of our control. The factors that may affect revenue include:

- the scope of our approved Product labels, including any expanded indications;
- the perception of physicians and other members of the health care community of the safety and efficacy and cost-competitiveness relative to that of competing products;
- our ability to maintain successful sales, marketing and educational programs for certain physicians and other health care providers;
- our ability to raise patient and physician awareness of the risks associated with using opioids for postoperative pain management and encourage physicians to consider utilizing a non-opioid alternative;
- our ability to raise patient and physician awareness of CINV associated with AC combination chemotherapy regimens, MEC or HEC and encourage physicians to look for incidence of CINV among patients;
- our ability to raise patient and physician awareness of PONV associated with surgical procedures and encourage physicians to look for incidence of PONV among patients;
- the timing and scope of acceptance of our Products by institutional formulary committees and the amount of time between such acceptance and the first use of our Products within the applicable setting of care;
- patient and physician satisfaction with our Products;
- the size of the potential market for our Products;
- our ability to obtain coverage and adequate reimbursement from government and third-party payors;
- unfavorable publicity concerning our Products or similar products;
- the introduction, availability and acceptance of competing treatments, including competing generic products;
- adverse event information relating to our Products or similar classes of drugs;
- product liability litigation alleging injuries relating to our Products or similar classes of drugs;
- our ability to maintain and defend our patents and trade secrets for our Products and our Biochronomer Technology;
- our ability to continue to have our Products manufactured at commercial production levels successfully and on a timely basis;

- our ability to scale up manufacturing of our Products to meet commercial requirements;
- the availability of raw materials necessary to manufacture our Products;
- our ability to establish and maintain successful commercial arrangements like our co-promotion agreement with Crosslink Network;
- our ability to access third parties to manufacture and distribute our Products on acceptable terms or at all and those third parties' ability and/or willingness to fully perform their obligations;
- regulatory developments related to the manufacture or continued use of our Products;
- conduct of post-approval study requirements and the results thereof;
- the extent and effectiveness of sales and marketing and distribution support for our Products;
- our competitors' activities, including decisions as to the timing of competing product launches, generic entrants, pricing and discounting; and
- any other material adverse developments with respect to the commercialization of our Products.

Our business will be adversely affected if, due to these or other factors, our commercialization of our Products does not achieve the acceptance and demand necessary to sustain revenue growth. If we are unable to successfully commercialize our Products our business and results of operations will suffer.

If we are unable to develop and maintain sales, marketing and distribution capabilities or enter into agreements with third parties to sell and market our Products, our sales may be adversely affected.

We have established an internal commercial organization for the sale, marketing and distribution of our Products in the U.S. The development of a sales organization to market our Products is expensive and time consuming, and we cannot be certain that we will be able to successfully develop this capacity or that this function will execute as expected. If we are unable to establish and maintain adequate sales, marketing and distribution capabilities, whether independently or with third parties, we may not be able to generate product revenue and our business and results of operations will suffer.

Our internal sales and marketing organization is not currently structured or staffed to launch products on an international level and, therefore, we may not be able to successfully commercialize our Products outside of the U.S. In order to commercialize our Products in jurisdictions other than the U.S., we would be required to obtain separate marketing approvals and comply with numerous and varying regulatory requirements in each foreign country. If we decide to seek the assistance of third parties with international expertise to help commercialize our Products outside of the U.S., we may not be successful in finding willing third parties and, even if we are able to find willing third parties, they might not be able to successfully obtain the approvals and take the steps needed to commercialize our Products. If we decide to commercialize our Products outside of the U.S. without the assistance of third parties with international expertise, it may take longer than expected to obtain the approvals and take the steps needed to commercialize them. As a result, we may decide to delay or abandon development efforts in certain markets. Any such delay or abandonment may have an adverse effect on the benefits otherwise expected from marketing our Products in foreign countries.

From time to time, we may enter into additional arrangements with third parties to help commercialize our Products and we would be dependent on the subsequent efforts of these other parties to sell our Products. Currently, we have a co-promotion agreement with Crosslink Network, pursuant to which we have committed to pay Crosslink Network certain agreed-upon compensation to co-promote the sale of certain products and Crosslink Network has been appointed as our exclusive co-promoter of ZYNRELEF within the U.S. If Crosslink Network or any such other third

party fails to perform their obligations as anticipated for any reason, it could adversely impact our financial condition and be detrimental to our future business prospects.

If we cannot maintain satisfactory pricing of our Products that is also acceptable to the U.S. government, insurance companies, managed care organizations and other payors, or arrange for favorable reimbursement policies, our product sales may be adversely affected and our future revenue may suffer.

The continuing efforts of the U.S. government, insurance companies, managed care organizations and other payors of health care costs to contain or reduce costs of health care may adversely affect our ability to generate adequate revenues and gross margins to make our Products commercially viable. Our ability to commercialize our Products successfully will depend in part on the extent to which governmental authorities, private health insurers and other organizations establish appropriate reimbursement levels for the cost of such products and related treatments and for what uses reimbursement will be provided.

Adoption of our Products by the medical community may be limited if third-party payors will not offer adequate coverage. In addition, third-party payors often challenge the price and cost-effectiveness of medical products and services, and such pressure may increase in the future. In many cases, uncertainty exists as to the adequate reimbursement status of newly approved healthcare products. Accordingly, our Products may not be considered cost-effective and adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to realize a profit. Further, coverage policies and third-party payor reimbursement rates may change at any time. Even if favorable coverage and reimbursement status is attained for one or more of our Products or product candidates for which we receive regulatory approval, less favorable coverage policies and reimbursement rates may be implemented in the future.

Legislation and regulations affecting the pricing of pharmaceuticals may change and any such changes could further limit reimbursement. Cost control initiatives may decrease coverage and payment levels for our Products and, in turn, the reimbursement that we receive. We are unable to predict all changes to the coverage or reimbursement methodologies that will be applied by private or government payors to our Products. If our Products do not receive adequate reimbursement, our revenue could be severely limited.

In the U.S., given recent federal and state government initiatives directed at lowering the total cost of health care, the U.S. Congress and state legislatures will likely continue to focus on health care reform, reducing the cost of prescription pharmaceuticals and reforming the Medicare and Medicaid systems. For example, the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively, “PPACA”) encourages comparative effectiveness research. Any adverse findings for our Products from such research may negatively impact reimbursement available for our Products. Similarly, the SUPPORT Act, which was signed into law on October 24, 2018, established policies to encourage the prevention and treatment of opioid addiction and the development of non-opioid pain management treatments. Due to the SUPPORT Act, Medicare pays separately for certain non-opioid pain management drugs in ambulatory surgical centers (“ASC”) but not in the hospital outpatient setting (“OPPS”). However, under the Consolidated Appropriations Act of 2023, the prior payment policy was replaced by a new three-year period of separate payment for non-opioid pain relief products in the OPPS and ASC settings for 2025 through 2027. As of January 1, 2025, Medicare has implemented this new payment methodology, which remains in effect through December 31, 2027. For 2025, ZYNRELEF is included in this new policy, effective April 1, which means continued separate Medicare payment in the OPPS and ASC settings. While this change may improve access to ZYNRELEF, it may also lead to greater competition.

In March 2021, Congress enacted the American Rescue Plan Act of 2021, which removed the statutory cap on rebates that manufacturers pay to state Medicaid programs pursuant to the Medicaid Drug Rebate Program. The Infrastructure Investment and Jobs Act, signed into law on November 15, 2021, also included a provision requiring drug manufacturers to pay CMS a refund for certain amounts of Part B drugs that are discarded from a single-dose container or single-use package. Under the law, and a CMS Proposed Rule issued in July 2022, this refund program became effective on January 1, 2023. Neither of these pieces of legislation have had a material impact on the Company, through December 31, 2024.

Further, the Inflation Reduction Act of 2022 (“IRA”), signed into law in August 2022, includes various provisions intended to address drug-pricing issues (such as provisions empowering the federal government to negotiate the

price of some high-cost, single-source Medicare Part B and Part D drugs (with the new pricing to take effect in January 2026 or thereafter) and requiring rebates for certain Part B and Part D drugs if their price increases outpace inflation). Although it is too early to assess the impact of these provisions on our Products, our Products would be unlikely to be selected for price negotiation given their low Medicare expenditures relative to other drugs. However, Medicare inflation rebates may impact our product pricing or increase our rebate obligations, though no material impact has been observed thus far through December 31, 2024.

In addition, developments in Medicare hospital outpatient reimbursement for 340B-acquired drugs may further drive 340B hospital business for Heron. The 340B program allows certain hospitals and safety net providers to purchase Part B outpatient drugs from manufacturers at federally mandated discounted rates. Due to the June 2022 Supreme Court decision in American Hospital Association et al. v. Becerra et al, since January 1, 2023, the Medicare Part B hospital outpatient payment rate for 340B-acquired drugs has returned to being at the same rate as the rate for non-340B hospitals, Average Selling Price (ASP) + 6% methodology.

As evidenced by developments such as these, low prices of our Products in the U.S. and foreign jurisdictions may have a negative impact on the prices of our Products in the U.S. For example, if legislation is passed or regulations are adopted that tie the prices of U.S. pharmaceuticals to the cost of pharmaceuticals in other countries, then this could lower the potential price of the product in the U.S., thereby limiting the revenue we would be able to generate from it.

Economic pressure on state budgets may result in states increasingly seeking to achieve budget savings through mechanisms that limit coverage or payment for drugs. State Medicaid programs are increasingly asking manufacturers to pay supplemental rebates and requiring prior authorization by the state program for use of any drug for which supplemental rebates are not being paid. Further, the trend toward managed health care in the U.S., which could significantly influence the purchase of health care services and products, may result in lower prices for our Products. While we cannot predict whether any legislative or regulatory proposals affecting our business will be adopted, the announcement or adoption of these proposals could have a material and adverse effect on our potential revenues and gross margins.

If we fail to comply with our reporting and payment obligations under U.S. governmental pricing and contracting programs, we could be subject to additional reimbursement requirements, penalties and fines, which could have a negative impact on our business, financial condition, and results of operations.

The Medicare program and certain government pricing programs, including the Medicaid drug rebate program, the Public Health Services' 340B drug pricing program, and the pricing program under the Veterans Health Care Act of 1992 impact the reimbursement we may receive from sales of our Products, or any other products that are approved for marketing in the U.S. Pricing and rebate calculations vary among programs. The calculations are complex and are often subject to interpretation by manufacturers, governmental or regulatory agencies and the courts. We are required to submit a number of different pricing calculations to government agencies on a quarterly basis. Failure to comply with our reporting and payment obligations under U.S. governmental pricing and contracting programs may result in additional payments, penalties and fines due to government agencies, which could negatively impact our business, financial condition and results of operations.

If our suppliers or contract manufacturers are unable to manufacture in commercially viable quantities, we could face delays in our ability to commercialize our Products, our costs will increase and sales of our Products , may be severely hindered.

The commercial success of our Products are dependent on the ability of our contract manufacturers to produce a product in commercial quantities at competitive costs of manufacture in a process that is validated by the FDA. We have scaled up manufacturing for CINVANTI and ZYNRELEF in order to realize important economies of scale, and these activities took time to implement, required additional capital investment, process development and validation studies and regulatory approval. We cannot guarantee that we will be successful in achieving competitive manufacturing costs through such scaled-up activities or that our contract manufacturers will perform their obligations. In addition, our manufacturing agreements include payment terms that require significant cash payments at specified times, and if we are unable to make the required payments at the required times, we are at risk of default under the agreements, which would severely hinder our ability to procure adequate amounts of our Products.

The manufacture of pharmaceutical products is a highly complex process in which a variety of difficulties may arise, including product loss due to material failure, equipment failure, vendor error, operator error, labor shortages, inability to obtain material, equipment or transportation, physical or electronic security breaches and natural or man-made disasters. Problems with manufacturing processes could result in product defects or manufacturing failures, which could require us to delay shipment of products or recall products previously shipped, or could impair our ability to expand into new markets or supply products in existing markets. We may not be able to resolve any such problems in a timely manner, if at all.

We depend on third-party suppliers and contract manufacturers to manufacture our Products, and we expect to do the same for any future products that we develop; if our contract manufacturers do not perform as expected, our business could suffer.

We do not own or operate manufacturing facilities for the production of commercial or clinical quantities of any product, including our Products. Our ability to successfully commercialize our Products depends in part on our ability to arrange for, and rely on, other parties to manufacture our products at a competitive cost, in accordance with regulatory requirements, and in sufficient quantities for clinical testing and commercialization. We currently rely on a small number of third-party manufacturers to produce compounds used in our Products. Certain contract manufacturers are, at the present time (and are expected to be for the foreseeable future), our sole resource to manufacture certain key components of our Products. Although we entered into long-term commercial manufacturing agreements for the manufacture of our Products, including long-term agreements for the manufacture of our Biochronomer Technology, we might not be able to successfully negotiate long-term agreements with any additional third parties, or we might not receive all required regulatory approvals to utilize such third parties, and, accordingly, we might not be able to reduce or remove our dependence on a single supplier for the commercial manufacturing of our Products. We may have difficulties with these manufacturer relationships, and we may not be able to find replacement contract manufacturers on satisfactory terms or on a timely basis. At times, our contract manufacturers or other third parties might not perform their obligations under long-term commercial manufacturing agreements or other agreements, which could impede the manufacturing of our Products and could require us to incur additional costs, including legal fees, as we seek to enforce our contractual rights. Our reliance on third-party suppliers and contract manufacturers also subjects our business to risks associated with geographic areas in which those parties reside, which could include natural or man-made disasters, including severe weather, epidemics, pandemics, acts of war or terrorism, armed conflict or resource shortages. Due to regulatory and technical requirements, we may have limited ability to shift production to a different third-party should the need arise. We cannot be certain that we could reach agreement on reasonable terms, if at all, with such a manufacturer. Even if we were to reach agreement, the transition of the manufacturing process to a different third-party could take a significant amount of time and money and may not be successful.

Further, we, along with our contract manufacturers, are required to comply with FDA and foreign regulatory requirements related to product testing, quality assurance, manufacturing and documentation. Our contract manufacturers may not be able to comply with the applicable FDA or foreign regulatory requirements. They may be required to pass an FDA pre-approval inspection for conformity with cGMP before we can obtain approval to manufacture our Products and our product candidates and will be subject to ongoing, periodic, unannounced inspection by the FDA and corresponding state agencies to ensure strict compliance with cGMP, and other applicable government regulations and corresponding foreign standards. If we and our contract manufacturers fail to achieve and maintain high manufacturing standards in compliance with cGMP, or fail to scale up manufacturing processes in a timely manner, we may experience manufacturing errors resulting in defective products that could be harmful to patients, product recalls or withdrawals, delays or interruptions of production or failures in product testing or delivery, delay or prevention of filing or approval of marketing applications for our product candidates, cost overruns or other problems that could seriously harm our business. Not complying with FDA or foreign regulatory requirements could result in an enforcement action, such as a product recall, or prevent commercialization of our product candidates and delay our business development activities. In addition, such failure could be the basis for the FDA or foreign regulators to issue a warning or untitled letter or take other regulatory or legal action, including recall or seizure, total or partial suspension of production, suspension of ongoing clinical trials, refusal to approve pending applications or supplemental applications, and potentially civil and/or criminal penalties depending on the matter.

Our Products may be in competition with other products for access to the facilities of third parties and, consequently, could be subject to manufacturing delays if our contractors give other companies' products greater priority than ours. Additionally, our contractors might be required by government regulation or government authority to prioritize production of other products, such as priority-rated orders pursuant to the U.S. Government Department of Defense Operation Warp Speed under the Health Resources Priority and Allocations System regulation. For this and other reasons, our third-party contract manufacturers may not be able to manufacture our Products in a cost-effective or timely manner. If not manufactured in a timely manner, the manufacture of any of our Products or their submission for regulatory approval could be delayed, and our ability to deliver products to market on a timely basis could be impaired. This could increase our costs, cause us to lose revenue or market share and damage our reputation.

Certain of the components used in the manufacture of our Products are, or might be, sourced from a single vendor, and the loss or disruption of this vendor could significantly harm our business.

Some of the critical materials and components used in manufacturing our Products are, or might be, sourced from single suppliers. An interruption in the supply of a key material could significantly delay our research and development process or increase our expenses for commercialization or development products. Specialized materials must often be manufactured for the first time for use in drug delivery technologies, or materials may be used in the technologies in a manner different from their customary commercial uses. The quality of materials can be critical to the performance of a drug delivery technology, so a reliable source that provides a consistent supply of materials is important. Materials or components needed for our drug delivery technologies may be difficult to obtain on commercially reasonable terms, particularly when relatively small quantities are required or if the materials traditionally have not been used in pharmaceutical products. Our reliance on a single vendor for certain components used in the manufacturing of our Products also subjects our business to risk associated with the geographic areas in which those single vendors reside, which could include natural or man-made disasters, including severe weather, epidemics, pandemics, acts of war or terrorism, armed conflict, geopolitical instability or resource shortages. Such adverse events could cause global supply chain interruptions that could increase our costs and, to the extent such interruptions impair our ability to have sufficient inventory, cause us to lose revenue or market share. We continually evaluate our supply chains to identify potential risks and needs for additional manufacturers and other suppliers for the manufacturing of our Products. Establishing additional or replacement suppliers for certain raw materials in our proprietary polymers, if required, may not be accomplished quickly, or at all, and may involve significant expense. If we are able to find a replacement supplier, we would need to evaluate and qualify such replacement vendor and its ability to meet quality and compliance standards. Any change in suppliers or the manufacturing process could require additional regulatory approval and result in operational delays.

Some of our suppliers may experience disruption to their respective supply chains due to the adverse events or conditions, including the effects of a pandemic or disease outbreak, the imposition of tariffs and other trade protective measures, rising geopolitical tensions, armed conflict or other factors, which could delay, prevent or impair our development or commercialization efforts.

We obtain certain critical materials and components used in manufacturing our Products from third-party suppliers whose operations might be directly or indirectly affected by adverse events or conditions, including the effects of a pandemic or disease outbreak, the imposition of tariffs and other trade protective measures, rising geopolitical tensions, armed conflict or other factors (including, without limitation, adverse weather conditions, political instability, war, civil unrest, economic instability, outbreaks of disease, or other public health emergencies and the impact of any such U.S. or foreign government response and public fears regarding any of the foregoing). For example, in particular, in recent years, tensions between mainland China and Taiwan have further escalated, with China accelerating the development of military capabilities and threatening the use of military force to gain control over Taiwan in certain circumstances. Similarly, the ongoing armed conflict between Russia and Ukraine remains unpredictable and could escalate into a broader armed conflict and additional economic sanctions by the U.S., the United Nations or other countries against Russia. If we are unable to obtain these critical materials and components in sufficient quantities and in a timely manner, the manufacture, development, testing and clinical study of our Products might be delayed or infeasible, which could significantly harm our business.

We have, or may have, significant inventory levels of drug products, and write-downs related to the impairment of those inventories may adversely impact or delay our profitability.

We have, or may have, significant inventory levels of drug products, and we may increase those inventory levels as we continue to commercialize our Products. We determine inventory levels of drug products based on a variety of estimates, including timing of regulatory approval of our drug products, market demand for our drug products and those of our competitors, entrance of competing drug products, introduction of new, or changes in interpretations of, pharmaceutical regulations, and changes in healthcare provider and insurer reimbursement policies. These estimates are inherently difficult to make and may be inaccurate. We analyze our inventory levels and will write down inventory that has become obsolete. If our initial estimate of the appropriate inventory levels of drug products is or becomes inaccurate, write-downs of inventory may be required, which would be recorded as cost of product sales and thereby adversely impact or delay our profitability.

It is difficult to predict commercial demand for our Products, and, if our estimates of demand are too low, it may adversely impact our ability to generate revenue and profits in the short term and our ability to establish and maintain a competitive position in the relevant markets where our Products are sold, or may be sold, in the future.

Despite our efforts to maintain appropriate inventory levels of our Products, as we continue to commercialize our Products, our estimates of appropriate inventory levels may not be accurate. If we fail to build up sufficient inventory levels to meet commercial demand, our ability to generate revenue and profits in the short term would be adversely impacted. Failure to meet demand may also cause us to lose market share to our competitors, which could materially and adversely affect our business, financial condition, cash flows and results of operations. Given the time required to scale production and replenish inventory, our ability to correct for inaccurate estimates in a timely manner may be limited.

We face intense competition from other companies developing products for the management of postoperative pain or the prevention of CINV and PONV, which may limit our ability to sell our Products.

ZYNRELEF competes in the postoperative pain management market with MARCAINETM (bupivacaine hydrochloride injection, solution, marketed by Pfizer Inc.) and generic forms of bupivacaine; NAROPIN® (ropivacaine, marketed by Fresenius Kabi USA, LLC) and generic forms of ropivacaine; EXPAREL® (bupivacaine liposome injectable suspension, marketed by Pacira BioSciences, Inc.); XARACOLL®(bupivacaine HCl implant, marketed by Innocoll Pharmaceuticals Limited); POSIMIR® (owned by Durect Corporation and to be marketed in the U.S. by Innocoll Pharmaceuticals Limited); ANJESO® (meloxicam injection, marketed by Baudax Bio, Inc.); OFIRMEV® (acetaminophen injection, marketed by Mallinckrodt Pharmaceuticals); SEGLENTIS® (celecoxib and tramadol hydrochloride, marketed by Kowa Pharmaceuticals America, Inc. in the U.S.); generic forms of IV acetaminophen; and potentially other products in development for postoperative pain management that reach the U.S. market.

APONVIE competes in the PONV prevention market with generic ondansetron, the current standard of care, generic aprepitant, and BARHEMSYS® (amisulpride, marketed by Eagle Pharmaceuticals, Inc.); TAK-951 (a peptide agonist under development (PH2) by Takeda Pharmaceutical Company Limited for PONV and not approved anywhere globally for any use); and potentially other products in development for PONV prevention that reach the market.

CINVANTI faces significant competition. NK1 receptor antagonists are administered for the prevention of CINV, in combination with 5-HT3 receptor antagonists, to augment the therapeutic effect of the 5-HT3 receptor antagonist. Currently available NK1receptor antagonists include: generic versions of EMEND® IV (fosaprepitant); EMEND® IV (fosaprepitant, marketed by Merck & Co., Inc.); EMEND® (aprepitant, marketed by Merck & Co., Inc.); AKYNZEO®(palonosetron, a 5-HT3 receptor antagonist, combined with netupitant, an NK1 receptor antagonist, marketed by Helsinn Therapeutics (U.S.), Inc.); VARUBI® (rolapitant, marketed by TerSera Therapeutics LLC), FOCINVEZ™ (fosaprepitant injection, marketed by Amneal Pharmaceuticals, LLC) and other products that include an NK1 receptor antagonist that reach the market for the prevention of CINV.

SUSTOL faces significant competition. Currently available 5-HT3 receptor antagonists include: AKYNZEO® (palonosetron, a 5-HT3 receptor antagonist, combined with netupitant, an NK1 receptor antagonist, marketed by Helsinn Therapeutics (U.S.), Inc.); SANCUSO® (granisetron transdermal patch, marketed by Cumberland Pharmaceuticals Inc.); and generic products including ondansetron (formerly marketed by GlaxoSmithKline plc as ZOFRAN), granisetron (formerly marketed by Hoffman-La Roche, Inc. as KYTRIL) and palonosetron (formerly marketed by Eisai in conjunction with Helsinn Healthcare S.A. as ALOXI) and Posfrea (Palonosetron Injection, marketed by AVYXA). Currently, palonosetron is the only 5-HT3receptor antagonist other than SUSTOL that is approved for the prevention of delayed CINV associated with MEC regimens. SUSTOL is indicated in combination with other antiemetics in adults for the prevention of acute and delayed nausea and vomiting associated with initial and repeat courses of moderately emetogenic chemotherapy (MEC) or anthracycline and cyclophosphamide (AC) combination chemotherapy regimens, which is considered to be a HEC regimen by the NCCN and ASCO. No other 5-HT3 receptor antagonist is specifically approved for the prevention of delayed CINV associated with a HEC regimen.

Small or early-stage companies and research institutions may also prove to be significant competitors, particularly through collaborative arrangements with large and established pharmaceutical companies. We will also face competition from these parties in establishing clinical trial sites and patient registration for clinical trials, and acquiring and in-licensing technologies and products complementary to our programs or potentially advantageous to our business. If any of our competitors succeed in obtaining approval from the FDA or other regulatory authorities for their product candidates sooner than we do for our product candidates that are more effective or less costly than ours, our commercial opportunity could be significantly reduced. Major technological changes can happen quickly in the biotechnology and pharmaceutical industries, and the development of technologically improved or different products or drug delivery technologies may make our product candidates or platform technologies obsolete or noncompetitive.

Our Products may face competition from lower-cost generic products offered by our competitors, which may limit our ability to sell our Products or require us to reduce our pricing.

Pricing for therapeutics can be extremely competitive, and strict formulary guidelines enforced by payors may create significant challenges in the acceptance and profitability of branded products. The market for generic products can be very lucrative, and it is dominated by companies that may have much larger distribution capabilities than we may have in the future. It can be very difficult to predict the timing of the launch of generic products given the commonality of litigation with manufacturers over anticipated patent expiration. Our inability to accurately foresee and plan for generic product launches that may compete with our Products may significantly impact our potential revenues from such Products. On the expiration or loss of patent protection for a branded product, or on the “at-risk” launch (despite pending patent infringement litigation against the generic product) by a manufacturer of a generic version of a drug that may compete with one of our products, we could quickly lose a significant portion of our sales of that Product. The inability for a branded Product we may sell to successfully compete against generic products could negatively impact sales of our Product, reduce our ability to grow our business and significantly harm our business prospects.

For example, we may face competition from newly developed generic products as the Hatch-Waxman Act seeks to stimulate competition by providing incentives to generic pharmaceutical manufacturers to introduce non-infringing forms of patented pharmaceutical products and to challenge patents on branded pharmaceutical products. Currently, two companies are seeking approval via an Abbreviated New Drug Application (“ANDA”) in the United States for CINVANTI and one company is seeking approval via a 505(b)(2) application in the United States based on CINVANTI. If the Company is unsuccessful in demonstrating infringement of its patents by an ANDA or 505(b)(2) product, or the validity of the Company’s patents is successfully challenged, cheaper ANDA or 505(b)(2) versions of our products may be launched commercially and may compete with CINVANTI, as they may be favored by insurers and third-party payors, which would significantly harm our business.

Our business and results of operations may suffer as a result of changes in our pricing or marketing strategies.

In an effort to remain competitive in the marketplace, we can determine, from time to time, to change our pricing or marketing strategies for our approved Products, including by altering the amount or availability of discounts or rebates for any of our approved Products. Any such changes could have short-term or long-term negative impacts on

our revenues, which would cause our business and results of operations to suffer. Price increases or changes to our marketing strategies may also negatively affect our reputation and our ability to secure and maintain reimbursement coverage for our approved Products, which could result in decreased demand and cause our business and results of operations to suffer.

Guidelines and recommendations published by various organizations could reduce the demand for or use of our Products.

Government agencies promulgate regulations and guidelines directly applicable to us and to our Products. In addition, professional societies, practice management groups, private health and science foundations and other organizations from time to time may publish papers, guidelines or recommendations to the healthcare and patient communities with respect to specific products or classes of products. Recommendations of government agencies or these other groups or organizations may relate to such matters as usage, dosage, route of administration and use of concomitant therapies. Recommendations or guidelines that do not recognize a Product, suggest limitations or inadequacies of a Product or suggest the use of competitive or alternative products as the standard of care to be followed by patients and healthcare providers could result in decreased use or adoption of any of our Products which could have an adverse impact on our business, financial condition and results of operations.

Because the results of preclinical studies and clinical trials are not necessarily predictive of future results, we can provide no assurances that our Products or product candidates will have favorable results in future studies or receive regulatory approval or expansion of approved indications.

Positive results from preclinical studies or clinical trials should not be relied on as evidence that later or larger-scale studies will succeed. Even if our Products or product candidates achieve positive results in early-stage preclinical studies or clinical studies, we will be required to demonstrate that they are safe and effective for use in Phase 3 studies before we can seek expanded indications or regulatory approvals for their commercial sale. Even if our early-stage preclinical studies or clinical studies achieve the specified endpoints, the FDA may determine that these data are not sufficient to allow the commencement of Phase 3 studies. There is an extremely high historical rate of failure of product candidates proceeding through clinical trials in our industry. There is no guarantee that the efficacy of any of our product candidates shown in early patient studies will be replicated or maintained in future studies and/or larger patient populations. Similarly, favorable safety and tolerability data seen in short-term studies might not be replicated in studies of longer duration and/or larger patient populations. If any Product or product candidate demonstrates insufficient safety or efficacy in any preclinical study or clinical trial, we would experience potentially significant delays in, or be required to abandon, development of that Product for an expanded indication, or product candidate for approval. In addition, product candidates in Phase 3 studies may fail to show the desired safety and efficacy despite having progressed through preclinical and earlier stage clinical trials, which could delay, limit or prevent regulatory approval. Further, data obtained from pivotal clinical studies are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. Regulatory approval may also be delayed, limited or prevented by other factors. If we delay or abandon our efforts to develop any of our Products for expanded indications, or product candidates for approval, we may not be able to generate sufficient revenues to become profitable, and our reputation in the industry and in the investment community would likely be significantly damaged, each of which would cause our stock price to decrease significantly.

Interim, topline or preliminary data from our clinical trials that we announce or publish may change as more patient data become available and are subject to audit and verification procedures that could result in material changes in the final data.

We may publicly disclose interim, topline, or preliminary data from our clinical trials, which is based on a preliminary analysis of then-available data, and the results and related findings and conclusions are subject to change following a full analysis of all data related to the particular trial. We also make assumptions, estimations, calculations and conclusions as part of our analyses of data, and we may not have received or had the opportunity to fully and carefully evaluate all data. As a result, the interim, topline, or preliminary results that we report may differ from future results of the same trials, or different conclusions or considerations may qualify such results, once additional data have been received and fully evaluated. Topline data also remain subject to audit and verification procedures that may result in the final data being materially different from the preliminary data we previously published. As a result, topline data should be viewed with caution until the final data are available. We may also

disclose interim data from our clinical trials. Interim data from clinical trials that we may complete are subject to the risk that one or more of the clinical outcomes may materially change as patient enrollment continues and more patient data become available. Adverse differences between interim, topline or preliminary data and final data could significantly harm our business prospects.

Further, others, including regulatory agencies, may not accept or agree with our assumptions, estimates, calculations, conclusions or analyses or may interpret or weigh the importance of data differently, which could impact the value of the particular program, the approvability or commercialization of the particular product candidate or product and our business in general. In addition, the information we choose to publicly disclose regarding a particular study or clinical trial is based on what is typically extensive information, and you or others may not agree with what we determine is the material or otherwise appropriate information to include in our disclosure, and any information we determine not to disclose may ultimately be deemed significant with respect to future decisions, conclusions, views, activities or otherwise regarding a particular drug, product candidate or our business. If the interim, topline, or preliminary data that we report differ from actual results, or if others, including regulatory authorities, disagree with the conclusions reached, our ability to obtain expanded indications for our Products, or to obtain approvals for and commercialize our product candidates, our business, operating results, prospects or financial condition may be harmed.

Although the FDA might grant Fast Track, Breakthrough Therapy and Priority Review or similar designations to our Products and product candidates, there can be no assurance that any of our Products or product candidates that receive similar designations in the U.S. or in any other regulatory jurisdictions will receive regulatory approval any sooner than other Products or product candidates that do not have such designations, or at all.

Fast Track designation is intended to facilitate the development and expedite the review of new therapies to treat serious conditions with unmet medical needs by providing sponsors with the opportunity for frequent interactions with the FDA. Breakthrough Therapy designation is designed to expedite the development and review of drugs that are intended to treat serious conditions and for which preliminary clinical evidence indicates substantial improvement over available therapies on clinically significant endpoint(s). Priority Review designation is for drugs that, if approved, would be significant improvements in the safety or effectiveness of the treatment or prevention of serious conditions. Product candidates that receive Fast Track or Breakthrough Therapy designation may receive more frequent interactions with the FDA regarding the product candidate's development plan and clinical trials and may be eligible for the FDA's Rolling Review and Priority Review. Priority Review designation is intended to direct overall attention and resources of the FDA to the evaluation of such applications and means that the FDA's goal is to take action on such applications within six months, compared to 10 months under standard review. We can provide no assurances that any of our Products or product candidates that receive Fast Track, Breakthrough Therapy, Priority Review or similar designations in the U.S. or in any other regulatory jurisdictions will receive regulatory approval any sooner than other Products or product candidates that do not have such designations, or at all. The FDA or any foreign regulatory authorities may also withdraw or revoke Fast Track, Breakthrough Therapy, Priority Review or similar designations, or elect to treat designated candidates in a manner different from what was originally indicated, if they determine that any of our Products or product candidates that receive such designations no longer meet the relevant criteria. Failure to realize the potential benefits of these designations could materially and adversely affect our business, financial condition, cash flows and results of operations.

Our product platforms or product development efforts may not produce safe, efficacious or commercially viable products, and, if we are unable to develop new products, our business may suffer.

Our long-term viability and growth will depend on the successful development of products through our research and development activities. Product development is very expensive and involves a high degree of risk. Only a small number of research and development programs result in the commercialization of a product. Success in preclinical work or early-stage clinical trials does not ensure that later-stage or larger-scale clinical trials will be successful. Our ability to complete our clinical trials in a timely fashion depends in large part on a number of key factors, including protocol design, regulatory and IRB approval, the rate of patient enrollment in clinical trials and compliance with extensive cGCP.

In addition, because we fund the development of our Products and product candidates, we may not be able to continue to fund all such development efforts to completion or to provide the support necessary to perform the

clinical trials, obtain regulatory approvals, or market any approved products. If our drug delivery technologies or product development efforts fail to result in the successful development and commercialization of our Products and product candidates, or if our new Products do not perform as anticipated, such events could materially and adversely affect our business, financial condition, cash flows and results of operations.

We rely on third parties to conduct our preclinical testing and conduct our clinical trials, and their failure to perform their obligations in a timely and competent manner may delay development and commercialization of our Products and product candidates and our business could be substantially harmed.

We have used contract research organizations ("CROs") to oversee or provide selected services for our clinical trials for our Products and our product candidates, and we expect to use the same or similar organizations for our future clinical trials and pipeline programs. There can be no assurance that these CROs will perform their obligations at all times in a competent or timely fashion, and we must rigorously oversee their activities in order to be confident in their conduct of these trials on our behalf. If the CROs fail to commit resources to our Products or product candidates, our clinical programs could be delayed, terminated or unsuccessful, and we may not be able to obtain initial or expanded regulatory approvals for, or successfully commercialize, them. Different cultural and operational issues in foreign countries could cause delays or unexpected problems with patient enrollment or with the data obtained from those locations. If we experience significant delays in the progress of our clinical trials or experience doubts with respect to the quality of data derived from our clinical trials, we could face significant delays in gaining necessary product approvals.

We also rely on third parties to assist in conducting our preclinical studies in accordance with GLP and the Animal Welfare Act requirements. We, our CROs and other third parties are required to comply with cGCP, which are regulations and guidelines enforced by the FDA, the Competent Authorities of the Member States of the EEA and comparable foreign regulatory authorities. Regulatory authorities enforce cGCP through periodic inspections of trial sponsors, principal investigators and trial sites. If we or any of our CROs fail to comply with applicable cGCP, the clinical data generated in the clinical trials may be deemed unreliable, and the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot be certain that on inspection by a given regulatory authority, such regulatory authority will determine that any of our ongoing or future clinical trials comply with cGCP. In addition, all of our clinical trials must be conducted with product produced under cGMP. Failure to comply with these regulations may require us to repeat preclinical and clinical trials, which would increase our related expenses and delay the regulatory approval process.

Our CROs and other third parties we may engage to support our development programs are not our employees, and, except for remedies available to us under our agreements with such CROs, we cannot control whether or not they devote sufficient time and resources to our ongoing clinical, non-clinical and preclinical programs. Outsourcing these functions involves risk that third parties may not perform to our standards, may not produce results in a timely manner, or may fail to perform at all. If CROs do not successfully carry out their contractual duties or obligations or meet expected deadlines or if the quality or accuracy of the preclinical results or clinical data they obtain is compromised due to the failure to adhere to test requirements, our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated and we may not be able to obtain regulatory approval for or successfully commercialize our Products and product candidates. As a result, our results of operations and the commercial prospects for our Products and product candidates would be harmed, our costs could increase and our ability to generate revenues could be delayed.

If we are unable to recruit and retain skilled employees, we may not be able to achieve our objectives.

We depend on a small number of key management and personnel, including our Chief Executive Officer. Retaining our current employees and recruiting qualified personnel to perform future research and development and commercialization work will be critical to our success. Competition is always present for highly skilled and experienced personnel, and an inability to recruit or retain sufficient skilled personnel could result in delays in our business growth and development and adversely impact our research and development or commercial activities. If we lose key members of our senior management team, we may not be able to find suitable replacements and our business may be harmed as a result. If we fail to adequately address any of the issues referred to above, it could

adversely impact our ability to recruit and retain our skilled employees which may result in a material adverse effect on our business, operating results and financial condition.

Our business strategy may include acquisitions of other businesses, products or product licenses. We may not be able to successfully manage such activities.

We may engage in strategic transactions that could cause us to incur contingent liabilities, commitments or significant expense. In the course of pursuing strategic opportunities, we may evaluate potential acquisitions, licenses or investments in strategic technologies, products or businesses. Future acquisitions, licenses or investments could subject us to a number of risks, including, but not limited to:

- our inability to appropriately evaluate and take into consideration the potential uncertainties associated with the other party to such a transaction, including, but not limited to, the prospects of that party and their existing products or product candidates and regulatory approvals;
- difficulties associated with realizing the perceived potential for commercial success with respect to any acquired or licensed technology, product or business;
- our ability to effectively integrate any new technology, product and/or business including personnel, intellectual property or business relationships into our Company;
- our inability to generate revenues from acquired or licensed technology and/or products sufficient to meet our objectives in undertaking the acquisition or license or even to offset the associated acquisition and maintenance costs and/or assumption of liabilities; and
- the distraction of our management from our existing product development programs and initiatives in pursuing an acquisition or license.

In connection with an acquisition or license, we must estimate the value of the transaction by making certain assumptions that may prove to be incorrect, which could cause us to fail to realize the anticipated benefits of a transaction. Any strategic transaction we may pursue may not result in the benefits we initially anticipate, may result in costs that end up outweighing the benefits and may adversely impact our financial condition and be detrimental to our future business prospects.

Our business strategy may include entry into collaborative agreements. We may not be able to enter into collaborative agreements or may not be able to negotiate commercially acceptable terms for these agreements.

Our business strategy may include the entry into collaborative agreements for the development and commercialization of our Products. The negotiation and consummation of these types of agreements typically involve simultaneous discussions with multiple potential collaborators and require significant time and resources from our officers, business development and research and development staff. In addition, in attracting the attention of pharmaceutical and biotechnology company collaborators, we compete with numerous other third parties with product opportunities as well as the collaborators' own internal product opportunities. We may not be able to consummate collaborative agreements, or we may not be able to negotiate commercially acceptable terms for these agreements.

If we do enter into such arrangements, we could be dependent on the subsequent success of these other parties in performing their respective responsibilities and the cooperation of our partners. Our collaborators may not cooperate with us or perform their obligations under our agreements with them. We cannot control the amount and timing of our collaborators' resources that will be devoted to researching our product candidates pursuant to our collaborative agreements with them. Our collaborators may choose to pursue existing or alternative technologies in preference to those being developed in collaboration with us.

Under agreements with any collaborators we may work with in the future, we may rely significantly on them to, among other activities:

- fund or perform research and development activities with us or independently;
- diligently pursue regulatory approvals in certain territories;
- pay us fees on the achievement of milestones; and
- market for or with us any commercial products that result from our collaborations.

If we do not consummate collaborative agreements, we may use our financial resources more rapidly on our product development efforts, continue to defer certain development activities or forego the exploitation of certain geographic territories, any of which could have a negative impact on our business prospects. Further, we may not be successful in overseeing any such collaborative arrangements. If we fail to establish and maintain necessary collaborative relationships, our business prospects could suffer.

Natural or man-made disasters, including severe weather, epidemics, pandemics, cyber attacks, acts of war or terrorism, armed conflict, federal workforce uncertainty, or resource shortages, could disrupt our investigational drug candidate development and approved drug commercialization efforts or have other negative consequences on our business and adversely affect results.

Our ongoing or planned clinical studies and approved drug commercialization efforts could be delayed or disrupted indefinitely on the occurrence of a natural or man-made disaster, including severe weather, an epidemic, a pandemic, or other disease outbreak, cyberattacks, acts of war or terrorism, armed conflict, or resource shortages. We are also vulnerable to damage from other disasters, such as power losses, fires, earthquakes, floods, hurricanes and similar events. Any such natural or man-made disaster, including severe weather, an epidemic, a pandemic, or other disease outbreak, cyberattacks, acts of war or terrorism, armed conflict, and the resulting damage could negatively impact enrollment and participation in our clinical studies, divert attention and resources at our research sites, cause unanticipated delays in the collection and receipt of data from our clinical studies, cause unanticipated delays in communications with, and any required approvals from, the FDA, European Medicines Agency, United Kingdom's Medicines and Healthcare Products Regulatory Agency, Health Canada, and other regulatory authorities, and cause unanticipated delays in the manufacturing and distribution of our Products. If a significant disaster occurs, our ability to continue our operations could be seriously impaired and we may not have adequate insurance to cover any resulting losses. Any significant unrecoverable losses could seriously impair our operations and financial condition.

Further, the recent geo-political conflicts have created extreme volatility in the global financial markets and are expected to have further global economic consequences, including continued disruptions of the global supply chain and energy markets and heightened volatility of commodity prices. Any such instability or disruption may have adverse consequences on us or the third parties on whom we rely, including as a result of a general downturn in global economic conditions, deterioration in the credit or equity markets, or more direct impacts on operational matters. This conflict may also give rise to or amplify the other risks described herein including risks relating to cybersecurity, global economic conditions, and supply chains, which could adversely affect our business, operations and financial condition and results.

Our potential international expansion of our business may expose us to new business, regulatory, political, operational, financial and economic risks associated with such expansion and could adversely affect our business, financial condition, results of operations and growth.

If our Products are marketed internationally by us or a potential third-party partners, we and such third-party partners could be subject to additional risks related to operating in foreign countries, including:

- general economic conditions and monetary and fiscal policy, including economic weakness or inflation;

- financial risks, such as longer payment cycles, difficulty in collecting from international customers, pricing and insurance regimes, unexpected changes in tariffs, trade barriers, and exposure to foreign currency exchange rate fluctuations and controls, which could result in increased operating expenses and reduced revenue, and the effect of local and regional financial crises;
- conflicting and changing laws and regulations such as export and import restrictions;
- compliance with tax, employment, immigration and labor laws for employees living or traveling abroad;
- foreign taxes, including withholding of payroll taxes;
- difficulties staffing and managing foreign operations;
- workforce uncertainty in countries where labor unrest is more common than in the U.S.;
- potential liability under the FCPA or comparable foreign regulations;
- challenges enforcing contractual and intellectual property rights, especially in those foreign countries that do not respect and protect intellectual property rights to the same extent as the U.S.;
- production shortages resulting from any events affecting raw material supply or manufacturing capabilities abroad, if applicable;
- logistical challenges resulting from distributing our Products to foreign countries; and
- economic or business interruptions resulting from civil unrest or social, political, economic, or diplomatic developments, including geo-political actions, such as armed conflict or terrorism.

These and other risks associated with international operations may compromise our ability to earn revenue from arrangements with potential third-party partners for our Products and, therefore, could adversely affect our business, operations and planned international expansion.

Risks Related to Our Financial Condition

We have a history of losses, we expect to generate losses in the near future, and we may never achieve or maintain profitability.

We have incurred significant operating losses and negative cash flows from operations and had an accumulated deficit of $1.9 billion through December 31, 2024. The amount we spend will impact our profitability. Our spending will depend, in part, on:

- the commercial success of our Products;
- the cost of possible acquisitions of technologies, compounds, product rights or companies;
- the cost of obtaining licenses to use technology owned by others for proprietary products and otherwise;

- the time and expense required to prosecute, enforce and/or challenge patent and other intellectual property rights;
- the costs and impacts of current and potential future litigation; and
- the costs associated with recruiting and compensating a highly skilled workforce in an environment where competition for such employees may be intense.

To achieve and sustain profitability, we must, alone or in cooperation with others, successfully develop, obtain regulatory approval for, manufacture, market and sell our Products, including our current work commercializing our Products . We have incurred substantial expenses in our efforts to develop and commercialize our Products and we may never generate sufficient revenue to become profitable or to sustain profitability.

Additional capital will be needed in the future to enable us to implement our business plan, and we may be unable to raise capital, which would force us to limit or cease our operations.

As of December 31, 2024, we had cash, cash equivalents and short-term investments of $59.3 million and indebtedness under our Senior Convertible Notes and Working Capital Facility totaling $175.5 million. We expect that we will need to refinance, or otherwise satisfy, our current indebtedness of $175.5 million to fully fund our current business plan and meet all of our commitments. Historically, we have financed our operations, including technology and product research and development, primarily through sales of our common stock, product sales and debt financings.

Our capital requirements and liquidity going forward will depend on numerous factors, including but not limited to:

- the degree of commercial success of our Products and our product candidates, if approved;
- the timing and cost to manufacture our Products and our product candidates;
- the magnitude and scope of our research and development programs;
- our ability to establish and maintain strategic collaborations or partnerships for research, development, clinical testing, manufacturing and marketing of our product candidates;
- the impact of competitive products;
- the cost of establishing supply arrangements for our Products;
- the cost and timing of establishing or enlarging sales and marketing capabilities;
- the unanticipated delays due to manufacturing difficulties, supply constraints or changes in the regulatory environment, including as a result of geopolitical uncertainty, or other factors;
- the impact of the $150.0 million in aggregate principal amount of the Senior Convertible Notes (as defined below) that are outstanding and will mature on May 26, 2026, unless earlier converted, redeemed or repurchased;
- the impact of the $25.5 million in aggregate principal amount of the Working Capital Facility (as defined below) that is outstanding and will mature on the earlier of earlier of (a) September 1, 2027 and (b) to the extent that any of the Senior Convertible Notes remain outstanding on such date, (i) May 12, 2026 or (ii) in the event that the maturity date of any of the Senior Convertible Notes is extended, prior to May 12, 2026, to August 11, 2026 or later, the date that is ninety-one days prior to the maturity date of such further extended Senior Convertible Notes; and
- general market conditions.

If we issue additional equity securities or securities convertible into equity securities to raise funds, our stockholders will suffer dilution of their investment, and such issuance may adversely affect the market price of our common stock.

New debt financing we enter into typically involves covenants that restrict our operations. These restrictive covenants may include, among other things, limitations on borrowing and specific restrictions on the use of our assets, as well as prohibitions on our ability to create liens, pay dividends, redeem capital stock or make investments. For example, under a working capital facility agreement that we entered into with Hercules Capital, Inc. as administrative agent and collateral agent, and the lenders party thereto (the "Working Capital Facility Agreement" and the facility thereunder, the "Working Capital Facility"), we are required to hold cash of no less than $8.5 million, if our market capitalization is less than $400 million. The Working Capital Facility Agreement also contains customary representations and warranties and customary affirmative and negative covenants, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, prepayment of other indebtedness, and dividends and other distributions, subject to certain exceptions. Our outstanding senior unsecured convertible notes due 2026, (the "Senior Convertible Notes") also impose certain negative covenants on the Company, including on the incurrence of certain indebtedness, the creation of certain liens and selling royalty interests in Company assets. In the event that additional funds are obtained through arrangements with collaborative partners, these arrangements may require us to relinquish rights to some of our technologies, product candidates or Products on terms that are not favorable to us or require us to enter into a collaboration arrangement that we would otherwise seek to develop and commercialize ourselves. If adequate funds are not available, we may default on our indebtedness, be required to further delay, reduce the scope of, or eliminate one or more of our product development programs and reduce personnel-related and other costs, which would have a negative impact on our business.

Management’s view of our liquidity relies on estimates and assumptions about the market opportunity for our Products, which estimates and assumptions are subject to significant uncertainty.

Provisions contained in our debt instruments limit our ability to incur additional indebtedness.

The terms of our Senior Convertible Notes require us to seek approval from the holders of such notes before taking certain actions, including incurring certain additional indebtedness, modifying the terms of certain existing indebtedness, creating liens or selling royalty interests in Company assets. Our Senior Convertible Notes also contain provisions that trigger events of default on any default of our financial obligations under certain material contracts we may enter into. As a result, we may not be able to raise funds through the issuance of debt or selling of royalty interests in the future, which could impair our ability to finance our business obligations or pursue business expansion initiatives.

We could be exposed to significant product liability claims that could be time-consuming and costly to defend, divert management attention and adversely impact our ability to obtain and maintain insurance coverage.

The administration of drugs in humans, whether in clinical studies or commercially, carries the inherent risk of product liability claims whether or not the drugs are actually the cause of an injury. Our Products and other products that we may commercially market in the future may cause, or may appear to have caused, injury or dangerous drug reactions, and we may not learn about or understand those effects until the Product has been administered to patients for a prolonged period of time.

Although we are insured against such risks up to an annual aggregate limit in connection with clinical trials and commercial sales of our Products, our present product liability insurance may be inadequate and may not fully cover the costs of any claim or any ultimate damages we might be required to pay. Product liability claims or other claims related to our Products, regardless of their outcome, could require us to spend significant time and money in litigation or to pay significant damages. Any successful product liability claim may prevent us from obtaining adequate product liability insurance in the future on commercially desirable or reasonable terms. In addition, product liability coverage may cease to be available in sufficient amounts or at an acceptable cost. An inability to obtain sufficient insurance coverage at an acceptable cost or otherwise to protect against potential product liability claims could prevent or inhibit the commercialization of our Products. A product liability claim could also significantly harm our reputation and delay market acceptance of our Products.

If any of our services providers are characterized as employees, we would be subject to employment and tax withholding liabilities and other additional costs.

We rely on independent third parties to provide certain services to us. We structure our relationships with these outside services providers in a manner that we believe results in an independent contractor relationship, not an employee relationship. An independent contractor is generally distinguished from an employee by his or her degree of autonomy and independence in providing services. A high degree of autonomy and independence is generally indicative of an independent contractor relationship, while a high degree of control is generally indicative of an employment relationship. Tax or other regulatory authorities may challenge our characterization of services providers as independent contractors both under existing laws and regulations and under laws and regulations adopted in the future. We are aware of a number of judicial decisions and legislative proposals that could bring about major reforms in worker classification, including the California legislature's 2019 passage of California Assembly Bill 5 ("AB 5"). AB 5 purports to codify a new test for determining worker classification that is widely viewed as expanding the scope of employee relationships and narrowing the scope of independent contractor relationships. There is limited guidance from the regulatory authorities charged with its enforcement, and there is a significant degree of uncertainty regarding its application. In addition, AB 5 has been the subject of widespread national discussion and it is possible that other jurisdictions, including New York, may enact similar laws. As a result, there is significant uncertainty regarding what the state, federal and foreign worker classification regulatory landscape will look like in future years. The current economic climate indicates that the debate over worker classification will continue for the foreseeable future. If such regulatory authorities or state, federal or foreign courts were to determine that our services providers are employees and not independent contractors, we would, among other things, be required to withhold income taxes, to withhold and pay Social Security, Medicare and similar taxes, to pay unemployment and other related payroll taxes, and to provide certain employee benefits. We could also be liable for unpaid past taxes and other costs and subject to penalties. As a result, any determination that the services providers we characterize as independent contractors are our employees could have a negative impact on our business, financial condition and results of operations.

The investment of our cash is subject to risks, which may cause losses or adversely affect the liquidity of these investments and our results of operations, liquidity and financial condition.

A significant amount of our assets is comprised of cash, cash equivalents and short-term investments. These investments of cash, cash equivalents and short-term investments are subject to general credit, liquidity, market and interest rate risks, which have been and may, in the future, be exacerbated by a U.S. and/or global financial crisis. We may realize losses in the fair value of certain of our investments or a complete loss of these investments if the credit markets tighten, which would have an adverse effect on our results of operations, liquidity and financial condition.

Adverse developments affecting the financial services industry, such as actual events or concerns involving liquidity, defaults or non-performance by financial institutions or transactional counterparties, could adversely affect our current and projected business operations and its financial condition and results of operations.

Actual events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions, transactional counterparties or other companies in the financial services industry or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks, have in the past and may in the future lead to market-wide liquidity problems. If any of our counterparties to any such instruments were to be placed into receivership, we may be unable to access such funds. In addition, if any parties with whom we conduct business are unable to access funds pursuant to such instruments or lending arrangements with such a financial institution, such parties' ability to pay their obligations to us or to enter into new commercial arrangements requiring additional payments to us could be adversely affected.

Although we assess our banking relationships as we believe necessary or appropriate, our access to funding sources and other credit arrangements in amounts adequate to finance or capitalize our current and projected future business operations could be significantly impaired by factors that affect us, the financial institutions with which we have arrangements directly, or the financial services industry or economy in general. These factors could include, among others, events such as liquidity constraints or failures, the ability to perform obligations under various types of financial, credit or liquidity agreements or arrangements, disruptions or instability in the financial services industry or financial markets, or concerns or negative expectations about the prospects for companies in the financial services industry. These factors could involve financial institutions or financial services industry companies with which we have financial or business relationships, but could also include factors involving financial markets or the financial

services industry generally. The results of events or concerns that involve one or more of these factors could include a variety of material and adverse impacts on our current and projected business operations and our financial condition and results of operations.

In addition, investor concerns regarding the U.S. or international financial systems could result in less favorable commercial financing terms, including higher interest rates or costs and tighter financial and operating covenants, or systemic limitations on access to credit and liquidity sources, thereby making it more difficult for us to acquire financing on acceptable terms or at all. Any decline in available funding or access to our cash and liquidity resources could, among other risks, adversely impact our ability to meet our operating expenses, financial obligations or fulfill our other obligations, result in breaches of our financial and/or contractual obligations or result in violations of federal or state wage and hour laws. Any of these impacts, or any other impacts resulting from the factors described above or other related or similar factors not described above, could have material adverse impacts on our liquidity and our current and/or projected business operations and financial condition and results of operations.

Further, any additional deterioration in the macroeconomic economy or financial services industry could lead to losses or defaults by parties with whom we conduct business, which in turn, could have a material adverse effect on our current and/or projected business operations and results of operations and financial condition. For example, a party with whom we conduct business may fail to make payments when due, default under their agreements with us, become insolvent or declare bankruptcy. Any bankruptcy or insolvency, or the failure to make payments when due, of any counterparty of ours, or the loss of any significant relationships, could result in material losses to us and may material adverse impacts on our business.

Risks Related to Our Industry

Failure to obtain regulatory approval in international jurisdictions would prevent our Products from being marketed abroad.

In the event we pursue the right to market and sell our Products in jurisdictions other than the U.S., we or our potential third-party partners would be required to obtain separate marketing approvals and comply with numerous and varying regulatory requirements in each foreign country. The approval procedure varies among countries and can involve additional testing. The time required to obtain approval may differ substantially from that required to obtain FDA approval. The regulatory approval process outside the U.S. generally includes all of the risks associated with obtaining FDA approval. In addition, in many countries outside the U.S., it is required that the product be approved for reimbursement before the product can be approved for sale in that country. In the event we choose to pursue them, we or our potential third-party partners may not obtain approvals from regulatory authorities outside the U.S. on a timely basis, if at all. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions, and approval by one regulatory authority outside the U.S. does not ensure approval by regulatory authorities in other countries or jurisdictions or by the FDA. However, failure to obtain approval in one jurisdiction may impact our or our potential third-party partners' ability to obtain approval elsewhere. If we or our potential third-party partners are unable in the future to obtain approval of a product candidate by regulatory authorities in non-U.S. jurisdictions, the commercial prospects of that product candidate may be significantly diminished and our business prospects could decline.

If we fail to comply with continuing federal, state and foreign regulations with respect to our Products for which we obtain regulatory approval, we could lose our approvals to market drugs, and our business would be seriously harmed.

Our Products for which we obtain regulatory approval remain subject to ongoing requirements of the FDA and comparable foreign regulatory authorities, including requirements related to manufacturing, quality control, further development, labeling, packaging, storage, distribution, safety surveillance, import, export, advertising, promotion, recordkeeping, and reporting of safety and other postmarket information. Following initial regulatory approval for drugs we develop, including our Products, we remain subject to continuing regulatory review, including review of adverse drug experiences and clinical results that may be reported after drug products become commercially available. This would include results from any postmarketing tests or continued actions required as a condition of approval. The manufacturer and manufacturing facilities we use to make any of our drug candidates will also be subject to periodic review and inspection by the FDA. If a previously unknown problem or problems with a Product

or a manufacturing and laboratory facility used by us is discovered, the FDA or foreign regulatory agency may impose restrictions on that Product or on the manufacturing facility, including requiring us to withdraw the Product from the market. Any changes to an approved product, including the way it is manufactured or promoted, often require FDA approval before the product, as modified, can be marketed. We and our contract manufacturers will also be subject to ongoing FDA requirements for submission of safety and other postmarket information. If we and our contract manufacturers fail to comply with applicable regulatory requirements, a regulatory agency may:

- issue warning letters;
- impose civil or criminal penalties;
- suspend or withdraw our regulatory approval;
- suspend or terminate any of our ongoing clinical trials;
- refuse to approve pending applications or supplements to approved applications filed by us;
- impose restrictions on our operations;
- close the facilities of our contract manufacturers; or
- seize or detain products or require a product recall.

The occurrence of any event or penalty described above may inhibit our ability to commercialize our Products and generate revenue.

Additionally, such regulatory review covers a company's activities in the promotion of its drugs, with significant potential penalties and restrictions for promotion of drugs for an unapproved use or other inappropriate sales and marketing activities. Advertising and promotion of any product candidate that obtains approval in the U.S. will be heavily scrutinized by the FDA, the Department of Justice, and the Department of Health and Human Services' Office of Inspector General. Violations of applicable advertising and promotion laws and regulations, including promotion of products for unapproved (or off-label) uses, are subject to enforcement letters, inquiries and investigations and civil and criminal sanctions by the FDA. We are also required to submit information on our open and completed clinical trials to public registries and databases; failure to comply with these requirements could expose us to negative publicity, fines and penalties that could harm our business. We are also required to comply with the requirements to submit to governmental authorities information on payments to physicians and certain other third parties. Failure to comply with these requirements could expose us to negative publicity, fines and penalties that could harm our business.

The commercial use of our Products may cause unintended side effects or adverse reactions, or incidents of misuse may occur, which could adversely affect our business.

We cannot predict whether any commercial use of our product candidates, once approved, will produce undesirable or unintended side effects that have not been evident in clinical trials conducted for such product candidates to date. Additionally, incidents of Product misuse may occur. These events, including the reporting of adverse safety events, among others, could result in Product recalls, product liability actions related to our Products or withdrawals or additional regulatory controls (including additional regulatory scrutiny and requirements for additional labeling), all of which could have a negative impact on our business, financial condition, cash flows and results of operations.

The pharmaceutical industry is subject to significant regulation and oversight pursuant to anti-kickback laws, false claims statutes and anti-corruption laws, which may result in significant additional expense and limit our

ability to commercialize our Products. In addition, any failure to comply with these regulations could result in substantial fines or penalties.

We are subject to health care fraud and abuse regulations that are enforced by the federal government and the states in which we conduct our business, as well as foreign jurisdictions in which we may conduct business. Healthcare providers, physicians and third-party payors play a primary role in the recommendation and prescription of any drug product with marketing approval. Our future arrangements with third-party payors and customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations that may constrain the business or financial arrangements and relationships through which we market, sell and distribute our Products with marketing approval. Restrictions under applicable federal, state and foreign healthcare laws and regulations include, but are not limited to, the following:

- the Federal health care programs' Anti-Kickback Law, which prohibits, among other things, persons from knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, lease, order or recommendation of, any good or service for which payment may be made under federal health care programs such as the Medicare and Medicaid programs;

- federal false claims laws, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid or other federal health care programs that are false or fraudulent. This false claims liability may attach in the event that a company is found to have knowingly submitted false average sales price, best price or other pricing data to the government or to have unlawfully promoted its drug products;

- the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") also prohibits, 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;

- federal "sunshine" laws, now known as Open Payments, that require transparency regarding financial arrangements with health care providers, such as the reporting and disclosure requirements imposed by the federal Physician Payments Sunshine Act within PPACA on drug manufacturers regarding any "payment or transfer of value" made or distributed to physicians, other healthcare professionals, and teaching hospitals as well as ownership and investment interests held by such physicians and their family; and

- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws, which may apply to items or services reimbursed by any third-party payor, including commercial insurers; and

- increasingly complex standards for complying with foreign laws and regulations, including those of the EU, that may differ substantially from country to country and may conflict with corresponding U.S. laws and regulations.

The risk of being found in violation of these laws is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Moreover, certain health care reform legislation has strengthened many of these laws. For example, the PPACA, among other things, amends the intent requirement of the federal anti-kickback and criminal health care fraud statutes to clarify that a person or entity does not need to have actual knowledge of this statute or specific intent to violate it. In addition, PPACA provides that a claim including items or services resulting from a violation of the federal anti-kickback statute constitutes a false or fraudulent claim for purposes of the false claims statutes. Finally,

some states, such as California, Massachusetts and Vermont, mandate implementation of commercial compliance programs to ensure compliance with these laws.

In addition, a number of states have laws that require pharmaceutical companies to track and report payments, gifts and other benefits provided to physicians and other health care professionals and entities.

The FCPA and similar anti-bribery laws in other jurisdictions generally prohibit companies and their intermediaries from providing money or anything of value to officials of foreign governments, foreign political parties, or international organizations with the intent to obtain or retain business or seek a business advantage. A determination that our operations or activities are not, or were not, in compliance with U.S. or foreign laws or regulations could result in the imposition of substantial fines, interruptions of business, loss of supplier, vendor or other third-party relationships, termination of necessary licenses and permits, and other legal or equitable sanctions. Other internal or government investigations or legal or regulatory proceedings, including lawsuits brought by private litigants, may also follow as a consequence.

Changes in laws affecting the healthcare industry could also adversely affect our revenues and profitability, including new laws, regulations or judicial decisions, or new interpretations of existing laws, regulations or decisions related to patent protection and enforcement, healthcare availability, and drug product pricing and marketing. Changes in FDA regulations and regulations issued by other regulatory agencies inside and outside of the U.S., including new or different approval requirements, timelines and processes, may also require additional safety monitoring, labeling changes, restrictions on product distribution or other measures that could increase our costs of doing business and adversely affect the market for our Products. The enactment in the U.S. of healthcare reform, new legislation or implementation of existing statutory provisions on importation of lower-cost competing drugs from other jurisdictions and legislation on comparative effectiveness research are examples of previously enacted and possible future changes in laws that could adversely affect our business.

If our operations are found to be in violation of any of the laws described above or any other governmental regulations that apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, exclusion from government-funded healthcare programs, like Medicare and Medicaid, and the curtailment or restructuring of our operations. Any penalties, damages, fines, curtailment or restructuring of our operations could adversely affect our ability to operate our business and our financial results. Although compliance programs can mitigate the risk of investigation and prosecution for violations of these laws, the risks cannot be entirely eliminated. Any action against us for violation of these laws or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. Moreover, achieving and sustaining compliance with applicable federal, state and foreign privacy, security and fraud laws may prove costly.

We may incur significant liability if it is determined that we are promoting the "off-label" use of drugs or promoting in a non-truthful and misleading way.

We are prohibited from promoting our Products that receive regulatory approval for "off-label" uses or promoting in a non-truthful and misleading way that are not described in its labeling and that differ from the uses approved by the FDA. Physicians may prescribe drug products for off-label uses, and such off-label uses are common across medical specialties. The FDA and other regulatory agencies do not regulate a physician's choice of treatments. However, they do restrict pharmaceutical companies and their sales representatives' dissemination of information concerning off-label use. The FDA and other regulatory agencies actively enforce regulations prohibiting promotion of products for off-label uses and the promotion of products for which marketing authorization has not been obtained. A company that is found to have promoted products for off-label uses may be subject to significant liability, including civil and administrative remedies as well as criminal sanctions. Notwithstanding the regulatory restrictions on off-label promotion, the FDA and other regulatory authorities allow companies to engage in truthful, non-misleading, and non-promotional scientific exchanges concerning their products.

The FDA or other regulatory authorities may conclude that we have violated applicable laws, rules or regulations, and we may therefore be subject to significant liability, including civil and administrative remedies, as well as criminal sanctions. Such enforcement actions could cause us reputational harm and divert the attention of our management from our business operations. Likewise, our distribution and contracting partners and those providing

vendor support services may also be the subject of regulatory investigations involving, or remedies or sanctions for, off-label promotion of our Products, which may adversely impact sales of our Products or trigger indemnification obligations. These consequences, could, in turn, have a negative impact on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

Health care reform could increase our expenses and adversely affect the commercial success of our Products.

The U.S. and some foreign jurisdictions are considering or have enacted a number of reform proposals to change the healthcare system. There is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality or expanding access. In the U.S., the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by federal and state legislative initiatives, including those designed to limit the pricing, coverage, and reimbursement of pharmaceutical and biopharmaceutical products, especially under government-funded healthcare programs, and increased governmental control of drug pricing.

For example, the PPACA includes numerous provisions that affect pharmaceutical companies. The PPACA seeks to expand healthcare coverage to the uninsured through private health insurance reforms and an expansion of Medicaid. The PPACA also imposes substantial costs on pharmaceutical manufacturers, such as an increase in liability for rebates paid to Medicaid, new drug discounts that must be offered to certain enrollees in the Medicare prescription drug benefit and an annual fee imposed on all manufacturers of brand prescription drugs in the U.S. The PPACA also requires increased disclosure obligations—including those required under the “sunshine” laws—and an expansion of an existing program requiring pharmaceutical discounts to certain types of hospitals and federally subsidized clinics and contains cost-containment measures that could reduce reimbursement levels for pharmaceutical products. In addition, the IRA extends enhanced subsidies for individuals purchasing health insurance coverage in PPACA marketplaces through plan year 2025. The IRA also eliminates the “donut hole” under the Medicare Part D program beginning in 2025 by significantly lowering the beneficiary maximum out-of-pocket cost and creating a new manufacturer discount program. These and other aspects of the PPACA, including the regulations that may be imposed in connection with the implementation of the PPACA, could increase our expenses and adversely affect our ability to successfully commercialize our Products.

There have been, and we anticipate that there will be, healthcare reform measures that may be adopted in the future that may result in more rigorous coverage criteria and additional downward pressure on the reimbursement for healthcare products and services. These reform measures may limit the amounts that federal and state governments will pay for healthcare products and services, and also indirectly affect the amounts that private payors are willing to pay. Moreover, in the U.S., there have been several presidential executive orders, congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products.

Drug development involves a lengthy and expensive process with an uncertain outcome, and results of earlier studies and trials may not be predictive of future trial results.

Conducting clinical trials is a lengthy, time-consuming and expensive process. For example, we incurred significant expenses in developing our Products, with no guarantees that doing so would result in a commercially viable product. Before obtaining regulatory approvals for the commercial sale of any products, we, or our potential partners, must demonstrate through preclinical testing and clinical trials that our product candidates are safe and effective for their intended uses in humans. We have incurred and will continue to incur substantial expense and devote a significant amount of time to preclinical testing and clinical trials.

The outcome of clinical testing is inherently uncertain. Failure can occur at any time during the clinical trial process. The results of preclinical studies and early clinical trials of product candidates may not be predictive of the results of later-stage clinical trials. In addition, regulations are not static, and regulatory agencies, including the FDA, alter their staff, interpretations and practices and may in the future impose more stringent requirements than are currently in effect, which may adversely affect our planned drug development and/or our commercialization efforts. Satisfying regulatory requirements typically takes a significant number of years and can vary substantially based on the type, complexity and novelty of the product candidate. Our business, results of operations and financial

condition could be materially and adversely affected by any delays in, or termination of, our clinical trials. Factors that could impede our ability to generate commercially viable products through the conduct of clinical trials include:

- insufficient funds to conduct clinical trials;
- the inability to find partners, if necessary, for support, including research, development, manufacturing or clinical needs;
- the failure of tests or studies necessary to submit an NDA, such as clinical studies, bioequivalence studies in support of a 505(b)(2) regulatory filing, or stability studies;
- the failure of clinical trials to demonstrate the safety and efficacy of our product candidates to the extent necessary to obtain regulatory approvals;
- the failure by us or third-party investigators, CROs, or other third parties involved in the research to adhere to regulatory requirements applicable to the conduct of clinical trials;
- the failure of preclinical testing and early clinical trials to predict results of later clinical trials;
- any delay in completion of clinical trials caused by a regional, national or global disturbance where we or our collaborative partners are enrolling patients in clinical studies, such as a pandemic (including COVID-19), terrorist activities, cyberattack, or war, political unrest, a natural or man-made disaster or any other reason or event, resulting in increased costs;
- any delay in obtaining advice from the FDA or similar regulatory authorities; and
- the inability to obtain regulatory approval of our product candidates following completion of clinical trials, or delays in obtaining such approvals.

From time to time, even if a product candidate has not failed, we may voluntarily determine to pause development, which effectively halts our ability to commercialize the product. For example, we decided to pause the development of HTX-034 to evaluate the program and market potential going forward. There can be no assurance that our decisions with respect to such pauses, and subsequent resumptions, if any, will yield the most favorable result for the Company.

There can be no assurance, that if our clinical trials are successfully initiated and completed, we will be able to obtain approval by the FDA in the U.S. or similar regulatory authorities elsewhere in the world in a timely manner, if at all. If we fail to successfully develop and commercialize one or more of our product candidates, we may be unable to generate sufficient revenues to attain profitability, and our reputation in the industry and in the investment community would likely be significantly damaged, each of which would cause our stock price to significantly decrease.

Delays in, or suspensions and terminations of, clinical testing could increase our costs and delay our ability to obtain regulatory approval for, and commercialize, our product candidates.

Before we can receive regulatory approval for the commercial sale of our product candidates, the FDA and comparable authorities in non-U.S. jurisdictions require extensive preclinical safety testing and clinical trials to demonstrate their safety and efficacy. Significant delays in preclinical and clinical testing could materially impact our product development costs and delay regulatory approval of our product candidates. Our ability to complete clinical trials in a timely manner, or at all, has in the past been, and could in the future be impacted by, among other factors:

- delay or failure in reaching agreement with the FDA or comparable foreign regulatory authority on a trial design that we are able to execute;

- delay or failure in obtaining authorization to commence a trial or inability to comply with conditions imposed by a regulatory authority regarding the scope or design of a clinical study;
- delay or failure in reaching agreement on acceptable terms with prospective CROs and clinical trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- delay or failure in obtaining IRB approval or the approval of other reviewing entities, including comparable foreign entities, to conduct a clinical trial at each site;
- withdrawal of clinical trial sites from our clinical trials as a result of changing standards of care or the ineligibility of a site to participate in our clinical trials;
- delay or failure in obtaining clinical materials;
- delay or failure in recruiting and enrolling suitable subjects to participate in a trial;
- delay or failure of subjects completing a trial or returning for post-treatment follow-up;
- clinical sites and investigators deviating from trial protocol, failing to conduct the trial in accordance with regulatory requirements, or dropping out of a trial;
- inability to identify and maintain a sufficient number of trial sites, many of which may already be engaged in other clinical trial programs, including some that may be for the same indication;
- failure of our third-party clinical trial managers to satisfy their contractual duties or meet expected deadlines;
- delay or failure in adding new clinical trial sites;
- ambiguous or negative interim results or results that are inconsistent with earlier results;
- feedback from the FDA, the IRB, data safety monitoring boards or comparable foreign entities, or results from earlier stage or concurrent preclinical and clinical studies that might require modification to the protocol;
- decisions by the FDA, the IRB, comparable foreign regulatory entities, or recommendations by a data safety monitoring board or comparable foreign regulatory entity to suspend or terminate clinical trials at any time for safety issues or for any other reason;
- unacceptable risk-benefit profiles or unforeseen safety issues or adverse side effects;
- failure to demonstrate a benefit from using a drug;
- manufacturing issues, including problems with manufacturing or obtaining from third parties sufficient quantities of a product candidate for use in clinical trials; and
- changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial.

We rely on CROs and clinical trial sites to ensure the proper and timely conduct of our clinical trials and while we have agreements governing their activities, we have limited influence over CROs' actual performance.

Our failure to successfully establish, recruit for, and oversee our clinical trials could delay our product development efforts and negatively impact our business. If we experience delays in the completion of any ongoing study, the commercial prospects of our product candidates or any of our other future product candidates could be harmed, and our ability to generate product revenue will be delayed. Any delays in completing our clinical trials will increase our costs, slow our product candidates' development and approval process and jeopardize our ability to commence product sales and generate revenues. Any of these occurrences may harm our business, financial condition and prospects significantly.

We may not obtain regulatory approval for our product candidates in development. Regulatory approval may also be delayed or revoked or may impose limitations on the indicated uses of a product candidate. If we are unable to obtain regulatory approval for our product candidates in development, our business will be substantially harmed.

The process for obtaining regulatory approval of a new drug is time-consuming, is subject to unanticipated delays and costs and requires the commitment of substantial resources. Any product that we or our potential future collaborative partners develop must receive all necessary regulatory agency approvals or clearances before it may be marketed in the U.S. or other countries. Human pharmaceutical products are subject to rigorous preclinical and clinical testing and other requirements by the FDA in the U.S. and similar health authorities in foreign countries. We may not receive necessary regulatory approvals or clearances to market our product candidates currently in development in the U.S. or in other jurisdictions, as a result of changes in regulatory policies prior to approval or other events. Additionally, data obtained from preclinical and clinical activities, or from stability or bioequivalence studies, are susceptible to varying interpretations that could delay, limit or prevent regulatory agency approvals or clearances.

Our product candidates could fail to receive regulatory approval from the FDA or a comparable foreign regulatory authority for many reasons, including:

- disagreement with the design or implementation of our clinical trials;
- failure to demonstrate that the product candidate is safe and effective for its proposed indication;
- failure of clinical trial results to meet the level of statistical significance required for approval;
- the failure of third parties to manage and conduct the trials or perform necessary oversight to meet expected deadlines or to comply with regulatory requirements;
- failure to demonstrate that the product candidate's clinical and other benefits outweigh its safety risks;
- disagreement with our interpretation of data from preclinical studies or clinical trials;
- the insufficiency of data collected from clinical trials to support the submission and filing of an NDA or other submission or to obtain regulatory approval;
- disapproval of the manufacturing processes or facilities of third-party manufacturers with whom we contract for clinical and commercial supplies; and
- changes in approval policies or regulations that render our preclinical and clinical data insufficient for approval.

The FDA or a comparable non-U.S. regulatory authority may require additional preclinical or clinical data to support approval, such as confirmatory studies and other data or studies to address questions or concerns that may arise during the FDA review process. Regulatory approval may also be delayed, limited or prevented by other

factors. For example, in 2013, 2018 and 2019, the U.S. federal government entered shutdowns suspending services deemed non-essential as a result of the failure by Congress to enact regular appropriations. Our development and commercialization activities could be harmed or delayed by a similar shutdown of the U.S. federal government in the future, which may significantly delay the FDA's ability to timely review and process any submissions we have filed or may file or cause other regulatory delays, which could have a negative impact on our business.

Even if granted, regulatory approvals may include significant limitations on the uses for which products may be marketed. Failure to comply with applicable regulatory requirements can, among other things, result in warning letters, imposition of civil penalties or other monetary payments, delay in approving or refusal to approve a product candidate, suspension or withdrawal of regulatory approval, product recall or seizure, operating restrictions, interruption of clinical trials or manufacturing, injunctions and criminal prosecution.

In addition, the marketing and manufacturing of products are subject to continuing FDA review, and later discovery of previously unknown problems with a product, its manufacture or its marketing may result in the FDA requiring further clinical research or restrictions on the product or the manufacturer, including withdrawal of the product from the market.

Our use of hazardous materials could subject us to liabilities, fines and sanctions.

Our laboratory and clinical testing sometimes involve use of hazardous, radioactive or otherwise toxic materials. We are subject to federal, state and local laws and regulations governing how we use, manufacture, handle, store and dispose of these materials.

Although we believe that our safety procedures for handling and disposing of such materials comply in all material respects with all federal, state and local regulations and standards, there is always the risk of accidental contamination or injury from these materials. In the event of an accident, we could be held liable for any damages that result, and we could also be subject to fines and penalties and such liability and costs could exceed our financial resources. If we fail to comply with these regulations and standards or with the conditions attached to our operating licenses, the licenses could be revoked, and we could be subjected to criminal sanctions and substantial financial liability or be required to suspend or modify our operations. Compliance with environmental and other laws may be expensive and current or future regulations may impair our product development efforts.

Our employees may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could have a negative impact on our business.

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include intentional failures to comply with FDA regulations or similar regulations of comparable foreign regulatory authorities, provide accurate information to the FDA or comparable foreign regulatory authorities, comply with manufacturing standards we have established, comply with federal and state healthcare fraud and abuse laws and regulations and similar laws and regulations established and enforced by comparable foreign regulatory authorities, report financial information or data accurately, or disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Employee misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. It is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and results of operations, including the imposition of significant fines or other sanctions.

We are and may become subject to stringent and evolving laws, regulations, rules, contractual obligations, policies and other obligations related to data privacy and security. Our actual or perceived failure to comply with

such obligations could lead to regulatory investigations or actions, litigation, fines and penalties, disruptions of our business operations, reputational harm, loss of revenue or profits, and other adverse business consequences.

In the ordinary course of business, we collect, receive, store, process, generate, use, transfer, disclose, make accessible, protect, secure, dispose of, transmit, and share (collectively, "processing") personal data and other sensitive information, including proprietary and confidential business data, trade secrets, intellectual property, sensitive third-party data, business plans, transactions and financial information (collectively, "sensitive data"). Our data processing activities may subject us to numerous data privacy and security obligations, such as various laws, regulations, guidance, industry standards, external and internal privacy and security policies, contractual requirements, and other obligations relating to data privacy and security.

In the U.S., federal, state, and local governments have enacted numerous data privacy and security laws, including data breach notification laws, personal data privacy laws, consumer protection laws (e.g., Section 5 of the Federal Trade Commission Act), and other similar laws (e.g., wiretapping laws). For example, the CCPA requires businesses to provide specific disclosures in privacy notices and honor requests of California residents to exercise certain privacy rights. The CCPA provides for civil penalties of up to $7,500 per violation and allows private litigants affected by certain data breaches to recover significant statutory damages. In addition, the CPRA, which became operative January 1, 2023, expanded the CCPA's requirements, including applying to personal information of business representatives and employees and establishing a new regulatory agency to implement and enforce the law. Other states, such as Virginia and Colorado, have also passed comprehensive data privacy and security laws, and similar laws are being considered in several other states, as well as at the federal and local levels. These developments may further complicate compliance efforts and may increase legal risk and compliance costs for us and the third parties upon whom we rely.

For example, HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, imposes specific requirements relating to the privacy, security, and transmission of individually identifiable health information. Healthcare providers who prescribe our products and from whom we may obtain patient health information are subject to privacy and security requirements under HIPAA. We currently are not a HIPAA covered entity, do not intend to become one, and we do not operate as a business associate to any covered entities. We could be subject to criminal penalties if we knowingly obtain individually identifiable health information from a covered entity in a manner that is not authorized or permitted by HIPAA or for aiding and abetting the violation of HIPAA. We are unable to predict whether our actions could be subject to prosecution in the event of an impermissible disclosure of health information to us.

Outside the U.S., an increasing number of laws, regulations, and industry standards may govern data privacy and security. For example, the European Union's General Data Protection Regulation ("EU GDPR"), the United Kingdom's GDPR ("UK GDPR"), Canada's Personal Information Protection and Electronic Documents Act ("PIPEDA") and Canada's Anti-Spam Legislation ("CASL"), impose strict requirements for processing personal data. For example, under the EU GDPR, companies may face temporary or definitive bans on data processing and other corrective actions; fines of up to 20 million Euros or 4% of annual global revenue, whichever is greater; or private litigation related to processing of personal data brought by classes of data subjects or consumer protection organizations authorized at law to represent their interests.

In addition, we may be unable to transfer personal data from Europe and other jurisdictions to the U.S. or other countries due to data localization requirements or limitations on cross-border data flows. Europe and other jurisdictions have enacted laws requiring data to be localized or limiting the transfer of personal data to other countries. In particular, the EEA and the United Kingdom ("UK") have significantly restricted the transfer of personal data to the U.S. and other countries whose data privacy and security laws it believes are inadequate. Other jurisdictions may adopt similarly stringent interpretations of their data localization and cross-border data transfer laws. Although there are currently various mechanisms that may be used to transfer personal data from the EEA and UK to the U.S. in compliance with law, such as the EEA and UK's standard contractual clauses, these mechanisms are subject to legal challenges, and there is no assurance that we can satisfy or rely on these measures to lawfully transfer personal data to the U.S. If there is no lawful manner for us to transfer personal data from the EEA, the UK, or other jurisdictions to the U.S., or if the requirements for a legally-compliant transfer are too onerous, we could face significant adverse consequences, including the interruption or degradation of our operations, the need to relocate part of or all of our business or data processing activities to other jurisdictions at significant expense,

increased exposure to regulatory actions, substantial fines and penalties, the inability to transfer data and work with partners, vendors and other third parties, and injunctions against our processing or transferring of personal data necessary to operate our business. Some European regulators have prevented companies from transferring personal data out of Europe for allegedly violating the GDPR's cross-border data transfer limitations.

In addition to data privacy and security laws, we may be contractually subject to industry standards adopted by industry groups and may become subject to such obligations in the future. We may also be bound by other contractual obligations related to data privacy and security, and our efforts to comply with such obligations may not be successful. We may publish privacy policies, marketing materials, and other statements, such as compliance with certain certifications or self-regulatory principles, regarding data privacy and security. If these policies, materials or statements are found to be deficient, lacking in transparency, deceptive, unfair, or misrepresentative of our practices, we may be subject to investigation, enforcement actions by regulators, or other adverse consequences.

Obligations related to data privacy and security are quickly changing, becoming increasingly stringent, and creating regulatory uncertainty. Additionally, these obligations may be subject to differing applications and interpretations, which may be inconsistent or conflict among jurisdictions. Preparing for and complying with these obligations requires us to devote significant resources and may necessitate changes to our services, information technologies, systems, and practices and to those of any third parties that process personal data on our behalf. We may at times fail (or be perceived to have failed) in our efforts to comply with our data privacy and security obligations. Moreover, despite our efforts, our personnel or third parties on whom we rely may fail to comply with such obligations, which could negatively impact our business operations. If we or the third parties on which we rely fail, or are perceived to have failed, to address or comply with applicable data privacy and security obligations, we could face significant consequences, including but not limited to: government enforcement actions (e.g., investigations, fines, penalties, audits, inspections, and similar); litigation (including class-action claims); additional reporting requirements and/or oversight; bans on processing personal data; and orders to destroy or not use personal data. Any of these events could have a material adverse effect on our reputation, business, or financial condition, including but not limited to: loss of customers; inability to process personal data or to operate in certain jurisdictions; limited ability to develop or commercialize our products; expenditure of time and resources to defend any claim or inquiry; adverse publicity; or substantial changes to our business model or operations.

Security breaches and other disruptions could compromise our information and expose us to liability, which would cause our business and reputation to suffer.

In the ordinary course of our business, we and the third parties upon which we rely may process sensitive data, and, as a result, we and the third parties upon which we rely face a variety of evolving threats, including but not limited to ransomware attacks, which could cause security incidents. Cyber-attacks, malicious internet-based activity, online and offline fraud, and other similar activities threaten the confidentiality, integrity, and availability of our sensitive data and information technology systems, and those of the third parties upon which we rely. Such threats are prevalent and continue to rise, are increasingly difficult to detect, and come from a variety of sources, including traditional computer "hackers," threat actors, "hacktivists," organized criminal threat actors, personnel (such as through theft or misuse), sophisticated nation states, and nation-state-supported actors.

Some actors now engage and are expected to continue to engage in cyber-attacks, including without limitation nation-state actors for geopolitical reasons and in conjunction with military conflicts and defense activities. During times of war and other major conflicts, we and the third parties upon which we rely may be vulnerable to a heightened risk of these attacks, including retaliatory cyber-attacks, that could materially disrupt our systems and operations, supply chain, and ability to produce, sell and distribute our services. We and the third parties upon which we rely may be subject to a variety of evolving threats, including but not limited to social-engineering attacks (including through phishing attacks), malicious code (such as viruses and worms), malware (including as a result of advanced persistent threat intrusions), denial-of-service attacks (such as credential stuffing), credential harvesting, personnel misconduct or error, ransomware attacks, supply-chain attacks, software bugs, server malfunctions, software or hardware failures, loss of data or other information technology assets, adware, telecommunications failures, earthquakes, fires, floods, and other similar threats. In particular, severe ransomware attacks are becoming increasingly prevalent and can lead to significant interruptions in our operations, loss of sensitive data and income, reputational harm, and diversion of funds. Extortion payments may alleviate the negative impact of a ransomware

attack, but we may be unwilling or unable to make such payments due to, for example, applicable laws or regulations prohibiting such payments.

The increase in remote work has increased risks to our information technology systems and data, as more of our employees utilize network connections, computers, and devices outside our premises or network, including working at home, while in transit and in public locations. Additionally, future or past business transactions (such as acquisitions or integrations) could expose us to additional cybersecurity risks and vulnerabilities, as our systems could be negatively affected by vulnerabilities present in acquired or integrated entities' systems and technologies.

Further, our reliance on third-party service providers could introduce new cybersecurity risks and vulnerabilities, including supply-chain attacks, and other threats to our business operations. We may rely on third-party service providers and technologies to operate critical business systems to process sensitive data in a variety of contexts, including, without limitation, cloud-based infrastructure, data center facilities, employee email, and other functions. We may also rely on third-party service providers to provide other products, services, parts, or otherwise to operate our business. Our ability to monitor these third parties' information security practices is limited, and these third parties may not have adequate information security measures in place. If our third-party service providers experience a security incident or other interruption, we could experience adverse consequences. While we may be entitled to damages if our third-party service providers fail to satisfy their data privacy or security-related obligations to us, any award may be insufficient to cover our damages, or we may be unable to recover such award. In addition, supply-chain attacks have increased in frequency and severity, and we cannot guarantee that third parties' infrastructure in our supply chain or our third-party partners' supply chains have not been compromised.

Any of the previously identified or similar threats could cause a security incident or other interruption that could result in unauthorized, unlawful, or accidental acquisition, modification, destruction, loss, alteration, encryption, disclosure of, or access to our sensitive data or our information technology systems, or those of the third parties upon whom we rely. A security incident or other interruption could disrupt our ability (and that of third parties upon whom we rely) to provide our services. We may expend significant resources or modify our business activities to try to protect against security incidents. Additionally, certain data privacy and security obligations may require us to implement and maintain specific security measures or industry-standard or reasonable security measures to protect our information technology systems and sensitive data.

While we have implemented security measures designed to protect against security incidents, there can be no assurance that these measures will be effective. We may be unable in the future to detect vulnerabilities in our information technology systems because such threats and techniques change frequently, are often sophisticated in nature, and may not be detected until after a security incident has occurred. Further, we may experience delays in developing and deploying remedial measures designed to address any such identified vulnerabilities. Applicable data privacy and security obligations may require us to notify relevant stakeholders of security incidents. Such disclosures are costly, and the disclosure or the failure to comply with such requirements could lead to adverse consequences.

If we (or a third party upon whom we rely) experience a security incident or are perceived to have experienced a security incident, we may experience adverse consequences. These consequences may include: government enforcement actions (for example, investigations, fines, penalties, audits, and inspections); additional reporting requirements and/or oversight; restrictions on processing sensitive data (including personal data); litigation (including class claims); indemnification obligations; negative publicity; reputational harm; monetary fund diversions; interruptions in our operations (including availability of data); financial loss; and other similar harms. Security incidents and attendant consequences may cause customers to stop using our services, deter new customers from using our services, and negatively impact our ability to grow and operate our business.

Our contracts may not contain limitations of liability, and even where they do, there can be no assurance that limitations of liability in our contracts are sufficient to protect us from liabilities, damages, or claims related to our data privacy and security obligations. We cannot be sure that our insurance coverage will be adequate or sufficient to protect us from or to mitigate liabilities arising out of our privacy and security practices, that such coverage will continue to be available on commercially reasonable terms or at all, or that such coverage will pay future claims.

In addition to experiencing a security incident, third parties may gather, collect, or infer sensitive information about us from public sources, data brokers, or other means that reveals competitively sensitive details about our organization and could be used to undermine our competitive advantage or market position.

Changes in government policies, laws, and regulations and with respect to the government workforce may have a negative impact on our business and the markets in which we operate.

The laws and regulations governing our operations, as well as their interpretation, may change from time to time, and new laws and regulations may be enacted. Similarly, operational changes at government agencies, including actions intended to reduce government spending at agencies that regulate significant parts of our business, such as the FDA and CMS, could have a significant impact on the implementation of laws and regulations that impact our business. Accordingly, any change in these laws or regulations, changes in their interpretation, or newly enacted laws or regulations and any failure by us to comply with these laws or regulations could require changes to certain of our business practices, negatively impact our operations, cash flow or financial condition, impose additional costs on us or otherwise adversely affect our business. For example, U.S. trade policy under the new administration, including potential new or increased tariffs, along with changing trade policies in China, Mexico, the U.K., Canada, and parts of Europe, may impact global trade, create sourcing challenges with respect to raw materials and instruments and increase our costs, potentially harming our business.

Moreover, uncertainty with respect to legislation, regulation and government policy at the federal, state and local levels, including as a result of the change in administration, has introduced new and difficult-to-quantify macroeconomic and geopolitical risks with potentially far-reaching implications. There are currently a number of laws and regulations in the U.S. that have recently been adopted with the change in presidential administration but not yet implemented or have been proposed or are being considered to which we or our customers may become subject, including healthcare reform initiatives and potential spending and tax proposals, but at this time their impact on our business and results of operations remains uncertain. Changes in legislation, regulation or policy increase the likelihood that we will fail to appropriately adapt to changes in our compliance obligations, particularly when such changes happen abruptly, such as following a change in government. Any of the foregoing changes could increase our litigation and regulatory exposure, directly impact our results of operations and cash flows, adversely affect our ability to provide our products, or adversely impact the demand for our products. Such changes may also impact our business by creating increased volatility and uncertainty in the markets in which we operate. At this time, we cannot predict the ultimate content, timing, or effect of these changes, including any legislative, regulatory and other actions under the new U.S. administration, or estimate the overall impact of any such changes on our business, results of operations and financial condition

Risks Related to Our Intellectual Property

If we are unable to adequately protect or enforce our intellectual property rights, we may lose valuable assets or incur costly litigation to protect our rights.

Our policy is to actively seek patent protection in the U.S. and to pursue equivalent patent claims in selected foreign countries, thereby seeking patent coverage for novel technologies and compositions of matter that may be commercially important to the development of our business. Granted patents include claims covering the product composition, methods of use and methods of preparation. Our existing patents may not cover future products, additional patents may not be issued and current patents, or patents issued in the future, may not provide meaningful protection or prove to be of commercial benefit.

The patent positions of pharmaceutical companies, including ours, are uncertain and involve complex legal and factual questions. In addition, the coverage claimed in a patent application can be significantly reduced before the patent is issued. Consequently, our patent applications may not issue into patents, and any issued patents may not provide sufficient protection for our product candidates or provide sufficient protection to afford us a commercial advantage against competitive technologies or may be held invalid if challenged or circumvented. Patent applications in the U.S. are maintained in confidence for at least 18 months after their filing. Consequently, we cannot be certain that the patent applications we are pursuing will lead to the issuance of any patent or be free from infringement or other claims from other parties. Our competitors may also independently develop products similar to

ours or design around or otherwise circumvent patents issued to us or licensed by us. In addition, the laws of some foreign countries may not protect our proprietary rights to the same extent as U.S. laws.

We may have to enforce our intellectual property rights against third parties who infringe our patents and other intellectual property or challenge our patent or trademark applications. For example, in the U.S., putative generics of innovator drug products (including products in which the innovation comprises a new drug delivery method for an existing product, such as the drug delivery market occupied by us) may file Abbreviated New Drug Applications ("ANDA") and, in doing so, certify that their products either do not infringe the innovator's patents or that the innovator's patents are invalid. This often results in litigation between the innovator and the ANDA applicant. This type of litigation is commonly known as "Paragraph IV" litigation in the U.S. On July 27, 2022, we filed a complaint for patent infringement of certain CINVANTI patents against Fresenius Kabi USA, LLC ("Fresenius Kabi") and a related entity in the District of Delaware in response to Fresenius Kabi's ANDA filing seeking approval to manufacture, use or sell a generic version of CINVANTI in the U.S. prior to expiration of the CINVANTI patents. While in December 2024, the District Court found that the Company's CINVANTI patents are valid and would be infringed by Fresenius Kabi's proposed generic product, this decision is currently pending appeal and there is no guarantee that other similar or future litigation will be resolved in our favor. These litigations, of which there are often multiple in process at one time, could result in new or additional generic competition to any of our Products and our product candidates and a potential reduction in product revenue. For example, there is pending litigation relating to the Company's CINVANTI patents against Mylan Pharmaceuticals Inc., and Azurity Pharmaceuticals, Inc. (and its subsidiaries).

We may enter into collaborative agreements that may subject us to obligations that must be fulfilled and require us to manage complex relationships with third parties. In the future, if we are unable to meet our obligations or manage our relationships with our collaborators under these agreements our revenue may decrease. The loss or diminution of our intellectual property rights could result in a decision by our third-party collaborators to terminate their agreements with us. In addition, these agreements are generally complex and contain provisions that could give rise to legal disputes, including potential disputes concerning ownership of intellectual property and data under collaborations. Such disputes can lead to lengthy, expensive litigation or arbitration, requiring us to divert management time and resources to such dispute.

Because the patent positions of pharmaceutical and biotechnology companies involve complex legal and factual questions, enforceability of patents cannot be predicted with certainty. The ultimate degree of patent protection that will be afforded to products and processes, including ours, in the U.S., remains uncertain and is dependent on the scope of protection decided on by the patent offices, courts and lawmakers in these countries. The America Invents Act, which was enacted in 2011 and reformed certain patent laws in the U.S., may create additional uncertainty. Patents, if issued, may be challenged, invalidated or circumvented. As more products are commercialized using our proprietary product platforms, or as any product achieves greater commercial success, our patents become more likely to be subject to challenge by potential competitors.

We also rely on trade secrets, technical know-how and continuing technological innovation to develop and maintain our competitive position. We require our employees, consultants, advisors and collaborators to execute appropriate confidentiality and assignment-of-inventions agreements with us. These agreements typically provide that all materials and confidential information developed or made known to the individual during the course of the individual's relationship with us is to be kept confidential and not disclosed to third parties except in specific circumstances, and that all inventions arising out of the individual's relationship with us shall be our exclusive property. These agreements may be breached, and in some instances, we may not have an appropriate remedy available for such breach. Furthermore, our competitors may independently develop substantially equivalent proprietary information and techniques, reverse engineer our information and techniques, or otherwise gain access to our proprietary technology. We may be unable to meaningfully protect our rights in trade secrets, technical know-how and other non-patented technology. We may have to resort to litigation to protect our intellectual property rights, or to determine their scope, validity or enforceability. In addition, interference proceedings declared by the U.S. Patent and Trademark Office may be necessary to determine the priority of inventions with respect to our patent applications. Enforcing or defending our proprietary rights is expensive, could cause diversion of our resources and may not prove successful. In addition, courts outside the U.S. may be less willing to protect trade secrets. Costly and time-consuming litigation could be necessary to seek to enforce and determine the scope of our

proprietary rights. Any failure to enforce or protect our rights could cause us to lose the ability to exclude others from using our technology to develop or sell competing products.

We may be subject to claims that we have infringed on the intellectual property rights of others, and any litigation could force us to stop developing or selling potential products and could be costly, divert management attention and harm our business.

We must be able to develop products without infringing the proprietary rights of other parties. Because the markets in which we operate involve established competitors with significant patent portfolios, including patents relating to the composition of a variety of polymers, specific products, product groups and processing technology, it could be difficult for us to use our technologies or develop products without infringing the proprietary rights of others. Therefore, there is risk that third parties may make claims of infringement against our Products, our product candidates or our technologies. We may not be able to design around the patented technologies or inventions of others, and we may not be able to obtain licenses to use patented technologies on acceptable terms, or at all. If we cannot operate without infringing the proprietary rights of others, we will not be able to develop or commercialize some or all of our product candidates, and consequently will not be able to earn product revenue.

There is considerable uncertainty within the pharmaceutical industry about the validity, scope and enforceability of many issued patents in the U.S. and elsewhere in the world. We cannot currently determine the ultimate scope and validity of patents that may be granted to third parties in the future or which patents might be asserted to be infringed by any future manufacture, use or sale of our Products and our product candidates. In part as a result of this uncertainty, there has been, and we expect that there may continue to be, significant litigation in the pharmaceutical industry regarding patents and other intellectual property rights.

If we are required to defend ourselves in a patent-infringement lawsuit, we could incur substantial costs, and the lawsuit could divert management attention, regardless of the lawsuit's merit or outcome. These legal actions could seek damages and seek to enjoin testing, manufacturing and marketing of the accused product or process. In addition to potential liability for significant damages, we could be required to redesign affected products or obtain a license to continue to manufacture or market the accused product or process and any license required under any such patent may not be made available to us on acceptable terms, if at all. Competitors may sue us as a way of delaying the introduction of our Products and our product candidates. Any litigation, including any interference or derivation proceedings to determine priority of inventions, oppositions or other post-grant review proceedings to patents in the U.S. or in countries outside the U.S., or litigation against our partners may be costly and time-consuming and could harm our business. We expect that litigation may be necessary in some instances to determine the validity and scope of certain of our proprietary rights. Litigation may be necessary in other instances to determine the validity, scope and/or non-infringement of certain patent rights claimed by third parties to be pertinent to the manufacture, use or sale of our Products and our product candidates. Ultimately, the outcome of such litigation could adversely affect the validity and scope of our patent or other proprietary rights or hinder our ability to manufacture and market our Products and our product candidates.

Periodically, we review publicly available information regarding the development efforts of others in order to determine whether these efforts may violate our proprietary rights. We occasionally determine that litigation is necessary to enforce our proprietary rights against others. Such litigation can result in substantial expense, regardless of its outcome, and may not be resolved in our favor.

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

As is common in the biotechnology and pharmaceutical industries, we employ individuals who were previously employed at other biotechnology and pharmaceutical companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers.

Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

Risks Related to Our Common Stock

The price of our common stock has been and may continue to be volatile.

The stock markets, in general, and in particular with respect to biotech and life sciences companies, have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the trading price of our common stock. In addition, the limited trading volume of our stock may contribute to its volatility. Our stock price may be particularly volatile given the stage of our business.

In the past, following periods of volatility in the market price of a particular company's securities, litigation has often been brought against that company. If litigation of this type is brought against us, it could be extremely expensive and divert management's attention and our Company's resources.

Our certificate of incorporation, our bylaws and Delaware law contain provisions that could discourage another company from acquiring us and may prevent attempts by our stockholders to replace or remove our current management.

Provisions of Delaware law, our certificate of incorporation and our bylaws may discourage, delay or prevent a merger or acquisition that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace or remove our Board of Directors (the "Board"). These provisions include authorizing the issuance of "blank check" preferred stock without any need for action by stockholders.

In addition, Section 203 of Delaware General Corporation Law, which is applicable to us, may discourage, delay or prevent a change in control of our Company by prohibiting stockholders owning in excess of 15% of our outstanding voting stock from merging or combining with us, unless certain approvals are obtained.

Future utilization of net operating loss carryforwards or research and development credit carryforwards may be impaired due to recent changes in ownership.

We believe our net operating loss and research and development credit carryforwards, and certain other tax attributes, may be subject to limitation under Section 382 of the Internal Revenue Code of 1986 ("IRC"). As a result, our deferred tax assets, and related valuation allowance, have been reduced for the estimated impact of the net operating loss and research and development credit carryforwards that we currently estimate may expire, unused. Utilization of our remaining net operating loss and research and development credit carryforwards may still be subject to substantial annual limitations due to ownership change limitations provided by the IRC and similar state provisions for ownership changes after July 31, 2023, including those that may come in conjunction with future equity financings or market trades by our stockholders.

Actions of activist stockholders could impact the pursuit of our business strategies, cause us to incur substantial costs, divert our management's attention and resources, and adversely affect our business, results of operations, liquidity, financial condition, and the trading price of our common stock.

While we value constructive input from investors and regularly engage in dialogue with our stockholders, and we welcome their views and opinions regarding strategy and performance, we may be subject to actions or proposals from activist stockholders that may not align with our business strategies or the interests of our other stockholders, and the Board and our management are committed to acting in the best interests of all of our stockholders. Accordingly, there is no assurance that the actions taken by the Board and our management in seeking to maintain constructive engagement with certain stockholders will be successful in preventing the occurrence of stockholder activist campaigns.

As previously reported, in February 2023, we entered into a Cooperation Agreement, dated February 21, 2023, with two of our stockholders, Rubric Capital Management LP and certain of its affiliates and Velan Capital Investment

Management LP and certain of its affiliates (collectively, the "Investor Group"), regarding certain changes to the composition of the Board, among other items.

Proxy contests have been waged against many companies in the biopharmaceutical industry over the last few years. If faced with any proxy contest or activist stockholder request or action in the future, we may not be able or willing to respond successfully to the contest, request, or action, which could be significantly disruptive to our business. Even if we are successful, our business, results of operations, liquidity, financial condition, and trading price of our common stock could be adversely affected by any proxy contest or activist stockholder request or action involving us because:

- responding to proxy contests and requests or actions by activist stockholders can be costly and time-consuming, disrupting operations and diverting the attention of management and employees, and can lead to uncertainty;
- perceived uncertainties as to the future direction of the Company and our business may result in the loss of potential acquisitions, collaborations or in-licensing opportunities, and may make it more difficult to attract and retain qualified personnel and business partners;
- if individuals are elected or appointed to the Board with a specific agenda, it may adversely affect our ability to effectively implement our strategic plan in a timely manner and create additional value for our stockholders; and
- if individuals are elected or appointed to the Board who do not agree with our strategic plan, the ability of the Board to function effectively could be adversely affected.

We cannot predict, and no assurances can be given, as to the outcome or timing of any matters relating to the foregoing actions by activist stockholders and our responses thereto or the ultimate impact on our business, results of operations, liquidity, financial condition, and trading price of our common stock. Any such activist stockholder contests, requests or actions, or the mere public presence of activist stockholders among our stockholder base, could cause the market price of our common stock to experience periods of significant volatility or stagnation.

If we identify a material weakness in our internal control over financial reporting, our ability to meet our reporting obligations and the trading price of our common stock could be negatively affected.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our financial statements will not be prevented or detected on a timely basis. Accordingly, a material weakness increases the risk that the financial information we report contains material errors.

We regularly review and update our internal controls, disclosure controls and procedures and corporate governance policies. In addition, we are required under the Sarbanes-Oxley Act of 2002 to report annually on our internal control over financial reporting. Any system of internal controls, however well designed and operated, is based in part on certain assumptions and can provide only reasonable, not absolute, assurances that the objectives of the system are met. If we, or our independent registered public accounting firm, determine that our internal controls over financial reporting are not effective, or we discover areas that need improvement in the future, these shortcomings could have an adverse effect on our business and financial results.

If we cannot conclude that we have effective internal control over our financial reporting, investors could lose confidence in the reliability of our financial statements. Failure to comply with reporting requirements could also subject us to sanctions and/or investigations by the SEC, The Nasdaq Capital Market or other regulatory authorities.

Because we do not anticipate paying any cash dividends on our common stock in the foreseeable future, capital appreciation, if any, will be the source of gain for our stockholders.

We have never declared or paid cash dividends on our common stock. We currently intend to retain all of our current and future earnings to finance the growth and development of our business. As a result, capital appreciation, if any, of our common stock will be the sole source of gain for our stockholders for the foreseeable future.

ITEM 1B. UNRESOLVED STAFF COMMENTS.

None.

ITEM 1C. CYBERSECURITY

Risk Management and Strategy

In the ordinary course of our business, we collect, use, store, and transmit digitally large amounts of confidential, sensitive, proprietary, and personal information. The secure maintenance of this information and our information technology systems is important to our operations and business strategy. To this end, we have implemented processes designed to assess, identify, and manage risks from potential unauthorized occurrences on or through our information technology systems that may result in adverse effects on the confidentiality, integrity, and availability of these systems and the data residing therein. These processes are managed and monitored by a dedicated information technology team, which is led by our Chief Financial Officer and include mechanisms, controls, technologies, systems, and other processes designed to prevent or mitigate data loss, theft, misuse, or other security incidents or vulnerabilities affecting the data and maintain a stable information technology environment. For example, we conduct vulnerability testing, data recovery testing, security audits, and ongoing risk assessments, including due diligence on and audits of our key technology vendors, and other contractors and suppliers. We also conduct periodic employee training on cyber and information security, among other topics. In addition, we consult with outside advisors and experts, when appropriate to assist with assessing, identifying, and managing cybersecurity risks, including to anticipate future threats and trends, and their impact on the Company's risk environment.

In the last fiscal year, we have not identified risks from known cybersecurity threats, including any prior cybersecurity incidents, that have materially affected us. However, we face certain ongoing cybersecurity threats that, if realized, are reasonably likely to materially affect us. Additional information on cybersecurity risks we face is discussed in Part I, Item 1A, "Risk Factors."

Governance

Our Chief Financial Officer, who reports directly to the Chief Executive Officer and has over 15 years of experience managing information technology and cybersecurity matters, is responsible for assessing and managing cybersecurity risks. We consider cybersecurity, along with other significant risks that we face, within our overall enterprise risk management framework.

The Board, as a whole and at the committee level, has oversight for the most significant risks facing us and for our processes to identify, prioritize, assess, manage, and mitigate those risks. The Audit Committee, which is comprised solely of independent directors, has been designated by the Board to oversee cybersecurity risks. The Audit Committee receives regular updates on cybersecurity and information technology matters and related risk exposures from our Chief Financial Officer. The Board also receives updates from management and the Audit Committee on cybersecurity risks on at least an annual basis.

ITEM 2. PROPERTIES.

We have an operating lease for 52,148 square feet of laboratory and office space in San Diego, California, with a lease term that expires on December 31, 2025. In October 2021, we entered into a sublease agreement to sublet 23,873 square feet of laboratory and office space. The space was delivered to the subtenant in March 2022. The sublease agreement expires on December 31, 2025 and is coterminous with the operating lease for the subleased space. We have an operating lease for 5,840 square feet of office space in Cary, North Carolina, with a lease term that expires on April 30, 2025. We also have a short-term operating lease for 9,882 square feet of office space in Cary, North Carolina, with a lease term that expires on August 31, 2025.

ITEM 3. LEGAL PROCEEDINGS.

On June 14, 2022, the Company received a Paragraph IV notice of certification (the "Fresenius Kabi Notice") from Fresenius Kabi advising that Fresenius Kabi had submitted an ANDA to the FDA seeking approval to manufacture, use or sell a generic version of CINVANTI in the U.S. prior to the expiration of U.S. Patent Nos.: 9,561,229; 9,808,465; 9,974,742; 9,974,793; 9,974,794; 10,500,208; 10,624,850; 10,953,018; and 11,173,118 (the "CINVANTI Patents"), which are listed in the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations (the "Orange Book"). The Fresenius Kabi Notice alleges that the CINVANTI Patents are invalid, unenforceable and/or will not be infringed by the commercial manufacture, use or sale of the generic product described in Fresenius Kabi's ANDA.

On July 27, 2022, the Company filed a complaint for patent infringement of the CINVANTI Patents against Fresenius Kabi and a related entity in the U.S. District Court for the District of Delaware (the "Court") in response to Fresenius Kabi's ANDA filing. The complaint seeks, among other relief, equitable relief enjoining Fresenius Kabi from infringing the CINVANTI Patents. On May 15, 2024, the Court granted partial summary judgment of infringement for the Company and found no indefiniteness of U.S. Patent Nos. 9,561,229 and 9,974,794. On June 24, 2024, the parties commenced a four-day bench trial centered on Fresenius Kabi's defense of obviousness of claims from U.S. Patent Nos. 9,561,229 and 9,974,794 that cover CINVANTI. Oral argument was held on August 29, 2024.

On December 3, 2024, the Court issued a ruling in the Company's favor. The Court found that the Company's U.S. Patent Nos. 9,561,229 and 9,974,794, which expire in 2035, are valid and would be infringed by Fresenius Kabi's proposed generic product. In view of the decision, the Court ordered that the effective date of any final approval by the FDA of Fresenius Kabi's ANDA shall not be a date earlier than September 18, 2035, the expiration date of each of U.S. Patents Nos. 9,561,229 and 9,974,794. On January 8, 2025, Fresenius Kabi filed notice of appeal to the U.S. Court of Appeals for the Federal Circuit. The Company intends to vigorously enforce its intellectual property rights relating to CINVANTI.

On August 4, 2023, the Company received a Notice Letter (the "Mylan August Notice") from Mylan Pharmaceuticals Inc. ("Mylan") advising that Mylan had submitted an ANDA to the FDA seeking approval to manufacture, use or sell a generic version of CINVANTI ("Mylan's CINVANTI ANDA") in the U.S. prior to the expiration of the CINVANTI Patents, which are listed in the Orange Book. The Mylan August Notice alleges that the CINVANTI Patents are invalid, unenforceable and/or will not be infringed by the commercial manufacture, use or sale of the generic product described in Mylan's CINVANTI ANDA. On September 15, 2023, the Company filed a complaint for patent infringement of the CINVANTI Patents against Mylan in the U.S. District Court for the District of Delaware in response to the filing of Mylan's CINVANTI ANDA. The complaint seeks, among other relief, equitable relief enjoining Mylan from infringing the CINVANTI Patents. On November 9, 2023, the Company received an updated Notice Letter from Mylan advising that it had submitted an amendment to Mylan's ANDA to include a Paragraph IV certification to Heron's recently listed U.S. Patent No. 11,744,800. The parties completed fact discovery and are in expert discovery. A five-day bench trial is scheduled for May 19, 2025. The Company intends to vigorously enforce its intellectual property rights relating to CINVANTI. As a result of filing our complaint for patent infringement, the FDA may not approve Mylan's CINVANTI ANDA until the earlier of February 4, 2026 or resolution of the litigation.

On December 16, 2023, the Company received a Notice Letter (the "Mylan December Notice") from Mylan advising that Mylan had submitted an ANDA to the FDA seeking approval to manufacture, use or sell a generic version of APONVIE in the U.S. ("Mylan's APONVIE ANDA") prior to the expiration of U.S. Patent Nos.: 9,561,229; 9,808,465; 9,974,742; 9,974,793; 9,974,794; 10,500,208; 10,624,850; 10,953,018; 11,173,118; and 11,744,800 (the "APONVIE Patents"), which are listed in the Orange Book. The Mylan December Notice alleges that the APONVIE Patents are invalid, unenforceable and/or will not be infringed by the commercial manufacture, use or sale of the generic product described in Mylan's APONVIE ANDA. On January 11, 2024, the Company filed a complaint for patent infringement of the APONVIE Patents against Mylan in the U.S. District Court for the District of Delaware in response to Mylan filing Mylan's APONVIE ANDA. The complaint seeks, among other relief, equitable relief enjoining Mylan from infringing the APONVIE Patents. On January 26, 2024, the Court consolidated this litigation concerning Mylan's APONVIE ANDA with the previously-filed litigation concerning Mylan's CINVANTI ANDA. A five-day bench trial is scheduled for May 19, 2025. The Company intends to vigorously enforce its intellectual property rights relating to APONVIE. As a result of filing our complaint for patent

infringement, the FDA may not approve Mylan's APONVIE ANDA until the earlier of June 16, 2026 or resolution of the litigation.

On December 11, 2023, the Company received a Paragraph IV notice of certification (the "Slayback Notice") from Slayback Pharma LLC ("Slayback") (now owned by Azurity Pharmaceuticals, Inc.) advising that Slayback had submitted an NDA under Section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act to the FDA seeking approval to manufacture, use or sell a generic version of CINVANTI in the U.S. ("Slayback's NDA") prior to the expiration of the patents listed in the Orange Book. The Slayback Notice alleges that the CINVANTI Patents are invalid, unenforceable and/or will not be infringed by the commercial manufacture, use or sale of the generic product described in Slayback's NDA. On January 24, 2024, the Company filed a complaint for patent infringement of the CINVANTI Patents against Slayback and a related entity in the U.S. District Court for the District of New Jersey in response to Slayback's NDA filing. The complaint seeks, among other relief, equitable relief enjoining Slayback from infringing those patents. On July 2, 2024, the U.S. District Court for the District of New Jersey granted Slayback's motion to transfer this matter to the U.S. District Court for the District of Delaware. On December 12, 2024, to reflect Azurity Pharmaceuticals, Inc.'s ("Azurity") acquisition of Slayback, the Court entered a stipulation adding Azurity and a related entity into the case. On December 12, 2024, the Company filed a complaint against Slayback, Azurity, and related entities in the U.S. District Court for District of Delaware for patent infringement of U.S. Patent Nos. 12,115,254 and 12,115,255. The parties are currently in fact discovery and preparing for claim construction. A four-day bench trial is currently scheduled for November 17, 2025. The Company intends to vigorously enforce its intellectual property rights relating to CINVANTI. As a result of our initial complaint for patent infringement, the FDA may not approve Slayback's NDA until the earlier of June 12, 2026 or resolution of the litigation.

ITEM 4. MINE SAFETY DISCLOSURES.

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES.

Information About Our Common Stock

Shares of our common stock are traded on The Nasdaq Capital Market, under the symbol "HRTX."

Stockholders

As of February 6, 2025, there were 68 holders of record of our common stock, which does not include beneficial owners of stock held in street name (i.e., through a brokerage firm, bank, broker-dealer, trust or other similar organization).

Dividend Policy

We have never paid dividends on our common stock. We currently intend to retain all available funds and any future earnings for use in the operation and expansion of our business, and we do not anticipate paying any cash dividends in the foreseeable future.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

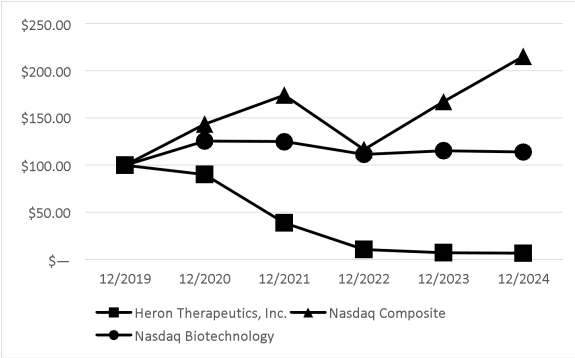
None.

Unregistered Sales of Equity Securities and Use of Proceeds

None.

Performance Graph
Cumulative Total Return

The following graph compares the relative performance of our common stock, the NASDAQ Composite Index and the NASDAQ Biotechnology Index. This graph covers the period from December 31, 2019 through December 31, 2024 and assumes that $100 was invested on December 31, 2019 in our common stock, the NASDAQ Composite Index and the NASDAQ Biotechnology Index with the reinvestment of any dividends.



	December 31,					
	2019	2020	2021	2022	2023	2024
Heron Therapeutics, Inc.	$ 100.00	$ 90.06	$ 38.85	$ 10.64	$ 7.23	$ 6.51
Nasdaq Composite Index	100.00	143.64	174.36	116.65	167.30	215.22
Nasdaq Biotechnology Index	100.00	125.69	124.89	111.27	115.42	113.84

The graph is not, and is not intended to be, indicative of future performance of our common stock.

This performance graph shall not be deemed “filed” with the SEC or subject to the liabilities of Section 18 of the Exchange Act, and should not be deemed incorporated by reference into any of our prior or subsequent filings under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

ITEM 6. [RESERVED].

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

The following discussion and analysis of our financial condition and results of operations should be read together with our audited financial statements and the related notes and other financial information included elsewhere in this Annual Report on Form 10-K. Some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report on Form 10-K, including information with respect to our plans and strategy for our business, include forward-looking statements that involve risks and uncertainties. You should review the sections entitled "Forward-Looking Statements" and "Risk Factors" in this Annual Report on Form 10-K for a discussion of important factors that could cause our actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Introduction

Management's discussion and analysis of financial condition and results of operations is provided as a supplement to the consolidated financial statements and notes, included in Item 8 of this Annual Report on Form 10-K to help provide an understanding of our financial condition, the changes in our financial condition and our results of operations. Our discussion is organized as follows:

- *Overview.* This section provides a general description of our business and operating expenses, as well as other matters that we believe are important to understanding our results of operations and financial condition and in anticipating future trends.

- *Critical accounting estimates.* This section contains a discussion of the accounting estimates that require a significant level of estimation uncertainty, and changes in which are reasonably likely to have a material effect on our financial condition or results of operations. In addition, all of our significant accounting policies are summarized in Note 2 to the consolidated financial statements included in Item 8 of this Annual Report on Form 10-K.

- *Results of operations.* This section provides an analysis of our results of operations presented in the accompanying consolidated statements of operations and comprehensive loss by comparing the results for the year ended December 31, 2024 to the results for the year ended December 31, 2023 and the results for the year ended December 31, 2023 to the results for the year ended December 31, 2022.

- *Liquidity and capital resources.* This section provides a discussion of our financial condition and liquidity, an analysis of our cash flows for the years ended December 31, 2024 and 2023, and a discussion of our outstanding commitments and contingencies that existed as of December 31, 2024.

Overview

We are a commercial-stage biotechnology company focused on improving the lives of patients by developing and commercializing therapeutic innovations that improve medical care. Our advanced science, patented technologies, and innovative approach to drug discovery and development have allowed us to create and commercialize a portfolio of products that aim to advance the standard of care for acute care and oncology patients.

ZYNRELEF® (bupivacaine and meloxicam) extended-release solution ("ZYNRELEF") is approved in the United States ("U.S.") for the management of postoperative pain. APONVIE® (aprepitant) injectable emulsion ("APONVIE") is approved in the U.S. for the prevention of postoperative nausea and vomiting. CINVANTI® (aprepitant) injectable emulsion ("CINVANTI") and SUSTOL® (granisetron) extended-release injection ("SUSTOL") are both approved in the U.S. for the prevention of chemotherapy-induced nausea and vomiting.

Material Trends and Developments

Impact of Global Business, Political and Macroeconomic Conditions

Uncertainty in the political and macroeconomic environments presents significant risks to our business. We are subject to continuing risks and uncertainties, including increasing financial market volatility and uncertainty,

inflation, interest rate fluctuations, uncertainty with respect to the federal budget and debt ceiling and potential government shutdowns related thereto, natural or man-made disasters, including severe weather, epidemics, pandemics, cyberattacks, acts of war or terrorism, armed conflict, or global pandemics. We closely monitor the impacts of these factors on all aspects of our business, including the impacts on our clinical trial patients, employees, partners, suppliers, and vendors. The ultimate impact of global economic conditions on our business remains highly uncertain and will depend on future developments and factors that continue to evolve. Most of these developments and factors are outside of our control and could exist for an extended period of time. As a result, we are subject to continuing risks and uncertainties and continue to closely monitor the impact of the current conditions on our business. For more information regarding these risks and uncertainties, see the section titled "Risk Factors" in this Annual Report on Form 10-K.

Crosslink Co-Promotion Agreement

On January 5, 2024, we entered into a five-year co-promotion agreement with Crosslink Network to be the lead partner in the United States to expand the promotion of ZYNRELEF for orthopedic indications. Under the terms of the agreement, Crosslink Network is compensated on a fixed-fee per vial basis, based on growth over a pre-determined baseline period.

Net Product Sales

Net product sales include revenue recognized for sales of ZYNRELEF, APONVIE, CINVANTI, and SUSTOL (collectively, our “Products”) to a limited number of specialty distributors and full line wholesalers (collectively, “Customers”), less applicable sales allowances. The revenues we generate are dependent upon and subject to several factors, including those discussed in the "Risk Factors" section of this Annual Report on Form 10-K. Refer to the “Critical Accounting Estimates” section of this Annual Report on Form 10-K for further details on our revenue recognition policy.

Cost of Product Sales

Cost of product sales relates to the costs to produce, package and deliver our Products to our Customers. These costs include raw materials, labor, manufacturing and quality control overhead, and depreciation of equipment, as well as shipping and distribution costs. The costs to produce, package and deliver our Products are dependent upon and subject to several factors as discussed in the "Risk Factors" section of this Annual Report on Form 10-K. See the “Critical Accounting Estimates” section of this Annual Report on Form 10-K for further details on our inventory policy.

Research and Development Expense

All costs of research and development are expensed in the period incurred. Research and development expense primarily consists of salaries, stock-based compensation expense and other related costs for personnel in clinical and preclinical development, regulatory, and quality. Other research and development expense includes professional fees paid to outside service providers and consultants, facilities costs and materials used in the clinical and preclinical trials and research and development.

General and Administrative Expense

General and administrative expense primarily consists of salaries, stock-based compensation expense and other related costs for personnel in executive, finance and accounting, information technology, legal, human resource, manufacturing and medical affairs functions. Other general and administrative expense includes professional fees for legal, investor relations, accounting and other general corporate purposes, facility costs and insurance not otherwise included in research and development expense.

Sales and Marketing Expense

Sales and marketing expense primarily consists of salaries and related costs for personnel, stock-based compensation expense and other related costs for sales operations, marketing and market access. Other sales and marketing costs include professional fees and commercialization costs related to our Products.

Other Income (Expense), Net

Other income (expense), net primarily consists of interest expense, income earned on our cash, cash equivalents and short-term investments, the amortization of debt issuance costs related to our Senior Convertible Notes payable, the amortization of debt discount related to our Working Capital Facility, and write-off of property and equipment.

We may be able to control the timing and extent of the operating expenses, but some expenses may be incurred without regard to our actions due to contractual commitments. Our expectations are subject to various risks and assumptions, including but not limited to those listed under the section entitled "Forward-Looking Statements" and “Risk Factors” in this Annual Report on Form 10-K.

Critical Accounting Estimates

A summary of the significant accounting policies is provided in Note 2 to our consolidated financial statements included in Item 8 of this Annual Report on Form 10-K.

The discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We evaluate our estimates on an ongoing basis, including those related to revenue recognition, investments, inventory, accrued clinical and manufacturing liabilities, income taxes and stock-based compensation. We base our estimates on historical experience and on assumptions that we believe to be reasonable under the circumstances, the results of which form the basis of making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ materially from these estimates under different assumptions or conditions.

Management considers an accounting estimate to be critical if it requires a significant level of estimation uncertainty, and changes in the estimate are reasonably likely to have a material effect on our financial condition or results of operations.

We believe the following critical accounting estimates describe the most significant judgments and estimates used in the preparation of our consolidated financial statements.

Revenue Recognition

Revenue is recognized in accordance with the Financial Accounting Standards Board Accounting Standards Codification Topic 606, Revenue from Contracts with Customers (“Topic 606”). Topic 606 is based on the principle that revenue should be recognized to depict the transfer of promised 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 and services.

Product Sales

Our Products are distributed in the U.S. through a limited number of Customers that resell to healthcare providers and hospitals, the end users of our Products.

Revenue is recognized in an amount that reflects the consideration we expect to receive in exchange for our Products. To determine revenue recognition for contracts with Customers within the scope of Topic 606, we perform the following 5 steps: (i) identify the contract(s) with a Customer; (ii) identify the performance obligations of the contract(s); (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract(s); and (v) recognize revenue when (or as) we satisfy the performance obligations. We recognize revenue from product sales when there is a transfer of control of the product to our Customers. We typically determine transfer of control based on when the product is delivered, and title passes to our Customers.

Product Sales Allowances

We recognize product sales allowances as a reduction of product sales in the same period the related revenue is recognized. Product sales allowances are based on amounts owed or to be claimed on the related sales. Such variable consideration includes estimates that take into consideration the terms of our agreements with Customers, historical product returns, rebates or discounts taken, the shelf life of the product and specific known market events, such as competitive pricing and new product introductions. If actual future results vary from our estimates, we may need to adjust these estimates, which could have an effect on product sales and earnings in the period of adjustment.

We believe our estimated allowances for distributor fees, group purchasing organization (“GPO”) rebates and administrative fees, Medicaid rebates and prompt pay discounts do not require a high degree of judgment because the amounts are settled within a relatively short period of time.

We believe our estimated allowance for product returns and GPO discounts requires a high degree of judgment and is subject to change based on our experience and certain quantitative and qualitative factors. We allow our Customers to return product for credit for up to 12 months after its product expiration date. As such, there may be a significant period of time between the time the product is shipped and the time the credit is issued on returned product. We estimate anticipated GPO discounts based on the applicable contractual terms. We regularly monitor our estimates and record adjustments when trends, contract terms or other significant events indicate that a change in estimates is appropriate. To date, our estimates have not differed materially from actuals. However, subsequent changes in estimates may result in a material change to our product sales allowances, which could materially affect our results of operations and financial condition.

Investments

We invest in various types of securities, including U.S. treasury bills and government agency obligations, corporate debt securities and commercial paper. These securities have been initially valued at the transaction price and subsequently valued utilizing a third-party to assess the fair value using inputs other than quoted prices that are observable either directly or indirectly, such as yield curve, volatility factors, credit spreads, default rates, loss severity, current market and contractual prices for the underlying instruments or debt, broker and dealer quotes, as well as other relevant economic measures. We perform certain procedures to corroborate the fair value of these holdings, and in the process, we apply judgment and estimates that if changed, could significantly affect our consolidated balance sheets. To date, our estimates have not differed materially from actual values. However, subsequent changes in estimates may result in a material change to the value of our cash equivalents and short-term investments, which could materially affect our results of operations and financial condition.

Inventory

Inventory is stated at the lower of cost or estimated net realizable value on a first-in, first-out ("FIFO"), basis. We periodically analyze our inventory levels and write down inventory that has become obsolete, inventory that has a cost basis in excess of its estimated realizable value and inventory quantities that are in excess of expected sales requirements as cost of product sales. The determination of whether inventory costs will be realizable requires estimates by management. If actual market conditions are less favorable than projected by management, additional write-downs of inventory may be required, which would be recorded as cost of product sales.

Accrued Research and Development Expenses

We estimate certain costs and expenses and accrue for these liabilities as part of our process of preparing financial statements. Examples of areas in which subjective judgment may be required include, among other things, costs associated with services provided by contract organizations for preclinical and clinical development, and manufacturing of our Products. We accrue for costs incurred as the services are being provided by monitoring the status of the services provided, and the invoices received from our external service providers. In the case of clinical trials, we rely on estimates of the progress of the clinical trials and related expenses incurred. Changes to estimates are recorded to research and development expense in the period in which the facts that gave rise to the revision become known. To date, our estimates have not differed materially from the actual costs incurred. However, subsequent changes in estimates may result in a material change to our accruals, which could also materially affect our results of operations and financial condition.

Income Taxes

We make certain estimates and judgments in determining income tax expense for financial statement purposes. These estimates and judgments occur in the calculation of certain deferred tax assets and liabilities, which arise from differences in the timing of recognition of revenue and expense for tax and financial statement purposes. As part of the process of preparing our consolidated financial statements, we are required to estimate our income taxes for each of the jurisdictions in which we operate. This process involves estimating our current tax exposure under the most recent tax laws and assessing temporary differences resulting from differing treatment of items for tax and financial statement purposes. At December 31, 2024, we established a valuation allowance to offset our deferred tax assets due to the uncertainty of realizing future tax benefits from our net operating loss carryforwards and other deferred tax assets. To date, our estimates have not materially changed. However, subsequent changes in estimates may result in a significant change to our deferred tax assets and liabilities, which could materially affect our results of operations and financial condition.

Stock-based Compensation

We estimate the fair value of stock options granted using the Black-Scholes option pricing model and for market-based stock option grants using the Monte Carlo simulation model. This fair value is then amortized over the requisite service periods of the awards. The Black-Scholes option pricing model requires the input of subjective assumptions, including each option's expected life and price volatility of the underlying stock. Expected volatility is based on our historical stock price volatility. The expected life of employee stock options represents the average of the contractual term of the options and the weighted-average vesting period, as permitted under the simplified method. To date, our assumptions used in our calculation of stock-based compensation expense has not significantly changed. However, subsequent changes in our assumptions could impact our stock-based compensation expense, which could materially affect our net loss and net loss per share.

Recent Accounting Pronouncements

See Note 2 to the Consolidated Financial Statements included in Item 8 of this Annual Report on Form 10-K.

Results of Operations

Comparison of Results of Operations

($ in thousands)	Years Ended December 31, 2024	% of Sales	2023	% of Sales	2022	% of Sales
Net product sales	$ 144,285		$ 127,044		$ 107,672	
Cost of product sales	38,648	26.8%	65,105	51.2%	54,874	51.0%
Gross Profit	$ 105,637		$ 61,939		$ 52,798	
Operating expenses:						
Research and development	16,683	11.6%	39,133	30.8%	82,704	76.8%
General and administrative	53,397	37.0%	65,778	51.8%	62,239	57.8%
Sales and marketing	47,085	32.6%	67,643	53.2%	82,513	76.6%
Loss from operations	$ (11,528)	(8%)	$ (110,615)	(87%)	$ (174,658)	(162%)

Net Product Sales

	Years Ended December 31, 2024	2023	2022
Acute Care Net Product Sales	$ 30,064	$ 19,118	$ 10,196
Oncology Net Product Sales	$ 114,221	$ 107,926	$ 97,476
Total Net Product Sales	**$ 144,285**	**$ 127,044**	**$ 107,672**

	2024 vs. 2023	2023 vs. 2022
Acute Care Growth	57.3%	87.5%
Oncology Growth	5.8%	10.7%
Total Net Product Sales Growth	**13.6%**	**18.0%**

Total acute care net product sales increased 57.3% during the year ended December 31, 2024, as compared to the prior year, primarily driven by an increase in the units sold as a result of increase in market share and new customers to the products for both ZYNRELEF and APONVIE. In addition, the increase is attributed to the commercial launch of APONVIE in March 2023.

Total acute care net product sales increased 87.5% during the year ended December 31, 2023, as compared to the prior year, driven by an increase in the units sold as a result of increase in market share and new customers to the products, as well as commercial launch of APONVIE in the U.S. in March 2023.

Total oncology net product sales increased 5.8% during the year ended December 31, 2024, as compared to the prior year, primarily driven by an increase in the units sold.

Total oncology net product sales increased 10.7% during the year ended December 31, 2023, as compared to the prior year, driven by an increase in the units sold.

Cost of Product Sales

Cost of sales decreased 40.6% during the year ended December 31, 2024, as compared to the prior year and as a percentage of sales, decreased 24.4% during the same period, primarily driven by a 29.2% decrease due to reduction in inventory reserves recorded, as the year-ended December 31, 2023 included write-offs for excess and obsolete inventory, for which there were not similar reserves or write-offs in the current year, and a 10.3% decrease due to scaled production achieved in late 2022, resulting in a lower cost per unit.

Cost of sales increased 18.6% during the year ended December 31, 2023, as compared to the prior year and as a percentage of sales, increased 0.2% during the same period, primarily driven by a 20.8% increase due to inventory

reserves recorded. This increase was partially offset by a 1.8% decrease due to scaled production achieved in late 2022, resulting in a lower cost per unit.

Research and Development Expense

Research and development expense consisted of the following (in thousands):

	December 31,		
	2024	2023	2022
ZYNRELEF-related costs	$ 6,424	$ 11,505	$ 47,975
CINVANTI-related costs	1,441	1,772	6,300
SUSTOL-related costs	428	1,207	1,681
APONVIE-related costs	405	4,572	724
Personnel costs and other expenses	6,129	13,572	15,993
Stock-based compensation expense	1,856	6,505	10,031
Total research and development expense	$ 16,683	$ 39,133	$ 82,704

Research and development expense decreased 57.4% during the year ended December 31, 2024, compared to the prior year and as a percentage of sales, decreased 19.2% during the same period, primarily due to decreased headcount and related costs as a result of the restructuring implemented in the year ended December 31, 2023, as well as a decrease in corresponding non-cash, stock-based compensation expense. The decrease is also partially due to APONVIE becoming commercially available in March 2023, which resulted in lower research and development expense in the year ended December 31, 2024 for APONVIE.

Research and development expense decreased 52.7% during the year ended December 31, 2023, compared to the prior year and as a percentage of sales, decreased 46.0% during the same period, primarily due to decreases in costs related to ZYNRELEF and CINVANTI, as product scale-up, validation activities and raw materials qualification were completed in 2022. In addition, the decrease in research and development expense was due to decreased headcount and related costs as a result of restructurings in the years ended December 31, 2023 and December 31, 2022, as well as a decrease in corresponding non-cash, stock-based compensation expense. These decreases were offset by an increase in APONVIE related costs to support commercial launch in March 2023.

General and Administrative Expense

General and administrative expense decreased 18.8% during the year ended December 31, 2024, compared to the prior year and as a percentage of sales, decreased 14.8% during the same period, primarily due to decreased headcount and related costs, as a result of the restructuring implemented in the year ended December 31, 2023, and operational efficiencies. These decreases were offset by increased legal costs due to ongoing patent litigation.

General and administrative expense increased 5.7% during the year ended December 31, 2023, compared to the prior year and as a percentage of sales, decreased 6.0% during the same period, primarily due to severance and non-cash, stock-based compensation expense in connection with the executive departures in the second and third quarters of 2023, and ongoing legal costs associated with the CINVANTI patent litigation.

Sales and Marketing Expense

Sales and marketing expense decreased 30.4% during the year ended December 31, 2024, compared to the prior year and as a percentage of sales, decreased 20.6% during the same period, primarily due to decreased headcount and related costs, as a result of the restructuring implemented in the year ended December 31, 2023, and operational efficiencies.

Sales and marketing expense decreased 18.0% during the year ended December 31, 2023, compared to the prior year and as a percentage of sales, decreased 23.4% during the same period, primarily due to a decrease in costs to support the ongoing commercialization of ZYNRELEF, offset by costs to support commercialization of APONVIE, and due to improved operational efficiencies.

Other (Expense) Income, Net

Other (expense) income, net decreased $2.1 million during the year ended December 31, 2024, compared to the prior year, primarily due to the interest expense associated with the Working Capital Facility Agreement, which was entered into August 2023.

Other (expense) income, net increased $7.4 million during the year ended December 31, 2023, compared to the prior year, primarily due to the write-off of property and equipment at a third-party manufacturing site in 2022, as well as an increase in interest income earned on our invested cash balances in 2023.

Liquidity and Capital Resources

As of December 31, 2024, we had cash, cash equivalents and short-term investments of $59.3 million. Based on our current operating plan and projections, management believes that the Company's existing cash, cash equivalents and short-term investments will be sufficient to meet the Company's anticipated cash requirements for a period of at least one year from the date this Annual Report on Form 10-K is filed with the U.S. Securities and Exchange Commission. However, we expect that we will need to refinance, or otherwise satisfy, our current indebtedness of $175.5 million to fully fund our current business plan and meet all commitments discussed below. We continuously evaluate our liquidity and capital resources, including access to external capital, in light of current economic and market conditions and our operational performance.

Our net loss for the year ended December 31, 2024 was $13.6 million, or $0.09 per share, compared to a net loss of $110.6 million, or $0.80 per share, for the same period in 2023, and $182.0 million or $1.67 per share for the same period in 2022.

Our net cash used in operating activities for the year ended December 31, 2024 was $22.5 million, compared to $58.8 million for the same period in 2023. The decrease in net cash used in operating activities was primarily due to a decrease in net loss as a result of decreases in operating spend and stock-based compensation expenses, primarily as a result of the restructuring implemented in 2023, offset by the net increase in write-offs of property and equipment of $3.8 million during the year ended December 31, 2024, and changes in working capital, specifically accounts receivable due to timing of collections, inventory as a result of write-offs incurred, prepaid assets due to the timing of payments, and accounts payable and accrued expenses, including payroll and employee liabilities due to the timing of payments and reduced headcount.

Our net cash provided by investing activities for the year ended December 31, 2024 was $18.7 million, compared to $18.0 million for the same period in 2023. The increase in cash provided by investing activities was primarily due to net maturities of short-term investments of $20.4 million for the year ended December 31, 2024, compared to net maturities of short-term investments of $19.5 million for the same period in 2023.

Our net cash provided by financing activities for the year ended December 31, 2024 was $0.9 million, compared to $54.1 million for the same period in 2023. The decrease in cash provided by financing activities was primarily due to net proceeds of $54.1 million received from debt and equity financings completed in the third quarter of 2023. There were no comparable transactions in the year ended December 31, 2024. The net cash provided by financing activities for the year ended December 31, 2024 was a result of proceeds from transactions under the Employee Stock Purchase Plan and the equity incentive plan.

Historically, we have financed our operations, including technology and product research and development, primarily through sales of our common stock, product sales and debt financings.

Material Cash Requirements

As of December 31, 2024, $150.0 million in aggregate principal amount of the Senior Convertible Notes were outstanding (see Note 8 to the Consolidated Financial Statements included in this Annual Report on Form 10-K). The Senior Convertible Notes mature on May 26, 2026, unless earlier converted, redeemed or repurchased.

As of December 31, 2024, $25.5 million aggregate principal amount under the Working Capital Facility was outstanding (see Note 8 to the Consolidated Financial Statements included in this Annual Report on Form 10-K). The Working Capital Facility has a four year term and matures on the earlier of earlier of (a) September 1, 2027 and (b) to the extent that any of the Senior Convertible Notes remain outstanding on such date, (i) May 12, 2026 or (ii) in the event that the maturity date of any of the Senior Convertible Notes is extended, prior to May 12, 2026, to August 11, 2026 or later, the date that is ninety-one days prior to the maturity date of such further extended Senior Convertible Notes. As of December 31, 2024, the total amount of availability under the Working Capital Facility is approximately $10 million.

At December 31, 2024, purchase obligations primarily consisted of non-cancellable commitments with third-party manufacturers in connection with the manufacturing of our Products. Total purchase obligations of $49.2 million were not included in our consolidated financial statements for the year ended December 31, 2024, with $37.4 million due in one year and $11.8 million due within two years. We intend to use our current financial resources to fund our commitments under these purchase obligations.

As of December 31, 2024, we had an operating lease for 52,148 square feet of laboratory and office space in San Diego, California, with a lease term that expires on December 31, 2025. In October 2021, we entered into a sublease agreement to sublet 23,873 square feet of laboratory and office space. The space was delivered to the subtenant in March 2022. The sublease agreement expires on December 31, 2025 and is coterminous with the operating lease for the subleased space. In September 2023, we also entered into a sublease agreement to sublet 5,840 square feet of office space in Cary, North Carolina, with a lease term that expires on April 30, 2025. In September 2024, we entered into a short-term sublease agreement to sublet 9,882 square feet of office space in Cary, North Carolina, with a lease term that expires on August 31, 2025. As of December 31, 2024, we had total operating lease obligations of $3.0 million, all of which is due within one year.

We enter into agreements with contract manufacturing organizations for the manufacture and supply of commercial materials and drug product. In some of our agreements with contract manufacturing organizations, we are required to meet minimum purchase obligations. Under certain of these agreements, we may be subject to penalties in the event that we prematurely terminate these agreements. At this time, due to the variability associated with clinical site agreements, contract research organization agreements and contract manufacturing agreements, we are unable to estimate with certainty the future costs we will incur. We intend to use our current financial resources to fund our obligations under these commitments.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

Interest Rate Risk

We invest in marketable securities in accordance with our investment policy. The primary objectives of our investment policy are to preserve capital, maintain proper liquidity to meet operating needs and maximize yields. Our investment policy specifies credit quality standards for our investments and limits the amount of credit exposure to any single issue, issuer or type of investment. We place our excess cash with high credit quality financial institutions, commercial companies, and government agencies in order to limit the amount of credit exposure. Some of the securities we invest in may have market risk. This means that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. Our investment exposure to market risk for changes in interest rates relates to the increase or decrease in the amount of interest income we can earn on our portfolio, changes in the market value due to changes in interest rates and other market factors, as well as the increase or decrease in any realized gains and losses. Our investment portfolio includes only marketable securities and instruments with active secondary or resale markets to help ensure portfolio liquidity. We generally have the ability to hold our fixed-income investments to maturity and, therefore, do not expect that our operating results, financial condition or cash flows will be materially impacted due to a sudden change in interest rates. However, our future investment income may fall short of expectations due to changes in interest rates, or we may suffer losses in principal if forced to sell securities which have declined in market value due to changes in interest rates or other factors, such as changes in credit risk related to the securities' issuers. To minimize this risk, we schedule our investments to have maturities that coincide with our expected cash flow needs, thus avoiding the need to redeem an investment prior to its maturity date. Accordingly, we do not believe that we have material exposure to interest rate risk arising from our investments. We have not realized any significant losses from our investments. We do not use interest rate derivative instruments to manage exposure to interest rate changes. We ensure the safety and preservation of invested principal funds by limiting default risk, market risk and reinvestment risk. We reduce default risk by investing in investment grade securities.

Foreign Currency Exchange Rate Risk

Most of our revenues and expenses are denominated in the U.S. Dollar. We also incur transactions in foreign currency, principally denominated in Euros, primarily related to contract manufacturing, and we expect to continue to do so. Our limited foreign currency exposure is to fluctuations in the Euro. We do not anticipate that foreign currency transaction gains or losses will be significant at our current level of operations. However, transaction gains or losses may become significant in the future. We have not engaged in foreign currency hedging to date. Foreign currency gains or losses are included in the line items to which they relate in the Consolidated Statements of Operations and Comprehensive Loss.

Inflation Risk

Inflation generally impacts us by potentially increasing our operating expenses, including cost of product sales. We do not believe that inflation has had a material impact on our business or results of operations during the periods for which the consolidated financial statements are presented in this report. Significant adverse changes in inflation could negatively impact our future results of operations.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Heron Therapeutics, Inc.

Opinion on the Consolidated Financial Statements and Internal Control Over Financial Reporting

We have audited the accompanying consolidated balance sheets of Heron Therapeutics, Inc. and subsidiaries (the "Company") as of December 31, 2024 and 2023, and the related consolidated statements of operations and comprehensive loss, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2024, and the related notes (collectively referred to as the "consolidated financial statements"). We also have audited the Company's internal control over financial reporting as of December 31, 2024, based on criteria established in 2013 Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO").

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2024 and 2023, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2024, in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2024, based on criteria established in 2013 Internal Control—Integrated Framework issued by the COSO.

Basis for Opinion

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's consolidated financial statements and an opinion on the entity's internal control over financial reporting 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 audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the financial statements included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

Definition and Limitations of Internal Control Over Financial Reporting

An entity's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance

with accounting principles generally accepted in the United States of America. An entity's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the entity; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures of the entity are being made only in accordance with authorizations of management and directors of the entity; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the entity's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness 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 the policies or procedures may deteriorate.

Critical Audit Matters

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated financial statements; and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing separate opinions on the critical audit matter or on the accounts or disclosures to which it relates.

Allowance for Product Returns

Description of the Matter

As discussed in Notes 2 and 5 to the consolidated financial statements, the Company earns its revenue through the sale of its products, CINVANTI, SUSTOL, ZYNRELEF, and APONVIE, to specialty distributors. The Company's net product sales totaled $144.3 million for the year ended December 31, 2024. The amount of revenue recognized is net of product sales allowances for product returns, distributor fees, group purchase organization fees, discounts and rebates, and Medicare rebates, which totaled $37.4 million as of December 31, 2024. The allowances are recorded in the same period that the related revenue is recognized and create variability in the consideration that the Company expects to receive. Management's estimated allowance for product returns requires a high degree of judgment and is subject to change based on various quantitative and qualitative factors. Accordingly, extensive audit effort and a high degree of auditor judgment were needed to evaluate management's estimates and assumptions used in the determination of the allowance for product returns. Therefore, we identified management's allowance for product returns as a critical audit matter.

How We Addressed the Matter in Our Audit

To address this matter, through our integrated audit approach, we performed both control testing as well as substantive audit procedures. We obtained an understanding of, evaluated the design and tested the operating effectiveness of management's controls over the Company's processes related to recording the allowance for product returns, including testing management's quarterly control to perform a hindsight analysis and review historical returns rates.

We also evaluated the significant accounting policies relating to product returns, as well as management's application of the policies, for appropriateness and reasonableness. As part of our substantive testing procedures, we selected a sample of customer transactions and performed the following procedures for each selection:

- Obtained and read contract source documents and management's contract analyses.
- Evaluated whether the selected estimates were applied consistently across similar arrangements.
- Tested the reasonableness of management's assumptions in calculating the allowance for product returns by comparing them to historical data, peer group information, and, where available, subsequent product returns.
- Where management used actual shipments and returns to estimate product returns, we tested the third-party reports used by management for completeness and accuracy.

Additionally, we tested the mathematical accuracy of management's calculation of revenue, net of product sales allowances, including product returns, and the associated timing of revenue recognition, in the consolidated financial statements.

/s/ WithumSmith+Brown, PC

We have served as the Company's auditor since 2006.

Orlando, Florida
February 27, 2025

PCAOB ID Number 100

HERON THERAPEUTICS, INC.

CONSOLIDATED BALANCE SHEETS

(In thousands, except par value and share amounts)

	December 31, 2024	December 31, 2023
ASSETS		
Current assets:		
Cash and cash equivalents	$ 25,802	$ 28,677
Short-term investments	33,481	51,732
Accounts receivable, net	78,881	60,137
Inventory, net	53,160	42,110
Prepaid expenses and other current assets	17,690	6,118
Total current assets	209,014	188,774
Property and equipment, net	14,863	20,166
Right-of-use lease assets	2,787	5,438
Other assets	6,483	8,128
Total assets	$ 233,147	$ 222,506
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 11,709	$ 3,240
Accrued clinical and manufacturing liabilities	25,402	22,291
Accrued payroll and employee liabilities	9,554	9,224
Other accrued liabilities	41,755	41,855
Current lease liabilities	3,037	3,075
Total current liabilities	91,457	79,685
Non-current lease liabilities	—	2,800
Non-current notes payable, net	25,026	24,263
Non-current convertible notes payable, net	149,700	149,490
Other non-current liabilities	615	241
Total liabilities	266,798	256,479
Commitments and contingencies (see Note 6)		
Stockholders' deficit:		
Common stock, $0.01 par value: 400,000,000 shares authorized; 152,127,878 shares issued and outstanding at December 31, 2024 and 225,000,000 shares authorized; 150,285,044 shares issued and outstanding at December 31, 2023	1,521	1,503
Additional paid-in capital	1,884,409	1,870,525
Accumulated other comprehensive income	13	13
Accumulated deficit	(1,919,594)	(1,906,014)
Total stockholders' deficit	(33,651)	(33,973)
Total liabilities and stockholders' deficit	$ 233,147	$ 222,506

See accompanying Notes to Consolidated Financial Statements.

HERON THERAPEUTICS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS

(In thousands, except per share amounts)

	Years Ended December 31,		
	2024	2023	2022
Revenues:			
Net product sales	$ 144,285	$ 127,044	$ 107,672
Cost of product sales	38,648	65,105	54,874
Gross profit	105,637	61,939	52,798
Operating expenses:			
Research and development	16,683	39,133	82,704
General and administrative	53,397	65,778	62,239
Sales and marketing	47,085	67,643	82,513
Total operating expenses	117,165	172,554	227,456
Loss from operations	(11,528)	(110,615)	(174,658)
Other (expense) income, net:			
Interest income	3,550	3,364	1,638
Interest expense	(6,032)	(3,868)	(2,474)
Other income (expense)	430	560	(6,530)
Total other (expense) income, net	(2,052)	56	(7,366)
Net loss	(13,580)	(110,559)	(182,024)
Other comprehensive income (loss):			
Unrealized gains (losses) on short-term investments	-	32	(13)
Comprehensive loss	$ (13,580)	$ (110,527)	$ (182,037)
Basic and diluted net loss per share	$ (0.09)	$ (0.80)	$ (1.67)
Shares used in computing basic and diluted net loss per share	152,449	138,135	108,876

See accompanying Notes to Consolidated Financial Statements.

HERON THERAPEUTICS, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
(In thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount				
Balance, December 31, 2021	102,005	$ 1,020	$ 1,689,987	$ (6)	$ (1,613,431)	$ 77,570
Issuance of common stock under Employee Stock Purchase Plan	407	4	1,440	—	—	1,444
Issuance of common stock under equity incentive plan	614	6	(1,536)	—	—	(1,530)
Issuance of common stock in a private placement	16,129	161	74,984	—	—	75,145
Stock-based compensation expense	—	—	42,980	—	—	42,980
Net loss	—	—	—	—	(182,024)	(182,024)
Net unrealized loss on short-term investments	—	—	—	(13)	—	(13)
Comprehensive loss	—	—	—	—	—	(182,037)
Balance, December 31, 2022	119,155	$ 1,191	$ 1,807,855	$ (19)	$ (1,795,455)	$ 13,572
Issuance of common stock under Employee Stock Purchase Plan	717	7	897	—	—	904
Issuance of common stock under equity incentive plan	1,130	11	(914)	—	—	(903)
Issuance of common stock in a private placement	20,735	208	29,547	—	—	29,755
Issuance of common stock on exercise of pre-funded warrants	8,548	86	(85)	—	—	1
Issuance of warrant in debt financing	—	—	371	—	—	371
Stock-based compensation expense	—	—	32,854	—	—	32,854
Net loss	—	—	—	—	(110,559)	(110,559)
Net unrealized gain on short-term investments	—	—	—	32	—	32
Comprehensive loss	—	—	—	—	—	(110,527)
Balance, December 31, 2023	150,285	$ 1,503	$ 1,870,525	$ 13	$ (1,906,014)	$ (33,973)
Issuance of common stock under Employee Stock Purchase Plan	640	6	631	—	—	637
Issuance of common stock under equity incentive plan	1,203	12	291	—	—	303
Stock-based compensation expense	—	—	12,962	—	—	12,962
Net loss	—	—	—	—	(13,580)	(13,580)
Comprehensive loss	—	—	—	—	—	(13,580)
Balance, December 31, 2024	152,128	$ 1,521	$ 1,884,409	$ 13	$ (1,919,594)	$ (33,651)

See accompanying Notes to Consolidated Financial Statements.

HERON THERAPEUTICS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

	Years Ended December 31,		
	2024	2023	2022
Operating activities:			
Net loss	$ (13,580)	$ (110,559)	$ (182,024)
Adjustments to reconcile net loss to net cash used in operating activities:			
Stock-based compensation expense	12,962	32,854	42,980
Depreciation and amortization	2,492	2,899	2,889
Amortization of debt discount	751	133	—
Amortization of debt issuance costs	210	206	202
Accretion of discount on short-term investments	(2,143)	(1,739)	(736)
Retirement and impairment of property and equipment	4,409	617	209
(Gain)/Loss on disposal of property and equipment	(27)	10	74
Change in operating assets and liabilities:			
Accounts receivable	(18,744)	(8,088)	(16,550)
Inventory	(11,050)	12,463	(6,191)
Prepaid expenses and other assets	(9,927)	15,426	1,010
Accounts payable	8,469	15	(578)
Accrued clinical and manufacturing liabilities	3,220	(2,177)	752
Accrued payroll and employee liabilities	330	(4,192)	(1,847)
Other accrued liabilities	99	3,343	12,898
Net cash used in operating activities	(22,529)	(58,789)	(146,912)
Investing activities:			
Purchases of short-term investments	(103,087)	(87,658)	(145,683)
Maturities and sales of short-term investments	123,480	107,185	143,957
Purchases of property and equipment	(1,706)	(1,545)	(1,825)
Proceeds from the sale of property and equipment	27	13	227
Net cash provided by (used in) investing activities	18,714	17,995	(3,324)
Financing activities:			
Net proceeds from sale of common stock	—	29,755	75,145
Net proceeds from notes financing	—	24,350	—
Proceeds from purchases under the Employee Stock Purchase Plan	637	904	1,444
Receipts (payments) for stock issued under the equity incentive plan	303	(903)	(1,530)
Proceeds from warrant exercises	—	1	—
Net cash provided by financing activities	940	54,107	75,059
Net (decrease) increase in cash and cash equivalents	(2,875)	13,313	(75,177)
Cash and cash equivalents at beginning of year	28,677	15,364	90,541
Cash and cash equivalents at end of year	$ 25,802	$ 28,677	$ 15,364
Supplemental disclosure of cash flow information:			
Interest paid	$ 4,860	$ 3,059	$ 2,250

See accompanying Notes to Consolidated Financial Statements.

1. Organization and Business

We are a commercial-stage biotechnology company focused on improving the lives of patients by developing and commercializing therapeutic innovations that improve medical care. Our advanced science, patented technologies, and innovative approach to drug discovery and development have allowed us to create and commercialize a portfolio of products that aim to advance the standard of care for acute care and oncology patients.

ZYNRELEF® (bupivacaine and meloxicam) extended-release solution ("ZYNRELEF") is approved in the United States ("U.S.") for the management of postoperative pain. APONVIE® (aprepitant) injectable emulsion ("APONVIE") is approved in the U.S. for the prevention of postoperative nausea and vomiting. CINVANTI® (aprepitant) injectable emulsion ("CINVANTI") and SUSTOL® (granisetron) extended-release injection ("SUSTOL") are both approved in the U.S. for the prevention of chemotherapy-induced nausea and vomiting.

As of December 31, 2024, we had cash, cash equivalents, and short-term investments of $59.3 million. Based on our current operating plan and projections, management believes that the Company's cash, cash equivalents and short-term investments will be sufficient to meet the Company's anticipated cash requirements for a period of at least one year from the date this Annual Report on Form 10-K is filed with the U.S. Securities and Exchange Commission ("SEC").

2. Summary of Significant Accounting Policies

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Heron Therapeutics, Inc. and its wholly-owned subsidiary, Heron Therapeutics B.V., which was organized in the Netherlands in March 2015. Heron Therapeutics B.V. has no operations and no material assets or liabilities, and there have been no significant transactions related to Heron Therapeutics B.V. since its inception.

Reclassification of Certain Expenses

The consolidated statements of operations and comprehensive loss for the year ended December 31, 2023 and December 31, 2022, reflect reclassification of certain expenses from research and development to general and administrative expenses to align with the Company's presentation for the year ended December 31, 2024, as a result of the restructuring implemented in 2023 and the realignment of the Company's departments. These reclassifications resulted in no change to total operating expenses, loss from operations or net loss and no pro forma financial information is necessary.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles in the U.S. ("GAAP") requires management to make estimates and assumptions that affect the amounts reported in the financial statements and disclosures made in the accompanying notes to the financial statements. Our significant accounting policies that involve significant judgment and estimates include revenue recognition, investments, inventory and the related reserves, accrued clinical and manufacturing liabilities, income taxes and stock-based compensation. Actual results could differ materially from those estimates.

Cash, Cash Equivalents and Short-term Investments

Cash and cash equivalents consist of cash and highly liquid investments with contractual maturities of three months or less from the original purchase date.

Short-term investments consist of securities with contractual maturities of greater than three months from the original purchase date. Securities with contractual maturities greater than one year are classified as short-term investments on the consolidated balance sheets, as we have the ability, if necessary, to liquidate these securities to meet our liquidity needs in the next 12 months. We have classified our short-term investments as available-for-sale securities in the accompanying consolidated financial statements. Available-for-sale securities are stated at fair

market value, with net changes in unrealized gains and losses reported in other comprehensive loss and realized gains and losses included in other income (expense), net. The cost of securities sold is based on the specific identification method. Interest and dividends on securities classified as available-for-sale are included in interest income within other income (expense), net.

Our bank and investment accounts have been placed under a control agreement in accordance with our Working Capital Facility Agreement (see Note 8).

Fair Value of Financial Instruments

A company may elect to use fair value to measure accounts receivable, available-for-sale securities, accounts payable, guarantees and issued debt, among others. If the use of fair value is elected, any upfront costs and fees related to the item such as debt issuance costs must be recognized in earnings and cannot be deferred. The fair value election is irrevocable and generally made on an instrument-by-instrument basis, even if a company has similar instruments that it elects not to measure based on fair value. Unrealized gains and losses on existing items for which fair value has been elected are reported as a cumulative adjustment to beginning retained earnings and any changes in fair value are recognized in earnings. We have elected to not apply the fair value option to our financial assets and liabilities.

Financial instruments, including cash and cash equivalents, receivables, inventory, prepaid expenses, other current assets, accounts payable and accrued expenses, are carried at cost, which is considered to be representative of their respective fair values because of the short-term maturity of these instruments. Short-term available-for-sale investments are carried at fair value. Our convertible notes and non-current notes payable outstanding at December 31, 2024 and 2023 do not have a readily available ascertainable market value, however, their carrying value, which is measured at carrying value less unamortized debt issuance costs or debt discounts, is considered to approximate their fair value.

Concentration of Credit Risk

Cash, cash equivalents and short-term investments are financial instruments that potentially subject us to concentrations of credit risk. We deposit our cash in financial institutions. At times, such deposits may be in excess of insured limits. We have not experienced any losses in such accounts and believe we are not exposed to significant risk on our cash, cash equivalents and short-term investments. Any loss incurred or a lack of access to such funds could have a significant adverse impact on our financial condition, results of operations, and cash flows.

We may also invest our excess cash in money market funds, U.S. government and agencies, corporate debt securities and commercial paper. We have established guidelines relative to our diversification of our cash investments and their maturities in an effort to maintain safety and liquidity. These guidelines are periodically reviewed and modified to take advantage of trends in yields and interest rates.

ZYNRELEF, APONVIE, CINVANTI and SUSTOL (collectively, our “Products”) are distributed in the U.S. through a limited number of specialty distributors and full line wholesalers (collectively, “Customers”) that resell to healthcare providers and hospitals, the end users of our Products.

The following includes the percentage of net product sales and accounts receivable balances for our three major Customers, each of which comprised 10% or more of our net product sales:

	Net Product Sales Year Ended December 31			Accounts Receivable As of December 31,	
	2024	2023	2022	2024	2023
Customer A	43.3%	43.3%	43.5%	39.9%	42.1%
Customer B	36.1%	36.8%	36.4%	37.2%	36.1%
Customer C	19.4%	19.0%	18.8%	22.5%	21.5%
Total	98.8%	99.1%	98.7%	99.6%	99.7%

Accounts Receivable, Net

Accounts receivable are recorded at the invoice amount, net of an allowance for credit losses. The allowance for credit losses reflects accounts receivable balances that are believed to be uncollectible. In estimating the

allowance for credit losses, we consider: (1) our historical experience with collections and write-offs; (2) the credit quality of our Customers and any recent or anticipated changes thereto; (3) the outstanding balances and past due amounts from our Customers; and (4) reasonable and supportable forecast of economic conditions expected to exist throughout the contractual term of the receivable.

As of December 31, 2024 and 2023, we determined that an allowance for credit losses was not required. For the years ended December 31, 2024 and 2023, we did not have any material write-offs of accounts receivable balances.

Inventory

Inventory is stated at the lower of cost or estimated net realizable value on a FIFO basis. We periodically analyze our inventory levels and write down inventory that has become obsolete, inventory that has a cost basis in excess of its estimated realizable value and inventory quantities that are in excess of expected sales requirements as cost of product sales. The determination of whether inventory costs will be realizable requires estimates by management. If actual market conditions are less favorable than projected by management, additional write-downs of inventory may be required, which would be recorded as cost of product sales.

Property and Equipment

Property and equipment is stated at cost less accumulated depreciation and amortization. Depreciation is calculated on a straight-line basis over the estimated useful lives of the assets (generally five years). Leasehold improvements are stated at cost and amortized on a straight-line basis over the shorter of the estimated useful life of the asset or the lease term.

Impairment of Long-Lived Assets

If indicators of impairment exist, we assess the recoverability of the affected long-lived assets by determining whether the carrying value of such assets can be recovered through undiscounted future operating cash flows. If impairment is indicated, we measure the amount of such impairment by comparing the carrying value of the asset to the fair value of the asset and record the impairment as a reduction in the carrying value of the related asset with a corresponding charge to operating expenses. Estimating the undiscounted future operating cash flows associated with long-lived assets requires judgment and assumptions that could differ materially from actual results.

Leases

We determine if an arrangement is a lease or contains lease components at inception. Operating leases with an initial term greater than 12 months are recorded as lease liabilities with corresponding right-of-use (“ROU”) lease assets on the consolidated balance sheets. ROU lease assets represent our right to use the underlying assets over the lease term, and lease liabilities represent the present value of our obligation to make lease payments arising from the lease. Lease liabilities are recognized at the lease commencement based on the present value of lease payments over the lease term. As most of our leases do not provide an implicit rate, we use our incremental borrowing rate based on the information available at the commencement date in determining the present value of lease payments. We use the implicit rate when readily determinable. The ROU lease assets equal the lease liabilities, less unamortized lease incentives, unamortized initial direct costs and the cumulative difference between rent expense and amounts paid under the lease. The lease term includes any option to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense is recognized on a straight-line basis over the lease term. We have elected the practical expedient to not separate lease and non-lease components.

Revenue Recognition

Revenue is recognized in accordance with the Financial Accounting Standards Board (the “FASB”) Accounting Standards Codification (“ASC”) Topic 606, *Revenue from Contracts with Customers* (“Topic 606”). Topic 606 is based on the principle that revenue should be recognized to depict the transfer of promised 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.

Product Sales

Our Products are distributed in the U.S. through a limited number of Customers that resell to healthcare providers and hospitals, the end users of our Products.

Revenue is recognized in an amount that reflects the consideration we expect to receive in exchange for our Products. To determine revenue recognition for contracts with Customers within the scope of Topic 606, we perform the following five steps: (i) identify the contract(s) with a Customer; (ii) identify the performance obligations of the contract(s); (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract(s); and (v) recognize revenue when (or as) we satisfy the performance obligations. We recognize revenue from product sales when there is a transfer of control of the product to our Customers. We typically determine transfer of control based on when the product is delivered, and title passes to our Customers.

Product Sales Allowances

We recognize product sales allowances as a reduction of product sales in the same period the related revenue is recognized. Product sales allowances are based on amounts owed or to be claimed on the related sales. Such variable consideration includes estimates that take into consideration the terms of our agreements with Customers, historical product returns, rebates or discounts taken, the shelf life of the product and specific known market events, such as competitive pricing and new product introductions. If actual future results vary from our estimates, we may need to adjust these estimates, which could have an effect on product sales and earnings in the period of adjustment. Our product sales allowances include:

- Product Returns—We allow our Customers to return product for credit up to 12 months after the product expiration date. As such, there may be a significant period of time between the time the product is shipped and the time the credit is issued on returned product.

- Distributor Fees—We pay distribution service fees to our Customers based on a contractually fixed percentage of the wholesale acquisition cost and fees for data. These fees are paid no later than two months after the quarter in which product was shipped.

- Group Purchasing Organization ("GPO") Discounts and Rebates—We offer cash discounts to GPO members. These discounts are taken when the GPO members purchase product from our Customers, who then charge back to us the discount amount. Additionally, we offer volume and contract-tier rebates to GPO members. Rebates are based on actual purchase levels during the quarterly rebate purchase period.

- GPO Administrative Fees—We pay administrative fees to GPOs for services and access to data. These fees are based on contracted terms and are paid after the quarter in which the product was purchased by the GPOs' members.

- Medicaid Rebates—We participate in Medicaid rebate programs, which provide assistance to certain low-income patients based on each individual state's guidelines regarding eligibility and services. Under the Medicaid rebate programs, we pay a rebate to each participating state, generally within six months after the quarter in which the product was sold.

- Prompt Pay Discounts—We may provide discounts on product sales to our Customers for prompt payment based on contractual terms.

We believe our estimated allowance for product returns and GPO discounts requires a high degree of judgment and is subject to change based on our experience and certain quantitative and qualitative factors. We believe our estimated allowances for distributor fees, GPO rebates and administrative fees, Medicaid rebates and prompt pay discounts do not require a high degree of judgment because the amounts are settled within a relatively short period of time.

Our product sales allowances and related accruals are evaluated each reporting period and adjusted when trends or significant events indicate that a change in estimate is appropriate. Changes in product sales allowance estimates could materially affect our results of operations and financial condition.

Accrued Clinical and Manufacturing Liabilities

We accrue clinical and manufacturing costs based on work performed, which relies on estimates of the progress of the work completed and the related expenses incurred. Contracts for clinical trials and manufacturing vary significantly in duration, and may be for a fixed amount, based on the achievement of certain contingent events or deliverables, a variable amount based on actual costs incurred, capped at a certain limit or contain a combination of these elements. Revisions are recorded to research and development expense or inventory in the period in which the facts that give rise to the revision become known. Historically, revisions have not resulted in material changes to research and development expense or inventory. However, a modification could result in a material charge to our results of operations.

Research and Development Expense

All costs of research and development are expensed in the period incurred. Research and development expense primarily consists of personnel and related costs, stock-based compensation expense, fees paid to outside service providers and consultants, facilities costs and materials used in clinical and preclinical trials and research and development.

Patent Costs

We incur outside legal fees in connection with filing and maintaining our various patent applications. All patent costs are expensed as incurred and are included in general and administrative expense in the consolidated statements of operations and comprehensive loss.

Stock-Based Compensation Expense

We estimate the fair value of each option grant using the Black-Scholes option pricing model and for market-based stock option grants using the Monte Carlo simulation model. This fair value is then amortized using the straight-line single-option method of attributing the value of stock-based compensation to expense over the requisite service periods of the awards. Forfeitures are accounted for, as incurred, as a reversal of stock-based compensation expense related to awards that will not vest. The Black-Scholes option pricing model and the Monte Carlo simulation model both require inputs of complex and subjective assumptions, including each option's expected life and price volatility of the underlying stock.

Warrants

We have issued warrants to purchase shares of our common stock in conjunction with certain equity and debt financings or in exchange for services. The terms of the warrants were evaluated to determine the appropriate classification as equity or a liability.

Income Taxes

We recognize the impact of a tax position in our consolidated financial statements if the position is more likely than not to be sustained on examination and on the technical merits of the position. The total amount of unrecognized tax benefits, if recognized, would affect other tax accounts, primarily deferred taxes in future periods, and would not affect our effective tax rate, since we maintain a full valuation allowance against our deferred tax assets (see Note 12). We recognize interest and penalties related to income tax matters in income tax expense.

Comprehensive Loss

Comprehensive loss is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. Net changes in unrealized gains and losses on available-for-sale securities are included in other comprehensive income (loss) and represent the difference between our net loss and comprehensive loss for both periods presented.

Net Loss per Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of common shares outstanding for the period, including pre-funded warrants to purchase shares of common stock. Diluted net loss per share is computed by dividing the net loss by the weighted-average number of common shares and common stock equivalents outstanding for the period determined using the treasury stock method. For purposes of this calculation, stock options, restricted stock units, warrants and shares of common stock underlying convertible notes are considered to be common stock equivalents and are included in the calculation of diluted net loss per share only when their effect is dilutive.

Because we have incurred a net loss for all periods presented in the consolidated statements of operations and comprehensive loss, the following common stock equivalents were not included in the computation of net loss per share because their effect would be anti-dilutive (in thousands):

	December 31,		
	2024	2023	2022
Stock options outstanding	26,082	24,575	20,749
Restricted stock units outstanding	1,981	1,405	3,167
Warrants outstanding	298	298	8,548
Shares of common stock underlying convertible notes outstanding	9,819	9,819	9,819

Segment Reporting

Management, upon consideration of the organizational structure of the business and information reviewed by the Company's Chief Executive Officer, who is also the Company's chief operating decision maker ("CODM"), has concluded that we have one reportable segment. All revenues for the years ended December 31, 2024, 2023 and 2022 were generated from customers in the U.S. The CODM allocates resources and evaluates the performance of the reportable segment, which is the consolidated entity, primarily based on net income (loss) as reported on the consolidated statements of operations and comprehensive loss. The significant expenses reviewed by the CODM are cost of product sales, research and development expenses, general and administrative expenses, and sales and marketing expenses as reported on the consolidated statements of operations and comprehensive loss. The Company's operating segments do not record intercompany revenue nor allocate any expenses. The CODM does not evaluate operating segments using discrete asset information.

Recent Accounting Pronouncements

In November 2023, the FASB issued ASU 2023-07, Segment Reporting (Topic 280): *Improvements to Reportable Segment Disclosures* (“ASU 2023-07”), which enhances segment disclosures primarily by requiring disclosure of significant segment expenses. This standard is effective for fiscal years beginning after December 15, 2023, and interim periods beginning after December 15, 2024. Retrospective application is required. The Company adopted this standard in the year ended December 31, 2024. The adoption of this standard did not have a material impact to the Company's disclosures.

Not Yet Adopted

In December 2023, FASB issued Accounting Standards Update No. 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures* (“ASU 2023-09”), to enhance income tax reporting disclosures and require disclosure of specific categories in the tabular rate reconciliation. This standard is effective for fiscal years beginning after December 15, 2024. The Company is currently evaluating the impact on our disclosures.

In November 2024, the FASB issued ASU 2024-03, *Income Statement - Reporting Comprehensive Income - Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses* ("ASU 2024-03"), which requires disaggregated disclosures of certain categories of expenses that are included in the face of the financial statements. This standard is effective for fiscal years beginning after December 15, 2026 and interim periods beginning after December 15, 2027. Early adoption is permitted. The Company is currently evaluating the impact on our disclosures.

3. Fair Value Measurements

Fair value is defined 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 must maximize the use of observable inputs and minimize the use of unobservable inputs. The FASB ASC Topic 820, *Fair Value Measurements & Disclosures*, establishes a fair value hierarchy which prioritizes the inputs used in measuring fair value as follows:

- Level 1—Observable inputs such as quoted prices in active markets for identical assets or liabilities.
- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

We measure cash, cash equivalents and short-term investments at fair value on a recurring basis. The fair values of such assets were as follows (in thousands):

	Fair Value Measurements at Reporting Date Using			
	Balance at December 31, 2024	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and money market funds	$ 23,860	$ 23,860	$ —	$ —
U.S. treasury bills and government agency obligations	14,868	14,868	—	—
U.S. corporate debt securities	13,644	—	13,644	—
Foreign corporate debt securities	5,913	—	5,913	—
Foreign commercial paper	998	—	998	—
Total	$ 59,283	$ 38,728	$ 20,555	$ —

	Fair Value Measurements at Reporting Date Using			
	Balance at December 31, 2023	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and money market funds	$ 23,441	$ 23,441	$ —	$ —
U.S. treasury bills and government agency obligations	31,636	31,636	—	—
U.S. corporate debt securities	16,889	—	16,889	—
Foreign corporate debt securities	5,460	—	5,460	—
U.S. commercial paper	1,990	—	1,990	—
Foreign commercial paper	993	—	993	—
Total	$ 80,409	$ 55,077	$ 25,332	$ —

We have not transferred any investment securities between the three levels of the fair value hierarchy.

As of December 31, 2024, cash equivalents included $0.9 million of available-for-sale securities with contractual maturities of three months or less and short-term investments included $9.0 million of available-for-sale securities with contractual maturities of three months to one year. As of December 31, 2023, cash equivalents included $5.3 million of available-for-sale securities with contractual maturities of three months or less and short-term investments included $51.7 million of available-for-sale securities with contractual maturities of three months to one year. The money market funds as of December 31, 2024 and 2023 are included in cash and cash equivalents on the consolidated balance sheets.

4. Balance Sheet Details

Short-Term Investments

The following is a summary of our short-term investments (in thousands):

	December 31, 2024			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. treasury bills and government agency obligations	$ 14,860	$ 8	$ —	$ 14,868
U.S. corporate debt securities	11,699	3	—	11,702
Foreign corporate debt securities	5,911	2	—	5,913
Foreign commercial paper	998	—	—	998
Total	$ 33,468	$ 13	$ —	$ 33,481

	December 31, 2023			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. treasury bills and government agency obligations	$ 31,625	$ 11	$ —	$ 31,636
U.S. corporate debt securities	11,652	1	—	11,653
Foreign corporate debt securities	5,459	1	—	5,460
U.S. commercial paper	1,990	—	—	1,990
Foreign commercial paper	993	—	—	993
Total	$ 51,719	$ 13	$ —	$ 51,732

The amortized cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity. We regularly monitor and evaluate the realizable value of our marketable securities. We did not recognize any impairment losses for the years ended December 31, 2024 and 2023.

Unrealized gains and losses associated with our investments are reported in accumulated other comprehensive income (loss). For the year ended December 31, 2024, we recorded no net unrealized gains or losses associated with our short-term investments. For the year ended December 31, 2023, we recorded $32,000 in net unrealized losses associated with our short-term investments.

Realized gains and losses associated with our investments, if any, are reported in the statements of operations and comprehensive loss. We recognized $5,000 in realized gains during the year ended December 31, 2024, $1,000 in realized losses during the year ended December 31, 2023. We did not recognize any realized gains or losses during the year ended December 31, 2022.

Inventory

Inventory consists of the following (in thousands):

	December 31,	
	2024	2023
Raw materials	$ 19,733	$ 17,643
Work in process	27,190	14,550
Finished goods	6,237	9,917
Total inventory	$ 53,160	$ 42,110

As of December 31, 2024, total inventory included $11.8 million related to ZYNRELEF, $36.6 million related to CINVANTI, $3.2 million related to SUSTOL and $1.6 million related to APONVIE. As of December 31, 2023, total inventory included $11.2 million related to ZYNRELEF, $26.4 million related to CINVANTI, $4.1 million related to SUSTOL and $0.4 million related to APONVIE. Cost of product sales for the years ended December 31, 2024 and 2023 included charges of $2.5 million and $20.3 million, respectively, relating to the reserves and write-offs of inventory.

Prepaid Expenses and Other Assets

Prepaid expenses and other assets consist of the following (in thousands):

	December 31,	
	2024	2023
Prepaid expenses	$ 21,224	$ 11,731
Prepaid insurance	2,203	1,910
Deposits	274	274
Interest receivables	263	310
Other receivables	209	21
Total prepaid expenses and other assets	$ 24,173	$ 14,246

Property and Equipment

Property and equipment, net consists of the following (in thousands):

	December 31,	
	2024	2023
Scientific equipment	$ 30,342	$ 34,027
Leasehold improvements	307	647
Computer equipment and software	1,047	1,506
Furniture, fixtures and office equipment	1,014	1,014
Property and equipment, gross	32,710	37,194
Less: accumulated depreciation and amortization	(17,847)	(17,028)
Property and equipment, net	$ 14,863	$ 20,166

Depreciation and amortization expense for the years ended December 31, 2024 and 2023 was $2.5 million and $2.9 million, respectively. As of December 31, 2024 and 2023, $2.6 million and $6.3 million of property and equipment, respectively, was in process and not depreciated during the respective years.

Accrued Payroll and Employee Liabilities and Other Accrued Liabilities

Accrued payroll and employee liabilities consist of the following (in thousands):

	December 31,	
	2024	2023
Accrued employee salaries and benefits	$ 1,591	$ 1,371
Accrued bonuses	5,907	5,499
Accrued vacation	2,056	2,354
Total accrued payroll and employee liabilities	$ 9,554	$ 9,224

Other accrued liabilities consist of the following (in thousands):

	December 31,	
	2024	2023
Accrued product sales allowances	$ 37,419	$ 36,529
Accrued consulting and professional fees	3,036	3,940
Other accrued liabilities	1,063	415
Accrued interest	237	412
Accrued accounts payable	—	559
Total other accrued liabilities	$ 41,755	$ 41,855

5. Revenue Recognition

The following provides disaggregated net product sales (in thousands):

	For the Years Ended December 31,		
	2024	2023	2022
CINVANTI net product sales	$ 100,079	$ 94,869	$ 87,245
ZYNRELEF net product sales	25,546	17,727	10,196
SUSTOL net product sales	14,142	13,057	10,231
APONVIE net product sales	4,518	1,391	—
Total net product sales	$ 144,285	$ 127,044	$ 107,672

The following provides a summary of activity with respect to our product returns, distributor fees and discounts, rebates, administrative and other fees, which are included in other accrued liabilities on the consolidated balance sheets (in thousands):

	Product Returns	Distributor Fees	Discounts, Rebates, Administrative and Other Fees	Total
Balance at December 31, 2023	$ 4,776	$ 4,419	$ 27,334	$ 36,529
Provision	(174)	30,045	206,662	236,533
Payments/credits	(811)	(28,581)	(206,251)	(235,643)
Balance at December 31, 2024	$ 3,791	$ 5,883	$ 27,745	$ 37,419

6. Commitments and Contingencies

Leases

As of December 31, 2024, we had an operating lease for 52,148 square feet of laboratory and office space in San Diego, California, with a lease term that expires on December 31, 2025. In October 2021, we entered into a sublease agreement to sublet 23,873 square feet of laboratory and office space. The space was delivered to the subtenant in March 2022. As a result of the sublease agreement, our one five-year option to renew the lease on expiration applies only with respect to our remaining 28,275 square feet of laboratory and office space.

In September 2023, we also entered into a sublease agreement to sublet 5,840 square feet of office space in Cary, North Carolina, with a lease term that expires on April 30, 2025.

In September 2024, we entered into a short-term sublease agreement to sublet 9,882 square feet of office space in Cary, North Carolina, with a lease term that expires on August 31, 2025.

Annual future minimum lease payments as of December 31, 2024 are as follows (in thousands):

Year ended December 31:		
2025	$	3,138
Total future minimum lease payments		3,138
Less: discount		(101)
Total lease liabilities	$	3,037

Rent expense under all operating leases totaled $3.0 million, $2.9 million and $2.8 million for the years ended December 31, 2024 , 2023 and 2022, respectively. During the years ended December 31, 2024, 2023 and 2022, we paid $3.2 million, $3.0 million and $2.9 million, respectively, for our operating leases.

Sublease rental income for the San Diego, CA sublease totaled $1.3 million, $1.2 million and $1.1 million for the years ended December 31, 2024, 2023 and 2022.

Development Agreements

We enter into agreements with contract manufacturing organizations for the manufacture and supply of commercial materials and drug product. In some of our agreements with contract manufacturing organizations, we are required to meet minimum purchase obligations. Under certain of these agreements, we may be subject to penalties in the event that we prematurely terminate these agreements. At this time, due to the variability associated with contract manufacturing agreements, we are unable to estimate with certainty the future costs we will incur. We intend to use our current financial resources to fund our obligations under these commitments.

Purchase Obligations

At December 31, 2024, purchase obligations primarily consisted of non-cancellable commitments with third-party manufacturers in connection with the manufacturing of our commercial products. Total purchase obligations of $49.2 million were not included in our consolidated financial statements for the year ended December 31, 2024, with $37.4 million due in one year and $11.8 million due within two years.

7. Reorganization

June 2023 Reorganization

In June 2023, we implemented a restructuring plan under which we provided certain employees with one-time severance payments upon termination, continuation of benefits for a specific period of time, outplacement services and certain stock award modifications. During the year ended December 31, 2023, we recognized $4.2 million of expense, $2.4 million of which was included in sales and marketing expense, $1.7 million of which was included in research and development expense and $0.1 million of which was included in general and administrative expense. As of December 31, 2024, we paid all of the total cash severance charges.

Executive Officer Departures

During the second and third quarters of 2023, we implemented changes to our executive leadership structure. In connection with these changes, we provided five executive officers with one-time severance payments upon termination, continued benefits for a specified period of time, and certain stock award modifications. The total expense for these activities was $13.4 million, $4.7 million of which was primarily for severance and $8.7 million of which was for non-cash, stock-based compensation expense. During the year ended December 31, 2023, we recognized the $13.4 million of expense, $7.2 million of which was included in general and administrative expense, $3.9 million of which was included in sales and marketing expense, and $2.3 million of which was included in research and development expense. As of December 31, 2024, we paid all of the total cash severance charges.

June 2022 Reorganization

In June 2022, we implemented a restructuring plan under which we provided certain employees one-time severance payments upon termination, continuation of benefits for a specific period of time, outplacement services and certain stock award modifications. The total amount incurred for these activities was $5.4 million, $5.0 million of which was primarily for severance and $0.4 million of which was for non-cash, stock-based compensation

expense related to stock award modifications. For the year ended December 31, 2022, we recognized the $5.4 million of expense, $4.2 million of which was included in research and development expense, $1.0 million of which was included in sales and marketing expense, and $0.2 million of which was included in general and administrative expense. As of December 31, 2023, we paid all of the total cash severance charges.

We have accounted for these expenses in accordance with the FASB ASC Topic 420, *Exit or Disposal Cost Obligations*.

8. Long-Term Debt and Convertible Notes

Working Capital Facility Agreement

On August 9, 2023, we entered into a working capital facility agreement (the “Working Capital Facility Agreement”) with Hercules Capital, Inc., as administrative agent and collateral agent, and the lenders party thereto (the “Lenders”). The Working Capital Facility Agreement provides an aggregate principal amount of up to $50.0 million with tranched availability as follows: $25.0 million at closing (“tranche 1A”), $5.0 million available through December 15, 2024 (“tranche 1B”), and $20.0 million available from the earlier of: (1) the full draw of tranche 1B and (2) the expiration of tranche 1B, and available through December 15, 2025 (“tranche 1C”), and in the case of tranches 1B and 1C, subject to certain customary conditions to draw down.

The Working Capital Facility Agreement has a term of four years, with a springing maturity date that is 91 days prior to the stated maturity of our existing Senior Convertible Notes (as defined below) (if still outstanding at such time). The loans thereunder do not have any scheduled amortization payments and accrue interest at a floating rate equal to, as of closing, 9.95% per annum, payable in cash on a monthly basis and upon maturity or payoff. In addition, under the terms of the Working Capital Facility Agreement, the loans also accrue paid-in-kind interest monthly at a fixed-rate of 1.5% per annum which is due upon maturity or payoff.

In addition, in connection with the tranche 1A funding, we issued warrants to the Lenders to purchase up to 297,619 shares of our common stock at an exercise price of $1.68 per share (the "Lender Warrants"). The Lender Warrants are equal to 2.00% of the principal amount of loans funded by the Lenders (the “Warrant Coverage”). The Working Capital Facility Agreement also requires that we issue additional warrants to the Lenders at the time of each draw down of tranches 1B and 1C with the same Warrant Coverage. Each Lender Warrant is exercisable for seven years from the date of issuance.

The Working Capital Facility Agreement contains a minimum cash covenant, beginning on the closing date, that requires us to hold cash of no less than $8.5 million, if our market capitalization is less than $400 million. The Working Capital Facility Agreement also contains customary representations and warranties and customary affirmative and negative covenants, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, prepayment of other indebtedness, and dividends and other distributions, subject to certain exceptions. We were in compliance with all covenants of the Working Capital Facility Agreement as of December 31, 2024.

On February 13, 2025, the Working Capital Facility Agreement was amended to extend the maturity date to the earlier of (a) September 1, 2027 and (b) to the extent that any of the Company’s Senior Convertible Notes remain outstanding on such date, (i) May 12, 2026 or (ii) in the event that the maturity date of any of the Senior Convertible Notes is extended, prior to May 12, 2026, to August 11, 2026 or later, the date that is ninety-one days prior to the maturity date of such further extended Senior Convertible Notes.

The Working Capital Facility Agreement was accounted for in accordance with ASC Topic 470, *Debt*, ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC Topic 815, *Derivatives and Hedging*. The initial tranche 1A funding of $25.0 million and the warrants issued upon closing to purchase 297,619 shares of our common stock are accounted for as freestanding debt and equity financial instruments, respectively, as they are legally detachable and separately exercisable. The additional borrowings available under the Working Capital Facility Agreement plus the additional warrants to purchase shares of our common stock, which would be issued concurrently, are accounted for as a single freestanding financial instrument that are not assets or obligations of ours; this financial instrument meets the loan commitment derivative scope exception and will be accounted for when and if we borrow additional

tranches in the future. The initial funding of $25.0 million was recorded as a liability on the condensed consolidated balance sheets.

In connection with the Working Capital Facility Agreement, we recognized the initial Lender Warrants at their relative fair value of $0.4 million, and we incurred debt issuance costs of $0.6 million, both of which were recorded as debt discounts. The debt discounts and the end of term fee, of $0.8 million, are being amortized and accreted into interest expense using the effective interest rate method over the term of the Working Capital Facility Agreement, resulting in an effective interest rate of 14.5%.

For the years ended December 31, 2024 and 2023, interest expense related to the Working Capital Facility Agreement was $3.7 million and $1.3 million, respectively. Interest expense for the year ended December 31, 2024 included $2.6 million, related to the stated interest rate, $0.4 million, related to paid-in-kind interest, and $0.7, related to the amortization of the debt discounts and accretion of the end of term fee. Interest expense for the year ended December 31, 2023, included $1.0 million, related to the stated interest rate, $0.2 million related to paid-in-kind interest and $0.1 million related to the amortization of the debt discounts and accretion of the end of term fee.

As of December 31, 2024, the carrying value of tranche 1A was $25.0 million, which is comprised of the $25.0 million principal amount outstanding, and $0.5 million of accumulated paid-in-kind interest, less debt discounts of $0.5 million. The end of term fee accreted as of December 31, 2024, of $0.4 million is recorded in other non-current liabilities on the condensed consolidated balance sheets.

As of December 31, 2023, the carrying value of tranche 1A was $24.3 million, which is comprised of the $25.0 million principal amount outstanding, and $0.2 million of accumulated paid-in-kind interest, less debt discounts of $0.9 million.

Senior Unsecured Convertible Notes

In May 2021, we entered into a note purchase agreement with funds affiliated with Baker Bros. Advisors LP for a private placement of $150.0 million in Senior Unsecured Convertible Notes ("Senior Convertible Notes"). We received a total of $149.0 million, net of issuance costs, from the issuance of these Senior Convertible Notes.

The Senior Convertible Notes were issued at par. The Senior Convertible Notes bear interest at a rate of 1.5% per annum, payable in cash semi-annually in arrears on June 15 and December 15 of each year, beginning on December 15, 2021. The Senior Convertible Notes mature on May 26, 2026, unless earlier converted, redeemed or repurchased.

The Senior Convertible Notes will be subject to redemption at our option, between May 24, 2024 and May 24, 2025, but only if the last reported sale price per share of our common stock exceeds 250% of the conversion price for a specified period of time, or on or after May 24, 2025 if the last reported sale price per share of our common stock exceeds 200% of the conversion price for a specified period of time. The redemption price will be equal to the principal amount of the Senior Convertible Notes to be redeemed, plus accrued and unpaid interest.

Upon conversion, we will settle the Senior Convertible Notes in shares of our common stock. The initial conversion rate for the Senior Convertible Notes is 65.4620 shares per $1,000 principal amount of the Senior Convertible Notes (equivalent to an initial conversion price of $15.276 per share of common stock).

If a holder of the Senior Convertible Notes converts upon a make-whole fundamental change or company redemption, the holder may be eligible to receive a make-whole premium through an increase to the conversion rate.

In May 2021, we filed a registration statement with the SEC to register for resale 12.4 million shares of our common stock underlying the Senior Convertible Notes, including the maximum number of shares of common stock issuable under the make-whole premium.

The Senior Convertible Notes were accounted for in accordance with ASC Subtopic 470-20, *Debt with Conversion and Other Options* ("ASC 470-20") and ASC Subtopic 815-40, *Contracts in Entity's Own Equity* ("ASC 815-40"). Under ASC 815-40, to qualify for equity classification (or non-bifurcation, if embedded), the instrument (or embedded feature) must be both (1) indexed to the issuer's stock and (2) meet the requirements of the equity classification guidance. Based upon our analysis, it was determined that the Senior Convertible Notes do contain embedded features indexed to our own stock, but do not meet the requirements for bifurcation, and therefore do not need to be separately accounted for as an equity component. Since the embedded conversion feature meets the equity scope exception from derivative accounting, and, also since the embedded conversion option does not need to

be separately accounted for as an equity component under ASC 470-20, the proceeds received from the issuance of the Senior Convertible Notes were recorded as a liability on the consolidated balance sheets.

We incurred issuance costs related to the Senior Convertible Notes of $1.0 million, which we recorded as debt issuance costs and are included as a reduction to the Senior Convertible Notes on the consolidated balance sheets. The debt issuance costs are being amortized to interest expense using the effective interest rate method over the term of the Senior Convertible Notes, resulting in an effective interest rate of 1.6%.

For the year ended December 31, 2024, interest expense related to the Senior Convertible Notes was $2.4 million, which included $2.2 million related to the stated interest rate and $0.2 million related to the amortization of debt issuance costs. For the year ended December 31, 2023, interest expense related to the Senior Convertible Notes was $2.5 million, which included $2.3 million related to the stated interest rate and $0.2 million related to the amortization of debt issuance costs. For the year ended December 31, 2022, interest expense related to the Senior Convertible Notes was $2.5 million, which included $2.3 million related to the stated interest rate and $0.2 million related to the amortization of debt issuance costs.

As of December 31, 2024, the carrying value of the Senior Convertible Notes was $149.7 million, which is comprised of the $150.0 million principal amount of the Senior Convertible Notes outstanding, less debt issuance costs of $0.3 million.

As of December 31, 2023, the carrying value of the Senior Convertible Notes was $149.5 million, which is comprised of the $150.0 million principal amount of the Senior Convertible Notes outstanding, less debt issuance costs of $0.5 million.

9. Stockholders' Equity

2023 Private Placement

On July 21, 2023, we entered into a Securities Purchase Agreement (the "2023 Private Placement") with Rubric Capital Management L.P., Velan Capital, Clearline Capital and Hercules Capital, Inc. (collectively, the "Purchasers") whereby we sold 20.7 million shares of our common stock in a private placement at a purchase price of $1.37 per share. In addition, as a component of the 2023 Private Placement, we sold 1.2 million pre-funded warrants to purchase shares of our common stock at a purchase price of $1.3699 per share. The pre-funded warrants have an exercise price of $0.0001 per share. The total net proceeds from the sale of the common stock and pre-funded warrants was $29.8 million (net of $0.2 million in issuance costs). The 2023 Private Placement closed on July 25, 2023. In August 2023, we filed a registration statement with the SEC to register for resale 21.9 million shares of our common stock. The registration statement was declared effective on August 31, 2023.

2022 Private Placement

On August 8, 2022, we entered into an agreement to sell 16.1 million shares of our common stock in a private placement at a purchase price of $3.10 per share ("2022 Private Placement"). In addition, as a component of the 2022 Private Placement, we agreed to sell 8.5 million pre-funded warrants to purchase shares of our common stock at a purchase price of $3.0999 per share. The pre-funded warrants have an exercise price of $0.0001 per share. The total net proceeds from the sale of the common stock and pre-funded warrants was $75.1 million (net of $1.4 million in issuance costs). The 2022 Private Placement closed on August 10, 2022. In October 2022, we filed a registration statement with the SEC to register for resale 24.6 million shares of our common stock. The registration statement was declared effective on October 18, 2022.

Common Stock Reserved for Future Issuance

Shares of our common stock reserved for future issuance as of December 31, 2024 were as follows (in thousands):

	Number of Shares
Stock options outstanding	26,082
Restricted stock units outstanding	1,981
Shares available for future grants under the Amended & Restated 2007 Equity Incentive Plan	12,125
Shares of common stock reserved under the Employee Stock Purchase Plan	921
Shares of common stock underlying warrants	298
Shares of common stock underlying convertible notes outstanding (see Note 8)	9,819
Total shares reserved for future issuance	51,226

10. Equity Incentive Plans

Employee Stock Purchase Plan

In 1997, our stockholders approved our Employee Stock Purchase Plan (“ESPP”) at which time a maximum of 10,000 shares of common stock were available for issuance. In December 2007, May 2009, June 2011, May 2014, May 2015, June 2016, June 2017, June 2019, June 2021, May 2022, June 2023 and June 2024, our stockholders authorized increases in the number of shares reserved for issuance under the ESPP by 5,000, 10,000, 25,000, 25,000, 100,000, 100,000, 200,000, 300,000, 200,000, 850,000, 400,000 and 1,200,000 shares, respectively, for a total of 3,425,000 shares reserved at December 31, 2024. Under the terms of the ESPP, employees can elect to have up to a maximum of 10% of their base earnings withheld to purchase shares of our common stock. The purchase price of the stock is 85% of the lower of the closing prices for our common stock on either: (i) the first trading day in the enrollment period, as defined in the ESPP, in which the purchase is made, or (ii) the purchase date. The length of the enrollment period is 6 months. Enrollment dates are the first business day of May and November. Under the ESPP, we issued 639,681 and 717,046 shares in 2024 and 2023, respectively. The weighted-average exercise price per share of the purchase rights exercised during 2024 and 2023 was $1.00 and $1.26, respectively. As of December 31, 2024, 2,537,126 shares of common stock have been issued under the ESPP and 920,953 shares of common stock are available for future issuance.

Equity Incentive Plan

We currently have one equity incentive plan from which we can grant options, restricted stock awards, restricted stock units ("RSUs"), and stock appreciation rights to employees, officers, directors and consultants. In December 2007, the stockholders approved our 2007 Amended and Restated Equity Incentive Plan (“2007 Plan”) at which time a maximum of 150,000 shares of common stock were available for grant. In May 2010, June 2011, May 2014, May 2015, June 2016, June 2017, June 2019, June 2021, May 2022, June 2023 and June 2024, our stockholders approved amendments to our 2007 Plan to increase the maximum number of shares of common stock available for grant by 100,000, 4,500,000, 1,750,000, 4,300,000, 3,000,000, 5,000,000, 7,000,000, 2,000,000, 2,900,000, 8,490,000 and 7,500,000 shares of common stock, respectively, resulting in an aggregate of 46,690,000 shares of common stock authorized for issuance as of December 31, 2024. At December 31, 2024, there were 12,125,013 shares available for future grant under the 2007 Plan. Any shares that are subject to awards granted pursuant to the 2007 Plan that expire, are cancelled or are forfeited are available for future grant under the 2007 Plan.

In 2024, we granted options and RSUs to certain employees outside of the 2007 Plan as inducement equity awards. All such options to purchase our common stock were granted with an exercise price that equals fair market value of the underlying common stock on the grant dates and expire no later than 10 years from the date of grant. The options are exercisable in accordance with vesting schedules that generally provide for them to be fully vested and exercisable four years after the date of grant. All such RSUs vest ratably over four years. All stock options and RSU granted as inducement equity awards were approved by our Board of Directors and have been registered on Form S-8 with the SEC.

The following table summarizes the stock option activity for the year ended December 31, 2024:

	Outstanding Options	
	Number of Shares	Weighted-Average Exercise Price
Balance at December 31, 2023	24,575	$ 7.06
Granted	8,158	$ 2.20
Exercised	(485)	$ 2.47
Cancelled	(6,166)	$ 12.02
Balance at December 31, 2024	26,082	$ 4.46

The following table summarizes the RSU activity for the year ended December 31, 2024:

	Outstanding RSUs	
	Number of Shares	Weighted-Average Grant Date Fair Value
Balance at December 31, 2023	1,405	$ 4.43
Granted	2,175	$ 1.65
Released	(1,116)	$ 2.49
Forfeited	(483)	$ 3.69
Balance at December 31, 2024	1,981	$ 2.35

As of December 31, 2024, options outstanding have a weighted-average remaining contractual term of 7.8 years and options exercisable have a weighted-average remaining contractual term of 6.4 years.

Total intrinsic value of options outstanding, which is the difference between the exercise price and the closing price of our common stock on the last trading day of the calendar year, was $1.5 million at December 31, 2024 and $2.8 million at December 31, 2023. The were no options outstanding and in-the-money at December 31, 2022.

The total intrinsic value of stock option exercises, which is the difference between the exercise price and closing price of our common stock on the date of exercise, during the years ended December 31, 2024 and 2023 was $385,000 and $10,000, respectively. There were no option exercises during the year ended December 31, 2022.

As of December 31, 2024 and 2023, the total intrinsic value of options outstanding and exercisable was $385,000 and $137,000, respectively. As of December 31, 2022, there were no options outstanding and exercisable that were in-the-money.

	Years Ended December 31,					
	2024		2023		2022	
	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price
Exercisable at end of year	9,589	$ 8.88	11,390	$ 12.87	13,650	$ 17.86
Options vested or expected to vest	26,082	$ 4.46	24,575	$ 7.06	20,184	$ 14.82

Exercise prices and weighted-average remaining contractual lives for the options outstanding as of December 31, 2024 were:

Outstanding Options	Range of Exercise Prices	Weighted-Average Remaining Contractual Life (in years)	Weighted-Average Exercise Price	Options Exercisable	Weighted-Average Exercise Price of Options Exercisable
5,241	$0.97 - $1.51	8.42	$ 1.24	1,457	$ 1.27
13,321	$1.52 - $2.28	8.65	1.90	2,683	1.93
3,826	$2.34 - $3.51	8.03	2.87	1,862	3.00
87	$3.66 - $5.49	8.62	3.94	35	4.14
20	$5.50 - $8.25	7.24	5.87	13	5.86
535	$9.66 - $14.49	4.98	12.01	498	12.00
1,394	$14.87 - $22.305	3.92	16.37	1,390	16.37
1,598	$23.00 - $34.50	2.92	25.96	1,591	25.94
60	$38.20 - $57.30	3.65	38.38	60	38.38
26,082		7.82	$ 4.46	9,589	$ 8.88

On December 31, 2024, we had reserved 28,062,017 shares of common stock for future issuance upon exercise of outstanding options and vesting of outstanding restricted stock units granted under the 2007 Plan, as well as the inducement award grants.

Stock-Based Compensation

The following summarizes stock-based compensation expense related to stock-based payment awards pursuant to our equity compensation arrangements (in thousands):

	December 31,		
	2024	2023	2022
Research and development	$ 1,856	$ 6,505	$ 10,025
General and administrative	7,138	16,846	19,552
Sales and marketing	3,968	9,503	13,403
Total stock-based compensation expense	$ 12,962	$ 32,854	$ 42,980

As of December 31, 2024, there was $19.8 million of total unrecognized compensation cost related to non-vested, stock-based payment awards granted under all of our equity compensation plans and all non-plan option grants. Total unrecognized compensation cost will be adjusted for future changes in estimated forfeitures. We expect to recognize this compensation cost over a weighted-average period of 2.4 years.

The fair value of RSUs is estimated based on the closing market price of our common stock on the date of the grant. RSUs generally vest quarterly over a four-year period.

We estimated the fair value of each option grant and ESPP purchase right on the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions:

Options:

	December 31,		
	2024	2023	2022
Risk-free interest rate	4.5 %	3.7 %	3.3 %
Dividend yield	— %	— %	— %
Volatility	80.1 %	68.1 %	62.0 %
Expected life (years)	6	6 to 10	6

ESPP:

	December 31,		
	2024	2023	2022
Risk-free interest rate	4.9 %	5.3 %	3.2 %
Dividend yield	— %	— %	— %
Volatility	95.3 %	99.6 %	83.8 %
Expected life (months)	6	6	6

The weighted-average fair value of options granted was $1.40 and $1.13 for the years ended December 31, 2024 and 2023, respectively.

The weighted-average fair value of shares purchased through the ESPP was $1.53 and $0.64 for the years ended December 31, 2024 and 2023, respectively.

The risk-free interest rate assumption is based on observed interest rates on U.S. Treasury debt securities with maturities close to the expected term of our employee and director stock options and ESPP purchases.

The dividend yield assumption is based on our history and expectation of dividend payouts. We have never paid dividends on our common stock, and we do not anticipate paying dividends in the foreseeable future.

We used our historical stock price to estimate volatility.

The expected life of employee and director stock options represents the average of the contractual term of the options and the weighted-average vesting period, as permitted under the simplified method. We have elected to use the simplified method, as we do not have enough historical exercise experience to provide a reasonable basis on which to estimate the expected term. The expected life for the ESPP purchase rights is six months, which represents the length of each purchase period.

11. Employee Benefit Plan

We have a defined contribution 401(k) plan ("Plan") covering substantially all of our employees. For the year ended December 31, 2024, we made matching cash contributions equal to 50% of each participant's contribution during the Plan year up to 6% per pay period. For the year ended December 31, 2023 and 2022, we made matching cash contributions equal to 50% of each participant's contribution during the Plan year up to a maximum amount equal to the lesser of 3% of each participant's annual compensation or $9,900 and $9,150, respectively. Such amounts were recorded as expense in the corresponding years. We may also contribute additional discretionary amounts to the Plan as we determine. For the years ended December 31, 2024, 2023 and 2022, we contributed $0.7 million, $1.0 million and $1.4 million, respectively, to the Plan. No discretionary contributions have been made to the Plan since its inception.

12. Income Taxes

For the years ended December 31, 2024, 2023 and 2022, we did not record a provision for income taxes due to a full valuation allowance against our deferred tax assets.

The difference between the provision for income taxes and income taxes computed using the effective U.S. federal statutory rate is as follows (in thousands):

	December 31,		
	2024	2023	2022
Tax at statutory federal rate	$ (2,852)	$ (23,210)	$ (38,225)
State tax, net of federal benefit	1,513	(1,460)	(13,898)
Research and development credits	—	—	(3,531)
Stock-based compensation expense	7,968	19,022	5,857
Non-deductible compensation	2,630	(4,682)	2,104
Employee retention credit adjustment	—	—	(1,265)
Change in valuation allowance	(10,392)	7,556	46,452
Provision to return adjustment	285	3,008	—
Other	848	(234)	2,506
Provision for income taxes	$ —	$ —	$ —

Deferred income tax assets and liabilities arising from differences between accounting for financial statement purposes and tax purposes, less valuation allowance at year-end are as follows (in thousands):

	December 31,	
	2024	2023
Deferred tax assets:		
Net operating loss carryforward	$ 324,175	$ 320,998
Research and development credits	59,168	59,417
Section 174 capitalized research and development	25,117	28,822
Stock-based compensation	5,323	15,413
Lease liabilities	762	1,471
Other	5,262	5,005
Total gross deferred tax assets	419,807	431,126
Deferred tax liabilities:		
Right-of-use lease assets	(699)	(1,362)
Total gross deferred tax liabilities	(699)	(1,362)
Valuation allowance	(419,108)	(429,764)
Net deferred tax assets	$ —	$ —

We have established a valuation allowance to offset net deferred tax assets as of December 31, 2024 and 2023 due to the uncertainty of realizing future tax benefits from such assets.

As of December 31, 2024 and December 31, 2023, we had federal and state net operating loss ("NOL") carryforwards of $1.3 billion and $1.3 billion, respectively. The federal NOL carryforwards consist of $542.3 million generated before January 1, 2019, which began to expire in 2024, and $769.9 million that can be carried forward indefinitely, but are subject to the 80% taxable income limitation. The state NOL carryforwards will begin to expire in 2028.

As of December 31, 2024 and December 31, 2023, we had federal and state research and development credit carryforwards of $44.4 million and $44.6 million, respectively. The federal research and development credit carryforwards began to expire in 2024. The state research and development credit carryforwards will be carried forward indefinitely.

Internal Revenue Code ("IRC") Sections 382 and 383 place a limitation on the amount of taxable income that can be offset by NOL and credit carryforwards after a change in control (generally greater than 50% change in ownership within a three-year period) of a loss corporation. Generally, after a change in control, a loss corporation cannot deduct NOL and credit carryforwards in excess of the IRC Sections 382 and 383 limitation. State jurisdictions have similar rules. We have performed an analysis of IRC Sections 382 and 383 through July 31, 2023 and determined there were ownership changes in 2007, 2011 and 2013. The limitation in the federal and state NOL and research and development credit carryforwards that expire unused would reduce the deferred tax assets, which are fully offset by a valuation allowance.

We file U.S. and state income tax returns with varying statutes of limitations. The tax years from 2004 to 2024 remain open to examination due to the carryover of unused NOL carryforwards and tax credits.

A reconciliation of our unrecognized tax benefits is as follows (in thousands):

	Year Ended December 31,	
	2024	2023
Balance at beginning of year	$ 10,903	$ 11,235
Decrease for tax positions of prior years	—	(332)
Increase based on tax positions related to current year	—	—
Balance at end of year	$ 10,903	$ 10,903

Due to our valuation allowance, the $10.9 million of unrecognized tax benefits would not affect the effective tax rate, if recognized. It is the Company's practice to recognize interest and penalties related to income tax matters in income tax expense. As of December 31, 2024, we had no accrued interest and penalties related to uncertain tax positions. We do not expect any material changes to the estimated amount of liability associated with our uncertain tax positions within the next 12 months.

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") was enacted and signed into law in response to the COVID-19 pandemic. The CARES Act includes changes to the tax provisions that benefits business such as the Employee Retention Credit ("ERC"). The ERC provides an eligible employer with a tax credit that is allowed against certain employment taxes. We qualified for federal government assistance through the ERC provisions for the period between January 1, 2021 and September 30, 2021. We recognize government grants when there is reasonable assurance of compliance with grant conditions and receipt of the credits. For the year ended December 31, 2022, we recorded a one-time refund totaling $6.0 million, which was included in the consolidated balance sheets as prepaid expenses and other current assets, as well as in the consolidated statements of operations and comprehensive loss as an offset to the related employee expenses within research and development, general and administrative, and sales and marketing expenses. The one-time $6.0 million refund was received in the second quarter of 2023.

13. Subsequent Event

The Company considers events or transactions that occur after the balance sheet date but prior to the issuance of the consolidated financial statements to provide additional evidence for certain estimates or to identify matters that require additional disclosure. The Company has concluded that no subsequent events have occurred that require disclosure, except as included in Note 8.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

ITEM 9A. CONTROLS AND PROCEDURES.

Disclosure Controls and Procedures

Our management, with the participation of our principal executive and principal financial officers, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 ("Exchange Act")) as of December 31, 2024. Based on this evaluation, our principal executive and principal financial officers concluded that our disclosure controls and procedures were effective as of December 31, 2024.

Management Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rule 13a-15(f) and Rule 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, our principal executive and principal financial officers and effected by our Board of Directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the U.S. and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the U.S., and that receipts and expenditures are being made only in accordance with authorizations of our management and directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness 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 the policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2024. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control-Integrated Framework (2013).

Based on our assessment, management concluded that, as of December 31, 2024, our internal control over financial reporting was effective based on those criteria.

The independent registered public accounting firm that audited the consolidated financial statements that are included in this Annual Report on Form 10-K has issued an audit report on our internal control over financial reporting, which is included herein.

Changes in Internal Control Over Financial Reporting

There have been no significant changes in our internal control over financial reporting that occurred during the period covered by this Annual Report on Form 10-K that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION.

Rule 10b5-1 Trading Plans

During the fourth quarter of 2024, none of the Company's directors or executive officers adopted or terminated any "Rule 10b5-1 trading arrangement" or any "non-Rule 10b5-1 trading arrangement" as each term is defined in Item 408 of Regulation S-K.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS.

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.

Information required by this item will be contained in our Definitive Proxy Statement for our 2025 Annual Meeting of Stockholders, to be filed pursuant to Regulation 14A with the SEC within 120 days of December 31, 2024 (the "2025 Proxy Statement") in the sections titled: "Information Concerning the Board of Directors," "Information Concerning Executive Officers," "Delinquent Section 16(a) Reports," "Code of Ethics and Business Conduct," "Corporate Governance," "Insider Trading Policy," and "Report of the Audit Committee." Such information is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION.

Information required by this item will be contained in our 2025 Proxy Statement in the sections titled: "Director Compensation" and "Executive Compensation." Such information is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.

Information required by this item will be contained in our 2025 Proxy Statement in the sections titled: "Security Ownership of Certain Beneficial Owners and Management" and "Equity-Based Compensation Plan Information." Such information is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE.

Information required by this item will be contained in our 2025 Proxy Statement in the sections titled: "Certain Relationships and Related Party Transactions" and "Board Independence." Such information is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES.

Information required by this item will be contained in our 2025 Proxy Statement in the section titled: "Fees of the Independent Registered Public Accounting Firm." Such information is incorporated herein by reference.

PART IV

ITEM 15. EXHIBIT AND FINANCIAL STATEMENT SCHEDULES.

1. Consolidated Financial Statements.

   The consolidated financial statements and supplementary data set forth in Part II of the Annual Report on Form 10-K are included herein.

2. Consolidated Financial Statement Schedules.

   These schedules are omitted because they are not required, or are not applicable, or the required information is shown in the consolidated financial statements or notes thereto.

3. Exhibits.

   The exhibits listed in the accompanying Exhibit Index are incorporated by reference herein or filed as part of this Annual Report on Form 10-K.

EXHIBIT INDEX

Exhibit	Document Description
3.1	Certificate of Incorporation, as amended through July 29, 2009 (incorporated by reference to our Quarterly Report on Form 10-Q for the quarter ended June 30, 2009, as Exhibit 3.1, filed on August 4, 2009)
3.2	Certificate of Amendment to the Certificate of Incorporation (incorporated by reference to our Current Report on Form 8-K, as Exhibit 3.1, filed on January 13, 2014)
3.3	Certificate of Amendment to the Certificate of Incorporation (incorporated by reference to our Current Report on Form 8-K, as Exhibit 3.1, filed on June 18, 2024)
3.4	Amended and Restated Bylaws (incorporated by reference to our Current Report on Form 8-K, as Exhibit 3.1, filed on February 8, 2019)
4.1	Common Stock Certificate (incorporated by reference to our Registration on Form S-3 (Registration No. 333-162968), as Exhibit 4.1, filed on November 6, 2009)
4.2	Form of Convertible Senior Unsecured Promissory Note (included in Exhibit 10.7)
4.3	Amended and Restated Certificate of Designation, Preferences, and Rights of Series A Preferred Stock (incorporated by reference to our Current Report on Form 8-K, as Exhibit 3.C, filed on December 19, 2006)
4.4*	Description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934
4.5	Form of Pre-Funded Warrant to Purchase Common Stock (incorporated by reference to our Current Report on Form 8-K, as Exhibit 10.1, filed on August 10, 2022)
10.1†	Amended and Restated 1997 Employee Stock Purchase Plan (incorporated by reference to our Form S-8 Registration Statement, as Exhibit 99.2, filed on June 30, 2023)
10.2†	Amended and Restated 2007 Equity Incentive Plan (incorporated by reference to our Form S-8 Registration Statement, as Exhibit 99.1, filed on June 30, 2023)
10.3†*	Form of 2007 Equity Incentive Plan Stock Option Agreement
10.4†*	Form of 2007 Equity Incentive Plan Restricted Stock Unit Agreement
10.5†*	Form of Indemnification Agreement
10.6*#+	Agreement of Sublease, dated as of September 23, 2024 by and between the Company and Crown Castle USA, Inc.
10.7#	Note Purchase Agreement, dated as of May 24, 2021, by and among Heron Therapeutics, Inc. and funds affiliated with Baker Bros. Advisors, LP (incorporated by reference to our Current Report on Form 8-K, as Exhibit 10.1, filed on May 25, 2021)
10.8	Cooperation Agreement, dated February 21, 2023, by and among Heron Therapeutics, Inc., Rubric Capital Management LP, the persons and entities listed on Schedule A thereto, Velan Capital Investment Management LP, and the persons and entities listed on Schedule B thereto (incorporated by reference to our Current Report on Form 8-K, as Exhibit 10.1, filed on February 22, 2023)
10.9†	Executive Employment Agreement, dated April 3, 2023, by and between the Company and Craig Collard (incorporated by reference to our Quarterly Report on Form 10-Q for the quarter ended June 30, 2023, as Exhibit 10.1, filed on August 14, 2023)
10.10†	Management Retention Agreement, dated June 6, 2023, by and between the Company and William Forbes (incorporated by reference to our Quarterly Report on Form 10-Q for the quarter ended June 30, 2023, as Exhibit 10.3, filed on August 14, 2023)
10.11†	Management Retention Agreement, dated June 16, 2023, by and between the Company and Ira Duarte (incorporated by reference to our Quarterly Report on Form 10-Q for the quarter ended June 30, 2023, as Exhibit 10.4, filed on August 14, 2023)
10.12†	Form of Inducement Notice of Grant of Stock Options and Option Agreement (incorporated by reference to our Registration Statement on Form S-8, as Exhibit 99.3, filed on August 6, 2024)
10.13†	Form of Inducement Notice of Grant of Restricted Stock Units and Restricted Stock Unit Agreement (incorporated by reference to our Registration Statement on Form S-8, as Exhibit 99.4, filed on August 6, 2024)
10.14#	Working Capital Facility Agreement dated August 9, 2023, by and among the Company, the several banks and other financial institutions or entities from time to time party thereto, and Hercules Capital, Inc.

	(incorporated by reference to our Quarterly Report on Form 10-Q, as Exhibit 10.10, filed on August 14, 2023)
10.15#	First Amendment to Working Capital Facility Agreement, dated as of February 13, 2025, by and among the Company, the several banks and other financial institutions or entities from time to time party thereto, and Hercules Capital, Inc. (incorporated by reference to our Current Report on Form 8-K, as Exhibit 10.1, filed on February 20, 2025)
10.16	Co-Promotion Agreement, dated as of January 5, 2024, by and between the Company and Crosslink Network, LLC (incorporated by reference to our Quarterly Report on Form 10-Q, as Exhibit 10.1, filed on May 7, 2024)
10.17	Amendment No. 1 to Co-Promotion Agreement, dated as of January 5, 2024, by and between the Company and Crosslink Network, LLC (incorporated by reference to our Quarterly Report on Form 10-Q, as Exhibit 10.1, filed on November 12, 2024)
10.18	Amendment No. 2 to Co-Promotion Agreement, dated as of January 5, 2024, by and between the Company and Crosslink Network, LLC (incorporated by reference to our Quarterly Report on Form 10-Q, as Exhibit 10.2, filed on November 12, 2024)
19.1*	Insider Trading Policy
23.1*	Consent of Independent Registered Public Accounting Firm (WithumSmith+Brown, PC)
24.1*	Power of Attorney (included on the signature page hereto)
31.1*	Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1**	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
97.1	Compensation Recovery Policy (incorporated by reference to our Quarterly Report on Form 10-K, as Exhibit 97.1, filed on March 12, 2024
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document and contained in Exhibit 101)

* Filed herewith.

** Furnished herewith. The certifications attached as Exhibit 32.1 accompany this Annual Report on Form 10-K pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed "filed" by the Registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

† Management contract or compensatory plan, contract or arrangement.

+ Certain information has been omitted from the exhibit pursuant to Item 601 of Regulation S-K

Schedules to this Exhibit have been omitted pursuant to Item 601(a)(5) of Regulation S-K under the Securities Act of 1933, as amended. A copy of any omitted schedule will be furnished to the SEC upon request.

ITEM 16. FORM 10-K SUMMARY.

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

HERON THERAPEUTICS, INC.

DATE: February 27, 2025 BY: /s/ CRAIG COLLARD

Craig Collard
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS that each individual whose signature appears below constitutes and appoints Craig Collard as his or her true and lawful attorney-in-fact and agent, with full power of substitution, for him or her and in his or her name, place and stead, in any and all capacities, with respect to this annual report and any and all amendments thereto, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all the said attorney-in-fact and agent or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

Signature	Title	Date
/s/ CRAIG COLLARD Craig Collard	Chief Executive Officer and Director *(Principal Executive Officer)*	February 27, 2025
/s/ IRA DUARTE Ira Duarte	Executive Vice President, Chief Financial Officer *(Principal Financial Officer)*	February 27, 2025
/s/ SHARMILA DISSANAIKE Sharmila Dissanaike	Director	February 27, 2025
/s/ MICHAEL KASETA Michael Kaseta	Director	February 27, 2025
/s/ CRAIG JOHNSON Craig Johnson	Director	February 27, 2025
/s/ ADAM MORGAN Adam Morgan	Chairman of the Board of Directors	February 27, 2025
/s/ SUSAN RODRIGUEZ Susan Rodriguez	Director	February 27, 2025
/s/ CHRISTIAN WAAGE Christian Waage	Director	February 27, 2025

Exhibit 4.4

DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

As of the date of the Annual Report on Form 10-K of which this exhibit is a part, Heron Therapeutics, Inc. (the "Company" or "we" or "our") has one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"): our common stock, par value $0.01 per share ("common stock").

Description of Common Stock

The following description of our common stock is a summary and does not purport to be complete. It is subject to and qualified in its entirety by reference to our certificate of incorporation, as amended (the "certificate of incorporation") and our amended and restated bylaws (the "bylaws"), each of which are incorporated by reference as an exhibit to the Annual Report on Form 10-K of which this exhibit is a part. We encourage you to read our certificate of incorporation, our bylaws and the applicable provisions of the Delaware General Corporation Law (the "DGCL") for additional information.

General

Authorized Shares. We are authorized to issue up to 400,000,000 shares of common stock.

Voting Rights. The holders of our common stock are entitled to one vote per share on all matters to be voted upon by the stockholders. In all matters other than an election of director, when a quorum is present at any meeting of our stockholders, the affirmative vote of a majority of the votes properly cast on the matter (excluding any abstentions or broker non-votes) will be the act of the stockholders, except as otherwise provided in the bylaws, the certificate of incorporation or a preferred stock designation, or as otherwise required by law. When a quorum is present at any meeting of stockholders for the election of directors, each director shall be elected by a majority of the votes cast; provided that, if the election is contested, the directors shall be elected by a plurality of the votes cast.

Dividends. Subject to preferences that may be applicable to any outstanding preferred stock, the holders of our common stock are entitled to receive ratably all dividends, if any, as may be declared from time to time by our Board of Directors out of the funds legally available.

Other Rights. In the event of the liquidation, dissolution or winding up of the Company, the holders of our common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock, if any, then outstanding. The common stock has no preemptive or conversion rights. There are no redemption or sinking fund provisions applicable to the common stock. All outstanding shares of common stock are fully paid and non-assessable.

Transfer Agent and Registrar. The transfer agent and registrar for our common stock is Computershare Trust Company N.A.

Listing. Our common stock is currently listed on The Nasdaq Capital Market under the symbol "HRTX".

Certain Provisions Affecting Control of the Company

Certificate of Incorporation and Bylaw Provisions. Some provisions of the DGCL and our certificate of incorporation and bylaws contain provisions that could make the following transactions or similar transactions more difficult:

- acquisition of us by means of a tender offer;
- acquisition of us by means of a proxy contest or otherwise; or
- removal of our incumbent officers and directors.

These provisions, summarized below, are intended to discourage coercive takeover practices and inadequate takeover bids and to promote stability in our management. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our Board of Directors.

Authorized but Unissued Shares. The authorized but unissued shares of common stock are available for future issuance without any further vote or action by our stockholders unless such vote or action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. These additional shares may be utilized for a variety of corporate purposes, including future public or private offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of common stock could render more difficult or discourage an attempt to obtain control over us by means of a proxy contest, tender offer, merger or otherwise.

Undesignated Preferred Stock. The ability to authorize undesignated preferred stock makes it possible for our Board of Directors to issue one or more series of preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of us. These and other provisions may have the effect of deterring hostile takeovers or delaying changes in control or management of our company.

Advance Notice Procedures. The advance notice procedures in our bylaws with regard to stockholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our stockholders provide that notice of stockholder proposals must be timely given in writing to our corporate secretary prior to the meeting at which the action is to be taken. Generally, to be timely, notice must be received at our principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary date of the annual meeting for the preceding year. Our bylaws specify the requirements as to form and content of all such stockholder notices. These requirements may have the effect of precluding stockholders from bringing proposals relating to the nomination of candidates for election as directors or new business before the stockholders at an annual or special meeting.

Delaware Anti-Takeover Statute. We are subject to Section 203 of the DGCL. This law prohibits a publicly held Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;

- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding those shares owned by persons who are directors and also officers and by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- on or subsequent to the date of the transaction, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 of the DGCL defines “business combination” to include:

- any merger or consolidation involving the corporation and the interested stockholder;

- any sale, transfer, pledge or other disposition of 10% or more of the corporation’s assets involving the interested stockholder;

- in general, any transaction that results in the issuance or transfer by the corporation of any of its stock to the interested stockholder; or

- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 of the DGCL defines an “interested stockholder” as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by the entity or person.

HERON THERAPEUTICS, INC.

AMENDED AND RESTATED 2007 EQUITY INCENTIVE PLAN

Notice of Stock Option Grant

Heron Therapeutics, Inc., a Delaware corporation (the "**Company**") has awarded to you ("**Awardee**") an option to purchase up to the number of shares of Common Stock set forth below (this "**Option**") under its Amended and Restated 2007 Equity Incentive Plan (the "**Plan**").

Awardee Name:

Grant Date:

Exercise Price per Share:

Number of Shares:

Type of Option: [Incentive Stock Option][Nonstatutory Stock Option]

Expiration Date: The trading day immediately preceding the tenth anniversary of the Grant Date (subject to Section 3 of this Grant Agreement and Section 14 of the Plan).

Vesting Schedule: Subject to the Awardee's Continuous Service and other limitations set forth in the Plan and this Grant Agreement (as defined below), the Option shall become vested and exercisable in accordance with the following schedule (the "**Vesting Schedule**"):

[[**Use for new hires:** The Option shall vest over a period of four years with 1/4th of the Option to vest on [DATE] and an additional 1/48th of the Option to vest on each monthly anniversary thereafter, such that the Option shall be 100% vested on [DATE].] [**Use for all other grants:** The Option shall vest over a period of four years with 1/48th of the Option to vest on [DATE] and on each monthly anniversary thereafter, such that the Option shall be 100% vested on [DATE].]

[Insert performance-based vesting schedule, if applicable.]

If the Vesting Schedule would result in a fractional Share vesting on any vesting date, the number of Shares that vest on that vesting date will be rounded down to the nearest whole Share and such fractional Shares shall remain unvested until one Share can vest and such whole Share shall vest on the next applicable vesting date (if any).

Capitalized terms used but not defined in this Notice of Stock Option Grant (this "**Notice**") or the attached Option Terms and Conditions (including any appendices and exhibits attached thereto)

will have the same meanings specified in the Plan. The Notice and the Option Terms and Conditions are collectively referred to as the "**Grant Agreement**" applicable to this Option.

By accepting this Option (whether electronically or otherwise), Awardee acknowledges and agrees to the following:

1. This Option is governed by the terms and conditions of this Grant Agreement and the Plan. In the event of a conflict between the terms of the Plan and this Grant Agreement, the terms of the Plan will prevail.

2. Awardee has received a copy of the Plan, this Grant Agreement, the Plan prospectus (if required under Applicable Laws), and the Company's insider trading policy, and represents that Awardee has read these documents and is familiar with their terms. Awardee further agrees to accept as binding, conclusive, and final all decisions and interpretations of the Committee and the Administrator regarding any questions relating to this Option and the Plan.

3. Vesting of this Option is subject to Awardee's Continuous Service as an Employee, Director, or Consultant, which is for an unspecified duration and may be terminated at any time, with or without Cause, and nothing in this Grant Agreement or the Plan changes the nature of that relationship.

4. The Company is not providing any tax, legal, or financial advice, nor is the Company making any recommendations regarding participation in the Plan. ***Awardee should consult with Awardee's own personal tax, legal, and financial advisors regarding participation in the Plan before taking any action related to the Plan***.

5. Awardee consents to electronic delivery and participation as set forth in the Plan and this Grant Agreement.

6. **If Awardee does not decline this Option within ninety (90) days of the Grant Date or by such other date that may be communicated to Awardee by the Company, the Company will accept this Option on Awardee's behalf and Awardee will be deemed to have accepted the terms and conditions of this Option set forth in the Plan and this Grant Agreement. If Awardee wishes to decline this Option, Awardee should promptly notify Human Resources. If Awardee declines this Option, this Option will be cancelled and no benefits from this Option nor any compensation or benefits in lieu of this Option will be provided to Awardee**.

Heron Therapeutics, Inc.	**Awardee**
By:	Signature:
Title:	Date:

HERON THERAPEUTICS, INC.

AMENDED AND RESTATED 2007 EQUITY INCENTIVE PLAN

Option Terms and Conditions

1. **Grant of Option**. Capitalized terms used in this Grant Agreement but not defined in this Grant Agreement will have the same meanings specified in the Plan. Awardee has been granted an Option to purchase up to the number of Shares set forth in the Notice at the Exercise Price set forth in the Notice. If designated in the Notice as an Incentive Stock Option, this Option is intended to qualify as an Incentive Stock Option under Section 422 of the Code. However, even if this Option is intended to be an Incentive Stock Option, it will be treated as a Nonstatutory Stock Option to the extent that it exceeds the $100,000 limit contained in Section 422(d) of Code, as provided in Section 10(b) of the Plan.

2. **Exercise of Option**. This Option is exercisable during its term in accordance with the Vesting Schedule contained in the Notice and the applicable provisions of the Plan and this Grant Agreement. Awardee may exercise the vested portion of this Option only by following the option exercise procedures established by the Administrator and payment of the aggregate Exercise Price for the Shares to be purchased, together with any applicable taxes.

3. **Method of Payment**. The Administrator shall determine the acceptable method of payment, either through the terms of this Grant Agreement or at the time of exercise of the Option. Acceptable forms of consideration may include:

    a. cash;

    b. check or wire transfer (denominated in U.S. Dollars);

    c. other Shares held by the Awardee which have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which the Option shall be exercised;

    d. cashless “net exercise” arrangement pursuant to which the Company will reduce the number of Shares issued upon exercise by the largest whole number of Shares having an aggregate Fair Market Value that does not exceed the aggregate exercise price; provided that the Company shall accept a cash or other payment from the

Awardee to the extent of any remaining balance of the exercise price not satisfied by such reduction in the number of whole Shares to be issued;

e. such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws; or

f. any combination of the foregoing methods of payment.

4. **Option Term**.

a. **Maximum Term**. This Option will in all events expire at the close of business at Company headquarters on the Expiration Date specified in the Notice, unless it terminates earlier in connection with the termination of Awardee's Continuous Service (as provided below) or a Change in Control (as provided in the Plan).

b. **Post-Termination Exercise Period**. If Awardee's Continuous Service terminates prior to the Expiration Date of this Option other than for Cause, the unvested portion of this Option will automatically expire on Awardee's date of termination, and the vested portion of this Option will remain outstanding and exercisable for the following periods, unless otherwise determined by the Committee:

i. three (3) months following a termination for any reason other than Cause, Total and Permanent Disability, or death;

ii. twelve (12) months following a termination due to Total and Permanent Disability; and

iii. twelve (12) months following the date of Awardee's death, if Awardee dies while in Continuous Service, or during the period provided in clauses (i) or (ii) above.

c. **Termination for Cause**. If Awardee's Continuous Service is terminated for Cause, this Option will terminate and be forfeited immediately upon such Awardee's Termination of Continuous Service, and Awardee will be prohibited from exercising any portion (including any vested portion) of this Option on or after the

date of such Termination of Continuous Service. If Awardee's Continuous Service is suspended pending an investigation of whether Awardee's Continuous Service will be terminated for Cause, all of Awardee's rights under this Option, including the right to exercise such Options, shall be suspended during the investigation period.

d. **Determination of Termination Date**. For purposes of this Option, Awardee's Continuous Service will be considered terminated as of the date Awardee is no longer actively providing services to the Company or one of its Parents, Subsidiaries, or Affiliates (regardless of the reason for such termination and whether or not later found to be invalid or in breach of employment laws in the jurisdiction where Awardee is employed or the terms of Awardee's employment agreement, if any). The Committee shall have the exclusive discretion to determine when Awardee is no longer actively providing services for purposes of this Option (including whether Awardee may still be considered to be providing services while on a leave of absence).

e. **Automatic Exercise**. Notwithstanding any other provision of this Grant Agreement to the contrary, if, on the Expiration Date, (i) there remains an outstanding portion of the Option that is vested and exercisable, and (ii) the Fair Market Value of a Share exceeds the per share Exercise Price of the Option by at least $0.01, such portion shall, unless otherwise determined by the Company, be automatically exercised on such trading day. The Company shall determine whether the aggregate Exercise Price and any related taxes shall be settled by the Company withholding the relevant number of Shares or by a broker-assisted net exercise mechanism. Such automatic exercise shall not apply to the Option if the Awardee notifies the Company in writing, at least thirty (30) business days prior to such automatic exercise, that such auto-exercise shall not occur. This Section shall not apply to the Option to the extent that this Section causes the Option to fail to qualify for favorable tax treatment under Applicable Law. In its discretion, the Company may determine to cease the automatic exercise provided for in this Section.

5. **Non-Transferability of Option**. This Option may not be transferred in any manner other than by will or by the laws of descent or distribution or court order and may be exercised during the lifetime of Awardee only by Awardee. The terms of the Plan and this Grant Agreement will be binding upon the executors, administrators, heirs, successors, and assigns of Awardee.

6. **Taxes**.

a. **Responsibility for Taxes**. By accepting this Option, Awardee acknowledges that, regardless of any action taken by the Company or, if different, any Parent, Subsidiary, or Affiliate that employs Awardee (the "**Employer**"), the ultimate liability for all taxes is and remains Awardee's responsibility and may exceed the amount actually withheld by the Company or the Employer. Awardee further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any taxes in connection with any aspect of this Option, including, but not limited to, the grant, vesting, or exercise of this Option, the subsequent sale of Shares acquired pursuant to such exercise and the receipt of any dividends; and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of this Option to reduce or eliminate Awardee's liability for taxes or achieve any particular tax result. Further, if Awardee is subject to taxes in more than one jurisdiction, as applicable, Awardee acknowledges that the Company and/or the Employer may be required to withhold or account for taxes in more than one jurisdiction. Awardee agrees to pay to the Company or the Employer any amount of taxes that the Company or the Employer may be required to withhold or account for as a result of Awardee's participation in the Plan that cannot be satisfied by the means described in this Section. The Company may refuse to issue or deliver the Shares or the proceeds of the sale of Shares, if Awardee fails to comply with Awardee's obligations in connection with the taxes.

b. **Withholding**. Prior to the relevant taxable or tax withholding event, as applicable, Awardee agrees to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all taxes. In this regard, Awardee authorizes the Company or the Employer, or their respective agents, at their discretion, to satisfy the obligations with regard to all taxes by one or a combination of the following:

i. withholding from Awardee's wages or other cash compensation paid to Awardee by the Company and/or the Employer or any Parent, Subsidiary, or Affiliate;

ii. withholding from proceeds of the sale of Shares acquired at exercise of this Option either through a voluntary sale or through a mandatory sale arranged by the Company (on Awardee's behalf pursuant to this authorization and without further consent);

iii. withholding Shares to be issued upon exercise of this Option, provided the Company only withholds a number of Shares necessary to satisfy no more than the withholding amounts determined based on the maximum permitted statutory rate applicable in Awardee's jurisdiction;

iv. Awardee's payment of a cash amount (including by check representing readily available funds or a wire transfer); or

v. any other arrangement approved by the Committee and permitted under Applicable Laws.

Withholding for taxes will be made in accordance with Section 13(d) of the Plan and such rules and procedures as may be established by the Administrator, and in compliance with the Company's insider trading policy, if applicable. In the event the Company or the Employer withholds more than the taxes using one of the methods described above, Awardee may receive a refund of any over-withheld amount in cash but will have no entitlement to the Shares sold or withheld.

7. **Notice of Disqualifying Disposition of Incentive Stock Option Shares**. If Awardee is subject to taxes in the United States and sells or otherwise disposes of any of the Shares acquired pursuant to an Incentive Stock Option on or before the later of (a) two years after the Grant Date, or (b) one year after the exercise date, Awardee will immediately notify the Company in writing of such disposition.

8. **Nature of Grant**. In accepting this Option, Awardee acknowledges, understands and agrees that: (a) the Plan is established voluntarily by the Company, is discretionary in nature, and may be amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan; (b) the grant of this Option is voluntary and occasional and does not create any contractual or other right to receive future grants, or benefits in lieu of grants, even if grants have been made in the past; (c) all decisions with respect to future grants, if any, will be at the sole discretion of the Company; (d) Awardee is voluntarily participating in the Plan; (e) this Option and the Shares allocated to this Option are not intended to replace any pension rights or compensation and are outside the scope of Awardee's employment contract, if any; (f) this Option and the Shares allocated to this Option, and the income and value of same, are not part of normal or expected compensation for any purpose, including, without limitation, calculating any severance, resignation, termination, redundancy, dismissal, end-of- service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments; (g) unless otherwise provided in the Plan or by the Company in its discretion, this Option and the benefits evidenced by this Grant Agreement do not create any entitlement to have this Option or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the Shares; and (h) neither the Company nor any of its Affiliates shall be liable for any foreign exchange rate fluctuation between Awardee's local currency and the United States Dollar or the selection by the Company or any one of its Affiliates in its sole discretion of an applicable foreign exchange rate that may affect the value of this Option (or the calculation of income or taxes thereunder) or of any amounts due to Awardee pursuant to the settlement of this Option or the subsequent sale of the Shares allocated to this Option.

9. **Code Section 409A**. It is intended that the terms of this Option will not result in the imposition of any tax liability pursuant to Code Section 409A, and this Grant Agreement shall be construed and interpreted consistent with that intent.

10. **Data Privacy**. ***Awardee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of Awardee's personal data as described in this Grant Agreement and any other grant materials by and among the Company and its Affiliates for the purpose of implementing, administering and managing Awardee's participation in the Plan. Awardee understands that the Company and its Affiliates may hold certain personal information about Awardee, including, but not limited to, Awardee's name, home address and telephone number, date of birth, social security number or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all grants, or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in Awardee's favor ("Data"), for the purpose of implementing, administering and managing the Plan. Awardee understands that Data will be transferred to such stock plan service provider as may be selected by the Company, presently or in the future, which may be assisting the Company with the implementation, administration and management of the Plan. Awardee understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipient's country (e.g., the United States) may have different data privacy laws and protections than Awardee's country. Awardee authorizes the Company, the stock plan service provider as may be selected by the Company, and any other possible recipients which may assist the Company, presently or in the future, with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing Awardee's participation in the Plan. Further, Awardee understands that Awardee is providing the consents herein on a purely voluntary basis. If Awardee does not consent, or if Awardee later seeks to revoke Awardee's consent, or instructs the Company to cease the processing of the Data, Awardee's Continuous Service will not be adversely affected; the only adverse consequence of refusing or withdrawing Awardee's consent or instructing the Company to cease processing, is that the Company would not be able to grant Awardee Options, Awards or any other equity awards or administer or maintain such awards. Therefore, Awardee understands that refusing or withdrawing Awardee's consent may affect Awardee's ability to participate in the Plan. For more information on the consequences of Awardee's refusal to consent or withdrawal of consent, Awardee understands that Awardee may contact Awardee's local human resources representative.***

11. **Governing Law and Venue**. This Grant Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or this Grant Agreement, the parties hereby submit to the exclusive jurisdiction of the State of Delaware and agree that such litigation shall be conducted only in the courts of the State of Delaware, or the federal courts for the United States for the District of Delaware and no other courts, where this grant is made and/or to be performed.

12. **Addendum and Sub-Plans**. Notwithstanding any provisions in this Grant Agreement, this Option shall be subject to any special terms and conditions set forth in any addendum to this Grant Agreement for Awardee's country. Moreover, if Awardee relocates to one of the countries included in the addendum (if any), the special terms and conditions for such country will apply to Awardee, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The addendum (if any) constitutes part of this Grant Agreement. Further, the Plan shall be deemed to include any special terms and conditions set forth in any applicable sub-plan for Awardee's country, and, if Awardee relocates to a country for which the Company has established a sub-plan, the special terms and conditions for such country will apply to Awardee, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons.

13. **Entire Agreement; Enforcement of Rights; Amendment**. This Grant Agreement, together with the Plan, sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior or contemporaneous discussions, agreements, commitments, negotiations and arrangements between them. Except as contemplated by the Plan, no modification of or amendment to this Grant Agreement, nor any waiver of any rights under this Grant Agreement, shall be effective unless in writing signed by the parties to this Grant Agreement to the extent it would materially impair the rights of Awardee. The failure by either party to enforce any rights under this Grant Agreement shall not be construed as a waiver of any rights of such party. Notwithstanding anything to the contrary in the Plan or this Grant Agreement, the Company reserves the right to revise this Grant Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Awardee, to comply with Code Section 409A or to otherwise avoid imposition of any additional tax or income recognition or costs under Code Section 409A in connection with this Option.

14. **Severability**. If one or more provisions of this Grant Agreement are held to be unenforceable under Applicable Laws, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Grant Agreement, (b) the balance of this Grant Agreement shall be interpreted as if such provision were so excluded, and (c) the balance of this Grant Agreement shall be enforceable in accordance with its terms.

15. **Language**. If Awardee has received this Grant Agreement, the Plan or any other document related to this Option and/or the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

16. **Imposition of Other Requirements**. The Company reserves the right to impose other requirements on Awardee's participation in the Plan, on this Option and on any Shares purchased upon exercise of this Option, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require Awardee to accept any additional agreements or undertakings that may be necessary to accomplish the foregoing.

17. **Notices**. Any notice, demand or request required or permitted to be given under this Grant Agreement shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email or fax, or forty-eight (48) hours after being deposited in the U.S. mail or a comparable foreign mail service, as certified or registered mail with postage or shipping charges prepaid, addressed to the party to be notified at such party's address as set forth on the signature page, as subsequently modified by written notice, or if no address is specified on the signature page, at the most recent address, email or fax number set forth in the Company's books and records.

18. **Counterparts.** This Grant Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Facsimile, email or other electronic execution and delivery of this Grant Agreement (including but not limited to execution by electronic signature or click-through electronic acceptance) shall constitute valid and binding execution and delivery for all purposes and shall be deemed to be, and have the effect of, an original signature.

19. **Successors and Assigns**. The rights and benefits of this Grant Agreement shall inure to the benefit of, and be enforceable by the Company's successors and assigns.

20. **Consent to Electronic Delivery and Participation**. By accepting this Option, Awardee agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company, and consents to the electronic delivery of this Grant Agreement, the Plan, account statements, Plan prospectuses (if any), and all other documents, communications, or information related to this Option and current or future participation in the Plan. Electronic delivery may include the delivery of a link to the Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other delivery determined at the Company's discretion. Awardee acknowledges that Awardee may receive from the Company a paper copy of any documents delivered electronically at no cost if Awardee contacts the Company by telephone, through a postal service, or electronic mail to Stock Administration.

21. **Clawback**. Notwithstanding any other provision herein to the contrary, any performance-based compensation, or any other amount, paid to the Awardee pursuant to an Award, including this Option, which is subject to recovery under any law, government regulation, stock exchange listing requirement, or any policy adopted by the Company will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation, stock exchange listing requirement, or policy adopted by the Company. No recovery of compensation under such a clawback policy will be an event giving rise to a right to resign for "good reason" or be deemed a "constructive termination" (or any similar term) as such terms are used in any agreement between any Awardee and the Company.

HERON THERAPEUTICS, INC.

AMENDED AND RESTATED 2007 EQUITY INCENTIVE PLAN

Notice of Restricted Stock Unit Grant

Heron Therapeutics, Inc., a Delaware corporation (the "**Company**") has awarded to you ("**Awardee**") restricted stock units ("**Restricted Stock Units**") covering the number of shares of Common Stock set forth below (the "**Restricted Stock Unit Grant**") under its Amended and Restated 2007 Equity Incentive Plan (the "**Plan**").

Awardee Name:

Grant Date:

Number of Restricted Stock Units:

Vesting Schedule: Subject to the Awardee's Continuous Service and other limitations set forth in the Plan and this Grant Agreement (as defined below), the Restricted Stock Units shall vest in accordance with the following schedule (the "**Vesting Schedule**"):

[**Possible use for new hires:** The Restricted Stock Units shall vest over a period of four years with 1/4th of the Restricted Stock Units to vest on [DATE] and an additional 1/16th of the Restricted Stock Units to vest on each quarterly anniversary thereafter, such that the Restricted Stock Units shall be 100% vested on [DATE].] [**Use for all other grants**: The Restricted Stock Units shall vest over a period of four years with 1/16th of the Restricted Stock Units to vest on [DATE] and on each quarterly anniversary thereafter, such that the Restricted Stock Units shall be 100% vested on [DATE].

[Insert performance-based vesting schedule, if applicable.]

If the Vesting Schedule would result in a fractional Restricted Stock Unit vesting on any vesting date, the number of Restricted Stock Units that vest on that vesting date will be rounded down to the nearest whole Restricted Stock Unit and such fractional Restricted Stock Units shall remain unvested until one Restricted Stock Unit can vest and such whole Restricted Stock Unit shall vest on the next applicable vesting date (if any).

Capitalized terms used but not defined in this Notice of Restricted Stock Unit Grant (this "**Notice**") or the attached Restricted Stock Unit Terms and Conditions (including any appendices and exhibits attached thereto) will have the same meanings specified in the Plan. The Notice and the Restricted

Stock Unit Terms and Conditions are collectively referred to as the "**Grant Agreement**" applicable to the Restricted Stock Units.

By accepting (whether electronically or otherwise) the Restricted Stock Unit Grant, Awardee acknowledges and agrees to the following:

1. The Restricted Stock Unit Grant is governed by the terms and conditions of this Grant Agreement and the Plan. In the event of a conflict between the terms of the Plan and this Grant Agreement, the terms of the Plan will prevail.

2. Awardee has received a copy of the Plan, this Grant Agreement, the Plan prospectus (if required under Applicable Laws), and the Company's insider trading policy, and represents that Awardee has read these documents and is familiar with their terms. Awardee further agrees to accept as binding, conclusive, and final all decisions and interpretations of the Committee and the Administrator regarding any questions relating to the Restricted Stock Unit Grant and the Plan.

3. Vesting of the Restricted Stock Units is subject to Awardee's Continuous Service as an Employee, Director, or Consultant, which is for an unspecified duration and may be terminated at any time, with or without Cause, and nothing in this Grant Agreement or the Plan changes the nature of that relationship.

4. The Company is not providing any tax, legal, or financial advice, nor is the Company making any recommendations regarding participation in the Plan. ***Awardee should consult with Awardee's own personal tax, legal, and financial advisors regarding participation in the Plan before taking any action related to the Plan***.

5. Awardee consents to electronic delivery and participation as set forth in the Plan and this Grant Agreement.

6. **If Awardee does not decline this Restricted Stock Unit Grant within ninety (90) days of the Grant Date or by such other date that may be communicated to Awardee by the Company, the Company will accept this Restricted Stock Unit Grant on Awardee's behalf and Awardee will be deemed to have accepted the terms and conditions of the Restricted Stock Units set forth in the Plan and this Grant Agreement. If Awardee wishes to decline this Restricted Stock Unit Grant, Awardee should promptly notify Human Resources. If Awardee declines this Restricted Stock Unit Grant, the Restricted Stock Units will be cancelled and no benefits from the Restricted Stock Units nor any compensation or benefits in lieu of the Restricted Stock Units will be provided to Awardee**.

Heron Therapeutics, Inc.	**Awardee**
By:	Signature:
Title:	Date:

HERON THERAPEUTICS, INC.

AMENDED AND RESTATED 2007 EQUITY INCENTIVE PLAN

Restricted Stock Unit Terms and Conditions

1. **Grant of Restricted Stock Units**. Capitalized terms used in this Grant Agreement but not defined in this Grant Agreement will have the same meanings specified in the Plan. A Restricted Stock Unit is a non-voting unit of measurement which is deemed solely for bookkeeping purposes to be equivalent to one outstanding share of Common Stock (a "**Share**"). The Restricted Stock Units are used solely as a device to determine the number of Shares to eventually be issued to Awardee if such Restricted Stock Units vest. The Restricted Stock Units shall not be treated as property or as a trust fund of any kind.

2. **Settlement**. On or as soon as administratively practical (and within thirty (30) days) following the applicable date of vesting under the Vesting Schedule set forth in the Notice (each, a "**Vesting Date**"), the Company will deliver to Awardee a number of Shares (either by delivering one or more certificates for such Shares or by entering such Shares in book entry form, as determined by the Company in its discretion) equal to the number of Restricted Stock Units subject to the Restricted Stock Unit Grant that vest on the applicable Vesting Date, subject to the satisfaction of any applicable taxes. No fractional Restricted Stock Units or rights for fractional Shares shall be created pursuant to this Grant Agreement.

3. **Dividend and Voting Rights**. Unless and until such time as Shares are issued in settlement of vested Restricted Stock Units, Awardee will have no ownership of the Shares allocated to the Restricted Stock Units, and will have no rights to vote such Shares and no rights to dividends.

4. **Non-Transferability of Restricted Stock Units**. The Restricted Stock Units and any interest therein will not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of in any manner other than by will or by the laws of descent or distribution or court order. The terms of the Plan and this Grant Agreement will be binding upon the executors, administrators, heirs, successors, and assigns of Awardee.

5. **Termination**. If Awardee's Continuous Service terminates for any reason, all unvested Restricted Stock Units will be forfeited to the Company, and all rights of Awardee to such Restricted Stock Units will immediately terminate without payment of any consideration to Awardee. The Committee shall have the exclusive discretion to determine when Awardee is no longer actively providing services for purposes of this Restricted Stock Unit Grant (including whether Awardee may still be considered to be providing services while on a leave of absence).

6. **Taxes**.

a. **Responsibility for Taxes**. By accepting this Restricted Stock Unit Grant, Awardee acknowledges that, regardless of any action taken by the Company or, if different, any Parent, Subsidiary, or Affiliate that employs Awardee (the "**Employer**"), the ultimate liability for all taxes is and remains Awardee's responsibility and may exceed the amount actually withheld by the Company or the Employer. Awardee further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any taxes in connection with any aspect of the Restricted Stock Unit Grant, including, but not limited to, the grant, vesting, or settlement of the Restricted Stock Unit Grant, the subsequent sale of Shares acquired pursuant to such settlement, and the receipt of any dividends; and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of the Restricted Stock Unit Grant to reduce or eliminate Awardee's liability for taxes or achieve any particular tax result. Further, if Awardee is subject to taxes in more than one jurisdiction, as applicable, Awardee acknowledges that the Company and/or the Employer may be required to withhold or account for taxes in more than one jurisdiction. Awardee agrees to pay to the Company or the Employer any amount of taxes that the Company or the Employer may be required to withhold or account for as a result of Awardee's participation in the Plan that cannot be satisfied by the means described in this Section. The Company may refuse to issue or deliver the Shares, or the proceeds of the sale of Shares, if Awardee fails to comply with Awardee's obligations in connection with the taxes.

b. **Withholding**. Prior to the relevant taxable or tax withholding event, as applicable, Awardee agrees to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all taxes. In this regard, Awardee authorizes the Company or the Employer, or their respective agents, at their discretion, to satisfy the obligations with regard to all taxes by one or a combination of the following:

i. withholding from Awardee's wages or other cash compensation paid to Awardee by the Company and/or the Employer or any Parent, Subsidiary, or Affiliate;

ii. withholding from proceeds of the sale of Shares acquired on settlement of the Restricted Stock Units either through a voluntary sale or through a mandatory sale arranged by the Company (on Awardee's behalf pursuant to this authorization and without further consent);

iii. withholding Shares to be issued upon settlement of the Restricted Stock Units, provided the Company only withholds a number of Shares necessary to satisfy no more than the withholding amounts determined based on the maximum permitted statutory rate applicable in Awardee's jurisdiction;

iv. Awardee's payment of a cash amount (including by check representing readily available funds or a wire transfer); or

v. any other arrangement approved by the Committee and permitted under Applicable Laws.

Withholding for taxes will be made in accordance with Section 13(d) of the Plan and such rules and procedures as may be established by the Administrator, and in compliance with the Company's insider trading policy, if applicable. In the event the Company or the Employer withholds more than the taxes using one of the methods described above, Awardee may receive a refund of any over-withheld amount in cash but will have no entitlement to the Shares sold or withheld.

7. **Nature of Grant**. In accepting this Restricted Stock Unit Grant, Awardee acknowledges, understands and agrees that: (a) the Plan is established voluntarily by the Company, is discretionary in nature, and may be amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan; (b) the grant of this Restricted Stock Unit Grant is voluntary and occasional and does not create any contractual or other right to receive future grants, or benefits in lieu of grants, even if grants have been made in the past; (c) all decisions with respect to future grants, if any, will be at the sole discretion of the Company; (d) Awardee is voluntarily participating in the Plan; (e) this Restricted Stock Unit Grant and the Shares allocated to this Restricted Stock Unit Grant are not intended to replace any pension rights or compensation and are outside the scope of Awardee's employment contract, if any; (f) this Restricted Stock Unit Grant and the Shares allocated to this Restricted Stock Unit Grant, and the income and value of same, are not part of normal or expected compensation for any purpose, including, without limitation, calculating any severance, resignation, termination, redundancy, dismissal, end-of- service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments; (g) unless otherwise provided in the Plan or by the Company in its discretion, this Restricted Stock Unit Grant and the benefits evidenced by this Grant Agreement do not create any entitlement to have this Restricted Stock Unit Grant or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the Shares; and (h) neither the Company nor any of its Affiliates shall be liable for any foreign exchange rate fluctuation between Awardee's local currency and the United States Dollar or the selection by the Company or any one of its Affiliates in its sole discretion of an applicable foreign exchange rate that may affect the value of this Restricted Stock Unit Grant (or the calculation of income or taxes thereunder) or of any amounts due to Awardee pursuant to the settlement of this Restricted Stock Unit Grant or the subsequent sale of the Shares allocated to this Restricted Stock Unit Grant.

8. **Code Section 409A**. It is intended that the terms of the Restricted Stock Unit Grant will not result in the imposition of any tax liability pursuant to Code Section 409A, and this Grant Agreement shall be construed and interpreted consistent with that intent. Payments pursuant to this Restricted Stock Unit Grant are intended to constitute separate payments for purposes of Code Section 409A.

9. **Data Privacy**. ***Awardee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of Awardee's personal data as described in this Grant Agreement and any other grant materials by and among the Company and its Affiliates for the purpose of implementing, administering and managing Awardee's participation in the Plan. Awardee understands that the Company and its Affiliates may hold certain personal information about Awardee, including, but not limited to, Awardee's name, home address and telephone number, date of birth, social security number or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all grants, or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in Awardee's favor ("Data"), for the purpose of implementing, administering and managing the Plan. Awardee understands that Data will be transferred to such stock plan service provider as may be selected by the Company, presently or in the future, which may be assisting the Company with the implementation, administration and management of the Plan. Awardee understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipient's country (e.g., the United States) may have different data privacy laws and protections than Awardee's country. Awardee authorizes the Company, the stock plan service provider as may be selected by the Company, and any other possible recipients which may assist the Company, presently or in the future, with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing Awardee's participation in the Plan. Further, Awardee understands that Awardee is providing the consents herein on a purely voluntary basis. If Awardee does not consent, or if Awardee later seeks to revoke Awardee's consent, or instructs the Company to cease the processing of the Data, Awardee's Continuous Service will not be adversely affected; the only adverse consequence of refusing or withdrawing Awardee's consent or instructing the Company to cease processing, is that the Company would not be able to grant Awardee Restricted Stock Units, Awards or any other equity awards or administer or maintain such awards. Therefore, Awardee understands that refusing or withdrawing Awardee's consent may affect Awardee's ability to participate in the Plan. For more information on the consequences of Awardee's refusal to consent or withdrawal of consent, Awardee understands that Awardee may contact Awardee's local human resources representative.***

10. **Governing Law and Venue**. This Grant Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or this Grant Agreement, the parties hereby submit to the exclusive jurisdiction of the State of Delaware and agree that such litigation shall be conducted only in the courts of the State of Delaware,

or the federal courts for the United States for the District of Delaware and no other courts, where this grant is made and/or to be performed.

11. **Addendum and Sub-Plans**. Notwithstanding any provisions in this Grant Agreement, this Restricted Stock Unit Grant shall be subject to any special terms and conditions set forth in any addendum to this Grant Agreement for Awardee's country. Moreover, if Awardee relocates to one of the countries included in the addendum (if any), the special terms and conditions for such country will apply to Awardee, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The addendum (if any) constitutes part of this Grant Agreement. Further, the Plan shall be deemed to include any special terms and conditions set forth in any applicable sub-plan for Awardee's country, and, if Awardee relocates to a country for which the Company has established a sub-plan, the special terms and conditions for such country will apply to Awardee, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons.

12. **Entire Agreement; Enforcement of Rights; Amendment**. This Grant Agreement, together with the Plan, sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior or contemporaneous discussions, agreements, commitments, negotiations and arrangements between them. Except as contemplated by the Plan, no modification of or amendment to this Grant Agreement, nor any waiver of any rights under this Grant Agreement, shall be effective unless in writing signed by the parties to this Grant Agreement to the extent it would materially impair the rights of Awardee. The failure by either party to enforce any rights under this Grant Agreement shall not be construed as a waiver of any rights of such party. Notwithstanding anything to the contrary in the Plan or this Grant Agreement, the Company reserves the right to revise this Grant Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Awardee, to comply with Code Section 409A or to otherwise avoid imposition of any additional tax or income recognition or costs under Code Section 409A in connection with this Grant.

13. **Severability**. If one or more provisions of this Grant Agreement are held to be unenforceable under Applicable Laws, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Grant Agreement, (b) the balance of this Grant Agreement shall be interpreted as if such provision were so excluded, and (c) the balance of this Grant Agreement shall be enforceable in accordance with its terms.

14. **Language**. If Awardee has received this Grant Agreement, the Plan or any other document related to this Restricted Stock Unit Grant and/or the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

15. **Imposition of Other Requirements**. The Company reserves the right to impose other requirements on Awardee's participation in the Plan, on the Restricted Stock Unit Grant and on any Shares acquired under the Plan, to the extent the Company determines it is

necessary or advisable for legal or administrative reasons, and to require Awardee to accept any additional agreements or undertakings that may be necessary to accomplish the foregoing.

16. **Notices**. Any notice, demand or request required or permitted to be given under this Grant Agreement shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email or fax, or forty-eight (48) hours after being deposited in the U.S. mail or a comparable foreign mail service, as certified or registered mail with postage or shipping charges prepaid, addressed to the party to be notified at such party's address as set forth on the signature page, as subsequently modified by written notice, or if no address is specified on the signature page, at the most recent address, email or fax number set forth in the Company's books and records.

17. **Counterparts.** This Grant Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Facsimile, email or other electronic execution and delivery of this Grant Agreement (including but not limited to execution by electronic signature or click-through electronic acceptance) shall constitute valid and binding execution and delivery for all purposes and shall be deemed to be, and have the effect of, an original signature.

18. **Successors and Assigns**. The rights and benefits of this Grant Agreement shall inure to the benefit of, and be enforceable by the Company's successors and assigns.

19. **Consent to Electronic Delivery and Participation**. By accepting the Restricted Stock Units, Awardee agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company, and consents to the electronic delivery of this Grant Agreement, the Plan, account statements, Plan prospectuses (if any), and all other documents, communications, or information related to the Restricted Stock Units and current or future participation in the Plan. Electronic delivery may include the delivery of a link to the Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other delivery determined at the Company's discretion. Awardee acknowledges that Awardee may receive from the Company a paper copy of any documents delivered electronically at no cost if Awardee contacts the Company by telephone, through a postal service or electronic mail to Stock Administration.

20. **Clawback**. Notwithstanding any other provision herein to the contrary, any performance-based compensation, or any other amount, paid to the Awardee pursuant to an Award, including this Restricted Stock Unit Grant, which is subject to recovery under any law, government regulation, stock exchange listing requirement, or any policy adopted by the Company will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation, stock exchange listing requirement, or policy adopted by the Company. No recovery of compensation under such a clawback policy will be an event giving rise to a right to resign for "good reason" or be deemed a "constructive termination" (or any similar term) as such terms are used in any agreement between any Awardee and the Company.

Exhibit 10.5

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is entered into as of _____, 20__ (the "Effective Date") by and between Heron Therapeutics, Inc., a Delaware corporation (the "Company"), and [_____] (the "Indemnitee").

RECITALS

WHEREAS, the Board of Directors has determined that the inability to attract and retain qualified persons as directors and officers is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there shall be adequate certainty of protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the Company;

WHEREAS, the Company has adopted provisions in its Certificate of Incorporation providing for indemnification and advancement of expenses of its directors and officers to the fullest extent authorized by the General Corporation Law of the State of Delaware (the "DGCL"), and the Company wishes to clarify and enhance the rights and obligations of the Company and the Indemnitee with respect to indemnification and advancement of expenses;

WHEREAS, in order to induce and encourage highly experienced and capable persons such as the Indemnitee to serve and continue to serve as directors and officers of the Company and in any other capacity with respect to the Company as the Company may request, and to otherwise promote the desirable end that such persons shall resist what they consider unjustified lawsuits and claims made against them in connection with the good faith performance of their duties to the Company, with the knowledge that certain costs, judgments, penalties, fines, liabilities, and expenses incurred by them in their defense of such litigation are to be borne by the Company and they shall receive the maximum protection against such risks and liabilities as may be afforded by applicable law, the Board of Directors of the Company has determined that the following Agreement is reasonable and prudent to promote and ensure the best interests of the Company and its stockholders; and

WHEREAS, the Company desires to have the Indemnitee continue to serve as a director or officer of the Company and in any other capacity with respect to the Company as the Company may request, as the case may be, free from undue concern for unpredictable, inappropriate, or unreasonable legal risks and personal liabilities by reason of the Indemnitee acting in good faith in the performance of the Indemnitee's duty to the Company; and the Indemnitee desires to continue so to serve the Company, provided, and on the express condition, that he or she is furnished with the protections set forth hereinafter.

AGREEMENT

NOW, THEREFORE, in consideration of the Indemnitee's continued service as a director or officer of the Company, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) A "Change in Control" will be deemed to have occurred if the individuals who, as of the Effective Date, constitute the Board of Directors of the Company (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director subsequent to such effective date whose election, or nomination for election by the stockholders of the Company, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board of Directors.

(b) "Disinterested Director" means a director of the Company who is not or was not a party to the Proceeding in respect of which indemnification is being sought by the Indemnitee.

(c) "Expenses" includes, without limitation, expenses incurred in connection with the defense or settlement of any action, suit, arbitration, alternative dispute mechanism, inquiry, judicial, administrative, or legislative hearing, investigation, or any other threatened, pending, or completed proceeding, whether brought by or in the right of the Company or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative, or other nature, attorneys' fees, witness fees and expenses, fees and expenses of accountants and other advisors, retainers and disbursements and advances thereon, the premium, security for, and other costs relating to any bond (including cost bonds, appraisal bonds, or their equivalents), and any expenses of establishing a right to indemnification or advancement under Sections 9, 11, 13, and 16 hereof, but shall not include the amount of judgments, fines, ERISA excise taxes, or penalties actually levied against the Indemnitee, or any amounts paid in settlement by or on behalf of the Indemnitee.

(d) "Independent Counsel" means a law firm or a member of a law firm that neither is presently nor in the past five years has been retained to represent (i) the Company or the Indemnitee in any matter material to either such party or (ii) any other party to the Proceeding giving rise to a request for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or the Indemnitee in an action to determine the Indemnitee's right to indemnification under this Agreement.

(e) "Proceeding" means any action, suit, arbitration, alternative dispute mechanism, inquiry, judicial, administrative, or legislative hearing, investigation, or any other threatened, pending, or completed proceeding, whether brought by or in the right of the Company or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative, or other nature, to which the Indemnitee was or is a party or is threatened to be made a party or is otherwise involved in by reason of the fact that the Indemnitee is or was a director, officer, employee, agent, or trustee of the Company or while a

director, officer, employee, agent, or trustee of the Company is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, or by reason of anything done or not done by the Indemnitee in any such capacity, whether or not the Indemnitee is serving in such capacity at the time any expense, liability, or loss is incurred for which indemnification or advancement can be provided under this Agreement.

2. Service by the Indemnitee. The Indemnitee shall serve and/or continue to serve as a director or officer of the Company faithfully and to the best of the Indemnitee's ability so long as the Indemnitee is duly elected or appointed and until such time as the Indemnitee's successor is elected and qualified or the Indemnitee is removed as permitted by applicable law or tenders a resignation in writing.

3. Indemnification and Advancement of Expenses. The Company shall indemnify and hold harmless the Indemnitee, and shall pay to the Indemnitee in advance of the final disposition of any Proceeding all Expenses incurred by the Indemnitee in defending any such Proceeding, to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, all on the terms and conditions set forth in this Agreement. Without diminishing the scope of the rights provided by this Section, the rights of the Indemnitee to indemnification and advancement of Expenses provided hereunder shall include but shall not be limited to those rights hereinafter set forth, except that no indemnification or advancement of Expenses shall be paid to the Indemnitee:

(a) to the extent expressly prohibited by applicable law or the Certificate of Incorporation of the Company;

(b) for and to the extent that payment is actually made to the Indemnitee under a valid and collectible insurance policy or under a valid and enforceable indemnity clause, provision of the certificate of incorporation or bylaws, or agreement of the Company or any other company or other enterprise (and the Indemnitee shall reimburse the Company for any amounts paid by the Company and subsequently so recovered by the Indemnitee);

(c) in connection with an action, suit, or proceeding, or part thereof initiated by the Indemnitee (including claims and counterclaims, whether such counterclaims are asserted by (i) the Indemnitee, or (ii) the Company in an action, suit, or proceeding initiated by the Indemnitee), except a judicial proceeding or arbitration pursuant to Section 11 to enforce rights under this Agreement, unless the action, suit, or proceeding, or part thereof, was authorized or ratified by the Board of Directors of the Company; or

(d) with respect to any Proceeding brought by or in the right of the Company against the Indemnitee that is authorized by the Board of Directors of the Company, except as provided in Sections 5, 6, and 7 below.

4. Action or Proceedings Other than an Action by or in the Right of the Company. Except as limited by Section 3 above, the Indemnitee shall be entitled to the indemnification rights provided in this Section if the Indemnitee was or is a party or is threatened to be made a

party to, or was or is otherwise involved in, any Proceeding (other than an action by or in the right of the Company) by reason of the fact that the Indemnitee is or was a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee of the Company is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, or by reason of anything done or not done by the Indemnitee in any such capacity. Pursuant to this Section, the Indemnitee shall be indemnified against all expense, liability, and loss (including judgments, fines, ERISA excise taxes or penalties, amounts paid in settlement by or on behalf of the Indemnitee, and Expenses) actually and reasonably incurred by the Indemnitee in connection with such Proceeding, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe his or her conduct was unlawful.

5. Indemnity in Proceedings by or in the Right of the Company. Except as limited by Section 3 above, the Indemnitee shall be entitled to the indemnification rights provided in this Section if the Indemnitee was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any Proceeding brought by or in the right of the Company to procure a judgment in its favor by reason of the fact that the Indemnitee is or was a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee of the Company is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, or by reason of anything done or not done by the Indemnitee in any such capacity. Pursuant to this Section, the Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no such indemnification shall be made in respect of any claim, issue, or matter as to which the DGCL expressly prohibits such indemnification by reason of any adjudication of liability of the Indemnitee to the Company, unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the Indemnitee is entitled to indemnification for such expense, liability, and loss as such court shall deem proper.

6. Indemnification for Costs, Charges, and Expenses of Successful Party. Notwithstanding any limitations of Sections 3(c), 3(d), 4, and 5 above, to the extent that the Indemnitee has been successful, on the merits or otherwise, in whole or in part, in defense of any Proceeding, or in defense of any claim, issue, or matter therein, including, without limitation, the dismissal of any action without prejudice, or if it is ultimately determined, by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal, that the Indemnitee is otherwise entitled to be indemnified against Expenses, the Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee in connection therewith.

7. Partial Indemnification. If the Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the expense, liability, and loss (including judgments, fines, ERISA excise taxes or penalties, amounts paid in settlement by or on behalf of the Indemnitee, and Expenses) actually and reasonably incurred in connection with any Proceeding, or in connection with any judicial proceeding or arbitration pursuant to Section 11 to enforce rights under this Agreement, but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify the Indemnitee for the portion of such expense, liability, and loss actually and reasonably incurred to which the Indemnitee is entitled.

8. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the maximum extent permitted by the DGCL, the Indemnitee shall be entitled to indemnification against all Expenses actually and reasonably incurred by the Indemnitee or on the Indemnitee's behalf if the Indemnitee appears as a witness or otherwise incurs legal expenses as a result of or related to the Indemnitee's service as a director or officer of the Company, in any threatened, pending, or completed action, suit, arbitration, alternative dispute mechanism, inquiry, judicial, administrative, or legislative hearing, investigation, or any other threatened, pending, or completed proceeding, whether of a civil, criminal, administrative, legislative, investigative, or other nature, to which the Indemnitee neither is, nor is threatened to be made, a party.

9. Determination of Entitlement to Indemnification. To receive indemnification under this Agreement, the Indemnitee shall submit a written request to the Secretary of the Company. Such request shall include documentation or information that is necessary for such determination and is reasonably available to the Indemnitee. Upon receipt by the Secretary of the Company of a written request by the Indemnitee for indemnification pursuant to Sections 4, 5, 6, 7, or 8, the entitlement of the Indemnitee to indemnification, to the extent not provided pursuant to the terms of this Agreement, shall be determined by the following person or persons who shall be empowered to make such determination: (a) the Board of Directors of the Company by a majority vote of Disinterested Directors, whether or not such majority constitutes a quorum; (b) a committee of Disinterested Directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum; (c) if there are no Disinterested Directors, or if the Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the Indemnitee; (d) the stockholders of the Company; or (e) in the event that a Change in Control has occurred, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the Indemnitee. Such Independent Counsel shall be selected by the Board of Directors and approved by the Indemnitee, except that in the event that a Change in Control has occurred, Independent Counsel shall be selected by the Indemnitee. Upon failure of the Board of Directors so to select such Independent Counsel or upon failure of the Indemnitee so to approve (or so to select, in the event a Change in Control has occurred), such Independent Counsel shall be selected upon application to a court of competent jurisdiction. The determination of entitlement to indemnification shall be made and, unless a contrary determination is made, such indemnification shall be paid in full by the Company not later than 60 calendar days after receipt by the Secretary of the Company of a written request for indemnification. If the person making such determination shall determine that the Indemnitee is entitled to indemnification as to part (but not all) of the application for indemnification, such person shall reasonably prorate such

partial indemnification among the claims, issues, or matters at issue at the time of the determination.

10.Presumptions and Effect of Certain Proceedings. The Secretary of the Company shall, promptly upon receipt of the Indemnitee's written request for indemnification, advise in writing the Board of Directors or such other person or persons empowered to make the determination as provided in Section 9 that the Indemnitee has made such request for indemnification. Upon making such request for indemnification, the Indemnitee shall be presumed to be entitled to indemnification hereunder and the Company shall have the burden of proof in making any determination contrary to such presumption. If the person or persons so empowered to make such determination shall have failed to make the requested determination with respect to indemnification within 60 calendar days after receipt by the Secretary of the Company of such request, a requisite determination of entitlement to indemnification shall be deemed to have been made and the Indemnitee shall be absolutely entitled to such indemnification, absent actual fraud in the request for indemnification. The termination of any Proceeding described in Sections 4 or 5 by judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself (a) create a presumption that the Indemnitee did not act in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had reasonable cause to believe his or her conduct was unlawful or (b) otherwise adversely affect the rights of the Indemnitee to indemnification except as may be provided herein.

11.Remedies of the Indemnitee in Cases of Determination Not to Indemnify or to Advance Expenses; Right to Bring Suit. In the event that a determination is made that the Indemnitee is not entitled to indemnification hereunder or if payment is not timely made following a determination of entitlement to indemnification pursuant to Sections 9 and 10, or if an advancement of Expenses is not timely made pursuant to Section 16, the Indemnitee may at any time thereafter bring suit against the Company in a court of competent jurisdiction in the State of Delaware seeking an adjudication of entitlement to such indemnification or advancement of Expenses. Alternatively, the Indemnitee at the Indemnitee's option may seek an award in an arbitration to be conducted by a single arbitrator in the State of Delaware pursuant to the rules of the American Arbitration Association, such award to be made within 60 calendar days following the filing of the demand for arbitration. The Company shall not oppose the Indemnitee's right to seek any such adjudication or award in arbitration. In any suit or arbitration brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit or arbitration brought by the Indemnitee to enforce a right to an advancement of Expenses), it shall be a defense that the Indemnitee has not met any applicable standard of conduct for indemnification set forth in the DGCL, including the standard described in Section 4 or 5, as applicable. Further, in any suit brought by the Company to recover an advancement of Expenses pursuant to the terms of an undertaking, the Company shall be entitled to recover such Expenses upon a final judicial decision of a court of competent jurisdiction from which there is no further right to appeal that the Indemnitee has not met the standard of conduct described above. Neither the failure of the Company (including the Disinterested Directors, a committee of Disinterested Directors, Independent Counsel, or its stockholders) to have made a determination prior to the commencement of such suit or arbitration that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the standard of conduct described above, nor an actual determination by the Company (including the Disinterested Directors, a committee of

Disinterested Directors, Independent Counsel, or its stockholders) that the Indemnitee has not met the standard of conduct described above shall create a presumption that the Indemnitee has not met the standard of conduct described above, or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of Expenses hereunder, or brought by the Corporation to recover an advancement of Expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section 11 or otherwise shall be on the Company. If a determination is made or deemed to have been made pursuant to the terms of Section 9 or 10 that the Indemnitee is entitled to indemnification, the Company shall be bound by such determination and is precluded from asserting that such determination has not been made or that the procedure by which such determination was made is not valid, binding, and enforceable. The Company further agrees to stipulate in any court or before any arbitrator pursuant to this Section 11 that the Company is bound by all the provisions of this Agreement and is precluded from making any assertions to the contrary. If the court or arbitrator shall determine that the Indemnitee is entitled to any indemnification or advancement of Expenses hereunder, the Company shall pay all Expenses actually and reasonably incurred by the Indemnitee in connection with such adjudication or award in arbitration (including, but not limited to, any appellate proceedings) to the fullest extent permitted by law, and in any suit brought by the Company to recover an advancement of Expenses pursuant to the terms of an undertaking, the Company shall pay all Expenses actually and reasonably incurred by the Indemnitee in connection with such suit to the extent the Indemnitee has been successful, on the merits or otherwise, in whole or in part, in defense of such suit, to the fullest extent permitted by law.

12.Non-Exclusivity of Rights. The rights to indemnification and to the advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other right that the Indemnitee may now or hereafter acquire under any applicable law, agreement, vote of stockholders or Disinterested Directors, provisions of a charter or bylaws (including the Certificate of Incorporation or Bylaws of the Company), or otherwise.

13.Expenses to Enforce Agreement. In the event that the Indemnitee is subject to or intervenes in any action, suit, or proceeding in which the validity or enforceability of this Agreement is at issue or seeks an adjudication or award in arbitration to enforce the Indemnitee's rights under, or to recover damages for breach of, this Agreement, the Indemnitee, if the Indemnitee prevails in whole or in part in such action, suit, or proceeding, shall be entitled to recover from the Company and shall be indemnified by the Company against any Expenses actually and reasonably incurred by the Indemnitee in connection therewith.

14.Continuation of Indemnity. All agreements and obligations of the Company contained herein shall continue during the period the Indemnitee is a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee is serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, and shall continue thereafter with respect to any possible claims based on the fact that the Indemnitee was a director, officer, employee, agent, or trustee of the Company or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or

other enterprise, including service with respect to an employee benefit plan. This Agreement shall be binding upon all successors and assigns of the Company (including any transferee of all or substantially all of its assets and any successor by merger or operation of law) and shall inure to the benefit of the Indemnitee's heirs, executors, and administrators.

15.Notification and Defense of Proceeding. Promptly after receipt by the Indemnitee of notice of any Proceeding, the Indemnitee shall, if a request for indemnification or an advancement of Expenses in respect thereof is to be made against the Company under this Agreement, notify the Company in writing of the commencement thereof; but the omission so to notify the Company shall not relieve it from any liability that it may have to the Indemnitee. Notwithstanding any other provision of this Agreement, with respect to any such Proceeding of which the Indemnitee notifies the Company:

(a) The Company shall be entitled to participate therein at its own expense;

(b) Except as otherwise provided in this Section 15(b), to the extent that it may wish, the Company, jointly with any other indemnifying party similarly notified, shall be entitled to assume the defense thereof, with counsel satisfactory to the Indemnitee. After notice from the Company to the Indemnitee of its election so to assume the defense thereof, the Company shall not be liable to the Indemnitee under this Agreement for any expenses of counsel subsequently incurred by the Indemnitee in connection with the defense thereof except as otherwise provided below. The Indemnitee shall have the right to employ the Indemnitee's own counsel in such Proceeding, but the fees and expenses of such counsel incurred after notice from the Company of its assumption of the defense thereof shall be at the expense of the Indemnitee unless (i) the employment of counsel by the Indemnitee has been authorized by the Company, (ii) the Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and the Indemnitee in the conduct of the defense of such Proceeding, or (iii) the Company shall not within 60 calendar days of receipt of notice from the Indemnitee in fact have employed counsel to assume the defense of the Proceeding, in each of which cases the fees and expenses of the Indemnitee's counsel shall be at the expense of the Company. The Company shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Company or as to which the Indemnitee shall have made the conclusion provided for in (ii) above; and

(c) Notwithstanding any other provision of this Agreement, the Company shall not be liable to indemnify the Indemnitee under this Agreement for any amounts paid in settlement of any Proceeding effected without the Company's written consent, or for any judicial or arbitral award if the Company was not given an opportunity, in accordance with this Section 15, to participate in the defense of such Proceeding. The Company shall not settle any Proceeding in any manner that would impose any penalty or limitation on or disclosure obligation with respect to the Indemnitee without the Indemnitee's written consent. Neither the Company nor the Indemnitee shall unreasonably withhold its consent to any proposed settlement.

16.Advancement of Expenses. All Expenses incurred by the Indemnitee in defending any Proceeding described in Section 4 or 5 shall be paid by the Company in advance of the final disposition of such Proceeding at the request of the Indemnitee. To receive an advancement of Expenses under this Agreement, the Indemnitee shall submit a written request to

the Secretary of the Company. Such request shall reasonably evidence the Expenses incurred by the Indemnitee and shall include or be accompanied by an undertaking, by or on behalf of the Indemnitee, to repay all amounts so advanced if it shall ultimately be determined, by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal, that the Indemnitee is not entitled to be indemnified for such Expenses by the Company as provided by this Agreement or otherwise. The Indemnitee's undertaking to repay any such amounts is not required to be secured. Each such advancement of Expenses shall be made within 20 calendar days after the receipt by the Secretary of the Company of such written request. The Indemnitee's entitlement to Expenses under this Agreement shall include those incurred in connection with any action, suit, or proceeding by the Indemnitee seeking an adjudication or award in arbitration pursuant to Section 11 of this Agreement (including the enforcement of this provision) to the extent the court or arbitrator shall determine that the Indemnitee is entitled to an advancement of Expenses hereunder.

17.Severability; Prior Indemnification Agreements. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable for any reason whatsoever, (a) the validity, legality, and enforceability of the remaining provisions of this Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that are not by themselves invalid, illegal, or unenforceable) shall not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that are not themselves invalid, illegal, or unenforceable) shall be construed so as to give effect to the intent of the parties that the Company provide protection to the Indemnitee to the fullest enforceable extent. This Agreement shall supersede and replace any prior indemnification agreements entered into by and between the Company and the Indemnitee and any such prior agreements shall be terminated upon execution of this Agreement.

18.Headings; References; Pronouns. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof. References herein to section numbers are to sections of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the singular or plural as appropriate.

19.Other Provisions.

(a) This Agreement and all disputes or controversies arising out of or related to this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to the laws of any other jurisdiction that might be applied because of conflicts of laws principles of the State of Delaware.

(b) This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

(c) This Agreement shall not be deemed an employment contract between the Company and any Indemnitee who is an officer of the Company, and, if the Indemnitee is an

officer of the Company, the Indemnitee specifically acknowledges that the Indemnitee may be discharged at any time for any reason, with or without cause, and with or without severance compensation, except as may be otherwise provided in a separate written contract between the Indemnitee and the Company.

(d) In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

(e) This Agreement may not be amended, modified, or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each party. No failure or delay of either party in exercising any right or remedy hereunder shall operate as a waiver thereof, and no single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, shall preclude any other or further exercise thereof or the exercise of any other right or power.

[The remainder of this page is intentionally left blank.]

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

Heron Therapeutics, Inc.

By:
Name:
Title:

Indemnitee

SIGNATURE PAGE TO INDEMNIFICATION AGREEMENT

Exhibit 10.6

CERTAIN INFORMATION HAS BEEN OMITTED IN ACCORDANCE WITH ITEM 601(B)(10) OF REGULATION S-K BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE OF INFORMATION THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. OMISSIONS ARE MARKED [***].

AGREEMENT OF SUBLEASE

THIS AGREEMENT OF SUBLEASE (this "Sublease") is made as of September 23, 2024, by and between CROWN CASTLE USA INC., a Pennsylvania corporation, having an office at 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 Attention: General Counsel ("Sublandlord"), and HERON THERAPEUTICS, INC. ("Subtenant")

WITNESSETH:

WHEREAS, by that certain Office Lease dated August 27, 2012, between Duke Realty Limited Partnership ("Original Landlord"), as landlord, and Sublandlord, as tenant (together with and as amended by the that certain First Amendment to the Office Lease dated March 2, 2015, that certain Letter of Understanding dated June 1, 2015, and that certain Second Amendment dated September 16, 2019, the "Lease"), Original Landlord leased to Sublandlord approximately 9,882 square feet located on a portion of the third (3rd) floor Suite 300 (the "Premises") of the building located at 100 Regency Forest Dr., Cary, North Carolina 27518, (the "Building"). A true and correct copy of the Lease, with certain provisions thereof that are inapplicable to this Sublease redacted, is attached to this Sublease as Exhibit A.

WHEREAS, Subtenant desires to sublease from Sublandlord, and Sublandlord is willing to sublease to Subtenant, the Premises on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Sublandlord and Subtenant agree as follows:

1. Subleasing of Premises; Condition of Premises.

(a) Subject to Section 18, Sublandlord hereby subleases to Subtenant, and Subtenant hereby takes from Sublandlord, the Premises, upon and subject to all of the terms, covenants, and conditions hereinafter set forth. Capitalized terms not otherwise defined in this Sublease shall have the meanings ascribed to them in the Lease.

(b) Subtenant shall accept the Premises as well as the Sublandlord's FF&E (as defined in Section 20) in its "as is" condition and state of repair on the date hereof, subject to ordinary wear and tear between the date hereof and the Commencement Date, as defined in Section 2, and Subtenant expressly acknowledges and agrees that, except as specifically set forth in Section 1(c), neither Sublandlord nor Sublandlord's agents, have made any representations with respect to the Premises, Sublandlord's FF&E or the Building, and that Sublandlord is not obligated to make any repairs, perform any work, supply any materials, incur any expenses or make any installations in order to prepare the Premises, Sublandlord's FF&E or the Building for Subtenant's occupancy.

(c) Sublandlord represents and warrants to Subtenant that (i) Sublandlord is not in default in the payment or performance of any of its obligations under the Lease, (ii) the Lease is in full force and effect (iii) all obligations of Landlord have been fulfilled, and (iv) and (to the best of Sublandlord's knowledge) there has been no event or condition which, with the giving of notice or the passage of time or both, would constitute a material default or material breach under the Lease.

2. Term. Subject to Section 18, the term (the "Term") of this Sublease shall commence on October 1, 2024 (the "Commencement Date")and shall expire at 11:59 pm (Central Standard Time) on August 31, 2025 (the "Expiration Date"). Under no circumstances shall the Term of this Sublease extend beyond the expiration of or earlier termination as permitted in, the Lease.

3. Base Rent.

(a) During the Term, from and after the Commencement Date, Subtenant shall pay to Sublandlord, in lawful money of the United States, an annual rent ("Base Rent") at a rate equal to $22.50 per rentable square foot as set forth below:

Period	**Base Rent for Term**	**Monthly Base Rent**
October 1, 2024 –October 31, 2024	**No Rent**	**-**
November 1, 2024 - August 31, 2025	**$185,287.50**	**$18,528.75**

(b) Base Rent shall be payable in equal monthly installments ("Monthly Base Rent") due and payable in advance on the 1st day of each calendar month during the Term with the exception of the first month of the Term, as described above, which no such Monthly Base Rent shall be due. Monthly Base Rent shall be payable at the office of Sublandlord, or at such other place as Sublandlord may designate, at any time and from time-to-time, without any set-off or deduction of any kind whatsoever.

(c) Base Rent is a gross lease rate, and includes utilities, janitorial, HVAC and any and all operating expense contribution. Payments for those services and costs will continue to be paid by Sublandlord per the Lease.

(d) Notwithstanding anything to contrary set forth in this Sublease, Subtenant shall not be required to pay any amounts hereunder, whether or not included in Base Rent, which represents late charges, penalties or fees arising out of any late payments made by Sublandlord, as "Tenant" to Landlord under the Lease, unless such late payments are the result of any late payment of such sum by Subtenant to Sublandlord hereunder.

4. Care, Surrender and Restoration of the Premises.

(a) Without limiting any other provision of this Sublease or the Lease, Subtenant shall take good care of the Premises, suffer no waste or injury thereto and shall fully comply with all laws, orders, rules, regulations, directives, ordinances and requirements of all governmental authorities having jurisdiction over the Premises, the Building and Subtenant's use or manner of use thereof, which are imposed on Sublandlord, as tenant under the Lease, in connection with the Premises or the Building.

(b) Upon the Expiration Date or earlier termination of the Term, Subtenant shall, (i) quit and surrender the Premises to Sublandlord, broom clean, in good order and condition existing on the Commencement Date, ordinary wear and tear, condemnation, and casualty damage excepted, (ii) remove all of its personal property therefrom and restore the Premises to its original condition as of the Commencement Date, ordinary wear and tear, condemnation, and casualty damage excepted, and (iii) repair any damage to the Premises, Sublandlord's FF&E (if not purchased by Subtenant per Section 20) or the Building due to such removal. Subtenant shall observe and perform each of the covenants contained in this Sublease and Subtenant's obligations hereunder shall survive the Expiration Date or earlier termination of this Sublease.

5. Use. Subtenant shall use and occupy the Premises for the general office uses as permitted under the Lease and for no other purpose.

6. Subordination to and Incorporation of Terms of the Lease.

(a) This Sublease is in all respects subject and subordinate to all of the terms, provisions, covenants, stipulations, conditions and agreements of the Lease, and, except as otherwise expressly provided in this Sublease, all of the terms, provisions, covenants, stipulations, conditions, rights, obligations, remedies and agreements of the Lease are

incorporated in this Sublease by reference and made a part hereof as if herein set forth at length, and shall, as between Sublandlord and Subtenant (as if they were the Landlord and Tenant, respectively, under the Lease, as if the word "Lease" were "Sublease"), constitute the terms of this Sublease, except for terms of the Lease that are inapplicable, inconsistent with, or specifically modified by, the terms of this Sublease, and shall be binding upon and inure to the benefit of Sublandlord and Subtenant respectively. In furtherance of the foregoing, Subtenant shall not take any action or do or permit to be done anything which (i) is or may be prohibited to Sublandlord, as tenant under the Lease, (ii) might result in a violation of or default under any of the terms, covenants, conditions or provisions of the Lease or any other instrument to which this Sublease is subordinate, or (iii) would result in any additional cost or other liability to Sublandlord. This clause shall be self-operative and no further instrument of subordination shall be required, but Subtenant shall execute promptly any certificate confirming such subordination that Sublandlord may request. As between the parties hereto only, in the event of any inconsistency between this Sublease and the Lease, the terms of this Sublease shall control. Subtenant acknowledges that it has read and examined the Lease, and is fully familiar with the terms, covenants and conditions on the Sublandlord's part to be performed thereunder, and all of the applicable terms, covenants and conditions of the Lease, other than those that have been redacted or as modified herein.

(b) Without limiting the provisions of Section 6(a), Subtenant shall not be obligated to comply with any of the provisions of the Lease that have been redacted from the copy of the Lease attached as Exhibit A (the "Redacted Provisions"). Sublandlord represents and warrants to Subtenant that none of the Redacted Provisions will adversely affect, in any material respect, Subtenant's rights to use and occupy the Premises or any other material rights of Subtenant under this Sublease.

(c) In the event that the Lease is cancelled or terminated, Landlord may at its option, take over all of the right, title and interest of Sublandlord under this Sublease, and Subtenant shall, at the option of Landlord, attorn to and recognize Landlord, as Sublandlord pursuant to the then executory provisions of this Sublease, except that Landlord shall not (i) be liable for any previous act or omission of Sublandlord under this Sublease, (ii) be subject to any offset not expressly provided for in this Sublease, which shall theretofore have accrued to Subtenant against Sublandlord hereunder, (iii) be bound by any modification of this Sublease or by any previous prepayment of more than one month's rent unless previously approved by Landlord, (iv) be bound by any covenant to undertake or complete any construction of the Premises or any portion thereof, or (v) be bound to make any payment to or on behalf of Subtenant. Subtenant agrees that following any such attornment, Landlord shall not be bound by any obligation to make payment to or on behalf of Subtenant with respect to any construction performed by or on behalf of Subtenant at the Premises. Subtenant shall, promptly upon Landlord's request, execute and deliver all instruments necessary or appropriate to confirm such attornment and recognition. Subtenant hereby waives all rights under any present or future law to elect, by reason of the Landlord terminating the Lease, to terminate this Sublease or surrender possession of the Premises.

(d) This Sublease, and all rights of Subtenant hereunder, are and shall be subject and subordinate in all respects to all mortgages and ground or other superior leases, and to all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefor, and advances made thereunder. This Section 6(d) shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Subtenant shall promptly execute and deliver any instrument that Landlord or any the holder of any superior interest may request to evidence such subordination.

(e) Subtenant shall have the use of parking spaces and other Building amenities as described the Lease.

7. Subtenant's Obligations. Except as specifically set forth herein to the contrary, all acts to be performed by, and all of the terms, provisions, covenants, stipulations, conditions, obligations and agreements to be observed by, Sublandlord, as tenant under the Lease, shall, to the extent that the same relate to the Premises, and are not inconsistent with the terms of this Sublease, be performed and observed by Subtenant, and Subtenant's obligations in respect thereof shall run to Sublandlord or Landlord, as Sublandlord may reasonably determine to be appropriate or as may be required by the respective interests of Sublandlord and Landlord. Notwithstanding the foregoing, Subtenant shall have no obligation or liability to pay or perform any obligations contained in any of the Redacted Provisions, or any obligations of Sublandlord arising under the Lease prior to the Commencement Date. Subject to the preceding sentence, Subtenant shall indemnify Sublandlord against, and hold Sublandlord harmless from, all liabilities, losses, obligations, damages, penalties, claims, costs and expenses (including attorney's fees and other costs) which are paid,

suffered or incurred by Sublandlord as a result of the nonperformance or nonobservance of any such terms, provisions, covenants, stipulations, conditions, obligations or agreements by Subtenant as set forth herein, provided, however, that, Subtenant shall not be required to indemnify and hold Sublandlord harmless to the extent any liabilities, losses, obligations, damages, penalties, claims, costs and expenses is a result of the negligence or willful misconduct of Sublandlord or any of its agents, contractors, servants, employees, invitees or licensees.

8. Sublandlord's Obligations.

(a) Notwithstanding anything contained in this Sublease to the contrary, Sublandlord shall have no responsibility to Subtenant for, and shall not be required to provide, any of the services or make any of the repairs or restorations which Landlord has agreed to make or provide, or cause to be made or provided, under the Lease and Subtenant shall rely upon, and look solely to, Landlord for the provision of such services and the performance of such repairs and restorations. Subtenant shall not make any claim against Sublandlord for any damage which may result from, nor shall Subtenant's obligations hereunder, including Subtenant's obligation to pay all Base Rent when due, be impaired by reason of (i) the failure of Landlord to keep, observe or perform any of its obligations under the Lease, or (ii) the acts or omissions of Landlord or any of its agents, contractors, servants, employees, invitees or licensees.

(b) Notwithstanding anything to the contrary set forth in Section 8(a), Sublandlord agrees to use commercially reasonable efforts to cause Landlord to perform Landlord's obligation under the Lease with respect to the Premises, which commercially reasonable efforts shall not, however, include the expenditure of money or the commencement of legal proceedings. If Landlord shall default in any of its obligations to Subtenant with respect to the Premises, Subtenant shall be entitled to participate with the Sublandlord in the enforcement of Sublandlord's rights against Landlord (and in any recovery or relief obtained, to the extent relating to the Premises), but Sublandlord shall have no obligation to bring any action or proceeding or to take any steps to enforce Subtenant's rights against Landlord. Any action or proceeding so instituted by Sublandlord shall be at the expense of Subtenant. If, after written demand by from Subtenant, Sublandlord fails or refuses to take appropriate action for the enforcement of Sublandlord's rights against Landlord with respect to the Premises, then, unless Sublandlord shall have reasonable objection, Subtenant shall have the right to take such action in its own name and, for that purpose and only to such extent, the rights of Sublandlord to enforce the obligations of Landlord under the Lease are hereby conferred upon and are conditionally assigned to Subtenant and Subtenant hereby is subrogated to such rights (including the benefit of any recovery or relief with respect to the Premises) to the extent that the same shall apply to the Premises. Subtenant agrees to indemnify and hold harmless Sublandlord, as provided in Section 11(d), in connection with the taking of any such action by Subtenant.

(c) Sublandlord hereby agrees to indemnify and hold Subtenant harmless from and against any and all liabilities, losses, obligations, damages, penalties, claims, costs and expenses (including attorney's fees and other costs) which are paid, suffered or incurred by Tenant as a result of (i) the nonperformance or nonobservance of any such terms, provisions, covenants, stipulations, conditions, obligations or agreements by Sublandlord under the Lease or this Sublease (including, but not limited to, any termination of this Sublease by reason of the default of Sublandlord under the Lease) and/or (ii) the negligence or willful misconduct of Sublandlord, provided, however, that, Sublandlord shall not be required to indemnify Subtenant to the extent such liabilities, losses, obligations, damages, penalties, claims, costs and expenses is a result of the negligence or willful misconduct of Subtenant. Sublandlord's obligations under this Section 8 shall survive the expiration or earlier termination of this Sublease.

(d) Notwithstanding anything to the contrary herein, Sublandlord covenants as follows: (i) not to voluntarily terminate the Lease, (ii) not to modify the Lease so as to adversely affect Subtenant's rights hereunder, and (iii) to take all actions reasonably necessary to preserve the Lease.

9. Covenants With Respect To The Lease. In the event that Subtenant shall be in default of any term, provision, covenant, stipulation, condition, obligation or agreement of, or shall fail to honor any obligation under, this Sublease, Sublandlord, on giving the notice required by the Lease (as modified pursuant to Section 13) and subject to the right, if any, of Subtenant to cure any such default within any applicable grace period provided in the Lease (as modified pursuant to Section 13), shall have available to it all of the remedies available to Landlord under the Lease in the event

of a like default or failure on the part of Sublandlord, as tenant thereunder. Such remedies shall be in addition to all other remedies available to Sublandlord at law or in equity.

10. Intentionally Omitted.

11. Indemnification of Sublandlord. Subtenant agrees to indemnify Sublandlord against and hold Sublandlord harmless from, any and all liabilities, losses, obligations, damages, penalties, claims, costs and expenses (including attorney's fees and other charges) which are paid, suffered or incurred by Sublandlord as a result of (a) any personal injuries or property damage occurring in or on the Premises during the Term, (b) any work or thing done, or any condition created, by Subtenant in or on the Premises or the Building during the Term, (c) any act or omission of Subtenant or Subtenant's agents, contractors, servants, employees, invitees or licensees during the Term, or (d) the taking of any action by Subtenant against Landlord pursuant to Section 8(b); except, however, if and to the extent any of the foregoing results from the negligence or willful misconduct of Sublandlord or its agents, contractors, servants, employees, invitees or licensees. Subtenant's obligations under this Section 11 shall survive the expiration or earlier termination of this Sublease.

12. Approvals or Consents. In all provisions of the Lease requiring the approval or consent of Landlord, Subtenant shall be required to obtain the express written approval or consent of Sublandlord, which consent shall be subject to the approval or consent of Landlord, pursuant to the Lease. If Sublandlord shall give its consent to any request made by Subtenant then Sublandlord hereby agrees to promptly furnish to Landlord copies of such request for consent or approval received from Subtenant. If Landlord shall refuse to give its consent or approval to any request made by Subtenant then Sublandlord's refusal to give its consent or approval to such request shall be deemed to be reasonable.

13. Time Limits. The parties agree that unless otherwise expressly modified herein, the time limits set forth in the Lease for the giving of notices, making demands, payment of any sum, the performance of any act, condition or covenant, or the exercise of any right, remedy or option, are modified for the purpose of this Sublease by shortening or lengthening the same in each instance by three (3) business days so that notices may be given, demands made, any act, condition or covenant performed and any right or remedy hereunder exercised, by Sublandlord or Subtenant, as the case may be, within the time limits relating thereto contained in the Lease. Sublandlord and Subtenant shall, promptly after receipt thereof, furnish to each other a copy of each notice, demand or other communication received from Landlord with respect to the Premises.

14. Assignment and Subletting. Notwithstanding anything to the contrary contained herein or in the Lease, Subtenant, for itself, its successors and assigns, expressly covenants that it shall not assign, pledge or otherwise encumber this Sublease, or sublet all or any portion of the Premises, without obtaining, in each instance, the prior written consent of Landlord and the prior written consent of Sublandlord. Sublandlord reserves the right to transfer and assign its interest in and to this Sublease to any entity or person who shall succeed to Sublandlord's interest in and to the Lease.

15. End of Term. Subtenant acknowledges that possession of the Premises must be surrendered to Sublandlord on the Expiration Date or earlier termination of this Sublease, in the condition required pursuant to Section 4(b), subject to normal wear and tear, condemnation, and casualty damage. If for any reason Subtenant shall fail to vacate and surrender possession of the Premises or any part thereof on or before the expiration or earlier termination of this Sublease and the Term hereof, then Subtenant's continued possession of the Premises shall be as a holdover tenant from month to month, during which time, without prejudice and in addition to any other rights and remedies Sublandlord may have under this Sublease or at law, Subtenant shall pay to Sublandlord for each month and for each portion of any month during which Subtenant holds over an amount equal to one-hundred fifty percent (150%) of the Monthly Base Rent in effect immediately prior to such holdover period. In addition, Subtenant hereby agrees to indemnify Sublandlord against and hold Sublandlord harmless from any and all reasonable costs and expenses (including attorney's fees and other charges) which are paid or incurred by Sublandlord as a result of the failure of, or the delay by, Subtenant in so surrendering the Premises, including any claims made by Landlord or any succeeding tenant founded on such failure or delay. The provisions of this Section 15 shall not in any way be deemed to (a) permit Subtenant to remain in possession of the Premises after the Expiration Date or sooner termination of this Sublease, or (b) imply any right of Subtenant to use or occupy the Premises upon expiration or termination of this Sublease and the

Term hereof, and no acceptance by Sublandlord of payments from Subtenant after the Expiration Date or sooner termination of the Term shall be deemed to be other than on account of the amount to be paid by Subtenant in accordance with the provisions of this Section 15. Subtenant's obligations under this Section 15 shall survive the expiration or earlier termination of this Sublease.

16. Notices. Notwithstanding anything to the contrary, any notice, request or demand (each, a "Notice") permitted or required to be given by the terms and provisions of this Sublease, or by any law or governmental regulation, either by Sublandlord or Subtenant, shall be in writing. Unless otherwise required by law or regulation, all Notices shall be given and shall be deemed to have been served and given by either of the parties hereto and received by the other party, on the date when the party giving the Notice shall have mailed the Notice by registered or certified mail, return receipt requested, addressed to the other party at the address of the other party first set forth above. A copy of all Notices sent to Sublandlord shall be sent to 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 Attention: General Counsel. Either party hereto may designate a different address for Notices to such party by serving notice of such change in accordance with this Section 16.

17. Broker. Subtenant represents and warrants to Sublandlord that it has not dealt with any broker or finder in connection with this Sublease other than Lee & Associates Raleigh Durham, LLC. Sublandlord represents and warrants to Subtenant that it has not dealt with any broker or finder in connection with this Sublease other than Transwestern. Lee & Associates Raleigh Durham, LLC and Transwestern shall be collectively referred to as "Broker" herein. Each party hereby agrees to indemnify, hold, and save the other party harmless from and against any and all liabilities, losses, obligations, damages, penalties, claims, costs and expenses (including attorney's fees and other charges) arising out of any claim, demand or proceeding for a real estate brokerage commission, finder's fee or other compensation arising out of either of their acts in connection with this Sublease. The provisions of this Section 17 shall survive the expiration or earlier termination of this Sublease. Notwithstanding the foregoing, Sublandlord agrees to pay Broker its commission in accordance with a separate listing agreement promptly following the mutual execution of this Sublease and the receipt by Sublandlord of the written consent of Landlord to this Sublease. The provisions of this Section 17 shall survive the expiration or earlier termination of this Sublease.

18. Sublease Conditional Upon Landlord's Consent. This Sublease is subject to and conditioned upon Sublandlord obtaining the written consent of Landlord to this Sublease, as required under the Lease. Sublandlord shall promptly request such consent, and Subtenant shall cooperate with Sublandlord, at Sublandlord's cost or expense, to obtain such consent and shall provide all information concerning Subtenant that Landlord shall request. Promptly after the execution and delivery of this Sublease, Sublandlord shall request Landlord's consent hereto in accordance with the terms of the Lease. If such consent is refused or if Landlord shall otherwise fail to grant such consent within thirty days after the date Sublandlord executes and delivers a fully executed counterpart of this Sublease to Subtenant, then either party may, by written notice to the other, given at any time prior to the granting of such consent, terminate and cancel this Sublease, whereupon, Sublandlord shall refund to Subtenant any Base Rent paid in advance hereunder together with Subtenant's security deposit and neither party shall have the further right to terminate this Sublease pursuant to this Section 18. Upon such termination and the making of such refunds, neither party hereto shall have any further obligation to the other under this Sublease, except to the extent that the provisions of this Sublease expressly survive the termination of this Sublease.

19. Security Deposit. Simultaneously with the execution and delivery of this Sublease, Subtenant has deposited with Sublandlord the sum of $18,528.75, as security for the full and faithful performance of every provision of this Sublease to be performed by Subtenant (all or any part of such amount, the "Security Deposit"). If Subtenant shall default beyond any applicable grace or notice period in the payment or performance of any of Subtenant's obligations under this Sublease, Sublandlord may use, apply or retain all or any part of this Security Deposit for the payment of any Base Rent or any other sum in default or for the payment of any other amount which Sublandlord may spend or become obligated to spend by reason of such default, or to compensate Sublandlord for any other loss, cost or damage which Sublandlord may suffer by reason thereof. Within five days after notice from Sublandlord to Subtenant of such use or application of any portion of the Security Deposit, Subtenant shall deposit with Sublandlord cash in an amount sufficient to restore the Security Deposit to the amount then required pursuant to the terms of this Section 19. Subtenant's obligation to make such payment shall be deemed a requirement that Subtenant pay an item of additional rent, and Subtenant's failure to do so shall be a breach of this Sublease. Sublandlord shall not, unless otherwise required by law, pay interest to Subtenant on the Security Deposit. Subtenant shall not assign or encumber any part of the

Security Deposit, and no assignment or encumbrance by Subtenant of all of any part of the Security Deposit shall be binding upon Sublandlord, whether made prior to, during, or after the Term. Sublandlord shall not be required to exhaust its remedies against Subtenant or against the Security Deposit before having recourse to any other form of security held by Sublandlord and recourse by Sublandlord to any Security Deposit shall not affect any remedies of Sublandlord which are provided in this Sublease or which are available to Sublandlord in law or in equity. If Subtenant shall fully and faithfully perform every covenant and provision of this Sublease to be performed and observed by Subtenant, the Security Deposit or any balance thereof shall be returned to Subtenant within thirty (30) days after the expiration or sooner termination (other than a termination resulting from a default by Subtenant under this Sublease) of the Term and Subtenant's surrender to Sublandlord of the Premises in the condition required under this Sublease.

20. Sublandlord's FF&E. For no additional consideration, Sublandlord agrees to allow Subtenant to use the items of personal property described in Exhibit B to this Sublease ("Sublandlord's FF&E"). Subtenant shall provide, at its expense, (a) insurance against loss or theft or damage to Sublandlord's FF&E for the full replacement value thereof, and (b) commercial general liability and property insurance as required under the Lease, all in such form, and with insurance companies, as shall be satisfactory to Sublandlord. On or before the Commencement Date, and on each anniversary of the Commencement Date thereafter, Subtenant shall provide to Sublandlord a certificate of insurance confirming that the insurance required hereunder is in effect, naming Sublandlord as additional insured. Subtenant shall bear the entire risk of loss, theft, or destruction of or damage to any item of Sublandlord's FF&E; no loss or damage shall relieve Subtenant of its obligations hereunder, including its obligation to pay Base Rent. Subtenant shall promptly notify Sublandlord of any loss of or damage to Sublandlord's FF&E, and, at Subtenant's expense, shall repair or replace any item of Sublandlord's FF&E suffers such loss or damage. Sublandlord's FF&E shall be and remain the personal property of Sublandlord subject to Subtenant's use right and right to purchase under this Section; Subtenant shall have no right or interest in Sublandlord's FF&E except as provided herein. Subtenant, at its expense, shall keep Sublandlord's FF&E fee and clear from any liens or encumbrances of any kind and Subtenant hereby agrees to indemnify Sublandlord against and hold Sublandlord harmless from any and all losses, costs or expenses which are paid, suffered or incurred by Sublandlord as a result of the failure of Subtenant to do so. Subtenant shall give Sublandlord immediate written notice of any attachment or judicial process affecting Sublandlord's FF&E or Sublandlord's ownership thereof. Subtenant, at its expense, will keep Sublandlord's FF&E in good condition and repair, subject to reasonable war and tear, condemnation, and casualty damage. All parts furnished in connection with such repair and maintenance shall immediately become components of Sublandlord's FF&E and the property of Sublandlord. If requested by Sublandlord, Subtenant will label Sublandlord's FF&E as the property of Sublandlord and shall allow Sublandlord to inspect Sublandlord's FF&E on reasonable prior notice during regular business hours. Upon the expiration or early termination of the Term, Subtenant shall have the option to either (i) return the Sublandlord's FF&E in good working order, normal wear and tear, condemnation, and casualty damage excepted, or (ii) purchase Sublandlord's FF&E for the sum of One Dollar ($1.00). Subtenant shall provide written notice to Sublandlord no less than ninety (90) days prior expiration of this Sublease, notifying Sublandlord of its election hereunder.

21. Miscellaneous.

(a) This Sublease may not be modified, amended, extended, renewed, terminated or otherwise modified except by a written instrument signed by both of the parties hereto.

(b) The provisions of this Sublease shall be governed and interpreted in accordance with the laws of the State of North Carolina.

(c) Unless otherwise set forth herein, the obligations of Sublandlord under this Sublease shall not be binding upon Sublandlord named herein after the assignment or transfer of its interest in and to the Lease, and in the event of any such assignment or transfer, Sublandlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Sublandlord hereunder. Subtenant shall look solely to Sublandlord to enforce Sublandlord's obligations hereunder and no partner, shareholder, director, officer, principal, employee or agent, directly and indirectly, of Sublandlord (collectively, the "Exculpated Parties") shall be personally liable for the performance of Sublandlord's obligations under this Sublease, and Subtenant shall not seek any damages or other legal or equitable remedy against any of the Exculpated Parties.

(d) All understandings and agreements heretofore had between Sublandlord and Subtenant are merged in this Sublease, which alone fully and completely expresses their agreement with respect to the subject matter hereof. This Sublease has been executed and delivered after full investigation by each of the parties hereto, and neither party hereto has relied upon any statement, representation or warranty which is not specifically set forth in this Sublease.

(e) For purposes of this Sublease: (i) whenever the words "include", "includes", or "including" are used, they shall be deemed to be followed by the words "without limitation, (ii) whenever the context may require, pronouns shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa, (iii) the word "or" is not exclusive and the word "including" is not limiting, (iv) references to a law include any rule or regulation issued under the law and any amendment to the law, rule or regulation, (v) references to a Section or Exhibit mean an Section or Exhibit contained in or attached to this Sublease (or Lease as otherwise indicated), and (vi) caption headings are for convenience and reference only and do not define, modify or describe the scope or intent of any of the terms of this Sublease.

(f) This Sublease will be interpreted and enforced in accordance with its provisions and without the aid of any custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provisions in question.

(g) This Sublease does not constitute an offer by Sublandlord to sublease the Premises to Subtenant, and Subtenant shall have no rights with respect to the subleasing of the Premises unless and until Sublandlord, in its sole and absolute discretion, elects to be bound hereby by executing and unconditionally delivering to Subtenant an original counterpart of this Sublease.

(h) This Sublease may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument. The parties agree to accept a digital image (including but not limited to an image in the form of a PDF, JPEG, GIF file, DocuSign, or other e-signature) of this Sublease, if applicable, reflecting the execution of one or both of the parties, as a true and correct original.

[the remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, this Sublease has been duly executed as of the day and year first above written.

SUBLANDLORD:
By: CROWN CASTLE USA INC., a Pennsylvania corporation

By: /s/ Taryn Speakman
Name: Taryn Speakman
Title: Director of Corp. Facilities and WM

SUBTENANT:
By: HERON THERAPEUTICS, INC.

By: /s/ Ira Duarte
Name: Ira Duarte
Title: Chief Financial Officer

EXHIBIT A
Lease

OFFICE LEASE

THIS OFFICE LEASE is executed this27th day of August, 2012 by and between DUKE REALTY LIMITED PARTNERSHIP, an Indiana limited partnership doing business in North Carolina as Duke Realty of Indiana Limited Partnership ("Landlord"), and CROWN CASTLE USA, INC., a Pennsylvania corporation ("Tenant").

ARTICLE 1 • LEASE OF PREMISES

Section 1.0l. Basic Lease Provisions and Definitions.

(a) Leased Premises (shown outlined on **Exhibit A** attached hereto): Suite 150 of the building (the "Building"), located at 100 Regency Forest Drive, Cary, North Carolina 27511, within Regency Forest (the "Park").

(b) Rentable Area: approximately 6,195 rentable square feet. The Rentable Area includes the square footage within the Leased Premises plus a pro rata portion of the square footage of the common areas within the Building, as reasonably determined by Landlord.

(c) Tenant's Proportionate Share: 5.98%.

(d) [***]

(e) [***]

(f) Base Year: 2012.

(g) Target Commencement Date: November **15.** 2012.

(h) Lease Term: Five (5) years and five (5) months.

(i) Security Deposit: [***]

(j) Broker(s): Duke Realty Services, LLC representing Landlord and Anthony & Co. representing Tenant.

(k) Permitted Use: General office purposes.

(l) Address for notices and payments are as follows:

Landlord: Duke Realty Limited Partnership
c/o Duke Realty Corporation
Aun.: Raleigh Market - Vice President,
Asset Management & Customer Service 3005
Carrington Mill Road, Suite 100 Morrisville,
North Carolina 27560

With a copy to: Duke Realty Limited Partnership
c/o Duke Realty Corporation Attn: Raleigh
Market Attorney 3715 Davinci Court, Suite
300
Peachtree Corners, Georgia 30092

With
Payments to: Duke Realty Limited Partnership
75 Remittance Drive, Suite 3205
Chicago, Illinois 60675-3205

Tenant: Crown Castle USA, Inc.
100 Regency Forest Drive, Suite 150 Cary, North
Carolina 27511

(m)Guarantor(s): None.

EXHIBITS
Exhibit A Exhibit B Exhibit C Exhibit D Exhibit E Exhibit F

- Leased Premises
- Tenant Improvements
- Letter of Understanding
- Intentionally Omitted
- Rules and Regulations
- Refusal Space

Section 1.02. Lease of Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises, under the terms and conditions herein, together with a non-exclusive right, in common with others, to use the following {collectively, the "Common Areas"): the areas of the Building and the underlying land and improvements thereto that are designed for use in common by all tenants of the Building and their respective employees,.agents, customers. invitees and others.

ARTICLE 2 - TERM AND POSSESSION

Section 2,0 I. Term, The Lease Tenn shall commence as of the date (the "Commencement Date") that Substantial Completion (as defined in **Exhibit B** hereto) of the Tenant Improvements (as defined in Section 2.02 below) occurs.

Section 2.02. Construction of Tenant Improvements. Landlord shall construct and install all leasehold improvements to the Leased Premises (collectively, the "Tenant Improvements") in accordance with **Exhibit B** attached hereto and made a part hereof.

Section 2.03. Surrender of the Leased Premises. Upon the expiration or earlier termination of this Lease, Tenant shall, at its sole cost and expense, immediately (a) surrender the Leased Premises to Landlord in broom-clean condition and in good order, condition and repair, (b) remove from the Leased Premises or where located (i) Tenant's Property (as defined in Section 8.01 below), (ii) all data and communications equipment, wiring and cabling (including above ceiling, below raised floors and behind walls), and (iii) any alterations required to be removed pursuant to Section 7.03 below, and (c) repair any damage caused by any such removal and restore the Leased Premises to the condition existing upon the Commencement Date, reasonable wear and tear excepted. All of Tenant's Property that is not removed within ten (I0) days following Landlord's written demand therefor shall be conclusively deemed to have been abandoned and Landlord shall be entitled to dispose of such property at Tenant's cost without incurring any liability to Tenant. This Section 2.03 shall survive the expiration or any earlier termination of this Lease.

Section 2.04. Holding Over. If Tenant retains possession of the Leased Premises after the expiration or earlier termination of this Lease, Tenant shall be a tenant at sufferance at one hundred fifty percent (150%) of the Monthly Rental Installments and Annual Rental Adjustment (as hereinafter defined) for the Leased Premises in effect upon the date of such expiration or earlier termination, and otherwise upon the terms, covenants and conditions herein specified, so far as applicable. Acceptance by Landlord of rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor shall such acceptance create a month-to-month tenancy. In the event a month-to-month tenancy is created by operation of law, either party shall have the right to terminate such month-to-month tenancy upon thirty (30) days' prior written notice to the other, whether or not said notice is given on the rent paying date. This Section 2.04 shall in no way constitute a consent by Landlord to any holding over by Tenant upon the expiration or earlier termination of this Lease, nor limit Landlord's remedies in such event.

ARTICLE 3 - RENT

Section 3.01. Base Rent. Tenant shall pay to Landlord the Minimum Annual Rent in the Monthly Rental Installments in advance, without demand, deduction or offset, on the Commencement Date and on or before the first day of each and every calendar month thereafter during the Lease Term. The Monthly Rental Installments for partial calendar months shall be prorated. Tenant shall be responsible for delivering the Monthly Rental Installments to the payment address set forth in Section !..&.!.LJ.} above in accordance with this Section 3.01.

Section 3.02. Annual Rental Adjustment Definitions.

(a) "Annual Rental Adjustment" shall mean the amount of Tenant's Proportionate Share of Operating Expenses for a particular calendar year.

(b) "Operating Expenses" shall mean the amount of all of Landlord's costs and expenses paid or incurred in operating, repairing, replacing and maintaining the Building and the Common Areas in good condition and repair for a particular calendar year (including all additional costs and expenses that Landlord reasonably determines that it would have paid or incurred during such year if the Building had been fully occupied; furthermore, if the Building's occupancy is deemed substantially full in any calendar year, al I costs and expenses paid or incurred during that year will be recoverable from the tenants of the Building), including by way of illustration and not limitation, the following: all Real Estate Taxes (as hereinafter defined), insurance premiums and deductibles; water, sewer, electrical and other utility charges other than the separately billed electrical and other charges paid by Tenant as provided in this Lease (or other tenants in the Building); service and other charges incurred in the repair, replacement, operation and maintenance

of the elevators and the heating, ventilation and air-conditioning system; costs associated with providing fitness facilities, if any; cleaning and other janitorial services; tools and supplies; repair costs; landscape maintenance costs; security patrols; license, permit and inspection fees; management fees (which shall not exceed four percent (4%) of the gross rental receipts for the Building); administrative fees; supplies, costs, wages and related employee benefits payable for the management, maintenance and operation of the Building; maintenance, repair and replacement of the driveways, parking and sidewalk areas (including snow and ice removal), landscaped areas, and lighting; and maintenance and repair costs, dues, fees and assessments incurred under any covenants or charged by any owners association. The cost of any Operating Expenses that are capital in nature shall be amortized over the useful life of the improvement (as reasonably determined by Landlord), and only the amortized portion shall be included in Operating Expenses.

(c) Operating Expenses Exclusions: Notwithstanding the foregoing, Operating Expenses shall exclude or have deducted therefrom, as the case may be:

(i) Leasing commissions;

(ii) The cost of tenant finish improvements provided solely for the benefit of other tenants or proposed tenants in the Building;

(iii) Depreciation on the Building;

(iv) The cost of services separately charged to and paid by another tenant in the Building;

(v) Interest payments and financing costs associated with Building financing;

(vi) Legal fees associated with the preparation, interpretation and/or enforcement of leases;

(vii) Repairs and replacements for which and to the extent that Landlord has been reimbursed by insurance and/or paid pursuant to warranties.

(viii) Advertising and promotional expenses;

(ix) Costs representing amounts paid to an affiliate of Landlord for services or materials which are in excess of the amounts which would have been paid in the absence of such relationship; and

(x) Repairs and replacements necessitated by the negligence of other tenants.

(d) "Tenant's Proportionate Share of Operating Expenses" shall mean an amount equal to the remainder of (i) the product of Tenant's Proportionate Share times the Operating Expenses less (ii) Tenant's Proportionate Share times the Operating Expenses for the Base Year, provided that such amount shall not be less than zero.

(e) "Real Estate Taxes" shall mean any form of real estate tax or assessment or service payments in lieu thereof, and any license fee, commercial rental tax, improvement bond or other similar charge or tax (other than inheritance, personal income or estate taxes) imposed upon the Building or Common Areas, or against Landlord's business of leasing the Building, by any authority having the power to so charge or tax, together with the reasonable costs and expenses of contesting the validity or amount of the Real Estate Taxes.

Section 3.03. Payment of Additional Rent.

(a) Any amount required to be paid by Tenant hereunder (in addition to Minimum Annual Rent) and any charges or expenses incurred by Landlord on behalf of Tenant under the terms of this Lease shall be considered "Additional Rent" payable in the same manner and upon the same terms and conditions as the Minimum Annual Rent reserved hereunder, except as set forth herein to the contrary. Any failure on the part of Tenant to pay such Additional Rent when and as the same shall become due shall entitle Landlord to the remedies available to it for non-payment of Minimum Annual Rent.

(b) In addition to the Minimum Annual rent specified in this Lease, commencing as of the sixth (6th) month of the Lease Term, Tenant shall pay to Landlord as Additional Rent for the Leased Premises, in each calendar year or partial calendar year during the Lease Term, an amount equal to the Annual Rental Adjustment for such calendar year. Landlord shall estimate the Annual Rental Adjustment annually, and written notice thereof shall be given to Tenant prior to the beginning of each calendar year. Tenant shall pay to Landlord each month, at the same time the Monthly Rental Installment is due, an amount equal to one-twelfth (I /12) of the estimated Annual Rental Adjustment. Tenant shall be responsible for delivering the Additional Rent to the payment address set forth in Section 1.0 I (I) above in accordance with this Section 3.03. If Operating Expenses increase during a calendar year, Landlord may increase the estimated Annual Rental Adjustment during such year by giving Tenant written notice to that effect, and thereafter Tenant shall pay to Landlord, in each of the remaining months of such year, an amount equal to the amount of such increase in the estimated Annual Rental Adjustment divided by the number of months remaining in such year. Within a reasonable time after the end of each calendar year, Landlord shall prepare and deliver to Tenant a statement showing the actual Annual Rental Adjustment. Within thirty (30) days after receipt of the aforementioned statement, Tenant shall pay to Landlord, or Landlord shall credit against the next rent payment or payments due from Tenant, as the case may be, the difference between the actual Annual Rental Adjustment for the preceding calendar year and the estimated amount paid by Tenant during such year. This Section 3.03 shall survive the expiration or any earlier termination of this Lease.

Section 3.04. Late Charges. Tenant acknowledges that Landlord shall incur certain additional unanticipated administrative and legal costs and expenses if Tenant fails to pay timely any payment required hereunder. Therefore, in addition to the other remedies available to Landlord hereunder, if any payment required to be paid by Tenant to Landlord hereunder shall become overdue, such unpaid amount shall bear interest from the due date thereof to the date of payment at the prime rate of interest, as reported in the Wall Street Journal (the "Prime Rate") plus six percent (6%) per annum; provided, however, such interest rate shall not be less than twelve percent (12%) per annum.

Section 3.05. Maximum increase in Operating Expenses. Notwithstanding anything in this Lease to the contrary, Tenant will be responsible for Tenant's Proportionate Share of Real Estate Taxes, insurance premiums, utilities, janitorial services, snow removal, landscaping, management fees, and charges assessed against the Building pursuant to any covenants or owner's association ("Uncontrollable Expenses"), without regard to the level of increase in any or all of the above in any year or other period of time. Tenant's obligation to pay all other Building Operating Expenses that are not Uncontrollable Expenses (herein "Controllable Expenses") shall be limited to an eight percent **(8%)** per annum increase over the amount the Controllable Expenses for the immediately preceding calendar year would have been had the Controllable Expenses increased at the rate of eight percent (8%) in all previous calendar years beginning with the actual Controllable Expenses for the year ending December 31, 2013.

Section 3.06. Tenant's Right to Audit.

(a) Tenant shall have the right to inspect, at reasonable times and in a reasonable manner, during the sixty (60) day period following the delivery of Landlord's statement of the actual amount of the Annual Rental Adjustment (the "Inspection Period"), such of Landlord's books of account and records as pertain to and contain information concerning the Annual Rental Adjustment for the prior calendar year in order to verify the amounts thereof. Such inspection shall take place at Landlord's office upon at least fifteen (15) days prior written notice from Tenant to Landlord. Only Tenant or a certified public accountant that is not being compensated for its services on a contingency fee basis shall conduct such inspection. Tenant shall also agree to follow Landlord's reasonable procedures for auditing such books and records. Landlord and Tenant shall act reasonably in assessing the other party's calculation of the Annual Rental Adjustment. Tenant shall provide Landlord with a copy of its findings within thirty (30) days after completion of the audit. Tenant's failure to exercise its rights hereunder within the Inspection Period shall be deemed a waiver of its right to inspect or contest the method, accuracy or amount of such Annual Rental Adjustment.

(b) If Landlord and Tenant agree that Landlord's calculation of the Annual Rental Adjustment for the inspected calendar year was incorrect, the parties shall enter into a written agreement confirming such undisputed error and then Landlord shall make a correcting payment in full to Tenant within thirty (30) days after the determination of the amount of such error or credit such amount against future Additional Rent if Tenant overpaid such amount, and Tenant shall pay Landlord within thirty (30) days after the determination of such error if Tenant underpaid such amount.

(c) All of the information obtained through Tenant's inspection with respect to financial matters (including, without limitation, costs, expenses and income) and any other matters pertaining to Landlord, the Leased Premises, the Building and/or the Park as well as any compromise, settlement or adjustment reached between Landlord and Tenant relative to the results of the inspection shall be held in strict confidence by Tenant and its officers, agents, and employees; and Tenant shall cause its independent professionals to be similarly bound. The obligations within the preceding sentence shall survive the expiration or earlier termination of the Lease.

ARTICLE 4 - SECURITY DEPOSIT

Upon execution and delivery of this Lease by Tenant, Tenant shall deposit the Security Deposit with Landlord as security for the performance by Tenant of all of Tenant's obligations contained in this Lease. In the event of a default by Tenant, Landlord may apply all or any part of the Security Deposit to cure all or any part of such default; provided, however, that any such application by Landlord shall not be or be deemed to be an election of remedies by Landlord or considered or deemed to be liquidated damages. Tenant agrees promptly, upon demand, to deposit such additional sum with Landlord as may be required to maintain the full amount of the Security Deposit. All sums held by Landlord pursuant to this Article 4 shall be without interest and may be commingled by Landlord. Within thirty (30) days after the termination of the Lease, provided that there is then no uncured default or any repairs required to be made by Tenant pursuant to Section 2.03 above or Section 7.03 below, Landlord shall return the Security Deposit to Tenant.

ARTICLE 5 - OCCUPANCY AND USE

Section 5.0 I. Use. Tenant shall use the Leased Premises for the Permitted Use and for no other purpose without the prior written consent of Landlord.

Section 5.Q2. Covenants of Tenant Regarding Use.

(a) Tenant shall (i) use and maintain the Leased Premises and conduct its business thereon in a safe, careful, reputable and lawful manner, (ii) comply with all covenants that encumber the Building and all laws, rules, regulations, orders, ordinances, di11ections and requirements of any governmental authority or agency, now in force or which may hereafter be in force, including, without limitation, those which shall impose upon Landlord or Tenant any duty with respect to or triggered by a change in the use or occupation of, or any improvement or alteration to, the Leased Premises, and (iii) comply with and obey all reasonable directions, rules and regulations of Landlord, including the Building Rules and Regulations attached hereto as **Exhibit E** and made a part hereof, as may be modified from time to time by Landlord on reasonable notice to Tenant.

(b) Tenant shall not do or permit anything to be done in or about the Leased Premises that will in any way cause a nuisance, obstruct or interfere with the rights of other tenants or occupants of the Building or injure or annoy them. Landlord shall not be responsible to Tenant for the non-performance by any other tenant or occupant of the Building of any of Landlord's directions, rules and regulations, but agrees that any enforcement thereof shall be done uniformly. Tenant shall not use the Leased Premises, nor allow the Leased Premises to be used, for any purpose or in any manner that would (i) invalidate any pol icy of insurance now or hereafter carried by Landlord on the Building, or (ii) increase the rate of premiums payable on any such insurance policy unless Tenant reimburses Landlord for any increase in premium charged.

Section 5.03. Landlord's Rights Regarding Use. Without limiting any of Landlord's rights specified elsewhere in this Lease (a) Landlord shall have the right at any time, without notice to Tenant, to control, change or otherwise alter the Common Areas in such manner as it deems necessary or proper; provided such alteration does not unreasonably interfere with Tenant's occupancy of or ability to conduct business in the Leased Premises, and (b) Landlord, its agents, employees and contractors and any mortgagee of the Building shall have the right to enter any part of the Leased Premises at reasonable times upon reasonable notice (except in the event of an emergency where no notice shall be required) for the purposes of examining or inspecting the same (including, without limitation, testing to confirm Tenant's compliance with this Lease), showing the same to prospective purchasers, mortgagees or tenants, and making such repairs, alterations or improvements to the Leased Premises or the Building as Landlord may deem

necessary or desirable; provided such entry of the Leased Premises does not unreasonably interfere with Tenant's occupancy of or ability to conduct business in the Leased Premises.

ARTICLE 6 - UTILITIES AND OTHER BUILDING SERVICES

Section 6.0 I. Services to be Provided. Provided Tenant is not in default, Landlord shall furnish to Tenant, except as noted below, the following utilities and other services to the extent reasonably necessary for Tenant's use of the Leased Premises for the Permitted Use, or as may be required by law or directed by governmental authority:

(a) Heating, ventilation and air-conditioning between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday and (upon forty-eight (48) hours prior request from Tenant) 9:00 a.m. to I :00 p.m. on Saturday of each week except on legal holidays;

(b) Electrical current not to exceed four (4) watts per square foot;

(c) Water in the Building for lavatory and drinking purposes;

(d) Automatic elevator service;

(e) Cleaning and janitorial service in the Leased Premises and Common Areas on Monday through Friday of each week except legal holidays; provided, however, Tenant shall be responsible for carpet cleaning other than routine vacuuming in the Leased Premises;

(f) Washing of windows at intervals reasonably established by Landlord;

(g) Replacement of all lamps, bulbs, starters and ballasts in Building standard lighting as required from time to time as a result of normal usage; and

(h) Maintenance of the Common Areas, including the removal of rubbish, ice and snow.

Section 6.02. Additional Services.

(a) If Tenant requests utilities or building services in addition to those identified above, or if Tenant uses any of the above utilities or services in frequency, scope, quality or quantity substantially greater than that which Landlord determines, in its reasonable discretion, is normally required by other tenants in the Building, then Landlord shall use reasonable efforts to attempt to furnish Tenant with such additional utilities or services. In the event Landlord is able to and does furnish such additional utilities or services, the costs thereof (which shall be deemed to mean the cost that Tenant would have incurred had Tenant contracted directly with the utility company or service provider) shall be borne by Tenant, who shall reimburse Landlord monthly for the same as Additional Rent. Landlord shall also have the right to submeter or separately meter the Leased Premises at Tenant's sole cost, and Tenant shall pay such utilities based on the submeter or separate meter.

(b) If any lights, density of staff, machines or equipment used by Tenant in the Leased Premises materially affect the temperature otherwise maintained by the Building's air-conditioning system or generate substantially more heat in the Leased Premises than that which would normally be generated by other tenants in the Building or by tenants in comparable office buildings, then Landlord shall have the right to install any machinery or equipment that Landlord considers reasonably necessary in order to restore the temperature balance between the Leased Premises and the rest of the Building, including, without limitation, equipment that modifies the Building's air-conditioning system. All costs expended by Landlord to install any such machinery and equipment and any additional costs of operation and maintenance in connection therewith shall be borne by Tenant, who shall reimburse Landlord for the same as provided in this Section 6.02.

Section 6.03. Interruption of Services. Landlord shall use commercially reasonable effort to assure that utility and other services shall not be interrupted or terminated nor shall Tenant's tenancy be diminished or disrupted by lack of services. Nevertheless, Tenant acknowledges and agrees that any one or more of the utilities or other services identified in Sections 6.0 I or 6.02 or otherwise hereunder may be interrupted by reason of accident, emergency or other causes beyond Landlord's control, or may be discontinued or diminished temporarily by Landlord or other persons until certain repairs, alterations or improvements can be made. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility or service and no such failure or interruption shall entitle Tenant to terminate this Lease or withhold sums due hereunder.

ARTICLE 7 - REPAffiS$_1$ MAINTENANCE AND ALTERATIONS

Section 7.0 I. Repair and Maintenance of Building. Landlord shall promptly make all necessary repairs and replacements to the roof, exterior walls, exterior doors, windows, corridors and other Common Areas all in a good and workmanlike manner and in a manner consistent with similar buildings, and Landlord shall keep the Building in a clean and neat condition and use reasonable efforts to keep all equipment used in common with other tenants in good condition and repair. The cost of such repairs, replacements and maintenance shall be included in Operating Expenses to the extent provided in Section 3.02; provided however, to the extent any such repairs, replacements or maintenance are required because of the negligence, misuse or default of Tenant, its employees, agents, contractors, customers or invitees, Landlord shall make such repairs at Tenant's sole expense.

Section 7.02. Repair and Maintenance of Leased Premises. Landlord shall keep and maintain the Leased Premises in good condition and repair all in a good and workmanlike manner and in a manner consistent with similar buildings. The cost of such repairs and maintenance to the Leased Premises shall be included in Operating Expenses; provided however, to the extent any repairs or maintenance are required in the Leased Premises because of the negligence, misuse or default of Tenant, its employees, agents, contractors, customers or invitees or are made at the specific request of Tenant, Landlord shall make such repairs or perform such maintenance at Tenant's sole expense. Notwithstanding the above, Tenant shall be solely responsible for any repair or replacement with respect to Tenant's Property (as defined in Section 8.0 I below) located in the Leased Premises, the Building or the Common Areas.

Nothing in this Article 7 shall obligate Landlord or Tenant to repair normal wear and tear to any paint, wall covering or carpet in the Leased Premises.

Section 7.03. Alterations. Tenant shall not permit alterations in or to the Leased Premises unless and until Landlord has approved the plans therefor in writing. As a condition of such approval, Landlord may require Tenant to remove the alterations and restore the Leased Premises upon termination of this Lease; otherwise, all such alterations shall at Landlord's option become a part of the realty and the property of Land lord, and shall not be removed by Tenant. Tenant shall ensure that all alterations shall be made in accordance with all applicable laws, regulations and building codes, in a good and workmanlike manner and of quality equal to or better than the original construction of the Building. No person shall be entitled to any Lien derived through or under Tenant for any labor or material furnished to the Leased Premises, and nothing in this Lease shall be construed to constitute Landlord's consent to the creation of any lien. If any lien is filed against the Leased Premises for work claimed to have been done for or material claimed to have been furnished to Tenant, Tenant shall cause such lien to be discharged of record within thirty (30) days after filing. Tenant shall indemnify Landlord from all costs, losses, expenses and attorneys' fees in connection with any construction or alteration and any related lien. Tenant agrees that at Landlord's option, Duke Construction Limited Partnership or a subsidiary or affiliate of Landlord, who shall receive a fee as Landlord's construction manager or general contractor, shall perform all work on any a1terations to the Leased Premises.

Section 7.04. Critical Cooling. Notwithstanding anything to the contrary contained herein, Tenant shall be responsible for all non-base building costs related to critical cooling/additional cooling of the Leased Premises and non-base building fire suppression systems for the Leased Premises. Tenant shall have the right to operate the critical cooling system twenty-four (24) hours a day, seven (7) days a week. Tenant shall be solely responsible, at its cost and expense, for the maintenance, repair and replacement (if necessary) of the critical cooling system. Tenant shall operate and maintain the critical cooling system in accordance with all applicable federal, state and local laws and regulations. In no event shall any critical cooling exhaust into the building plenum. Tenant shall also be responsible for the actual cost incurred by Landlord for the electricity and the water, if applicable, to operate the critical cooling system. Upon

expiration or earlier termination of the Lease, Tenant shall remove the critical cooling system and repair any and all damage to the Leased Premises and/or the Building caused by such removal.

ARTICLE 8 - INDEMNITY AND INSURANCE

Section 8.0 I. Release. All of Tenant's trade fixtures, merchandise, inventory, special fire protection equipment, telecommunication and computer equipment, supplemental air conditioning equipment, kitchen equipment and all other personal property in or about the Leased Premises, the Building or the Common Areas, which is deemed to include the trade fixtures, merchandise, inventory and personal property of others located in or about the Leased Premises or Common Areas at the invitation, direction or acquiescence (express or implied) of Tenant (all of which property shall be referred to herein, collectively, as "Tenant's Property"), shall be and remain at Tenant's sole risk.

Landlord shall not be liable to Tenant or to any other person for, and Tenant hereby releases Landlord (and its affiliates, property managers and mortgagees) from (a) any and all liability for theft or damage to Tenant's Property, and (b) any and all liability for any injury to Tenant or its employees, agents, contractors, guests and invitees in or about the Leased Premises, the Building or the Common Areas, except to the extent of personal injury caused by the negligence or willful misconduct of Landlord, its agents, employees or contractors. Nothing contained in this Section 8.01 shall limit (or be deemed to limit) the waivers contained in Section 8.06 below. In the event of any conflict between the provisions of Section 8.06 below and this Section 8.0 I, the provisions of Section 8.06 shall prevail. This Section 8.01 shall survive the expiration or earlier termination of this Lease.

Section 8.02. Indemnification by Tenant. Tenant shall protect, defend, indemnify and hold Landlord, its agents, employees and contractors of all tiers harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) to the extent (a) arising out of or relating to any act, omission, negligence, or willful misconduct of Tenant or Tenant's agents, employees, contractors, customers or invitees in or about the Leased Premises, the Building or the Common Areas, (b) arising out of or relating to any of Tenant's Property, or (c) arising out of any other act or occurrence within the Leased Premises, in all such cases except to the extent of personal injury caused by the negligence or willful misconduct of Landlord, its agents, employees or contractors. Nothing contained in this Section 8.02 shall limit (or be deemed to limit) the waivers contained in Section 8.06 below. In the event of any conflict between the provisions of Section 8.06 below and this Section 8.02, the provisions of Section 8.06 shall prevail. This Section 8.02 shall survive the expiration or earlier termination of this Lease.

Section 8.03. Indemnification by Landlord. Landlord shall protect, defend; indemnify and hold Tenant, its agents, employees and contractors of all tiers harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels} to the extent arising out of or relating to any act, omission, negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors. Nothing contained in this Section 8.03 shall limit (or be deemed to limit) the waivers contained in Section 8.06 below. In the event of any conflict between the provisions of Section 8.06 below and this Section 8.03, the provisions of Section 8.06 shall prevail. This Section 8.03 shall survive the expiration or earlier termination of this Lease.

Section 8.04. Tenant's Insurance.

(a) During the Lease Term (and any period of early entry or occupancy or holding over by Tenant, if applicable), Tenant shall maintain the following types of insurance, in the amounts specified below:

(i) Liability Insurance. Commercial General Liability Insurance, ISO Fonn CG 00 01, or its equivalent, covering Tenant's use of the Leased Premises against claims for bodily injury or death or property damage, which insurance shall be primary and non-contributory and shall provide coverage on an occurrence basis with a per occurrence limit of not less than $4,000,000 for each policy year, which limit may be satisfied by any combination of primary and excess or umbrella per occurrence policies.

(ii) Property Insurance. Special Fonn Insurance in the amount of the full replacement cost of Tenant's Property (including, without limitation, alterations or additions performed by Tenant pursuant hereto, but excluding those improvements, if any, made pursuant to Section 2.02 above), which insurance shall waive coinsurance limitations.

(iii) Worker's Compensation Insurance. Worker's Compensation insurance in amounts required by applicable law; provided, if there is no statutory requirement for Tenant, Tenant shall still obtain Worker's Compensation insurance coverage.

(iv) Business Interruption Insurance. Business Interruption Insurance with limits not less than an amount equal to two (2) years rent hereunder.

(v) Automobile Insurance. Comprehensive Automobile Liability Insurance insuring bodily injury and property damage arising from all owned, non-owned and hired vehicles, if any, with minimum limits of liability of$1,000,000 combined single limit, per accident.

(b) All insurance required to be carried by Tenant hereunder shall be issued by one or more insurance companies reasonably acceptable to Landlord, licensed to do business in the State in which the Leased Premises is located and having an AM Best's rating of A IX or better. Said insurance shall not be canceled or permitted to lapse until Tenant shall have given Landlord not less than thirty (30) days' prior written notice. In addition, Tenant shall name Landlord, Landlord's managing agent, and any mortgagee requested by Landlord, as additional insureds under its commercial general liability, excess and umbrella policies (but only to the extent of the limits required hereunder). On or before the Commencement Date (or the date of any earlier entry or occupancy by Tenant), and thereafter, within ten (I 0) days prior to the expiration of each such policy, Tenant shall furnish Landlord with certificates of insurance in the form of ACORD 25 (or other evidence of insurance reasonably acceptable to Landlord), evidencing all required coverages, and that, such insurance is primary and non-contributory. Upon Tenant's receipt of a request from Landlord, Tenant shall provide Landlord *with* copies of all insurance policies, including all endorsements, evidencing the coverages required hereunder. If Tenant fails to carry such insurance and furnish Landlord with such certificates of insurance or copies of insurance policies (if applicable), Landlord may obtain such insurance on Tenant's behalf and Tenant shall reimburse Landlord upon demand for the cost thereof as Additional Rent. Landlord reserves the right from time to time to require Tenant to obtain higher minimum amounts or different types of insurance if it becomes customary for other landlords of similar buildings in the area to require similar sized tenants in similar industries to carry insurance of such higher minimum amounts or of such different types.

Section 8.05. Landlord's Insurance. During the Lease Tenn, Landlord shall maintain the following types of insurance, in the amounts specified below (the cost of which shall be included in Operating Expenses):

(a) Liability Insurance. Commercial General Liability Insurance, ISO Form CG 00 01, or its equivalent, covering the Common Areas against claims for bodily injury or death and property damage, which insurance shall be primary and non-contributory and shall provide coverage on an occurrence basis with a per occurrence limit of not less than $4,000,000 for each policy year, which limit may be satisfied by any combination of primary and excess or umbrella per occurrence policies.

(b) Property Insurance. Special Form Insurance in the amount of the full replacement cost of the Building, including, without limitation, any improvements, if any, made pursuant to Section 2.02 above, but excluding Tenant's Property and any other items required to be insured by Tenant pursuant to Section 8.04 above.

Section 8.06. Waiver of Subrogation. Notwithstanding anything contained in this Lease to the contrary, Landlord (and its affiliates, property managers and mortgagees) and Tenant (and its affiliates) hereby waive any rights each may have against the other on account of any loss of or damage to their respective property, the Leased Premises, its contents, or other portions of the Building or Common Areas arising from any risk which is required to be insured against by Sections 8.04(a)(ii), 8.04(a)(iii), and 8.05(b) above. The special form property insurance policies and worker's compensation insurance policies maintained by Landlord and Tenant as provided in this Lease shall include an endorsement containing an express waiver of any rights of subrogation by the insurance company against Landlord and Tenant, as applicable.

ARTICLE 9 - CASUALTY

In the event of total or partial destruction of the Building or the Leased Premises by fire or other casualty, Landlord agrees promptly to restore and repair same to a condition that is equivalent to or better than the condition prior to said destruction. Rent shall proportionately abate during the time that the Leased Premises or part thereof are unusable because of any such damage. Notwithstanding the foregoing, if the Leased Premises are so destroyed that they cannot be repaired or rebuilt within one hundred eighty (180) days from the casualty date, then Landlord shall give written notice to Tenant of such determination (the "Casualty Notice") within thirty (30) days of such casualty and either Landlord or Tenant may terminate this Lease effective as of the date of such casualty by giving written notice to the other party within thirty (30) days after Tenant's receipt of the Casualty Notice. If the Leased Premises are destroyed by a casualty that is not covered by the insurance required hereunder or, if covered, such insurance proceeds are not released by any mortgagee entitled thereto or are insufficient to rebuild the Building and the Leased Premises; then; Landlord may, upon thirty (30) days written notice to Tenant terminate this Lease with respect to matters thereafter accruing. Tenant waives any right under applicable laws inconsistent with the terms of this paragraph and in the event of a destruction agrees to accept any offer by Landlord to provide Tenant with comparable space within the project in which the Leased Premises are located on the same terms as this Lease..

ARTICLE_ 10 - EMINENT DOMAIN

If all or any substantial part of the Leased Premises, the Building or Common Areas shall be acquired by the exercise of eminent domain so that the Leased Premises shall become impractical for Tenant to use for the Permitted Use, either, Landlord or Tenant may terminate this Lease by giving written notice to the other party on or before the date possession thereof is so taken. All damages awarded shall belong to Landlord; provided, however, that Tenant may pursue a claim for its damages.

ARTICLE 11 - ASSIGNMENT AND SUBLEASE

Section 11.0 I. Assignment and Sublease.

(a) Tenant shall not assign this Lease or sublet the Leased Premises in whole or in part without Landlord's prior written consent. In the event of any permitted assignment or subletting, Tenant shall remain primarily liable hereunder, and any extension, expansion, rights of first offer, rights of first refusal or other options granted to Tenant under this Lease shall be rendered void and of no further force or effect. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or to be a consent to the assignment of this Lease or the subletting of the Leased Premises. Any assignment or sublease consented to by Landlord shall not relieve Tenant (or its assignee) from obtaining Landlord's consent to any subsequent assignment or sublease.

(b) By way of example and not limitation, Landlord shall be deemed to have reasonably withheld consent to a proposed assignment or sublease if in Landlord's opinion (i) the Leased Premises are or may be in any way adversely affected; (ii) the business reputation of the proposed assignee or subtenant is unacceptable; (iii) the financial worth of the proposed assignee or subtenant is insufficient to meet the obligations hereunder, or (iv} the prospective

assignee or subtenant is a current tenant at the Park or is a bona-fide third-party prospective tenant. Landlord further expressly reserves the right to refuse to give its consent to any subletting if the proposed rent is publicly advertised to be less than the then current rent for similar premises in the Building. [f Landlord refuses to give its consent to any proposed assignment or subletting, Landlord may, at its option, within thirty (30) days after receiving a request to consent, terminate this Lease by giving Tenant thirty (30) days prior written notice of such termination, whereupon each party shall be released from all further obligations and liability hereunder, except those which expressly survive the termination of this Lease. Notwithstanding the foregoing, in the event Landlord elects to terminate this Lease pursuant to the immediately preceding sentence, Tenant shall have the right to withdraw its assignment or sublet request within ten (10) days after receipt of Landlord's termination notice, whereupon Landlord's termination shall be ineffective and this Lease shall continue in full force and effect.

(c) If Tenant shall make any assignment or sublease, with Landlord's consent, for a rental in excess of the rent payable under this Lease, Tenant shall pay to Landlord fifty percent (50%) of any such excess rental upon receipt. Tenant agrees to pay Landlord $500.00 upon demand by Landlord for reasonable accounting and attorneys' fees incurred in conjunction with the processing and documentation of any requested assignment, subletting or any other hypothecation of this Lease or Tenant's interest in and to the Leased Premises as consideration for Landlord's consent.

Section 11.02. Permitted Transfer. Notwithstanding anything to the contrary contained in Section 1 l.0 I above, Tenant shall have the right, without Landlord's consent, but upon ten (I 0) days prior notice to Landlord, to (a) sublet all or part of the Leased Premises to any related corporation or other entity which controls Tenant, is controlled by Tenant or is under common control with Tenant; (b) assign all or any part of this Lease to any related corporation or other entity which controls Tenant, is controlled by Tenant, or is under common control with Tenant, or to a successor entity into which or with which Tenant is merged or consolidated or which acquires substantially all of Tenant's assets or property; or (c) effectuate any public offering of Tenant's stock on the New York Stock Exchange or in the NASDAQ over the counter market; provided that in the event of a transfer pursuant to clause (b), the tangible net worth after any such transaction is not less than the tangible net worth of Tenant as of the date hereof and provided further that such successor entity assumes all of the obligations and liabilities of Tenant (any such entity hereinafter referred to as a "Permitted Transferee"). For the purpose of this Article 11 (i) "control" shall mean ownership of not less than fifty percent (50%) of all voting stock or legal and equitable interest in such corporation or entity, and (ii) "tangible net worth" shall mean the excess of the value of tangible assets (i.e. assets excluding those which are intangible such as goodwill, patents and trademarks) over liabilities. Any such transfer shall not relieve Tenant of its obligations under this Lease. Nothing in this paragraph is intended to nor shall permit Tenant to transfer its interest under this Lease as part of a fraud or subterfuge to intentionally avoid its obligations under this Lease (for example, transferring its interest to a shell corporation that subsequently files a bankruptcy), and any such transfer shall constitute a Default hereunder. Any change in control of Tenant resulting from a merger, consolidation, or a transfer of partnership or membership interests, a stock transfer, or any sale of substantially all of the assets of Tenant that do not meet the requirements of this Section I 1.02 shall be deemed an assignment or transfer that requires Landlord's prior written consent pursuant to Section 11.01 above.

ARTICLE 12 - TRANSFERS BY LANDLORD

Section 12.01. Sale of the Building. Landlord shall have the right to sell the Building at any time during the Lease Term, subject only to the rights of Tenant hereunder; and such sale shall operate to release Landlord from liability hereunder after the date of such conveyance.

Section 12.02. Estoppel Certificate. Within ten (10) days following receipt of a written request from Landlord, Tenant shall execute and deliver to Landlord, without cost to Landlord, an estoppel certificate in such form as Landlord may reasonably request certifying (a) that this Lease is in full force and effect and unmodified or stating the nature of any modification, (b) the date to which rent has been paid, (c) that there are not, to Tenant's knowledge, any uncured defaults or specifying such defaults if any are claimed, and (d) any other matters or state of facts reasonably required respecting the Lease. Such estoppel may be relied upon by Landlord and by any purchaser or mortgagee of the Building.

Section 12.03. Subordination. This Lease is and shall be expressly subject and subordinate at all times to the lien of any present or future mortgage or deed of trust encumbering fee title to the Leased Premises. If any such mortgage or deed of trust be foreclosed, upon request of the mortgagee or beneficiary ("Landlord's Mortgagee"), as the case may be, Tenant will attorn to the purchaser at the foreclosure sale. The foregoing provisions are declared to be self-operative and no further instruments shall be required to effect such subordination and/or attornment; provided, however, that subordination of this Lease to any present or future mortgage or trust deed shall be conditioned upon the mortgagee, beneficiary, or purchaser at foreclosure, as the case may be agreeing that Tenant's occupancy of the Leased Premises and other rights under this Lease shall not be disturbed by reason of the foreclosure of such mortgage or trust deed, as the case may be, so long as Tenant is not in default under this Lease. Within ten (10) days following receipt of a written request from Landlord, Tenant shall execute and deliver to Landlord, without cost, any commercially reasonable instrument that is reasonably necessary to confirm the subordination of this Lease.

ARTICLE 13 - DEFAULT AND REMEDY

Section 13.0 I. Default. The occurrence of any of the following shall be a "Default":

(a) Tenant fails to pay any Monthly Rental Installments or Additional Rent within five (5) days after the same is due. Notwithstanding the foregoing, Tenant shall be allowed one (I) written courtesy notice of a failure to pay Rent on time, and Tenant shall have an additional five (5) days to make such payment before such failure shall be deemed a Default by Tenant, provided, however, that Landlord shall not be required to provide Tenant with written notice more than one time in any twelve (12) month period.

(b) Tenant fails to perform or observe any other term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Landlord; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required to cure, then such default shall be deemed to have been cured if Tenant commences such performance within said thirty (30) day period and thereafter diligently completes the required action within a reasonable time.

(c) Tenant shall vacate or abandon the Leased Premises, or fail to occupy the Leased Premises or any substantial portion thereof for a period of thirty (30) days. Notwithstanding the foregoing, Tenant shall have the right to vacate or abandon the Leased Premise during the Lease Term, and shall not be considered in default, as long as **(i)** Tenant is not otherwise in default hereunder; (ii) Tenant continues to pay rent through the end of the term of the Leased Premises as defined in Section 3.01 of this Lease Agreement, (iii) Tenant adequately secures the Leased Premises to prevent damage, destruction or vandalism to the Leased Premises (iv) Tenant continues such utilities to the Leased Premises as will prevent any damage to the Leased Premises; (v) Tenant continues to provide insurance for the Leased Premises and Tenant pays any increased premium resulting from a lack of a tenant in the Leased Premises. Therefore, except for physically occupying the Leased Premises, Tenant shall otherwise comply with all its obligations under the Lease, including but not limited to the obligation to pay all rental due hereunder.

(d) Tenant shall assign or sublet all or a portion of the Leased Premises in contravention of the provisions of Article 11 of this Lease.

(e) All or substantially all of Tenant's assets in the Leased Premises or Tenant's interest in this Lease are attached or levied under execution (and Tenant does not discharge the same within sixty (60) days thereafter); a petition in bankruptcy, insolvency or for reorganization or arrangement is filed by or against Tenant (and Tenant fails to secure a stay or discharge thereof within sixty (60) days thereafter); Tenant is insolvent and unable to pay its debts as they become due; Tenant makes a general assignment for the benefit of creditors; Tenant takes the benefit of any insolvency action or law; the appointment of a receiver or trustee in bankruptcy for Tenant or its assets if such receivership has not been vacated or set aside within thirty (30) days thereafter; or, dissolution or other termination of Tenant's corporate charter if Tenant is a corporation.

In addition to the defaults described above, the parties agree that if Tenant receives written notice of a violation of the performance of any (but not necessarily the same) term or condition of this Lease three (3) or more times during any twelve (I 2) month period, regardless of whether such violations are ultimately cured, then such conduct shall, at Landlord's option, represent a separate Default.

Section I3.02. Remedies. Upon the occurrence of any Default, Landlord shall have the following rights and remedies, in addition to those stated elsewhere in this Lease and those allowed by law or in equity, any one or more of which may be exercised without further notice to Tenant:

(a) Landlord may re-enter the Leased Premises and cure any Default of Tenant, and Tenant shall reimburse Landlord as Additional Rent for any costs and expenses that Landlord thereby incurs; and Landlord shall not be liable to Tenant for any loss or damage that Tenant may sustain by reason of Landlord's action.

(b) Landlord may terminate this Lease by giving Tenant notice of termination, in which event this Lease shall expire and terminate on the date specified in such notice of termination and all rights of Tenant under this Lease and in and to the Leased Premises shall terminate. Tenant shall remain liable for all obligations under this Lease arising up to the date of such termination, and Tenant shall surrender the Leased Premises to Landlord on the date specified in such notice. Furthermore, Tenant shall be liable to Landlord for the unamortized balance of any leasehold improvement allowance and brokerage fees paid in connection with the Lease.

(c) Without terminating this Lease, Landlord may terminate Tenant's right to possession of the Leased Premises, and thereafter, neither Tenant nor any person claiming under or through Tenant shall be entitled to possession of the Leased Premises. In such event, Tenant shall immediately surrender the Leased Premises to Landlord, and Landlord may re-enter the Leased Premises and dispossess Tenant and any other occupants of the Leased Premises by any lawful means and may remove their effects, without prejudice to any other remedy that Landlord may have. Upon termination of possession, Landlord may re-let all or any part thereof as the agent of Tenant for a term different from that which would otherwise have constituted the balance of the Lease Term and for reasonable rent and on terms and conditions reasonably different from those contained herein, whereupon Tenant shall be immediately obligated to pay to Landlord an amount equal to (i) the difference between the rent provided for herein and that provided for in any lease covering a subsequent re-letting of the Leased Premises, for the period which would otherwise have constituted the balance of the Lease Term had this Lease not been terminated (said period being referred to herein as the "Remaining Tenn"), (ii) the reasonable costs of recovering possession of the Leased Premises and all other expenses, loss or damage incurred by Landlord by reason of Tenant's Default ("Default Damages"), which shall include, without limitation, expenses of preparing the Leased Premises for re-letting, demolition, repairs, tenant finish improvements, brokers' commissions and attorneys' fees, and (iii) all unpaid Minimum Annual Rent and Additional Rent that accrued prior to the date of termination of possession, plus any interest and late fees due hereunder (the "Prior Obligations"). Neither the filing of any dispossessory proceeding nor an eviction of personalty in the Leased Premises shall be deemed to terminate the Lease.

(d) Landlord may terminate this Lease and recover from Tenant all damages Landlord may incur by reason of Tenant's default, including, without limitation, an amount which, at the date of such termination is equal to the sum of the following: (i) the value of the excess, if any, discounted at the prime rate of interest (as reported in the *Wall Street Journal},* of(A) the Minimum Annual Rent, Additional Rent and all other sums that would have been payable hereunder by Tenant for the Remaining Term, less (8) the aggregate reasonable rental value of the Leased Premises for the Remaining Term, as determined by a real estate broker licensed in the State of North Carolina who has at least ten {I 0) years of experience, (ii) all of Landlord's Default Damages, and (iii) all Prior Obligations. Land lord and Tenant acknowledge and agree that the payment of the amount set forth in clause (i) above shall not be deemed a penalty, but shal I merely constitute payment of liquidated damages, it being understood that actual damages to Landlord are extremely difficult, if not impossible, to ascertain. It is expressly agreed and understood that all of Tenant's liabilities and obligations set forth in this subsection (d) shall survive termination.

(e) With or without terminating this Lease, declare immediately due and payable the sum of the following: (i) the present value (discounted at the prime rate of interest, as reported in the *Wall Street Journal)* of all Minimum Annual Rent and Additional Rent due and coming due under this Lease for the entire Remaining Term (as

if by the terms of this Lease they were payable in advance), (ii) all Default Damages, and (iii) all Prior Obligations, whereupon Tenant shall be obligated to pay the same to Landlord; provided, however, that such payment shall not be deemed a penalty or liquidated damages, but shall merely constitute payment in advance of all Minimum Annual Rent and Additional Rent payable hereunder throughout the Remaining Term, and provided further, however, that upon Landlord receiving such payment, Tenant shall be entitled to receive from Landlord all rents received by Landlord from other assignees, tenants and subtenants on account of said Leased Premises during the Remaining Term (but only to the extent that the monies to which Tenant shall so become entitled do not exceed the entire amount actually paid by Tenant to Landlord pursuant to this subsection (e)), less all Default Damages of Landlord incurred but not yet reimbursed by Tenant.

(t) Land lord may sue for injunctive relief or to recover damages for any loss resulting from the Default.

(g) In no event shall Tenant be liable to Landlord for any consequential or punitive damages, except in the event Tenant is holding over in the Leased Premises as set forth in Section 2.04.

Section 13.03. Landlord's Default and Tenant's Remedies. Landlord shall be in default if it fails to perform any term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Tenant to Landlord; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is such that it cannot reasonably be performed within thirty (30) days, such default shall be deemed to have been cured if Landlord commences such performance within said thirty-day period and thereafter diligently undertakes to complete the same. Upon the occurrence of any such default, Tenant may sue for injunctive relief or to recover damages for any loss directly resulting from the breach, but Tenant shall not be entitled to terminate this Lease or withhold, offset or abate any sums due hereunder. In no event, however, shall Landlord be liable to Tenant for any consequential or punitive damages. Notwithstanding the foregoing, if any essential services (such as HY AC service, electricity, water) supplied by Landlord to the Leased Premises are interrupted, then Tenant shall notify Landlord of such interruption, and Landlord shall use its best efforts to restore such services to the Leased Premises as soon as possible.

Section 13.04. Limitation of Landlord's Liability. If Landlord shall fail to perform any term, condition, covenant or obligation required to be performed by it under this Lease and if Tenant shall, as a consequence thereof, recover a money judgment against Landlord, Tenant agrees that it shall look solely to Landlord's right, title and interest in and to the Building for the collection of such judgment; and Tenant further agrees that no other assets of Landlord shall be subject to levy, execution or other process for the satisfaction of Tenant's judgment.

Section 13.05. Nonwaiver of Defaults. Neither party's failure or delay in exercising any of its rights or remedies or other provisions of this Lease shall constitute a waiver thereof or affect its right thereafter to exercise or enforce such right or remedy or other provision. No waiver of any default shall be deemed to be a waiver of any other default. Landlord's receipt of less than the full rent due shall not be construed to be other than a payment on account of rent then due, nor shall any statement on Tenant's check or any letter accompanying Tenant's check be deemed an accord and satisfaction. No act or omission by Landlord or its employees or agents during the Lease Term shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept such a surrender shall be valid unless in writing and signed by Landlord.

Section 13.06. Attorneys' Fees. If either party defaults in the performance or observance of any of the terms, conditions, covenants or obligations contained in this Lease and the non-defaulting party obtains a judgment against the defaulting party, then the defaulting party agrees to reimburse the non defaulting party for reasonable attorneys fees incurred in connection therewith. In addition, if a monetary Default shall occur and Landlord engages outside counsel to exercise its remedies hereunder, and then Tenant cures such monetary Default, Tenant shall pay to Landlord, on demand, all expenses incurred by Landlord as a result thereof, including reasonable attorneys' fees, court costs and expenses actually incurred.

ARTICLE 14 - LANDLORD'S RIGHT TO RELOCATE TENANT

Landlord shall have the right upon at least ninety (90) days' prior written notice to Tenant to relocate Tenant and to substitute for the Leased Premises other space ("Relocation Space") in the Building containing at least as much square footage as the Leased Premises, with similar amount of exterior glass and similar layout, and provided the minimum annual rent and operating expenses for the Relocation Space shall not exceed the Minimum Annual Rent and Operating Expenses due hereunder with respect to the Leased Premises, and provided the Relocation Space is ready for occupancy at the time of such relocation. Landlord shall improve such Relocation Space, at its expense, with improvements at least equal in quantity and quality to those in the Leased Premises. Any relocation of Tenant shall occur over a weekend. Landlord shall reimburse Tenant for all reasonable third party expenses incurred in connection with, and caused by, such relocation, including telephone installation, moving of equipment and furniture, and printing of stationery and change of address announcements with Tenant's new address in an amount not to exceed Ten Thousand and 00/100 Dollars ($10,000.00). Such costs shall be reimbursed by Landlord within thirty (30) days of Landlord's receipt from Tenant of original invoices or receipts for such costs marked "paid in foll". ln no event shall Landlord be liable to Tenant for any consequential damages as a result of any s11Jch relocation, including, but not limited to, loss of business income or opportunity.

ARTICLE 15 - TENANT'S RESPONSIBILITY REGARDING ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES

Section 15.0 I. Environmental Definitions.

(a) "Environmental Laws" shall mean all present or future federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of the Leased Premises, and the rules and regulations of the Federal Environmental Protection Agency and any other federal, state or municipal agency or governmental board or entity having jurisdiction over the Leased Premises.

(b) "Hazardous Substances" shall mean those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" "solid waste11 or 11infectious waste" under Environmental Laws and petroleum products.

Section 15.02. Restrictions on Tenant Tenant shall not cause or permit the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Leased Premises, or the transportation to or from the Leased Premises of any Hazardous Substances, except as necessary and appropriate for its Permitted Use in which case the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws and the highest standards prevailing in the industry.

Section 15.03. Notices, Affidavits. Etc. Tenant shall immediately (a) notify Landlord of (i) any violation by Tenant, its employees, agents, representatives, customers, invitees or contractors of any Environmental Laws on, under or about the Leased Premises, or (ii) the presence or suspected presence of any Hazardous Substances on, under or about the Leased Premises, and (b) deliver to Landlord any notice received by Tenant relating to (a)(i) and (a)(ii) above from any source. Tenant shall execute affidavits, representations and the like within five (S) days of Landlord's request therefor concerning Tenant's best knowledge and belief regarding the presence of any Hazardous Substances on, under or about the Leased Premises.

Section 15.04. Tenant's Indemnification. Tenant shall indemnify Landlord and Landlord's managing agent from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys' fees, costs of testing and remediation costs, incurred by Landlord in connection with any breach by Tenant of its obligations under this Article 15. The covenants and obligations under this Article 15 shall survive the expiration or earlier termination of this Lease.

Section 15.05. Existing Conditions. Notwithstanding anything contained in this Article 15 to the contrary, Tenant shall not have any liability to Landlord under this Article JS resulting from any conditions existing, or events occurring, or any Hazardous Substances existing or generated, at, in, on, under or in connection with the Leased Premises prior to the Commencement Date of this Lease (or any earlier occupancy of the Leased Premises by Tenant) except to the extent Tenant exacerbates the same.

ARTICLE 16 - MISCELLANEOUS

Section 16.0 I. Benefit of Landlord and Tenant. This Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns.

Section 16.02. Governing Law. This Lease shall be governed in accordance with the laws of the State where die Building is located.

Section 16.03. Force Majeure. Landlord and Tenant (except with respect to the payment of any monetary obligation) shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control, including but not limited to work stoppages, boycotts, slowdowns or strikes; shortages of materials, equipment, labor or energy; unusual weather conditions; or acts or omissions of governmental or political bodies.

Section 16.04. Examination of Lease. Submission of this instrument by Landlord to Tenant for examination or signature does not constitute an offer by Landlord to lease the Leased Premises. This Lease shall become effective, if at all, only upon the execution by and delivery to both Landlord and Tenant. Execution and delivery of this Lease by Tenant to Landlord constitutes an offer to lease the Leased Premises on the terms contained herein. The offer by Tenant will be irrevocable until 6:00 p.m. EST, fifteen (15) days after the date Landlord receives the Lease executed by Tenant.

Section 16.05. Indemnification for Leasing Commissions. The parties hereby represent and warrant that the only real estate brokers involved in the negotiation and execution of this Lease are the Brokers and that no other party is entitled, as a result of the actions of the respective party, to a commission or other fee resulting from the execution of this Lease. Each party shall indemnify the other from any and all liability for the breach of this representation and warranty on its part and shall pay any compensation to any other broker or person who may be entitled thereto. Landlord shall pay any commissions due Brokers based on this Lease pursuant to separate agreements between Landlord and Brokers.

Section 16.06. Notices. Any notice required or permitted to be given under this Lease or by law shall be deemed to have been given if it is written and delivered in person or by overnight courier or mailed by certified mail, postage prepaid, to the party who is *to* receive such notice at the address specified in Section 1.01(1). If sent by overnight courier. the notice shall be deemed to have been given one (I) day after sending. If mailed, the notice shall be deemed to have been given on the date that is three (3) business days following mailing. Either party may change its address by giving written notice thereof to the other party.

Section 16.07. Partial Invalidity; Complete Agreement. If any provision of this Lease shall be held to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect. This Lease represents the entire agreement between Landlord and Tenant covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Lease except by a written agreement executed by Landlord and Tenant.

Section 16.08. Financial Statements. If at any time during the Lease Term and any extensions thereof, Tenant's financial statements are not publicly available, Tenant shall provide to Landlord, upon request no more frequently than once a year, a copy of Tenant's most recent financial statements prepared as of the end of Tenant's fiscal year. Such financial statements shall be signed by Tenant or an officer of Tenant. if applicable, who shall attest to the truth and accuracy of the information set forth in such statements, or if the Minimum Annual Rent hereunder exceeds

$100,000.00, said statements shall be certified and audited. All financial statements provided by Tenant to Landlord hereunder shall be prepared in conformity with generally accepted accounting principles, consistently applied.

Sect ion 16.09. Representations and Warranties.

(a) Tenant hereby represents and warrants that (i) Tenant is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the State under which it was organized; (ii) Tenant is authorized to do business in the State where the Building is located; and (iii) the individual(s) executing and delivering this Lease on behalf of Tenant has been properly authorized to do so, and such execution and delivery shall bind Tenant to its terms.

(b) Landlord hereby represents and warrants that (i) Landlord is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the State under which it was organized; (ii) Landlord is authorized to do business in the State where the Building is located; and (iii) the individual(s) executing and delivering this Lease on behalf of Landlord has been properly authorized to do so, and such execution and delivery shall bind Landlord to its terms.

Section 16.10. Signage. Landlord, at its cost and expense, shall provide Tenant with Building standard signage on the main Building directory and at the entrance to the Leased Premises. Any changes requested by Tenant to the initial directory or suite signage shall be made at Tenant's sole cost and expense and shall be subject to Landlord's approval. Landlord may install such other signs, advertisements, notices or tenant identification information on the Building directory, tenant access doors or other areas of the Building, as it shall deem necessary or proper. Tenant shall not place any exterior signs on the Leased Premises or interior signs visible from the exterior of the Leased Premises without the prior written consent of Landlord. Notwithstanding any other provision of this Lease to the contrary, Landlord may immediately remove any sign(s) placed by Tenant in violation of this Section 16.10.

Section 16.11. Parking. Tenant shall be entitled to the non-exclusive use of four (4) parking spaces per l,000 rentable square feet contained in the Leased Premises within the parking area designated for the Building by Landlord. Tenant agrees not to overburden the parking facilities and agrees to cooperate with Landlord and other tenants in the use of the parking facilities. Landlord reserves the right in its absolute discretion to determine whether parking facilities are becoming crowded and, in such event, to allocate parking spaces between Tenant and other tenants. There will be no assigned parking unless Landlord, in its sole discretion, deems such assigned parking advisable. No vehicle may be repaired or serviced in the parking area and any vehicle brought into the parking area by Tenant, or any of Tenant's employees, contractors or invitees, and deemed abandoned by Landlord will be towed and all costs thereof shall be borne by the Tenant. All driveways, ingress and egress, and all parking spaces are for the joint use of all tenants. There shall be no parking permitted on any of the streets or roadways located within the Park. In addition, Tenant agrees that its employees will not park in the spaces designated visitor parking.

Section 16.12. Consent. Where the consent of a party is required, such consent will not be unreasonably withheld.

Section 16.13. Time. Time is of the essence of each term and provision of this Lease.

Section 16.14. Patriot Act. Each of Landlord and Tenant, each as to itself, hereby represents its compliance and its agreement to continue to comply with all applicable anti-money laundering laws, including, without limitation. the USA Patriot Act, and the laws administered by the United States Treasury Department's Office of Foreign Assets Control, including, without limitation, Executive Order 13224 ("Executive Order"). Each of Landlord and Tenant further represents (such representation to be true throughout the Lease Term) (i) that it is not, and it is not owned or controlled directly or indirectly by any person or entity, on the SON List published by the United States Treasury Department's Office of Foreign Assets Control and (ii) that it is not a person otherwise identified by government or legal authority as a person with whom a U.S. Person is prohibited from transacting business. As of the date hereof, a list of such designations and the text of the Executive Order are published under the internet website address www.ustreas.gov/offices/enforcement/ofac.

Section 16.15. Joint and Several Liability. If more than one natural person and/or entity shall constitute Tenant, then the liability of each such person or entity shall be joint and several. If Tenant is a general partnership or other entity the partners or members of which are subject to personal liability, then the liability of each such partner or member shall be joint and several.

ARTICLE 17 - SPECIAL PROVISIONS

Section 17.0 I . QQ.t ion to Extend.

(a) Grant and Exercise of Option. Provided that (i) 110 default has occurred and is then continuing, (ii) the creditworthiness of Tenant is then reasonably acceptable to Landlord and (iii) Tenant originally named herein remains in possession of, and has been continuously operating in the entire Leased Premises throughout the Lease Tenn, Tenant shall have one (I) option to extend the Lease Term for one (I) additional period of five (5) years (the "Extension Term"). The Extension Tenn shall be upon the same terms and conditions contained in the Lease except (x) Tenant shall not have any further option to extend, (y) any improvement allowances or other concessions applicable to the Leased Premises under the Lease shall not apply to the Extension Term, and (z) the Minimum Annual Rent shall be adjusted as set forth herein **("Rent** Adjustment"). Tenant shall exercise such option by delivering to Landlord, no later than twelve (12) months prior to the expiration of the current Lease Tenn, written notice of Tenant's desire to extend the Lease Term. Tenant's failure to properly exercise such option shall be deemed a waiver of such option. If Tenant properly exercises its option to extend, Landlord and Tenant shall execute an amendment to the Lease (or, at Landlord's option, a new lease on the form then in use for the Building) reflecting the terms and conditions of the Extension Tenn within thirty (30) days after Landlord's receipt of Tenant's notice.

(b) Rent Adjustment. The Minimum Annual Rent for the Extension Term shall be an amount equal to one hundred three percent (I 03%) of the Minimum Annual Rent per square foot for the period immediately preceding the applicable Extension Term for the first twelve (12) months of the applicable Extension Term, with an increase of three percent (3%) for each successive twelve (12) month period of the Extension Term. The Monthly Rental Installments shall be an amount equal to one-twelfth (1/12) of the Minimum Annual Rent for each year of the Extension Term and shall be paid at the same time and in the same manner as provided in the Lease.

Section 17.02 . Right of First Refusal.

(a) Provided that (i) no default has occurred and is then continuing, (ii) the creditworthiness of Tenant is then reasonably acceptable to Landlord, and (iii) Tenant originally named herein remains in possession of and has been continuously operating in the entire Leased Premises throughout the Lease Term, and subject to any rights of other tenants to the Refusal Space (as defined herein) and Landlord's right to renew or extend the lease term of any other tenant with respect to the portion of the Refusal Space now or hereafter leased by such other tenant, Tenant shall have a one-time right of first refusal ("Refusal Option") to lease additional space in the Building located contiguous to the Leased Premises as shown crosshatched on the attached **Exhibit F** ("Refusal Space"). Prior to entering into any lease that includes all or any portion of the Refusal Space, Landlord shall notify Tenant in writing ("Landlord's Notice") of Landlord's receipt of an arms-length offer to lease such space that Landlord is willing to accept from a bona fide third party offeror ("Bona Fide Offer") and setting forth the material terms of the Bona Fide Offer and such other terms as are herein provided. If the Bona Fide Offer includes space in the Building in addition to the Refusal Space, then the Refusal Space shall be deemed to include, and this Refusal Option shall be deemed to apply to, all of the space included in the Bona Fide Offer. Tenant shall have five (5) days after Tenant receives Landlord's Notice in which to notify Landlord in writing of its election to lease the Refusal Space upon the terms set forth in Landlord's Notice. If Tenant declines to exercise this Refusal Option or fails to give such written notice within the time period required, Tenant shall be deemed to have waived this Refusal Option, and thereafter this Refusal Option shall be void and of no further force or effect, and Landlord shall be free to lease the Refusal Space to the bona fide offeror or any other third party.

(b) The term for the Refusal Space shall be the greater of (i) the term set forth in the Bona Fide Offer or (ii) the then remaining period of the Lease Term; provided, however, that if the term set forth in the Bona Fide Offer is greater than the then remaining period of the Lease Term, the Lease Tenn for the then existing Leased Premises ("Existing Premises") shall be extended to be coterminous with the term for the Refusal Space. The Refusal Space shall be offered to Tenant at the rental rate and upon such other terms and conditions as are set forth in the Bona Fide Offer and herein, but in no event shall such rental rate be less than the then current rental rate under this Lease. If the Lease Term for the Existing Premises is extended as provided above, the Minimum Annual Rent for such extension term shall be an amount equal to the Minimum Annual Rent then being quoted by Landlord to prospective renewal tenants of the Building for space of comparable size and quality and with similar or equivalent improvements as are found in the Building, and if none, then in similar buildings in the vicinity provided, however, that in no event shall the Minimum Annual Rent during such extension term be less than the highest Minimum Annual Rent payable during the immediately preceding term.

(c) If Tenant shall exercise the Refusal Option, the parties shall enter into an amendment to this Lease adding the Refusal Space to the Leased Premises upon the terms and conditions set forth herein and making such other modifications to this Lease as are appropriate under the circumstances.]f Tenant shall fail to enter into such amendment within ten (10) days following Tenant's exercise of the Refusal Option, then Landlord may terminate this Refusal Option, by notifying Tenant in writing, in which event this Refusal Option shall become void and of no further force or effect, and Landlord shall thereafter be free to lease the Refusal Space to the bona fide offeror or any other third party.

(SIGNATURES CONTAINED ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LANDLORD:

DUKE REALTY LIMITED PARTNERSHIP,
an Indiana limited partnership doing business in
North Carolina as Duke Realty of Indiana Limited Partnership

By: Duke Realty Corporation, its General Partner

By: /s/ Jeffrey B. Sheehan
Senior Vice President
Raleigh

Date of Execution: 8/27/2012

TENANT:

CROWN CASTLE USA, INC., a Pennsylvania Corporation

By: /s/ Jim Young
Name: Jim Young
Title: COO

Date of Execution: 8/3/2012/

Ill

FIRST AMENDMENT TO OFFICE LEASE

THIS FIRST AMENDMENT TO OFFICE LEASE (this "Amendment") is made as of the 25 day of February , 2015 by and between DUKE REALTY LIMITED PARTNERSHIP, an-- Indiana limited partnership doing business in North Carolina as Duke Realty of Indiana Limited Partnership ("Landlord"), and CROWN CASTLE USA, INC., a Pennsylvania corporation ("Tenant").

W I T N E S S E T **H:**

WHEREAS, Landlord and Tenant heretofore entered into that certain Office Lease dated August 27, 2012 (the "Lease") for the lease of approximately 6,195 rentable square feet of space located at 100 Regency Forest Drive, Suite 150, Cary, North Carolina 27511, within Regency Forest, said space being more particularly described therein (the "Original Premises"); and

WHEREAS, Landlord and Tenant desire to amend the Lease to, among other things, relocate Tenant to approximately 9,882 rentable square feet of space located at 100 Regency Forest Drive, Suite 300, Cary, North Carolina 27511, within Regency Forest, said space being more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Relocation Space").

NOW, THEREFORE, for and in consideration of Ten and No/I 00 Dollars ($10.00) and other good and valuable consideration in hand paid by each party hereto to the other, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Incorporation of Recitals and Definitions. The above recitals are hereby incorporated into this Amendment as if fully set forth herein. All capitalized terms used herein but undefined shall have the meaning as defined in the Lease. •

2. Leased Premises.

(a) Commencing as of the date (the "Relocation Date") that Substantial Completion of the Relocation Improvements (as those terms are hereinafter defined) occurs, Section I.0l(a) of the Lease is hereby deleted in its entirety and replaced with the following:

"(a) Leased Premises (shown outlined in **Exhibit A** attached hereto): Suite 300 of the building (the "Building") located at I 00 Regency Forest Drive, Cary, North Carolina 27511, within Regency Forest (the "Park")."

(b) Commencing as of the Relocation Date, all references in the Lease to the Leased Premises shall be deemed to refer to the Relocation Space.

(c) Commencing as of the Relocation Date, Exhibit A to the Lease is hereby deleted in its entirety and replaced with **Exhibit A** attached hereto.

3. Surrender of Original Premises. Commencing as of the date immediately preceding the Relocation Date, all rights and obligations of Tenant with respect to the Original Premises shall terminate and be of no further force or effect; provided, however, that any of Tenant's obligations under the Lease which accrued prior to the Relocation Date or which survive the termination of the Lease shall continue to apply to the Original Premises as provided therein. Tenant shall, and hereby does, abandon and quitclaim to Landlord all its right, title and interest in any improvements made by Tenant to the Original Premises. Notwithstanding the foregoing, Tenant shall remove any supplemental heating, ventilation and air conditioning unit serving the Leased Premises and repair any damage caused by such removal. If Tenant fails to surrender the Original Premises on or before the Relocation Date, Tenant shall be deemed to be holding over with respect to the Original Premises, *as* set forth in Section 2.04 of the Lease.

4. Rentable Area. Commencing as of the Relocation Date, Section 1 .0l(b) of the Lease shall be modified to reflect that the Leased Premises contains approximately 9,882 rentable square feet.

5. Tenant's Proportionate Share. Commencing as of the Relocation Date, Tenant's Proportionate Share, as set forth in Section l .0l(c) of the Lease, shall be 9.54%.

6. Minimum Annual Rent. Section 1.0 l(d) of the Lease is hereby modified to reflect the schedule of Monthly Rental Installments set forth in Section 7 below.

7. [***]

To the extent that the Relocation Date occurs on a date other than May 1, 2015, all of the dates in the foregoing schedule shall be adjusted on a day-for-day basis.

8. Lease Term. The Lease Tenn is hereby extended through and including the date that is the last day of the sixty-first (6151) month following the Relocation Date.

9. Tenant's Address. Commencing as of the Relocation Date, Section 1.01(1) is hereby amended to reflect that Tenant's address for notice purposes shall be as follows:

Tenant: Crown Castle USA, Inc.
I 00 Regency Forest Drive, Suite 300
Cary, North Carolina 27511

10. Maximum Increase in Operating Expenses. Commencing as of the Relocation Date, Section 3.05 of the Lease is hereby deleted in its entirety and replaced with the following:

"Section 3.05. Maximum Increase in Operating Expenses. Notwithstanding anything in this Lease to the contrary, Tenant will be responsible for Tenant's Proportionate Share of Real Estate Taxes, insurance premiums, utilities, janitorial services, snow removal, landscaping, management fees, and charges assessed against the Building pursuant to any covenants or owner's association ("Uncontrollable Expenses"), without regard to the level of increase in any or all of the above in any year or other period of time. Tenant's obligation to pay all other Building Operating Expenses that are not Uncontrollable Expenses (herein "Controllable Expenses") shall be limited to an eight percent (8%) per annum increase over the amount the Controllable Expenses per rentable square foot for the immediately preceding calendar year would have been had the Controllable Expenses per rentable square foot increased at the rate of eight percent (8%) in all previous calendar years beginning with the actual Controllable Expenses per rentable square foot for the year ending December 31, 2013."

11. Option to Extend. Section 17.01 of the Lease is hereby deleted in its entirety and replaced with the following:

"Section 17.0 I. Option to Extend.

(a) Grant and Exercise of Option. Provided that (i) no default has occurred and is then continuing, (ii) the creditworthiness of Tenant is then reasonably acceptable to Landlord and (iii) Tenant originally named herein remains in possession of, and has been continuously operating in the entire Leased Premises throughout the Lease Term, Tenant shall have one (1) option to extend the Lease Term for one (l) additional period of five (5) years (the "Extension Term"). The Extension Tenn shall be upon the same terms and conditions contained in the Lease except (x) Tenant shall not have any further option to extend, (y) any improvement allowances or other concessions applicable to the Leased Premises under the Lease shall not apply to the Extension Tenn, and (z) the Minimum Annual Rent shall be adjusted as set forth herein ("Rent Adjustment"). Tenant shall exercise such option by delivering to Landlord, no later than twelve (12) months prior to the

expiration of the current Lease Tenn, written notice of Tenant's desire to extend the Lease Term. Tenant's failure to properly exercise such option shall be deemed a waiver of such option. If Tenant properly exercises its option to extend, Landlord shall notify Tenant of the Rent Adjustment no later than eleven (11) months prior to the commencement of the Extension Term. Tenant shall be deemed to have accepted the Rent Adjustment if it fails to deliver to Landlord a written objection thereto within five (5) business days after receipt thereof. If Tenant properly exercises its option to extend, Landlord and Tenant shall execute an amendment to the Lease (or, at Landlord's option, a new lease on the form then in use for the Building) reflecting the terms and conditions of the Extension Term within thirty (30) days after Tenant's acceptance (or deemed acceptance) of the Rent Adjustment.

(b) Rent Adjustment. The Minimum Annual Rent for the Extension Term shall be reasonably determined by Landlord based on the monthly rent charged to prospective renewing tenants for the Building and comparable buildings (e.g., buildings of comparable age, physical condition, number of stories, total size, comparable location) in the area in which the Leased Premises are located, taking into account all financial terms, including without limitation, base rent; free rent, escalations, work contributions and allowances and leasing and brokerage commissions. The Monthly Rental installments shall be an amount equal to one twelfth (1/12) of the Minimum Annual Rent for the Extension Term and shall be paid at the same time and in the same manner as provided in the Lease. Without limiting the foregoing, if Tenant delivers to Landlord a written objection to Landlord's calculation of the Rent Adjustment within five (5) business days after Tenant's receipt of Landlord's determination of the Rent Adjustment, and the parties cannot agree on a Rent Adjustment within ten (I 0) days after Tenant's written objection then Tenant may retract its exercise of its option to extend, or Tenant may choose arbitration to determine the Rent Adjustment. If Tenant chooses arbitration, Tenant shall give Landlord written notice of its desire to seek arbitration with in three (3) days after expiration of such ten (I 0) day period ("Arbitration Notice"). Within ten (I 0) days after Tenant provides Landlord with its Arbitration Notice, the parties shall each appoint an appraiser to determine the Rent Adjustment for the Leased Premises. Each appraiser so selected shall be either a MAI appraiser or a licensed real estate broker, each having at least ten (10) years prior experience in the appraisal or leasing of comparable space in the metropolitan area in which the Leased Premises are located and with a working knowledge of current rental rates and practices. If the two appraisers cannot agree upon the Rent Adjustment for the Leased Premises within twenty (20) days after their appointment, then, within ten (l 0) days after the expiration of such twenty (20) day period, the two appraisers shall select a third appraiser meeting the above criteria. Once the third appraiser has been selected as provided for above, then such third appraiser shall within ten (10) days after appointment make its determination of the Rent Adjustment. The average of the two closest determinations of the Rent Adjustment shall be used as the Minimum Annual Rent for the applicable Extension Term and shall be binding on both Landlord and Tenant. Landlord and Tenant shall each bear the cost of its appraiser and shall share the cost of the third. If Tenant fails to provide the Arbitration Notice as provided above, then Tenant's exercise of its option to extend shall be deemed retracted."

12. Right of First Refusal. Commencing as of the Relocation Date, Exhibit F to the Lease is hereby deleted in its entirety and replaced with **Exhibit F** attached hereto.

13. Construction of Relocation Improvements.

(a) Landlord's Obligations. Tenant has personally inspected the Relocation Space and accepts the same **"AS IS"** without representation or warranty by Landlord of any kind and with the understanding that Landlord shall have no responsibility with respect thereto except to construct and install within the Relocation Space, in a good and workmanlike manner, the leasehold improvements (the "Relocation Improvements"), in accordance with this Section 13.

(b) Tenant Contribution. The Tenant Improvements shall be constructed at the shared expense of Landlord and Tenant as follows: (a) Tenant shall contribute an amount equal to Twelve Thousand Three Hundred Thirty-Nine and 43/100 Dollars ($12,339.43) (the "Tenant Contribution") towards the cost of the Tenant Improvements and the construction fees associated therewith, which Tenant Contribution shall be paid by Tenant to Landlord within thirty (30) days following the date of the full execution of this Amendment; and (b) all costs in excess

of the Tenant Contribution associated with construction of the Tenant Improvements described in the Scope of Work shall be paid by Landlord (except in the event of a Change Order requested by Tenant).

(c) Construction Drawings. On or before the thirtieth (30'h) day following the date hereof, Landlord shall prepare and submit to Tenant a set of construction drawings (the "Relocation CD's") covering all work to be performed by Landlord in constructing and installing the Relocation Improvements, which shall be based on the scope of work attached as **Exhibit B** hereto. Tenant shall have five (5) days after receipt of the Relocation CD's in which to review the Relocation CD's and to give to Landlord written notice of Tenant's approval of the Relocation CD's or its requested changes to the Relocation CD's. Tenant shall have no right to request any changes to the Relocation CD's that would increase the scope of work or materially alter the exterior appearance or basic nature of the Building or the Building systems. If Tenant fails to approve or request changes to the Relocation CD's within five (5) business days after its receipt thereof, Tenant shall be deemed to have approved the Relocation CD's and the same shall thereupon be final. If Tenant requests any changes to the Relocation CD's, Landlord shall make those changes which are reasonably requested by Tenant and shall within ten (l 0) days of its receipt of such request submit the revised portion of the Relocation CD's to Tenant. Tenant may not thereafter disapprove the revised portions of the Relocation CD's unless Landlord has unreasonably failed to incorporate reasonable comments of Tenant and, subject to the foregoing, the Relocation CD's, as modified by said revisions, shall be deemed to be final upon the submission of said revisions to Tenant. Tenant shall at all times in its review of the Relocation CD's, and of any revisions thereto, act reasonably and in good faith. Without limiting the foregoing, Tenant agrees to confirm Tenant's consent to the Relocation CD's in writing within three (3) days following Landlord's written request therefor.

(d) Schedule and Early Occupancy. Landlord shall provide Tenant with a proposed schedule for the construction and installation of the Relocation Improvements and shall notify Tenant of any material changes to said schedule. Tenant agrees to coordinate with Landlord regarding the installation of Tenant's phone and data wiring and any other trade related fixtures that will need to be installed in the Relocation Space prior to Substantial Completion. In addition, if and to the extent permitted by applicable laws, rules and ordinances, Tenant shall have the right to enter the Relocation Space for fourteen (14) days prior to the scheduled date for Substantial Completion (as may be modified from time to time) in order to install fixtures and otherwise prepare the Relocation Space for occupancy, which right shall expressly exclude making any structural modifications. During any entry prior to the Relocation Date (i) Tenant shall comply with all terms and conditions of the Lease other than the obligation to pay rent with respect to the Relocation Space, (ii) Tenant shall not interfere with Landlord's completion of the Relocation Improvements, (iii) Tenant shall cause its personnel and contractors to comply with the terms and conditions of Landlord's rules of conduct (which Landlord agrees to furnish to Tenant upon request), and (iv) Tenant shall not begin operation of its business within the Relocation Space. Tenant acknowledges that Tenant shall be responsible for obtaining all applicable permits and inspections relating to any such entry by Tenant.

(e) Change Orders. Tenant shall have the right to request changes to the Relocation CD's at any time following the date hereof by way of written change order (each, an "Relocation Change Order", and collectively, "Relocation Change Orders"). Provided such Relocation Change Order is reasonably acceptable to Landlord, Landlord shall prepare and submit promptly to Tenant a memorandum setting forth the impact on cost and schedule resulting from said Change Order (the "Relocation Change Order Memorandum of Agreement"). Tenant shall, within three (3) business days following Tenant's receipt of the Relocation Change Order Memorandum of Agreement, either (i) execute and return the Relocation Change Order Memorandum of Agreement to Landlord, or (ii) retract its request for the Relocation Change Order. At Landlord's option, Tenant shall pay to Landlord (or Landlord's designee), within ten (I 0) days following Landlord's request, any increase in the cost to construct the Relocation Improvements resulting from the Relocation Change Order, as set forth in the Relocation Change Order Memorandum of Agreement. Landlord shall not be obligated to commence any work set forth in a Relocation Change Order until such time as Tenant has delivered to Landlord the Relocation Change Order Memorandum of Agreement executed by Tenant and, if applicable, Tenant has paid Landlord in full for said Relocation Change Order.

(t) Tenant Delay. Notwithstanding anything to the contrary contained herein, if Substantial Completion of the Relocation Improvements is delayed beyond May 1, 2015 as a result of Tenant Delay (as hereinafter defined), then, for purposes of determining the Relocation Date, Substantial Completion of the Relocation Improvements shall be deemed to have occurred on the date that Substantial Completion of the Relocation Improvements would have occurred but for such Tenant Delay. Without limiting the foregoing Landlord shall use commercially reasonable speed and diligence to Substantially Complete the Tenant Improvements on or before May 1, 2015.

(g) Letter of Understanding. Promptly following the Relocation Date, Tenant shall execute Landlord's Lener of Understanding in substantially the form attached hereto as Exhibit Cand made a part hereof, acknowledging (i) the Relocation Date, and (ii) except for any punchlist items, that Landlord has Substantially Completed the Relocation Improvements. If Tenant takes possession of and occupies the Relocation Space, Tenant shall be deemed to have accepted the Relocation Space and that the condition of the Relocation Space was at the time satisfactory and in conformity with the provisions of this Amendment in all respects, subject to any punch list items.

(h) Definitions. For purposes of this Amendment (i) "Substantial Completion" (or any grammatical variation thereof) shall mean completion of construction of the Relocation Improvements, subject only to punch list items to be identified by Landlord and Tenant in a joint inspection of the Relocation Space prior to Tenant's occupancy, as established by a certificate of occupancy for the Relocation Space or other similar authorization issued by the appropriate governmental authority, if required, and (ii) "Tenant Delay" shall mean any delay in the completion of the Relocation Improvements attributable to Tenant, including, without limitation (A) Tenant's failure to meet any time deadlines specified herein, (B) the performance of any other work in the Relocation Space by any person, firm or corporation employed by or on behalf of Tenant, or any failure to complete or delay in completion of such work, (C) Landlord's inability to obtain an occupancy permit for the Relocation Space because of the need for completion of all or a portion of improvements being installed in the Relocation Space directly by Tenant, and (D) any other act or omission of Tenant which causes a delay to Landlord.

14. Brokers. Except for Anthony & Co. dba Colliers International representing Tenant and Duke Realty Services of Indiana, LLC representing Landlord, whose commissions shall be paid by Landlord, Landlord and Tenant each represents and warrants to the other that neither party has engaged or had any conversations or negotiations with any broker, finder or other third party concerning the matters set forth in this Amendment who would be entitled to any commission or fee based on the execution of this Amendment. Landlord and Tenant each hereby indemnifies the other against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing. The foregoing indemnification shall survive the termination of the Lease for any reason.

15. Representations and Warranties.

(a) Tenant hereby represents and warrants that (i) Tenant is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the State under which it was organized; (ii) Tenant is authorized to do business in the State where the Building is located; and (iii) the individual(s) executing and delivering this Amendment on behalf of Tenant has been properly authorized to do so, and such execution and delivery shall bind Tenant to its terms.

(b) Landlord hereby represents and warrants that (i) Landlord is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the State under which it was organized; (ii) Landlord is authorized to do business in the State where the Building is located; and (iii) the individual(s) executing and delivering this Amendment on behalf of Landlord has been properly authorized to do so, and such execution and delivery shall bind Landlord to its terms.

16. Examination of Amendment. Submission of this instrument for examination or signature to Tenant does not constitute a reservation or option, and it is not effective until execution by and delivery to both Landlord and Tenant.

17. Incorporation. This Amendment shall be incorporated into and made a part of the Lease, and all provisions of the Lease not expressly modified or amended hereby shall remain in foll force and effect. As amended hereby, the Lease is hereby ratified and confirmed by Landlord and Tenant. To the extent the terms hereof are inconsistent with the terms of the Lease, the terms hereof shall control.

[Signatures contained on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first set forth above.

LANDLORD:

DUKE REALTY LIMITED PARTNERSHIP, an
Indiana limited partnership doing business in North Carolina as Duke Realty of Indiana Limited Partnership

BY: Duke Realty Corporation, its general partner

By: /s/Jeffrey B. Sheehan
Jeffrey B. Sheehan
Senior Vice President

Dated: 2/25/15

TENANT:

Crown Castle USA, Inc., a Pennsylvania Corporation

By: /s/ Jim Young
Name: Jim Young
Title: Chief Operating Officer

Attest: /s/ Lyndi Muraco
Name: Lyndi Muraco
Title Senior Executive Admin.

Dated: 2/13/15

SECOND AMENDMENT TO OFFICE LEASE

THIS SECOND AMENDMENT TO OFFICE LEASE (this ""Second Amendment") is made this 16th day of September 2019 ("Effective Date") by and between **AKF3 AF4 Regency Interchange, LLC** ("Landlord") and **Crown Castle USA Inc.** ("Tenant,.).

WITNESSETH

WHEREAS, Landlord's predecessor in interest, Duke Limited Partnership, and Tenant entered into that certain Office Lease dated *August* 27, 2012 {"Original Lease"), as amended by that certain First Amendment to Office Lease dated March 2, 2015 and as amended by certain Letter of Understanding dated June I, 2015 (collectively, the "Lease") for the Leased Premises described as 100 Regency Forest Drive, Suite 300, Cary, NC 27513, consisting of approximately 9,882 rentable square feet; and

WHEREAS, the Lease expires by its terms on **May 31, 2020** ("Expiration Date"); and

WHEREAS, Landlord and Tenant wish to agree to amend the Lease to extend the Term and add ce1tain other terms and conditions as provided for herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do covenant and agree as follows:

1. Incorporation of Recitals and Definitions. The above recitals **are** hereby incorporated t-0 this Second Amendment by this reference as if fully set forth herein.

2. Extension of Tenn. By this Second Amendment, Landlord and Tenant agree to extend the term of the Lease from the Expiration Date until **August** 3 **t. 2025** ("New Expiration Date"). The period between the Expiration Date and the New Expiration Date shall be referred to as the "Extension Term".

3. Base Rent. For the Extension Term, Base Rent owed by Tenant under the Lease, as amended, shall be as follows:

[***]

4. condition.

Condition of Leased Premises. Tenant is retaining the Leased Premises in "As-Is"

5. [***]

Landlord will remit the Tenant Improvements Allowance to Tenant by paying requisitions submitted by Tenant to Landlord once the construction of the Tenant Improvements is complete. Tenant's request for payment of the Tenant Improvements Allowance will be accompanied by bills. invoices, receipts, releases of liens, cancelled checks or other evidence reasonably satisfactory to Landlord which will support the payments being requested and will be certified and sworn to be true by an individual with sufficient knowledge to make such pledge. Remittance of the Tenant Improvements Allowance to Tenant is further conditioned upon: (a) visual inspection by representative of Landlord to verify the Tenant Improvements were completed, (b) receipt of As-Built Drawings, and (c) all close out documentation with respect to the Tenant Improvements submitted to Tenant by the general contractor, which shall include proof of any applicable warranties. Landlord will make payments either directly to contractors, laborers or suppliers or will reimburse Tenant for paid bills. Approved requests for reimbursement of costs incurred by Tenant for Tenant Improvements received by the 25th of the month shall be paid by Landlord by the 15th of the following month. Requisitions for Landlord's payment of the Tenant Improvements Allowance must be submitted on or before February 29, 2020.

6. Option to Renew Market Rate. Tenant is hereby granted an option to renew the Lease at the end of the Extension Term pursuant to the following terms and conditions ("Additional Extension Option"):

a) Provided that at the time such option is exercised and at the expiration of the Extension Term, (i) Tenant is not in default under the Lease, (ii) Tenant has not assigned this Lease or sublet the Leased Premises, other than to subleases or assignees as permitted in the Lease, (iii) Tenant continues to occupy the Leased Premises, (iv) Tenant's use continues to be consistent with the general quality of the tenants and uses in the Project, and (v) Tenant remains creditworthy, Tenant is granted one (l) option to renew the Lease for a period of five (5) years (..Additional Extension Tem1"}.

b) Base Rent for the Additional Extension Term shall be at market rate, with market rate incorporating an increase in Base Rent for each year of the option period. Market rate shall be based upon comparable rates for similar space in the surrounding area.

c) Tenant shall exercise its Additional Extension Option by providing written notice ("Option Notice") of its intent to exercise an option at least nine (9) months prior to the expiration of the Extension Term. Failure to provide timely notice shall render the option null and void.

d) Landlord shall have the right but not the obligation to withdraw and void the option if Tenant is in breach (after applicable notice and opportunity to cure) of this Lease at the time of (i) the Option Notice or (ii) at any time between the Option Notice and the date the option period is to commence. Landlord shall provide the notice of its withdrawal of option within ten (l 0) days after the cure period has expired.

e) Each party shall provide the other with its opinion of market rate within sixty (60) days of Landlord's receipt of the Option Notice. In the event the parties cannot agree as to market rate within ninety (90) days of the exchange of market rate materials, the same shall be determined by using the "Rent Adjustment" procedures set forth in Section 17.0l(b) of the Lease, as amended by the First Amendment.

7. Right of First Refusal. Provided Tenant is not in default of the Lease, Tenant shall have a right of first refusal on contiguous space as it becomes available, subject to rights of existing tenants. Landlord shall provide Tenant in writing with the terms and conditions of any third party offer which is acceptable to Landlord. Tenant shall have five (5) days to exercise, in writing, its right of first refusal on the terms and conditions of the acceptable third-party offer. Landlord and Tenant shall immediately, but no later than five (5) business days thereafter, enter into an amendment to the existing Lease memorializing the exercised right of first refusal.

8. Unmodified Holdover. Except as otherwise expressly set forth herein, this Second Amendment shall not be construed as (i) granting Tenant additional rights, including, but not limited to, any express or implied right to remain in the Leased Premises after the Extension Term or (ii) a modification of any holdover provisions in the Lease.

9. Brokerage. Each of the parties represents and warrants that it has dealt with no broker or brokers in connection with the negotiation or execution of this Second Amendment, except **Trinity** ("Landlord's Broker") and **Colliers International** ('Tenant's Broker"), and each of the parties agrees to il1demnify the other party hereto (and its members, principals, beneficiaries, partners, officers, directors, employees, mortgagee(s) and agents (collectively, the "Related Parties")) against, and hold it harmless from, all liabilities arising from any claim for brokerage commissions or finder's fee resulting from the indemnitor's acts (including, without limitation, reasonable attorney's fees in connection therewith); provided, however, that (i) Landlord shall not be required to indemnify Tenant for claims made by Tenant's Broker (or any party claiming by or through Tenant's Broker) and (ii) Tenant shall not be required to indemnify Landlord for claims made by Landlord's Broker (or any party claiming by or through Landlord's Broker).

10. Base Year. Commencing with the beginning of the Extension Term, the Base Year and the year determining increase in Operating Expenses pursuant to paragraph 10 of the first Amendment is calendar year 2020.

11. Security Deposit. Landlord is currently holding-as Security Deposit and no additional deposit is required for this Second Amendment.

12. No Existing Sublease. Tenant represents that it has not made any assignment sublease, transfer or conveyance of the Lease or any interest therein or in the Leased Premises unless explicitly recited herein. Tenant shall indemnify and hold Landlord harmless for any liability incurred as a result or inaccuracy of this representation.

13. Landlord Notice Address. Landlord's Notice Address shall be amended to be: AKF3 AF4 Regency Interchange, LLC c/o Adler Real Estate Partners, LLC 800 Brickell Avenue, Suite 701, Miami, FL 33131.

14. Payment Address. Lease payments shall be directed to: Adler Real Estate Services, LLC Attn: Accounts Receivable 9050 Pines Blvd, Suite 300, Pembroke Pines, FL 33024.

15. Authority. The person executing this Second Amendment on behalf of Landlord and Tenant hereby represents that each and any entity signing on behalf of Landlord or Tenant is a valid and existing entity authorized to do business in the State of North Carolina and that the actual signatory is fully authorized to act on behalf of the entity(ies) for which the individual is signing.

16. Amendment. To the extent not inconsistent or in conflict with the terms of this Second Amendment, the terms of the Lease shall remain in full force and effect. In the event of any inconsistency or conflict, the terms of this Second Amendment shall govern. This Second Amendment may be executed in counterparts, each of which constitutes and original and shall be valid against the party that signed such counterpart, and **all** of which together constitute one agreement.

THIS SECOND AMENDMENT shall be binding upon and inure to the benefit of Landlord and Tenant and their respective successors and assigns.

Dated this 16th day of September, 2019.

Landlord:
AKF3 AF4 Regency Interchange, LLC, a
Delaware limited liability company

By: /s/ Matthew Adler
Matthew Adler
Managing Principal

TENANT:
Crown Castle USA, Inc., a Pennsylvania
Corporation

By: /s/ Mark Schrott
Print Name: Mark Schrott
Title: VP National Facilities

Exhibit 19.1

Heron Therapeutics, Inc. Insider Trading Policy

Heron Therapeutics, Inc. (the "***Company***") has adopted this Insider Trading Policy (the "***Policy***") to promote compliance with federal Securities laws by directors, officers, employees and contractors/consultants to the extent they are privy to Non-Public Material Information of the Company and its affiliates, as well as any immediate family members sharing the household of any of the foregoing, and any entities controlled by any of the foregoing persons, including corporations, partnerships or trusts (collectively, the "***Company Personnel***"). The Policy also is designed to protect an important corporate asset: the Company's reputation for integrity and ethical conduct. This Policy governs transactions in Securities of the Company or any other issuer where conflicts of interest could arise. As a result of applicable Securities laws and this Policy, Company Personnel may, from time to time, have to forego or delay a desired Securities transaction, and may suffer economic loss or forego anticipated profit as a result.

POLICY

No Company Personnel may purchase or sell, offer to purchase or sell, or otherwise Trade in the Company's Securities unless certain that he or she does not possess Non-Public Material Information about the Company. No Company Personnel may disclose, or "*tip*," such information to others who might use it for Trading or might pass it along to others who might Trade.

Similarly, Company Personnel may not purchase or sell, offer to purchase or sell, or otherwise Trade in Securities of any other company unless they are certain that they do not possess any Non-Public Material Information about that company which they obtained in the course of their employment or consulting relationship with the company, such as information about a major contract or merger being negotiated. No Company Personnel may disclose, or "*tip*" such information to others who might use it for Trading or might pass it along to others who might Trade.

Covered Persons (as defined below) must "*pre-clear*" all Trading in Company Securities in accordance with the procedures set forth below in the section entitled "Pre-Clearance of Securities Transactions."

Inside Information relating to the Company is the property of the Company, and the unauthorized disclosure of such information is prohibited.

The head of the Legal and CFO shall have the authority to administer and interpret this Policy.

All Company Personnel will be required to undergo periodic training regarding this Policy, and to certify that they have read, understand, and will abide by the terms of this Policy on an annual basis.

DEFINITIONS

"***Business Day***" means any day on which the Nasdaq Stock Market is open for Trading.

"***Covered Person(s)***" include all members of the Company's Board of Directors, all Company employees, and any immediate family members sharing the household of any such persons.

"***Non-Public***" or "***Inside Information***", means information that has not yet become publicly available or disseminated to the public. The test of whether information is Non-Public is fact-based and depends on the specific circumstances involved. For example, the fact that information has been disclosed to a few members of the public does not make it public for insider Trading purposes. Release of information to the media does not immediately free Company Personnel to Trade. To be "*public*" the information must have been disseminated in a manner designed to reach investors generally. Further, information that has been released may not mean that the information is "*Non-Public*." Company Personnel should refrain from Trading until the market has had an opportunity to absorb and evaluate the information. For the information to be considered widely disseminated, it is usually sufficient to wait at least twenty-four (24) hours after its publication before Trading. If you are not sure whether information is considered public, you should either consult with the Company's head of Legal and/or CFO or assume that the information is Non-Public and treat it as confidential.

"***Material Information***" is any information relating to a company, its business operations or Securities, the public dissemination of which would be likely to affect the market price of any of its Securities, or which would likely be considered important by a reasonable investor in determining whether to buy, sell or hold such Securities. While it is not possible to list all types of information which might be considered "*material*" under particular circumstances, information concerning the following subjects are particularly likely to be found to be Material Information:

- financial performance, especially sales numbers, quarterly and year-end earnings, significant changes in financial performance or liquidity and expectations for future periods;
- major new discoveries or advances in research;
- acquisitions, including mergers and tender offers;
- sales of substantial assets;
- important business developments such as discoveries, study results and regulatory rulings;
- financings or restructurings;
- an extraordinary item for accounting purposes, including:
    - changes in debt ratings;
    - significant write-downs of assets;
    - additions to reserves for bad debts or contingent liabilities;
    - liquidity problems;
- extraordinary management developments;
- public or private offerings of Securities;
- actual or threatened major litigation or regulatory actions or the resolution of such litigation or regulatory actions;
- major price or marketing changes for products;
- threatened or actual significant litigation or investigations by government authorities;
- cybersecurity attacks, breaches or similar events;
- awards or losses of significant contracts; and
- receipt or denial of licenses or regulatory approvals of products or rates.

The information may be positive or negative. Material Information is not limited to historical facts but may also include projections and forecasts. The public, the media, and the courts may use hindsight in judging what is Material Information. When in doubt about whether particular Inside Information is "*Material Information*", you should presume it is Material Information and consult with the Company's head of Legal and/or CFO.

"***Securities***" include any type of stock, share, limited partnership interest, or bond, debt or other fixed income instrument issued by a business, organization, or government agency or instrumentality. It also includes buying, selling, or writing an option or some other instrument that derives its value from another Security, such as put and call options and convertible debentures or preferred stock, as well as debt securities such as bonds and notes.

"***Trading*** *" or "****Trade***" includes buying or selling or any other transaction involving publicly-Traded Securities. It does not include ongoing purchases under the Company's Employee Stock Purchase Plan (the "***ESPP***"), participation decisions under the ESPP or exercising stock options under any Company option plan for cash or the delivery of previously owned Company stock. For purposes of this Policy, the sale of any shares issued on the exercise of Company stock options (including the sale of shares to pay the exercise price and/or taxes), are subject to Trading restrictions under this Policy.

ADDITIONAL PROHIBITIONS AND GUIDANCE

Short Sales and Derivatives

Short sales of the Company's Securities (a sale of Securities which are not then owned), including a "*sale against the box*" (a sale with delayed delivery) are prohibited.

Option Trading

No Company Personnel may *ever* engage in transactions in *publicly-Traded* options, such as puts, calls and other derivative Securities, relating to the Company. This prohibition does not prevent Company Personnel from exercising Company-issued options, subject to the other restrictions of this Policy.

Hedging

Company Personnel are also prohibited from engaging in hedging, a monetization transaction or similar arrangements involving the Company's Securities, such as zero-cost collars and forward sale contracts, as they involve the establishment of a short position in the Company's Securities.

Standing Orders

Standing orders (except standing orders under approved Rule 10b5-1 plans, *see* below) should be used only for a brief period of time. The problem with purchases or sales resulting from standing instructions to a broker is that there is no control over the timing of the transaction. The broker could execute a transaction when you are in possession of Non-Public Material Information. No Covered Person may enter any standing order (except standing orders approved under Rule 10b5-1 plans, *see* below) that extends beyond the two (2) Business Day preclearance period described below in the section entitled "Pre-Clearance of Securities Transactions."

Margin Accounts and Pledges

Securities held in a margin account may be sold by the broker without the customer's consent if the customer fails to meet a margin call. Similarly, Securities pledged as collateral for a loan may be sold in foreclosure if the borrower defaults on the loan or, in many instances, if the value of the collateral declines. Because a margin sale or foreclosure sale may occur at a time when the pledgor is aware of Non-Public Material Information regarding the Company, Company Personnel are prohibited from holding Securities of the Company in a margin account or pledging such Securities as collateral for a loan. An exception to this prohibition may be permitted in certain limited circumstances with the advance written approval of the Company's head of Legal and/or CFO.

Internet and Social Media

Because of the potential for abuse of the prohibition on "*tipping*," Company Personnel are prohibited from posting any information on Internet chat rooms, social media, or other types of public forums where the Company or the Company's Securities are a topic.

BLACKOUT POLICY

As part of this Policy, the Company has adopted a blackout policy that prohibits Trading in the Company's Securities by Company Personnel, beginning on the last Business Day of each fiscal quarter (generally, March 31, June 30, September 30, December 31 of each calendar year) and ending 24 hours after earnings for such quarter are publicly released.

Who is covered by this blackout policy?

- All Company Personnel

What transactions are prohibited during a blackout period?

- Open market purchase or sale of the Company's Securities
- Purchase or sale of the Company's Securities through a broker
- Exercise of stock options where all or a portion of the acquired stock is sold during the blackout period
- The sale of shares purchased through the ESPP

What transactions are allowed during a blackout period?

- Exercise of stock options where no Company stock is sold in the market to fund the option exercise
- Regular purchases through the ESPP
- Gifts of Company stock, but only if such gifts have been cleared in advance by the Company's head of Legal and/or CFO
- Transfers of Company stock to or from a trust
- Transactions pursuant to Rule 10b5-1 plans approved by the Company's head of Legal and/or CFO in accordance with this Policy (*see* below)
- Commencing participation in, ceasing participation in, or changing the terms of participation in the ESPP

In addition to the standard end-of-quarter blackout periods, the Company may, from time to time, impose other blackout periods. The scope of persons affected may be broader than, or different from, the persons described above.

As an aid to implementation of this Policy, during blackout periods the Company may utilize available procedures to restrict prohibited actions on any equity award administration website made available to employees.

Rule 10b5-1 Plans

Rule 10b5-1 provides a defense from insider Trading liability. To be eligible for this defense, Company Personnel may enter into a "*Rule 10b5-1 plan*" for Trading in the Company's Securities (a "***Rule 10b5-1 plan***"). If such plan meets the requirements of Rule 10b5-1, Company Securities may be purchased or sold under the plan without regard to certain insider Trading restrictions including blackout and pre-clearance requirements.

To comply with this Policy, a Rule 10b5-1 plan must (1) meet the requirements of Rule 10b5-1 and (2) be pre-approved by the Company's head of Legal and/or CFO.

In general, a Rule 10b5-1 plan must be entered into in good faith at a time when the person entering into the plan is not aware of Non-Public Material Information. Company Personnel who adopt a plan must not following adoption exercise any influence over the amount of Securities to be Traded, the price at which they are to be Traded or the date of the Trade. Instead, the plan must either (1) specify the type of Securities, amount, pricing, and timing of transactions (or other formula(s) describing such transactions) in advance or (2) delegate discretion on these matters to an independent third party who does not possess any Non- Public Material Information about the Company.

PRE-CLEARANCE OF SECURITIES TRANSACTIONS

All Covered Persons are obligated to pre-clear transactions in the Company's Securities because they are likely to obtain Non-Public Material Information on a regular basis. These transactions include all transactions noted above as being prohibited during a blackout period. Pre-clearance is not required for the Trading of Securities under an approved Rule 10b5-1 plan (provided that the third party effecting the transactions on behalf of the Covered Person is instructed to send duplicate confirmations of all such transactions to both the Company's head of Legal and CFO).

Who authorizes the clearance?

- the Company's head of Legal and/or CFO;
- the head of Legal, in the event the CFO is seeking pre-clearance; or
- the CFO, in the event the Company's head of Legal is seeking pre-clearance.

Pre-clearance advice generally is good for two (2) Business Days, unless the Covered Person comes into contact with Non-Public Material Information during that time. If the transaction does not occur during such two (2)-Business Day period, pre-clearance of the transaction must be re-requested.

POST-TERMINATION TRANSACTIONS

Applicable Securities laws continue to apply to transactions in Company Securities even after service with the Company has ended. Covered Persons in possession of Non-Public Material Information at the time of

their termination, may not purchase or sell Company Securities until that information has become public or is no longer Material Information.

SECTION 16 REPORTS

Some officers and all of the Company's directors are obligated to file Section 16 reports when they engage in transactions in the Company's Securities. Although the CFO's office will assist reporting persons in preparing and filing the required reports, the reporting persons retain responsibility for the reports.

Who is obligated to file Section 16 reports?

- the Company's directors; and
- the Company's officers designated as "*executive officers*" for SEC reporting purposes as determined by the Company's Board of Directors.

FORM 144 REPORTS

The Company's directors and certain officers designated by the Board of Directors are required to file a Form 144 before making an open market sale of the Company's Securities. Form 144 notifies the SEC of such individual's intent to sell the Company's Securities. This form is generally prepared and filed by such individual's broker and is in addition to the Section 16 reports filed on your behalf by the CFO's office.

PENALTIES FOR NON-COMPLIANCE

Penalties under the SEC for violations of insider Trading laws, which prohibit Trading on Non-Public Material Information, apply to both the individuals involved in such unlawful conduct and their employers and supervisors, and include: (1) imprisonment; (2) criminal fines; (3) civil penalties; (4) prejudgment interest; and (5) private party damages. In addition, violation of this Policy could result in termination of employment (or termination of business engagement for consultants or contractors) or other disciplinary action. Given the severity of the potential penalties, compliance with this Policy is absolutely mandatory. If you have questions regarding any of the provisions of this Policy, please contact the Company's head of Legal.

CERTIFICATION

Each year, all Company Personnel will be required to certify that they have received and read a copy of this Policy and to certify compliance with it. In the event that an individual fails to make such a certification, the Company, in its discretion, may request information or documentation, including records relating to Securities Trading, or take such other action as it may deem appropriate to assure compliance with this Policy and its procedures.

Adopted: December 10, 2024

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-256620, 333-267781, and 333-274167) and Form S-8 (Nos. 333-35151, 333-90428, 333-118546, 333-127574, 333-137954, 333-148660, 333-162610, 333-167515, 333-176365, 333-176366, 333-190549, 333-198853, 333-206165, 333-214503, 333-219830, 333-233023, 333-259518, 333-267352, 333-273059, and 333-281293) of Heron Therapeutics, Inc. of our report dated February 27, 2025, relating to the consolidated financial statements and the effectiveness of Heron Therapeutics, Inc.'s internal control over financial reporting which appear in this Form 10-K as of and for the year ended December 31, 2024.

WithumSmith+Brown, PC

Orlando, Florida
February 27, 2025

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Craig Collard, certify that:

1. I have reviewed this Annual Report on Form 10-K of Heron Therapeutics, 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: February 27, 2025

By: /s/ Craig Collard
Craig Collard
Chief Executive Officer
(As Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Ira Duarte, certify that:

1. I have reviewed this Annual Report on Form 10-K of Heron Therapeutics, 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: February 27, 2025

By: /s/ Ira Duarte
Ira Duarte
Executive Vice President, Chief Financial Officer
(As Principal Financial Officer)

Exhibit 32.1

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Craig Collard, Chief Executive Officer of Heron Therapeutics, Inc. (the "Company"), and Ira Duarte, Executive Vice President, Chief Financial Officer of the Company, each hereby certifies that, to the best of his or her knowledge:

- the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2024, to which this Certification is attached as Exhibit 32.1 (the "Annual Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and
- the information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 27, 2025

In Witness Whereof, the undersigned have set their hands hereto as of the 27th day of February, 2025.

/s/ Craig Collard
Craig Collard
Chief Executive Officer
(As Principal Executive Officer)

/s/ Ira Duarte
Ira Duarte
Executive Vice President, Chief Financial Officer
(As Principal Financial Officer)

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